MINUTES OF DECEMBER 8, 1988

MARTHA'S VINEYARD COMMISSION MEETING

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

ITEM #1 - Chairman's Report - Mr. Early, Chairman, read two letters, one from the Oak Bluffs Planning Board and the other from the Oak Bluffs Board of Selectmen, both summarized as follows: Request the MVC consider the Planned Development District for nomination as a DCPC as outlined in nomination papers. Feel the designation is critical to the Town and Island as a whole and will provide a unique planning opportunity to address the pressures and constraints of growth that lie before us. Mr. Early went on to say that this involves approximately 230 acres across from the High School between Barnes and County Road. The ownership of the property is unknown at this time. The Planned Development District is for multi use purposes, municipal facilities, private businesses, industrial, housing, etc. It was received today and we will be acting on it. I appoint the Planning and Economic Development Committee as the DCPC Committee for this consideration.

ITEM #2 - Old Business - There was none.

ITEM #3 - Minutes of December 1, 1988

It was motioned and seconded to approve the draft minutes as written. There was no discussion. The motion carried with no opposition, 1 abstention (Ferraguzzi).

ITEM #4 - Committee Reports

Mr. Early reported that the Katama Airport DCPC Subcommittee had met concerning three exemption requests for residential projects. Two which were not in the clear zone were approved, one which is in a clear zone has been deferred pending discussion with the Katama Airport Committee.

When there were no other committee reports Mr. Early moved to the next agenda item.
ITEM #5 - Discussion & Possible Vote

Mr. Early opened by stating there would be two DRIs under this agenda item tonight. The first #291 is the MVY Realty Trust Modification of Access, the second #292 is the MVY Realty Trust Subdivision proposal. He then introduced Don Connors and Eric Wodlinger, Commission Counsel from Choate, Hall & Stewart. Mr. Early stated that as usual, discussion tonight would be among the Commissioners only, the only outside input admitted would be at the request of the Commissioners through the Chair. He then asked Mr. Connors to briefly outline the parameters of the discussion on the two matters before us tonight.

Mr. Connors, MVC Counsel, stated that the first item before us is the proposal for modification of the DRI Decision on the MVY Realty Trust that was granted by the Commission last year. It is not the original decision that is the subject of your vote tonight. It is the modification of the that Decision. The modification of a Development of Regional Impact granted in 1987 which you must act on by a determination under the Vineyard Commission Act, whether the benefits outweigh the detriments. First I would like Carol Borer, Executive Director, to tell you what is different. What is it that is before you that is different than what you had before you last year, and which you approved last year with conditions. Second, I would like Eric Wodlinger to discuss the status of the road, way, or ancient way or some way to which the public may have access. It is very important that the Commissioners understand what we understand and believe to be the law about that way question and its relationship to the Tisbury Zoning regulations, because your decisions are generally supposed to be consistent with Town Zoning Regulations. But the bottom line is whether we think it makes a difference on your deliberations tonight, as a legal matter, what the legal status of that road is, and what public have rights of access.

Ms. Borer stated that in a few sentences we are here this evening to act on the modification of a DRI that was previously approved. The difference between last year and this year are the relocation of the access road approximately 60' to the west, there are parking reconfigurations, some landscaping reconfigurations and we are also considering the modification of the $400,000 condition.

Mr. Connors asked if the $400,00 is the sum of money that the applicant would make available to Tisbury or the County for the connector road? Ms. Borer responded that is correct. Mr. Connors then asked, that connector road was deemed by the Commission to be necessary to mitigate the traffic impact? Ms. Borer responded that is correct. Mr. Connors then asked Mr. Wodlinger to address the issue of Old Holmes Hole Road.

