

Submitted to Planning Board
by Alan Robillard
February 1, 2018

Plan Design

Number of Bedrooms Error

Please refer to the LRD's DRI Application in Appendix A, dated 12/1/17, the Shared System Plan, Appendix C, and the condition (7.8) set by the MVC in their final decision regarding the number of bedrooms intended to be on the septic plan.

-According to LRD's Application, it maintains that there will be 14 lots and 16 dwellings in Cluster C.

- According to LRD, the bedrooms in Cluster C will come from 16 dwellings x 2.5 bedrooms which equals 40 bedrooms. Because there is a limit of 52 bedrooms imposed by the MVC conditions that leaves 12 bedrooms in Cluster B, for a total of 52 bedrooms on the clustered septic system (40 + 12). This seems to satisfy the MVC condition.

-But this number of BRs is not correct and differs from the septic system's "Proposed System Usage Block" found on the engineer's drawing.

- The Shared System was designed for 43 bedrooms on 17 lots in Cluster C and 12 bedrooms in Cluster B, totaling 55 bedrooms which exceeds the 52 BRs referred to by the MVC.

- However, the engineer's drawing itself is also wrong, because LRD wants to also add a Community House with bedrooms (presumably 2) which brings the total up to 57 bedrooms on the septic plant.

-The plant is designed for 6,050 GPD of flow from 55 BRs.

- Not only does the plan exceed the BRs set by MVC, it also has a septic plan that is potentially too small.

Error in Mg/L Nitrogen (N)

-MVC limits the nitrogen from the plant to be no more than 13 mg/L. However, the plan is designed for 14 mg/L as described in the engineer's plan....You can view this number (14mg/L) on the Proposed System Usage Block.

-LRD also states (See LRD's letter, page 5, number 6.) that the houses on the septic plant in Clusters B and C must meet or exceed the 19 mg/L N as imposed on Cluster A. This is wrong. The true number for the shared septic plant is 13mg/L N or less.

Board of Health (BOH) Decision Based on Faulty Process

-LRD touts the BOH's approval of the septic plant as seen in Appendix C. LRD also provides the minutes from the BOH approving the system.

-The BOH minutes, dated 7/19/16, clearly state that the BOH decision was **based** on the final decision of the MVC.

-The problem with the BOH's rationale of basing their decision on MVC's ruling is that when the MVC was making its decision, they assumed in several instances that the Oak Bluffs BOH had already approved the septic system. This can be seen and heard on the videotape of the MVC's deliberations on 6/2/16. I can point you to the various times on the videotape. In essence, the MVC relied on something that the BOH did not do, but nonetheless, the MVC maintained that BOH had approved the system prior to MVC's meeting. This was an improper assumption. The reality is that the BOH was investigating the system, but had not yet approved it.

- The MVC's misconception that the plan had been approved may have come from a hearsay type statement made by Mr. Danielson at a MVC meeting. He reported to the Commission that he had spoken to an MVC staffer who said that the staffer had spoken to the BOH's Health Agent who in turn said that he, the health agent, was ready to sign off on the septic system. That seems to be the extent of the "approval" at that time of the deliberations.

- It is evident that the BOH had not approved the design before the meeting, because it wasn't until 7/19/16, that the BOH document was signed. If they had approved it in May or June, why approve it again in July?

-There are no documents that I can find that pre-date the MVC's deliberation meeting which are from the BOH and which approve the septic system.

-Therefore, the BOH's decision compounded the error of the MVC when they incorrectly assumed that the MVC had properly reviewed the system themselves, because in reality, the MVC was relying on the supposed approval of the BOH which had not been given.

-Had the MVC's decision been read thoroughly, it would have been noticed that there was a condition to the plan (7.5) created after the deliberation meeting which states that the wastewater

plant must be reviewed and approved by the BOH. This is confounding, because it appears that despite deliberating and relying on the supposed approval of the BOH, the MVC finally realized that the BOH had not yet given its approval and thus set this condition.

-The BOH then completed the circle of assumptions by approving the plan “based” on the final MVC decision apparently not understanding the MVC's prior faulty assumptions.

-Was the scrutiny that was given appropriate for a septic permit that has wide ranging effects and will be the type of a clustered system that will be used for the first time in Oak Bluffs?

