

THE MARTHA'S VINEYARD COMMISSION

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MARTHA'S VINEYARD COMMISSION

MINUTES OF JUNE 9, 1988

The Martha's Vineyard Commission held a special meeting of the Commission on Thursday, June 9, 1988 at 8:00 P.M. at the Commission offices, Olde Stone Building, New York Avenue, Oak Bluffs, MA regarding the following items:

Item #1 - Chairman's Report

John G. Early, Chairman, welcomed Commissioners back to the newly renovated Commission offices. He also stated that Chuck Clifford is home and doing well after heart surgery. Mr. Early also told the Commissioners that Secretary Hoyte would be present at next weeks meeting.

Item #2 - Thimble Farms

Mr. Early notified the Commission that Carol Borer, Executive Director, will discuss the judge's findings regarding the Thimble Farm Case. Mrs. Borer stated the findings are as follows: the courts summary judgement stated that the MVC determination to permit the development was without error; the MVC properly interpreted and applied C. 40A s.3 to the facts; the court ordered that the MVC Decision be affirmed.

Item #3 - Minutes of May 19, 1988

Motion to approve the minutes of May 19, 1988 as prepared. Seconded. The motion carried with one abstention (Lynch).

Item #4 - Committee Reports

Land Use Planning Committee - James Young, Chairman of LUPC, stated the Committee met this past Monday (June 6) to review with Mr. Young, Surfside Inn in Oak Bluffs, his proposal for expansion. The Committee also reviewed with Sam Sherman the proposal for the Island Athletic Club on the Edgartown/Vineyard Haven and discussed with Tom Wallace a preliminary proposal for affordable housing which would be in conjunction with HOP. Lastly he stated the Committee will meet again next Monday (June 13) to discuss the MSPCA and possible recommendation and further review the Millbrook (Crocker) proposal for West Tisbury and Chilmark.

Task Forces - Mrs. Borer stated there will be a joint meeting of all Task Forces on June 15 at 7:00 P.M. at the Commission offices. She invited any interested Commissioners to attend.

Lagoon Pond DCPC - Mr. James Young stated the Committee and the Lagoon Pond Management Committee will meet next Thursday, June 16 at 5:30 P.M. at the MVC offices to discuss the recommendation to be submitted to the Towns.

Item #5 - Discussion

Priester's Pond DRI

Mr. Early stated that he will leave the room and hand the meeting over to Michael Lynch, Vice Chairman, as there may be a possible conflict of interest.

Mr. Lynch referenced handout to each Commissioner and stated he would take a 5 minute recess to give Commissioners time to briefly review. Following the recess Mr. Lynch asked for an update from Staff.

Tom Bales, MVC, referencing the staff handout and an enlargement of the lot plan, stated the location of the proposal as West Tisbury Assessor's Map 22, lot 4.1 consisting of 51.9 acres ± of land. The proposal is for 13 residential lots plus open space. He stated the property is within the AR3 zone of West Tisbury and noted the restrictions in the zoning district which have been satisfied by the applicant. He noted that the applicant's draft restrictive covenants states "no structure will exceed 27 feet in height". Mr. Bales then reviewed the open space stating one field of approximately 4.43 acres will remain open space and will be managed by the Homeowner's Association; and the 200 foot wide special conservation area will be provided along the two ponds, further management of this area will include restrictions of lawns, chemicals, fertilizing and brush cutting, this to be worked out with LUPC. Mr. Bales then addressed guest homes in relationship to West Tisbury Planning Board's rules and regulations. He discussed fire protection and stated that Seven Gates has filed a Notice of Intent for placing a dry hydrant on their property therefore allowing the fire department to shuttle water to the proposed subdivision. Mr. Bales then reviewed density and requirements for paving roads in a subdivision. He stated that the applicant considers paved roads to be out of character with the intended development character and since the W.T. Planning Board has a cut off of 10 lots for dirt roads and that the affordable housing lot(s) is not counted the applicant will consider combining lots 7 and 8 if he is allowed one guest house. Mr. Bales stated if lots 7 and 8 are combined lot 6 will be reconfigured. He noted that this issue has not been resolved therefore making it unknown if the roadway will be paved or gravelled. Addressing groundwater, Mr. Bales stated the affect of this development to groundwater flowing into Priester's Pond was an issue raised in the LUPC and stated a possible solution to this is to designate the proposed buffer zone around the pond a special conservation area in which restrictions would be placed on the use of fertilizers, herbicides and pesticides. Mr. Bales said another groundwater issue is the possibility of contaminated groundwater flowing into abutters wells and stated that it has been determined that the separation between the septic system and abutter's well is adequate.

