

# THE MARTHA'S VINEYARD COMMISSION

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MINUTES OF AUGUST 8, 1991

## MARTHA'S VINEYARD COMMISSION MEETING

The Martha's Vineyard Commission held a public hearing on Thursday, August 8, 1991 at 8:00 p.m. at the Martha's Vineyard Commission Offices, Olde Stone Building, New York Avenue, Oak Bluffs, MA regarding the following Development of Regional Impact (DRI):

Applicant: Crow Hollow Realty Trust  
c/o Schofield, Barbini, Hoehn

Location: Off Tiah's Cove Road  
West Tisbury, MA

Proposal: Subdivision of land qualifying as a DRI since the proposal is a contiguous ownership of 20 acres or more.

John Early, temporary Chairman of the Land Use Planning Committee, read the Public Hearing Notice and opened the hearing for testimony at 8:05 P.M.

Jenny Greene abstained from the proceedings and left the room.

Mr. Early called upon the applicant to make his presentation. Rob Kendall presented the proposal and discussed the reason for the development. He discussed the location of the land and why the type of design presented. He discussed the past usage of the property, the soil analysis and the sensitivity of certain areas. He noted that the lots presented were minimum of three acres plus two larger lots for the family. He discussed the environmental aspects of the site. Doug Hoehn discussed the location of the proposal on Tiah's Cove Road. He discussed a previous meeting with the Planning Board.

Mr. Early called for questions from Commissioners.

Mr. Sullivan questioned the width of the road and whether it was used for access by others. Mr. Hoehn indicated 10 foot and the Fishers had used it for years.

Ms. Sibley questioned how it could have been a Form A. Mr. Hoehn explained how such a design would have worked. Mr. Geller discussed the letter from the Planning Board. Mr. Early asked that such a discussion be held after the Planning Board representative had a chance to speak.

Mr. Early asked for a staff presentation.

Mr. Wilcox discussed the soils and water quality aspects of the proposal. He described the agricultural soils in detail. He related

the soils to septic system usage. He felt that careful siting of wells and septic and following West Tisbury Board of Health regulations would be more than adequate. He then discussed nitrogen loading of the pond and what he felt was acceptable. He felt that between 1-2 parts per million would be safe. He discussed acceptable mitigation measures. He discussed the examples he had presented and the various options that could be used to ensure the best impact possible.

Mr. Colaneri raised a question on depth of the water table in the area. Mr. Hoehn felt the depth was around 22-32 feet. A discussion of this matter followed. Ms. Sibley asked where the agricultural soils on the proposed lots were located. Mr. Wilcox indicated the various locations.

Mr. Early called for town board input. Don Sibley, West Tisbury Planning Board, discussed previously submitted letter and the reason therefore. He further discussed the concerns of the board. He further discussed the flexible development section of the Zoning By-law. He then discussed the interpretation of Town Counsel regarding this matter. The Board wanted to try to eliminate incremental development and that there may be some further development in the area at some future date. He further discussed the letter from the Board. He further discussed the possibility of ensured open space. He then discussed impact reports and the need for such in the future. He discussed affordable housing as related to the flexible development provisions of the Zoning By-law. He also discussed the Board practice of not allowing guest houses.

Mr. Geller asked for a more specific answer as to how to restrict the plan in the future. Mr. Sibley felt the access road was one issue whether it should be a 40-foot road all the way to the property line and whether any future development should be a flexible plan. He discussed future impact studies being needed.

Mr. Jason questioned what would satisfy the Town - all three matters in the letter being addressed or that a condition making any future division must return to the MVC and must be in compliance with the flexible zoning portion of the By-law. Mr. Sibley discussed the matter and felt it was acceptable to meet flexible requirements. A brief discussion of this issue followed.

Mr. Colaneri questioned the amount of up-grading of the road. Mr. Sibley indicated satisfaction with minimal widening and the creation of way-bys.

Mr. Colaneri questioned the total number of lots to be saved. Mr. Sibley felt eight without knowing the number of homes on the Fisher land. He indicated that a division of 10 lots created the need for paving.

