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Decision of the Martha's Vineyard Commission DRI 34-M2 - Flat Point Farm Preliminary Estate Plan

1. SUMMARY

- Referring Board: Planning Board, Town of West Tisbury, MA
- Subject: Development of Regional Impact #34-M2
Flat Point Farm Preliminary Estate Plan
- Project: A preliminary estate plan that would divide the remaining 91.6 acres of Flat Point Farm into 2 large conservation parcels (67.8 acres), 5 four-acre lots (around existing buildings), and 3 one-acre (+/-) youth lots.
- Owner: A.M. Fischer 1994 Trust, Priscilla P. Fischer (Trustee)
- Applicant: Priscilla Fischer, Arnie Fischer Jr., Eleanor Fischer, Vineyard Land Surveying (Glenn Provost – Agent)
- Applicant Address: C/O Glenn Provost, Vineyard Land Surveying, P.O. Box 421, West Tisbury, MA, 02575.
- Project Location: Road to Great Neck, West Tisbury Map 35 Lot 3.1 (91.6 acres)
- Description: A preliminary estate plan that would divide the remaining 91.6 acres of Flat Point Farm into 2 large conservation parcels (67.8 acres), 5 four-acre lots (around existing buildings), and 3 one-acre (+/-) youth lots. In 1976 Arnie Fischer Sr. came to the MVC to divide four 5-acre lots, one for each of his children, out of the original 130 (+/-) acre farm. In 2007 they created a 12.9 acre Form A lot (DRI 34-M) around an existing camp building that was built in 1969.
- Decision: The Martha's Vineyard Commission (the Commission) approved the application for the project as a Development of Regional Impact with conditions, at a vote of the Commission on November 19, 2009.
- Written Decision: This written decision was approved by a vote of the Commission on January 7, 2010.

The permit-granting authorities of the Town of West Tisbury may now grant the request for approval of the Applicant's proposal in accordance with the conditions contained herein and may place further conditions thereon in accordance with applicable law, or may deny the request for approval.

2. FACTS

The exhibits listed below including the referral, the application, the notice of public hearing, the staff report, the plans of the project, and other related documents are incorporated into the record herein by reference. The full record of the application is kept on the premises of the Martha's Vineyard Commission.

2.1 Referral

The project was referred to the Commission on July 10, 2009 by the Planning Board of the Town of West Tisbury, MA for action pursuant to Chapter 831 of the Acts of 1977, as amended (the Act) and the Commission's Standards and Criteria Administrative Checklist for Developments of Regional Impact, Sections 3.102b, 3.203a, and 3.203b, the last two items being mandatory referrals.

2.2 Hearings

Notice: Public notice of a public hearing on the Application was published in the Vineyard Gazette, September 18, 2009.

Hearings: On October 1, 2009, the Commission held a public hearing on the Application that was conducted by the Commission pursuant to the Act and M.G.L. Chapter 30A, Section 2, as modified by Chapter 831.

2.3 The Plan

The following plans and documents submitted by the Applicant and contained in the Commission's project file constitute "the Plan."

P1 "Preliminary Plan of Land in West Tisbury, MASS. Surveyed for Flat Point Farm: Arnold M. Fischer 1995 Trust: Priscilla P. Fischer", consisting of one 24" x 36" sheet showing the proposed preliminary estate plan of 91.6 acres, Scale 1 inch = 200 feet, prepared by Vineyard Land Surveying & Engineering, Inc., P.O. Box 421, West Tisbury, MA 02575, May 18, 2009.

2.4 Other Exhibits

- E1. Referral to the MVC from the West Tisbury Planning Board July 10, 2009.
- E2. Staff Report, by Paul Foley, MVC DRI Coordinator, with the assistance of other staff members, Date, September 1, 2009; revised September 29, 2009.
- E3. Letter from the West Tisbury Planning Board, dated July 23, 2009.
- E4. Letter from Kristian Strom, Samantha Look, and Carly Look, dated September 30, 2009.
- E5. Letter from John O'Sullivan, dated October 1, 2009.
- E6. Minutes of the Commission's Land Use Planning Committee meeting, August 31, 2009.
- E7. Minutes of the Commission's Public Hearing, October 1, 2009.
- E8. Minutes of the Commission Meeting of November 19- Deliberations and Decision.
- E9. Minutes of the Commission Meeting of January 7, 2010 - Approval of the Written Decision.

