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Decision of the Martha's Vineyard Commission DRI 597 – Middle Line Road Community Housing Program

1. SUMMARY

- Referring Board: Planning Board, Town of Chilmark, MA
- Subject: Development of Regional Impact #597
Middle Line Road Community Housing Program
- Project: To create a 9-building, 12-unit housing complex on a 21.4-acre site on Middle Line Road in Chilmark.
- Owner: Town of Chilmark
- Applicant: Town of Chilmark; Warren Doty (Selectmen)
- Applicant Address: P.O. Box 119, Chilmark, MA 02535
- Project Location: Map 13 Lot 43, Middle Line Road, Chilmark, MA
- Description: The Applicant has submitted a Form "B" preliminary subdivision plan to the Chilmark Planning Board. The proposal is to create a 9-building, 12-unit housing complex on a 21.4-acre site on Middle Line Road in Chilmark. There will be 6 residential "homesites" in which individual owners will build single-family homes up to 4 bedrooms each. There will be 6 duplex units developed by a private developer hired by the town and managed by an independent agency. At least four units will go to families earning less than 100% of Area Median Income (AMI) and the remainder to families earning less than 150% of (AMI). All units will be permanently restricted to be affordable according to the above limits. The Town will retain ownership of the entire parcel. The project will be re-submitted as a Form C Subdivision.
- 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 June 14, 2007.
- Written Decision: This written decision was approved by a vote of the Commission on July 5, 2007.

The permit-granting authorities of the Town of Chilmark may now grant the request for approval of the Applicant's Form B subdivision 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 March 27, 2007 by the Planning Board of the Town of Chilmark, 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 3.104c, 3.204b, 3.401a, all mandatory review referrals.

2.2 Hearings

Notice: Public notice of a public hearing on the Application was published in the Vineyard Gazette, April 27, 2007.

Hearings: 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 on May 10, 2007, and was continued to May 31, 2007 and closed on that date. .

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 Chilmark, Mass.", consisting of one page, Scale 1' = 50', prepared by Vineyard Land Surveying & Engineering, Inc., P.O. Box 421, West Tisbury, MA 02575 March 23, 2007.
- P2 "Preliminary Plan of Land in Chilmark, Mass.: Locus Map", consisting of one page, Scale 1' = 150', prepared by Vineyard Land Surveying & Engineering, Inc., P.O. Box 421, West Tisbury, MA 02575 March 22, 2007.
- P3 Untitled Site Plan, consisting of one 24" by 36" sheet showing proposed building sites, no scale, received by MVC on May 31, 2007 from David Handlin of Handlin, Garrahan, Zachos and Associates Architects, 104 Mount Auburn Street, Cambridge, MA 02138.
- P4 DRI Application Packet for Middle Line Road Community Housing Program, consisting of fifty three 8.5" by 11" sheets with DRI Application Form, Project narrative with purpose, background, policies, locus map, site plan B, Deeds, conservation restriction, letters from state agencies, and implementation guidelines.

2.4 Other Exhibits

- E1. Referral to the MVC from the Chilmark Planning Board March 27, 2007
- E2. Staff Report, by Paul Foley, MVC DRI Coordinator, with the assistance of other staff members, May 10, 2007.

