

THE MARTHA'S VINEYARD COMMISSION

BOX 1447 • OAK BLUFFS
MASSACHUSETTS 02557
(508) 693-3453
FAX (508) 693-7894

MINUTES OF DECEMBER 1, 1988

MARTHA'S VINEYARD COMMISSION MEETING

The Martha's Vineyard Commission held a Special Meeting of the Commission on Thursday, December 1, 1988 at 8:00 p.m. at the Oak Bluffs School Gym, Oak Bluffs, MA.

ITEM #1 - Chairman's Report

Mr. Early, Chairman, reported that the nominating committee is appointed as follows: Michael Lynch, Marvin Geller, Roger Wey, Marc Widdiss, David Ferraguzzi, Jim Young, and Bob Morgan, with Mr. Widdiss to serve as chairman protemp. Please report with a slate of officers for 1989 by December 15th.

ITEM #2 - Old Business

Mr. Early stated that Mr. Adler had requested that they hold off on discussion of Spring Cove Realty Trust DRI until next week.

Ms. Medeiros, Commissioner, stated she wanted to bring an issue regarding a previous DRI to the attention of the Commissioners at the suggestion of Ms. Custer, MVC Commissioner during said DRI decision. Regarding Merchant Mart II, specifically the request of Mr. Convoy for a slope easement. The Town has unanimously denied this request. I'm calling it to the Commissions attention to determine if it is consistent with the conditions of the decision. Ms. Medeiros submitted information from the Town of Tisbury to be reviewed by the Commission staff. Mr. Early stated that the information would be reviewed to determine if it was consistent with the conditions and then the proper permit granting authorities would be notified.

ITEM #3 - Minutes of November 17, 1988

It was motioned and seconded to approve the draft minutes with one correction (page 3, paragraph 7, sentence 7 change the to then). The motion carried with no opposed, 1 abstention (Medeiros). (Harney, Allen, Geller abstained).

ITEM #4 - Committee Reports

Mr. Young, Chairman Land Use Planning Committee, reported that LUPC had met with MVY Realty Trust last Monday and that this will be discussed under Item #5. Since it was decided not to vote on this

until December 8th we did not make a recommendation at that time but used the meeting to clarify several items. We may meet with MVY again next Monday, or if not, we will meet to discuss standards and criteria of the MVC.

Mr. Jason, Chairman, Planning and Economical Development, reported that regarding the proposed Oak Bluffs commercial district, it has the support of the Selectmen and the Planning Board. They are willing to nominate it as a District of Critical Planning Concern (DCPC). We have also approached the Tisbury Planning Board to see if they might consider a DCPC for their B-2 zone in Tisbury.

Mr. Young requested that the Lagoon Pond DCPC Subcommittee meet during the recess to discuss 2 exemption applications.

Mr. Early then moved to Item #6 possible vote on written decisions.

ITEM #6 - Written Decision, George Pessotti, Island Group DRI

It was motioned and seconded to approve the draft decision as written. There was no discussion. This motion carried with 8 in favor, 1 opposed, 4 abstentions. (Allen, in favor, Geller, Harney abstained).

ITEM #6 - Written Decision, Roger Wey, Cottage City Supply DRI

It was motioned and seconded to approve the draft decision with 2 corrections (page 7, paragraph 1.a. and page 8, paragraph 1.d. delete as conditioned herein). There was no discussion on this motion. The motion carried with 12 in favor, 0 opposed and 1 abstention. (Harney, Geller in favor, Allen abstained.)

ITEM #5 - Discussion MVY Realty Trust

Mr. Early stated that discussion is between the Commissioners and Staff with the public being heard only through questions put to the chair. Mr. Early then stated there would be 2 DRIs for discussion tonight, the access modification (DRI #291) and the subdivision proposal (DRI #292) and that we would start with the access modification. He then introduced Ms. Skiver, MVC staff, to review the application.

