

# THE MARTHA'S VINEYARD COMMISSION

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## MARTHA'S VINEYARD COMMISSION MINUTES OF MAY 12, 1988

The Martha's Vineyard Commission held a Special Meeting of the Commission at the Old Whaling Church, Main Street, Edgartown, MA on Thursday, May 15, 1988 at 8:00 P.M.

### Item #1 - Chairman's Report

Mr. Early stated, as the Commissioners and public are aware, there has been a great deal of controversy and concern regarding the conflict of interest matter. He then asked Eric Wodlinger, Esquire, to make a brief statement regarding the above situation.

Mr. Wodlinger stated he thinks it is regrettable that the facts were not fully investigated before charges were made. He stated that our findings find that there are no substance to the conflict of interest allegations. Of the 13 members of the MVC that participated in the vote, 12 of the 13 had statements of financial interest on file with the State Ethics Commission, several had annually filed statements going back a few years and one filing is not readily found by Staff of the Ethics Commission. The 13th member upon investigation it was found out the only connection with the MV National Bank was the fact that his parents maintained a checking account there. Further following review of the filings of the State Ethics Commission and responses filed by the Commissioners and those are now available and our findings are there has been no violation of Chapter 268A. In an excess of caution, we asked one of the Commissioners to review the facts with his appointing authority and the Selectmen voted unanimously that his association with the bank did not render him anything less than impartial. Our findings in brief are that there are no associations with the bank that would reflect any violation of the Act, any indication of partiality, or even the appearance of partiality and we regard the matters closed.

Mr. Early stated that he would be taking the items of the agenda out of order.

Item #2 - Old Business - There was none.

Item #3 - Minutes of April 28, 1988

Motion to approve as written. Seconded. There was no discussion. The motion carried with 2 abstentions (Evans, Custer).

- Minutes of May 5, 1988

Motion to approve as written. Seconded. There was no discussion. The motion carried unanimously.

Item #4 - Committee Reports

Land Use Planning Committee (LUPC)

James Young, Chairman of LUPC, stated the Committee met on May 9, 1988 and discussed the Simkin's DRI for an airport hangar. He stated Mr. Packer was scheduled for LUPC however, did not attend. The Committee will meet on Monday the 16th to discuss the Mill Brook West Tisbury and Chilmark DRI. He encouraged Commissioners to attend this meeting.

Wascosim's Rock DCPC Committee

Michael Lynch, Chairman of the Committee, stated the Committee met prior to this meeting and unanimously voted to recommend approval of the Wascosim's Rock as a Special Place DCPC and stated the subcommittee's recommendation:

The DCPC Subcommittee recommends designation of the Wascosim's Rock boundary area under consideration as a Special Place DCPC by the Martha's Vineyard Commission.

The Subcommittee further recommends that existing zoning bylaws already adopted by the Towns of Chilmark and West Tisbury to regulate Special Places, also apply to Wascosim's Rock.

The Subcommittee recommends that the following additional guidelines be adopted to protect and administer the Wascosim's Rock DCPC.

That no development (as defined in Chapter 831 Section 6.) shall occur within the DCPC area above the 145-foot elevation contour. Developments below the 145-foot elevation contour will require a special permit.

Special Permits shall only be granted after consideration of the effects of the development on the view from the rock formations and ridgetop and the effects on the view of the ridgeline and horizon from the surrounding valleys. This consideration shall also include, among other factors, the height, roof expanse, angles, massing and architectural detail of proposed development to insure compatibility with the surrounding landscape character.

Development within the DCPC and the surrounding area should not limit the potential for present or future public access to the ridgetop and rock formations.

Opportunities for full public pedestrian access to the DCPC should be pursued by the MVC, the Land Bank, the Towns and private organizations through negotiated easements or acquisitions.

The Conservation Commissions of Chilmark and West Tisbury shall cooperatively develop management guidelines for the DCPC to include standards for on-site trail maintenance and vegetation management to protect ecological habitat and views. The guidelines shall include standards for careful selective removal of vegetation for access, views and ecological reasons.

Following Mr. Lynch's statement, Mr. Early asked if there were any questions from Commissioners. There were none.

Item #6 - Discussion

Wascosim's Rock Designation -  
District of Critical Planning Concern

There was no discussion - Mr. Early moved to the next item.

