

THE MARTHA'S VINEYARD COMMISSION

BOX 1447
OAK BLUFFS
MASSACHUSETTS
02557
617-693-3453

DATE: September 20, 1984
TO: Planning Board of the Town of Edgartown
FROM: Martha's Vineyard Commission
SUBJECT: DEVELOPMENT OF REGIONAL IMPACT
RE: RESIDENTIAL SUBDIVISION

APPLICANT: Katama Village
Edward D. Raposa
c/o Smith & Dowling
P.O. Box 1987
Tisbury, MA 02568

SUMMARY

The Martha's Vineyard Commission hereby denies permission for the development contained in the Application of Katama Village, Edward D. Raposa, c/o Smith and Dowling, P.O. Box 1987, Tisbury, Massachusetts 02568 for the subdivision of land in the Town of Edgartown as shown on the plans entitled: Katama Village, A Plan of Land in Edgartown, Massachusetts prepared for Edward D. Raposa, Smith and Dowling, Engineers-Surveyors-Planners, Vineyard Haven, Massachusetts, May 1984, consisting of two (2) sheets (the Plan).

The Planning Board of the Town of Edgartown shall not grant the appropriate development permits.

The decision is rendered pursuant to the vote of the Commission on September 20, 1984.

FACTS

The proposed development is a Development of Regional Impact as defined by the Commission's Criteria and Standards, Developments of Regional Impact, Section 3.203. The application was referred to the Commission by the Planning Board of the Town of Edgartown for action pursuant to M.G.L. Chapter 831, Acts of 1977 as amended (the Act). The Application and notice of public hearing relative thereto are incorporated herein.

A duly noticed public hearing on the Application was conducted by the Commission pursuant to the Act and Massachusetts General Laws, Chapter 30A, Section 2, on August 2, 1984 at 9:00 p.m. at the Commission offices, Olde Stone Building, New York Avenue, Oak Bluffs, Massachusetts. The proposal is for the division of land into a cluster development which creates or accommodates more than ten (10) dwelling units.

Margaret Harris, Vice Chairman of the Land Use Planning Committee read the notice of the hearing and called for testimony.

James Muth of the Commission staff presented a description of the area and of the proposal. He described the groundwater flow of the area as well as the depth to same. He described the surrounding neighborhood and the vistas available, and the soil characteristics as defined by Soil Conservation Service. He then described the proposal itself.

He then described the covenants that were in draft form. He further described the remainder of the items indicated on the plan and then presented a list of issues regarding the proposal.

Ms. Honig, Edgartown Board of Health commented on the easement between the lots and the termination date thereof.

Ms. Brown, Chairman of the Edgartown Planning Board commented on some of the details of the covenants. A discussion of the matter followed.

Mrs. Harris called for the proponents.

Doug Dowling, agent for the applicant discussed a number of points regarding the proposal. He discussed meeting Board of Health regulations as well as the covenants thus written for the proposal. He discussed the style and size of the proposed houses. He discussed the planting proposal and the reason therefore.

Mr. Dowling explained the easement to the south, the time frame

thereon and the reasons behind it.

Ms. White indicated that Ms. Honig was going to make the same comment and she deferred to her. Ms. Honig discussed the Board of Health's reasoning for the test wells and the easement. A discussion of the matter followed.

Mr. Geller asked that the applicant respond to the issues raised, item by item.

Mr. Dowling discussed the water company and its feeling on discussions. He discussed the lay-out of the water lines around the area as well as the proposed lines.

Mr. Dowling discussed the groundwater under the proposal and his feelings regarding groundwater quality. He indicated that he did not believe there would be any problems with pollution of wells. Long and short term remedies were discussed. He discussed the Edgartown rules and procedures. Mr. Dowling explained his reasoning with respect to depths of wells and pollution sources. He discussed the possible remedies available to abutters in case of concerns of pollution.

Ms. White raised a question regarding the 20 foot easement. There was a bit of confusion and discussion between Mr. Dowling and the Board of Health representative. A discussion followed on this matter.

Russell Smith of the Commission staff discussed the density of the area, the references that were used to review potential nitrate pollution of the area and a number of related matters. He raised the question of whether groundwater under area should remain drinking water quality. He discussed the monitoring wells and their use. A general discussion followed. He noted the question of the water company's ability to provide water rather than their engineering ability to bring the lines to the site.

Mr. Dowling noted that he had reviewed the same studies as Mr. Smith and he noted his differences with each study. He further

discussed his view of groundwater pollution.

Mr. Jason raised the question of the applicant's and the towns responsibility. Mr. Dowling addressed that issue.