Ms. Skiver stated that no new staff notes had been prepared, however the plans are on display for review and the correspondence given to you at the November 17th meeting, as well as additional correspondence received after that date has been summarized and included in you meeting information. In addition to the summary are copies of all correspondence not previously distributed. Ms. Skiver reviewed the summary of the correspondence not previously distributed, beginning with Page 6 of the summary. She then noted that the letter from Carmen Durso, Tisbury Counsel, was not received until late this afternoon so it has not been included in the summary. She then read this letter which is summarized as follows: Mr. Durso stated that the

question of whether "Old Holmes Hole Road" is an ancient way can only be resolved by obtaining a definitive answer through Land Court proceedings and that since there is no vital municipal interest which warrants the Town initiating such action the Town takes no position at this time on the status of Old Holmes Hole Road. Ms. Skiver then asked for questions from the Commissioners.

Mr. Ewing, Commissioner, asked if more information became available within the next week pertaining to the ancient way, and is deemed important enough, will it be presented to the Commissioners at next week's meeting? Ms. Borer, Executive Director, responded yes.

Mr. Young, Commissioner, stated that at the public hearing, when I laid down the rules for the public hearing, I stated, at the advice of Carol Borer, Executive Director, who was presumably under the advise of Eric Wodlinger, MVC Counsel, that legal issues would not be heard at the public hearing and that any testimony regarding legal matters, specifically the status of Old Holmes Hole Road as an ancient way would not be entertained at the public hearing. I find it very disturbing that Mr. Wodlinger is now advising Mr. Bernstein that he should have presented his information at the public hearing. Furthermore, I'm am also disturbed that Mr. Wodlinger, who has found that there might indeed be legal justification for declaring Old Holmes Hole Road as an ancient way, that he isn't taking it on himself to do that research. Part of the Commission's responsibility is to preserve the rights of the public when they might be threatened by development. And I think it is not incumbent on a private party to establish public rights, I think that is the Commission's responsibility. I would hope that Mr. Wodlinger would conduct this research.

Ms. Borer stated that the documents in front of us tonight are counsels research. Mr. Young stated that Mr. Wodlinger is asking Mr. Bernstein to supply evidence, I feel Mr. Wodlinger should research for this evidence himself.

Mr. Widdiss, Commissioner, asked how long should we wait for this evidence to be submitted? This proposal has been open for 2 years.

Mr. Early, Chairman, stated the Commission Counsel's duty is to analyze documents and legal testimony and give his opinion on what was submitted, not do private research, which is what Mr. Young is suggesting.

Mr. Young stated he isn't suggesting private research. What he is suggesting concerns over Mr. Wodlinger's opinion that the information submitted could neither support or refute the contention that the public has rights to Old Holmes Hole Road. Now if he leaves it at that and the Commission decides to approve the modification, thereby in some way contravening the rights that the public has to Old Holmes Hole Road and it is subsequently demonstrated that that is a fact, then the Commission will have made a decision contrary to the mandate of our legislation. It is the Commission Counsel's job to make sure we do not make such a contrary decision.

Mr. Evans, Commissioner, asked if the basis for a public way is adverse use or crossing for 20 years? Mr. Borer stated that Town meeting approval is necessary to designate a public way, prescriptive rights is based on 20 year use.

There was lengthy discussion regarding public rights of road, tying in with ancient way or private way and the implication of all.

Mr. Early stated that perhaps this issue is best left until next week when MVC counsel could be present. There are several other issues to discuss. Mr. Early then read the issues from the public hearing notice.