Mr. Bales then discussed dredging of Priester's Pond and stated it could be difficult to place dredging as a condition of approval because the applicant only owns a portion of Priester's Pond and Seven Gates owns the

other portion. He stated that the Land Use Planning Committee received correspondence from Commissioner Geller on how costs could be covered and responsibilities of dredging. He noted that LUPC seems to be against dredging because of complications involved and that because the ponds are valuable to the surrounding properties dredging is likely to be undertaken without Commission intervention. Regarding the dams on the property he stated that LUPC was not in favor of recommending that a maintenance plan for the dams be a condition for approval. He explained that the Committee reached this conclusion because of the complications involved, the small difference in water levels in front of and behind the dams and the likelihood that the dams will be maintained without Commission intervention.

Mr. Bales then summarized correspondence regarding the proposal which has been received since the close of the hearing:

To Tom Bales, MVC Staff, from Bruce Sorrie, MA Natural Heritage Program, Botanist, stating that there are two historical occurrences (pre-1978) of the Box Turtle and the Cranefly Orchid on the site under consideration. He suggests a site survey by a qualified botanist to determine if these species still occur on this site; a letter from Commissioner Geller to Carol Borer, Executive Director, addressing plans for dredging if dredging should be recommended, and how to cover the cost of dredging and also the applicant's responsibility of this area; from Kib Bramhall, President of Seven Gates Farm Corp., to Commission Members stated the map submitted which shows the dam on Priester's Pond is inadequate. He stated the dam was built by Mr. Priester on Seven Gates property with Seven Gates permission and Seven Gates neither derives any benefit from the dam nor ever maintained it, therefore Seven Gates should not be burdened with any maintenance costs. He further states Seven Gates would consider deeding the dam to Priester's Pond Association; To Commission Members, from Abby and Hamilton Cammon dated May 5, 1988 stated as abutters they feel: the proposed development as it was presented does not give their property adequate screening; they object to the cutting of vistas along and between the two ponds; they feel the 200' buffer zone along the ponds should be managed by the MVC; required fire hydrants should be the responsibility of the developer; each hydrant should draw from its own well; 13 lots with fourteen homes is too dense for this area; they are concerned for the safety of those who live downstream of the proposed development because of possible septic leakage; increased erosion along the ponds, aggravated by increased pedestrian traffic and the proposed vista cutting will cause problems; and lastly, the letter points out that an acceptable density for the area is the seven lot proposal made by Betsey Anderson several years ago. To Members of the Commission from Martha and Paul Thurlow, dated May 5, 1988 - the letter is divided into four sections. Listed as concerns relating to groundwater use: flow of household toxins, pesticides, herbicides, fertilizers in the groundwater towards their well; because of the nature of this project the applicant should have a qualified engineer examine septic flow minimization methods such as seepage pits and safe vertical depth from septic system to groundwater; the appropriateness of placing affordable housing on substandard lots where the well is within 85' of the lot line and the use of fertilizers, herbicides, pesticides and other groundwater/environmental toxins. The Thurlow's strongly support limiting the build-out to 10% per year. Listed as reasons for this are: reduced traffic during construction; reduced noise during construction, slowing growth is in the interest of the economic health of the Town and

the benefits to Islanders of longer term employment opportunities. The Curlew's then listed general considerations as follows: support of the plan to not pave the roads; support of the West Tisbury Planning Board's suggestion to decrease the number of lots; support of the proposed restriction against guest-homes; support of the plan to manage outdoor lighting sensitively; support of the "no cut zone" along the ponds and State Road. The letter also includes a traffic chart of the traffic impact of construction crews with text predicting: 800 vt/d if all workers necessary to work on eight or 266 vt/d if 1/3 of those showed up and further this will go on for 2 years. To Tom Bales from Richard J. McCarron, Planning Board Counsel, dated May 20, 1988 writes that the Board of Appeals, according to the WT Zoning By-laws section 4b, may grant, by Special Permit, the right to build on a lot not meeting the towns minimum lot dimensions. To MVC Commissioners, from David Douglas, WT Planning Board, states that at the Boards meeting of May 23rd, they agreed unanimously that if lots 7 and 8 are combined that 1 guest house limited to 800 square feet will be allowed. The applicant would then not be required to pave the subdivision road.

