

# THE MARTHA'S VINEYARD COMMISSION

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

MINUTES OF FEBRUARY 9, 1989

## MARTHA'S VINEYARD COMMISSION MEETING

The Martha's Vineyard Commission held a public hearing on Thursday, February 9, 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: Edgartown Marine  
John J. Taroli, Agent  
Morse Street, Box 215  
Edgartown, MA 02539

Location: Herring Creek Road

Proposal: New construction qualifying as a DRI since the proposal is greater than 3,000 square feet and is on property which was the subject of a previous DRI.

James Young, Chairman of the Land Use Planning Committee (LUPC), read the Edgartown Marine Public Hearing Notice, opened the hearing at 8:35 p.m., and stated that the Applicant has withdrawn this proposal. He then closed the public hearing.

Mr. Young then proceeded to the next public hearing regarding the following Development of Regional Impact (DRI):

Applicant: MSPCA  
c/o Edmond G. Coogan, Esq., Agent  
P.O. Box 1639  
Vineyard Haven, MA 02568

Location: Off Edgartown-Vineyard Haven Road  
Edgartown, MA

Proposal: Request for modification of July 7, 1988 DRI decision qualifying as a DRI since the development is the subject of a previous DRI application.

Mr. Young read the MSPCA Public Hearing Notice, opened the hearing for testimony, described the order of the presentations for the hearing, and introduced Greg Saxe, MVC Staff, to make his presentation.

Mr. Saxe reviewed staff notes (available in their entirety in the DRI file) addressing the following issues: Building sizes, access, parking, zoning, Lily Pond Well Zone of Contribution, sewage proposal, site features, and the following concerns: Retain 3 conditions from previous decision with the exception of the easement for egress via bank site; including sewage flow monitoring, animal exercising policy, and cedar shingles as siding material. Mr. Saxe used wall displays to explain the differences between the existing buildings, the 1987 proposal, the 1988 proposal, and the current proposal. He then answered questions from the Commissioners.

Mr. Jason, Commissioner, asked for the square footage of the proposed shelter in the 3 proposals? Mr. Saxe responded that the original proposal was for 4,500 sq. ft., the 1988 proposal was 2,415 sq. ft., and the current proposal is 2,128 sq. ft.

Ms. Colebrook, Commissioner, asked if the existing building is the same square footage as that proposed? Mr. Saxe responded that the existing shelter is approximately 2,000 sq. ft. The proposed building shows a fenced in dog area which will be constructed like a porch extension and therefore the building really isn't as large as it appears.

Mr. Evans, Commissioner, asked for an explanation of the traffic flow, isn't Pennywise Path a one way road? Mr. Saxe responded that the road is flatter and wider near the bike path and has sufficient room for 2 cars to pass there. The traffic flow is functional now, since the plans don't include an increase in use it should continue to function.

Mr. Evans then asked about the parking provided and required? Mr. Saxe responded that the parking would remain as is.

Mr. Saxe went on to state that regarding the possibility of access/egress through the bank property, I have looked at the site and it appears that this would be physically possibility. I believe the problem would be monetary not physical.

When there were no further questions for Mr. Saxe, Mr. Young called on the applicant to make his presentation.

Mr. Coogan, agent for the applicant, stated that the MSCPA can now fiscally handle the proposal that is before you. We want to tear down the existing shelter, which is not good for the animals due to lack of individual cages and difficulty cleaning the area. In its place we want to build a facility which will address the needs of the animals including individual cages and ease for cleaning. When we originally made this proposal we proposed making changes to Pennywise Path but the neighbors didn't feel the traffic warranted these types of changes and voiced their disapproval.

When Mr. Coogan was finished Mr. Young asked if Commissioners had any questions for him, there were none. Mr. Young then called on Town Boards to present testimony, there was none. He then called on public testimony in favor of the proposal.

Margaret Hall stated she has been in favor of this proposal since the start and has filled the Gazette with articles to that effect. She feels that it is time we get this up and running so we can use the facility. She went on to state that she has 3 cats.

Joe Robichau, resident of the area, stated that it is nice to see a workable plan presented. Regarding the question on Pennywise Path, the traffic works very well as it is.