Item # 7 - Possible Vote

Wascosim's Rock Designation -  
District of Critical Planning Concern

Motion to approve designation of Wascosim's Rock as a Special Place District of Critical Planning Concern. Seconded

Mr. Early read the boundaries as follows:

In the Town of Chilmark beginning at the point where the 130 foot contour meets the 500 foot radius of Wascosim's Rock, northerly and southerly in the Town of West Tisbury along said 130 foot contour to the eastern most point where the contour crosses the 500 foot radius line from Wascosim's Rock and continuing along said radius into the Town of Chilmark to the point of origin.

On a roll call vote the motion carried with a vote of 14 in favor, 0 opposed and 3 abstentions (Evans, Custer, Delaney) Harney voted in favor.

Item #6 - Discussion

Robert Simkin's DRI (Airport Hangar)

Mr. Young stated the LUPC recommends approval as the proposal is in keeping with the Airport Master Plan.

There being no discussion Mr. Early moved to the next item.

Item #7 Possible Vote

Robert Simkin's DRI (Airport Hangar).

Motion to instruct the executive director to prepare a draft decision approving the Robert Simkin's DRI as presented. Seconded. On a roll call vote the motion carried with 3 abstentions (Custer, Wey, Delaney).

Item #5 - Public Comment regarding the Final Environmental Impact Report for Nobnocket (MVY Realty Trust DRI).

Mr. Early asked that the members of the public come to the microphone, to speak, and state their name for the record and try not to repeat testimony previously heard.

Dr. Self, Representative for Vineyard Conservation Society (VCS) including 27 Directors and officers and 1,500 members, stated he feels the MVC and VCS have much in common as both have dedicated goals to enhance and protect the environment and is unfortunate that we are in this adversary position. Further that Nobnocket has caused an enormous amount of difficulty. He asked the MVC to seriously consider rehearing the entire case as VCS feels since the last vote new information has become available i.e. traffic; ill effects on Lake Tashmoo and Tisbury Water Supply.

Linda Sibley, Citizen's for a Livable Island (CLI) stated she will not argue with the MVC actual impact of the project however, stated she strongly feels there is new evidence which is available to the Commission on the impact and that it is important that a new hearing be held. She stated it is true that the FEIR does not reveal any new information regarding traffic however, the MA Department of Transportation Secretary Salvucci has expressed severe reservation about the adequacy of data used in the report. Further she stated that in Secretary Hoytes decision on the FEIR Hoyte named the MVC as the appropriate agency to evaluate a project of this scale. She then stated that she feels it is important to review all comments and information now.

Mr. Bernstein, Attorney for CLI, referenced a letter sent to Commissioners, dated May 11, 1988. He thanked the Commission for this time to comment but pointed out this is in no way a substitute for a public hearing. He stated a public hearing would allow for others (i.e. representatives from EOTC) to come and speak to the MVC. He stated that he has had an opportunity to review the written report presented to the Commission from Rizzo Associates, also other documents regarding the contract which Rizzo Associates worked under since last fall and stated the scope of the contract. He then stated his opinion on the EIR process (Re: scope which was set by Secretary of EOEA). He stated that they feel there is new information and new environmental effects which have come out of this process that support reopening. Further they think that environmental issues which were

addressed by commentators that the developer states he does not have to respond to. He then discussed the MVC Mandate and environmental issues. In addition, through current litigation, many documents and new information have been provided since the public hearing. He spoke of traffic calculations by applicant's consultants regarding their findings that service level E be acceptable and stated they submit this is not acceptable. He spoke of traffic counts for Bicycles and Mopeds and calculated by the applicant's consultant and counts done in 1976 by Vineyard Open Land Foundations (VOLF). He also expressed concerns for: seasonal miscalculations and stated these must be resolved; trip generations and questioned if Cronigs is a supermarket or convenience store; concern for the appropriateness of the ITE Report; substantial number of water quality issues many which have not been addressed by the Commission; he then compared the DEIR, FEIR and Staff Analysis regarding discharge direction. In addition he stated that staff analysis was done regarding the DEIR and that there was no staff analysis in the FEIR and stated if there wasn't any staff analysis he feels that it would be appropriate to get the benefit of it and reopening can serve that purpose. He stated other concerns of both VCS and CLI are Air Quality and the economic issues regarding downtown and other businesses. He stated these are all issues which he feels supports a reopening. As stated, we don't think the decision to reopen has to be limited in a narrow sense although in September 87 MVC Council suggested that the hearing could only be reopened on narrow grounds and stated that in a letter he sent last week to the MVC they think the MVC has much more authority to protect the interest MVC. Further he eluded to the Town of Tisbury rejecting the gifts of the Applicant and stated this is another reason for reopening of the hearing. Mr. Bernstein stated there are new documents available, not deliberately withheld, which can help to make an informed decision. Therefore VCS and CLI request the MVC reopen the public hearing.

