

# THE MARTHA'S VINEYARD COMMISSION

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## MINUTES OF JUNE 23, 1988 MARTHA'S VINEYARD COMMISSION MEETING

### CAPE POGUE PUBLIC HEARING

The Martha's Vineyard Commission held a public hearing on Thursday, June 23, 1988 at 8:00 P.M. at the Commission offices, Olde Stone Building, New York Avenue, Oak Bluffs, MA, pursuant to Section 8, Massachusetts General Laws, Chapter 30A, Section 3, and the Standards and Criteria regarding designation of a District of Critical Planning Concern adopted by the Commission and approved on September 8, 1975 by the Secretary of Communities and Development, to hear testimony and receive evidence as to whether the Commission should designate specific geographic areas of the land and waters of Martha's Vineyard as described below in the boundaries as a District of Critical Planning Concern.

#### Area Accepted for Consideration of Designation:

All the land, bordered by the mean high water line, beginning at Masque Point (southern-most point of Edgartown Assessor's Map 48 lot 45); thence northerly along said land bordered by the Atlantic Ocean to and including Cape Pogue Point, continuing southwesterly around said Point to the tip of land known as Cape Pogue Gut, bordered by the Atlantic Ocean. Thence around the tip in a northeasterly curve bordered by the mean high water line on the east by Cape Pogue Bay. Thence, continuing the curve southerly along the eastern shore of the Bay; including the water's of Shear Pin Pond. Thence continuing along the mean high water line in a southerly direction along the eastern shore of the channel (A/K/A the Lagoon), connecting Cape Pogue Bay and Poucha Pond to it's southern-most point. Thence southerly along the western bound on Map 48 Lot 45 (Edgartown Tax Assessor's Map) for 1,310 feet. Thence southeasterly along the southern boundary of said lot for 360 feet to the point of origin.

John G. Early, Chairman of the Commission, read the public hearing notice at 8:10 P.M. and opened the hearing for testimony. Mr. Early stated he would Chair this hearing in the absence of Dick West, Chairman of the DCPC Committee, who is unable to attend the meeting. Mr. Early asked for the staff presentation.

Mr. Greg Saxe, MVC staff planner, reviewed the nomination as presented: He stated the area nominated is the land north of the southern tip of Poucha Pond, bordered on the west by Poucha Pond, Cape Pogue Bay, and the Atlantic Ocean and on the East by the Atlantic Ocean. He stated the purpose of the nomination is: To protect the unique and fragile ecosystem consisting of shifting sand and indigenous plant and wildlife species. The area is an important breeding habitat and is not a resilient system; it will not recover easily from any alteration. Biotic and abiotic components considered exemplary and rare, and provide opportunity for observation of vanishing resource. The history and character of the system

provide a perspective on ecology not widely available. It is a system which demonstrates the fragile balance associated with survival in nature and interdependency. He stated the current status of the area is as follows: although the area is protected by regulations associated with Federal and State Barrier Beach Designations and Coastal DCPC Designation, and by the Trustees of Reservations, some construction is permitted. This is evidenced by excavation currently underway and permit applications under review. He stated Critical District Qualifications are: 2.40 - Wildlife, Natural, Scientific or Ecological Resource District; 2.50 - Cultural or Historic Resource District and 2.80 - Hazardous District.

Mr. Widdiss, Commissioner, asked how much land within this nominated District is considered developable? Mr. Saxe stated residential and minor non-residential construction is allowed in the inland zone, which is 100' back from any bluff or any waterfront. Mr. Saxe was not sure of how many acres this encompasses.

There being no other questions from Commissioners, Mr. Early asked for testimony from Town Boards.

Christina Brown, Member of the Edgartown Conservation Commission, stated that her Board has voted unanimously to support the nomination because this is a more critical geological and ecological area than any other part of Edgartown as they are barrier beaches and tidelands and serves as a recreational area for the entire Island. She spoke of existing protection and regulations being mosaic and the need for the DCPC.

Paul Bagnall, Edgartown Shellfish Department, stated as a department they do not often endorse or disagree with a political decision. He then presented facts and figures that showed how important the Cape Pogue area is to the fishing industry. He stated anything that can be done to preserve this area he wholeheartedly endorses.

Mr. Early then called for proponents.

Mr. Peter Look, nominator, stated that increased damage and the points that raise his concern were prior to developing the area there should be research to determine the ability to develop and development which could impact the wildlife habitat. One aspect of MVC deliberation should be what type of activities should be allowed. He stated he does not want to stop development however wants to protect the wildlife and scenic vista. He stated this is a unique place and environment.

Patty Blakesley, stated this is a very important area and is in favor of this nomination.

Rob Kendall, stated this is a special place and he recommends designation.