- E3. Photographs of the site, taken on November 1, 2006 and May 2, 2007 by MVC staff members, Paul Foley and Mark London.
- E4. Letter from Blair Emin, Dianne Emin, Keith Emin, and Wanda Emin, dated February 8, 2005.
- E5. Letter from Brona Simon, State Archaeologist, dated November 30, 2006.
- E6. Letter from William Flender, dated February 8, 2007.
- E7. Letter from Cheryl Andrews-Maltais, Tribal Historic Preservation Officer, dated April 11, 2007.
- E8. Letter from David Norton, Chilmark Fire Chief, dated April 16, 2007.
- E9. Letter from Thomas French, Assistant Director of NHESP, dated May 3, 2007.
- E10. Letter from Blair and Dianne Emin, dated May 3, 2007.
- E11. Letter from Chilmark Planning Board, dated May 9, 2007.
- E12. Letter from Chilmark Planning Board, dated May 30, 2007.
- E13. Minutes of the Commission's Land Use Planning Committee meeting, June 19, 2006.
- E14. Minutes of the Commission's Land Use Planning Committee meeting, November 6, 2006.
- E15. Minutes of the Commission's Land Use Planning Committee meeting, December 18, 2006.
- E16. Minutes of the Commission's Land Use Planning Committee meeting, April 2, 2007.
- E17. Minutes of the Commission's Public Hearing, May 10, 2007.
- E18. Minutes of the Commission's Continued Public Hearing, May 31, 2007.
- E19. Minutes of the Commission Meeting of June 14, 2007 – Deliberations and Decision.
- E20. Minutes of the Commission Meeting of July 5, 2007 – 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 Warren Doty, Riggs Parker, Frank Fenner, Andy Goldman, Chuck Hodgkinson, Glenn Provost, Kent Healy, and David Handlin.
- Staff reports by Paul Foley, MVC DRI coordinator; Bill Wilcox, MVC Water Planner; Jim Miller, MVC Traffic Planner; Mark London, Executive Director.
- Letters from citizens of Martha's Vineyard noted above.
- Oral testimony from members of the Town Planning Board, Selectmen, and General Housing Committee.
- Oral testimony from Public: David Vigneault of the Dukes County Regional Housing Authority, Diane Emin, Zelda Gamson, Perry Ambulos, Lenny Jason, Dardanelle Slavin, Christina Soulagnet, Mary Beth Grady, and Tim Lasker.

3. FINDINGS

3.1 Project Description

- The site plan is organized around a central single-lane, dirt road that parallels Holman Road, a former road and now a trail. Three roads off the central road lead to loops at the center of each group of three buildings – one duplex and two single-family homes. Two clay pits are now manmade wetlands, which the Town will accept as wetlands and buffer. The Town will place a Conservation Restriction on a beech grove and the clay pits.
- The 6 single-family units will be used as residential homesites by families who will build houses that will be allowed up to 4 bedrooms each.
- The 6 duplex units will be rented. These rental units will be developed by a private developer who will be hired by the town, and will be managed by an independent agency. The duplexes will have two 1-br, two 2-br, and two 3-br units.
- At least four units will be used by families earning no more than 100% of Area Median Income (AMI) and the remainder earning no more than 150% of AMI.
- All units will be permanently restricted to be affordable according to the above limits. The Town will retain ownership of the entire parcel.

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 this Town-owned property represents the best short-term opportunity to achieve badly needed affordable housing in Chilmark, despite the fact that this is not an ideal site with respect to its impact on the natural environment and the distance to town services (school, library, community

center, store, etc.). The Commission notes that six houses and six guest houses could have been built under existing zoning, which could have had a similar and perhaps even greater impact than this proposal. The Commission also notes that Chilmark has been developed in a dispersed pattern over the last thirty years.

A2 The Commission finds that the proposed development would have a negative 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 proposal adheres to the Commission's Water Quality Policy with respect to wastewater and nitrogen-loading.

With respect to Open Space, Natural Community and Habitat, the Commission notes that this it is one of the last large unbroken tracts of woodland in Chilmark with value as habitat, potential as conservation land, and as a remnant of rural values. The Commission finds that the proposed development plans to retain at least 70% of the land as undisturbed open space. The Commission also finds that the developers have submitted their preliminary plan to the Natural Heritage and Endangered Species Program (NHESP) for review because a portion of the property is designated as Priority Habitat and that the NHESP has cleared the preliminary plan as not constituting a "take" of habitat. The Commission also notes that revisions to those preliminary plans will be submitted to the NHESP for further review.

With respect to Night Lighting and Noise, the Commission finds that the project will change the area and undoubtedly increase night lighting and noise. The Commission notes that the developers have offered to minimize night lighting and that the Town of Chilmark has strict night lighting by-laws.

