

## THE MARTHA'S VINEYARD COMMISSION

BOX 1447 • OAK BLUFFS  
 MASSACHUSETTS 02557  
 (508) 693-3453  
 FAX (508) 693-7894

DATE: March 4, 1993  
 TO: Planning Board, Town of Edgartown  
 FROM: Martha's Vineyard Commission  
 SUBJECT: Development of Regional Impact  
 RE: Residential Subdivision  
 APPLICANT: Paul and Carolyn Daniele  
 c/o Douglas Hoehn  
 Schofield, Barbini & Hoehn  
 P.O. Box 339  
 Vineyard Haven, MA 02557

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DECISION OF THE MARTHA'S VINEYARD COMMISSION

SUMMARY

The Martha's Vineyard Commission (the Commission) hereby denies the application of Paul and Carolyn Daniele, c/o Douglas Hoehn, Schofield, Barbini and Hoehn, P.O. Box 339, Vineyard Haven, MA, 02557 for the subdivision of land as shown on the plans entitled: "Plan of land in Edgartown, MA" prepared for Paul E. and Carolyn C. Daniele; March 13, 1992, revised October 21, 1992; Schofield, Barbini and Hoehn, Civil Engineers and Land Surveyors, State Road, P.O. Box 339, Vineyard Haven, MA, 02568; consisting of one (1) sheet, (the Plan).

This Decision is rendered pursuant to the vote of the Commission on March 4, 1993.

The Planning Board of the Town of Edgartown is denied permission to grant the necessary development permits.

FACTS

The proposed development is a Development of Regional Impact as defined by the Commission's Standards and Criteria, Developments of Regional Impact Section 3.102. The Application was referred to the Commission by the Planning Board of the Town of Edgartown 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 October 22, 1992 at 8:00 P.M. in the Whaling Church, lower level, Edgartown, MA.

The proposal is for the subdivision of 6.2 acres into 4 lots.

Alan Schweikert, Chairman of the Land Use Planning Committee, (LUPC), read the Public Hearing Notice and opened the hearing for testimony at 8:02 p.m.

Michael Donaroma, Commission representative from Edgartown left the table and abstained from the proceedings due to a conflict.

Doug Hoehn of Schofield, Barbini and Hoehn distributed copies of the plan and presented the various persons present including the applicant, Paul Daniele.

Mr. Hoehn then proceeded to explain the proposal. He discussed the various uses that are on abutting property, the zoning in the area, the physical setting of the site and area. He then noted that he had distributed a copy of the soils mapping and explanation thereof as prepared by the Soil Conservation Service.

Mr. Hoehn then discussed the past history of development and DRI reviews of the original tract known as the Waller Farm. He further discussed the Town taking of a portion of the site and ultimate sale to the Land Bank. He further discussed the various meetings with the town boards and the LUPC.

He discussed the original design of the proposal and how after discussion and review on a preliminary level by the Edgartown Planning Board, the design had changed. The new proposal had the new lots aligned along the northern side of the site.

He then discussed the reasons for locating the road as shown, and

why it did not come off the existing town land access area.

He then discussed the location of building envelopes and view sheds and a number of self imposed conditions such as no further subdivision of the 4-acre lot, no guest houses on the three new lots, a height restriction of 26 feet on all building, architectural covenants to be reviewed by planning board, siting of actual buildings to be a joint undertaking between planning board and applicant.

He then discussed what he believed were the benefits of the plan.

Paul Daniele, applicant, discussed his background and that of the site. He discussed the reasons for the subdivision at this time. He then discussed the past workings with the planning board.

Eric Peters, attorney for applicant, discussed the reason why the proposal was before the Commission and the fact that there was still the issue of a special permit for the road from the planning board. He further discussed the reasons for the changes to the plan.

Mr. Schweikert again noted that Mr. Donaroma was abstaining from the proceedings.

John Schilling, MVC staff, discussed the proposal and reviewed various aspects of the natural and man-made features in the area. He noted the correspondence that had been received on the issue. He then noted the comments that had been received from the Board of Health. He also noted that there was no impact from traffic anticipated.

