

THE MARTHA'S VINEYARD COMMISSION

BOX 1447
OAK BLUFFS
MASSACHUSETTS
02557

DATE: May 14, 1987
TO: Planning Board, Town of West Tisbury
FROM: Martha's Vineyard Commission
SUBJECT: Development of Regional Impact
RE: Residential Subdivision
APPLICANT: Ancient Way Trust
c/o Betsy McKie, Trustee
Box 704
Edgartown, MA 02539

DECISION OF THE MARTHA'S VINEYARD COMMISSION

SUMMARY

The Martha's Vineyard Commission (the Commission) hereby denies permission for the development contained in the application of Ancient Way Trust, c/o Betsy Mckie, Trustee, Box 704, Edgartown, MA 02539 for the residential subdivision in the Town of West Tisbury as shown on the plans entitled: "Plan of Land in West Tisbury, Mass., prepared for Ancient Way Trust, Dated November 12, 1986 by Schofield Brothers, Inc., State Road, Vineyard Haven, Mass." consisting of one (1) sheet; "Forty (40) foot access road from Coffin's Field to Ancient Way Trust prepared by Smith & Dowling" consisting of one (1) sheet; making a total of two (2) sheets, (the plan).

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

The Decision is rendered pursuant to the vote of the Commission on May 14, 1987.

FACTS

The proposed development is a Development of Regional Impact as defined by the Commission's Standards and Criteria, Developments of Regional Impact Section 3.203 and Section 3.401. 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. Martha's Vineyard Commission staff document exhibits are incorporated by reference.

A duly noticed public hearing on the application was conducted by the Commission pursuant to the Act and M.G.L. Chapter 30A, Section 2 as modified by Chapter 831 on January 15, 1987 at 8:45 P.M. at the Commission offices, Olde Stone Building, New York Avenue, Oak Bluffs, Massachusetts.

The proposal is for the subdivision of 36 acres of land into 21 lots in the Town of West Tisbury.

Sanford Evans, Chairman of the Land Use Planning Committee, read the public hearing notice and opened the hearing for testimony at 9:00 P.M.

Mr. Michael Carroll, Agent and member of trust, gave a presentation of the proposed subdivision. He said the location of the parcel is south of the Martha's Vineyard Airport. He then discussed the history of the Ancient Way Trust and that there were six members in the Trust, further that the trust purchased the land ten years ago at a public auction and until recently the Trust could not gain access to this wood lot, and had recently purchased access from an abutter. Mr Carroll further described the the land, 40 acre parcel of which 36.5 acres are in West Tisbury, 30.6 acres are wooded/scrub and almost 6 acres which is an open field (hayfield). The parcel is in the outwash plain, soil is carver, western plateau is 35' above sealevel, 20 foot contours across land running north-south. He further stated that vegetation scrub oak with 3 hills of larger oak trees mix, 3 to 7" in diameter, and approximately 20 feet high. Mr. Carroll showed an overlay topographical map. Speaking to wildlife on the land, the applicant said all he has seen are deer runs. He further stated that the proposed subdivision is 21 lots, discussed rights of access through Ben Boldt's property known as Green Meadows property, pairing up of driveways, will go through to Starbuck's Hill subdivision, 12 foot paved road will be proposed, drawing up of a set of protective covenants to cover creation of a homeowners association and the maintenance of road, further that there will be a no structures no build no fence within the field. He then stated that in the center of the subdivision, there will be a recreation/hydrant lot. He described the approximate location of house sites, well and septic systems. Addressing density the proposal could have

been 23 lots, but chose 21 lots for density of 1.5 acres. Addressing the resident homesite policy the applicant said that one of the landowners will be putting aside two lots for the future needs of his children and therefore the applicant proposes one resident homesite lot to be given to the Town.

Mr. Carroll said it is an economic necessity to subdivide this land now. He further showed a map of the surrounding area south of the airport and said that to a great degree the surrounding area is not developed.

Commissioners asked Mr. McDonald, trustee, if he would be willing to deed the land to his sons now. Mr. McDonald answered in the affirmative.

Mr. Early stated that assurance would be needed, possibly a homestead note, so if this property was sold at a profit the Town would receive a contribution.

Lenny Jason asked for the exact location of the road.

Mr. Carroll, applicant, stated that the road is not cut as of yet and depending on what happens with Mr. Boldt's subdivision either Mr. Boldt or the applicants of this proposal will construct road in conjunction with the West Tisbury Planning Board specifications and Mr. Boldt.