2.5 Summary of Testimony

The following is a summary of the principal testimony given during the public hearing.

- Presentation of the project by Applicant Agent Glenn Provost (Vineyard Land Surveying); Arnie Fischer Jr. and Eleanor Fischer.
- Oral testimony from Public:
 - Samantha Look and Kristian Strom

2.6 Party Status

- No individuals and/or groups requested or were granted party status.

3. FINDINGS

3.1 Project Description

- The remaining 91.6-acre farm is situated at the end of a peninsula on Tisbury Great Pond between Short Cove and Pear Tree Cove.
- The peninsula is open farm pasture for a depth of approximately 850 feet from the Great Pond, beyond which the landscape becomes woods and farm fields.
- The proposal is a preliminary estate plan that would subdivide the remaining 91.6 acres of Flat Point Farm into 2 large conservation parcels (67.8 acres), 5 four-acre lots (around existing buildings), and 3 one-acre (+/-) youth lots.
- In 1976 Arnie Fischer Sr. came to the MVC to subdivide four 5-acre lots, one for each of his children, out of the original 130 (+/-) acre farm.
- In 2007 they created a 12.9 acre Form A lot (DRI 34-M) around an existing camp building that was built in 1969.

3.3 Statutory Authority

The purpose of the Commission, as set forth in Section 1 of the Act, is to "protect the health, safety and general welfare of island residents and visitors by preserving and conserving for the enjoyment of present and future generations the unique natural, historical, ecological, scientific and cultural values of Martha's Vineyard which contribute to public enjoyment, inspiration and scientific study by protecting these values from development and uses which would impair them, and by promoting the enhancement of sound local economies."

The Commission has reviewed the proposal as a Development of Regional Impact, using the procedures and criteria that the Commission normally uses in evaluating the benefits and detriments of such a proposal. The Commission has considered the Application and the information presented at the public hearing, including listening to all the testimony presented and reviewing all documents and correspondence submitted during the hearing and review period.

3.4 Benefits and Detriments

Based on the record and testimony presented therein, the Commission finds the following pursuant to Sections 14 and 15 of the Act.

A. THE COMMISSION FINDS THAT THE PROBABLE BENEFITS OF THE PROPOSED DEVELOPMENT WOULD EXCEED THE PROBABLE DETRIMENTS, AS EVALUATED IN LIGHT OF THE CONSIDERATIONS SET FORTH IN SECTION 14(a) OF THE ACT.

A1 The Commission finds that the proposed development at this location is appropriate in view of the available alternatives (Section 15(a) of the Act.)

The Commission finds that the majority of the proposed lot has long been and currently is farmland and that the majority of the land will be maintained as agricultural land in perpetuity. The Commission notes that this is a preliminary plan that cannot be acted upon and that no development is planned at this time.

A2 The Commission finds that the proposed development would have a minimal impact upon the environment relative to other alternatives (Section 15(b) of the Act).

With respect to Wastewater and Groundwater, the Commission finds that the final division plan must be able to meet the MVC nitrogen loading requirements for Tisbury Great Pond in force at the time of the final subdivision.

With respect to Open Space, Natural Community and Habitat, the Commission finds that the proposal creates two large (67.8 acres total) conservation parcels that will not be further subdivided.

With respect to Night Lighting and Noise, the Commission finds that proposal should not have a noticeable impact.

With respect to Energy and Sustainability, the Commission finds that the project retains most of the property in its current state.

A3 The Commission finds that the proposed development would have a moderate overall effect upon other persons and property (Section 15(c) of the Act).