Mr. Schweikert then asked for questions from the Commissioners. Mr. Best raised an issue regarding the soil in the area and whether it was prime agricultural soils or not and whether the mapping technique was accurate or not. A discussion of this issue followed.

Mr. Marinelli questioned why some of the items had not been addressed. Mr. Hoehn indicated that it was the belief of the applicant that there would be no impact.

Ms. Greene asked whether there would be town water or

separate wells. Mr. Hoehn indicated that the applicant would be discussing the matter further with the Board of Health and while wells were preferred, they would do what the Town wanted.

Mrs. Marinelli asked how many houses. Mr. Hoehn noted there was one existing, three new potentials plus one guest house potential.

Mr. Best questioned what type of road. Mr. Hoehn indicated a 12-foot wide hard surface, unpaved.

Mr. Best further questioned the use of landscaping. Mr. Hoehn noted that only preliminary discussions of screening had taken place. A brief discussion of this matter followed.

Mr. Jason questioned how many lots had been created from what was the Waller farm, from when it first came to the Commission years ago. Mr. Peters noted there were three including the present 6.2 acres plus eight that had been created on the south side of the original farm where a number of lots had been cut off years earlier. He noted that the eight lots had been taken by the Town. A discussion of this matter followed. Mr. Jason questioned why the applicant had not addressed affordable housing since the totals are cumulative for the MVC from January of 1985. Mr. Peters discussed the issue and felt that such was unclear but no, it had not been addressed.

Mr. Schweikert then called for town boards.

Edo Potter, Edgartown Conservation Commission, referred to a letter of opposition and the interest of the Town in the site. She discussed the background of interest. She disagreed with the assessment of soil capabilities with respect to agriculture. She further discussed the protection of agriculture and the relationship to the MVC Policy Plan. She asked the MVC to consider matter seriously.

Mr. Best discussed again issue of soils and whether they were prime or not. A discussion of the accuracy of the mapping followed. It was noted that map was a copy of the SCS book.

Ted Morgan, Selectman, spoke for Selectmen noting that the Board had objected to the original design but since the change

the majority of the Board had no objections to the new design. He further discussed the past history of the farm. He spoke for himself and indicated that the farm should not have any new homes placed thereon.

Ann Heron, Planning Board, read a copy of a letter sent from the Planning Board indicating that the Board felt that the applicant had adequately addressed many concerns of neighbors and town boards. She noted that landscaping and covenants were to be worked out with Planning Board.

She discussed the idea of maintaining rural character. She indicated that a majority of the Board felt the proposal was responsible.

Mr. Lee raised a question regarding any further subdivision. It was noted that the Board of Health comment was by Form C only.

Ms. Greene questioned whether no further development included guest houses. Ms. Heron indicated no. A discussion followed.

There being no further testimony from Town Boards, Mr. Schweikert called for proponents.

Paul Morse, Herring Creek Road, found no fault with proposal.

Pat Hughes, abutter from Crocker Drive, discussed view of site and that there didn't appear to be any harm.

Mr. Schweikert then called for those opposed.

Robert R. Waller, resident across street, read correspondence to Planning Board and felt many of comments remained relevant now. He submitted a written statement for the record.

He also further reiterated his opposition to the proposal and felt that the further subdivision of the site was not appropriate.

Ms. Greene asked for a further explanation of the wildlife comment.

Mr. Waller indicated song birds, deer, rabbits, skunks, etc.

Althea Waller Morgan, resident, read a prepared statement on the

preservation of the past. She discussed the need to consider the protection of the entire area that once was the farm and asked for a continuity of purpose that was established when the original area was protected.

Elizabeth Rogers, West Tisbury, Stated past usage of area and indicated opposition to proposal.

Ann Floyd, Edgartown, questioned how many Commissioners had seen site? And if not will it be visited before the vote. The Commissioners all commented on their personal feelings.