Mr. Dowling discussed the issue of low and moderate income lots. He indicated no, this was not considered. Mr. Jason noted that the question was lots not houses. Mr. Raposa indicated that he had to work for his, he felt that others should also have to. Did not feel that there was a need. Mrs. Harris asked for the record was there any provision for low or moderate priced lots for the young or elderly of Edgartown. The response was no. His intent was to sell houses and not lots.

Ms. Welch raised question of marketing units. A discussion followed. There was a difference of opinion regarding the need for low or moderate priced lots.

Mr. Dowling discussed question of transfer of development rights. A discussion of this matter followed.

Ms. Brown of the Edgartown Planning Board noted that there was \$15 million available through the State and wondered if this might not be investigated.

Mr. Dowling discussed the energy issue, noting that the houses would be electric but solar might be in the future.

Mr. Dowling discussed the issue of topsoil removal. He expects a substantial amount of topsoil will be available.

Mr. Dowling discussed the planting plan. He noted the phasing of the plan and the planting program also.

He discussed the development of the planting scheme.

Ms. White raised the issue of screening particularly along southern perimeter. Mr. Dowling indicated main scheme was to screen Herring Creek Road - abutters have to look at abutters. He discussed

definition of screening. A discussion followed.

Mr. Geller asked for clarification of Section 12.5 of Zoning ordinance. Mr. Dowling explained section. Mr. Geller asked who the team was. Mr. Dowling indicated that he was the registered surveyor and engineer; there were no others. Mr. Dowling explained the situation.

J. Geller indicated the reason for the Massachusetts law and the reason why the Planning Board required such items.

Ms. Brown, Chairman of the Edgartown Planning Board noted that the Board had been somewhat lax in the past with respect to Section 12.5. Mr. Dowling noted that there was no requirement to cluster. He explained the method that was used to determine the proposal.

Mr. Dowling discussed the issue of Grant's Pit and the safety factors involved.

Ms. White raised the question of standing water in Grant's Pit and how that might be affected by the leachate from the septic systems. Mr. Smith discussed the issue.

Mr. Dowling discussed the possibility of the bikepath easement across Mary Waller's lot. A discussion of the closing of the Waller driveway followed.

Mr. Dowling discussed the consistency of proposal with MVC agricultural policies. They are not consistent. A discussion followed.

Mrs. Harris discussed some items in the Edgartown Planning Boards minutes. There was a brief discussion.

Mrs. Harris called for further proponents. There were none. She then called for opponents.

Mrs. E. Moore of the Katama Association read a letter from the Association. (correspondence in record files)

Mr. J. White raised question of amount of time proponents had and asked for recess to give opponents equal time.

Mrs. Harris assured him that he would not be cut off.

Mr. White discussed the planting plan and the need for some form of protective spraying to care for them. He discussed the increase pollution from such as well as the protective measures. He discussed the potential use of pitch pine and the disease that afflicts them.

Mr. White discussed the water quality study done for the Board of Health and some of the issues raised by that study. He further discussed some of the items in the covenant. A brief discussion followed. He discussed the build-out rate and the issue of water availability.

Mr. Jason noted that he had just been handed a number of items of correspondence that he suggested each member of the Commission receive to study and he suggested a recess of the hearing until they could be read.

Mr. Clifford suggested that the Edgartown Water Company be asked to attend the next meeting to address issues raised by both sides.

Mrs. Harriss noted that the Commission was in the middle of the opponents testimony and that a recess was in order to give the Commissioners a chance to read all the correspondence.

At 10:49 p.m. it was decided that the hearing would be continued until September 20th.

The Martha's Vineyard Commission held a continuation of a public hearing on Thursday, September 20, 1984.

Mr. Widdiss chaired the meeting. Mr. Widdiss read the legal notice and opened the meeting at 8:45 p.m. Mr. Widdiss called for opponents of the proposal.

Attorney Thomas Bracken, attorney for abutters, discussed a paper that he had submitted regarding certain points with respect to the proposal. He felt that the proposal was defective in meeting many of the requirements of the Edgartown Zoning By-law. He discussed the problem of water supply, the Edgartown Water Company and potential pollution of neighboring wells. He discussed the conflicts between various studies regarding groundwater in the area. He also discussed the preservation of farmlands. He discussed the proximity to the Katama moratorium area as well as a problem with access over the extension of Waller Way. He urged for public health and sanitation and the protection of farmlands that the proposal be rejected.

Ron Mechur, Executive Director of the Vineyard Open Land Foundation, noted that a lot of public dollars had been spent to purchase farmlands in the area. He discussed other purchases of agricultural lands in the area. He felt that it was certainly a regional issue before the Commission.

Edith Potter, Edgartown Board of Selectmen, read parts of a letter which had been previously submitted. Her concern was for the preservation of farmland. She discussed the possibility of transfer of development rights. She felt that the farm could be subdivided with the good farmland being preserved and the housing set far back in the areas of the existing trees. She hoped the Commission would explore other development alternatives as well as development right transfer or a different design that would place housing to the rear of land and keep the agricultural lands open in the front. She thought there would be many alternatives to development on this piece of land.