Mr. Evans stated there was a Notice of Contract signed by Betsey McKie and Ben Boldt regarding easement of access and further stated that there were no specifications within the contract.

Commissioners discussed the Planning Board having to approve the road.

There was question of approximate length of road. Mr. Hall, Jr., Agent for Trustee, stated approximately 1,800 ft. of roadway would have to be built at an approximate cost of \$90,000.

Ben Hall, Jr. spoke of the 9 drives servicing 21 lots and hydrant/recreational lot. Further he stated that in the proposed covenants would limit fertilization of lawns.

Mr. Evans asked for staff presentation:

Mr. Rick Hopkins, MVC Staff, referenced a handout, and showed an aerial photo of the proposed subdivision location and surrounding area. He discussed access of West Tisbury Road, the hydrant lot, and then gave a slide presentation of the area. Mr. Hopkins then discussed zoning (ARIA) in this area, buildout rate of three years, parcel 100% wooded other than field, vegetation being scrub oak approximately 20 feet and 3 to 7 inches

in diameter and a field of hay. Mr. Hopkins then discussed population impacts to Town based on 1980 census, regarding total people, school age children, impact on municipal services, solid waste generation. He also discussed traffic generation and roadway requirements of 8 feet. Further he discussed drainage, soils being carver, and topography having a gentle slope 0 to 3% slope.

Mr. Hopkins questioned disposal of stumps, how and where building envelopes would be, management of open space, and future plans for open space? Mr. Hopkins also questioned the of impact of the Martha's Vineyard Airport on developments.

Russell Smith, MVC staff, referenced handout to Commissioners. He discussed methods of quantifying the impact of this development on groundwater and the Watcha Pond. Mr. Smith discussed mass balance and complete mix and explained the concept of both. Mixing the rainwater recharge and the septic system effluent showed the concentration of nitrates to be on the order of 2 to 3 mg/l entering the groundwater. Mr. Smith further discussed the minimum appropriate density for single family dwelling units with onsite disposal and private wells is on the order of 60,000 square feet per lot, further this proposal is at the minimum. The impact of the groundwater entering this pond with these nutrients was not known. Lastly, he stated that the activities on the fresh water pond was strictly recreational.

Russell Smith was questioned by the Commissioners about his calculations and if Coffin's Field had been included. Mr. Smith responded in the negative, only Ancient Way Trust and Starbuck's Hill were included. Further, Mr. Smith was asked if Coffin's Field would change the calculations? Mr. Smith was not sure how much, however stated that the flow of groundwater flow was in a southerly direction and therefore there could be an accumulative difference.

Mr. Evans asked for proponents - There were none

Mr. Evans asked for opponents - There were none

Mr. Evans asked for other testimony - Mr Motto, resident, owning 13 acres of land nearby which is being farmed. He stated that he felt the Ancient Way and Starbuck's Hill proposal were part of a large ecological system which feeds into one of the great ponds. He discussed the soils,

plants not growing well in this type of soil and watertable being high in this area. He further discussed the wastewater guidelines and feels that proposal is stretching the limits somewhat. Further Mr. Motto discussed vegetation, screening capabilities, visual impact of housing in this area and also the impact of Martha's Vineyard Airport on this area.

Mr. Evans asked for Town Board Testimony - Jim Young, West Tisbury Planning Board, stated that the Board was concerned with density, impact on ponds, also the number of lots and design of access to subdivision. Further Mr. Young said the Fire Chief feels because of length of access there seems to be a question of safety regarding fire trucks and emergency vehicles access into the proposed subdivision.

Mr. Evans stated that the Commission had received some correspondence regarding this proposal:

1. Mr. Evans read the letter from the West Tisbury Board of Health which addressed the three abutting subdivisions in this area and access from Coffin's Field. The Board feels this area is the recharge area for Watcha Pond and these subdivisions would have a detrimental effect on the pond. Lissa Bryant, West Tisbury Board of Health.

2. Betsie McKie, letter stating she was Trustee of Ancient Way Trust.

3. Letter from James Mitchell, Airport Manager, stating concerns he has about the impact the Airport will have on residential subdivisions south of the airport regarding the noise level.

Mr. Evans then asked if the Applicant had additional comments.

Ben Hall, Jr. stated that there will be covenants that have not been stated addressing a 50' buffer around all drives.

Ben Hall, Sr., Trustee, discussed density and division of land and surrounding lots that have not been subdivided as of yet, further that this subdivision is the last of the 1.5 acre lot subdivisions under current zoning.

