

# THE MARTHA'S VINEYARD COMMISSION

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MINUTES OF JANUARY 12, 1989

## MARTHA'S VINEYARD COMMISSION MEETING

The Martha's Vineyard Commission held a public hearing on Thursday, January 12, 1989 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: Vineyard Crossing, Inc.  
Thomas C. Wallace  
P.O. Box 210  
Edgartown, MA 02539

Location: Off Franklin Street  
Tisbury, MA

Proposal: Subdivision of land into 28 lots qualifying as a DRI since the proposal is for division of land into 10 or more lots.

James Young, Chairman of the Land Use Planning Committee (LUPC), read the Vineyard Crossing Public Hearing Notice, opened the hearing for testimony, described the order of the presentations for the hearing, and introduced Ann Skiver, MVC Staff, to make her presentation.

Ms. Skiver reviewed the staff notes (copies are available in the DRI file), reviewed correspondence from ComElectric, dated August 10, 1988 (available in DRI file), and showed a video of the site depicting the tennis courts, the topography and vegetation existing on the site, the power line easement, and the buildout of the adjacent properties. Ms. Skiver then responded to questions from the Commissioners.

Ms. Colebrook, Commissioner, In reference to the Tighe & Bond report, this suggests to me that the groundwater flow is in the direction of Lake Tashmoo. Ms. Skiver stated that the applicant stated conclusive evidence does not exist as to whether groundwater flows toward Vineyard Haven Harbor or Lake Tashmoo. Ms. Colebrook stated she mentions this because this study was done in consideration of this site as a possible location for the Waste Water Treatment Station. Excess amounts of nitrogen were detected and if in fact the system the system was put here they would have had to install advanced nitrogen treatment facilities.

Mr. Young, Commissioner, asked if the affordable housing sites would be deeded to the Regional Housing Authority (RHA) or the Town of

Tisbury? Ms. Skiver as written in the by-law they are just noted on the plan and recorded at the Registry of Deed in perpetuity, they won't be deeded to either. Mr. Young, the Town will select the applicants? Ms. Skiver responded yes based on criteria in the by-law and the applicants will purchase the lots from the developer. Mr. Young went on to ask what happens when that person decides to sell? Ms. Skiver stated the owner is responsible to sell the lot to the next qualified person on the list, the price would be based on calculations in the by-law. Ms. Skiver went on to state that this would be the first situation arising that would require administration of this by-law. Mr. Young responded that is precisely why it deserves attention and asked Ms. Eber, Commissioner and Chairman of Tisbury Planning Board, to comment on this. Ms. Eber stated that Ms. Skiver's responses were correct. The Plan is to make an agreement with the RHA and they would eventually administer the lots. Mr. Young, but that agreement hasn't been made yet. Ms. Eber responded no. Mr. Early, Commissioner, asked if there is a reason these lots can't be conveyed to the RHA? Mr. Jason, Commissioner, stated the Memorandum of Understanding with the RHA has not been approved yet. Ms. Mederios added that Tisbury and the RHA are still working on their agreement. Mr. Young, Commissioner, asked that with this being the case, if it would be wiser to deed these lots to the RHA? Ms. Mederios stated she would be better able to respond to that question next week when more information is available and she has time to investigate this.

Mr. Jason asked who owns the lots across the power lines from this site and if they are all built out? Ms. Skiver responded that some are owned by Vineyard Crossing, Inc. and some are owned privately and designated them on the wall map and referred to the aerial photo for a buildout estimate. Mr. Jason then asked the status of the ComElectric easement, is that Vineyard Crossing property with an easement over it? Ms. Skiver responded yes. Mr. Jason went on to ask if these lots are contiguous why doesn't it fall under the 15,000 gallon generation basis? Mr. Young asked for clarification of that question. Mr. Jason stated that during discussion of the Planned Development District it was stated if you generate more than 15,000 gallons total for contiguous lots that you have to go to an onsite treatment facility. There was discussion as to the total generation of this subdivision and the possibility of the contiguous lots being used in the 15,000 gallon calculation.

When there were no further question Mr. Young called on the applicant to make a presentation and/or address questions.