-The Planning Board has the mandate to review the impact of a project on the Town as a whole and should not be compelled to stand by a decision that is clouded.

-The Planning Board and BOH should suspend the Septic Permit given to LRD on 7/19/16 and conduct an independent study of the system and not rely on the faulty process of others.

Other Areas of the Plan with Anomalies

- LRD letter, Page 6 – Says 10.29 acres of development envelopes; yet the plan says 9.05 developed acres. Which is correct? How does this affect the percentage of open space?

-The Definitive Plan for LRD says the total acreage is 32.07 acres. This is not the size seen on prior plans and is less than what was presented to the MVC...32.5 acres. How does this affect the nitrogen calculation?

Compliance with Building Inspector

-Please see the letter from Building Inspector, 12/14/15, attached to Special Permit Application.

-The two bedroom Affordable Housing units are not located on site plan as directed.

-The Density Bonus is still in question because of the building dwellings or just giving lots issue.

-The site plan does not identify the senior house lots or duplex lots as directed.

-Parking spaces are not shown on the plan as directed.

No 50 Foot Buffer

-The 50 foot buffer around the property is not present on the Definitive Plan. The Flexible By-law calls for this.

60% Open Space

LRD received 2 bonus lots for preserving 60% as open space (one bonus lot for each 10% preserved over 40% is my understanding). I question whether the claim that 60% of land will be in its “natural state” is accurate, because it appears that some areas designated as open space are going to be developed and not remain in their natural state.

Since this issue creates two bonus lots, there should be an itemization. This itemization request is not new...the Building Inspector asked that the surveys provide the calculations, but these cannot be found in LRD's papers.

The following areas of development seem to have been included as open space:

-5,000 square feet (SF) for the Community House – not designated on the plan.

-The expansion from 30 feet to 40 feet ROW for all roads.

-The 25' ROW that will have trees cut down and stumped, trenches dug, pipes laid and an emergency road built on Cluster A. The ROW could be 1200 ft in length bearing an emergency road paralleling and cutting across Jib Stay Trail at two points and Bar Trail Road at one point.

-The area for the driveway, septic plant shed, drain field and backup drain field for the cluster septic system. See the engineering drawings for the square footage.

-The widening for the paved road from Barnes Road to the beginning of Cluster B and the bike path ROW. These are not in the LRD's acreage, but will go outside of the envelope to cut down trees in other open space.

Trail On Clusters B and C Not on Definitive Plan

Please see Appendix A; LRD letter; Applicant's Definitive Plan; the Yield Plan, and the MVC's final decision.

-LRD does not comply with the requirements set out by the MVC.

-LRD's Definitive Plan does not detail the other trail approved by the MVC and accepted by the Land Bank that was supposed to have an easement on Clusters B and C.

-See the Land Bank letter to the MVC that talks about the third trail which spurs off of the Bar Trail Rd. and has paths to Barnes Road . (Attachment 1)

-See the MVC condition 12.4 in Appendix A which requires a 10 ft wide easement for the third trail to Barnes Rd.

-See the Yield Plan which has markings for portions of the trail to Barnes Road and can be seen cutting through the backs of lots 5, 7, and 9 of the Yield Plan.

- The Barnes Rd. trail should be shown to extend through open space of Cluster C starting at Bar Trail Rd, then cut through to the end of Hopes Way, and then behind or through lots 5-8. The trail would continue on open space behind Oakwood Lane homes and is likely to cut through lots 4 and 2 leading the Barnes Rd. Portions of the trail are observable on Google Earth.

- Mr. Danielson was asked about the third trail while on the site visit and said it was not on his property. He seems to be mistaken about that point.

-A portion of the Barnes Rd. trail may cut through the drain field of the septic plant.

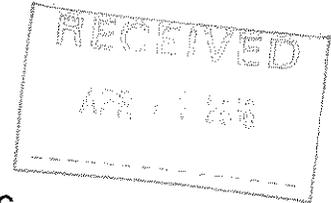
1998 MVC Decision Re: Lagoon Ridge

Has the MVC condition to the 1998 MVC decision pertaining to the two lots that are on the beginning of Double Ox Rd. been considered (Attachment 2) See Item 2A, Page 3 regarding Affordable Housing.