With respect to Energy and Sustainability, the Commission finds that the project will be developed using Leadership in Energy and Environmental Design (LEED) principles and will strive for the highest possible rating of Certification in the LEED Program.

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

With respect to Traffic and Transportation, the Commission finds that the project will increase traffic on a little traveled road, though probably comparable to alternative development as six homes and six guesthouses. The Commission notes that there are several issues that still need to be worked out with regard to the right of way and sightlines, which will presumably be resolved when the project is re-submitted as a "Form C" Definitive Subdivision Plan.

With respect to Scenic Values, Character, and Identity: The Commission finds that the project represents a tradeoff between the rural character of the town and the desire to enable working citizens of the town to stay in Chilmark and help retain its community character.

With respect to the Impact on Abutters, the Commission finds that the project will have an impact on the few abutters in this wooded and rural corner of Chilmark.

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

The Commission finds that the project is being developed specifically to supply much-needed housing in perpetuity for households earning a moderate income, a need that is particularly acute in Chilmark. The Commission notes that that the proposed income level limits do not specifically serve people with the

lowest income levels and in the greatest need. Overall, this benefit outweighs the proposal's detriments referred to above.

A5 The Commission finds that the proposed development would have some 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 there may be a burden on taxpayers to complete this project but that the Town has voted to pursue and pay for this project due to the great need for moderately priced housing in Chilmark.

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).

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).

The Commission notes that one of the goals of the Chilmark Master Plan is to develop affordable housing.

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 some of 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 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.

The Commission finds that the project is subject to review by the Planning Board, the Conservation Commission, the Board of Health, and the Zoning Board of Appeals of the town of Chilmark. The Commission notes that the developers have designed the project in such a way that no variance or changes to the zoning by-laws would be required.

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 not within any District of Critical Planning Concern (DCPC).

4. DECISION

The Martha's Vineyard Commission deliberated about the application at a duly noticed meeting of the Commission held on June 14, 2007 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 June 14, 2007.

- Voting in favor: John Breckenridge; Christina Brown; Peter Cabana; Mimi Davisson; Chris Murphy; Katherine Newman; Ned Orleans; Doug Sederholm; Susan Shea; Linda Sibley; and Andrew Woodruff.
- Voting against: Jim Athearn
- 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 June 14, 2007 and was approved by vote of the Commission on July 5, 2007.

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 Subdivision

- 1.1 As offered by the Applicant, following approval by the Chilmark Planning Board of the Form B subdivision plan, the Town will submit a Form C subdivision plan to the Planning Board for transmittal to the Commission for review and approval, which plan, among other items, will include the road access, house siting, setbacks, revisions to the intersection of Middle Line Road and Tabor House Road in order to improve sight lines, the location of turnouts along Middle Line Road, final delineation

of cut zones, the location of septic systems, lawn areas, access and other fire safety issues, rental guidelines, a landscaping plan, and an open space plan.

2 Landscaping

- 2.1 As offered by the Applicant, all fertilizers shall be slow-release, water-insoluble nitrogen source types. No synthetic pesticides including herbicides, fungicides and/or insecticides shall be used in the maintenance of landscaping.
- 2.2 As offered by the Applicant, all plantings shall be non-invasive species and shall include native species and use best management practices.
- 2.3 As offered by the Applicant, consistent with the MVC staff water quality assumptions and analysis, the Town agrees to allow no more than a total of 27,000 sq. ft. of "lawn area" within the 21-acre proposal (average of 3,000 sq. ft. per building). It will be fertilized no more than three times per year.

3 Exterior Lighting

- 3.1 As offered by the Applicant, any security lighting will be motion sensitive.
- 3.2 As offered by the Applicant, all exterior lighting will be downward shielded to prevent direct light from escaping the property as expressly determined in Chilmark's Outdoor Lighting By-Law—Article 5 Sections 5.5, 5.6, 5.7 and 5.8.

4 Affordable Housing

- 4.1 As offered by the Applicant, at least 1/3 of all dwellings (4) will be devoted to qualified recipients earning up to 100 % of the Dukes County Median Income. This commitment is dependent upon the number of qualified applicants that are within this income bracket.
- 4.2 As offered by the Applicant, the balance of the available dwellings will be devoted to qualified recipients earning up to 150 % of the Dukes County Median Income.