Mr. Lynch asked if Commissioners had any questions?

Mr. West asked if the 200' buffer was included in the 4.4 acres of open space. Mr. Bales answered in the negative.

Mr. West then asked for the total number of acres taken up by roadway. Mrs. Borer answered 1.77 acres as noted on plan. Mr. West commented that this plan is at maximum density.

Mr. Ferraguzzi asked if the number of lots vs. dirt road or paved road was addressed in the by-law. Mr. Young stated although not written in the law historically 10 lots has been the cut off.

Mr. Ewing discussed the boundary line and walking trail and asked if there is a management plan for this common area. Mr. Bales stated this is to be drawn up.

Mrs. Harney asked if each lot includes the 200' foot buffer plus the walking path. Mrs. Borer stated that the walking path is owned by the applicant.

Mr. West asked if groundwater flow was towards Mill Brook. Mr. Bales answered in the affirmative. Mr. West then asked if it flows to Mill Pond then Great Pond. Mrs. Borer answered in the affirmative.

Mr. West asked Rob Kendall, Agent for the applicant, to give his opinion on groundwater flow. Mr. Kendall stated the groundwater passes under the Mill Pond not through and depicted direction of flow on the plan.

Mr. Jason stated that he has concerns for public access to the pond and asked Mr. Young if LUPC had considered this? Mr. Young answered in the affirmative and stated it has been discussed more during WT Planning Board Meetings. He further stated that the Committee does not feel conditioning public access to the Pond would be appropriate.

Mr. Jason stated he feels public access to the pond should be conditioned as in the future the homeowners association may not allow access.

Mr. Ewing asked Mr. Jason if he meant this should be conditioned for public access for fishing. Mr. Jason answered in the affirmative.

Mr. Lynch then asked for the Land Use Planning Committee's recommendation.

Mr. Young, Chairman of LUPC, stated the Committee voted unanimously to approve the application with conditions: affordable housing regarding deed to the Regional Housing Authority; creating 1 lot from lots 6 & 7

which in turn would change the configuration of lots 5 and 6 slightly; some sort of limiting for the 200' buffer zone as the Conservation Commission has jurisdiction of up to 100' and concern has arisen for the additional 100'; view cutting easements at lots 5 & 6 overlooking Crocker Pond should be angled to westward and further condition that these changes come back for LUPC review.

Mr. Widdiss then stated that in his opinion there is no problem with the plan. He stated that he does not recommend combining lots and as for the views he feels that the Conservation Commission, through its jurisdiction, can deal with this matter adequately.

Mr. Morgan asked what the advantage of making 1 lot out of 2 is if in fact a guesthouse will be allowed. He suggested that the square footage of one of the lot's houses could be conditioned.

Mr. Young stated the Committee feels there are distinct advantages: the square footage of a guest house is less than a main house; the guesthouse would not be occupied full time and usually by house family members.

Mrs. Borer explained that during LUPC review the applicant expressed interest in a gravel road and this is a way of mitigating as the Town has the 10 lot cutoff.

Mr. Jason asked if there are any rules or regulations regarding the 10 lot cutoff and paved roads versus dirt roads in writing. Mr. Young answered in the negative.

Mr. West asked if the LUPC had addressed the issue of monitoring. Mr. Young stated no but this could be a condition.

Mr. Jason asked about dredging and the concerns the LUPC had.

Mr. Young responded that there are legal issues as Mr. Klebanoff is not full owner of the Pond. Mr. Young further referenced the letter from Commissioner Geller which addressed monies that should be set aside in case dredging was ever needed.

Responding to a question from Commissioners regarding dredging, Melissa Waterman, MVC staff, discussed shoaling and stated in her opinion dredging is a band aid solution to a natural process, therefore she feels that dredging is not appropriate.

Mr. Filley further asked if dredging would have a negative impact on the down streams areas. Greg Saxe, MVC Staff, stated immediate impacts would be as silt is being moved from the bottom nitrates will be higher however long term he feels there may be a possible benefit.