Attachment 1 Follows



Martha's Vineyard Land Bank Commission



April 5, 2016

Martha's Vineyard Commission
Post Office Box 1447
Oak Bluffs, Massachusetts 02557

Dear commissioners,

The land bank understands that the subdivision application pending before you (DRI 464-M3), submitted by Lagoon Ridge LLC, seeks meaningfully to connect with its abutting neighborhoods and the town via a series of public trails.

Three trails accomplish this goal. The first is a north-south spine in the location of the Old Road to Oak Bluffs, now known informally as the Cross-Oak Bluffs Trail. The second leaves the spine and runs to the east, where it prospectively offers links to other neighborhoods and, ultimately, the County Road. The third leaves the spine and links to the Barnes Road.

The purpose of this letter to inform you that the land bank would be willing to accept responsibility, via the conveyance of an easement, for the oversight and maintenance of these trails, in order to assure their availability to and use by the public.

Thank you.

Yours very truly,

James Lengyel
Executive Director

Attachment 2 Follows

THE MARTHA'S VINEYARD COMMISSION

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

Date: July 16, 1998

To: Planning Board, Town of Oak Bluffs

From: Martha's Vineyard Commission

Subject: Development of Regional Impact
 re: division of land

Applicant: Lagoon Ridge Associates Limited Partnership
 c/o Schofield, Barbini and Hoehn, Inc.
 PO Box 339
 Vineyard Haven, MA 02568

Decision of the Martha's Vineyard Commission
Summary

The Martha's Vineyard Commission (the Commission) hereby approves, with certain conditions, the granting of permits for the application of Lagoon Ridge Associates Limited Partnership, c/o Schofield, Barbini and Hoehn, Inc., PO Box 339, Vineyard Haven, MA 02568 for the division of land as shown on the plans entitled, "Base Map, Oak Bluffs, Mass., prepared for Lagoon Ridge Associates Limited Partnership, scale: 1" = 100', May 8, 1998, Schofield, Barbini and Hoehn, Inc., State Road, Vineyard Haven, Mass.", consisting of one (1) sheet; plus "Plan of Land in Oak Bluffs, Mass., prepared for Lagoon Ridge Associates Limited Partnership, scale: 1" = 40', March 13, 1998, revised May 8, 1998, Schofield, Barbini and Hoehn, Inc., Civil Engineers and Land Surveyors, 97 State Road, PO Box 339, Vineyard Haven, MA 02568", consisting of one (1) sheet; plus "Topographic Overlay, Plan of Land in Oak Bluffs, Mass., prepared for Lagoon Ridge Associates Limited Partnership, scale: 1" = 40', March 13, 1998, revised May 8, 1998, Schofield, Barbini and Hoehn, Inc., Civil Engineers and Land Surveyors, 97 State Road, PO Box 339, Vineyard haven, MA 02568", consisting of one (1) sheet and totaling three (3) sheets (the Plan).

This Decision is rendered pursuant to the vote of the Commission on July 16, 1998.

The Planning Board of the Town of Oak Bluffs, and all other permit granting boards in the Town of Oak Bluffs having jurisdiction may now grant the necessary development permits for the Applicant's proposal in accordance with the conditions contained herein and may 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(b). The Application was referred to the Commission by the Planning Board of the Town of Oak Bluffs 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 notice 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 Thursday, June 25, 1998 at 8:00 p.m. in the Commission Offices, Olde Stone Building, New York Avenue, Oak Bluffs. The hearing was closed the same night.

The proposal is for the division of land into three (3) lots qualifying as a DRI since the proposal is for the division of land into less than six (6) lots but does not propose irrevocable deed restriction or covenant to prohibit further subdivision.

A summary of the testimony of the hearing is provided as Exhibit A attached hereto. The hearing summary is for the convenience of the reader and was not relied upon by the Commission in reaching its decision on this matter.

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 AS CONDITIONED HEREIN, WILL EXCEED THE PROBABLE DETRIMENTS AS EVALUATED IN LIGHT OF THE CONSIDERATIONS SET FORTH IN SECTION 15 OF THE ACT (SECTION 14(a) OF THE ACT).