Mr. Young reported on issues raised at LUPC. Concerning traffic, the bikepath easement and construction had been required of the applicant in the previous decision, since that time it has become evident that if a bike path is built it will be built on the other side of the road. The applicant agrees to continue with the offer of an easement if the location changes to his side of the road but obviously construction is no longer an issue. We also discussed the potential interference of traffic entering the proposal with the traffic from the apartment complex across the street. The issue being that the road is now closer to being opposite to the apartment entrance. One of the issues raised is that the apartment complex is in the B-2 district which doesn't require any special permit process for change of use. So if some of the space which is now used for residential use were to change to commercial use it would not come to the Commission for review. The curb cut permit application was something I was confused about. I thought it might require a MEPA process all over again it does not. The decision will be made by DPW based on the EIR from the MEPA process. Concerning the parking and the fact there are more compact spaces now and some are relocated to the southern lot. By ITE standards and other standards there is considerable more parking provided than is deemed necessary. The applicant doesn't anticipate that the southern parking lot would be used for supermarket parking. The spaces have been reduced by 6" in width only, no change in length. Concerning the landscaping, there is significant loss of screening caused by the change in the access road. There is a loss of screening between the access road and supermarket parking lot, making the parking lot considerable more visible from State Road. There is also a loss of a grass strip between the sidewalk and the access road. The last issue the changes in condition 5b will have to be discussed tonight. The best the applicant can do is propose to give the money to the County Commission or put it in an escrow account until uses for it are found relating to the Tisbury Master Plan. Mr. Gahan doesn't want the condition contingent upon acceptance by a third party. What he would like is for the MVC to come up with a substitute condition that would maintain the spirit of the original condition, i.e. that the \$400,000 be put to use related to the Master Plan Goal of the through road.

Mr. Evans, Commissioner, stated that the applicant's engineers felt that the shift in the road might be a better location. He has experience with this area and what concerns him about their comments is that the Art Workers Guild and garage road was chosen because the way Old Holmes Hole Road is configured there is a bank in the way and you can not see up the road. In the original plan this was to be modified so that you did have sight lines. The further down the hill they come the faster they are going and the gap time is less. The other concern is the loss of the climbing lane. In the original plan, in the proximity of the apartment buildings, there was a turning lane. We now have in this area a two lane road as opposed to three and I think we can all agree that is not a benefit. Mr. Early asked for clarification, there is a bank here that obstructs your vision that is existing? Mr. Evans stated yes now there is but it was softened, setback in the original plan.

Mr. Filley, Commissioner, stated that one of the unknown variables is that during DPW review they may possibly request additional work to be done on the road and if so we should request to review it if the scale is beyond what we are envisioning. Mr. Widdiss, Commissioner, stated that if DPW wanted to put in a 4 lane highway now there would be nothing we could do about it so I don't know what the argument would be if they want to make it more accommodating. Mr. Early asked are you suggesting in the event of the approval of the project that the final scheme of the DPW come back to the Commission for information? Mr. Filley, responded yes.

Mr. Evans said with the original proposal everything was channeled from one intersection, businesses and residents that live back here, lagoon disposal, all using the same access and with this proposal you have two roads exiting and entering onto State Road.

Mr. Young corrected Mr. Evans by stating that in this modification plan the new access road is going to in fact eliminate Old Holmes Hole Road because most of the existing dirt path existing is on MVY Realty Trust property and there won't be enough left to drive on. The paved road will encompass almost the entire existing dirt tract. With the modification there would not be 2 usable roads, there would be 1 paved road developed and adjacent to the 40' strip of land owned by the Town. Ms. Eber stated that that strip was purchased for the Town to have access to their new well site, are you taking that away from us? Mr. Early stated no. Ms. Eber stated that this would create just what Mr. Evans said 2 roads. Mr. Young stated that if the Town built a road yes. Mr. Jason, Commissioner, asked if Ms. Eber is saying that Tisbury would rather build a road than use one that is already there? Ms. Eber asked, suppose they sell the property and the Town is refused access? Mr. Jason stated that it would be very easy to condition this to give a deeded access to the Town in the event that the Town needed access to get to it's land. Mr. Widdiss said it had been stated that the public wouldn't lose any of its rights on whatever access road that would be built.

Mr. Early moved on to the change in the parking.

Ms. Scott, Commissioner, stated that one of the letters she read expressed concern over the ability to push shopping carts through the cars if the spaces are reduced in size. Is that true? Mr. Young responded that they do provide walkways. Ms. Scott asked if for loading groceries could the carts fit between cars? This is something that was brought up in correspondence and for a supermarket it is a concern. Mr. Young stated that assuming each car is parked in the middle of the space you have lost 6" to move your cart through.

Mr. Evans stated that in the Cronigs parking lot the spaces are diagonal and easier to get in and out of, these spaces are perpendicular and as the spaces get smaller they get increasingly difficult to get in and out of especially in 4 wheel drive vehicles.

