

# THE MARTHA'S VINEYARD COMMISSION

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MINUTES OF OCTOBER 27, 1988

## MARTHA'S VINEYARD COMMISSION MEETING

The Martha's Vineyard Commission held a public hearing on Thursday, October 27, 1988 at 8:00 p.m. at the Commission's offices, Olde Stone Building, New York Avenue, Oak Bluffs, MA regarding the following Development of Regional Impact (DRI):

Applicant: MVY Realty Trust  
c/o Roche, Carens, & DeGiacomo  
One Post Office Square  
Boston, MA 02109

Location: State Road  
Tisbury, MA 02568

Proposal: Modification of June 18, 1987 DRI Decision qualifying as a DRI since the proposed modified access is a development on property which has been the subject of a previous DRI. The following issues in connection with the modification have been identified and placed on the hearing agenda. The Applicant, the staff, and the public are requested to address the following:

1. Traffic issues arising from change in location of access road to site.
  - a. Impacts on potential or future use of Old Holmes Hole Road as it runs northerly and southerly and at intersection of State Rd;
  - b. Proposed improvements to State Road and impacts on traffic pattern.
2. Parking issues arising from change in location of access road to site.
  - a. Reconfiguration of parking spaces.
  - b. Drainage as it relates to parking area and access within and to the site.
  - c. Size of parking areas.
3. Landscaping issues arising from change in location of access road to site and changes in southerly parking lot.
  - a. Location, quality, and quantity of species.

4. Is condition 5b of June 18, 1987 DRI Decision viable? Are there any desirable alternatives in light of this modification and Tisbury's actions?
5. Issues relating to conditions 5, 5a, 5b and 5c of June 18, 1987 DRI Decision as they relate to the Town of Tisbury in fulfilling Master Plan Goals.

James Young, Chairman of the Land Use Planning Committee (LUPC), read the MVY Public Hearing Notice, opened the hearing for testimony, reminded public and Commissioners that the public scoping session of October 6, 1988 decided the issues to be addressed, they will not accept testimony which does not concern these 5 issues and such testimony will be declared out of order, they will not accept any legal testimony, this Commission does not decide legal issues. If you have a legal issue you should submit it in writing to the Commission and it will be forwarded to our counsel for a ruling. He then proceeded to described the order of the presentations for the hearing, but before he could introduce MVC Staff to make the presentation he was interrupted by Captain William Grunden, Oak Bluffs Fire Department, Fire Safety Officer and Inspector. Captain Grunden stated that we are overcrowded and suggested we adjourn our meeting to a larger place, we are creating a fire hazard. There was discussion regarding the allowed capacity of the building and what procedures to follow. Captain Grunden said that we could not have people lined up the way there were in the halls, that there had to be 5 square feet per person. The meeting was adjourned to discuss this issues.

Mr. Young reopened the meeting and continued this public hearing until Thursday, November 3, 1988, 8:00 p.m. the place to be determined at a later time. He stated that the radios and papers would carry the new location or the public could call the Commission office.

Mr. Young then read the public hearing notice on the following Development of Regional Impact (DRI):

Applicant: MVY Realty Trust  
c/o Roche, Carens, & DeGiacomo  
One Post Office Square  
Boston, MA 02109

Location: State Road  
Tisbury, MA

Proposal: Subdivision of land qualifying as a DRI since  
the proposal is on property which has been  
the subject of a previous DRI.

After reading the public hearing notice Mr. Young opened the hearing and immediately continued this hearing to November 3, 1988, 8:00 p.m. at a place to be determined at a later date.

Mr. Early, Chairman, opened the special meeting, inviting any public who wished to stay to be seated, and after a short recess to allow the public to exit, proceeded with agenda items.

ITEM #1 - Chairman's Report - There was none

ITEM #2 - Old Business - There was none

ITEM #3 - Minutes of October 20th - It was motioned and seconded to approve the draft minutes. There was no discussion. The motion carried with one abstention (West).

ITEM #4 - Committee Reports

Mr. Young reported that LUPC had met regarding the MVY Realty Trust DRI Modification of 6/18/87 DRI and Subdivision. Next week's meeting will include Cottage City Addition, Roger Wey; Chadwick Inn, Antioco's; and Morey Family Trust to discuss the parking modification. Mr. Geller asked for further committee report from the LUPC October 24th MVY Realty Trust meeting. Mr. Young said it was a preparatory meeting for this public hearing. There was discussion among Commissioners as to whether this report should be included since the public hearing was continued and no public was in attendance to hear this because they were asked to leave. It was decided that since this was a Committee Report it was permissible to hear this report. Mr. Young gave a verbal summary of the meeting as listed in the LUPC Meeting Minutes in Commissioners' handouts.