Norman Rankow, abutter, indicated that he was speaking for the Stupaks and the Fitzpatrick's as well. He discussed the effect of a potential of ten structures on site (garages, guest house, homes). He discussed what he felt was the intent of the Town in purchasing the farm. He discussed what had been anticipated when the land was sold but was disappointed to see a subdivision. He asked the Commission to consider the goals of the Town.

Mr. Hoehn further discussed the issue of structures on the site.

Robert Morgan, resident, indicated opposition and delivered a list of persons present who had signed in opposition.

Donna Hannigan, Mercier Way, abutter to original farm, discussed view from that area and the possibility of dust from the dirt road being proposed. She felt that consideration should be given to the view from other directions as well.

Mr. Schweikert then called for any further testimony.

Ann Floyd noted the letters presented by the Waller family were excellent and stated she was opposed to the development

Ms. Sibley questioned whether the applicant would be willing to indicate what type and where any additional buildings on the 4-acre lot may be placed. She further discussed this matter. Mr. Hoehn noted that the applicant and the Planning Board should work these details out.

Mr. Peters discussed a potential agreement that the applicant had

considered.

Ms. Sibley questioned whether that meant for any building on the larger lot. Mr. Peters indicated that any new building would be with the concurrence of the Planning Board.

Mr. Jason questioned whether the parcel was for sale. Mr. Daniele indicated yes and explained why.

Mr. Peters discussed the failure of the Town to purchase the property and the vote thereon. He then discussed the DRI process in relation to this site. He discussed the lots that were subdivided by opponents across the road.

Mr. Morgan asked for time to comment and discussed how the lots across the street were not relevant.

Mrs. Morgan discussed the character of the neighboring lots in question.

Mr. Morgan T., asked again if the lot was for sale. It is.

Mr. Morgan R., discussed the relationship of the comments to the site.

Mr. Daniele noted that he and his wife intended to return to live in the farm.

Mr. Morgan, T., indicated a different feel for the proposal since the site was for sale and now strongly opposed the proposal.

Mr. Peters felt the issue of sale was irrelevant to the issue.

Mr. Schweikert indicated that he did not wish to have a debate in this issue.

Mr. Morgan, T., indicated that everyone was lead to believe that the site would be upgraded when lots were sold; the site being for sale changes the issue.

Ms. Hughes indicated she was the broker and explained why the lot had been put up for sale.

Mr. Daniele indicated he wished to move to site if possible and upgrade. He discussed the beauty of the site and felt the proposal was of minimal impact.

There being no further testimony, Mr. Schweikert closed the hearing at 9:30 p.m. and indicated that the record would remain open for two weeks.

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 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:

MVC Policy IV-10 - Preserve suitable agricultural land and make it available for farming and grazing. Protect lands with agricultural potential (Gen. Pol. 1975-2.701, 2.702)

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 or unreasonably with the achievement of the objectives of any general plan of the Town of Edgartown or any general plan of the County of Dukes County.

Specifically the proposed development is found to be in conflict with the following policies of the Edgartown Master Plan:

- Preserve farmland via governmental and local programs.
- Purchase important recreational, conservation and agricultural lands.

And with the following policies of the Edgartown Open Space Plan:

- Protect prime agricultural lands for farming:
  - a. identification and protection wherever possible of land containing Prime Agricultural soils and soils of State and Local importance.
  - c. preservation of farmlands by encouraging applications for purchase of development rights by the Commonwealth under Chapter 780 M.G.L.
  - d. consideration of the cost of purchase of important farmlands versus cost of providing services if land were developed.

