

THE MARTHA'S VINEYARD COMMISSION

BOX 1447
OAK BLUFFS
MASSACHUSETTS
02557
617-693-3453

DATE: September 18, 1986
TO: Planning Board, Town of West Tisbury
FROM: Martha's Vineyard Commission
SUBJECT: Development of Regional Impact
RE: Residential Subdivision
APPLICANT: Magid Property
c/o Peter Rosbeck, Agent
P.O. Box 609
Vineyard Haven, MA 02568

DECISION OF THE MARTHA'S VINEYARD COMMISSION

SUMMARY

The Martha's Vineyard Commission (The Commission) hereby approves, with certain conditions, the application of Magid Property, c/o Peter Rosbeck, Agent, P.O. Box 609, Vineyard Haven, MA 02568, for the development of land in the Town of West Tisbury as shown on the plans entitled: "Magid Property, Plan of Land in West Tisbury, Mass., Dated May 1, 1986, by Dean R. Swift, Vineyard Haven, Mass.", consisting of four (4) sheets; and "Topography by the University of Pennsylvania Regional Planning 1981, Contour Interval 4'" consisting of three (3) sheets; making a total of seven (7) sheets, (The Plan).

The Decision, with conditions contained herein, is rendered pursuant to the vote of the Commission on September 18, 1986. The Planning Board of the Town of West Tisbury may now grant the necessary development permits for the Applicant's residential subdivision in accordance with the conditions contained herein, or may approve in accordance with the conditions contained herein and place further conditions thereon or may disapprove the development application.

FACTS

The proposed development is a Development of Regional Impact as defined by the Commission's Criteria and Standards, Developments of Regional Impact, Section 3.201. The application was referred to the Commission by the Planning Board of the Town of West Tisbury 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 May 29, 1986 at 8:15 P.M. at the Commission offices, Olde Stone Building, New York Avenue, Oak Bluffs, Massachusetts. The proposal is for the subdivision of 196.8 acres of land into 85 lots.

Marc Widdiss, Chairman of the Land Use Planning Committee, read the public hearing notice and opened the hearing for testimony.

Mr. Widdiss read letters from the West Tisbury Planning Board and the West Tisbury Board of Selectmen requesting that the hearing be continued due to a conflict with a recessed West Tisbury Meeting.

It was moved and seconded to continue the hearing.

A discussion of the matter followed. Mr. Clifford discussed some of the conversations that he had had with the Town Boards and the LUPC.

The Applicant was asked if he would concur with a continuance and he was agreeable

A brief discussion followed.

The motion was restated, the motion to continue the hearing until June 5th at 8:00 P.M. seconded and so voted.

A discussion of a possible alternative date followed.

The hearing was continued to the 5th of June at 8:45 P.M.

The Martha's Vineyard Commission held a continuation of a Public Hearing on June 5, 1986.

Marc Widdiss, Chairman of the Land Use Planning Committee read the public hearing notice and opened the hearing for testimony at 8:12 P.M.

Peter Rosbeck, Applicant, discussed the proposal at length. He discussed the background and the number of meetings that he had previously had with the Planning Board, Board of Health and the Land Use Planning Committee. He described the area and location of the proposal. He discussed the lay of the land and the reasons for the design as presented. He discussed the proposal in detail and noted that the eleven lots south of the Scrubby Neck Road would be made available to the Town and abutters at the unimproved value for a period of three years, if purchased then the density would be reduced to nearly 1 house per three acres. He discussed the issue of affordable housing. He discussed the various regulations covering the area and the possible growth rate in the area. Mr. Rosbeck offered the following restrictions based on previous meetings:

1. the meadow to be fertilized only upon planting, and lawns and gardens restricted to 10% of lot area;
2. single family units only, no guest houses
3. use of leaching pits prohibited, leaching fields only;
4. water storage hydrants to be installed for fire protection;
5. preference for a housing fund but would request either land or money stay within affordable housing program;
6. request percentage of growth rate.