Mr. Wodlinger, MVC Counsel, stated that the first thing to bear in mind that the Commissioner's deliberation should focus on the benefit/detriment balance of this proposal. It is our opinion that the ancient way question has no bearing on your decision here tonight because of a combination of law and concessions made by the landowner.
The ancient way terms in an undefined term and doesn't appear in any statute. An Ancient way is a shorthand which lawyers and surveyors use when they run across a way or a road on a map whose legal character cannot be determined. The law in Massachusetts is that prior to 1846 a public right of passage on a road could be established in 3 fashions: 1. Landowner dedication with a public act of acceptance, such as appropriation of funds to improve a road, 2. Layout by the Selectmen, which is an official act shown in the selectman's layout, or 3. By prescription, or the act of a prescriptive right of passage. Upon examination of Old Holmes Hole Road in this instance there is no indication of dedication or selectman layout. The only indication consists essentially of the appearance of the road on maps, references in deeds and affidavits from people who claim the public has used the road, or persons have used this road, in the past without express permission of the landowner. However it is somewhat complicated by the fact that, as the road runs through the applicants property it is also a subdivision way which all the people who purchased from the grantor of that subdivision have a private easement to use. So it is necessary to distinguish between those who used the road with a private right of title to do so and those who used it under a claim of public right to do so. This is not a decision the Commission can make. A decision to the character of a road can only be definitively made by the superior court or land court. This Commission is not being asked tonight to sit in a judicial capacity on that question. The key issue is the applicant has not proposed to build any impediment to public usage of that road. Indeed he has proposed to make the road available to the public and to improvement it, as to use as a road, and the Commission has the power should it decide to approve the modification to write express conditions into this DRI decision in an enforceable form in the decision recorded in the Registry so it may be enforced, in essence, forever. So, there is no conflict here between the claim of public right and the applicant's desire to use the road. The applicant has made it plain that he has no objections to the Commission conditioning to permanently secure public use of Old Holmes Hole Road. It is on these grounds therefore that we can advise you, that although it is not possible for this Commission to make a final judicial determination as to the public character of that road usage, it is also not necessary for the Commission to do so. It can instead adopt a condition to assure public access to that road in the foreseeable future. It is not necessary for us to go into further detail. If any Commissioners have particular questions we can respond to those.

Mr. Connors asked if the Commission does not want to impose a condition of access, does the fact that there might be some public rights on Old Holmes Hole Road create a zoning issue under the Tisbury Zoning By-Laws as a so called split lot question? Mr. Wodlinger stated no. That is an issue that we stated previously. Let us assume there is a public right to use Old Holmes Hole Road. The case law is quite clear, it is an easement right only, the fee ownership rests with the landowner. Therefore there would be continuous ownership
north and south of the road and no separation of lots since there is no separation of ownership on the site. The easement burden does not change the ownership issue.

Mr. Connors stated that in October the Commission held a public meeting and scoped out the issues that it wanted to hear evidence on at the public hearing on this DRI. Mr. Connors then read the issues as identified in the public hearing notice and staff notes for this DRI. Those are the issues that you wanted to hear testimony on. He went on to say that any issue that relates to the benefits and detriments of this particular DRI is open for discussion and your records include testimony on a host of issues that you may properly consider. To close he reminded the Commissioner of what Section 15 says, it is the principle Section of the Vineyard Commission Act, that says how you are to act on DRI deliberations. He then read that section. In summary you need not concern yourself over the Old Holmes Hole Road issue, it is not a legal issue in your way, put it aside. The modification of the previous approval and conditions is what we feel desired your attention in this deliberation.

Mr. Early then asked for questions from the Commissioners for either Mr. Connors or Mr. Wodlinger, there where none. He then introduced Ann Skiver, MVC Staff, to give an update.

Ms. Skiver, MVC staff, stated the first page of the staff notes identified the issues placed on the hearing agenda. Ms. Skiver discussed the development concerns and the issues raised during the LUPC meeting, correspondence, or at the public hearings. This staff update is available in its entirety in the record, it is summarized as follows: 1. Traffic issues: concerns were raised about the impact from the apartment buildings access drive and possible future conversion of said buildings to commercial use; impact due to delay of project on traffic estimates; implications on future usage of Town owned lot 7.2; status of DPW State Highway curb cut review process; and impact of the private site access road as possible future feeder road entrance onto State Road. 2. Parking Issues: size of southerly parking lot, effects on microclimate, views and topography; conflicts from pedestrian movement to an from southern lot and supermarket; and parking required by Tisbury Zoning By-Laws. 3. Landscaping Issues: Change in southern parking lot provides no planting, effects microclimate, visual enhancement, and shading/screening of cars and other commercial buildings; site plan does not clarify extent of existing vegetation to be removed, extensive site grading and vegetation removal is necessary; lack of planting buffer between sidewalk and relocated site driveway; and view of supermarket from State Road as a result of reduced screening. 4/5. Issues relating to conditions 5, 5a., 5b., 5c., of June 18, 1987 MVC DRI Decision: 5a. & 5b. were designed to mitigate traffic impact, if they cannot be met should they be eliminated or modified? What modification would mitigate traffic and/or assist or fulfill a Master Plan goal?; Will private site access provide the same benefits as Town owned lot 7.2 may have provided as a road link to Edgartown-Vienayrd HAven Road. Ms. Skiver stated that the last few pages of this update are excerpts from the Master Plan Study of 1975 and Planning Board updates of the Master Plan with statements that relate to this project.
Mr. Early then asked if the Commissioners had questions for Ms. Skiver.