Mr. Tom Counter, Wallace & Co., planner and resident of Tisbury for 15 years. Using the same town zoning map that Ms. Skiver used he showed the zoning districts and the square foot per lot requirements for each, the West Chop Woods and the trail systems, the ComElectric land, the Tashmoo Woods triplex units. He stated that the Planning Board asked that they consider the density in the Tashmoo Woods (1 unit per acres) area and the area across from the power lines and try to fit the planning in between these two densities. He stated that the ownership of the area across from the power lines keeps changing and made correction to current ownership stated earlier. He stated that Vineyard Crossing has made substantial improvements to this neighborhood including sidewalks, fencing, decks, etc. Concerning the

location and what else might be built here, Tashmoo Woods to the west is built and that it it, it won't come any closer, there is a 50' green belt on the border of Tashmoo Woods. On the north there are three housing units and a golf course. We did at the request of the Fire Department attempt to construct a thru road here but the current owners were not agreeable so we have left the crash gate construction to allow this possibility in the future. To the Northeast is the West Chop Woods. To the East the residential area of Boxwood, Clark, and Leland Avenues. There is no building allowed in the power line zone. There was a dump on this property and upon buying the property the Town requested we clean it and we did but the rest of the area could use alot of upgrading, specifically the area of the power lines to compensate for the previous herbicidal use. He stated there had been repeated contact with Mr. Best at ComElectric regarding the use of the power line easement land. He went on to read a list of benefits of this proposal and describe the rationale for deciding on this use as opposed to other possible uses for this area. He stated the Tighe & Bond report was inconclusive as to the direction of groundwater flow. The prices of the dwellings in the area across from this site are as affordable as you can get on the Island. We have tried to deal with the affordable housing issue in this and other ways. There will be covenants on this subdivision to save trees 40-60 ft in height and he displayed a wall map denoting the building zones and green space required by the setbacks. We think we have prepared a good plan addressing drainage and lot clearing as well as other issues. Another benefits is that local people are doing this project, so we are contributing to the local economy and we have a stake in the outcome. He distributed pictures showing the renovations made to the properties and neighborhood across from this site. He explained that the tennis courts have been renewed since they purchased this property. That the V.H. Yacht Club, all previous owners, and all residents of Vineyard Crossing, Inc. will have access to these tennis courts on a first come first serve phone reservation basis. There are not many tennis courts in Tisbury and this is a benefit to the community. He stated that there is a reduction in density to what was previously submitted and the applicant's desire to reduce the visual effect of the ComElectric lines on the area. He went on to state that their analysis of the cost to the Town and the tax income that will be generated show a net gain to the Town. He also stated that they would cooperate with the Town concerning the affordable housing issue. He then answered questions from the Commissioners.

Ms. Harney, Commissioner, asked what is the price range for these homes? Mr. Counter responded that they have no plans to do the building. The lots fall in the 70-75,000 range based on today's market.

Ms. Colebrook, Commissioner, asked how many bedrooms there are in the neighboring development? Mr. Counter responded that he would have to calculate that but approximately 2 1/2 bedrooms per lot.

Ms. Sibley, Commissioner, asked for the details of the statement you made that the tax revenues from the development will outweigh the costs to the town? Mr. Counter stated that he had used the same basis for calculations as Ms. Skiver which are available in the staff notes and that these calculations do not include the cost of public works because that is unquantifiable.

Ms. Bryant, Commissioner, asked what the homeowners dues and assessments involved? The response was maintenance of the tennis courts (capital investment), maintenance of the green belt, and the usual costs of the upkeep of the neighborhood. Ms. Bryant then asked why affordable housing lots were only exempt for 2 years? The response was that 2 years is required by the Tisbury By-laws. Ms. Bryant stated that exempting this further would be good. Mr. Early stated this could be conditioned in the decision.

Mr. Young, Commissioner, asked if this road would be a private road? Mr. Counter responded it has not been discussed yet. Ms. Medeiros stated that Tisbury would not accept the road until after construction.

When there were no further questions for Mr. Counter, Mr. Young called on comments from Town Boards.

