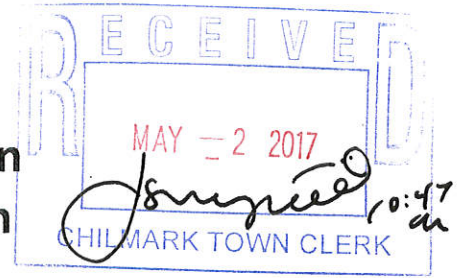


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Decision of the Martha's Vineyard Commission DRI 673 – Mayhew Subdivision



1. SUMMARY

Referring Board: Chilmark Planning Board

Subject: Development of Regional Impact # 673
Mayhew Subdivision

Project: Proposed Subdivision of fourteen (14) acres into five (5) parcels of which three (3) are buildable lots.

Owner: Eileen S. Mayhew Revocable Trust – 2000

Applicant: Eileen S. Mayhew Revocable Trust – 2000

Applicant Address: C/O Schofield, Barbini & Hoehn, 12 Surveyor's Lane, Box 339, Vineyard Haven, MA

Project Location: Middle Line Road, Chilmark; Map 13 Lot 42 (14.49 acres).

Description: To create a five (5) parcel Subdivision out of fourteen (14) acres with 3 buildable lots. One unbuildable 6.6-acre parcel in the back will be sold to the Land Bank as well as a thin parcel along Middle Line Road in the front for a trail.

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 March 16, 2017.

Written Decision: This written decision was approved by a vote of the Commission on April 6, 2017.

The permit-granting authorities of the Town of Chilmark 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 referral from the Chilmark Planning Board was received at the MVC on January 19, 2017 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, under DRI Checklist Sections 2.3 (Division of more than 10 acres); 2.4C Division of Farm Land – Prime Ag. Soils); and 2.5 (Division of Habitat). Sections 2.3 and 2.4C are mandatory DRI Reviews requiring a public hearing and the proposal was reviewed as such.

2.2 Hearings

Notice: Public notice of a public hearing on the Application was published in the Martha's Vineyard Times, February 23, 2017.

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 March 9, 2017 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 "Overlay Plan – Chilmark, Mass" prepared for the Eileen S. Mayhew Revocable Trust – 2000. The plan consists of one 24" X 36" sheet showing a subdivision of Chilmark Map 13 Lot 42 (14 acres) into five (5) parcels, of which 3 are buildable lots (plus one 6.6 acre unbuildable conservation parcel and one 19,573 sf parcel called "Trail Lot"), including development areas; contours; access; easement; abutting lots; and notes. Plan prepared by Schofield, Barbini, & Hoehn Inc.: Land Surveying and Civil Engineering, 12 Surveyor's Lane, Box 339, Vineyard Haven, Mass. Scale: 1" = 100'. Dated December 9, 2016. Stamped received at MVC March 9, 2017.
- P2 "Mayhew DRI 673 Offers" consisting of six (6) clarifying offers relative to the MVC Water Quality Policy; Open Space; Natural Heritage and Endangered Species; Lighting; and no further subdivision. Offers prepared by Schofield, Barbini, & Hoehn Inc.: Land Surveying and Civil Engineering, dated March 7, 2017 and signed by Prudy Peckham Marsh (March 8, 2017).

2.4 Other Exhibits

- E1. Referral to the MVC from the Chilmark Planning Board.
- E2. MVC Staff Report, March 9, 2017.
- E3. Power Point slide presentation dated February 5, 2017 prepared by Paul Foley, MVC DRI Coordinator, showing images of the site, plan, GIS maps, aerials and other images illustrating the site and the proposal.
- E4. Minutes of the Commission's Land Use Planning Committee meeting, February 6, 2017.

- E5. Minutes of the Commission's Public Hearing, March 9, 2017.
- E6. Minutes of the Commission Meeting of March 16, 2017 – Deliberation and Decision.
- E7. Minutes of the Commission Meeting of April 6, 2017 – Approval of the Written Decision.

2.5 Summary of Testimony

The following is a summary of the principal testimony given during the public hearing on March 24, 2016:

- Presentation of the project by: Doug Hoehn (SBH Surveyors & Engineers).
- Staff report by Paul Foley, MVC DRI coordinator.
- Oral testimony from Public Officials: None.
- Oral testimony from Public: None.

3. FINDINGS

3.1 Project Description

- The proposal is to create a five (5) parcel Subdivision of fourteen (14) acres with 3 buildable lots.
- One parcel will be an unbuildable 6.6 acre parcel to be sold to the Land Bank in the back.
- Another unbuildable parcel would be a thin (19,573 sf) "Trail Lot" along Middle Line Road in the front for a trail.
- The three buildable lots are 2.34 acres each. While less than three (3) acres each, this is allowed under Chilmark Zoning By-laws Flexible Siting section (Sections 6.7 and 6.8) because the overall Subdivision includes almost seven (7) acres of protected open space.

3.2 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.

3.3 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 this proposal is appropriate and notes that it protects land and provides public access to that conserved land.