Mr. Early called for opponents. There were none.

Mr. Early called for comments. Mr. Richard Brown, land owner, stated a good portion of this area is private property. He stated this is a fragile area and should be saved however, if its going to be saved for the general public the general public should foot the bill. He further stated that with the few houses that would be allowed out there, there would be no impact at all on shellfish.

Mr. Ewing asked, under current regulations, how many houses could be built in this area? Mr. Saxe was asked to find out prior to a vote.

Mr. Look stated its not the number of houses as much as the impact on the environment, i.e. saltwater intrusion, sewage solids and maintenance of septic system.

Mr. Early stated correspondence has been received from: the Edgartown Conservation Commission which endorses the nomination for the Cape Pogue

DCPC; and Edith W. Potter endorsing the nomination of the nominated area. Mr. Early read both letters in their entirety.

There being no further testimony, Mr. Early closed the public hearing at 8:30 P.M. and kept the record open for one week.

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The Martha's Vineyard Commission held a public hearing on Thursday, June 23, 1988 at 8:00 P.M. at the Martha's Vineyard Commission office, Olde Stone Building, New York Avenue, Oak Bluffs, MA 02557 regarding the following Development of Regional Impact (DRI):

Applicant: Deer Run Trust  
Joseph Nanlett, Trustee  
P.O. Box 2468  
Vineyard Haven, MA 02568

Location: Off Barnes Road &  
Edgartown/Vineyard Haven Road  
Oak Bluffs, MA

Proposal: Request for modification of the August 27,  
1987 DRI Decision qualifying as a DRI since the development  
is the subject of a previous DRI Application.

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Mr. James Young, Chairman of the Land Use Planning Committee, read the public hearing notice. He stated that staff handouts have been prepared. Also that this DRI was scheduled for Monday LUPC however, the applicant did not show up and in fact all the Commission has in hand are conceptual plans and not definitive plans of what is being proposed to be built at the recreational lot. Mr. Young stated briefly that before the Commission are two modifications 1) to relocate the recreational lot from one of the open space lots from one lots 2) to change the MVC condition regarding 3 resident homesite lots to payment in cash to the resident homesite committee in Oak Bluffs instead of land. Mr. Young then stated that the proper thing to do is to continue this hearing, as Commission policy requires submittal of plans three working days prior to the public hearing and the staff has not had time to review the plans. Commissioners agreed with Mr. Young.

John Shek, representative for the applicant, stated he had conceptional plans delivered and if possible would like to have the issues on the application heard as there are people here to speak. Mrs. Borer stated that as of noon today the new proposal was left at the office and staff has not had time to review the proposal.

Mr. Shek asked if there is any further information the MVC would need prior to the continued hearing.

Mrs. Borer asked how long will it take to submit definitive plans to the Commission. Mr. Shek asked if Mrs. Borer was asking for a definitive modification of the subdivision plan (i.e. mylar) and if so this would depend on the engineers ability to do so. He stated that the applicant was hoping that modification of the plan, being so minimal, that its simply a relocation that it could be done by a written decision instead of a visual plan. Mrs. Borer stated beyond that, the conceptual plans for the club house, tennis courts, swimming pool and parking lot have to be definitive.

The MVC is not in the process of approving concepts and asked how long it could take to produce those plans. Mr. Shek answered two days.

Mr. Young asked for an LUPC meeting prior to the MVC continued hearing. Mr. Shek stated they would be happy to meet with the committee, and stated there is a mistake in the name of the principal of the Trust and in the address. Mrs. Borer stated that she would appreciate if this could be corrected and for the record stated that the address used was the one on the DRI checklist. She stated that the LUPC meeting could be scheduled for July 11, 1988 and asked that Mr. Shek advise the MVC as to when the plans will be ready so she could advertise the continued hearing. Mr. Shek asked if this could be done any sooner? Mrs. Borer stated this would not be possible. Mr. Shek then asked for questions regarding time limits. Mr. Shek questioned if a written document could be submitted in place of a plan. Mrs. Borer answered in the negative. Mr. Young explained that a copy of the plan is needed for the file.

Mr. Young continued the public hearing at 8:45 P.M. to a later date.

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John G. Early, Chairman of the Commission, opened the special meeting of the Commission at 8:50 P.M.

Item #1 - Chairman's Report - There was none.

Item #2 - Old Business - There was none.

Item #3 - Minutes of June 16, 1988

Mr. Ferraguzzi stated, referencing page 9 - Mr. Ferraguzzi's statement regarding: Chilmark portion could be approved .... he requested that wording be inserted to indicate that approval would be possible for the Chilmark portion with appropriate modifications.

Motion to approve minutes of June 16, 1988 as corrected. Seconded. The motion carried with 1 abstention (Wey).