Pursuant to Section 15(a) of the Act, the Commission has considered whether the proposed development at this location is or is not essential or especially appropriate in view of available alternatives on the island of Martha's Vineyard and in view of that consideration and discussion 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 OR FARMLANDS, AND SINCE THE PROPOSAL IS IN CONFLICT WITH

ADOPTED COMMISSION POLICIES THUS DELINEATED ELSEWHERE  
IN THIS DECISION.

and Further,

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 view of that consideration and discussion the Commission finds that:

THE DEVELOPMENT IN THE MANNER PROPOSED WILL HAVE A MORE ADVERSE IMPACT ON THE ENVIRONMENT, BOTH NATURAL AND MAN-MADE IN COMPARISON TO ALTERNATIVE MANNERS OF DEVELOPMENT SINCE THE RESULTS WOULD BE A LOSS OF OR DEGRADATION OF A RURAL CHARACTER VIEWSHED AND WOULD RESULT IN THE LOSS OF A SIGNIFICANT RESOURCE, NAMELY AGRICULTURAL OR FARMLANDS.

and Further,

Pursuant to Section 15(d) of the Act, the Commission has considered whether the proposed development will favorably or adversely affect the provision of needed low and moderate income housing for Island residents and in view of that consideration and discussion the Commission finds that:

THE DEVELOPMENT IN THE MANNER PROPOSED WILL DO NOTHING TO ENHANCE THE OPPORTUNITIES TO IMPROVE THE PROVISION OF NEEDED LOW AND MODERATE INCOME HOUSING FOR ISLAND RESIDENTS.

and Further,

Pursuant to Section 15(c) of the Act, the Commission has considered whether the development as proposed will favorably or adversely affect other persons and property, and if so, 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 view of that consideration and discussion the Commission finds that:

THE DEVELOPMENT IN THE MANNER PROPOSED WILL ADVERSELY AFFECT OTHER PROPERTY AND THE EFFECT IS LIKELY TO BE

GREATER THAN IS ORDINARILY ASSOCIATED WITH THE DEVELOPMENTS OF THE TYPES PROPOSED AND EVEN WITH THE OFFER OF PROPOSED SCREENING AND MASKING VIA LANDSCAPING THE COMBINED EFFECT OF BOTH THE DEVELOPMENT AND THE ASSOCIATED LANDSCAPING SCREEN WILL LIKELY EFFECT THE NEIGHBORING PROPERTIES IN A DETRIMENTAL MANNER.

AND ADDITIONALLY

A SIGNIFICANT SUM OF PUBLIC MONEY HAS BEEN EXPENDED BY THE MUNICIPALITY IN THE ADJOINING AND SURROUNDING AREA FOR THE PURPOSES OF PRESERVATION OF AGRICULTURAL RESOURCES AND FOR THE PURPOSES OF PRESERVING THE VISUAL INTEGRITY OF THE FARM AND FARMLANDS AND THE DEVELOPMENT IN THE MANNER PROPOSED WILL HAVE A SIGNIFICANT AND DETRIMENTAL IMPACT UPON THAT CONTINUITY AND INTEGRITY BY INSPECTING THE VISTAS THE MUNICIPALITY HAS SO HEAVILY INVESTED IN PRESERVING.

and Further,

Pursuant to Section 15(g) of the Act, the Commission has considered whether the proposed development will aid or interfere with the ability of the Town to achieve the objectives set forth in the Town's general plan and in view of the consideration and discussion the Commission finds that:

THE INTENT OF THE TOWN'S GENERAL PLAN IS TO ENCOURAGE AGRICULTURAL USES OF SUITABLE LAND AND TO MINIMIZE DEVELOPMENT AND IN LIGHT OF THE STATED INTENT, THE COMMISSION FINDS THAT THE PROPOSED DEVELOPMENT MAY BE INCONSISTENT WITH THE TOWN'S PLAN AND THE RISK OF SAID INCONSISTENCY IS TOO GREAT FOR THE COMMISSION TO APPROVE THE APPLICATION AS PRESENTED.

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

The Decision is written consistent with the vote of the Commission: March 4, 1993.

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.

*Michael J. Donaroma*

Michael J. Donaroma, Chairman

3-4-93  
Date

*Ruth G. Dobby*

Notary

3/4/93  
Date

Edgartown, Mass. March 9 1993  
at 2 o'clock and 11 minutes P.M.  
received and entered with Dukes County Deeds  
book 601 page 180

Attest: *Sweeney W. King*

Register