Mr. Ewing asked if there is a filtering system which could be used during dredging. Ms. Waterman responded that hydrocloth could be used. She further stated that there will be a natural change in the Mill Pond.

Mr. Evans stated it is common practice to leave a meadow open but questioned why a pond should be left in a eutrophic state? Mr. Evans, looking at the design of the proposal, asked what benefits this proposal has to offer and noted that the subdivision is at maximum density. Mr. Young stated that the LUPC feels that the open space; combination of lots; restrictions and septic system plans are sensitive to the environment. Mr. Evans asked what are the benefits excluding limiting the negative impacts? He then stated the tax base; open space; consistency with subdivision regulations and affordable housing. He stated there seems to be a discrepancy regarding low density vs. maximum density and approval with

little question of the density. He stated low density is of course more appropriate.

Mr. Ferraguzzi stated he feels the proposal is fine as there are restrictive covenants; affordable housing provision and public access provided.

Mr. Ewing asked for history of limiting density of other subdivision. Reasons were given: open space and wetlands. Mr. Young further stated that the MVC will cut back if the Town requests lower density.

Mr. Young further noted that groundwater is 50' below grade and that Millbrook enters into groundwater not groundwater into Mill Brook.

Mr. Morgan stated if there is any doubt of the septic systems failing then this should be discussed however, he does not feel this will be a problem to West Tisbury Great Pond. Mr. Morgan spoke of a subdivision of 75 lots upgradient of this proposal within the past year which was approved.

Mr. Ferraguzzi stated that this property is zoned 3 acres and further he feels this is a lot of property for one house.

Mrs. Scott expressed concern for the relationship of all subdivisions to each other and questioned whether the MVC has a hand and control on this. She further asked if the MVC should be looking at each town zoning by law.

Mr. Lee asked for the applicant's proposed buildout rate. Mr. young stated 20% buildout or 2 lots per year and this excludes the affordable housing lot(s).

Mr. Filley suggested that future testing be done of this subdivision regarding impacts the subdivision has on the pond and surrounding area.

Mr. Morgan stated that Title V regulations are ~~1,500~~^{1,500} square feet or 110 gallon/day is safe to cleanse water and stated this proposal is for 135,000 square feet.

Mr. Filley commented although there are legal problems dredging will be a benefit.

Mr. Young stated Clean Lakes, Think Tank and the Inland Tributaries Studies, when complete, will help to answer these questions. Mr. Young then read Commissioner Geller's letter in its entirety.

Mr. Ewing referencing the EIS stated that dredging as a necessary measure to maintain ecology of the pond was mentioned four times. He then asked if the EIS recommendation could be made into the form of a condition. Mr. Young answered in the affirmative.

Mr. Widdiss asked if the 50 houses on Great Pond had any effect on the Pond.

There was lengthy discussion, by Commissioners, as to whether it was appropriate or not to condition dredging. Issues discussed as follows: Mr. Jason asked if it is known what part of a big plan does this pond play; Mrs. Harney stated that Seven Gates owns approximately 1/2 of the Pond; Mr. Ferraguzzi questioned the cost of dredging and asked how a developer could possibly agree to a condition that has no end number.

Mr. Ewing then asked what impact the development would have on the Pond from lawns and septic systems. Mrs. Borer stated specifics regarding restrictions will be by the Conservation Commission.

Mr. Evans questioned the applicant's affordable housing proposal? Mr. Young stated the applicant would like some say in design of house(s).

Mr. Evans stated he does not agree with this proposal he feels that 1/2 the density would be appropriate and feels that the benefits, i.e. affordable housing lot, open space field and tax base would make the proposal a benefit to the Island.

Mr. Evans asked how this subdivision, as proposed, could be considered a benefit to the Island as the lots will be marketed off Island. He discussed flexible lot size stating this could be considered a benefit to the Island as smaller lots could be marketed on Island. Mr. Young stated that the Planning Board in West Tisbury will shortly be bringing a flexible zoning by-law in front of the Town which will address Mr. Evans concerns. He stated he understands Mr. Evans concerns and issues however, LUPC finds that this proposal is sensitive to abutting properties.