Mr. Jason questioned the 40-foot right-of-way (ROW) discussed during the LUPC meeting along property line for use by the Fishers. Mr. Hoehn and Mr. Kendall discussed the matter very briefly. Mr. Kendall discussed the present access to the Fisher property and where there

may be a potential 40-foot access to qualify for certain agricultural preservation programs.  
Mr. Sibley discussed the firmness of the Board to not create a 40-foot way to the Fisher property.  
Mr. Lee questioned whether this was sole access to the Fisher land. Mr. Fisher indicated it was.  
Mr. Colaneri discussed the 40-foot way and how it was shown on the plan. He discussed the relationship to the Fisher land. Mr. Hoehn discussed why the plan was drawn as presented.  
Ms. Sibley discussed the LUPC meeting at which the issue of 40-foot for the Fishers was discussed.  
Mr. Jason wanted the record to show that the issue of the 40-foot access had been discussed at LUPC and it was noted that such access could be provided.  
Mr. Geller questioned why the applicant had not gone and done the entire property now and explained his reasons for such a question. Mr. Kendall explained the reasons for the plan being as such.  
Ms. Sibley questioned whether the applicant was comfortable meeting additional requirements as future development occurred. The response was yes. Ms. Sibley further questioned whether there would be building envelopes and certain restrictions to create potentially larger fields. Mr. Kendall discussed the soil types on the site. He discussed the reason for the development again but he did not have a problem with building envelopes but felt that the true agricultural soils were in the woods and not the field.  
Ms. Sibley then felt that this was all the more reason for a flexible plan.

Mr. Early called for other Town Boards - there were none.  
He then called for proponents - there were none.  
He called for opponents - there were none.  
He called for other testimony.  
Peter Hoover, resident, asked a question of where certain ancient ways were located such as Jerico Road, Manter's Way. No one seemed to know.  
Mr. Fisher noted that Jerico Road went through Crow Hollow and Chester Vincent's property out onto State Road. It went across the property in question.  
Mr. Early indicated that the Commission would try to locate these roads.  
Mr. Early then called for other testimony.  
Mr. Hoehn discussed the issue of guest houses on lots 6 and 7 and asked if they could be excluded from the no-guest-house requirement or condition.  
Mr. Sibley indicated that the Planning Board would not ask for a condition affecting lots 6 and 7 with respect to guest houses.  
Mr. Jason raised a question regarding the hand-outs from the applicant. It was noted that all had received copies of same.  
Ms. Sibley asked that before returning to the LUPC for recommendation that the wildlife and archeological sites be expanded.

There being no further testimony, the hearing was closed at 9:06 P.M. and the record was kept open for one week.

The Commission took a brief recess.

Jennie Greene, Chairman of the Commission, reconvened the meeting at 9:20 P.M.

ITEM #1 - Chairman's Report - there was none.

ITEM #2 - Old Business - Ms. Greene noted that there had been a letter received regarding the Boch DRI. Mr. Early raised a question regarding the comments of procedure and meeting deadlines. Mr. Clifford explained the procedures and was unaware of any errors of parliamentary procedures. Mr. Colaneri asked for clarification from Ms. Borer. Ms. Borer explained what she felt was the problem such as certain motions and votes and meeting notices. She indicated that a list had been made of the problem areas. Mr. Sullivan asked if the Commission had such a list. Ms. Greene indicated no. Mr. Hall asked if any agent of the applicant had been available at the LUPC on July 22. The response was no. Mr. Colaneri asked what the policy was for notifying applicants. Mr. Clifford read the MVC regulations and discussed his interpretation of procedures. He further read Sec. 2.630 of the MVC Regulations. Ms. Bryant asked for comment from the applicant. Ms. Borer read Sec. 2.610 of the regulations with respect to notices to applicants, boards, etc. Mr. Colaneri asked how none would proceed to reconsider the proposal. A discussion followed. Mr. Jason discussed which plan had been voted upon and such drastic changes would require a new hearing. Ms. Sibley felt that there were some communication problems and asked for an extension to discuss the matter with the applicant since the letter was not a clear enough change to warrant consideration of anything other than the original submittal. She would be comfortable only with an option to permit a new or reopened hearing. Mr. Geller questioned when the 20-day appeal was up. Ms. Greene discussed this matter. Mr. Jason felt that the applicant should withdraw without prejudice and submit a new proposal. Mr. Hall agreed and explained why. Mr. Colaneri asked what the applicant's thoughts were on the suggestion of Mr. Jason. Mr. Barbini asked for clarification with respect to whether the July 8 letter qualified as a new submittal or was an additional one being sought. A discussion of this matter followed. Mr. Barbini had no problem with using the July 8 letter as the basis for a new submittal. A discussion of procedural matters followed. A discussion of what the best method of handling the situation followed. Mr. Sullivan questioned who would be eligible to vote on a new application. It was noted that all participants in a new hearing would have the right to vote. Mr. Sullivan felt that a new application would be the best route to go. Mr. Hall discussed his feeling on this matter. Ms. Sibley discussed the issue of a suit and felt that there should be a new submittal and explained why. She felt the Commission should have dealt with the matter via a new hearing. Mr. Early discussed the issue of being in litigation and entertaining a new proposal at the same time. Mr. Jason thought that the applicant