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."

The Commission has listened to all of the testimony presented and has reviewed all documents and correspondence submitted during the hearing and review period and,

1. Based upon the record and the testimony presented therein, and in addressing whether there will be a more favorable or adverse impact on the environment in comparison to alternative manners of development, the Commission sets the following conditions (Section 15(b) of the Act):

a. That should there be any proposal for the division or subdivision of Lot #3 as shown on the Plan submitted then that proposal shall be submitted to the Martha's Vineyard Commission for review and action;

and further

b. That there shall be created a building envelope on Lot 1 and Lot 2 of the Plan submitted and said envelope shall be no closer to the edge of the right of way of Barnes Road than one hundred (100) feet;

and further

c. That the Commission accepts the offer of the Applicant to provide to the Town of Oak Bluffs a walking/biking easement over the ancient way that presently traverses Lot 3 of the Plan.

2. Based upon the record and the testimony presented therein, and in considering the affect upon the provision of needed low and moderate income housing, the Commission sets the following condition (Section 15(d) of the Act):

a. That should there ever be a division or subdivision of Lot 3 of the Plan then Lot 1 and Lot 2 shall be included in the final total number of lots for the purposes of determining compliance with the Martha's Vineyard Commission Affordable Housing Policy.

3. Based upon the record and the testimony presented therein, and in considering whether the proposed development will use efficiently or burden existing public facilities or those to be developed in the succeeding five years, the Commission sets the following condition:

a. That the Applicant shall provide to the Town of Oak Bluffs, a twenty (20) foot easement for the purposes of developing a bike path along Barnes Road.

B. THE COMMISSION FINDS THAT THE PROPOSED DEVELOPMENT WILL NOT SUBSTANTIALLY OR UNREASONABLY INTERFERE WITH THE ACHIEVEMENT OF THE OBJECTIVES OF THE GENERAL PLAN OF THE MUNICIPALITY OR OF THE GENERAL PLAN OF THE COUNTY OF DUKES COUNTY.

C. THE COMMISSION FINDS THE DEVELOPMENT PROPOSAL TO BE GENERALLY CONSISTENT WITH THE DEVELOPMENT ORDINANCES AND BY-LAWS OF THE TOWN OF OAK BLUFFS.

D. THE COMMISSION FINDS THAT THE DEVELOPMENT PROPOSAL IS WITHIN THE ROADSIDE DISTRICT OF CRITICAL PLANNING CONCERN AND THE LAGOON POND DISTRICT OF CRITICAL PLANNING CONCERN

BUT IS GENERALLY CONSISTENT WITH THE GUIDELINES AND REGULATIONS THEREOF.

The Applicant must, consistent with this Decision, apply to the appropriate Town of Oak Bluffs Officers and Boards for any other development permits which may be required by law.

This Decision is written consistent with the vote of the Commission: July 16, 1998.

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 herein.

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.

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 and should substantial construction not occur during said two (2) year period, then 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.

Linda B. Sibley
Chair

July 22, 1998
Date

Irene Miller Fyler
Notary Public

7-22-98
Date

**IRENE MILLER FYLER
NOTARY PUBLIC
MY COMMISSION EXPIRES
JUNE 10, 2005**

*Martha's Vineyard Commission Meeting
Minutes of June 25, 1998*

Mr. Donaroma opened the hearing at 8:10 p.m. and read the public hearing notice.

Applicant: *Lagoon Ridge Associates Limited Partnership
c/o Schofield, Barbini & Hoehn
PO Box 339
Vineyard Haven, MA 02568*

Location: *Oak Bluffs Assessor's Map 35 Lot 3, in the Town of Oak Bluffs,
located off Barnes Road south of Oakwood Lane.*

Proposal: *To divide approximately 36 acres into three lots.*

Mr. Doug Hoehn, of Schofield, Barbini & Hoehn gave the presentation for Lagoon Ridge Associates. He gave a brief overview of the entire site and pointed out that only two lots were being carved out. The third lot was unbuildable and would have to come back to the Commission for review. He discussed the access road for both lots.