Mr. Rosbeck then went on to explain the environmental impact statement. He discussed his request for comments and had heard nothing thus far. The report was of three parts,

physical, fiscal and water quality.

Mr. Rosbeck asked if there were time, that the water quality section be read.

Mr. West raised a question regarding covenants. Mr. Rosbeck indicated that there would be. A discussion of affordability followed. A discussion of assessed values followed.

A discussion of the meadow area of the proposal followed. Mr. Rosbeck discussed the topography and the area of wetlands. A discussion of the possible sale price of the lower twenty acres followed. A discussion of the meadow followed.

Mr. Widdiss called for any staff reports. Mr. Clifford explained a number of the maps that were hanging around the room and physical, fiscal aspects of the environment impact statement. Mr. Smith discussed the water quality section of the impact statement. He explained that the fecal coliform problems of the pond would not be affected by this proposal. He discussed eutrophication in general. He noted that the impact report failed to address any limiting factors in the coves of the pond. Other parts of the report he concurred with the findings and values. A discussion of nitrate and nitrification followed. A further discussion of the impact report followed.

Mr. Widdiss called for comments from Town Boards. Don Sibley of the Planning Board discussed the affordable housing fund and a hydrant lot. He commented on the impact statement and noted that two reviews had been turned over to the MVC for comment and interpretation. He discussed the possibility of monitoring wells.

Carol Koury of the Board of Health discussed the potential impact upon the water and the pond. The Board wants to know the environmental impact upon the water and the pond. The Board wants to know the environmental impact and don't feel that they know it yet.

Mr. Widdiss then called for proponents - there were none. He then called for opponents - Attorney Thomas Bracken representing abutters rose to speak.

Attorney Bracken felt that certain data was not available in the impact report. He raised the issue of the pond remaining the same. He discussed the issue of drinking water quality. He felt that more questions needed to be answered before action could be taken.

There being no further opponent testimony, Mr. Widdiss asked for rebuttal from Mr. Rosbeck. Mr. Rosbeck commented on some of the statements made.

Mr. McCavitt of the MVC raised a question on the impact statement. He discussed the whole issue of impact statements. A discussion of the matter followed. Copies of the reviews could be made available to the members of the Commission.

A discussion of any possible meeting between the applicant and the Planning Board regarding the impact statement followed. A discussion of the adequacy of the report followed. It was suggested that the Board of Health submit questions that it felt were not properly addressed.

A discussion of possible questions to be fed to the applicant followed.

It was suggested that R. Smith should review the comments as well as the original report and then if outside help needed, to seek it. A discussion of the matter followed.

Linda Bulard asked a question of the Commission if it were within the scope of the Commission to delay the project for any period of time. Mr. Widdiss responded in the affirmative.

Mr. Evans raised a number of questions regarding design aspects of the proposal and asked for more specific information regarding the same.

Pending the submittal of questions from the local

boards, the hearing was continued until the first meeting in July.

On July 10, 1986, Marc Widdiss, Chairman of the Land Use Planning Committee, announced that the continued Magid DRI Hearing had been postponed until July 17, 1986 at the request of the Applicant.

The Martha's Vineyard Commission held a continuation of a public hearing on July 17, 1986.

Mr. Widdiss, Chairman of the Land Use Planning Committee, read the public hearing notice and opened the hearing for testimony at 8:20 P.M.

Mr. Widdiss stated that at the conclusion of the last hearing, the Commissioners requested that their questions concerning the environmental report be answered by the engineer for the project.

Mr. Widdiss read a letter received from the West Tisbury Board of Health requesting a continuation of this hearing, as the Board had not received a copy of Dr. Teal's answers and would need time to review the document.

Discussion followed regarding the Commissioners receipt of report and adequate time for review. Mr. Early stated that he discussed the basic concepts of Dr. Teal's report with staff member Russell Smith and suggested that other Commissioners take some time to do the same, as it was beneficial.