When there was no more testimony in favor of the proposal, Mr. Young called on testimony opposed to the proposal, there was none. He then called on Mr. Coogan to make a final statement, he had none other than to applaud the audience and the statements in favor of the proposal.

There was no further questions or testimony. Mr. Young closed the public hearing at 8:50 p.m.

-----  
Mr. Early opened the Special Meeting of the Commission and proceeded to move to item #5 on the agenda.

ITEM #5 - Discussion - MSPCA Modification DRI

There was no discussion on this DRI. Mr. Early moved to the next item.

ITEM #6 - Possible Vote - MSPCA Modification DRI

It was motioned and seconded to approve the proposal retaining the 3 conditions from the previous decision. There was no discussion. This motion carried with a vote of 12 in favor, no opposed, no abstentions. (Harney was in favor.)

There was a round of public applause following the Commissions vote on this DRI.

After a short recess Mr. Early reconvened the meeting at 9:00 p.m. and proceeded with remaining agenda items.

ITEM #1 - Chairman's Report

Mr. Early stated he had intended to appoint members to the Comprehensive Island Plan Advisory Committee tonight, however, some of the Commissioners I had planned to appoint aren't present tonight. A handout has been distributed that briefly summarizes the purpose and activities of this Committee. He stated his proposal for the Committee as follows: Mr. Filley and Ms. Harney, co-chairpersons, with Mr. Evans, Ms. Colebrook, Ms. Bryant, and Mr. Fischer as members. He then stated that this would be addressed on next weeks agenda.

Mr. Early then stated he would like to raise the topic of last week's new business, namely the Gazette article and their insinuations of alleged conflicts of interest of our Executive Director. He stated

that he directed Ms. Borer to contact our counsel, present them with the facts as we know them and the article, and request a legal opinion. We received 2 pieces of correspondence from Mr. Kenneth Laurence as Chairman of the Choate, Hall & Stewart Ethics Committee. I spoke to Mr. Laurence and Mr. Connors in a conference call yesterday and requested a statement regarding Mr. Laurence's qualifications. The 1 page letter dated February 8th addresses this and I believe the qualifications listed are impressive. The second, 5 page letter, specifically addresses the Gazette's allegations. We received this letter in time to distribute copies to the Commissioners this morning. I called an Executive Committee meeting tonight and also discussed this with several commissioners, Mr. Young, Mr. Filley, Mr. Jason as well as Ms. Borer. In my opinion the letter completely clarifies issues not addressed or mis-addressed by the Gazette. I asked Mr. Laurence yesterday if he would be willing to come to the Commission meeting next week if the Commissioners decide it would be necessary or helpful. Both Mr. Connors and Mr. Lawrence indicated that they could attend. He then asked if the Commissioners had any questions regarding the content of the letter as it address the allegations in the newspaper? Also whether the Commissioners deem it necessary to have counsel present to further clarify the issues?

Commissioners' discussion is summarized as follows:

Ms. Harney, Ms. Bryant, and Mr. Wey, Commissioners, stated that they think the letter is clear and concise. It is an excellent letter that addresses the questions raised. They didn't feel it is necessary for both counsels to come down here on the Commissions nickel for further clarification.

Ms. Colebrook and Mr. Young, Commissioners, raised concerns regarding questions that have been planted in the public mind and their feelings that the opinions of the Commission counsel is probably not sufficient to clear up these questions or reestablish the credibility of the Commission or its Executive Director. Several Commissioners agreed that if there are questions, let them be presented to the Commission and then we will respond.

There were suggestions that this might best be dealt with through the State Ethics Commission and the fact that the Commission may not be subject to their statutes. Mr. Morgan, Commissioner, stated that the State Ethics Commission only gives an advisory opinion, not a final judgement and that it could still be questioned, as it often is.

Mr. Evans stated that he thinks the article in the Gazette did raise the issue of whether it is wise for staff members of the MVC or members of their families to be actively involved in real estate transactions as a business, not whether you rent or own a house. I think that we should examine this question and if we don't feel this is a valid point, we have made our statement to the public. If you do think it is, let's talk about it. Mr. Filley, Commissioner, stated that he agrees with Mr. Evans. As a Commission we have to bind ourselves together again and move on. We have too many other things to do, let's use this as a stepping stone to reaffirm our position and how we are going to conduct ourselves and go ahead.