Mr. Colaneri had questions about setbacks, width of the access road and site distances. Mr. Hoehn said the zoning setbacks were fifty feet, the access was about 400 feet from Oakwood Lane. He noted the best building sites for the houses would be over 200 feet back. He could not limit a buyer from locating a building where they wanted it, but height restrictions were 24 feet near the road.

Mr. Donaroma asked for a staff report. Mr. Simmons mentioned that this proposal left a large lot for future planning. The right of way was located where it was because the two lots could not have access onto Barnes Road because of the Island Road District. He said the two front lots had restrictions on them because they were in the Island Road District and the Lagoon Pond District. They could not have guest houses and were limited to the number of bedrooms permissible. Lot 3 was not a buildable lot. If anything were to be done in the future, it would have to go to the Planning Board for a form C subdivision road and it would have to come back to the Commission. They had been to LUPC twice to make sure the entrance road was curved and not straight. Staff did not see any major concerns with this project. If lot 3 was ever subdivided in the future, lots one and two should be counted in the total number of lots for the purposes of figuring out an appropriate affordable housing contribution. At LUPC, the Applicant had offered a walking easement over an ancient way that traversed lot 3. Mr. Simmons said they had received one piece of correspondence which had been put in the Commissioners packets and entered into the record. He had received several phone calls from people. Their concerns were with the future of lot 3.

Mr. Donaroma asked if there were questions for staff. There were none. Mr. Donaroma asked if there were members of town boards who wished to give testimony. Mr. David Whitman, a member of the Oak Bluffs Trail & By-Ways Committee said there were several trails through lot 3. There was public access to these trails. He pointed these out on a map. They were concerned about access being kept open to the trails if the land were developed.

Mr. Donaroma asked if there were members of the public who wished to give testimony in favor of the project. There were none.

Mr. Donaroma asked if there were members of the public who wished to give testimony in opposition to the project. Ms. Caroline Rowe spoke. She said there were two campers on one of the two lots, also a port-a-potty. She felt it was irresponsible of the developers to permit camping. There was a buffer zone that lay between the development on the right. But there was no buffer zone on Oakwood Lane. She would like to request a buffer zone for Oakwood Lane.

Mr. Allan Robelar spoke. He was concerned about development of Lot 3. He wished to ask if this was in some way a way of escaping future regulation. Mr. Donaroma explained that if he wished to develop that parcel, he would have to return to the Commission. Also, he could only put in one entrance road because he was in the Island Road District which only allowed one road per thousand feet. He asked if the rest of the development been drawn to date. The answer was no. He asked if Tower Ridge had deeded access to the Lagoon along a green path. Mr. Danielson answered that he was a developer of Tower Ridge. There was no deeded access to the Lagoon along that trail for any of those lots. He addressed his concerns about development of Lot 3 further. He spoke of the ancient trail through lot 1. He wondered if the lot were developed would there still be access to that ancient trail. Mr. Whitman did not know.

Mr. Donaroma asked if there were any more questions. There were none. Mr. Donaroma asked the Applicant to summarize.

Mr. Hoehn addressed the issue of buffer zones. Mr. Hoehn explained the previous developments had been open space community cluster subdivisions. The Applicant had made them smaller in exchange for a buffer zone. Mr. Tower had put in some of those trails.

Mr. Dave Danielson, owner of the property, spoke. He answered the question of the road that went along the line. This was a trail made during World War II. Therefore it was not an ancient way. It was a trail made by his father and it did not have public access. It was on private property. The one that came through the property was known as the Double Ox Road. It went up to Webb's campground and through a series of properties. This was a major walkway as was the one from Tower Ridge. He explained the tent issue and said they had approval from the Board of Health to put up a port-a-potty. A family member and soon Mr. Danielson would be camping there for the summer. He apologized but his understanding was they had gotten approval from the Board of Health. He said the future of the large lot was not planned yet. He knew there would be a public hearing required if they subdivided that parcel.

Mr. Hall asked about public access on the Tower Ridge property. The matter was discussed, there appears there are documents that prove there is deeded public access.

There being no further testimony, the hearing was closed at 9:15 p.m.

Edgartown, Mass July 23, 1998
 at 8 o'clock and 46 minutes AM
 received and entered with Dukes County Deeds
 book 736 page 590
 Attest:

Janice E. Powers Register