

THE MARTHA'S VINEYARD COMMISSION

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MINUTES OF JUNE 15, 1989

MARTHA'S VINEYARD COMMISSION MEETING

The Martha's Vineyard Commission held a public hearing on Thursday, June 15, 1989 at 8:00 p.m. at the Oak Bluffs School Gymnasium, School Street, Oak Bluffs, MA, pursuant to Chapter 831, Acts of 1977, as Amended, Section 10 and Chapter 30A, Section 2 of the Massachusetts General Laws. The purpose of the hearing will be for the Commission to receive testimony and determine if the proposed regulations conform to the guidelines for development of the Cape Pogue District of Critical Planning Concern specified in the Commission's Designation of this District on July 14, 1988.

Mr. Early, Chairman, read the Cape Pogue Legal Notice, opened the hearing for testimony, described the order of the presentations for the hearing, and introduced Greg Saxe, MVC Staff, to describe the boundaries and make his presentation.

Mr. Saxe used a wall map to described the boundaries of the DCPC. Mr. Saxe then reviewed his staff update (available in its entirety in the DCPC and Meeting files) which included an overview of the MVC Decision and proposed Town Article #14, a comparison of the Decision to the proposed Article #14 Town Meeting Warrant, changes to Article 14 as advertised in the MVC Public Hearing announcement recommended by the Planning Board after their public hearing on June 6, and staff concerns. Mr. Saxe then answered Commissioners' questions.

Mr. Ewing, Commissioner, asked, so the applicant doesn't have to supply management plans? Mr. Saxe responded Article #14 states that the management committee will develop management guidelines and keep records of management plans but it doesn't specify who will prepare management plans. Mr. Ewing asked, why shouldn't the applicant? Mr. Saxe responded that when a person comes in for a special permit application there is a very lengthy set of requirements that they have to turn in but it is not a pre-prepared wildlife plan that they would be conforming with it is essentially an impact statement.

When there were no further questions Mr. Early called on Federal/State agency testimony, there was none. He then called on Town Boards.

Mr. Fred Morgan, Selectman Town of Edgartown, stated that he hopes that with this being the fragile property that it is, a barrier beach property which surrounds one of the greatest producing shellfish area on the east coast, that it be protected as much as possible. The scallop harvests provide a basis of our economy in the Town of Edgartown during the scallop season and although I don't the exact number of bushels harvested in this area but I am sure it is a large

number and certainly one of the most important shellfish areas that I can think of. We have all seen what has happened with the closing of shellfish areas all along the East Coast for one reason or other, many times pollution. It would be a shame not to consider this by-law in its strictest sense in order to prevent anything from happening to this Pond. I think it is of the utmost priority to protect this Pond against all uses. We recently had a meeting of the Marine Advisory Committee and we are going to establish regulations whereby it will not be used as an anchorage; people who live on the Pond and desire to have friends with boats visit them will be limited in the time that they can anchor in that Pond for that purpose; but for the most part they will not allow this to become an anchorage basically because it is such an outstanding shellfishing area. My recommendation is that the Commission hold to the proposed by-law as strictly as they can.

There was no further Town Board testimony. Mr. Early called on testimony from the public.

Mr. Peter Look, the 1st signatory on the Nomination, stated he would like to speak representing the 35 + people who nominated this district and the scores that have suggested their agreement with the principles by which the nomination was made. The nomination was made generally as a result of an unforeseen scrap with development witnessed on that certain part of the nominated area known as Cape Pogue proper. The whole area is a very significant breeding ground for various types of wildlife and to see that impacted by any increased use of the land by new buildings, new people, helicopters delivering people to their houses, was such that we felt the area need to have more restrictions placed on it to preserve it its state as it is today. I think that the regulations that have been proposed amply attempt to impact the development there so that the wildlife is protected in the long run. That is really the reason why the whole thing started, to protect the wildlife that is there and the nesting area along the barrier beaches. This is one of the only areas on the Island which, by its own natural state, is very difficult to get to and because of that it has been left to nature in the way that it exists today and I would like to see that it stays that way. I know that all the people who signed the nomination are in favor of the proposed regulations and I hope that you would pass along your endorsement as well.