Mr. Jason, Commissioner, asked who approves the reduction in parking of 1/3, the Tisbury Planning Board or the Zoning Board of Appeals? Ms. Skiver responded she understands that a special permit must be granted by the Zoning Board of Appeals. Mr. Jason then asked, was that done? Mr. Skiver responded not to her knowledge.

When there where no further questions Mr. Early stated there were 2 pieces of correspondence to be read for the record. The first from Cora Medeiros, Commissioner, the second from Marvin Geller, Commissioner. Mr. Early introduced Ms. Medeiros who read her letter for the record, the letter which is summarized as follows is available in its entirety in the record: Ms. Medeiros stated she addresses the Commission "wearing four different hats"; (1) as a resident of Tisbury (2) as a member of the business community (3) as an elected official of Tisbury (4) as a member of the MVC. She expressed fears over whether the MVC was focusing on the movement of the road and realignment of the parking spaces or the political pressures of citizen's groups. She went on to examine the benefits and detriments of the project. She stated that IWY Realty Trust has listened to us, has changed and modified its proposal in response to our concerns. Wearing all her "hats" she think we need to approve this project to set a standard for future development; well planned and well discussed and with Tisbury's elected boards approval. She believes that for Tisbury's future we can't change our minds to listen to only those few who yell the loudest. Mr. Early then read the letter from Mr. Geller who could not be present due to a death in the family. It is summarized as follows: He stated that unless the existing development and natural growth of an expanding Island population should be ignored and that there should be no planning for the future, the bank project, is in my opinion, a good project. It prevents the loss of a substantial number of jobs to Island citizens. It is well designed. The need to have a national food chain on this Island to keep prices within reasonable bounds is obvious. So, in my view, it is a good project... but it is a good project in the wrong place. He went on to list 10 recommendations he had concerning the bank/supermarket and the Oak Bluffs Planned Development District.

Mr. Early, Chairman, opened the meeting for general discussion at 9:10 p.m. and stated that the format would follow that of the public hearing notice.

1. Traffic issues arising from changes in location of access road to site.

Mr. Young, Commissioner, said there appear to be both benefits and detriments here. The applicants traffic consultant believe this location to be preferable in terms of sight distance. It will increase the view up-Island, but I believe this is offset by the fact that the new locations is closer to the apartment complex access across the street, with traffic exiting left into Vineyard Haven competing with traffic turning right out of the development. This
problem is compounded by the possible conversion of the apartments to retail use without any permits from Tisbury or review by the Commission.

When there was no further discussion Mr. Early moved to the next issue.

2. Parking issues arising from change in location of access road to site, reconfiguration of spaces, parking and access related drainage, and size of parking areas. There was no discussion on this issue, Mr. Early moved on to the next.

3. Landscaping issues arising from change in location of access road to site and changes in southerly parking lot. Subsection under this is the location, quantity and quality to be planted.

Mr. Young stated that what comes into a benefit/detriment analysis is the detrimental reduction of screening between the access road and the main parking lot thereby increasing the view from State Road. There is also an elimination of the grass strip between the access road and the sidewalk.

Mr. Morgan, Commissioner, stated that he wanted to continue with Mr. Young's comments by saying that a very small reduction in the square footage of these buildings could restore the trees in the southern parking lot, would put the screening back in on the sidewalk side and the east entrance. Concerning the hill in the southern parking lot, on the basis that the rear commercial areas will now be visible because of the change in screening, it could be put back by cutting down on the building square footage then maybe the issues wouldn't be as conspicuous as discussed last week.

Mr. Widdiss, Commissioner, stated that regarding the number of parking spaces, the bank/supermarket representatives have stated that there are far and above more spaces than necessary and the only reason they are there is because Tisbury requires them. The applicant should not be penalized because the Town is unwilling to let them reduce the parking to levels that experts believe to be more realistic. The landscaping problems could be resolved to screen the site from the street without any problems.

Mr. Early then moved on to the next item of discussion.

#4 Is condition 5b of June 18, 1987 DRI decision viable? Are there any desirable alternatives in light of this modification and the Town of Tisbury's actions?