Mr. Jason asked what would be the reduction necessary in the building if we held the spaces to 9 ft? Mr. Ewing also asked if along those lines, you could determine the reduction if the landscaping was replaced in the southern parking lot? Ms. Skiver stated that 30% of the parking could be waived by special permit. Ms. Eber stated that some of the parking has already been waived. We have waived 20-30 spaces already. For each space removed, by Tisbury Zoning By-Laws you would have to reduce the building by 127 1/2 square feet gross of the building.

Mr. Evans stated regarding the size of the parking areas, we don't have anything like this on the Island. The lower lot is 1.4 acres of paved, hard top in order to accommodate the required parking. Mr. Evans said that in the original plan there were landscape islands which were some modification to the microclimate that exists in these areas. Maybe it seems like a technical issue that the Commission doesn't want to get into but in terms of whether the Vineyard continues to be an attractive place where people want to be, I think we have to face that fact that 4 Flags is not attractive to people. Ms. Medeiros asked what is a microclimate? Mr. Evans responded a very local climate, temperature, humidity, etc. for the space that you are in. A grass wooded area has one type of feel, an open parking lot with hot top has another feel. This lot would be an incredible experience in the middle of the summer.

Mr. Jason asked if Mr. Evans was suggesting that we no longer pave parking lots? Mr. Evans said that is another discussion for the Commission, whether the soaking pads and other measures will work. Large black top is not consistent with the Island scale, we are trying to offer a more inviting and receptive atmosphere for humans. There are other ways to design a parking lot that are more humane and better ecologically. Mr. Geller asked if it is detrimental to have this type of surface can't we say we want another type? Ms. Medeiros stated that she doesn't want to shop and pull her cart on a gravel lot.

Mr. Ewing, Commissioner, stated that his problem is the loss of land and the trees. If it is a large lot of asphalt with no shading it is a horrible place to be. Because of the modification they had to reduce the landscaping.

Mr. Lee, Commissioner, stated that he supports Mr. Evans on this. If you go to a warmer climate, California for instance, trees are essential to parking lots out there because it is hotter. People hate to go shopping in these giant malls but at least they have trees, grass, shade.

Ms. Skiver put up the alternative to the southern lot that the applicant would like to use and stated it doesn't conform to Tisbury Zoning By-Laws. Mr. Early asked if this was permissible by special permit? Ms. Skiver responded that Tisbury By-Laws allow up to a 30% reduction in parking. Mr. Wey asked how many less spaces are on the proposed alternative lot? Mr. Early asked Ms. Skiver to have those figures for next weeks meeting.

Mr. Evans stated that we had asked the applicant to use native plantings. Therefore the planting isle uses compact inkberry which is native but the area it is proposed for is narrow and inkberry is brittle and a slow grower it is doubtful that it will survive to provide screening and since this climate will be a hot one it will probably be in poor conditions, yellowing leaves, not growing. In the old design you had genuine screening. So coming down the road you will be looking directly into the parking area. The 1st design was much better than this one from a horticultural standpoint and solving visual problems. The southern lot has a loss of canopy. The existing land forms a cone in this area, it is a glacial deposit, serving a useful purpose of screening the industrial park behind it. One of the neat things about the Vineyard, because of our complex topography and glacial history, is that we have all of these private areas. The people working back here, have their own area, it is practical but it is not fancy. If you take this hill down, which is what they are planning to do, you can see back here. There is not the same room for screening as there was in the original plan. Even with the cedar they have planned there is still the strong sense of being able to look through here. I think good designs on the Vineyard respond to our geological history and work with the landforms in order to create these natural division which do several things. One is to allow us to have private areas that allow us not to be fancy and have a marginal business for ourselves and the second thing it does is enhances our sense of space. The screening enhances the space conceptualization and it is wrong to remove this useful geologic surface to put up a parking lot.

Mr. Filley said he agrees with Mr. Evans. It looks a lot different when you visit the site than it does on these plans. It is amazing to consider when you look at the screening and topography there, it is a major slope and I think everyone should go out and take a look at it.