Item #4 - Committee Reports

Mr. Young, LUPC Chairman, stated that the Committee met on Monday, June 20, 1988 at 4:30 P.M. at the MVC offices, and discussed the following: Douglas Cabral, subdivision which is scheduled for a public hearing on June 30, 1988; met with the Chadwick House, Edgartown and Peaked Hill subdivision which is scheduled for public hearing on July 14 and there will be another LUPC meeting regarding this subdivision prior to the public hearing. He stated that the next LUPC meeting will be on July 11th and at this meeting there will be further review of Peaked Hill and Wesley Arms will back at the Commission.

Item #5 - Discussion

MSPCA DRI

Greg Saxe, MVC staff planner, stated this is a modification of a previous decision. He reviewed the proposal as follows: demolition of 3 existing buildings; moving existing residence to another location on site;

construction of the new structure; location and history of this proposal. Mr. Saxe stated that concerns from Commissioners at the public hearing were: threat to groundwater; design of building and landscaping; traffic patterns and increased traffic on Pennywise Path and dog walking concerns. He stated conditions placed on the previous DRI decision and stated traffic flow is not addressed in the original decision.

Mr. Filley asked if the pass through road in the rear exists. Mr. Saxe stated the applicant has made arrangements with Mr. Convery, abutter, to design a connection. He also explained that the arrangements are only for traffic to exit through the abutting property.

Mr. Filley asked if there were any obstructions which would prevent this pass through from being created. Mr. Jason answered in the negative. Mr. Young stated that the LUPC committee recommends approval with the same conditions as in the previous decision. He further stated that personally he feels it is regrettable that the public aspect of this new facility has been sacrificed.

Mr. Ewing stated that he feels Pennywise Path must be widened. He further stated it must be paved. Mr. Young stated this is part of the applicant's proposal.

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

#### Item #6 - Possible Vote

##### MSPCA DRI

Motion to direct the executive director to draft a written decision approving the MSPCA DRI with conditions, as in original decision. Seconded.

Mr. Young stated that condition 3b should be deleted as emergency access has been changed.

Mr. Filley stated that he feels the connecting feeder road should be made a condition of approval as Pennywise Path feeds a residential area and the burden is already there, for cars entering and exiting.

Mr. Jason stated this road was put in at the request of the Planning Board. Mr. Filley stated that he wants to see that this connector road is constructed.

Mr. Saxe explained the proposal regarding widening of Pennywise Path, on the applicant's property.

Mr. Young asked the applicant if it is the plan to widen Pennywise Path and also will it be one-way through the MSPCA and if so, would it be burdensome to add a condition regarding traffic flow be in one direction only. Mr. Whitney answered that there will be no problem.

Mr. Widdiss stated opposition to this condition as he feels traffic patterns should be left up to the Town. Mr. Jason questioned what will happen if one-way traffic flow proves not appropriate at this location. Mr. Filley stated he is not as concerned with the flow of traffic as he is with the fact that there is a option for a connector road and he feels it should be construction.

Mr. Early stated he has reservations regarding the capacity of this body being able to regulate traffic on private property.

Mr. Evans stated he has been under the assumption that the rear connector roads are a benefit and asked if there is a problem with this concept. Commissioner's agreed. Mr. Evans then stated he feels Woody Filley's idea is appropriate.

Mr. Morgan stated he sees no problem if there is an agreement with the applicant and abutter therefore, he agrees with Mr. Filley and further suggested the MVC take a vote including Mr. Filley's condition.

Mr. Early stated there is a motion on the floor to approve the modification with conditions, as in original decision excluding condition 3b.

Motion and second were withdrawn.

Motion to direct the executive director to draft a written decision approving the application of the MSPCA with conditions, as in original decision deleting condition 3b and adding Mr. Filley's condition to accept the applicant's offer to construct an additional access/egress (feeder) road as shown on plan as in agreement with Mr. Convery. Seconded.

Mr. Ferraguzzi asked if this will cause the applicant to have to go through some kind of additional legal process (i.e. recording of deed).

Mr. Geller, Commissioner and Attorney, stated a letter of agreement which has been notarized must be recorded for acknowledgement.

Mrs. Borer asked if the letter of agreement should be in a form satisfactory to the Commission prior to construction. Commissioners were in favor of this suggestion.

There being no further discussion Mr. Early took a roll call vote.

The motion to approve with conditions carried with a vote of 11 in favor, 0 opposed and 2 abstentions (Wey, Lee) Geller and Harney also abstained.

Item #6 Possible Vote:

Mr. Early stated for reasons of possible conflict regarding the Priester's Pond and Mill Brook Chilmark and Mill Brook West Tisbury DRI's, he would turn the meeting over to J. Woodward Filley, Clerk/Treasurer. Mr. Early left the room.