Mr. Widdiss, stated he doesn't think the developers should be penalized because Tisbury won't accept the money for future planning. It should be set aside to address future problems on the Town or County wide agenda. Stated he couldn't understand why with proposition 2 1/2 and the problems with raising revenue the Town could refuse the money offered to address present and future problems.
Mr. Young stated that the problem with this condition is that the money was not for anything, it was tied to the connector road in an attempt to mitigate traffic from this project. The town vote and the fact that the Master Plan, which I now understand from last weeks meeting is 13 years old, leads me to believe that the Town isn't moving toward this goal. The money could go to a different location and that being the case, the Commissioners can't be assured that the donation would go to mitigating the traffic as conditioned. I don't see how an alternative condition could satisfactorily replace this one.

Mr. Widdiss disagreed and stated the money was to address a problem that is presently facing the Town which may or may not be exasperated by this development. The money was given to address the problems that are now facing the Town of Tisbury.

Mr. Jason stated that the problems are getting worse and that the Town of Tisbury has chosen not to deal with it for whatever reasons. I, in good conscience could not vote this project without that access road.

Ms. Mederios said she had problem with a town meeting vote and asked if we could condition the money to a ballot question in the Town. Mr. Young stated the applicant has expressed his desire not to have the conditions dependent on any 3rd party approval. Ms. Mederios suggested that the MVC handle the money then. It is great to say it should go to the County, but the money is for improvements in the Town of Tisbury. The money is very important to Tisbury, a lot of people have expressed their view to the Board of Selectmen to accept the money.

Mr. Ferraguzzi, Commissioner, said the Town of Tisbury, the people who go to meetings, and the elected officials seem to have come at this problem from two different ends. I think it was quite significant that everyone in Tisbury knows we have a problem with money, taxes but the only way the people could voice there disapproval of the project was to turn down $400,000.

Mr. Widdiss wanted to remind us that that the Town has zoned this area as a business district. They could have changed that zoning prior to the proposal if that was their wish. Apparently they do want business in that area. Mr. Jason stated we should be aware that the district was zoned in the early 70's and the town should be able to reconsider where the business district should be now.

Mr. Morgan asked counsel if we could separate the modification and condition 5b? Mr. Connors responded that you could approve the certain modification and not approve other modifications. Say for instance approve the change in road configurations and landscaping and leave condition 5b as it stands.

Mr. Mederios questioned what leaving 5b as is would do? Mr. Connors stated there would still be a condition on developing the land that is the subject of the DRI that the Town or County approve $400,000 for construction costs to install a road link as stated in 5b, which Mr.
Connors read. You could say we reaffirm this condition. Ms. Medeiros then asked, so you would be leaving the money available to the Town if it should desire or need it? Correct. Mr. Connors went on to say that the applicant has to decide to follow through on the condition. He went on to add a brief legal discussion on what the $400,000 is when imposed as a condition. It is what is called a development exaction. It is a contribution required of a developer as a condition of proceeding with the development which the Commission thought necessary to offset the impacts of the development. You can modify that condition if you want or as you weigh the benefits and detriments impose a different condition, if it still responds to the development. The condition must relate directly to impact of this development.

Ms. Scott, Commissioner, stated that if we hold onto the condition as is, the Town will still have to approve it, the applicant says they don't want to return to the Town or anyone for 3rd party approval. Will the Town indeed still have to vote? Mr. Connors responded yes.

Mr. Widdiss asked if the condition says the money will be given to the Town or County and the use is up to the Town? Mr. Connors responded that if the money is given to the Town it is up to the Town, if it is given to the County then it's up to them. However the first $100,000 goes to the Town of Tisbury to complete the Master Plan Study for the connector road.

Mr. Wodlinger added that you couldn't take the money and apply it to a traffic study across town, the money must be used to deal with the impacts on this development. If you wish to vary this condition and say perhaps we shouldn't use it on a connector road any more we should use it on the closest intersection to this development that will be impacted by the traffic of this development, if that is what you felt is an important condition, you could do that. But any condition must relate to the development, it can't be a general gift of money to the Town or County to address traffic problems in general.

Mr. Widdiss then asked if the applicant makes the money available is that enough to say, legally, he's fulfilled the condition? Mr. Connors responded that you could say that in the decision if that's what you want to do, but it doesn't answer the curing of an impact of the development. Money taken from a development is supposed to cure or offset the impact of the development. Mr. Wodlinger said we could change it to the applicant will offer the money instead of the applicant will pay. So if the Town does not accept the applicant will still have satisfied the condition by the offer. Mr. Connors stated you should consider if it is not used to offset the impact of the project, just offered, is it satisfactory to you as a Commission to cure the problems of impact created by the development.

