

# THE MARTHA'S VINEYARD COMMISSION

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DATE September 12, 1991  
TO: Planning Board, Town of West Tisbury  
FROM: Martha's Vineyard Commission  
SUBJECT: Development of Regional Impact  
RE: division of land  
APPLICANT: Crow Hollow Realty Trust  
c/o Schofield, Barbini & Hoehn  
P.O. Box 339  
Vineyard Haven, MA 02568

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## DECISION OF THE MARTHA'S VINEYARD COMMISSION

### SUMMARY

The Martha's Vineyard Commission (the Commission) hereby approves, with certain conditions, the application of Crow Hollow Realty Trust, c/o Schofield, Barbini and Hoehn, P.O. Box 339, Vineyard Haven, MA 02568 for the division of land as shown on the plans entitled: "Plan of Land in West Tisbury, MA, prepared for Crow Hollow Realty Trust; Schofield Brothers of Martha's Vineyard, Civil Engineers and Land Surveyors, State Road, P.O. Box 339, Vineyard Haven, MA 02568; scale: 1" - 100'; June 11, 1991" consisting of one (1) sheet, plus "Illustrative Plan; Plan of Land in West Tisbury, MA, prepared for Crow Hollow Realty Trust; Schofield Brothers of Martha's Vineyard, Civil Engineers and Land Surveyors, State Road, P.O. Box 339, Vineyard Haven, MA 02568; scale: 1" - 100'; June 11, 1991", consisting of one (1) sheet; making a total of two (2) sheets, (The Plan).

This Decision is rendered pursuant to the vote of the Commission on September 12, 1991.

The Planning Board of the Town of West Tisbury may now grant the necessary development permits for the Applicant's proposal in accordance with the conditions contained herein and place further conditions thereon in accordance with applicable law, or may disapprove the development application.

### FACTS

The proposed development is a Development of Regional Impact as defined by the Commission's Standards and Criteria, Development 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 Chapter 831 of the Acts of 1977 as Amended (the Act). The Application and Notice of Public Hearing relative thereto are incorporated into the record herein. Martha's Vineyard Commission staff document exhibits are also incorporated into the record 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 August 8, 1991 at 8:00 P.M. at the Martha's Vineyard Commission Offices, Olde Stone Building, New York Avenue, Oak Bluffs, MA.

The proposal is for a subdivision of 57 (+/-) acres of land into 7 lots qualifying as a DRI since the proposal is for the division of land of 20 acres or more.

The hearing was chaired by John Early, temporary Chairman of the Land Use Planning Committee (LUPC). Mr. Early read the Public Hearing notice and opened the Hearing for testimony at 8:05 P.M.

Jenny Greene abstained from the proceedings and left the room.

Mr. Early called upon the applicant to make his presentation. Rob Kendall presented the proposal and discussed the reason for the development. He discussed the location of the land and why the type of design presented. He discussed the past usage of the property, the soil analysis and the sensitivity of certain areas. He noted that the lots presented were minimum of three acres plus two larger lots for the family. He discussed the environmental aspects of the site.

Doug Hoehn discussed the location of the proposal on Tiah's Cove Road. He discussed a previous meeting with the Planning Board.

Mr. Early called for questions from Commissioners.

Mr. Sullivan questioned the width of the road and whether it was

used for access by others. Mr. Hoehn indicated 10 foot and the Fishers had used it for years.

Ms. Sibley questioned how it could have been a Form A. Mr. Hoehn explained how such a design would have worked. Mr. Geller discussed the letter from the Planning Board. Mr. Early asked that such a discussion be held after the Planning Board representative had a chance to speak.

Mr. Early asked for a staff presentation.

Mr. Wilcox discussed the soils and water quality aspects of the proposal. He described the agricultural soils in detail. He related the soils to septic system usage. He felt that careful siting of wells and septic and following West Tisbury Board of Health regulations would be more than adequate. He then discussed nitrogen loading of the pond and what he felt were acceptable. He felt the between 1-2 parts per million would be safe. He discussed acceptable mitigation measures. He discussed the examples he had presented and the various options that could be used to ensure the best impact possible.