Richard Brown, property owner in the area, testified that granted it is a fragile area, but what bothers me is that you are totally annihilating people's rights. People have investments here the same as you have in your own home. The people haven't exploited it. If the area is to be saved, I see no reason why people's rights can't be respected and why they can't have the opportunity to protect them by transferring the development rights somewhere else that is more appropriate, rather than just annihilating them. The last I knew, this still happened to be the United States and we still have a constitution and I think we ought to abide by it.

Karen Osler, property owner in the DCPC, submitted written testimony for the record (available in its entirety in the DCPC and meeting file) and stated that her attorney would follow with additional

testimony. She read her testimony for the record which is summarized as follows: Stated the life-long seasonal residence of generations of her family amidst the exceptional and fragile area and the enjoyment found there by them. Cited Commission Designation Decision Section 3 and stated that the only inappropriate development that occurred was adjacent to the light house property within the past year. Stated that while some special permit process may mitigate the detrimental impacts of future development the critical factor for the environment is use by the public. Stated they have observed a visitor increase travelling between Dyke Bridge and East Beach from 2-3 vehicles once a week to more than 100 per day. Also noted increases in sailboats and motorboats. Regarding Commission's recommendation, Section III (1) (c), she respectfully pointed out that the jeep trails are the only reliable access to Cape Pogue property (especially since the Dyke Bridge is closed) and therefore Cape Pogue residents must certainly be exempt from any such prohibition. Feels it would be inappropriately burdensome to require a very lengthy and expensive special permit application process for straightforward and non-impactive projects related to the maintenance and repair of already existing structures. Stated that of the eleven structures currently on Cape Pogue proper seven are more than sixty years old. Restated that the true threat to this sensitive environmental resource area is undermangement of its hundreds of daily recreational visitors.

Eric Peters, Montgomery, Meisner, & Peters Law Offices, testified on behalf of Judith Murphy, Karen Osler, and Dr. Edward B. Self, Jr., who together own various lots within the DCPC which have been given to them by their parents. He submitted a written copy of his testimony for the record (available in its entirety in the DCPC and Meeting files) the comments are summarized as follows: 1. The Special Permit process as a whole is too inclusive.. 2. Section 14.4.5.b on its face constitutes inverse condemnation, or the taking of rights of property owners. 3. Again as to Section 14.4.5.b, the second sentence is too vague. The word "buildable" is not defined in these regulations or in the Edgartown Zoning Bylaws. 4. Should you choose not to delete Section 14.4.5.b, Section 14.4.5.c would only be acceptable if amended to allow a guesthouse or additional dwelling on lots in excess of six acres, which would have the effect of creating the density of one dwelling per three acres of property. 5. The following should be inserted as the second paragraph in Section 14.4.4 so that the rights of existing landowners are expressly clarified and confirmed: "Every existing lot of more than three acres in size or the combination of existing lots into one lot of more than three acres in size, shall have the right of construction of a single family dwelling thereon, subject to the requirements for a Special Permit set forth in this section." 6. Given the goals the designation of the present boundaries of the district is arbitrary, in that it only includes the northern and eastern boundaries of Cape Pogue and Pocha Pond. Closed by saying the most severe threat to the area is from public use, not private use and suggests a more balanced, productive, and rational approach to land use regulations in this area would be to create a district that includes all of the area which has the greatest impact and threat to Cape Pogue and Pocha Pond and to regulate it sensibly.