When there was no further discussion on this topic Mr. Early moved on to the next item.

Item #5 issues relating to 5, 5a., 5b., 5c of the June 18, 1987 DRI Decision as they relate to the Town of Tisbury in fulfilling Master Plan Goals.
Mr. Connors said he is not sure the facts are precisely clear. In Massachusetts there is no legal requirement on Towns to adopt a Master Plan. A Master Plan such as they are employed in Massachusetts is prepared by somebody but it is the Planning Board that adopts the Master Plan. I believe when Chapter 831 was drafted the kind of Master Plan the statute was talking about is a Master Plan that was adopted in the regular statutory way. There are all over the State different groups of citizens who are preparing Master Plans, goals for future plans, or growth management plans for the town. I don't think those are Master Plans within the meaning of the statutory language of the Vineyard Commission. Nor do I think, from what I heard about Tisbury's Master Plan, that it is a Master Plan within the statutory language of the Vineyard Commission. However somebody from Tisbury might be able to shed some light on that. Was the Master Plan formerly adopted by the Planning Board in the statutory form? Ms. Mederios, Commissioner, responded yes, in 1975. Mr. Connors stated that is a Master Plan for the purposes of the Vineyard Commission Act.

Mr. Early, Commissioner, stated since there is no further discussion on this particular point we will return to the general discussion on the benefits and detriments of this modification and then move on to a possible vote.

Mr. Ewing, Commissioner, stated that he didn't like the original plan and this modification takes the original development and squeezes it into a smaller area, it is too big and in the wrong place.

Mr. Morgan, Commissioner, stated it is larger than I would like, and there is no doubt it will probably make the traffic more difficult on State Road. I would feel better if we had an alternative. I don't want to lose the A&P and the Bank. If we change the location, won't we have similar problems with the size, traffic and parking. This is one of the first DRI's before us that wouldn't add one more car or one more person to Martha's Vineyard.

Mr. Lee, Commissioner, stated that his primary interest to this project is the traffic safety on that bend in the road. Which is compounded by the loss of the stacking lane and bike path. Mr. Early asked staff if there is still an easement on the modified plan? Ms. Skiver responded that it is designated on the plan as a possible location for future bike path easement. The Planning Board said the bike path was not wanted on this side, there was also talk with the State who said the bike path was not wanted here. However the condition still stands. Mr. Filley, Commissioner, asked if the bike path was on the State Road layout or on the applicants property? Ms. Skiver responded the State Road layout. There was further discussion about the condition for the bike path so Mr. Early, Chairman, read the condition.

Mr. Lee asked what the State said about the stacking lanes? Ms. Skiver responded that it would go back to the DPW for the curb cut and will have to be reviewed.
Mr. Connors, MVC Counsel, added that the new statutes passed in the State budget this year require DPW to have a special traffic related review of developments for new curb cuts or expanded use of existing curb cuts. We don't have the power to condition what is going to happen in the State right-of-way, DPW can impose conditions to assure adequate traffic flow and movement in connection with a new or expanded curb cut. The Commission would have to work with the State DPW to insure adequate mitigating measures.

Mr. Widdiss, Commissioner, said he doesn't see that the change in the access makes the project any less desirable than when we approved it. He would like to see some things changed but doesn't think the changes will happen, and that is not the applicant's fault. The applicant can only do so much and they have been willing to do whatever was asked of them.

When there was no further discussion Mr. Early moved to possible vote and asked that any motions made be stated clearly and concisely.

Mr. Evans, Commissioner, motioned to deny the MVY modification under Chapter 831, section 15.b., development in the manner proposed will have a more adverse impact on the environment in comparison to alternative manners of development, 15.c., the proposed development will adversely affect other persons and property, 15.f., the proposed development will burden unduly existing public facilities. Mr. Filley seconded the motion.

Mr. Early called for discussion on this motion.

Mr. Morgan asked Counsel if we deny the modification is the original decision changed? Mr. Connors said no, it stays just the way it is.

Mr. Widdiss, asked Mr. Evans to clarify the burden on public facilities and the adverse effect on persons and/or property that he is alleging.