Lenny Jason asked Russell Smith if he agreed with the West Tisbury Board of Health and the statement that the subdivisions will obviously be detrimental to the pond. Russell said the word obvious was too strong, he felt that there will be an impact to pond, however, how much is not known.

Mr. Evans announced that the hearing would be continued until a later date at 10:30 P.M.

The Martha's Vineyard Commission held a duly noticed continuation of a Public Hearing concerning the Ancient Way Trust Development of Regional Impact (DRI) on February 19, 1987 at 8:30 P.M. at the Commission offices, Olde Stone Building, New York Avenue, Oak Bluffs, MA 02557.

Sanford Evans, Chairman of the Land Use Planning Committee, read the continuation of a public hearing notice and opened the hearing at 9:25 P.M.

Mr. Evans reviewed the reason for the continuation of the public hearing: to give time to receive covenants, discuss access and to complete a groundwater analysis. He then asked for the staff presentation.

Rick Hopkins, MVC Staff, stated that the subdivision in the Town of West Tisbury consists of 36+ to be divided into 21 residential lots with 1 recreational lot and showed approximate location of parcel. Mr. Hopkins stated that no further information has been submitted to the MVC or the Town of West Tisbury concerning access to the development and stated the original access easement as presented at the public hearing. Regarding concerns of nitrate loading to the ponds by way of groundwater, he discussed the analysis handed out at the previous hearing regarding the proximity to the water and the size of the subdivision and stated using the Walter Delaney Map it appears that the groundwater flow from Coffin's field flows to Oyster Pond and the Ancient Way and Starbuck's Hill proposal flow is to Watcha Pond, therefore including Coffin's Field subdivision would not be appropriate. Looking over covenants, there is an architectural and site design criteria, 50 foot no build and limited cutting within the area of driveways and roadway, recreational lot will have no structures allowed, fertilizer use is prohibited without permission from the grantor, no open space management plan was submitted, however no build within the open space area is incorporated into the covenants and further there was discussion provision for guest houses. Mr. Hopkins stated that according to the covenants it seems that guest houses will be allowed.

Mr. Filley asked if the land upgradient to the Northwest will mix with this proposed subdivision to the pond?

Mr. Evans asked the status of the Airport Study on Noise? Mr. Hopkins stated that the study is ongoing, preliminary reports include information from the Airport Master Plan showing a noise contour map which showed the

predicted change of noise level from 1984 to the year 2005 also within the report they speak of land use considerations and alternatives.

Mr. Hopkins gave a slide presentation of the area.

Lenny Jason questioned the status of the piece of land of 3.3 acres abutting the subdivision which lies in the Town of Edgartown? Mr. Hopkins stated that the land within Edgartown boundaries has not been included in this proposal. Mr. Hall, Applicant, further stated that it would be up to the Town of Edgartown to look at the piece of land in question and to decide if it is a buildable lot and further that an access easement could be placed on one of the lots that abut the land through Ancient Way proposal for access to this lot. Lenny Jason questioned the frontage of this piece of property.

Mr. Jason then asked Mr. Hall if he felt that this space is a buildable lot and would not stay open space? Mr. Hall stated he felt under the zoning by-laws of Edgartown that this was a buildable lot and that a house could be constructed on the lot.

Mr. Hall then discussed the granting and the way of the easement for access through Green Meadows Trust Land through Ancient Way with a loop to Starbuck's Hill. A driveway escape easement with a crash gate will be provided onto Watcha Path for use in case of an emergency. Further, Mr. Hall discussed the guest house provision incorporated within the covenants of the subdivision, stating that he feels it would be up to the Town whether they issued a permit for a guesthouse or not and that he wanted to leave this option open.

Mr. Evans called for testimony from Town Boards.

Carol Koury, West Tisbury Board of Health, stated the board has concerns of subdivision activities and the effects on Watcha Pond. Tests have been done by Craig Saunders, hydrologist, and have some results of tests done, Watcha Pond appears to be a very low salinity pond, fresh water fed although ocean sometimes does breach the beach, phosphate limited, and borderline oligotrophic/mesotrophic which is to say concerns of the board are grounded however, not as seriously as if it were a salt water pond. Further she discussed articles and studies which have been read which state to protect ponds 3 to 5 acre zoning seems to be pretty safe. Regarding guest houses she suggested the Commissions consider not allowing them.