could withdraw without prejudice and move on.  
 Ms. Borer felt the Commission should move to vacate a previous decision and then proceed with the new proposal.  
 Mr. Jason discussed this matter as well as a new proposal being submitted. He asked if the applicant agreed that a new hearing was necessary and that the 46-car lot plus other factors should be a new DRI. The response was yes.  
 Mr. Hall discussed that the record needed to be clear that any rescinding of a decision needed an extension of time along with the new application. A discussion of this matter followed.  
 Mr. Clifford explained the way he felt the process should work.  
 Mr. Geller discussed the matter further.  
 Ms. Greene explained the problem with a recorded decision and the fact that there remains an application before the Tisbury Planning Board. A general discussion of this matter followed.  
 Mr. Barbini noted that the Tisbury Planning Board had been granted an extension so that problem was no longer an issue. A discussion of what really was being sought followed. Mr. Barbini indicated that he was seeking a modification of a previous decision and Ms. Greene noted that the letter before the Commission asked for reconsideration of the vote.  
 Ms. Sibley questioned which application was before the Tisbury Planning Board. The 96-car lot was the response. A discussion of this matter followed.  
 Mr. Jason questioned what was really being sought by the applicant.  
 Mr. Barbini explained what was being asked of the Commission and that was to have the 46-car proposal fairly considered.  
 Mr. Clifford suggested a new application as being the best and clearest.  
 A discussion of an appeal followed.  
 Mr. Lee discussed withdrawal and the need for a new application.  
 A general discussion followed.  
 Mr. Colaneri questioned what would be sent to the applicant.  
 Ms. Greene referred to a possible letter indicating what the MVC response was to the letter.  
 Mr. Barbini asked for clarification that the denial was for and based on the original application of 96 cars and did not consider the 46-car proposal.  
 All agreed.  
 A discussion of whether there was a need to vote on the matter followed.

A discussion of the notice procedures of the LUPC followed. The Commission directed that a letter be sent to Mr. Barbini informing him of the meeting and inviting him to reapply.  
 Mr. Colaneri hoped that all future applicants would be notified of all meetings. A discussion of this matter followed.

ITEM #3 - Minutes of July 18, 1991

Mr. Early moved approval as drafted, duly seconded. Mr. Hall asked that page 7 be corrected to indicate the vote taken. The minutes were clarified to indicate what had been voted on. [Cape Cod Company DRI] By voice vote, the minutes were approved as corrected with 2 abstentions (Jason, Lee).

ITEM #3 (cont.) - Minutes of July 25, 1991

Mr. Early moved approval, duly seconded. Mr. Colaneri questioned the vote on Page 4 and whether there needed to be a listing of commissioners and how they voted. Mr. Clifford indicated that such had never been the practice and such vote was on a separate sheet in the files.

By voice vote, the minutes were approved as written with one abstention (Briggs).

ITEM #4 - Committee and Legislative Liaison Reports

LUPC - Mr. Clifford reported on the meeting and noted that the Fisher DRI would be scheduled for a re-opened hearing. He noted that a discussion had taken place with the Crow Hollow applicants to learn more about the proposal.