Mr. Evans stated that it is his view that these modifications are not an improvement of the original design when it comes to the traffic impact on State Road. My points were summarized by Mr. Young earlier. One of the things the original proposal has was a tapered down indication on the highway to guide people from a 3 lane situation into a 2 and that is now missing. That is the only thing I want to add to Mr. Young's earlier testimony. I'm only looking at whether the proposed modification is a benefit (improvement) or detriment over the original design. My understanding is that is my job.

Ms. Mederiors asked if this modification was the same as the one originally submitted to the Planning Board? Ms. Eber responded yes, the modification is the original plan that the Planning Board didn't like.

Mr. McCavitt, Commissioner, asked wasn't that because of the potential for 2 openings so close on State Road caused by the Town's hope in the future to do something with lot 7.2 and put a road in there? It was
responded in the affirmative. Mr. McCavitt continued, we know now that the Town has no interest in developing a road at this time. Isn't that correct? Ms. Eber responded no, not at this time. Mr. McCavitt stated there is no conflict at this time, it is the potential for conflict.

Mr. Ferraguzzi said that as Mr. Evans said this is a modification and the fact that Planning Board didn't want this because they felt it was a bad system just supports Mr. Evans issues. The potential for another road is still there.

When there was no further discussion Mr. Early called the vote. Reminding Commissioners that a yes vote was to deny the modification and the original decision of the Commission of June 18, 1987 would stand.

The motion to deny the modification of the previous DRI decision based Chapter 831, Section 15.b., c., and f. carried with a vote of 11 in favor, 5 opposed, (McCavitt not eligible to vote).

After a short recess Mr. Early reconvened the meeting at 10:20 p.m. and moved to the next agenda item.

ITEM #5 - Discussion and Possible Vote - MVY Realty Trust Subdivision DRI# 292.

Mr. Early described the proposal as follows: MVY Realty Trust, c/o Roche, Carens, & DeGiacomo, location: State Road, Vineyard Haven, MA, proposal: Subdivision of land qualifying as a DRI since the proposal is located on property which has been the subject of a previous DRI. He stated that Mr. Connors would give a brief summary of the parameter of this DRI and a staff review of development concerns is included in your meeting material.

Mr. Connors stated that this is the subdivision of a portion of the lot previously discussed tonight. There is no new development proposed, no different development is proposed, it is simply the division of land into various parcels. The purpose of such a subdivision plan is to afford some protection against changes in the Town's zoning regulations. You could approve it, deny it or approve with conditions. If conditions are imposed I might suggest a condition that you might want to include be that this subdivision doesn't allow any development that differs from what was previously approved in your DRI last year, and if land is used for any development other than the DRI that you approved with all of its conditions, that each proposed element of construction on all/or any lots would have to come back to the Commission for review as a DRI. If cumulative impacts are caused by lot by lot development, we reserve the power to impose future conditions on previous decisions because of cumulative impact. So that if, when the 3rd development was presented to you it had traffic problems that should be corrected by the 1st and 2nd in addition to the 3rd, that you retain the power to
impose those kinds of conditions. If you think that approach is acceptable we can work out appropriate language for you to consider.

Mr. Ewing, Commissioner, asked if the lot not included in this subdivision plans would be exempt from zoning changes? Mr. Connors responded no, it would not be exempt.

Mr. Evans asked how long this protection lasted? Mr. Connors responded 8 years plus an additional 10 months to 1 year from that time to process the subdivision plan.

Mr. McCavitt, Commissioner, asked doesn't the subdivision plan, if approved as is, also protect the layout of the proposed subdivision road? Mr. Connors responded yes but I assume you would also have a condition that the road must abide by the rules and regulations of the Planning Board as they are in effect right now.

Mr. Jason, Commissioner asked if the applicant is not withdrawing his application? Mr. Connors responded that the applicant is not prepared to withdraw.

Mr. Ferraguzzi, Commissioner, asked could we restrict the gross total of square feet for building on this subdivision? Mr. Wodlinger stated there would be no need to if we condition it to come back to the Commission. No abstract planning is necessary, it is sufficient to say that any construction on any or all of the lots has to come back to the Commission.

Ms. Eber, is it possible to condition that no 2 or more lots could be combined for any one purpose after the subdivision? Mr. Connors stated no, we should deal with proposed developments later. Mr. Wodlinger said this is just a subdivision proposal, which makes it possible for instance for the landowner to sell off different parcels but anyone who wanted to build would have to come back before the Commission.