Roger Schmidt, Oak Bluffs Taxpayer, discussed a concern that the access easement which the Applicant's have submitted may not be valid. As he and a number of other people have bought the Green Meadow Subdivision lots from Mr. Boldt prior to the signing of the easement.

Sanford Evans asked Mr. Schmidt for a date on legal documents for purchase of the land. Mr. Schmidt said in 1983 original documents were done and further gave history of the sales. Mr. Evans then read a Notice of Contract dated December 8, 1986 granting an access easement to the Ancient Way Trust.

Mr. Schmidt further stated that the access easement is fine as long as the Green Meadow Subdivision gets approved, however, if it does not then there are legal questions.

Mr. Hall, Applicant, stated that Mr. Schmidt has no documentation to support what he has just stated, also that Mr. Boldt always retains ownership of roadways, and further that if owners do have right to deny access he stated he feels it is out of place to do so at this public hearing.

Mr. Jason asked if the applicants had considered exploring access through the Coffin's Field Subdivision. Michael Carrol said yes however, Mr. Boldt was not willing to sell access and now the land is forever in open space/common land. Mr. Hall stated that he suggested to the West Tisbury Planning Board to allow access through the subdivision and they saw fit not to allow this access.

Mr. Hall stated the owner of record of Coffin's Field is Benjamin Jon Boldt which is recorded at the courthouse.

There being no further testimony Mr. Evans closed the public hearing at 10:17 P.M. and left the record open for one week. Following the close of the public hearing, correspondence was received by Betsy McKie, Trustee, regarding request to extend the Commission's time limit for the Decision period.

FINDINGS AND CONDITIONS

The Commission has considered the application and the information presented at the Land Use Planning Committee Meeting, the public hearing

and discussions during its decision deliberations and based upon such considerations, makes the following findings pursuant to Section 14 of the Act:

The Commission finds that the probable detriments of the proposed project 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 potentially in conflict with the general purpose of the Commission as stated in Chapter 831, Acts of 1977, as Amended, namely the protection of the health, safety and general welfare of Island residents and visitors, by preserving and conserving the Island's unique values and by protection values from development uses which would impair them or cause irreversible damage to them.

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

The Commission has considered the question of whether the development in the manner proposed will have a favorable or adverse impact on the environment in comparison to alternative manners of development. The Commission finds that the proposal, as presented, is too dense for this location as the average lot size is proposed to be 1.5 acres and the plan as presented, conveys the maximum number of lots allowed to be created under previous zoning with no open space amenities. The scale of the project and the potential increase in the intensity of use based on the site plan will be more detrimental than beneficial to the Town. The preservation and increase of open space, both public and private, is a policy of the Commission. Through open space, the Island's unique values may be preserved for future generations.

Further,

The Commission has considered the question of whether the proposed development will favorably or adversely affect other persons and property, and if so, whether because of circumstances peculiar to the location, the effect is likely to be greater than is ordinarily associated with the development of the types proposed and finds that the proposed access will be used by multiple subdivisions; this proposed subdivision will generate approximately 180 vehicle trips per day at full buildout and could create at peak summer flow and full buildout, using access through an existing subdivision, from 500 to

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1,500 vehicle trips per day. In light of this, the Commission finds that the proposal will burden the existing public facility known as the Edgartown-West Tisbury Road.

Further,

The Commission finds that the proposed development as set forth in the application and the plan is inconsistent with local development ordinances and by-laws by a 2/3 majority at Town Meeting changing zoning to three (3) acres in this location. In light of this, the Commission must find that the development would interfere with the municipality's land use objectives set forth in the Municipal General Plan.

The Commission disapproves the development application and Denies permission to the Planning Board of the Town of West Tisbury 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 in the Town of West Tisbury.

This Decision is written consistent with the vote of the Commission on May 14, 1987.

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.


John G. Early, Chairman

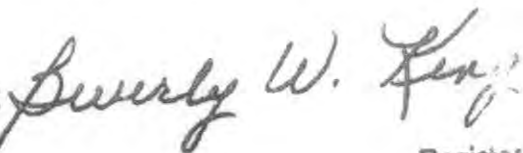
5/22/87
Date


Notary

5/22/87
Date

NORMAN FRIEDMAN
NOTARY PUBLIC
My commission expires Nov 2, 1990

Edgartown, Mass. May 22 19 87
at 9 o'clock and 27 minutes A M
Received and entered with Dukes County Deeds
book 474 page 234

Attest: 
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