PED - Mr. Early noted that the Commission had received the nomination papers from Oak Bluffs for the Ocean Park DCPC. He discussed the steps necessary from this point on.

Mr. Clifford explained when the moratorium would begin and what type of DCPC it would be.

LEGISLATIVE LIAISON REPORT - there was none.

The discussion returned to the DCPC at Ocean Park.

Mr. Colaneri asked if it was appropriate to vote now on the DCPC. Mr. Jason asked for a boundary map.

Mr. Colaneri moved to accept the nomination of Ocean Park to be a DCPC, duly seconded.

Ms. Greene indicated that the vote would be taken under ITEM #7 and she moved to that item at this time.

Mr. Schilling discussed the boundaries and noted that it was to be for architectural and historic purposes. A discussion of this matter followed.

ITEM #7 - New Business

Ms. Greene restated the motion and on a roll call vote the Commission voted unanimously to accept the nomination of Ocean Park for consideration as a DCPC.

ITEM #6 - Possible Vote - Cape Cod Company DRI

Ms. Greene discussed a letter from the Chilmark Planning Board regarding the decision of the Commission regarding the Cape Cod Company.

Mr. Colaneri asked who submitted the letter. Ms. Greene noted the entire Chilmark Board endorsed the letter. Chris Murphy, Chilmark Planning Board, explained the letter and the thinking of the Board. Ms. Greene explained where the MVC decision now stood.

Mr. Murphy felt the town may lose what had be negotiated if the Commission stuck to its decision and explained the reason therefor. Ms. Bryant discussed the issue and asked if the presence of the Chilmark Board was premature.

Mr. Murphy did not think so.

Mr. Colaneri asked for a clarification of the status. Mr. Clifford explained the situation as regards to the filing of the decision.

Ms. Sibley noted that the applicant could return with a request for a modification at any time.

A discussion of this matter followed.

Mr. Clifford discussed the choices of both the applicant and the Commission.

Mr. Murphy discussed further the feeling of the Chilmark Board.

Mr. Lee discussed his understanding of the situation. Mr. Hebert discussed the lack of a consensus on the vote. Mr. Jason discussed the MVC affordable housing policy and his feeling that it had been violated in this situation. Mr. Hall discussed the affordable housing policy and the clear intent of the policy.

Ms. Bryant discussed procedures of the MVC.

A discussion of past MVC procedures with respect to the affordable housing issue followed.

Ms. Sibley discussed the steps taken by the LUPC on the proposal.

Mr. Donaroma discussed what was needed to discuss the matter.

He then moved to reconsider the vote, seconded by Mr. Colaneri.

Ms. Bryant questioned why the matter was before the Commission.

Ms. Greene explained why the issue was on the agenda.

Mr. Jason noted that the issue was being consistent in policy.

A discussion of whether the MVC followed its policy or not followed.

A discussion of how to determine a dollar value followed.

Mr. Jason discussed the history of how these matters were handled in the past.

A discussion of how the Commission may have deviated from its policy followed.

Mr. Clifford discussed the history of the housing policy creation.

He also noted that there was a means of handling deviations from the policy.

Mr. Hall discussed the lack of giving the applicant the option for 2 off-site lots.

A discussion of the policy and the MVC practices followed.

Mr. Hebert discussed the flexibility of the policy and felt that waiting would not be bad. A discussion of this matter followed.

Ms. Sibley discussed the usage of assessed values and monetary contributions. She further discussed the practice of using market value in West Tisbury and the need to know what the assessed values were.

Mr. Murphy discussed what the Chilmark Board had wanted.

A discussion of how one determined the 20% of assessed value followed.

Ms. Bryant felt the Commission had been consistent in its decision.

Mr. Murphy discussed the development and that it was not a standard development. He discussed the Beach lot in Menemsha and that he felt a fair deal had been made and should be stuck to.

On a roll call vote the Commission voted 7 to 4 with one abstention (Best) not to reconsider the decision at this time.

ITEM #7 - New Business - Bike Path Grants

Mr. Simmons discussed the application for additional bike paths and