Edith Eber, Chairman of the Tisbury Planning Board, wanted to give some additional information about the Tashmoo Woods development. These 28 structures that Mr. Counter referred to are part of a cluster development totalling 206 acres with 45+ acres of open space. 29 buildings with 3 units, and 1 with 2 units equalling 89 dwelling units. The map the applicant has presented does not show the whole subdivision and I am concerned it might be a misinterpretation of the Tashmoo Woods development and it's density. Ms. Eber continued that the Tisbury Planning Board has not rendered a decision yet, however we have concerns. Is density of the subdivision compatible with the the existing developments in the surrounding area? One member also expressed concern about people living so close to the power lines and the possibility of suffering injurious health effects.

Ms. Colebrook, Board of Health Agent, stated she had the same concerns and called the Department of Radiation Control, the Department of Public Health, and the Epidemiology Clinic. There are ongoing studies on electronic transmission and association with bladder cancer and childhood leukemia. They suggest that people considering living in the vicinity of an electromagnetic field contract with a company to take measurements. Mr. Young, Commissioner, asked if the study suggested a safe distance? Ms. Colebrook stated that each site was considered differently and that is why a measurement was the best way to go. The study is inconclusive and it is not proven to cause cancer but it does indicate that by weakening the immune system it may promote certain illnesses. Mr. Early stated there would probably be differences depending on the magnitude of the line and the distance of the line from the ground. Ms. Colebrook added that the configuration of the wiring also contributed. These studies are not conclusive, but there are unknown factors present.

When there were no more town board members who wished to comment, Mr. Young called on public in favor of the project.

Mr. Tom Wallace, applicant, stated that when the project purchased was previously an application in litigation with the Town over a subdivision plan. We wanted to get away from that. Since then we have made improvements to the exteriors of the houses and the neighborhood. We significantly added to the year round housing by

converting 18 cottages to year round rentals, many with affordable housing subsidies, selling to clergy and Island residents, many at low mortgage or below market rates.

When there were no more comments in favor or opposed to the project Mr. Young called on Mr. Counter for any closing remarks.

Mr. Counter closed by stating he is available to answer any questions that may arise and he encourages everyone to review the Environmental Impact Report available on file.

Mr. Young closed the public hearing at 9:25 p.m. and stated the record would remain open for one week.

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After a short recess Mr. Early reconvened the meeting and moved to the next public hearing.

The Martha's Vineyard Commission will hold a public hearing on Thursday, January 12, 1989 at 8:30 P.M. at the Commission Office, Olde Stone Building, New York Avenue, Oak Bluffs, Massachusetts, pursuant to Chapter 831, Acts of 1977, as Amended, Section 10 and Chapter 30A Section 2 of the Massachusetts General Laws. The purpose of the public hearing will be for the Commission to receive testimony and determine if the proposed regulations conform to the guidelines for development of the Lagoon Pond District of Critical Planning Concern specified in the Commissions designation of this district on January 28, 1987.

The District includes the specific area defined as follows:

Starting at Lagoon drawbridge and Oak Bluffs Town line, thence northeasterly on Beach Road to Eastville Avenue; southeasterly on Eastville Avenue to Temahigan Avenue; northeasterly on Temahigan Avenue to a point 1,500 feet from the mean high water line of Lagoon Pond. From this point, including all the land within 1,500 feet of the mean high water line of Lagoon Pond in the Town of Oak Bluffs. At the southerly portion of Barnes Road this boundary shall extend to the intersection of Barnes Road and Edgartown-Vineyard Haven Road, A/K/A the Blinker Light, thence in a northwesterly direction along the Edgartown-Vineyard Haven Road to the intersection of Park Avenue, Town of Tisbury, Assessor's Map 16 Block B, Lot 2, thence continuing in a northerly direction including the land within 1,500 feet of the mean high water line of Lagoon Pond to Causeway Road, Town of Tisbury, Assessor's Map 9, westerly on Causeway Road to the intersection of Main Street A/K/A Massachusetts State Highway, northeasterly on Massachusetts State Highway to intersection of Beach Street thence northerly on Beach Street to the western bound of the Town of Tisbury's Commercial District bound (boundary between Map 9 Block A, Lots 11 & 12), southerly along eastern boundary of parcel 9-A-41 then easterly along southern boundary of parcel 9-A-22 to Howard Avenue, southerly along Howard Avenue and the Commercial District Bound, at the point before Mud Creek Bridge, then easterly to the waters of Lagoon Pond (including Mud Creek and Bass Creek) thence easterly along the mean high water line to the point of origin and including the waters of Lagoon Pond.