Mr. Young also reported that Lagoon Pond DCPC Subcommittee is still working on draft regulations and we will probably need a few more meetings to complete that.

Mr. Early asked Ms. Borer, Executive Director, to explain items concerning the Katama Airport DCPC. Ms. Borer said the MVC has received a request from the Army Corp of Engineers for both the Commission and the Edgartown Conservation Commission to review the excavation proposal at South Beach for artillery removal. They've outlined three proposals: one - mowing the area from the landward side of the dunes to the road, they will be doing a survey in 200 foot sections with metal detectors, if they detect anything they will be excavating the particular areas and will be backfilling with the original soil and compacting and re-vegetating; two - the dunes themselves will be scrapped down to expose the clay layer. All of this will be happening in the next 6 weeks. The storage of the sand will be put aside, if anything is found it will be excavated and then the sand will be replaced; three - finally the Navy will be in charge of clearing the seaward side of the dunes from the low water line to the mean high water line and again the sand will be placed aside while they do an ordinance survey. The Navy plans on this occurring over the next 5 months. I've been working with the Department of Environmental Management (DEM) and the Edgartown Conservation Commission (ECC) so that we may ask for a more definitive proposal from the Army and Navy before they proceed with the work. They would like to proceed on November 7th. I'm informing the Commission and the Katama Airport DCPC Subcommittee of this matter since it is under a moratorium and we might consider passing an emergency resolution to allow them to proceed under certain conditions. Presently, they do not have right of entry onto the property yet. The right of entry will be held by DEM until they receive, based on the special use permit, more definitive plans for the removal actions and a restoration proposal. They will start on the western end and hope to be finished by the summer season. The Town and DEM are not sure if

this can be completed in that time span. DEM, ECC, and myself are discussing if maybe this is the wrong time of year to do this because the beach is very vulnerable over the winter season. We might even be asking them to hold off on this proposal until March, then as they proceed with excavation they can immediately restore it with vegetation. The beach will then not be as vulnerable to the waves as it would be now. Last week's storm apparently did a lot of damage to the beach. If you have any suggestions or feedback that I could incorporate into conditions to pass on to them I would be interested in hearing them.

Mr. Lee, Commissioner, Has there been any mention of using more sophisticated techniques such as satellite scanners which I believe are available through private contractors? Ms. Borer responded that if the military has considered this the Town, MVC, DEM or ECC were not informed. Mr. Lee then asked if we could suggest this. Ms. Borer responded yes.

Ms. Harney, Commissioner, Will all the sand be put back? Ms. Borer responded that they say it will be off site for a few weeks then put back.

Mr. Early, Chairman, questioned how the mechanisms were going to work. You say that the ECC, DEM, and as well as MVC has concerns, how do we get together to work out a unified response? Ms. Borer responded that there has been daily contact with DEM and ECC and there is a meeting November 2nd to review the emergency request, we don't know if there will be a representative from DEM at that particular meeting. The Commissioners attendance would be very useful. I don't know if they will consider our concerns, they told us that South Beach would be dropped down on their priority list if we didn't act now. The ECC and DEM are concerned that again they are waiting until the 11th hour and not giving us enough information and there are some environmental concerns we all need to work out.

Mr. McCavitt, Commissioner, Have you spoke to Jeff Benoit of Coastal Zone Management (CZM)? Ms. Borer responded yes, there is a problem with CZM also in the fact that CZM should technically request a 30 day review period, the Army and Navy has asked CZM to waive that 30 day requirement. Mr. McCavitt asked if Mr. Benoit should attend the November 2nd meeting? Ms. Borer responded yes, he has been to the October 11 and 12th meetings, and Jim O'Connell is presently looking at the proposal for consistency and has informed them that it would usually take 30 days. CZM does have concerns.

Mr. Evans, Commissioner, questioned what exactly is our role? Ms. Borer responded that currently excavation and/or drilling is considered to be development and it is in the Katama Airport DCPC Moratorium. Mr. Evans asked if the Commission would be asked to vote on it? Ms. Borer responded that the MVC could adopt a resolution as we did when the fence was erected, the Commission would sign the emergency resolution. Mr. Evans, so the subcommittee would vote and sign the resolution? Ms. Borer responded the Commissioners would vote and John Early as Chairman would sign. Ms. Borer said both CZM

and DEM agree it is the wrong time of year for excavation as restoration (planting season) is in April. Mr. Evans if it is not done in November or March the Island will be faced with the beach closed during the summer. Ms. Borer responded that we don't know that, the Army Corp. of Engineers is not promising anything. Ms. Scott, Commissioner, responded that if they do it now there won't be any beach to go to anyway.