Jack Sternbach, Resident, stated since the Town has voted to reject gifts of the applicant by a clear majority he feels that the MVC should vote to reopen the public hearing.

Craig Saunders, Hydrogeologist, addressed water quality issues: lot lies within Zone of Contribution; sampling done of wells on site and results found and pavement and runoff. He discussed mitigative measures which are proposed, i.e. catch basin, and described the negative side of them. Further he discussed problems with oil separators. He then discussed monitoring wells and the significance of levels found and said they do not mitigate problems.

Res Williams, West Tisbury, stated that he would like to have the hearing reopened.

Kevin Begley, Vineyard Haven, request the MVC reopen the hearing for concerns of the air; the environment and especially the water of Tashmoo.

Tristin Israel, Vineyard Haven, stated concern for traffic and wash out during rain into Tashmoo and requests MVC reopens the hearing.

Tucker Hubble, West Tisbury, states he is a builder therefore not anti development but this project is so out of scope that it does not belong here on Martha's Vineyard. He stated he hoped that the applicants would change their mind and that the Town has twice denied the gifts of the applicant. He stated traffic will be a major problem and requests the MVC vote to re-open the hearing.

John Gahan, MVY attorney, stated they gave the MVC a detailed presentation. He stated he will challenge there is any environmental effect which has not been disclosed. He questioned new information that is available and where they came from. Mr. Gahan stated on the traffic report, traffic counts were taken in early 1987, Secretary Saluvcci's letter talks about traffic counts in 1986 Mr. Gahan stated no traffic counts for 1986 were used by the Applicant. He then stated that it was requested the applicant make a projection as to what traffic will be and that the MVC has that. He states there is new evidence, no new environmental effects, but new evidence which shows traffic predicted was greater than traffic which has been supported in three different instances in the summer of 1987 in front of Cronigs and other places. Mr. Gahan said that the gifts from the applicant were in response to discussions at meetings prior to the decision regarding this proposal and he takes great offense that suggestions on those gifts that we did anything other than represent exactly what those gifts were.

There being no further public comment, Mr. Early stated this part of the public meeting will be closed. Further, that there will be no opportunity for public comment during the Commissioners discussion period as is the usual procedure.

Mr. Early asked Eric Wodlinger, MVC Council, to review a few matters. He stated following Mr. Wodlinger's presentation there will be a 15 minute break to allow Commissioners time to review the documents presented to them tonight.

Mr. Wodlinger, Council, stated the reason for considering this issue is that the DRI decision on this project was drafted with the contemplation that the FEIR might disclose information which had not been previously before the MVC at the time it made its decision. He discussed the terms of the decision re: the right to modify the decision to take into account any environmental effects that might be disclosed in the FEIR. He stated the question before the MVC now is a determination initially whether there have immersed any environmental effects not previously disclosed. Mr. Wodlinger stated that only those Commissioners attending all of the MVY Realty Trust hearings can vote on this issue.

Following a short recess Mr. Early reconvened the public meeting and stated for the benefit of the public he would ask the Executive Director to review the materials which the Commissioners have been reviewing.

Carol Borer stated the Commissioners have been reviewing the following information: previous DRI decision, dated July 2, 1987; minutes of

last weeks meeting regarding Rizzo's presentation; draft and final EIR comments and Secretary's findings; Rizzo Reports from November and May; various legal materials dated May 3 and May 11 from Bernstein and Bronstein; and memorandums from Choate, Hall & Stewart dated May 11 and May 12; also a memorandum from last week submitted by Roche, Carens and DeGiacomo.

Item #6 - Discussion

Nobnocket - MVY Realty Trust DRI

Mr. Early read the agenda item: To determine whether the Final Environmental Impact Report for Nobnocket (MVY Realty Trust DRI) discloses environmental effects not previously disclosed to the MVC, and, if so, to determine whether a public hearing should be held to decide whether the Commission's Nobnocket Decision should be modified in response to those previously undisclosed effects.