5 Wastewater

- 5.1 As offered by the Applicant, as with the Form B design, the Form C plan will meet all of the Commonwealth's and Town's wastewater regulations. It is the Town's intent to achieve this without requesting a variance or special permit for any Town regulation.

6 Open Space

- 6.1 As offered by the Applicant, the project shall be developed in such a way as to retain 70-80 percent of Open Space with native species. There may be some areas within open space that will be preserved as a meadow – to provide a more varied natural habitat.
- 6.2 As offered by the Applicant, all significant landscape features such as clay pits and ancient ways will be protected with a minimum 50-foot no cut buffer with the exception that the access road into the subdivision will cross Holman Road once.
- 6.3 As offered by the Applicant, the Town shall cap the total number of dwelling units on the property at 12.

7 Habitat

- 7.1 As offered by the Applicant, the Town has submitted a Massachusetts Endangered Species Act (MESA) filing on behalf of the Middle Line Road Community Housing Program. It has been determined that the plan as proposed will not result in a prohibited "take" of state-listed rare species.
- 7.2 As offered by the Applicant, any major changes to this plan will be submitted to the Natural Heritage and Endangered Species Program (NHESP) for further review.

8 Energy Sustainability

- 8.1 As offered by the Applicant, the Applicant shall apply for LEED certification and shall seek the highest possible rating.
- 8.2 As offered by the Applicant, the Applicant shall apply for a Cape Light Compact grant for energy improvements and shall use any grant that is awarded to upgrade the energy efficiency, and/or to install renewable energy sources on the rental units.

9 Transportation

- 9.1 As offered by the Applicant, the Form C subdivision that the Town will submit to the MVC will improve sightlines of the intersection of Tabor House Road and Middle Line Road.
- 9.2 As offered by the Applicant, the access plan to the Middle Line subdivision will indicate the location of the turnouts on Middle Line Road.

10 Archaeological Oversight

- 10.1 As offered by the Applicant, the Town will have an intensive (locational) archaeological survey (950 CMR 70) conducted by a Massachusetts Historical Commission approved archaeologist before the Form C Submission is submitted for review.
- 10.2 As offered by the Applicant, if the archaeological survey indicates that there is significant archeological potential, then the Form C application to the Commission shall include the proviso, that the Tribe be notified one week in advance of any excavation and will be allowed to witness it.

11 Consideration and Report

- 11.1 The Applicant shall consider providing for universal access to all rental units and shall report its findings in the application for approval of the "Form C" Definitive Subdivision Plan.
- 11.2 The Applicant shall report the LEED (Leadership in Energy and Environmental Design) level achieved to the Martha's Vineyard Commission.
- 11.3 The Applicant shall consider requiring the owner of the residential homesite units to meet more stringent energy codes with rapid paybacks and shall report back on this issue.
- 11.4 The Applicant shall assure perpetual public access to Holman Road as a walking path

12 Major Alterations

- 12.1 As offered by the Applicant, should the project have major alterations to the use of the premises from the proposed uses it shall return to the Martha's Vineyard Commission to request approval of said alterations.

6. CONCLUSION

6.1 Permitting from the Town

The Applicant must, consistent with this Decision, apply to the appropriate Town of Chilmark 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 Chilmark 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 to file an application for a "Form C" Definitive Subdivision Plan. Should such an application not be filed 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

E. Douglas Sederholm, Chairman

Date

6.4 Notarization of Decision

Commonwealth of Massachusetts
County of Dukes County, Mass.

On this _____ day of _____, _____, before me,
_____, the undersigned Notary Public, personally
appeared _____, proved to me through satisfactory evidence of identity,
which was/were _____ 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.

Signature of Notary Public

Printed Name of Notary

My Commission Expires _____

6.5 Filing of Decision

Filed at the Dukes County Registry of Deeds, Edgartown, on: _____

Deed – Book , page