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Decision of the Martha's Vineyard Commission

DRI 598 – James Ferry Tennis and Racquet

1. SUMMARY

- Referring Board: Planning Board, Town of West Tisbury, MA
- Subject: Development of Regional Impact #598
James Ferry Tennis and Racquet
- Project: To construct an outdoor tennis court, an indoor racquetball court, a pro shop, and two offices on 21 Amos Lane.
- Owner: James Ferry
- Applicant: James Ferry
- Applicant Address: RR1 Box 375-J, Vineyard Haven, MA
- Project Location: Map 16 Lot 71.1(21 Amos Lane 0.47 acres). The applicant also owns the abutting property, Map 16 Lot 80 (497 State Road 0.69 acres), which provides the access and will share septic.
- Description: To construct an outdoor tennis court, an indoor racquetball court, a pro shop, and two offices on 21 Amos Lane. Hours of operation for racquetball would be 7:00 am to 9:00 pm. Of the two new offices in the proposed building one office would be for Mr. Ferry and the other would be a non-high traffic generating use. There will be a pro-shop in the racquetball/office building.
- 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 21, 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 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 May 27, 2006 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 3.301e and 3.301h, both concurrence review referrals. On October 5, 2006 the Martha's Vineyard Commission voted to concur with the referral that the project should be reviewed as a Development of Regional Impact and was reviewed as such by the Martha's Vineyard Commission.

2.2 Hearings

Notice: Public notice of a public hearing on the Application was published in the Vineyard Gazette, May 18, 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 31, 2007.

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 "Site Plan of Land in West Tisbury, MASS: Surveyed for James Ferry Showing Site Plan W/ Racquetball Court & Prop. Parking", consisting of one 11' by 17" sheet, Scale: 1" = 50', prepared by Vineyard Land Surveying & Engineering, Inc., P.O. Box 421, West Tisbury, MA 02575, December 12, 2006.
- P2 "Ferry Racquetball Court: Site Plan", consisting of one 11" by 17" sheet , prepared by Sullivan O'Connor Architects, P.O. Box 989, Oak Bluffs, MA 02557, October 22, 2006.
- P3 Ferry Racquetball Court: Exterior Elevations", consisting of one 11" by 17" sheet , prepared by Sullivan O'Connor Architects, P.O. Box 989, Oak Bluffs, MA 02557, October 22, 2006.
- P4 Ferry Racquetball Court: Floor Plans", consisting of one 11" by 17" sheet , prepared by Sullivan O'Connor Architects, P.O. Box 989, Oak Bluffs, MA 02557, October 22, 2006.

2.4 Other Exhibits

- E1. Referral to the MVC from the West Tisbury Planning Board November 27, 2006
- E2. Staff Report, by Paul Foley, MVC DRI Coordinator, with the assistance of other staff members, May 31, 2007.
- E3. Photographs of the site, taken on February 28, 2007 and May 31, 2007 by MVC staff members, Paul Foley and Mark London.

- E4. Letter from Eleanor Pearlson, dated May 21, 2007.
- E5. Minutes of the Commission's Land Use Planning Committee meeting, May 7, 2007.
- E6. Minutes of the Commission's Land Use Planning Committee meeting, June 18, 2007.
- E7. Minutes of the Commission's Public Hearing, May 31, 2007.
- E8. Minutes of the Commission Meeting of June 12, 2007 – Deliberations and Decision.
- E9. Minutes of the Commission Meeting of July 5, 2005 – 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 James Ferry.
- Staff reports by Paul Foley, MVC DRI coordinator; Bill Wilcox, MVC Water Planner; Jim Miller, MVC Traffic Planner; and Mark London, Executive Director.
- A Letter from one citizen of Martha's Vineyard noted above.
- A Letter from the Planning Board of West Tisbury.
- Oral testimony from Public: Sharon Estrella.

3. FINDINGS

3.1 Project Description

- The site includes two parcels in the Mixed Business District of West Tisbury.
- The proposed tennis, racquetball, and two-office building is located on Map 16 Lot 71.1(21 Amos Lane 0.47 acres).
- The applicant also owns the abutting property, Map 16 Lot 80 (497 State Road 0.69 acres), which provides the access and will share septic.
- 497 State Road has an existing house that has a home occupation dog grooming business and a separate one-bedroom apartment in the basement.
- Hours of operation for racquetball would be 7:00 am to 9:00 pm.
- One of the proposed offices would be for Mr. Ferry and the other would be a non-high traffic generating use.
- There would be a pro shop in the ground floor of the racquetball/office building.
- There would be locker rooms in the basement where the racquetball court is accessed.

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 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 proposal is an appropriate use in the West Tisbury Mixed-Use Business District. The Commission notes that the West Tisbury Planning Board wrote in their referral that they felt the proposal is appropriate for the MB District. The Commission notes that the site could have been more intensely developed.

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 project meets the MVC water resource policy in that it will not exceed an already approved wastewater flow.

With respect to Open Space, Natural Community and Habitat, the Commission finds that the project is in the Business District.

With respect to Night Lighting and Noise, the Commission finds that the project will not have lights on the tennis courts and landscape lighting will be downward shielded and/or motion sensitive. The Commission notes that there will be some noise associated with the tennis court but that should be alleviated by the hours of operation ending with dusk.