Mr. Early read the public hearing notice while Ms. Waterman, MVC staff, outlined the boundaries on a wall map (copies of the legal notice were distributed to Commissioners, available to the public, duly noticed in the newspaper, and available in the public hearing file). He opened the hearing for testimony, and introduced Ms. Waterman to make her presentation. Ms. Waterman reviewed staff notes (available in the public hearing file) and addressed each regulation following the legal notice format, answering questions from Commissioners and public as she proceeded.

A. Ms. Waterman explained the rationale for the MVC regulation and the input from Town Boards and that this regulation will assure the formal involvement of the Conservation Commission and the Highway Department in project review.

Doug Dowling asked on the erosion control is this a zoning by-law or rule and regulations? Ms. Waterman responded that it is a rule/regulation governing the subdivision of land. Mr. Dowling then stated that as with the State statute for Planning Board processes the Board of Health has a limited time period to reply to a submittal. Why not keep that same time period for the Highway Dept. and the Conservation Commission, otherwise the Planning Board can't act without getting a report? There was discussion as to what the time period was 30-45 days. Ms. Waterman stated that sounds like a good suggestion.

B. & C. Ms. Waterman stated the next regulations are geared toward the Board of Health. There are approximately 7 of these.

Questions: Doug Dowling how will monitoring be performed by digging up the septic and inspecting it? Mr. Young responded no only if the Health Agent suspects failure. Mr. Dowling responded that monitoring is being done now in Tisbury by recording pumpouts and they flag anything that seems abnormal. Mr. Young responded that comes up later under records of pumpouts and also coming up later is certification of systems when property is transferred but the monitoring is distinct. Mr. Dowling there is a practical method and a need to monitor the cleaning of septic systems. The state requires that they be periodically pumped out depending on the use. The Town hasn't enacted this because there is no place to put it. There should be automatic monitoring by pumpout records. Mr. Young stated that this is different in that it is annual monitoring of the systems within 1,500 ft. of Lagoon Pond. This will act year to year as a record for the health agent to review findings within the DCPC. Mr. Dowling so it is more like a reporting procedure? Mr. Young, Yes and it is more intensive than you would find elsewhere in the Town. I see your point on acting on pumpout records and ensuring pumpouts on a regular basis, but it does raise the point of what to do with it.

Ms. Waterman stated the next regulation has to do with pumpouts. That submission of pumpout records will be the duty of the homeowner of a newly permitted system. The purpose of this is to place the burden on the homeowner and not rely on the pumpout company to comply with the Towns regulations. Our purpose for these requirements is somewhat an educational one, a lot of people need to be educated on the need for pumpouts and the number of pumpouts received in a given period. Mr.

Dowling stated that the only real way is through the pumpers. All pumpers are licensed under Title V and under their licenses they are required to make reports of pumpouts. If there is no pumpout slip they can't pump or dump. The responsibility should be on the pumpers themselves, their licence and livelihood is on the line. So this is a way to monitor pumpouts and show compliance. If the town doesn't do it on a postcard mailing or newspaper notification the owners aren't going to remember to do it.

Rick Karney: There are problems with the way cesspools will be monitored. If they don't function they don't necessarily have to be pumped?

Ms. Colebrook: The problem we have specifically in Tisbury is not that people don't have their system pumped. The problem is that most are old and they are running all over the ground and are inadequate. What we mean by monitoring is doing visual inspections, locating the cesspool, which is nearly impossible, by doing die tests and following the die's path. Although there are many that dispute die tests we can use them to locate the cesspools. More importantly we can monitor the pumpouts and determine if more than 2 per year are done. If we decide by monitoring pumpouts and visual inspection that further evaluation is required we get a certified engineer to evaluate the cesspool. If the engineer/designer says the system is working we believe him, if not we require that it be brought up to Title V. Ms. Colebrook stated that Tisbury and Oak Bluffs already has a by-law which requires that property being transferred or sold be upgraded to Title V.

Ms. Waterman stated that by yearly monitoring the Boards of Health can decide where problems occur. Mr. Young the subcommittee has also discussed whether upgrading to Title V should be required of properties applying for building permits specifically building permits which are going to reflect a change in the sewage flow. The towns have not adopted this but it is open to debate.