Carol Fligor discussed the need for preservation of agricultural lands and a need to view this development carefully.

Edith Potter discussed the problem of housing and pollution versus agricultural uses and pollution.

George Wadsworth of the Edgartown Water Company discussed the policies and practices of the Water Company. The Company does not care one way or the other whether the development went in; it has

an adequate supply to meet its needs if developed. He discussed philosophy of the Town and the Water Company regarding development. He discussed the problem of nitrogen loading and the resultant pollution. He discussed the availability of public water and sewer and that relationship to development and density. He discussed environmental impacts of developments and the relationship of town developer methods of solving such issues.

Mr. Wadsworth responded to questions raised by Commissioners. A discussion of development in Katama Plains followed. A discussion of the adequacy of the Water Company's service followed.

(Break in tape) (Recorder malfunction) (New recorder in place)

Mr. Geller asked that the applicant discuss and address what the Martha's Vineyard Commission does and how the proposal meets those goals. Mr. Dowling attempted to address that issue.

Mr. Dowling discussed the proposal with respect to a build-out rate and the planting plan as proposed. He noted that it was approximately 60 percent of allowed density. He discussed the issue of farms with respect to groundwater pollution.

In response to a question of whether he felt he was doing the Town a favor by developing a farm, he indicated no, but that farms were a serious threat to groundwater. A discussion of the matter followed.

Mr. Jason, Chairman of the Commission asked Mr. Dowling to address the several issues raised by the Commission at the previous hearing notably (1) the use of a team of professionals that participated in the plan, (2) the conflict regarding the MVC policy of moderate income housing and (3) the preservation of agricultural lands. Mr. Jason asked if he had addressed those concerns.

Mr. Dowling noted that they had used a landscape architect to review the plan and suggest changes with respect to the visual impact of the development. Mr. Dowling noted the changes that

had been made to the plan and the reasons for them. He believed that the filings under the Town regulations meant and/or and this was always the interpretation in the past, if houses were to be built then an architect would have been used.

With respect to low-moderate income housing, he indicated that the applicant felt that the 23 lots that were not included in the subdivision were the trade-off. The applicant felt that was an adequate trade-off. Mr. Jason indicated that he believed the answer was that the applicant did not believe that there was a need for low and moderate housing. Mr. Dowling indicated that that was a personal belief.

With respect to agricultural lands, Mr. Dowling indicated that following the LUPC meeting, that they had considered concentrating the units in multi-family structures at the rear and leaving the front open. He did not feel that the neighbors would accept it and did not seem appropriate for the area. He discussed the item further and the reasons for the decision.

Mr. Early raised a question regarding the sizes of the proposed vegetation. Mr. Dowling responded on each point.

Mr. McCavitt questioned whether it was a definitive plan or not and which one was being reviewed. Mr. Dowling indicated that the filing was a Form C and a definitive plan. He noted that the changes were being proposed to the Planning Board.

On a question regarding the septic system for the new proposed lot 1, Mr. Dowling indicated that all the septic systems were along the road. A discussion of drinking water standards as well as a discussion of the service available in the area from the Water Company followed.

Ms. White asked about the lack of trees along the southern perimeter of the proposal. Mr. Mechur indicated that while the attempt was a fairly good one, the issue still remained and that you couldn't

cosmetically solve that issue by covering the area with vegetation.

A discussion of the design and the proposal followed.

John Waller indicating that he was neither in favor nor against the proposal, gave a bit of the background of the land in question. He discussed the politics of the situation, as well as a number of issues that had been brought up.

Mr. Widdiss called for other testimony. There being none, the hearing was closed at 10:10 p.m.

FINDINGS AND CONDITIONS

The Commission has considered the Application and the information presented at the public hearing, and based upon such consideration, makes the following findings pursuant to Section 14 of the Act:

A. The Commission finds that the probable detriments of the proposed development will exceed the probable benefits of the proposal in light of the considerations set forth in Section 15 of the Act. Specifically, the proposed development is found to be in conflict with the following policies of the Martha's Vineyard Commission:

1.004 It is a policy consistent with the Commission's general purpose as delineated in Chapter 637 of the Acts of 1974, (as amended by Chapter 831 of the Acts of 1977), namely to protect the health, safety and general welfare of Island residents and visitors, by promoting the enhancement of sound local economies, by preserving and conserving the Island's unique values, and by protecting these values from developments and uses which would impair them or cause irreversible damage to them.

2.603 The well-being of other parts of the Island economy, particularly tourism, will be encouraged

by the encouragement in this fashion of fishing and farming activities.