Tom Counter, Land Planner, testified representing the Leland Family for whom he has been working for 2 years in setting their 120 acre estate, which is the East Beach and 30 acres on the west side of Pocha Ponds. The 30 acre subdivision into 2 parcels, one 9 acres and the balance 21 acres, was brought to the DCPC Exemption Committee because a preliminary plan was submitted to the Edgartown Planning Board in December. The Committee submitted a letter to the Planning Board on January 23 expressing the Committee's desire to exempt the parcel in anticipation of the preliminary plan being referred to the Commission by the Planning Board. Since that time we have gone on with the subdivision process. The preliminary plan's seven months, by Town Bylaw protection, will be up in the end of July. We are still proceeding with this and anticipate that the Commission will honor the exemption for the same reasons they honored it before. We simply wanted to underscore that we are working towards that and we are going to meet the deadline of July 27th. Mr. Counter then pointed out the location of the Leland land on the wall display at the request of Commissioners. He showed the location of the property and stated that the family has owned the land for over 40 years. He showed the area they hoped to subdivide to put up homes and summer cottages for the family. He showed the area which is in the process of negotiations with the Trustees of Reservations to see that it remains in public use with the management of the Trustees. He closed by stated that Doctor Leland is here tonight also.

When there was no further testimony, Mr. Early called on any further questions from the Commissioners.

Mr. Young asked what the deadline is for this vote? Mr. Early responded July 14th, there will be meetings on the 6th and 13th of July. Mr. Early added this is on the Agenda for Item #5 Discussion and Item #6 Possible Vote. He polled the Commissioners to see if they felt they were prepared to vote at this time, they were not.

Mr. Early closed the public hearing at 9:05 p.m. with the record remaining open for one week. This will be on the agenda for discussion and possible vote either on July 6th or July 13th.

Mr. Early opened the Regular Meeting of the Commission at 9:10 p.m. and proceeded with agenda items.

ITEM #1 - Chairman's Report

Mr. Early reported that the next meeting of the Commission will be on July 6th at the West Tisbury School. He stated that the office would keep Commissioners informed of committee meetings and locations.

ITEM #2 - Old Business - There was none.

ITEM #3 - Minutes of June 8, 1989

It was motioned and seconded to approve the draft minutes as presented. There was no discussion. This motion passed with no opposition, 1 abstention, Filley. (Harney abstained.)

ITEM #4 - Committee and Legislative Liaison Reports

Mr. Morgan, Legislative Liaison, reported that the Senate had approved the budget and it will now go to the Conference Committee. He stated that regarding the Excise Bill there was discussion about amending the bill to allow Dukes and Nantucket Counties to use part of the 75% towards police law enforcement instead of jails and houses of correction. They did allow this amendment for Nantucket but not for Dukes County. There was discussion about the rationale for not including Dukes County and it was suggested that perhaps the plans for a new jail on Martha's Vineyard and no such plans on Nantucket contributed to this decision. Mr. Morgan continued by stating that the worst part, other than the dollar distribution of 15% to the county, 10% percent to the registry of deeds, and 75% to jails and houses of correction, is the fact that the whole County budget, supplemental or otherwise, will have to be reviewed by a new committee, and anyone with prior experience knows what this means. He concluded by stating that legislation on recyclable packaging would be brought up at the next All Island Selectmen's Meeting.

Ms. Bryant discussed a news article that came out today regarding Senator Raushenbach and the good he does supporting amendments for the individual living centers and the handicap and elderly buses, etc. When all things are said and done Mr. Raushenbach voted against the budget which included his own amendments and line items for the MVC budget. She stated that she feels that the MVC is too important to have our Senator voting against our line item in the budget.

Mr. Young, Chairman of Land Use Planning Committee, reported that they would meet on June 26 at 4:30 p.m. either at the Extension Service or the Oak Bluffs Selectmen's Meeting Room. On the agenda for this meeting is the Wesley Arms, Red Farm Modification, Dreamland and Surfside DRIs. We will also take a preliminary look at the affordable housing project in Edgartown. We met Monday but I was unable to attend due to an Executive Committee meeting so Mr. Morgan will report on that meeting.

Mr. Morgan reported that they had met Monday in the Oak Bluffs Selectmen's office to discuss the Management Plan for Swan Neck. Tom Counter and Tom Wallace were there. The plan is to divide the subdivision into 4 areas; the neck, a buffer, building envelopes, and non-building envelopes. There was discussion about making several acres of meadows, hopefully in conjunction with the Fullers who own 20-30 acres abutting this subdivision, and digging out 4 existing ponds on the property. The hope is that these ponds, which will be dug deeper and planted with food, will help to lure the swans and geese away from the main pond and thereby reduce the fecal coliform in the main pond. There was also discussion about access to the neck itself and signage both for boaters and pedestrians.