With respect to Energy and Sustainability, the Commission notes that the applicant has said he will explore his options regarding solar and geo-thermal energy.

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 project should not have any major impact on the amount of traffic in the area.

With respect to Scenic Values, Character, and Identity: The Commission finds that the project will be largely screened from State Road and that a landscape plan with vegetative screening will come back to the LUPC for review and approval.

With respect to the Impact on Abutters, the Commission finds that the project will have some impact on the direct abutters. The Commission notes that almost any development impacts the direct abutters and that this location could have been more intensely developed.

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 applicant rents the existing apartments at a reasonable rate and that if either becomes available he will notify an affordable housing organization.

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 project should have no discernible impact on municipal services.

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 the project should have no discernible impact on public facilities. The Commission notes that the project seeks to create a healthy living facility that could have a beneficial impact on the populous of the Town including offering activities to the youth of the Town.

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 the project is appropriate in its location.

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 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 Special Permit review by both the Planning Board and the Zoning Board of Appeals of the town of West Tisbury.

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 located within the Greenlands Water Resources Protection 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 21, 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 21, 2007.

- Voting in favor: James Athearn; John Breckenridge; Christina Brown; Peter Cabana; Mark Morris; Chris Murphy; Katherine Newman; Susan Shea; Linda Sibley; and Martin Crane.
- 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 June 21, 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 Landscaping

- 1.1 As offered by the Applicant, a final landscape plan including retaining walls to control runoff, an underground drainage system for gutters, court drainage, and screening for the two private residents will be submitted to the MVC and the West Tisbury Planning Board before construction begins.
- 1.2 As offered by the Applicant, the owner proposes to plant at least one tree for every tree removed for construction.

- 1.3 As offered by the Applicant, a final landscaping plan will be submitted to the LUPC for review and approval.

2 Exterior Lighting

- 2.1 As offered by the Applicant, landscape lighting will be installed as shown on plan and will be downward-shielded lighting with energy efficient light bulbs for walkways and the parking area.
- 2.2 As offered by the Applicant, there will be no lighting installed on tennis court for night playing, only motion-sensitive security lighting.
- 2.3 As offered by the Applicant, the fence around the tennis court is to be locked to keep people from entering after hours of operation.

3 Affordable Housing

- 3.1 As offered by the Applicant, both units on the front lot are currently rented at very affordable rates; however, should either unit become available the Applicant will notify the affordable housing of Martha's Vineyard.

4 Waste/Recycling

- 4.1 As offered by the Applicant, all waste is to be removed on a regular basis as needed and recycling will be strongly encouraged with bins readily available.

5 Wastewater

- 5.1 As offered by the Applicant, all wastewater systems are new and were done by John Keene Excavation as specified by the W.T. Board of Health and designed by Kent Healy.
- 5.2 As offered by the Applicant, the dog grooming tight tank is to be alarmed and pumped regularly and disposed at the wastewater treatment plant.
- 5.3 As offered by the Applicant, a deed restriction has been put in place to restrict the amount of wastewater to 220 gallons per day on the back lot and 440 gallons per day on the front lot.
- 5.4 As offered by the Applicant, both building will have water meters on them to regulate wastewater production as requested by the Board of Health and records will be kept for their review as needed.

6 Open Space

- 6.1 As offered by the Applicant, the driveway will be white shells with the exception of a paved apron off of State Toad for safety reasons.
- 6.2 As offered by the Applicant, open space will be greater than 50%.

7 Energy/Sustainability

- 7.1 As offered by the Applicant, the Applicant will explore all options for heating/cooling, including geothermal and solar, as to minimize the impact on the environment.

8 Hours of Operation and Use

- 8.1 As offered by the Applicant, hours of operation will be 7 am to 9 pm for indoor activity and only as permitted by natural light on the tennis court.
- 8.2 As offered by the Applicant, all mechanicals will be underground or in the basement to shield the neighbors from noise and will be serviced on a regular basis to ensure smooth operation.
- 8.3 As offered by the Applicant, an architect will do a final set of drawings upon approval of the project to be submitted to the West Tisbury Planning Board to show all exterior details such as cedar siding and trim to ensure that the building will fit into West Tisbury's standards.
- 8.4 As offered by the Applicant, the Applicant will encourage any input from neighbors as to screening and lighting.
- 8.5 As offered by the Applicant, the tennis court will not be rented out for non-recreation functions.
- 8.6 As offered by the Applicant, there will be no more than three charity events during the season and any event with more than 25 people will offer jitney service for parking.
- 8.7 As offered by the Applicant, there will be no outdoor amplified music after 9 pm.

9 Substantial Alterations

- 9.1 As offered by the Applicant, should the Applicant substantially alter the use of the premises from the proposed use, as determined by the Town's permitting authorities, it will return to the MVC for review and approval.

10 Donations

- 10.1 As offered by the Applicant, the Applicant will offer discounted and/or free use to the MV Charter School, YMCA of Martha's Vineyard, and other children's schools or groups as is financially feasible.

11 Dormant Easement

- 11.1 As offered by the Applicant, there shall be a dormant easement on the property connecting to abutting properties. If the Town of West Tisbury decides it wants to connect this property to other lots or easements, the applicant (owner of Map 16 Lot 71.1 and/or Map 16 Lot 80) will grant said easement.

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

_____ Date
E. Douglas Sederholm, Chairman

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