Mr. Colaneri raised a question on depth of the water table in the area. Mr. Hoehn felt the depth was around 22-32 feet. A discussion of this matter followed. Ms. Sibley asked where the agricultural soils on the proposed lots were located. Mr. Wilcox indicated the various locations.

Mr. Early called for town board input.

Don Sibley, West Tisbury Planning Board, discussed previously submitted letter and the reason therefore. He further discussed the concerns of the board. He further discussed the flexible development section of the Zoning By-law. He then discussed the interpretation of Town Counsel regarding this matter. The Board wanted to try to eliminate incremental development and that there may be some further development in the area at some future date.

He further discussed the letter from the Board. He further discussed the possibility of ensured open space. He then discussed impact reports and the need for such in the future. He

discussed affordable housing as related to the flexible development provisions of the Zoning By-law. He also discussed the Board practice of not allowing guest houses.

Mr. Geller asked for a more specific answer as to how to restrict the plan in the future. Mr. Sibley felt the access road was one issue whether it should be a 40-foot road all the way to the property line and whether any future development should be a flexible plan. He discussed future impact studies being needed.

Mr. Jason questioned what would satisfy the Town - all three matters in the letter being addressed or that a condition making any future division must return to the MVC and must be in compliance with the flexible zoning portion of the By-law. Mr. Sibley discussed the matter and felt it was acceptable to meet flexible requirements. A brief discussion of this issue followed.

Mr. Colaneri questioned the amount of up-grading of the road. Mr. Sibley indicated satisfaction with minimal widening and the creation of way-bys.

Mr. Colaneri questioned the total number of lots to be saved. Mr. Sibley felt eight without knowing the number of homes on the Fisher land. He indicated that a division of 10 lots created the need for paving.

Mr. Jason questioned the 40-foot right-of-way (ROW) discussed during the LUPC meeting along property line for use by the Fishers. Mr. Hoehn and Mr. Kendall discussed the matter very briefly. Mr. Kendall discussed the present access to the Fisher property and where there may be a potential 40-foot access to qualify for certain agricultural preservation programs.

Mr. Sibley discussed the firmness of the Board to not create a 40-foot way to the Fisher property.

Mr. Lee questioned whether this was sole access to the Fisher land. Mr. Fisher indicated it was.

Mr. Colaneri discussed the 40-foot way and how it was shown on the plan. He discussed the relationship to the Fisher land. Mr. Hoehn discussed why the plan was drawn as presented.

Ms. Sibley discussed the LUPC meeting at which the issue of 40-foot for the Fishers was discussed.

Mr. Jason wanted the record to show that the issue of the 40-foot access had been discussed at LUPC and it was noted that such access could be provided.

Mr. Geller questioned why the applicant had not gone and done the entire property now and explained his reasons for such a question. Mr. Kendall explained the reasons for the plan being as such.

Ms. Sibley questioned whether the applicant was comfortable meeting additional requirements as future development occurred. The response was yes. Ms. Sibley further questioned whether there would be building envelopes and certain restrictions to create potentially larger fields. Mr. Kendall discussed the soil types on the site. He discussed the reason for the development again but he did not have a problem with building envelopes but felt that the true agricultural soils were in the woods and not the field.

Ms. Sibley then felt that this was all the more reason for a flexible plan.

Mr. Early called for other Town Boards - there were none. He then called for proponents - there were none. He called for opponents - there were none. He called for other testimony.

Peter Hoover, resident, asked a question of where certain ancient ways were located such as Jerico Road, Manter's Way. No one seemed to know.

Mr. Fisher noted that Jerico Road went through Crow Hollow and Chester Vincent's property out onto State Road. It went across the property in question.

Mr. Early indicated that the Commission would try to locate these roads.

Mr. Early then called for other testimony.

Mr. Hoehn discussed the issue of guest houses on lots 6 and 7 and asked if they could be excluded from the no-guest-house

requirement or condition.

Mr. Sibley indicated that the Planning Board would not ask for a condition affecting lots 6 and 7 with respect to guest houses.

Mr. Jason raised a question regarding the hand-outs from the applicant. It was noted that all had received copies of same.

Ms. Sibley asked that before returning to the LUPC for recommendation the wildlife and archeological sites be expanded.