Mr. Ewing, Chairman of the Edgartown Ponds DCPC, reported that they had met this evening to informally discuss an exemption for a fairly large residence in the intermediate zone. There will be a joint site visit with the Conservation Commission on June 24th. We will notify

everyone of the exact time and location for this site visit and also for next week's meeting.

Mr. Early stated that the Katama Airport DCPC Committee met and discussed an exemption for a proposal to slightly increase the terminal facility at the airport by enclosing the existing deck, this is to provide badly needed additional office space. This would not increase the building footprint. Mr. Filley, Committee member, stated that they had, after discussion with staff, decided by consensus that they have no problems with this proposal.

Mr. Early took this opportunity to offer congratulations to our newly married Commissioner, Mr. Filley. A round of applause followed.

Mr. Filley, Co-Chairman of the Comprehensive Planning and Advisory Committee, reported that public forums sponsored by the League of Women Voters will be held next week: Tuesday, June 20th at the Tisbury School Gym and Wednesday, June 21st at the Chilmark Community Center. He urged all Commissioners to attend.

Mr. Early stated that the Oak Bluffs Harbor Area DCPC Committee would reported under Item #5.

ITEM #5 - Discussion - Consideration of Oak Bluffs Harbor DCPC

Tom Bales, MVC Staff, gave an update on the nomination including a description of the proposed boundaries and possible amendments to these boundaries using a wall display to depict these boundaries. He stated that they had met 4 times with Nominators, the Oak Bluffs Planning Board and Board of Selectmen and members of the Oak Bluffs Architectural Assistance Committee. Issues identified in conjunction with this nominated area included gas seepage from underground storage tanks, boats dumping into the harbor, road runoff, septic system pollution and failure, shellfish contamination, and aesthetic values. The DCPC Committee felt the issue of failed septic systems is a real threat and they would like to see regulations similar to those in the Lagoon Pond DCPC including inspection of septic systems and certification by a registered engineer and if no certification could be obtained then upgrading to Title V. Ms. Sibley, chairman of the Committee, will discuss the recommendation.

Ms. Sibley stated that the Committee had voted 4 to 1 against recommending this nomination. The area does have serious concerns, there is no doubt about that, and there is evidence that it is not just from the boats. There were strong feelings that additional regulations are needed but the main reason we didn't feel this should be nominated is that the area is pretty close to buildout already. Most of the major activity in this area would come before the Commission as a DRI because most of it is commercial. The Oak Bluffs Planning Board suggested going through a "mock" DCPC process so our committee can continue to exist and continue with developing proposed regulations for this area in conjunction with Town Boards. I thought this would be an interesting experiment.

Mr. Morgan stated he was the one who voted against the recommendation not to nominate. He stated there have been high coliform counts in 3 tests, a count of 14 is enough to close the Harbor. There have been some high counts in the summer, which is expected, however there have also been some peaks in the winter which might indicate a faulty septic system somewhere.

Discussion followed about the coliform counts, possible causes and remedies, the possibility of reducing the DCPC boundaries, working with the Town Boards to develop or amend regulations, the possibilities of reconsidering this nomination within a one year period and possibly putting a time limitation on the discussion and possible changes to the regulations by the Town Boards.

After much lengthy discussion Mr. Early moved to Item #6.

ITEM #6 - Possible Vote - Consideration of Oak Bluffs Harbor DCPC

It was motioned and seconded not to consider the Oak Bluffs Harbor DCPC Nomination. There was discussion of the Town Boards willingness to tackle these issue, the fact that the Town Boards had unanimously opposed this designation, and the possible time frame that would be allowed for planning assistance to be provided to the Town to resolve some problems. This motion passed on a vote of 7 in favor, 6 opposed, 0 abstentions. (Harney was opposed.)