With respect to Traffic and Transportation, the Commission finds that the impact on the road would be minimal. The Commission notes that it has made no determination as to whether the proponent has legal access over a private way or easement by prescription to the lot. In accordance with the Town's zoning, the Town will have to determine whether the proponent has legal access to the lot, or alternatively, that the Town will waive the relevant provisions of zoning requiring, for example, frontage on a public way. This DRI decision does not purport to affect or determine the property rights of the proponent or of any abutter or other party with title interest in the way or easement.

With respect to Scenic Values, Character, and Identity the Commission finds that the existing farm is being protected and that the character of the land would remain largely intact. The Commission notes that the proposal allows a multi-generational farm to stay primarily in agricultural use and largely within the family.

With respect to the Impact on Abutters, the Commission finds that abutters have expressed concerns that have been somewhat addressed by the offers and conditions contained in this Decision. The Commission notes that the issue of access will be dealt with by the Town and that the formal division

plan must return to the MVC with solutions to several issues that have been raised but have yet to be resolved at this time.

A4 The Commission finds that the proposed development would have little impact upon the supply of needed low and moderate income housing for Island residents (Section 15(d) of the Act).

The Commission finds that in terms of the MVC Affordable Housing Policy that any further division would trigger the policy at which time the Commission could consider the three "homesite" lots as mitigation for affordable housing.

A5 The Commission finds that the proposed development would have minor impacts on the provision of municipal services or burden on taxpayers in making provision therefore (Section 15(e) of the Act).

The Commission finds that the development of this property would add to the tax rolls of West Tisbury while still preserving most of the pasture land.

A6 The Commission finds that the proposed development would use efficiently and not unduly burden existing public facilities (other than municipal) or those that are to be developed within the succeeding five years. (Section 15(f) of the Act).

The Commission finds that this proposal should have minimal impact on public facilities.

A7 The Commission finds that the proposed development does not interfere with the ability of the municipality to achieve the objectives set forth in the municipal general plan. (Section 15(g) of the Act).

A8 The Commission finds that the proposed development would not contravene land development objectives and policies developed by regional or state agencies. (Section 15(h) of the Act).

The Commission notes that the development is consistent with the policies of the Martha's Vineyard Commission Regional Policy Plan, adopted by the vote of the Martha's Vineyard Commission, June 1991.

In sum, after careful review of the plan and its attendant submittals and the testimony presented by the Applicant and others, and the addition of conditions such as those relating to the location of the development envelope, wastewater and future traffic mitigation, the Commission has concluded that the probable benefits of this proposed development in this location exceed its probable detriment in light of the considerations set forth in section 14(a) of the Act.

B. THE COMMISSION FINDS THAT THE PROPOSED DEVELOPMENT WOULD BE CONSISTENT WITH THE LAND DEVELOPMENT OBJECTIVES OF THE COMMISSION, AS EVALUATED IN LIGHT OF THE CONSIDERATIONS SET FORTH IN SECTION 14(b) OF THE ACT.

The requested project, as a whole, advances the Commission's land development objectives, as outlined in the Martha's Vineyard Commission Regional Policy Plan adopted by the Commission in June 1991, and as noted previously in section A8 of this decision.

C. THE COMMISSION FINDS THAT THE PROPOSED DEVELOPMENT IS CONSISTENT WITH MUNICIPAL DEVELOPMENT ORDINANCES AND BY-LAWS, TO THE BEST OF THE COMMISSION'S KNOWLEDGE.

As noted in A3, The Commission notes that it has made no determination as to whether the proponent has legal access over a private way or easement by prescription to the lot in accordance with the Town's zoning. The Town will have to determine whether the proponent has legal access to the lot, or alternatively, that the Town will waive the relevant provisions of zoning requiring, for example, frontage on a public way.

D. THE COMMISSION FINDS THAT THE SITE IS IN CONFORMANCE WITH THE REGULATIONS OF DISTRICTS OF CRITICAL PLANNING CONCERN, AS EVALUATED IN LIGHT OF THE CONSIDERATIONS SET FORTH IN SECTION 14(d) OF THE ACT.