Ms. Colebrook: The Tisbury Board of Health does have that policy that change in use or increased use require the applicant to upgrade to Title V.

Ms. Waterman moved on to the next subject: Mounded systems. By their definition are septic disposal systems that cannot achieve the minimum separation from groundwater required by Title V. Given the identification of nitrates, a normal end-product of a properly function septic system, as a problematic nutrient in the pond, any measures which unduly promote septic systems must be discouraged. However, a mounded septic system is a better alternative than a failed system or an old system which rises and falls with the tides, and so may be considered for some dwellings.

Mr. Jason asked if staff is familiar with the changes in the flood plain by-law which I hear requires septics to be up to base flood? Mr. Jason asked if there is a conflict here? Ms. Waterman stated she is not familiar with this.

Ms. Colebrook stated that DEQE is not in favor of mounded systems.

Mr. Dowling: Mounding a system does not change the operation of the system. In some cases it increases its capabilities by placing it on a deeper more clay base. The design criteria should be determined by a qualified engineer based on the needs of the particular site, not on regulations. He cited the Chilmark regulations as a good example, that you can mound a system if you don't influence the groundwater separation, and asked staff to look at these regulations.

Tom Counter: What about the wording for existing dwellings, the State Lobster Hatchery, Tashmoo Boat Yard, etc, might not fall within this wording. I suggest changing Page 5, para 4 last sentence from dwelling to structure.

Ms. Waterman moved to the next topic: Sales or transfer of property requires system inspection. This is an appropriate time to assess the health of the septic system. The wording is taken from the West Tisbury Board of Health regulation.

Mr. Dowling: Engineers are not certified they are licensed I suggest changing the wording. How you can monitor this I don't know, I guess that is a legal question. But how professional engineers can certify the system meets Title V is impossible. To say it meets Title V and Town standards you would have to be there during construction and installation to make this determination. Otherwise you are talking about destroying the system to make this determination, that is if you can find it. I think it is just not practical. To determine if the system meets the letter of Title V is impossible.

Ms. Colebrook: Mandate regulations written by the Town of Tisbury is that you have to have Title V at time of transfer. You check with the Board of Health to see if certification is on file. Then call the engineer to put in Title V system if one does not exist. Variances and waivers are possible. Mr. Dowling asked how they would monitor sales and transfers? Ms. Colebrook responded they would read newspapers, notify lawyers, real estate agents, bankers, etc. When we find a property has been sold and we don't know about it then we contact the new owner.

The next item is the regulation that states that all new construction will be limited to one bedroom per 15,000 sf of total lot area, excluding all wetlands. For existing unbuilt lots, a maximum of 3 bedrooms may be built on those lots less than 45,000 square feet in size. A guesthouse or accessory structure will be included in the estimated total number of bedrooms. The intent is to control the amount of wastewater and the concentration of nitrates that would enter into the groundwater through a person property. Ms. Waterman stated there is a schematic drawing of the rationale behind this regulation at the back of the staff notes. She then explained this rationale.

Ms. Colebrook: If you are putting in 40 milligrams of nitrates per bedroom and the EPA accepted limit is 10 and nitrates don't bind with the soil or dissipate how does it happen there is such a discrepancy between 10 and 40? Ms. Waterman stated it is taken up and diluted. The problem with these calculations is that you are looking at the property as if it exists in isolation. The open space or uses around the property can change these figures.

Mr. Dowling: Wants to go on record as disagreeing with the 15,000 sq. ft. regulations. I would be interested to know if MVC staff has inventoried the number of lots less than 45,00 sf in the DCPC. I've never heard of a bedroom producing nitrates, it is usually people producing nitrates. I think the bedroom calculations should be thrown out and the gallons per day used, because you have variables caused by offices, dens, etc. in the home. The other thing I have a problem with is the statement excluding all wetlands. A wetland is a plus to eliminate nitrates in a watertable. If you have a wetland on your property the rainfall doesn't jump over the wetland, it flows into the wetland which eventually goes into groundwater. The total area has to include all the rainwater that falls on the property whether it is wetland, paved, etc. You still have that amount of flow from the sky into the flow and eventually into the groundwater. You have no pluses for those specific special instances that would fall outside this concentration problem. Therefore I would like to propose an amendment that says where compliance to these regulations causes a hardship to a lot in existence prior to 1/14/88 the requirements may be modified by the Board of Health. The other thing being the concentration from 15,000 to 10,000 feet for two bedrooms.

