

THE MARTHA'S VINEYARD COMMISSION

BOX 1447
 OAK BLUFFS
 MASSACHUSETTS
 02557

DATE: December 20, 1990
 TO: Planning Board, Town of West Tisbury
 FROM: Martha's Vineyard Commission
 SUBJECT: Development of Regional Impact
 RE: Division of Land
 APPLICANT: Steven Rattner
 1 West 72nd Street
 New York, NY 10023

 DECISION OF THE MARTHA'S VINEYARD COMMISSION

SUMMARY

The Martha's Vineyard Commission (the Commission) hereby approves, with certain conditions, the Application of Steven Rattner, 1 West 72nd Street, New York, NY 10023 for division of land as shown on the plans entitled: "Plan of Land in West Tisbury, Mass., prepared for Steven Rattner, prepared by Schofield Brothers, Inc., Registered Professional Engineers and Land Surveyors, State Road, P.O. Box 339, Vineyard Haven, MA 02568, dated May 25, 1990, received at the MVC November 15, 1990", consisting of one (1) sheet; "Plan of Land in West Tisbury, Mass., prepared for Steven Rattner, prepared by Schofield Brothers, Inc., Registered Professional Engineers and Land Surveyors, State Road, P.O. Box 339, Vineyard Haven, MA 02568, dated May 24, 1990, received at the MVC November 15, 1990", consisting of one (1) sheet; "Site Plan, Assr. Pcl. 6-2, West Tisbury, Mass., prepared for Guido F. Verbeck, Jr., c/o Reynolds, Rappaport, Kaplan, P.O. Box 1230, Edgartown, MA 02539, prepared by Schofield Brothers, Registered Professional Engineers and Land Surveyors, State Road, Vineyard Haven, MA 02568, dated January 23, 1989, revised February 21, 1989", consisting of one (1) sheet; "Site Plan for a Proposed Wetlands Crossing, Assr. Pcl. 6-2, West Tisbury, Mass., prepared for Guido F. Verbeck, Jr., c/o Reynolds, Rappaport, Kaplan, P.O. Box 1230, Edgartown, MA 02539, prepared by Schofield Brothers, Registered

Professional Engineers and Land Surveyors, State Road, Vineyard Haven, MA 02568, dated January 18, 1989, revised February 13 and February 17, 1989", consisting of one (1) sheet; "Town of West Tisbury Conservation Commission, West Tisbury, MA 02575, Special Conditions: Verbeck, #79-49, Dukes County Registry of Deed Book #519, Page 442, received at the MVC October 30, 1990"; "Wetland Replication Notes, prepared by Schofield Brothers, Inc.

Registered Professional Engineers and Land Surveyors, 97 State Road, P.O. Box 339, Vineyard Haven, MA 02568, received at MVC October 30, 1990"; "Deeds for land, Dukes County Registry of Deeds Book# 519, Pages 445-447 and Book #519, Pages 448-450, received at the MVC October 30, 1990; making a total of four (4) sheets, the West Tisbury Conservation Commission's Special Conditions #79-49, Wetland Replication Notes, and Deeds, (The Plan).

This Decision is rendered pursuant to the vote of the Commission on December 20, 1990.

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 or may approve in accordance with 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, Developments 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 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 November 15, 1990 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 Form A subdivision of 31.5 acres of land into 2 lots qualifying as a DRI since the proposal is for greater than 20 acres.

The hearing was chaired by Robert T. Morgan, Sr., Chairman of the Land Use Planning Committee (LUPC). Mr. Morgan read the public hearing notice and opened the hearing for testimony at 8:06 p.m.

Mr. Morgan described the order of the presentations for the hearing. He stated that in discussions at the LUPC meeting there was no problem with the proposal. He indicated that it appears on the evening's agenda for possible vote during the regular meeting if the Commissioners so chose. He then introduced John Schilling of the MVC Staff to make his presentation.

Mr. Schilling referred the Commission members to the staff notes which were contained in a hand-out memo and which he reviewed using a series of wall displays. In response to a question regarding whether there was a buffer zone around the burial ground, Mr. Schilling indicated the location and the fact that the applicant would have to address the size of the buffer. In response to a question regarding the location of the wetlands crossing, Mr. Schilling noted the location and also that the West Tisbury Conservation Commission had previously approved said crossing and the Order of Conditions was on file in the Commission office. A discussion of what the State requirement for buffers around burial grounds followed with Mr. Sullivan of the Commission indicating that he believed that Gay Head was using 100 foot minimum in accordance with State Guidelines.