The Commission finds that the proposed development site is partly located within the Coastal District of Critical Planning Concern (DCPC) and the Floodplain District of Critical Planning Concern, and must conform to their regulations.

4. DECISION

The Martha's Vineyard Commission deliberated about the application at a duly noticed meeting of the Commission held on November 19, 2009 and made its decision at the same meeting.

The following Commissioners, all of who participated in all hearings and deliberations on this project, participated in the decision on November 19, 2009.

- Voting in favor: Bill Bennett; John Breckenridge; Christina Brown; Peter Cabana; Carlene Gatting; Ned Orleans; Jim Powell; Doug Sederholm; Linda Sibley; and Holly Stephenson.
- Voting against: None
- Abstentions: None

Based on this vote, the Commission approved the application for the project as a Development of Regional Impact with the conditions listed in section 5 below.

This Written Decision is consistent with the vote of the Commission November 19, 2009 and was approved by vote of the Commission on January 7, 2010.

5. CONDITIONS

After reviewing the proposal for this Development of Regional Impact, the Martha's Vineyard Commission imposes the following conditions in order to increase the benefits and minimize the detriments of the

project. The analysis of benefits and the resulting decision to approve the project is based on the proposal as modified by these conditions. These conditions form an integral and indispensable part of this decision.

These conditions are an essential part of this decision and shall be enforced as written. If the Commission finds it necessary to seek judicial relief to enforce the condition, the Applicant, or its successors in title at the time of such proceedings, shall pay the Commission's attorney's fees and costs incurred in obtaining judicial relief.

1 Wastewater, Groundwater And Stormwater Management

1.1 With respect to wastewater the Applicant must be able to meet the MVC nitrogen loading requirements for Tisbury Great Pond in force at the time of the final division.

2 Final Division Plan

2.1 The final Division Plan shall be submitted to and is subject to the approval of the Martha's Vineyard Commission.

2.2 The Applicant, when submitting the final Division Plan, must include the following:

- Building envelopes on future lots aimed at reducing the impact on existing and potential farming and grazing areas, balanced with minimizing the impact on the pond;
- A clear indication that there will be no guest houses;
- Measures to meet the MVC Water Quality Policy in place at that time;
- A consideration of measures to minimize the blocking of the view of the farm field from the adjacent public access trail;
- A definitive instrument that limits future division.

2.3 The Applicant, when submitting the final Division Plan, may include a relocation and/or reconfiguration of the three homestead lots that seeks to minimize the impact on farmland, such as clustering. The Commission notes that it would be favorable to such a relocation and/or reconfiguration

6. CONCLUSION

6.1 Permitting from the Town

The Applicant must, consistent with this Decision, apply to the appropriate Town of West Tisbury Officers and Boards for any local development permits which may be required by law.

6.2 Notice of Appellate Rights

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 West Tisbury Town Clerk.

6.3 Length of Validity of Decision

The Applicant shall have two (2) years from the date of receipt of the Decision of the Martha's Vineyard Commission contained in this document to begin substantial construction. Should substantial construction

not occur during said two (2) year period, this Decision shall become null and void and have no further effect. This time period may be extended upon written request from the Applicant and written approval from the Martha's Vineyard Commission.

6.3 Signature Block

Christina Brown
Christina Brown, Chairman

Date January 11, 2010

6.4 Notarization of Decision

Commonwealth of Massachusetts
County of Dukes County, Mass.

On this 11th day of January, 2010, before me,
Jo-Ann Taylor, the undersigned Notary Public, personally
appeared Christina Brown, proved to me through satisfactory evidence of identity,
which was/were driver's license to be the person(s) whose name(s)
was/were signed on the preceding or attached document in my presence, and who swore or affirmed to
me that the contents of the document are truthful and accurate to the best of his/her/their knowledge and
belief.

Jo-Ann Taylor
Signature of Notary Public

Jo-Ann Taylor
Printed Name of Notary

My Commission Expires February 11, 2011

6.5 Filing of Decision

Filed at the Dukes County Registry of Deeds, Edgartown, on: January 13, 2010

Deed - Book 1201, page 465
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