Mr. Jason motioned that the Commission meet at the end of September '89 to review the progress made by the Oak Bluffs Town Boards in dealing with these problems in the Harbor area and if, at that time, insufficient progress had been made we may consider amending the Coastal District to include this area. Ms. Bryant seconded this motion. Discussion followed on the reasons for amending the Coastal District rather than reconsidering this nomination and the fact that it may be simpler since regulations already exist. This would not rule out reconsideration of this nomination. This motion passed with a vote of 13 in favor, 0 opposed, 0 abstentions. (Harney was in favor.)

Mr. Early called a short recess and asked Commissioners to please read the Findings and Conditions section of the M.V.R.R.D.D. DRI Decision in preparation for the next agenda item.

The meeting reconvened at 10:26 p.m. under Item #6.

ITEM #6 - Possible Vote - Written Decision M.V. Refuse District DRI, Solid Waste Transfer Station, Town of Edgartown

Mr. Early stated there is one administrative matter we must address before proceeding with the possible vote. He called on Carol Borer, Executive Director, to explain this.

Ms. Borer stated that the Refuse District has submitted a written request for a waiver of the filing fee requirements pursuant to Section 2.50 (3) of the DRI Regulations. Commission regulations say that if a governmental agency is a DRI applicant they may request in

writing a waiver of our filing fee. If the Commission decides that the DRI is for the health, safety, and general welfare of the Island the Commission may by majority vote grant said fee waiver.

It was motioned and seconded to waive the filing fee. There was no discussion. This motion passed unanimously.

Mr. Early then moved on to the Possible Vote on the Written Decision, M.V. Refuse District DRI and asked Ms. Borer to review the Draft Written Decision.

Ms. Borer stated that pages 3-9 of the Decision is in a different format than usual based on Commission Council's recommendations for a Finding of Facts section. She then noted typographical corrections as follows: Page 11, 3 paragraph, the 2nd lower case "c" should be a "d" and the "d" would then become an "e"; in the new lower case "d" the second sentence, change conditions to condition; Page 11, Condition 2, first paragraph, 4th line, after the word location insert a period and change the "i" to a capital "I"; Page 12, Condition 2.c, change beginning to "The Applicant is required to condition.."; Page 13, Condition 3.a , last sentence, add an "s" to the word Deed.

Mr. Jason asked about Condition 1.b on page 10, I thought we had discussed six weeks prior to scheduled lease renewal? Ms. Borer stated that after reviewing the lease this condition was changed to five months with the rationale being that the Town, as a term of the lease, must give 90 day (3 month) notice to terminate the lease, and we need ample time to conduct a public hearing, including notification and time frame for the public hearing.

Mr. Young stated that this Condition does not require a public hearing. Ms. Borer read the following excerpt from Condition 2.b. "Any suggested modifications to the site or facility operation which may result from this review, will be presented to the full MVC to determine whether these changes constitute a significant modification to the plan, requiring a public hearing and MVC approval....".

Ms. Sibley asked based on the this Condition, when would the first annual review be conducted? Ms. Borer stated 7 months from the July 1st start date.

Mr. Saxe, MVC Staff, and Ms. Borer discussed the fact that they found no evidence in the lease to indicate that a public hearing would be held by the Town of Edgartown during annual lease renewal and this Condition would address the Commissioners strong feelings about allowing public input.

Mr. Ewing asked about Condition 2.c., I thought we had said "shall make every effort not to operate" not "shall not operate"? Ms. Borer stated that based on the fact that the Commissioners would have preferred to prohibit directly and discussion with Commission Counsel who stated this is something we can do, it has been changed to this more definitive wording.

Mr. Jason asked about the first sentence on page 9, it appears there is a word missing? Ms. Borer stated the correction should be adding the word by, "picked up by the sweeping".

Mr. Morgan stated that on page 12, Condition 2.d we should change the 4th line to "the applicant shall offer to pay the costs" so we can avoid the possibility of being dependent on Town Meeting vote to accept this Condition and thereby possibly voiding this Decision.