#### FINDINGS AND CONDITIONS

The Commission has considered the application and the information presented at the public hearing and based upon such considerations, 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 of West Tisbury or any general plan of the County of Dukes County.
- C. The Commission finds that the proposed development as set forth in the Application and the plans, and subject to the conditions set forth herein, 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 development occurring in alternative locations.

Pursuant to Section 15(b) of the Act, the Commission has considered whether the development in the manner proposed will have a more favorable or adverse impact on the environment in comparison to alternative manners of development and in light of said consideration has set the following conditions:

THAT SHOULD THERE BE ANY FURTHER DIVISION OR SUBDIVISION OF THE LAND WHICH IS THE SUBJECT OF THIS DECISION, THEN SAID FUTURE DIVISION OR SUBDIVISION APPLICATION SHALL BE CONSISTENT WITH AND ADHERE TO ALL THE PROVISIONS AND REQUIREMENTS OF THE FLEXIBLE ZONING PROVISIONS OF THE WEST TISBURY ZONING ORDINANCE, INCLUDING THE ADHERENCE TO THE RESIDENTS HOMESITE REQUIREMENTS;

and Further,

THE RESULTS OF ANY FUTURE APPLICATION SHALL BE COMBINED WITH THE RESULTS OF THE APPLICATION WHICH IS THE SUBJECT OF THIS DECISION AND THE EFFECTS THEREOF SHALL BE CUMULATIVE WHEN DETERMINING THE NUMBER OF ACTS TO BE CONSIDERED UNDER THE FLEXIBLE ZONING PROVISIONS CITED ABOVE.

and Further,

THE COMMISSION RECOGNIZES THE EXISTENCE OF A 'FORM A' PLAN SUBMITTAL PENDING BEFORE THE WEST TISBURY PLANNING BOARD WHICH WOULD PERMIT THE EARLY RELEASE OF LOT #5 AS SHOWN ON THE PLAN WHICH IS THE SUBJECT OF THIS DECISION AND AGREES THAT THE PLANNING BOARD MAY PROCEED WITH THE SIGNING OF THE 'FORM A' SUBMITTAL AT THIS TIME.

Pursuant to Section 15(b) of the Act, the Commission has further considered whether the development in the manner proposed will have a more favorable or adverse impact on the environment in comparison to alternative manners of development and in light of said consideration has set the following condition:

THAT ANY FERTILIZERS WHICH ARE TO BE USED ON ANY LAWNS TO BE CREATED OR ON THE EXISTING FIELDS SHALL BE APPLIED USING THE SPLIT APPLICATION METHOD, ONE-HALF APPLICATION IN THE SPRING AND ONE-HALF APPLICATION IN THE FALL.

Pursuant to Section 15(c) of the Act, the Commission has considered 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 in light of said consideration has set the following condition:

THAT THE APPLICANT SHALL PROVIDE AN OPPORTUNITY FOR NEGOTIATION WITH THE ABUTTING OWNER ASSESSORS (PARCEL NUMBER 35-3.1) FOR THE PURPOSES OF PROVIDING A MECHANISM FOR SAID ABUTTING PROPERTY TO PARTICIPATE IN, IF DESIRED THE AGRICULTURAL PRESERVATION AND RESTRICTION ACT OF THE COMMONWEALTH.

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 this Decision, apply to appropriate Town of West Tisbury Officers and Boards for any other development permits which may be required by law.

The Decision is written consistent with the vote of the Commission: September 12, 1991.

Any Applicant aggrieved by a Decision of the Staff or Committee hereunder, may appeal to the full Martha's Vineyard Commission which shall decide such Appeal, after notice and hearing, within 21 days of the close of the public hearing.

The Executive Director may issue Certificates of Compliance which shall be conclusive evidence of the satisfaction of the conditions recited therein.

Any party aggrieved by a determination of the Commission may appeal to 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.

Jane A. Greene, Chairman

Notary

NORMAN FRIEDMAN  
NOTARY PUBLIC

MY COMMISSION EXPIRES OCT. 10, 1997

Date

Date

Received and entered with Dukes County Deed  
book 564 page 707

Attest:

Revised