Mr. Early asked Mr. Dowling to submit any specific proposed amendments in writing.

D. Road run-off: The intent of this regulation is to control the heavy metal contamination to the Pond. Studies on the Cape have shown that road runoff may also contain high levels of fecal coliform bacteria. The purpose of this regulation is to prompt development of non-technical methods to trap and to filter runoff before it enters Lagoon Pond.

Mr. Dowling: There is no reason the Town should be dumping anything into the pond. There are very simple solutions that aren't costly that the highway departments can work out. Even though you can't make a regulation to make them do it someone should take the lead and show them ways of doing this. This is a tremendous problem with the pond. Road runoff is a health problem. Mr. Young stated that the Commission is hesitant to put deadlines on the Towns. We hope the selectmen will require the highway department to do this. Mr. Dowling stated that it is human nature to put off things. Mr. Young responded that the subcommittee will be following through on what is being implemented once these rules and regulations are enacted.

E. Harbormasters: The powers of the harbormaster are considerable, controlling anchoring, mooring and navigational activities. Yet increased use of Lagoon Pond has shown the need for improved management of the Pond. The hope is that the towns will urge the harbormasters to promulgate and implement coordinated marine regulations for Lagoon Pond.

There were no comments or questions on this item.

F. Pier construction permit guidelines: Ms. Waterman noted that Coastal Zone Management has submitted favorable comments on this regulation and they are included at the back of the staff notes.

General Questions:

Mr. Jason: Have you considered developing a shellfish management program for Lagoon Pond? Ms. Waterman stated that according to the shellfish wardens there are management plans in place. Mr. Jason asked can we make Lagoon Pond more productive with a better shellfish management program? Rick Karney: Stated within limits. The most important thing is to have clean water. I want to impress on the Commission the severeness of the situation. We can seed the pond but when it rains you have poisons running off the street and then everything is killed. Management can't help that. The most important management objective is trying to clean up this pollution.

Mr. Ewing: Concerning road runoff, I remember some discussion about being able to divert runoff through the use of vegetative swales, catch basins etc. Are there culverts that empty directly into the pond? Ms. Waterman responded yes, 1 near Hines Point, another on the Oak Bluffs side. Mr. Ewing, my question is, often these culverts can be redirected to allow ways to filter this water, is there any technical information generated or that you have seen that suggests ways to do this? Ms. Waterman stated she has a bundle. Chatham has done a very good job in coming up with inexpensive ways to control road runoff. We can supply information to the Highway Department on controlling road runoff.

Mr. Wey stated that one of the major problems with the Lagoon is the restriction of flow created by the sandbars. The restrictions to the flow must be removed.

Mr. Dowling: It states there should be accurate shellfish bed maps, who will prepare these? Ms. Waterman responded that the towns will pin point which agencies will prepare these maps.

Ms. Waterman pointed out the comparison on the last pages of the staff notes among the MVC proposed regulations, Tisbury proposed regulations, and Oak Bluffs proposed regulations. The town regulations are usually more stringent.

Mr. Early asked if there were any more specific questions on the presentation that Ms. Waterman has just given. He also stated that he feels the presentation was excellent considering the complexity of the subject matter.

John Lovewell, Sewer Commissioner and engineer from Edgartown, What about private wells in this area? They tend to lower the groundwater table and influence direction of water out of the pond. Also what about the 65 acre watershed that Oak Bluffs has at the upper end of the pond? What is their plan for water consumption. There was nothing in your regulations to address this.

Mr. Morgan stated that things similar to that were suggested relating to water sources when this came before us. However, we are talking really about the surface waters of Lagoon Pond and what might go into it and not if you overpump a private well and get salt water contamination.

Mr. Dowling: Applicability of the Town well is that this well must be pumping a million gallons per day. Does the Town have plans of shutting down that well and going to the new one in the State Forest. There are not many private wells in that area that influence anything. At the head of the Lagoon, because that is the worst circulation point, you are taking away a tremendous quantity of water that would normally flow in and dilute that Lagoon and flush the Lagoon from that end. You are depleting the natural flushing cycle of the Lagoon and that should be interesting to see when you run a mass diagram on your concentration, how that affects it.