There was discussion among the Commissioners and Ms. Borer regarding the testimony given by Mr. Mercier, Edgartown Highway Superintendent, and Mr. Morgan, Edgartown Selectman last week. They stated that the applicant can be billed directly and therefore it will not be considered a gift.

Mr. Jason suggested changing this to "the applicant shall offer to incur the costs".

Ms. Borer stated that she believes she should discuss this with Counsel further. Previously Commission Counsel stated that this type of Condition could be done as a direct part of the mitigation measures.

Mr. Morgan and Mr. Jason were still unsure if the Town could accept this without Town Meeting approval.

Mr. Jason suggested "the applicant shall offer to pay the costs".

Mr. Ewing added that the next sentence would also need to be changed, "... with costs being born by the applicant".

It was decided by concensus to change Condition 2.d. second sentence to: The Applicant shall offer to pay..., and third sentence to: Said improvements will be undertaken by the Town of Edgartown.

Ms. Colebrook suggested an addition of the word "or" to Condition 13.a third sentence to read: If DEQE and or the Town Board of Health..... This was agreed by consensus.

Mr. Jason suggested rearranging the wording of the first sentence in Condition 13.a., for clarity, to read: ... in a form satisfactory to the MVC, to DEQE, the Town of Edgartown, and the MVC. This was agreed by consensus.

When there was no further discussion on text corrections Mr. Early called for a motion.

It was motioned and seconded to approve the M.V. Refuse District DRI written decision as amended and corrected. There was no discussion. This motion passed on a vote of 12 in favor, 0 opposed, 1 abstention, Eber. (Harney was in favor.)

ITEM #7 - New Business

Mr. Morgan announced his resignation from the Oak Bluffs Harbor Area

DCPC Subcommittee. He stated that this resignation had nothing to do with tonight's vote, he simply feels that serving on 3 DCPC Subcommittees is one too many.

ITEM #8 - Correspondence

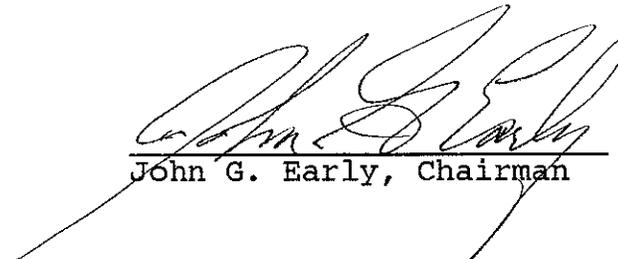
Mr. Early read the following: To: MVC, FROM: Valorie Colebrook, Oak Bluffs Representative. RE: DCPC Policy and Procedures. DATED: June 9, 1989. Dear Commission Members, I would like to request of the Full Commission by majority vote, as is required by our by-laws, as I interpret them, that the policy/procedure regarding the DCPC process be re-considered. I would request that, not unlike the DRI process, the sponsor of a DCPC Nomination be advised of all meetings that take place concerning the investigation, fact finding, and particularly the vote consideration of that DCPC. cc: Linda Marinelli

There was discussion among the Commissioner about this request and the circumstances of the Oak Bluffs Harbor Area DCPC.

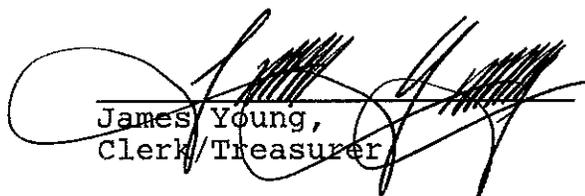
Mr. Early stated that the executive committee will investigate this request.

The meeting was adjourned at 11:30 p.m.

ATTEST



John G. Early, Chairman 7/6/89
Date



James Young,
Clerk/Treasurer 7/6/89
Date

Attendance

Present: Bryant, Colebrook, Early, Eber, Ewing, Filley, Fischer, Jason, Morgan, Scott, Sibley, Wey, Young, Harney.

Absent: Araujo, Lee, Delaney, McCavitt, Allen, Geller, Davis.