It was moved and seconded that the Magid hearing be continued until July 31, 1986. The West Tisbury Planning Board and Board of Health will be notified. John Early, Chairman, stated that this should be adequate time for the Commissioners and Town Boards to review the Teal report and there would be no further consideration for continuing this hearing.

Mr. Geller requested that the staff prepare a written

summary of Dr. Teal's report for the next meeting.

The Martha's Vineyard Commission held a continuation of a public hearing on July 31, 1986.

Marc Widdiss, Chairman of the Land Use Planning Committee, read the public hearing notice and opened the continuation of the hearing at 8:12 P.M.

Mr. Widdiss stated that at the conclusion of the last hearing, the Commissioners and the West Tisbury Board of Health requested additional time to review Dr. Teal's report dated July 14, 1986. Mr. Widdiss further stated that the Commission will honor the Commissioners and West Tisbury Board of Health request this evening.

Mr. Widdiss called upon the West Tisbury Board of Health and their representative. Carol Koury of the Board of Health has reviewed Dr. Teal's report and answers and has asked Craig Saunders, Hydrogeologist, with K-V Associates to respond for the Board.

Mr. Saunders began by discussing similarities of coastal ponds on Cape Cod with that of Tisbury Great Pond regarding eutrophic states, and shellfish stock. Mr. Saunders referred to Dr. Teal's charts and dilution factors and felt groundwater on site was ignored. Further discussed direction and speed of groundwater, nitrogen and phosphate background to assess situations and loading calculations.

Further, Mr. Saunders discussed wetland uptake, rainfall and mixing factors in the pond with the main control of flushing the pond as evidence with Cape Cod Ponds. He referred to Dr. Teal's graphs and nutrient spiking analysis and stated that samples were taken at the highest pond level. He further discussed future development along the edges of the pond and this addition of phosphate to the pond system. Examples of contributors of phosphate were given as: septage, fertilizers, rainwater and sediment into the pond.

Discussion with Mr. Saunders followed regarding mesotrophic, Falmouth Guidelines of critical levels and flushing rates of pond with adequate buildout density guess of 3-4 acres, assuming same loading and soils as Cape ponds.

Questions from Commissioners were answered regarding number of pond openings, bacteria problems and nitrate levels based on pond openings.

Carol Koury, West Tisbury Board of Health presented a map estimating lots available to be developed around Deep Bottom Cove. Her suggestions for the Magid subdivision were: 1) the development should come in at current zoning, 2) can the Board of Health say that this subdivision will get monitored and if there is a problem then halt further development? Ms. Koury further answered questions of the Commissioners regarding shellfishing and the Boards current study of the Pond by SP Engineering.

Marc Widdiss called upon Dr. Teal, Applicant's representative, to respond to the Board of Health and Commissioners questions. Dr. Teal, Senior Scientist, Woods Hole Oceanographic Institution, stated that he was hired to examine the effect of development on the ground water quality and Deep Bottom Cove.

Dr. Teal stated that domestic water quality is easy to handle - using a margin of safety - houses on 60,000 square feet will protect groundwater so nitrate level will not go beyond 5 parts/million. Further, he stated that to examine the effect on the ecology of the pond, he used the worst case scenario of no flushing and all nitrate in the groundwater from all development in the watershed of the pond. He stated that numbers in his tables reflect no moderating effects.

A discussion on "trophic" terms followed. Dr. Teal also explained his water sample tests. Dr. Teal was asked what acreage would be appropriate for this area. He responded that his Town uses 2.5 acres which has a high water table.

Development and its proximity to the Pond was discussed. Dr. Teal stated that if nitrate was a factor, than time is more important than proximity; If phosphate and bacteria are factors, than distance is important. Discussion followed regarding the control of phosphate, development within the total drainage basin and flushing rates of the pond.

Russell Smith, Staff of MVC, stated that Commissioners should not get caught up with the technical numbers in the two scientists reports. Reasonable assumptions have to be made regarding the amount of nutrients entering the pond. The question is rather what is the impact after these nutrients get into the pond.