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 applicant will be installing advanced alternative de-nitrification in the septic systems and that they are not using the full density under zoning

With respect to Open Space, Natural Community and Habitat, the Commission finds that the proposal, with the significant land being conveyed to the Land Bank will be a benefit for open space, natural community and habitat.

With respect to Night Lighting and Noise, the Commission finds that the project should have a minimal impact.

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

With respect to Traffic and Transportation, the Commission finds that that the project should have a minimal impact. The Commission notes that all lots have a single common curb cut off of Middle Line Road.

With respect to Scenic Values, Character, and Identity, the Commission finds that the project protects almost 7 acres of land and provides new trails that will connect to existing trails and is consistent with the character and identity of the Island.

With respect to the Impact on Abutters, the Commission notes that some abutters will now have neighbors whereas before they had undeveloped woods. However, the Commission finds that the impact should be negligible and that there are adequate buffers.

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

A5 The Commission finds that the proposed development would have a positive impact 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 will be a benefit to the taxpayers.

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 finds that the proposal is consistent with Town plans.

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 finds 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, as well as those of the Island Plan, adopted by vote of the Commission on December 10, 2009.

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, 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.

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.

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.

4. DECISION

The Martha's Vineyard Commission deliberated about the application at a duly noticed meeting of the Commission held on March 16, 2017 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 March 16, 2017.

- Voting in favor: Gail Barmakian; Clarence 'Trip' Barnes III; Christina Brown; Robert Doyle; Josh Goldstein; Fred Hancock; Lenny Jason; James Joyce; Joan Malkin; Ben Robinson; Linda Sibley; Earnest Thomas; and Richard Toole.
- 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 March 16, 2017 and was approved by vote of the Commission on April 6, 2017.

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. The primary enforcement agent for the compliance of these conditions is the building and zoning enforcement officer of the Town. These Conditions shall be part of the permit granted by the Town. If the Commission or the Town 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 and/or Town's attorney's fees and costs incurred in obtaining judicial relief.

1 **MVC Water Quality Policy:**

- 1.1 As offered by the Applicant, the Applicant offers to install advanced de-nitrification treatment on the septic systems on Lots 1, 2 & 3. The septic systems shall be limited to serving a 4-bedroom main house and a 2-bedroom guest house on each lot.
- 1.2 As offered by the Applicant, the Applicant offers to limit lawns and landscaping to what is permitted by NHESP regulations and MVC Water Quality Policy guidelines.

2 **Open Space:**

- 2.1 As offered by the Applicant, the Applicant offers to convey Lot 4, the Trail Lot and a Trail Easement, all as shown on the subdivision plan, to the Martha's Vineyard Land Bank Commission. The Applicant has prepared and filed the subdivision plan under the Flexible Siting section of the Chilmark Zoning By-laws (Sections 6.7 and 6.8)

3 **Natural Heritage and Endangered Species Program (NHESP):**

- 3.1 As offered by the Applicant, the Applicant offers to work with NHESP to limit disturbance of the property to no more than 5 acres of land within the Priority Habitat areas. The Applicant will forward a copy of the NHESP approval letter and plan to the MVC once they receive it.

4 **Lighting:**

- 4.1 As offered by the Applicant, the Applicant offers to limit outdoor lighting to be in conformance with the Outdoor Lighting section of the Chilmark Zoning By-laws (Sections 5.5 through 5.8).

5 **Subdivision:**

- 5.1 As offered by the Applicant, the Applicant offers to prohibit further subdivision that creates additional buildable lots. Property line adjustments are permitted provided no additional buildable lots are created.

6. CONCLUSION

6.1 Permitting from the Town

The Applicant shall, 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.

The permit-granting authorities of the Town of Chilmark 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. Any permit issued by the Town shall incorporate the plan approved by the MVC and the above conditions.

The Town's building inspector shall not issue a Certificate of Occupancy for any of the houses until it has received a Certificate of Compliance issued by the Executive Director of the Martha's Vineyard Commission confirming that the following conditions in this Decision has been satisfied: 1.1; 1.2; 2.1; and 3.1.

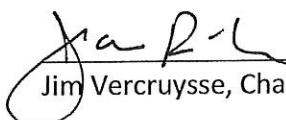
6.2 Notice of Appellate Rights

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 contained in this document to have it recorded at the Dukes County Registrar of Deeds. Should the Subdivision not be so recorded 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



Jim Vercruyssen, Chairman

4-26-17
Date

6.4 Notarization of Decision

Commonwealth of Massachusetts
County of Dukes County, Mass.

On this 26th day of April, 2017, before me,
Jo-Ann Taylor, the undersigned Notary Public, personally
appeared Jim Vercruyssen, 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.


Signature of Notary Public
Jo Ann Taylor
Printed Name of Notary
My Commission Expires February 9, 2018

6.5 Filing of Decision

Filed at the Dukes County Registry of Deeds, Edgartown, on: April 27, 2017
Deed – Book 1437, page 232