Mr. Ewing said this makes sense but the counsel for the applicant has already said that he doesn't agree with the reasons the subdivision is before us, namely once a DRI always a DRI. Mr. Wodlinger stated that the applicant had made a claim that he was reserving his right to contest the regulation which says that any land which has previously been the subject of a DRI remains the subject of a DRI in the future. He did reserve the right to contest that, on the other hand he has submitted the subdivision and it doesn't seem to be a very real complaint at the moment.

Mr. McCavitt stated that from his point of view, it is difficult to see, based on the plan, any benefits of the project in terms of alleviating traffic on State Road since there was no traffic analysis done to this particular configuration and in my looking at the plan and discussing it with staff it appears my real concerns spring to full life in this plan. In that there are in this plan 2 curb cuts, 1 to Old Holmes Hole Road and 1 for the new subdivisions proposed access. In all fairness there has been no traffic study of the impact
of an access at this location, no specified use, and no way to determine the benefit/detriment balance in these respects. There are no mitigating benefits. If Section 15 is the required standards I am hard pressed to see benefits, but can see several potential detriments including potential loss of access over Old Holmes Hole Road and the roadway subdivision ending in fire gate and preventing access to the back area this way. I have problems with the plan.

Mr. Widdiss stated the subdivision as presented uses an existing access. Concerning the traffic impact of these 4 lots, there is none at present. Traffic will not be generated by the subdivision as presented.

Mr. Young stated he does not believe that if Cronigs wasn't there, there would still be the same amount of traffic in that particular spot. The potential impact of traffic when the subdivision is built out is substantial. The way it is designed it is guaranteed there would be 2 curb cuts within 40-60 feet of each other on State Road. To approve a plan that places 2 potentially heavily used roads within such close proximity of one another is very bad planning.

Mr. Morgan asked is it a fact that the proposal enjoys its own access? Mr. Connors stated that the curb cut now existing, under the new statutes mentioned earlier tonight, would require permission from the State DPW for increased use or improvement.

Mr. Morgan stated it is disturbing to think that any land owner next to, or across the street from here could do this without ever being before us. It is scary to think we are giving them a double whammy. I see no traffic on this 4 lot subdivision.

Mr. Evans stated we are concerned with planning, not getting people. The way in which the rules for DRIs are set up gives us the opportunity to review, and rereview again for any changes. The counsel for the applicant has said this is just a subdivision. What has not been stressed is this is also a road layout. It gives legal permission to use the proposal in this way. It says you can come out this way for whatever uses that might be generated on these lots. Is that correct? Mr. Connors stated as long as they meet the Town requirements. Mr. Evans also stated it is extraordinarily difficult to monitor incremental growth. One of the things we can see is that this whole B-2 strip, this commercial area is only 1/4 developed, this is shocking. What concerns me is this is not just a subdivision it legally allows traffic, at least from our standpoint, to enter onto State Road under this configuration. Mr. Connors stated that if you don't approve of the configuration you can deny. This DRI is subject to all conditions that usually apply to DRIs.

Mr. Jason, I thought we should be basing the decision on benefits vs. detriments. In one DRI we say no we don't want the commercial mixed with the residential, we now have the commercial away from the residential and we are saying it is a detriment. That doesn't make sense. The only logical approach we have is to approve with
conditions that any development come back as a DRI. There are no facts as to the use of the property, how can you say there are detriments?

Mr. Young stated that residential subdivision traffic has always been part of DRI review. Commercial subdivisions should include this also. Mr. Morgan stated there is one difference. How many residential subdivisions do we say, we will approve the line but won't allow you to move one spoonful of dirt without coming back before the Commission?

Mr. Ferraguzzi, Commissioner, asked if the southern lot that is not included in this subdivision, would also have to come back for review? Mr. Early responded yes.

Mr. Ewing asked Ms. Skiver if this proposal would add 3 lots to that 94 figure on the land use inventory for B-2? Ms. Skiver responded Yes. Mr. Ewing stated his point is that it is a good rule that we look at this as DRI.

Mr. Morgan asked how do you foresee the next plan for subdivision of a parcel on Martha's Vineyard requesting 3-4 lots? If this is voted down, how could you vote through the next one? Mr. Ewing responded that he looks at each one specifically. There was further discussion between Mr. Morgan and Mr. Ewing on this topic.