- 2.701 The preservation of open farming and grazing lands is in the best interests of the people of Martha's Vineyard. To promote farming and to foster the expansion of the agricultural use of land, it will do all in its power to preserve suitable land open and available for these purposes.
- 2.702 Agricultural land protects pure water, fresh air and wildlife. It adds to the aesthetic enjoyment of the environment, and it allows for the development of agricultural activity which can be of economic benefit to the Island, both in generating income, and in enabling Island people to produce more of what Island people consume, leading as far as possible towards self-sufficiency. The need to pay special heed to the protection of fertile lands with agricultural potential is pressing, because built-on land is almost certainly lost irreversibly to agricultural pursuits.
- B. The Commission finds that the proposed development will interfere substantially and unreasonably with the achievement of the objectives of the Town of Edgartown Open Space Plan, dated January 1979. Specifically, the proposed development conflicts with Section 4, Open Space Goals, Objectives and Achievements, number 5:
- encourage agricultural use of land which is especially suitable for the purpose and to prevent permanent loss of such land to development.
- C. The Commission finds that the proposed development as set forth in the Application and the plan(s) is somewhat inconsistent with local development ordinances and by-laws.
- D. The Commission finds that the development proposal will be more detrimental than beneficial when compared to alternative manners of development or developments occurring in alternative locations.

Specifically, the Commission finds the design layout of the proposed development insensitive to the environmental considerations of the particular site in view of the options and alternatives available to the applicant.

Pursuant to Section 15 of Chapter 831 of the Acts of 1977, as amended:

The Commission has considered the question of whether development at the proposed location is or is not essential or especially appropriate in view of available alternatives on the Island of Martha's Vineyard. The Commission finds that the development is not especially appropriate at the proposed location since the results would be a loss of significant resource, namely, agricultural lands, and since the proposal is in conflict with adopted Commission policies thus delineated elsewhere in this decision.

Further, the Commission has considered the question of whether the proposed development will have a more favorable or adverse impact on the environment in comparison to alternative manners of development and finds that the proposal as submitted will have a more adverse impact on the environment because of the loss of a valuable Island natural resource, agricultural lands, and the potential degradation of groundwater quality in the adjacent area.

Further, the Commission had considered the question of whether the proposed development will favorably or adversely affect other persons and property and whether the impact will be greater than ordinarily associated with developments of the types proposed and finds that, given the nature of the area, the evidence presented in the Anderson-Nichols report

entitled: "Edgartown Water Resource Protection Program, Final Report: Phase 2" and prepared for the Board of Health in Edgartown, the possibility of groundwater contamination in areas adjacent to the proposed development is sufficient to warrant more adequate mitigation measures than have been proposed in this application.

Further, the Commission has considered the question of whether the proposed development will favorably or adversely affect the supply of needed low and moderate income housing for Island residents and finds an unwillingness on the part of the applicant to recognize the problem nor to address the issue by stating that not constructing an additional 23 homes is a sufficient trade-off to meet and address the issue, thus finds that the proposed development will have an adverse affect on the supply of such housing.

Further, the Commission has considered the question of whether the proposed development will aid or interfere with the ability of the municipality to achieve the objectives set forth in the municipal plan, and finds that the proposed development counter to and in conflict with the objectives of the Town of Edgartown as set forth in a document entitled: "Open Space Plan for the Town of Edgartown, January 1979, Section 4, page 22, paragraph 1, item 5".

Further, the Commission has considered the question of whether the proposed development will further contravene land development objectives and policies developed by state or regional agencies and finds that the proposed development is counter to adopted policies of the Martha's Vineyard Commission, the Massachusetts Agricultural Preservation Program as set forth in M.G.L. Chapter 132A, Section 11A-11E and M.G.L. Chapter 184, Section 31-33 and the policies of the Executive Office of Environmental Affairs with respect to the preservation of agricultural lands.

The Commission disapproves the development application and denies permission to the Planning Board in the Town of Edgartown for the granting of the necessary development permits.

The Applicant may modify the development proposal and/or submit a new proposal to the Planning Board of the Town of Edgartown.

This Decision is written consistent with the Vote of the Commission: September 20, 1984.

Any party aggrieved by a determination of the Commission may appeal to the Superior Court within twenty days after the Commission has sent the development Applicant written notice, by certified mail, of its decision and has filed a copy of its decision with the Town Clerk of the town in which the proposed development is located.

Margaret Harris
Margaret Harris, Vice-Chairman

9/27/84
Date

Norman Friedman
Notary

9/27/84
Date

NORMAN FRIEDMAN
NOTARY PUBLIC
My commission expires Nov 2, 1990



Edgartown, Mass. Oct 1 1984
at 8 o'clock and 30 minutes AM
Received and entered with Dukes County Deeds
book 420 Page 524

Attest: *Beverly W. King*
Register

BEVERLY W. KING
REGISTER