Mr. Widdiss read two letters of correspondence from Peter Rosbeck, Applicant. The first was in regard to a parcel of land the Applicant will provide for the purpose of low to moderate income housing, if requested by the Town. The second was in regard to an easement to Tisbury Great Pond for shellfishing, in response to the West Tisbury Conservation Commission.

Mr. Widdiss further stated that a letter from Thomas Bracken, representing West Tisbury Tax Payers Association, was received by the Commissioners and Russell Smith, staff of MVC. Russell Smith briefly reviewed said letter and Commissioners were asked to take this information into consideration.

Carol Koury, West Tisbury Board of Health also referred the Commissioners to a petition they received.

There being no further testimony, the hearing was closed at 10:12 P.M.

FINDINGS AND CONDITIONS

The Commission has considered the Application and the information presented at the public hearings, and based upon

such consideration, makes the following findings pursuant to Section 14 of the Act:

- a. The Commission finds that the probable benefits of the proposed development, subject to the conditions set forth herein, will exceed the probable detriments of the proposal in light of the considerations set forth in Section 15 of the Act.
- b. The Commission finds that the proposed development will not interfere substantially or unreasonably with the achievement of the objectives of any general plan of the Town or of Dukes County.
- c. The Commission finds the development as set forth in the Application and the plan will be consistent with local development ordinances and By-laws.
- d. The Commission finds that the development proposal will be more beneficial than detrimental when compared to alternative manners of development or developments occurring in alternative locations.

The Commission has considered the Question of the potential impact of this proposal on the environment and on other persons or property pursuant to Section 15 of the Act and has therefore set the following conditions:

1. LEACHING FIELDS WILL BE USED IN CONJUNCTION WITH INDIVIDUAL SEPTIC SYSTEMS, UNLESS WAIVED BY THE WEST TISBURY BOARD OF HEALTH.
2. THERE SHALL BE SINGLE FAMILY RESIDENCES ONLY, NO GUEST HOUSES WILL BE ALLOWED.
3. IN VIEW OF THE FACTS PRESENTED AT THE PUBLIC HEARING REGARDING THE POSSIBLE IMPACT OF THIS PROPOSAL ON TISBURY GREAT POND AND FURTHER, THE NEED TO ESTABLISH A DATA BASE, THE COMMISSION FINDS THAT THE APPLICANT SHALL INSTALL, AT HIS EXPENSE, A DEEP EXPLORATION WELL WITHIN THE SUBDIVISION AT A LOCATION AND WITH SPECIFICATIONS TO BE DETERMINED BY THE TOWN OF WEST TISBURY'S BOARD OF HEALTH AND THE STAFF OF THE MARTHA'S

VINEYARD COMMISSION. THE TOWN'S BOARD OF HEALTH AND STAFF OF THE MARTHA'S VINEYARD COMMISSION SHALL CREATE A TESTING PROGRAM AND MAINTAIN RECORDS OF ALL TESTS TAKEN. COSTS FOR SUCH TESTS SHALL BE INCURRED BY THE TOWN. THE APPLICANT SHALL INSTALL SAID WELL WITHIN TWELVE (12) MONTHS OF THE APPROVAL OF THE PLAN AND ALLOW THE COLLECTION OF SAMPLES TO BE TAKEN AT REASONABLE TIMES BY THE TOWN OR ITS APPOINTED DESIGNEE AND OR THE STAFF OF THE MARTHA'S VINEYARD COMMISSION.

4. NO MORE THAN 20% OF ANY LOTS' LAND AREA WILL BE LAWN OR GARDEN.
5. THE PROPOSED MEADOW WILL ONLY BE FERTILIZED DURING ITS INITIAL SEEDING. THE APPLICANT SHALL SUBMIT INFORMATION REGARDING THE COMPOUND ELEMENTS OF THIS FERTILIZER TO THE WEST TISBURY BOARD OF HEALTH BEFORE WORK COMMENCES.