Steve Ewing asked Mr. Wodlinger the definition of new information and further, referencing the FEIR and a memo from Choate, Hall & Stewart, asked if new environmental issues and additional information on impacts would be reason to re-open the hearing? Mr. Wodlinger stated that this does not have a black and white answer, he did however give the following example: on the subject matter 'traffic' an environmental effect which was clearly before the Commission previously and suppose during the MEPA process information came out that traffic would be 20% greater than suggested at the time the MVC was hearing this application - it would be open to the Commission to find that that great an increase in traffic constituted a qualitative change or difference in the impacts of traffic on this development. On the other hand if during the same process it was found that traffic would be 5% less than that suggested in the traffic studies when the MVC was reviewing the applications - clearly this would be new information but most likely would not constitute any new environmental effect. Therefore the question before the MVC is whether any information disclosed in the MEPA process is such a nature and kind that in your view it amounts to a new environmental effect, something different, which would indicate re-opening.

Mr. Ewing referencing the Rizzo Report on FEIR regarding counts for bicycles, mopeds and pedestrians and volume /capacity ratios and asked if this would constitute re-opening the hearing? Mr. Wodlinger stated that he can not say as he was not at the public hearings.

Mrs. Eber referencing the Rizzo Report of May 5, 1988 section 4 (b) regarding background growth and growth calculations being based on tables and stated she does not feel this is true for the Island. Using SSA figures she stated that there has been an increase, in the past few months, of 23-24% and states she does not feel this is normal growth rate. She further stated considerations must be taken for the entire Town.

Mr. Ferraguzzi stated the Town has rejected the gifts of the applicant twice and therefore he feels that the plan submitted to the MVC is no longer the plan and stated he wonders why the Commission is going through this if the process will have to be gone through again. Mr. Early stated that the plan that was approved is still the plan

before us and stated by virtue of the language of the MVC decision the Commission must give any notice of intent and notice of public hearing for modification within 30 days of the Secretary's evaluation.

Mrs. Custer asked if social and human effects would constitute reopening of the hearing? Mr. Wodlinger stated the Commissioners should look at parameters within the Secretary's scope.

Mr. Evans stated the EIR is a process in which people can respond to add information and stated it is a series of things. He stated his impression is that the MVC consultants were asked to review information submitted by the applicant, taking that boarder point of view he stated he did attend all public hearings and LUPC meetings with applicant and through all those sessions states there are still things he did not realize i.e. traffic counts and how these counts were obtained. He states he has concerns regarding the comments from Secretary of EOTC regarding the use of impulse data; there is missing well data; oil retention pads and the size of the parking lot i.e. amount of pavement and number of spaces at water quality. He stated that an analysis on the economical impact this project would have on the town has never been done although all over the country businesses have suffered dramatically by permitting shopping centers. Mr. Evans stated after last weeks meeting he asked the consultants from Rizzo if it had been within the contract what would they have done differently. Their reply was that they had concerns for the Holmes Hole by-pass as they feel this was not adequately studied. He further stated concerns that he thought that the Town of Tisbury wanted this project at the time of review of this project and that Town vote twice has ruled this out. He concluded by stating he feels many things have not been heard regarding this project and that there is a need to hear these things clearly so, in a public process, we can determine whether the mitigative methods are valid and are taken care of therefore would hope that the process could be re-opened.

Mr. Lynch stated since the Tisbury rejections of MVY gifts to Town it seems that by denial of the road access everyone would say this is a substantial change and asked if this would cause the applicant to come back. Mr. Wodlinger stated if the access road does not get built it would be a substantial change requiring re-hearing.

Mr. Lee referencing last paragraph of Secretary Salvucci's letter which sums up that the proponent has not seriously considered EOTC comments to the DEIR. He stated he urges reconsideration stating he feels it is essential.

Mr. Filley stated there are a number of questions tonight referencing comments of Secretary of EOE; Rizzo being careful to say no new impacts however new additional information; other more specifics regarding certain management techniques and incorporation of these into decision.

Mr. Young discussed his interpretation of what the MVC is voting on and then stated he would address one issue which was the convenience store methodology - review several figures, i.e. projected rates, convenience store figures vs. supermarket figures and ITE land use code, and explained why he feels the methodology used was not correct. Mr. Young stated that this is the only direct route to MV Hospital from up-Island and to the SSA from up-Island. Mr. Evans noted that the numbers that Jim Young reviewed were for the supermarket only.