Mr. West, Commissioner, There must be some records that show what type of ordinances are on South Beach. Ms. Borer responded, if the military knows they aren't saying.

Mr. Morgan, what is there was dropped by aircraft. Evidently what the DCPC subcommittee will have to consider is the question of if there is live ammunition under there will the beach be closed forever or do you in fact grant someone permission, as long as you are guaranteed that the elevations and plantings will be the same or better when they're finished.

Mr. Early, I think the urgency with which this was presented to us was of concern. The Katama Committee hasn't had a chance to meet on it, the letter was just faxed down today. But we will be having a subcommittee meeting and we will let all the Commissioners know so they can attend. Hopefully we will have some more information by then, and more input from DEM and ECC. As far as identifying the ordinances there, it was determined that what is there is potentially dangerous and we want to see it removed. I hate to see this Commission cast in the role of being the miser for one reason or another, doing or not doing something.

Mr. Morgan pointed out that in that area one of the highest dunes was torn down by a developer, and what they put back is actually a little higher and more secure than what was there. It is possible to re-establish a dune, and we might end up with something better, or at least higher than what currently exists.

Mr. Early, We want an opportunity to fully understand what is being proposed. This letter is 2 1/2 pages, but is not particularly specific on the methods they intend to employ, the timetable, or the techniques. Ms. Borer, that is one of the reasons I am trying to work very closely with the DEM and ECC. They have received the same information and we are trying to get more information so we can come up with a consistent recommendation. Mr. Early stated they would try to have a report by the next meeting.

- ITEM #5 - Possible Vote - Mass. Audubon - There was no vote.
- ITEM #6 - New Business - There was none.
- ITEM #7 - Correspondence

Mr. Early asked Ms. Borer to address the correspondence from Choate, Hall & Stewart regarding Crocker et al versus MVC, Civil Action #88-0061. All Commissioners have been given a copy. The judge upheld the validity of Section 2.50(1) which provides for the tolling of a town's clock once an application has been referred to the Commission. So clearly, for the Commission, this was a victory. Included behind

the judges findings is a letter to Carmen Durso, Tisbury Town Counsel from Choate, Hall and Stewart outlining the judges findings and what the particular count on the Millbrook Crocker Subdivision was and further explaining the summary judgement.

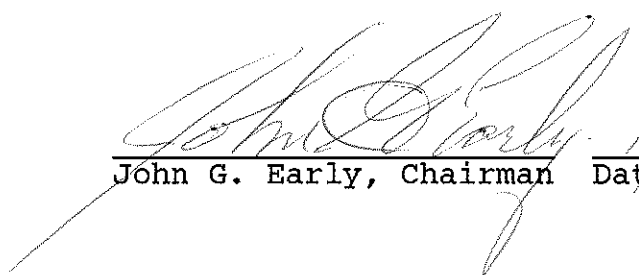
Mr. Ferraguzzi, Commissioner, Can we assume that puts to rest, legally, what in fact Tisbury has been doing? Ms. Borer, responded yes it does. Ms. Eber, Commissioner, stated that local town counsel, Mr. Healy, doesn't feel this is a definitive judgement. Mr. Early stated that the next step was a declaratory judgement. It was then asked if Crocker et al. was appealing this decision. Ms. Borer responded no.

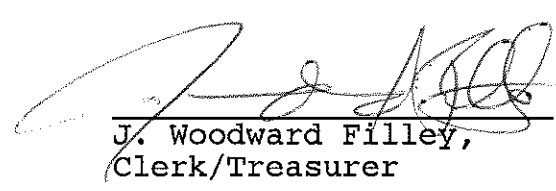
There was further discussion by Ms. Eber about Tisbury's counsel recommendations on procedures.

Mr. Early stated that the Whaling Church has been confirmed for next Thursday's MVY continued public hearings.

The meeting was adjourned at 9:55 p.m.

ATTEST

  
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John G. Early, Chairman      Date 11/3/88

  
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J. Woodward Filley,  
Clerk/Treasurer      Date 11/3/88

Attendance:

Present: Jason\*, Lynch, Widdiss, Filley, West, Young, Eber, Ferraguzzi, Evans, Scott, Early, Medeiros, Wey, Ewing, Lee, Morgan, McCavitt, Geller, Harney.

Absent: Delaney, Allen, Harris.

\*Mr. Jason left the room during ITEM #4, Committee Reports, LUPC report of MVY Realty Trust Modification of 6/18/87 DRI and Subdivision and meeting held on 10/24/88.