Written Decision Priester's Pond DRI:

Mr. Young made a motion to amend the written decision of Priester's Pond DRI by adding to page 13 immediately following the words Findings & Conditions the following sentence:

For the purposes of this Decision, the "Applicant" shall mean Howard M. Klebanoff and Millbrook Associates, Inc..

And,

On page 16 delete item 3b and insert as follows:

The Applicant has agreed to continue to allow residents to fish Crocker and Priester's Ponds with permission.

Mr. Jason asked why the decision had to be amended regarding who the applicant shall be. Mr. Young stated this was a concern of Mr. West last week because there was some confusion as to what point the applicant

relinquishes his rights by signing over to the homeowners association. Mr. Jason stated he does not want to lock into one name.

Mr. Jason and Mr. Geller suggested the motion, as above, should read

For the purposes of this Decision, the "Applicant" shall mean Howard M. Klebanoff, Millbrook Associates, Inc.. and or his successor's in title.

Seconded.

Mr. Filley called a roll on the two amendments.

The motion carried with a vote of 11 in favor, 1 abstention and Harney & Geller also in favor.

Mr. Filley then stated the decision as amended is open for discussion.

Mr. Geller referencing condition 2b of the draft decision stated that wording should be inserted which would make the applicant comply with this condition.

Mr. Jason stated that the applicant has agreed that he will comply with this condition. Commissioners discussed applicants abiding by conditions and studies that are in the process of being done.

Mr. Geller stated as this is a condition to approval of subdivision the last sentence of the paragraph should be deleted and the sentence as follows should be added:

The applicant having agreed to abide by recommendations set forth in the studies, it is a condition to the granting of the applicant's application that he so abide.

Following a lengthy discussion regarding making this a binding condition, Mr. Geller made a motion that the last sentence of condition 2b as drafted be deleted and insert:

The applicant having agreed to abide by recommendations set forth in the studies, it is a condition to the granting of the applicant's application that he so abide. Seconded.

On a roll call the motion to amend carried by a vote of 11 in favor and 1 abstention (Harney, Geller in favor).

Motion to approve the written decision with conditions as amended. Seconded.

On a roll call vote the motion carried with 11 in favor and 1 abstention (Harney in favor and Geller abstained).

Item #6 - Possible Vote - Written Decision Mill Brook Chilmark DRI

Motion to approve as written. Seconded.

There was no discussion.

On a roll call vote the motion carried with a vote of 9 in favor, 2 opposed and 1 abstention (Eber). (Harney - in favor, Geller - abstains)

Item #6 - Possible Vote - Written Decision Mill Brook West Tisbury DRI

Motion to approve as written. Seconded.

There was no discussion.

\*On a roll call vote the motion carried with a vote of 9 in favor, 2 opposed and 1 abstention (Eber). (Harney - in favor, Geller - abstains)

Following the votes on the MVC decisions Mr. Early returned to the meeting.

Item #7 - New Business

Mr. Ferraguzzi asked staff to find out how many square feet the Cronig's Market, Main Street, Vineyard Haven addition is.

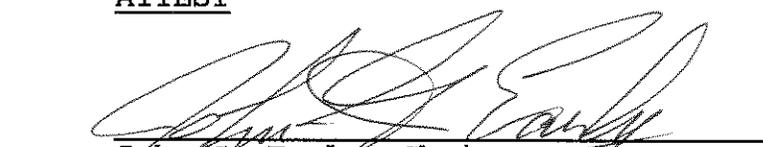
Mr. Early announced the resignation of Beth Erickson as executive secretary.

Item #8 - Correspondence

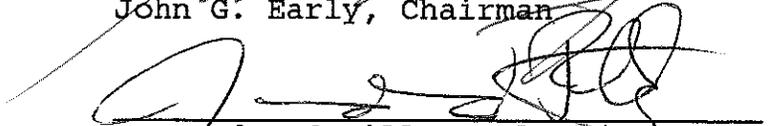
Mr. Early stated a letter was received from the Executive Secretary of the Town of Edgartown with attached letter from Town Counsel regarding the control of mopeds and requesting that the MVC assist in controlling the use of mopeds possibility by restricting mopeds from DCPC areas i.e. Island Road District.

There being no further business the meeting was adjourned at 10:30.

ATTEST

  
\_\_\_\_\_  
John G. Early, Chairman

6/30/88  
Date

  
\_\_\_\_\_  
J. Woodward Filley, Clerk/Treasurer

6/30/88  
Date

ATTENDANCE:

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

Absent: Lynch, West, Custer, Delaney, McCavitt, Allen, Harris

\*Upon preparation of annual report a discrepancy was noted. Roll call should be 11 in favor 0 opposed and 1 abstention.