Mr. Widdiss stated that these subdivisions are paying for a lot of the other land purchased which has been set aside which will help off set overdevelopment. He stated there is a certain point where some of these subdivisions must be excepted or there will be none of the others.

Mr. Morgan stated in the past there have been opportunities to create DCPC's and if they are not going to be created then we must operate by the rules and the democratic process.

Following Mr. Jason's question regarding time, Carol Borer stated the written decision is due June 23.

Mr. Jason stated he is curious about whether the rare plants and endangered species exist on this property and further if this could be found out by next week; also would like in writing an agreement with the Town to allow children sixteen years of age and younger to have access for fishing and would like to see an observation lot for the public. Mr. Jason suggested holding the vote off one week to give the applicant time to respond to these requests and to find out if there are any rare or endangered species on site. He also suggested that no dredging be allowed until all studies presently being done have been completed in order that they may give some direction to the applicant.

Mr. Ewing suggested that Mr. Jason's suggestions be made conditions contingent upon LUPC review and approval.

Mrs. Borer, referencing letter from Bruce Sorrie which states that pre 1978 the rare and endangered species were seen. Mr. Jason agreed with Mr. Ewing's suggestion of conditioning contingent upon LUPC review. Mrs. Borer stated prior to construction a site visit be done by a botanist to confirm occurrences.

Mr. Morgan suggested that dredging should be made condition on the homeowners association with the authority completely given to the Conservation Commission.

Mrs. Harney stated that the Commission has heard that dredging is a band aid solution only.

Commissioners discussed the fact that there are now three separate studies which are in the process of being done.

Mr. Young asked if a condition should be placed on the amount of money to be contributed to a dredging project. Mr. Jason felt this is unnecessary as it is a benefit to the owners to keep this Pond up.

Mr. Jason asked Mr. Klebanoff, Applicant, if he has considered dredging. Mr. Klebanoff stated that he owns very little of one pond however, he is in the process of talking to abutters regarding the pond and protection of it. He is waiting for the recommendations of the Committee's studying the ponds.

Mr. West stated he feels there should be an observation well and the location and specification should be worked out with the water quality subcommittee.

Mr. Jason asked if the 100' frontage requirement will be met if the affordable housing lot is cut in half. Mr. Young answered in the affirmative on State Road would be allowed.

There being no further discussion Mr. Lynch moved to the next item.

Item #6 - Possible Vote

Priester's Pond DRI

Motion to direct the executive director to draft a written decision approving the the Priester's Pond DRI application with conditions:

Agreement regarding access for children 16 years and younger to fish on pond.

No dredging will occur until all groups studying the ponds at present complete their studies and draw up recommendations.

View easements to be moved to the north northwest to be approved by LUPC.

Additional 100' of buffer zone around pond to be controlled by the West Tisbury Conservation Commission.

There will be an observation well placed in the subdivision.

Prior to construction there will be confirmation on the endangered species occurrences within the subdivision.

That prior to conveyance of any of the lots - lot number 13 shall be deeded to the DC Housing Authority.

Lots number 7 & 8 shall be combined.

There being no further discussion or additional conditions Mr. Lynch called for the vote. On a roll call vote the motion carried with a vote of 12 in favor, 2 abstentions and Harney voted yes.

Following the vote of the Commission regarding the Priester's Pond DRI John G. Early returned to the meeting.

Item #6 - Possible Vote - Written Decision Packer DRI

Motion to approve the written decision of Packer DRI as prepared, seconded.

On a roll call vote the motion carried with a vote of 13 in favor and 2 abstentions and a yes vote from Commissioner Harney.

Item #7 - New Business - There was none

Item #8 - Correspondence - There was none

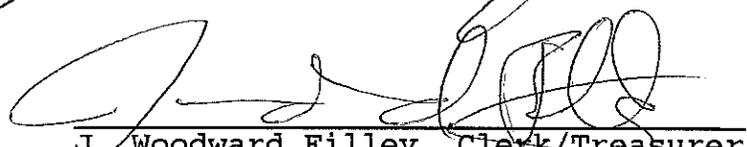
There being no further business the meeting adjourned at 10:00 P.M.

ATTEST



John G. Early, Chairman

6/16/88
Date



J. Woodward Filley, Clerk/Treasurer

6/16/88
Date

Attendance:

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

Absent: Custer, Delaney, McCavitt, Allen, Geller, Harris