Mr. Early moved to topic Number #4, Condition 5 of previous decision.

Mr. Geller asked regarding condition 5b. could the MVC accept the money in an interest bearing escrow account? Mr. Early stated that question will be put to counsel for an answer next week. Ms. Eber asked what it would be used for? Mr. Geller stated that someday someone would use the money for implementation of the Master Plan.

Ms. Eber asked what would happen to the traffic in the meantime? It was meant to act as a mitigation to the traffic problem. Mr. Geller said the money would stay there until the Town of Tisbury decided to do something. Ms. Eber stated that the purpose of the \$400,000 was to study and construct a connector road. The connector road was a mitigation of the traffic problem. While we are waiting we will have all that traffic on State Road without mitigation.

Mr. Ewing asked if the \$400,000 was to study and construct the road? Ms. Borer read the condition. Mr. Ewing stated it is just for that road and if we condition the money to the county what would it be used for?

Mr. Filley stated he is concerned that it has been rejected 2 times at town meetings. People feel that the rejection of this means they reject the project. The question here is, is this condition still viable? I think it is.

There was further discussion of this issue between Mr. Young and Mr. Early.

Ms. Eber wants to remind the Commissioners about last May's referendum question on the Town ballots which asked would you chose to build more roads to solve the traffic problem and the answer was 70% no in Tisbury and a little over 70% Island wide. Now that doesn't speak well for the connector road.

Mr. Jason asked if 70% voted not to construct new roads are you saying that the Town of Tisbury has changed its Master Plan? Ms. Eber stated that the Master plan was never presented to the Town for Approval. It was started in 1973 and completed in 1975 and conditions then were very different than they are today. The plan was done by 8-10 planning board members with professional consultants. Maybe 10 people in the Town devised that plan.

Mr. Geller, stated that in testimony we heard a few weeks ago it was stated that regardless of whether the project is constructed or not that in five years State Road will become impassable. So some plan has to be adopted. Even though 70% said they don't want new roads constructed they certainly don't want a parking lot in the middle of Tisbury. So some plan has to be adopted sometime to ease this problem. The \$400,000 whether it is used on Old Holmes Hole Road or elsewhere could be used to alleviate traffic.

Mr. Evans stated that the point during that testimony was that the road is in trouble without the new development. And if the development is done there would be little chance to solve the problem. He stated the number quoted during PED regarding land use in the Tisbury B-2 District. We need a hiatus to plan.

Mr. Ewing stated that he thinks it is good to take the \$400,000 to help alleviate the problem but we should be careful to use the money near the area or on a problem connected to the area.

Mr. Widdiss stated that if the DRI is approved the money should be used for any issue that would address a regional problem since this is a development of regional impact.

Mr. Jason asked Ms. Eber if the Tisbury Planning Board had any backup plan to address the traffic? Ms. Eber responded no.

Mr. Early reopened the discussion at 10:35 p.m. after a short recess.

Ms. Eber stated that the Master Plan didn't specify that the connector road had to be at this point. There might be better places for a feeder road. Mr. Lynch, Commissioner stated he was led to believe this was the spot. Mr. Jason stated that PED had met with the Tisbury Planning Board and it appeared to be that was the location at the time, did Tisbury change their mind?

When there was no further discussion on the modification Mr. Early moved on to DRI# 292, MVY Realty Trust Subdivision proposal. Mr. Early then asked Ms. Skiver to make a presentation.

Ms. Skiver stated that there were no new staff notes on this DRI. That the correspondence has been summarized and that in response to a question at the public hearing a handout has been done regarding the current uses in the Tisbury B-2 district. Ms. Skiver then answered questions from the Commissioners.

Mr. Geller, Commissioner, stated that in his associations with the MVC the worst occurrence was Nevin Square. The applicant came back week after week with modifications. With Nevin Square we kept requesting modification and finally the applicant subdivided the property and it came out worse then we had envisioned it. I am concerned that this doesn't happen again. I asked that the counsel be informed that the applicant doesn't agree with this subdivision being referred to the MVC and states that if we deny the proposal he feels free to do whatever he wants since he has subdivision approval from the Town.