Mr. Wey stated that a good portion of the usage is coming out of the well at the State Forest at this time.

Mr. Dowling: In talking about the high nitrate concentration going into the Lagoon it was noted that the tests were done at certain times of the year at certain locations. In a study system of continuing functioning systems you don't get that plume of nitrates you get a steady, smoothed over flow of nitrates because the flow is slow. That indicates to me that again the Highway Department probably has to take the lead here because that indicates there is major flushing. I don't think it is an expensive proposition to divert the first flush of a rainflow from the road into a temporary basin and then let the rest go into the pond if that's the way it has to go. I think the Towns should bite the bullet and do it. Ms. Waterman stated that one of the things noted in the Poole report is that 90% of the nitrogen entering the pond is groundwater carried and that points to fertilizer and septic usages.

Rick Karney: I have concerns over the whole process with regard to whether many of these recommendations will be carried out and within a schedule. Can the Commission or subcommittee review the progress in say, 6 months? Mr. Young stated that they do intend to do just that. Furthermore we are very interested in seeing what develops in the marine commercial district area. As Ms. Waterman stated we were asked to exclude it from the DCPC against our better judgement based on the Towns assertions that they are doing something to control input into Lagoon Pond waters from that area. We expect to see something done and if not the boundaries can be amended to include that area at a future date.

Reverend Dorchester stated that at a recent meeting with the Conservation Commission in Oak Bluffs when they were reviewing the guidelines that you have there was a very important observation. Unless we have a Master Plan for the use of the surface waters of the Lagoon that depicts what we would like in 5-10-15 years from now then we are going to see what has happened these last two summer continue to creep down the Lagoon almost like a blight. If you watch the moorings move because of the overflow from the harbor, they move from Hines Point and are going right down to the other end of the Lagoon and that is going to happen on both sides. Boats are now moored almost in the center of the Lagoon so that the corridor for water skiing and small boat activities is very severely narrowed. It seems to me that unless there is some design to which we are working it is just going to happen. There is no number of moorings that is the magic number, you can have as many moorings as the Lagoon can hold and

that is the way the rules are at the time. Nobody knows who should do that but it is a great need at the time. Mr. Young stated that we share your concerns and one of the things that we see as very important and something that we are going to follow up on as far as exerting pressure in the 2 Towns is to get some coordination between the 2 harbor masters concerning the Lagoon Pond waters and also to do more thorough policing of these waters. At the moment, we think that enforcement on Lagoon Pond is very difficult because those departments are understaffed. A couple of people shared by the 2 towns to police the area as well as putting together regulations to limit the surface uses would be beneficial and we will follow up on that.

Elizabeth Talbot stated that suggestions were made to propose a jointly funded summer position for an assistant harbor master. Has it been decided that that is a good idea? Mr. Young responded that at least one staff person is a very good idea and we have tried to meet with the 2 harbor masters to discuss this. Ms. Talbot then asked if a separate committee could be set up to address the problems of Lagoon Pond in lieu of individual harbor masters.

Ms. Medeiros stated that Tisbury has just formed a new group because our harbor group has fallen apart. So we have formed a group to come up with a new plan and new regulations. Ms. Waterman stated that she had been invited to join in these meetings. Mr. Young asked if this group is to address surface water usage? Ms. Medeiros responded yes. Mr. Young asked if they are going to meet with Oak Bluffs at some point? Ms. Medeiros stated that once they get set up they will ask Oak Bluffs to join a meeting with this group.

Mr. Early reminded Commissioners and public that any rules and regulations should be reviewed from time to time on any DCPC and they can be amended and fine tuned as the need arises.

A member of the public asked what procedures would be followed from this point on. Ms. Borer stated that regulations have to be adopted by January 26th. These regulations will be submitted to each town to be incorporated into the Town Regulations.