Mr. Saxe, MVC Staff, said he thinks we are dealing with two separate things. One is the question of whether or not staff should be involved in real estate. The other issue is that if the Gazette had used that type of structure for any other subject matter, some one would write to them and either ask for a formal apology or ask them to publish a letter from us and explain where they go their information from.

Mr. Early stated that for the record I have not heard from any concerned Commissioners other than Mr. Young and we met back in November and that is on the record prior to this article. I have talked to him since then. I was particularly disappointed that the newspaper didn't have the courtesy to approach me. I am willing to talk to anyone, any member of the Commission, the staff, the public, or any member of the press regarding this or any other issue that might arise.

Mr. Early then moved to the next agenda item and stated that because of a possible conflict of interest he would turn the gavel over to Mr. Filley, Vice-Chairman for this section of the meeting.

ITEM #2 - Old Business - Priester's Pond DRI; Request for Re-wording of a condition.

Mr. Filley stated that a copy of the condition referenced in the letter he is about to read has been distributed to the Commissioners. He then read the letter from H.K. Bramhall, Jr., Vice President, Seven Gates Farm Corporation, dated December 14, 1988. Dear Ms. Borer: The M.V.C. Decision on the Priester Pond Associates subdivision was recently brought to our attention, and we wish to take exception to the wording of paragraph #3.b. on page 15: "THE APPLICANT HAS AGREED TO ALLOW RESIDENTS TO FISH CROCKER AND PRIESTER'S POND WITH PERMISSION." Crocker Pond, up to and including the water line, belongs to Seven Gates Farm Corporation, as does roughly two-thirds of Priester's Pond. We therefore respectfully request the Commission to re-word this paragraph. cc: Frank Hoch, John Early.

There was discussion as to how this condition could best be reworded. Mr. Jason motioned that we change the wording of 3.b. by adding the words "of the owner" after the words with permission. This motion was seconded.

Ms. Sibley asked if the issue is that the applicant is in effect continuing to allow access over his land for the purpose of fishing Crocker and Priester's Pond? Then I would suggest additional wording to say that the applicant is willing to allow residents access to Crocker and Priester's Ponds for fishing with the permission of the owners?

Mr. Jason stated that he doesn't want a landcourt battle over who owns the pond. Ms. Sibley stated this would only say he is allowing the access.

Mr. Young stated it did come up at the Planning Board and we felt the same as the Commission did. If they can get permission from the owner they can fish the pond. The conflict did come up over the ownership and the point is that now that the dam needs repair no one wants to claim ownership. As far as we can understand somewhere around the dam, maybe down the middle of the dam, there is a line of ownership across Priester's Pond and as far as I understood the ownership of Crocker's Pond is entirely with Seven Gates Farm. What we granted here is probable fine but there is this objection from Mr. Bramhall. I suggest that we do this, the applicant has continued to allow access to resident to fish Crocker and Priester's Pond with the permission of the owner. Is that going to cover it?

Mr. Jason withdrew his motion.

Mr. Filley asked Ms. Borer about the access and if it is on common land of the applicants or on land that would belong to individual owners when they buy into the subdivision? Ms. Borer stated she believes that it is a 200' strip that is suppose to be conservation/common lands.

It was motioned and seconded that the condition be changed to THE APPLICANT HAS AGREED TO CONTINUE TO ALLOW ACCESS TO RESIDENTS TO FISH CROCKER AND PRIESTER'S POND WITH PERMISSION OF OWNERS. This motion carried with a vote of 11 in favor, 0 opposed, 1 abstention (Early).

Mr. Early returned to the table and proceeded with agenda items.

ITEM #3 - Minutes of February 2, 1989.

It was motioned and seconded to approve the draft minutes as prepared. There was no discussion. This motion carried with no opposition, no abstentions. (Harney was in favor).

ITEM #4 - Committee Reports

Mr. Young, Chairman of LUPC, stated that they met Monday with the applicants for MSPCA and with the withdrawn Edgartown Marine applicants. We also met with the M.V. Regional Refuse District concerning the temporary all-Island Transfer Station which we will see as a DRI. They are trying to get their contract with Seamass underway as of July 1, 1989. This will be a 3 year temporary site northwest of the landfill site. There was discussion as to whether they should submit the preliminary plans or wait until they come up with a definitive plan. We advised them to wait and come in with the definitive plan.