Further,

The Commission has considered the Applicant's offer and the Town's need for acquisition and subsequent reservation of property for residents of the Town as a potential public facility, pursuant to Section 15 of the Act, and therefore sets the following conditions:

THE APPLICANT WILL GRANT TO THE TOWN OF WEST TISBURY, AN EASEMENT OVER A PORTION OF LAND, MAP 36, PARCEL 43, TO PROVIDE ACCESS TO TISBURY GREAT POND, IF REQUESTED BY THE TOWN.

Further,

THE PROPERTY TO THE SOUTH OF SCRUBBY NECK ROAD WILL NOT BE DEVELOPED OR SOLD FOR A PERIOD OF THREE (3) YEARS DURING WHICH TIME, THE TOWN, OR ITS DESIGNEE, WILL HAVE AN OPTION TO ACQUIRE THE PROPERTY FOR CONSERVATION PURPOSES AT THE UNDEVELOPED FAIR MARKET VALUE AS DETERMINED BY DIVIDING BY TWO (2) THE APPRAISAL OF TWO (2)

APPRAISERS, ONE CHOSEN BY THE APPLICANT AND ONE CHOSEN BY THE TOWN. SUCH APPRAISER WILL APPRAISE THE PROPERTY, LOTS 17 THROUGH 27 ON THE PLAN, AS ONE (1) UNDEVELOPED LOT.

Further,

THE APPLICANT WILL MERGE THE FOLLOWING 22 LOTS ON THE PLAN (TO CREATE 11 LOTS IN EXCESS OF 3 ACRES EACH) UNLESS THE OPTION ON THE 11 LOTS TO THE SOUTH OF SCRUBBY NECK ROAD IS EXERCISED BY THE TOWN FOR CONSERVATION PURPOSES.

- | | |
|---------|---------|
| 1 & 2 | 56 & 57 |
| 12 & 13 | 61 & 62 |
| 30 & 31 | 76 & 77 |
| 37 & 38 | 78 & 79 |
| 44 & 45 | 82 & 83 |
| 46 & 47 | |

The Commission has considered the offer of the Applicant for assistance with the Islands low and moderate income housing needs. In addition, pursuant to Section 15 of the Act, the Commission has considered the potential impacts of this development regarding the supply of needed low and moderate income housing for Island residents and has weighed the proposals density and, therefore, sets the following condition:

TWENTY (20) PERCENT OF THE CURRENTLY ASSESSED VALUE OF THE PROPERTY OR \$130,000.00, WHICHEVER IS GREATER, WILL BE DEPOSITED INTO A HOUSING FUND WITHIN EIGHTEEN (18) MONTHS OF THE APPROVAL OF THE PLAN, IF SUCH FUND IS ESTABLISHED BY THE TOWN, TO ASSIST LOW TO MODERATE INCOME ISLAND RESIDENTS WITH THEIR HOUSING NEEDS.

The Commission finds that the proposed development is consistent with local ordinances and by-laws to the extent it is required to, only the Application being before it at this time. The Applicant must, consistent with the Decision, apply to appropriate Town of West Tisbury officers or boards for any other development permits which may be required by law.

The Commission approves the Town of West Tisbury officials granting applicable development permits.

This Decision is written consistent with the vote of the Commission: September 18, 1986.

Any party aggrieved by a determination of the Commission may appeal to the Superior Court within twenty (20) 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 in the Town in which the proposed development is located.

RECEIVED
TOWN CLERK
DUKES COUNTY
OCT 10 1986
RECEIVED/FILED

John G. Early

John G. Early

John G. Early, Chairman

10/9/86
Date

Norman Friedman

Notary

10/9/86
Date

NORMAN FRIEDMAN
NOTARY PUBLIC
My commission expires Nov 2, 1990

Edgartown, Mass. Oct 10 1986
at 2 o'clock and 02 minutes P.M.
Received and entered with Dukes County Deeds
book 457 Page 792

Attest: *Dorothy W. King*
Register