Mr. Early read a letter from Mr. Erolle J. Hass which is summarized as follows: Raises questions and criticisms wearing 3 hats, concerned citizen, homeowner on the shores of Lagoon Pond, and member of the O.B. Conservation Commission. Sec. B: Needs to be clarified. Sec. F: makes him uncomfortable, the entire Lagoon under the right conditions could have a "high probability" of becoming a shellfish bed. Sec. F 3c: preservatives such as "Wolmanizing" leech at such a slow rate that no problems are created. Sec. F, 4: I think it is a mistake to limit piers to 50'. On a positive note I want to congratulate the Commission for a job well done and I certainly hope that my remarks prove to be constructive.

Mr. Early closed the public hearing at 10:50 p.m. with the record remain open for 1 week.

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Mr. Early convened the Special Meeting of the Commission at 10:50 p.m. and proceeded with agenda items.

ITEM #1 - Chairman's Report

Mr. Early showed a copy of the bound edition of Chapter 831 given to the retired Commissioners.

ITEM #2 - Old Business

Mr. Early stated that he had promised the Superintendent of School that he would have a Commissioner to serve on the Regional School Space Needs Committee for their first meeting on January 23 are there any volunteers. Ms. Linda Sibley volunteered. Mr. Early stated they also need a member for the Joint Transportation Committee. Ms. Betty Ann Bryant volunteered. Mr. Early thanked Commissioners for their increased attendance at LUPC this week.

ITEM #3 - Minutes of January 5, 1989

It was motioned and seconded to approve the draft minutes as prepared. The motion to approve passed with no opposition, 2 abstentions (Wey, Medeiros). (Harney in favor, Allen abstained.)

ITEM #4 - Committee Reports

Mr. Young reported that he was pleased with the increased attendance at Land Use Planning. That Ms. Colebrook was a welcome addition and her input was very useful. He went on to say that Mr. Morgan could not make the meetings on a weekly basis so all other Commissioners are still urged to attend. He went on to state that during the discussion on the Crocker/Millbrook DRI the applicant was persuaded it was not a good idea to push the definitive West Tisbury plan through now. We jointly worked out a direction to pursue the overall parcel and a meeting is scheduled for January 30th. Next week we will meet with Peter Martel on the Wesley Arms in preparation for the January 26th public hearing and about the Bourne DRI in preparation for our deliberation of that decision.

Mr. Jason stated there was a Planning and Economic Development meeting at 6:30 tonight in which they discussed the Oak Bluffs Planned Development District. There will be a PED meeting on the 19th following the Commission meeting.

Ms. Borer stated that on January 19th the Commission would meet with The West Tisbury Planning Board to discuss the Flexible Zoning proposed by-law.

ITEM #5 - New Business - There was none.

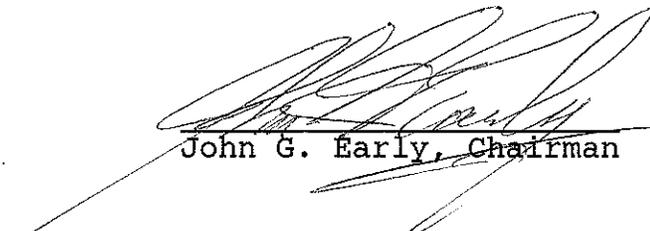
ITEM #6 - Correspondence - There was none

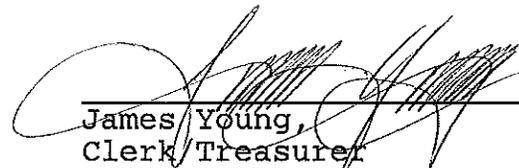
ITEM #7 - Possible vote to enter into Executive Session regarding litigation.

It was motioned and seconded to move into executive session and not to reconvene in regular session to discuss litigation. This motion passed on a roll call vote of 15 in favor, no opposition, no abstentions. (Harney and Allen in favor).

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

ATTEST

  
\_\_\_\_\_  
John G. Early, Chairman      Date 1/19/89

  
\_\_\_\_\_  
James Young,  
Clerk/Treasurer      Date 1/19/89

Attendance:

Present: Bryant, Colebrook, Early, Eber, Ewing, Filley\*, Fischer, Jason, Lee, Medeiros, Morgan, Scott, Sibley\*\*, Wey, Young, Allen, Harney.

Absent: Evans, Delaney, McCavitt, Geller.

\* Mr. Filley was not present for DRI #293, Vineyard Crossing.

\*\* Ms. Sibley arrived at 8:55 p.m. during DRI #293's applicant presentation.