Mr. Jason stated that Planning and Economic Development Committee report would come under Item #5.

When there were no other committee reports Mr. Early moved on to the next item.

ITEM #5 - Discussion - Alice Bourne DRI, Town of Edgartown

Mr. Early asked Ms. Waterman, MVC staff, to give an update on this DRI. Ms. Waterman gave an update (available in its entirety in the DRI and Meeting File) which highlighted the following: MVC conditions of the June 26, 1986 Decision, points to note from previous staff notes, correspondence received since the January 5th public hearing, and summaries of issues from the January 23rd LUPC meeting and the January 5th public hearing. The main issues were questions of height of the proposed structure vs. height of the previous approval and the adjacent cottage, possible flooding and flood plain regulations, and the view impact. Ms. Waterman then answered questions from the Commissioners.

Mr. Evans stated that a more subtle, less intense use is appropriate in this area. I didn't feel good about granting approval for the guesthouses but I think this is unwise. We should stick to the original approval.

Ms. Sibley stated that this is a specific area that the tourists come to gape at. We are selling our vistas as a tourist community. I have a lot of concerns about filling this entire lot, which this proposal appears to do.

Ms. Waterman stated that this proposal would only be 6" higher than the adjacent cottage if they are allowed to build at the 5' contour. It will either be 21' above sea level or 26' above sea level depending on whether the Zoning Board of Appeals (ZBA) grants a variance.

Mr. Early asked if the ZBA doesn't grant the variance would it come back to us? Mr. Young stated that we now have this as a condition. If we don't allow the option and the ZBA denies the variance then it is not buildable.

There was discussion about the square footage previously allowed by the by-laws governing guesthouses, 900 sq. ft., and the proposed size of this building, approx. 2,700 sq. ft. without the carport and porches.

Mr. Lee, Commissioner, stated that he doesn't think we should encourage building in the flood plain, at all.

There was a consensus that the Commissioner want the area staked out to show the proposed height at the two different elevations and a site visit to determine the effect on the vista. Mr. Jason was appointed to work with the developer to set up these stakes and coordinate their positioning.

Mr. Early asked the applicant if it was agreeable to extend the time period for this decision to March 17th to allow for this site visit? The applicant agreed to this extension.

ITEM #5 - Discussion - Designation of Planned Development District DCPC, Town of Oak Bluffs

Mr. Jason, Chairman of the Planning and Economic Development Committee (PED), stated that Ms. Skiver, MVC staff, would give a review of the Draft Designation that is in the Commissioners' packets.

Ms. Skiver stated that sections 1-4 use standard language. Section 5 contains the proposed guidelines. I suggest you review these carefully. We are trying to set up the framework for the planning process. She then answered questions from the Commissioners.

Ms. Colebrook asked is it correct that the conservation land is still included in the boundaries? Mr. Wey responded that since there are questions of ownership on this parcel, namely whether Mr. Brine had clear title when he deeded it to the Conservation Commission, we have decided that the parcel should stay in. Mr. Jason stated that our intent is to keep this as conservation land so there really isn't a conflict.

Ms. Harney asked about the ownership claims on this land? Ms. Skiver stated that some of these people attended the PED meetings. MBT Realty Trust claims over 100 acres of this parcel. Concerning the Conservation Land, guideline #10 specifically addresses this land.

Mr. Adams, MVC staff, stated we haven't tried to relate this guideline to ownership, we have addressed the conservation issue.