Mr. Young stated that even if it comes back to the Commission for specific buildings it wouldn't require the same mitigations as the bank/supermarket does. Overall if the 4 lots are developed it may be more traffic and we will probably have to review them 1 at a time.

Mr. Early asked Mr. Young to report on LUPC discussion. Mr. Young stated that the access road being on the existing curb cut would be DPW review not MEPA process therefore it would be a less stringent review. The access road to the subdivision ends perpendicular to Old Holmes Hole Road with a crashgate which would guarantee there would be 2 entrances on State Road within 60 feet.

Mr. Early then asked the applicant if there was any chance that they'll consider withdrawing the subdivision request at this point? Mr. Gahan responded yes. There has been conversation with MVC counsel and Mr. Durso, Tisbury Counsel regarding the lawsuit between the Town of Tisbury and the MVC about my subdivision. There is the

possibility of withdrawal if we will be allowed the possibility to reapply. We don't want to be involved in a turf war between the Town of Tisbury and the MVC. We also want a guarantee that when we resubmit to the Tisbury Planning Board that it will immediately be submitted to the MVC. We also don't want to lose our zoning freeze. This was just discussed at 4:30 p.m. today and I am not prepared to withdraw tonight but I might be prepared to withdraw by next week. I am willing to consider it if I get the zoning freeze benefit and I am not involved in litigation.

Mr. Young stated he assumed Mr. Gahan is on the Planning Board agenda? Mr. Gahan responded no he is not. Mr. Young asked if the possibility of withdrawal would be based on Planning Board Discussion? Mr. Gahan responded yes, discussion with counsel for the Tisbury Planning Board and counsel for the MVC.

Ms. Eber stated that the Tisbury Planning Board held a public hearing on whether they would adopt rules conforming with the MVC and they have been approved. Mr. Early requested a copy of these. Ms. Eber stated that she had dictated a letter today and they will be sent tomorrow.

Mr. Geller stated that since the Tisbury Planning Board has agreed to one of Mr. Gahan's conditions and since zoning is protected in the sense that any proposed change in the zoning could cause him to refile the existing plan, isn't this discussion moot? Mr. Early stated that they could not determine if the Tisbury Planning Board had agreed to Mr. Gahan's condition until they review the document. Mr. Geller moved to table this matter until next week. The motion to table was seconded.

Mr. Early called for a vote concerning the motion to table. The motion carried on a consensus vote. Mr. Early stated the matter is tabled until next week and requested Ms. Eber to forward the draft regulations from the Tisbury Planning Board as soon as possible. He then moved on to the next item on the agenda.

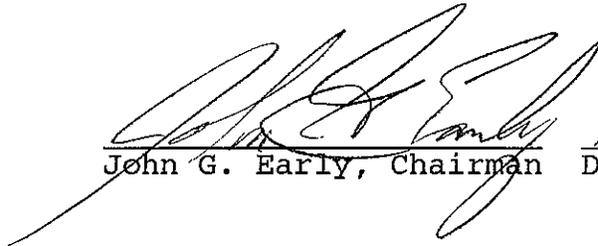
ITEM #7 - New Business

Mr. Morgan stated next time we should consider the questions remaining to better prepare for the next meeting when a motion is made to table a matter. Mr. Early stated that well may be the case but going by the regulatory rules of order we had to follow this procedure. Mr. Morgan said he understands that and is not questioning Mr. Early's handling of the motion.

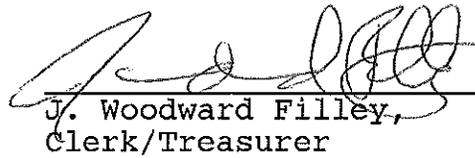
ITEM #8 - Correspondence - There was none.

The meeting was adjourned at at 11:00 p.m.

ATTEST



John G. Early, Chairman Date 12/15/88



J. Woodward Filley,
Clerk/Treasurer Date 12/15/88

Attendance:

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

Absent: West, Ferraguzzi, Delaney, McCavitt, Harris.

* Note Roger Wey arrived at 8:50 pm, just after the beginning of MVY Modification discussion (DRI #291).