Doug Hoehn, Schofield Brothers, agent for the applicant discussed further the buffer area and indicated that it was slightly less than 100 feet in one direction and more than 200 in

another. He further described the location of the burial ground on the site. Mr. Hoehn then indicated the changes to the plan that had been made based on the discussions and questions at the LUPC meeting and submitted the revised plans in place of the earlier submittals. He briefly discussed the ownership of the property and the reasons why the plans had to be submitted as they were. He indicated the natural split of the property along the stream which flowed intermittently through the center of the site. He discussed the concerns of the West Tisbury Planning Board and how he had addressed them on the plans. He indicated the future Form C notation on the plan which had been added. He further discussed the size of the burial ground buffer as being roughly 3/4 of an acre and indicated that the size could be increased if necessary.

Mr. Hoehn then discussed the stream crossing, indicating that it was approximately 25 feet in length and 12 feet in width. He described the design aspects including the headwalls, the 18 inch twin metal culverts which were each designed and sized to handle a 100 year storm. He discussed the driveway which was to be bluestone and the swale areas as approved by the Conservation Commission. He indicated that approximately 325 feet of wetlands would be removed and placed in an area of replication adjacent to the wetland area.

A discussion of the location of the replication area followed and whether it were permissible to replicate wetlands in bordering areas.

Attorney Rappaport, counsel for the applicant, discussed the right of the applicant to divide the property under Section 81L of the Massachusetts General Laws due to the fact that there were two pre-existing buildings on the lot. He discussed the subdivision and the lot line adjustment as indicated by the plans. He further discussed the fact that a potential 9 lots could have resulted but that the applicant wanted only 2 lots.

Mr. Morgan then called for testimony from proponents, there was none.

Mr. Morgan then called for testimony from opponents, there was none.

Mr. Morgan then indicated that in light of no additional testimony, the Commissioners could and should decide if they wished to hold the record open for a week for written testimony or close the hearing at that time and discuss the issue and possibly vote during the regular business meeting.

Woody Filley, Chairman of the Commission, asked if LUPC had any concerns. Mr. Morgan reiterated the concerns of the West Tisbury Planning Board.

A consensus vote to close the public hearing and put the matter to a vote during the regular session followed with one (1) abstention (L. Sibley).

There being no further discussion, Mr. Morgan closed the public hearing at 8:30 p.m.

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 plan(s) as revised, 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 the said consideration has set the following conditions:

THERE SHALL BE A BUFFER ZONE ESTABLISHED AROUND THE BURIAL GROUNDS ON THE SITE AND SAID BUFFER SHALL BE MAINTAINED AROUND THE BURIAL GROUND FOR A MINIMUM DISTANCE OF 100 FEET OR A DISTANCE EQUAL TO THE MINIMUM REQUIREMENTS, IF GREATER, OF THE COMMONWEALTH OF MASSACHUSETTS.

Further,
PRIOR TO ANY PERMITS BEING ISSUED, A STUDY SHALL BE CONDUCTED TO DETERMINE WHETHER THERE ARE ANY ENDANGERED SPECIES WITHIN 100 FEET OF ANY PROPOSED AREA OF CONSTRUCTION OR DISTURBANCE AND SAID STUDY SHALL BE REFERRED TO THE WEST TISBURY CONSERVATION COMMISSION FOR ANY ACTION, IF ANY, DEEMED NECESSARY.

Further,
THE SPECIAL CONDITIONS SET FORTH BY THE WEST TISBURY CONSERVATION COMMISSION IN THE ORDER OF CONDITIONS #79-49 AND RECORDED IN THE COUNTY OF DUKES COUNTY REGISTRY OF DEEDS BOOK 519 PAGE 442 SHALL BE INCORPORATED HEREIN.

Pursuant to Section 15(g) of the Act, the Commission has considered the question of whether the proposed development will aid or interfere with the ability of the municipality to achieve the objectives set forth in the municipal general plan and in light of said consideration has set the following condition:

ANY FURTHER SUBDIVISION OF LOTS 1 AND 2 THAT CREATES
ADDITIONAL BUILDING LOTS SHALL REQUIRE A FORM "C"
DEFINITIVE SUBDIVISION PLAN SUBMITTAL TO THE WEST
TISBURY PLANNING BOARD AS WELL AS THE MARTHA'S VINEYARD
COMMISSION.

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: December 20, 1990.


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.


J. Woodward Filley, Chairman

12/20/90
Date


Notary

12/20/90
Date

NORMAN FRIEDMAN
NOTARY PUBLIC
MY COMMISSION EXPIRES OCT. 10, 1997

Wigwam, Mass. Dec 21 1990
at 10 o'clock and 02 minutes A M
Received and filed in the Public Office
of the Registrar
350 1990 639

Book: Beverly W. King
Registrar