Ms. Sibley suggested that it would be appropriate to consider the impact of this area not only to the downtown area of Oak Bluffs, as in guideline #15, but it should also encompass the Vineyard Haven and Edgartown business zones seeing that the area is almost as close to these two business zones as it is to Oak Bluffs. She suggested adding an "s" to the word zone in #15. Mr. Wey stated that this was meant to address the concerns of the Oak Bluffs business people who fear a dual shopping district will disturb their businesses. Mr. Jason said it is a good point, however we were addressing the feasibility of this district in relation to Oak Bluffs. I can't see how this will affect downtown Vineyard Haven or Edgartown. Mr. Evans stated he agrees with Ms. Sibley. This centrally located property should not take on the regional mall scale in comparison to the Vineyard scale of other downtown areas. Past experience does show that it could have a negative impact on existing business areas. I can see people from Edgartown, namely the Vineyard Haven - Edgartown Road residents, coming to this center instead of going into downtown Edgartown. Ms. Skiver said that guidelines #1 does address this. Mr. Filley stated that he would endorse the addition of an "s" in guideline #15.

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

ITEM #6 - Possible Vote - Designation of Planned Development District DCPC, Town of Oak Bluffs.

It was motioned and seconded to designate the Planned Development District as a District of Critical Planning Concern (DCPC). Mr. Early opened this motion for discussion.

It was motioned and seconded to add an "s" to the word zone in guideline #15. This motion passed with a majority vote.

The motion to designate this area passed with a vote of 11 in favor, 1 opposed, no abstentions. (Harney was in favor).

ITEM #7 - New Business - Chicama Inn, Francis Cournoyer

Mr. Early asked Ms. Borer to brief the Commissioners on this issue.

Ms. Borer distributed copies of a sketch received from Mr. Glen Provost, agent for the applicant, and stated that due to the recent fire, the existing foundation has been rendered unusable. The applicant has requested our permission to fill the existing foundation and move the building footprint approximately 40' as shown in the sketch you have in front of you.

There was discussion among the Commissioners as to the approved and actually uses of this structure. It was decided that the change in the building footprint should be allowed. However, the letter stating approval should remind Mr. Cournoyer that the DRI was approved for five one-bedroom motel units, as shown on the specific floor plans, and that any change in this use must be submitted to the Commission for determination if a DRI public hearing is warranted. In addition, all conditions from the April 1987 decision shall remain.

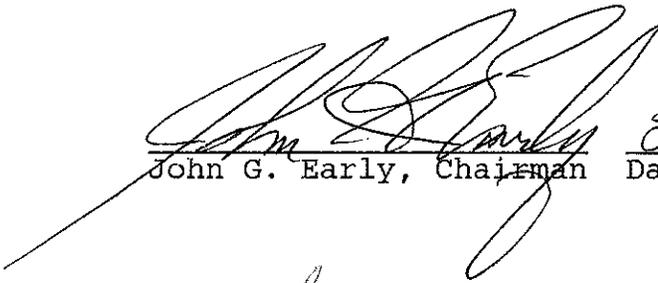
ITEM #8 - Correspondence

Mr. Early stated that the Commission had received a response to their letter to Mr. Haigazian on February 3rd and they read the following letter: Dear Mr. Early, Please be advised that Mr. J. Young has now applied to the Oak Bluffs Zoning Board of Appeals to clarify the issue which you have raised. In the matter of the Courtney Building on Circuit Ave., neither the building nor the use can be considered pre-existing, non-conforming, as this is in the B 1 Zoning District. If you have any further questions on this matter, feel free to contact me at your convenience. Thank you for your interest in our town. Sincerely, Alishan Haigazian, Building Inspector. cc: Oak Bluffs Board of Appeals, Board of Selectmen, Board of Health, Jeff Young, Eugene Courtney, Edmond Coogan, Oak Bluffs Town Counsel, Eric Wodlinger, Choate, Hall & Stewart.

There was discussion among the Commission and Staff regarding Mr. Haigazian's determination that the Courtney Building is neither pre-existing nor non-conforming. It was decided that the staff should investigate this issue, specifically the septic set-back requirements and the variances from these requirements and report back to the full Commission with their findings.

The meeting was adjourned at 11:17 P.M.

ATTEST

  
\_\_\_\_\_  
John G. Early, Chairman      Date 2/16/89

  
\_\_\_\_\_  
James Young,  
Clerk/Treasurer      Date 2/16/89

Attendance:

Present: Bryant, Colebrook, Early, Eber, Evans, Filley, Jason, Lee, Morgan, Sibley, Wey, Young, Harney.

Absent: Ewing, Fischer, Medeiros, Scott, Delaney, McCavitt, Allen, Geller.