There being no further discussion Mr. Early moved to Item #7  
Possible Vote:

To determine whether the Final Environmental Impact Report for Nobnocket (MVY Realty Trust DRI) discloses environmental effects not previously disclosed to the MVC, and, if so, to determine whether a public hearing should be held to decide whether the Commission's Nobnocket Decision should be modified in response to those previously undisclosed effects.

Motion that the FEIR discloses significant environmental effects not previously disclosed to the MVC. Seconded.

Open for discussion.

Mrs. Custer stated she has heard nothing new - she spoke of other projects which the MVC has approved in this area and asked if this is setting a precedent. Mr. Wodlinger stated it is up to the Commission in each individual case, which may require MEPA review, as to whether the Commission chooses to take advantage of that review prior to or after decision making.

Mr. Widdiss stated that he agrees with Mrs. Custer and that nothing from the FEIR has shocked him. He stated the traffic on that road has been bad for a long time and that he doesn't feel this project will create any further problem. He stated he feels people are venting their emotions in the wrong directions. He stated that people of the Island should address the traffic problem.

Mr. Morgan stated he is upset with allegations made. He stated Rizzo's have stated, as was the case of the DEIR, review does not include any new disclosures and complies to the law and regulations. He stated if the MVC concedes now it is his estimation that it might be the start of the undoing of the MVC and feels that the MVC should stick with their decision.

Mr. Ewing stated he does not understand Mr. Widdiss' comments and questioned how a 350 space parking lot would have no effect on the existing traffic.

Mr. Delaney clarified that Secretary Hoyte's Certification and MEPA process simply states there is an adequate data base. He stated that he feels a project of this magnitude and scope should have every possible review.

Mr. Lynch questioned the sensibility of opening a hearing that can't go through because of the Town vote.

Mrs. Custer stated that she feels that political pressures have distracted Commissioners from the issues.

Mr. Ferraguzzi stated it is clear that the Town of Tisbury does not want this project because of its size and scope.

Mrs. Harney stated that if this is voted down we are talking about 7 acres zoned for business with two projects versus alot of small businesses on the same 7 acres and further that she feels that smaller businesses will generate more traffic.

Mr. Young stated he has three comments 1) with respect to Mrs. Harney's statement - this will not happen without MVC approval 2) asked if the public hearing could be put off or is there a procedural deadline. Mrs. Borer stated that notice has to be made by next Thursday if it is decided that we re-open the hearing. Mr. Young stated it would be possible to hold off the public hearing to a later date. Mrs. Borer questioned for how long. 3) to Mr. Delaney he asked if Secretary Hoytes' review of project did not include a study of the validly of methodology used. Mr. Delaney stated the certificate simply states that the scope has been responded to adequately to address the issue raised in the scope.

Mr. Early restated the motion as stated by Mrs. Eber.

Mr. Jason stated he has not heard any thing new this evening, we have to keep in mind that traffic issues are complex and this is the reason Rizzo Associates were hired. They have stated that no new environmental concerns have been disclosed.

Mr. Evans discussed Rizzo's Technical assignment and public input.

Lenny Jason stated there have been many allegations, we have no facts.

Mr. Early then asked the Executive Director to remind the Commissioner who could participate in this vote. Mrs. Borer stated the following Commissioners may vote: Jason, Lynch, Widdiss, West, Early, Custer, Wey, Filly, Ferraguzzi, Eber, Evans

On a roll call vote the motion was denied by a vote of 4 in favor, 8 opposed and 5 abstentions (Scott, Young, Ewing, Lee, Delaney) Mrs. Harney voted opposed.

Item #8 - New Business - there was none.

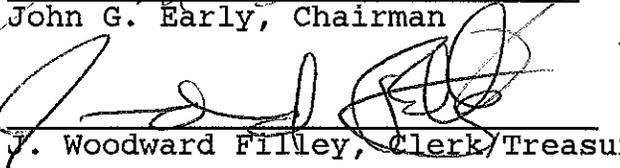
Item #9 - Correspondence - there was none.

There being no further business the meeting was adjourned at 10:59 P.M.

ATTEST

  
John G. Early, Chairman

5/19/88  
Date

  
J. Woodward Filley, Clerk/Treasurer

5/19/88  
Date

ATTENDANCE

Present: Jason, Lynch, Widdiss, Filley, West, Young, Eber, Ferraguzzi, Evans, Scott, Early, Custer, Wey, Ewing, Lee, Morgan, Delaney, Harris

Absent: McCavitt, ALlen, Geller, Harris