Mr. Filley asked if there was any possible option to the Planning Board's decision for crash gates. A possible option would determine a possible benefit/detriment. Being the potential future use of the road to the back lots. It is valid to consider an option to the 2 road access. Ms. Eber stated that the applicant had not offered the public the use of the subdivision road as the other offer was made and the crash gate was his request. The idea is that the crash gate can be easily removed if he wants to connect this road to anything else. Mr. Filley stated if there is not a potential for using this road as a unified access I see it as a detriment.

Ms. Mederios, if these lots change to residential use do they come back? Mr. Connors stated we could condition not to look at residences if we choose. Ms. Medeiros asked if each lot would have an individual review? Mr. Connors stated we could make exemptions.

Mr. Evans brought up what the engineer for the applicant addressed in the public hearing. That is the Tisbury requirements for road layouts and that this road and the way it is layed out would not be able to join Old Holmes Hole Road as I understand it and meet those underlying road specifications. Looking at the plans this can't work technically. You have a 100 foot radius. Mr. Morgan stated that Old Holmes Hole Road is not before us. Mr. Evans said Mr. Filley wants to take out the crash gate to connect the road.

Mr. Morgan motioned to approved as presented with the following conditions. 1. No excavation, 2. no vegetation removal, and 3. no development, without return to the MVC for review as a DRI.
Mr. Jason confirmed this meant no development would be permitted and then seconded the motion and added that these conditions should be so noted on the linen.

Ms. Medeiros stated there are no provisions for ownership of the road lot 5. Will it be owned by the 4 lots, common ownership, who will maintain it? Mr. Jason asked isn't that one of the conditions of the Tisbury Planning Board? Ms. Eber said yes that there be common ownership of the road. Mr. Jason said this should be handled at the local level. Mr. Early stated that usually the planning board hearing would follow the Commissions approval.

Mr. Filley asked, is it true the road can't be constructed as conditioned? Mr. Connors responded that is correct. Mr. Filley then asked at the time the road is brought before us can we then discuss the two curb cuts? The response was yes.

Mr. Evans stated by going ahead and approval with conditions we are literally giving permission, which we will not be able to change no matter how many reviews we have, for 2 curb cuts in a place that is already a problem. I think we should reject this because it is not good planning. The applicant is free to come back, without prejudice with a good plan in terms of access onto the road and address these concerns.

Mr. Jason asked Ms. Skiver to designate the curb cut for this subdivision road? He then stated he wants the record to reflect there is no new curb cut.

Mr. Young stated that is not the issue, what Mr. Evans is saying there is going to be considerable additional traffic, at least the potential, coming out immediately adjacent to another curb cut already accommodating a great deal of traffic. I agree with him absolutely, that considering all the alternatives the design could come in more accommodating with the traffic on one road and in that respect under Section 15.a this subdivision plan is not appropriate in view of the available alternatives.

Mr. Filley asked counsel again, when developed, we could transfer the public rights of access over to Lot 5? Mr. Connors stated the Commission doesn't have the right to say close off the public rights of way on Old Holmes Hole Road and go over to that piece of private land. We don't have that right, that is allowing public access to private land. It may be that the owner of the land may want to do that, perhaps make the same offers he made with the earlier application, but the Commission doesn't have those rights.

When there was no further discussion Mr. Early called for a vote on the motion to approve with the following conditions: no excavation, no vegetation removal, no development without returning to the MVC for review as a DRI. The motion carried on a vote of 9 in favor, 6 opposed, 1 abstained (Scott), (Delaney was not eligible to vote).
ITEM #6 - New Business - There was none.

ITEM #7 - Correspondence

Mr. Early read a letter of December 6th from Senator Paul Doane regarding the commission's correspondence urging opposition to Senate Bill 1905. The letter stated that the legislation was redrafted as Senate Bill 1923 and that after his diligent work to impede the progress of the bill, he is pleased to report that the legislation did not make it out of the Senate Committee on Bills in Third Reading. Due to prorogation of the Massachusetts Legislature in the wee hours of November 23, 1988 Senate Bill 1923 (formerly Senate Bill 1905) was effectively killed for this legislative session.

The meeting was adjourned at 11:25 P.M.

ATTEST

John G. Early, Chairman Date

J. Woodward Filley, Clerk/Treasurer Date

Attendance:

Present: Jason, Lynch, Widdiss, Filley, Young, Eber, Ferraguzzi, Evans, Scott, Early, Medeiros, Wey, Ewing, Lee, Morgan, Delaney, McCavitt.

Absent: West, Allen, Geller, Harney, Harris.