

THE MARTHA'S VINEYARD COMMISSION

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MINUTES OF APRIL 20, 1989

MARTHA'S VINEYARD COMMISSION MEETING

The Martha's Vineyard Commission held a Regular Meeting of the Commission on Thursday, April 20, 1989, at 8:00 p.m. at the Commission's offices, Olde Stone Building, New York Avenue, Oak Bluffs, MA.

Mr. Early, Chairman, opened the meeting and proceeded with agenda items.

ITEM #1 - Chairman's Report

Mr. Early stated that, as most of you know from the Executive Session on April 6th, Choate, Hall & Stewart last Thursday filed with the court a letter opposing the Motion to Intervene by VCS in the suit between the MVC and MVY Realty Trust. He also stated that a press release was made on the day of the filing.

He went on to state that the Commission meeting would be held in the basement of the Old Whaling Church in Edgartown and requested Commissioners to be there at 7:00 p.m. to meet with the Edgartown Planning Board regarding the B-II regulations.

ITEM #2 - Old Business - There was none.

ITEM #3 - Minutes of April 13, 1989

It was motioned and seconded to approve the draft minutes as prepared. There was no discussion. The motion passed with no opposition, 1 abstention, Medeiros. (Harney was in favor, Allen abstained.)

ITEM #4 - Committee and Legislative Liaison Reports

Mr. Morgan, Legislative Liaison, reported that the Excise Tax Bill we submitted would be held because a State wide bill appears to be going through. This bill would give 66% of revenues to the jails/correctional institution, 10% to the Registry of Deeds, and 24% to the County. There has been discussion about excluding Martha's Vineyard and Nantucket from this bill since the existing property taxes, i.e. Land Banks on both islands, would cause us to have the highest land transfer tax in the United States. There have been discussion, by Senator Turkington, for Nantucket and Martha's Vineyard to settle for \$1.00 instead of the proposed \$2.28 and this might work out better

than our bill and might insure that the County get the same amount of funding as would be possible with our bill. He stated there might be some efforts to push this through by the State to allow them to recoup some of the loan monies that were distributed to needy correctional institutions. He reminded Commissioner that our jail facility is not one of these and has got everything it needs. Mr. Morgan also reported that a Moped Bill requiring renters be insured has just been filed by Senator Turkington and he will keep the Commission posted on its progress.

Ms. Harney, Commissioner, asked, aren't they required to have insurance now? Mr. Morgan responded no. Ms. Medeiros added they can't find anyone to insure them. There was discussion about this being a possible means of moped control if insurance is required and can't be found.

Mr. Early asked if all the other moped bills are dead? Mr. Morgan responded that the Bill requiring dealers to be insured is now being held. There was further discussion about this bill.

Mr. Fischer, Chairman of the Gay Head Area DCPC Committee, reported that the Committee had met Tuesday and discussed pending permits. We also discussed Mr. Madison's proposal to introduce a few more lots into the DCPC bounds, the public hearing that was held last week, and our future plans to meet with Town boards, Coast Guard representative, and the Tribal Council. We will be meeting next week at 6:00 p.m. at the Old Whaling Church in Edgartown.

Mr. Early asked if any further correspondence has been received from the Coast Guard? Ms. Borer, Executive Director, responded no, but we have received many letters from the public.

Mr. Ewing, Chairman of the Edgartown Ponds DCPC Committee, reported that the Committee had met last week to review a video made of the area during a site visit. They also reviewed an exemption requested, not favorably, and discussed future tentative guidelines for the district. The public hearing will be next week at 8:00 p.m. at the Old Whaling Church in Edgartown and I hope everyone will be in attendance. He stated the the Committee would also meet on Wednesday at 5:00 p.m. Ms. Waterman, MVC staff, stated that they would also meet Friday at 4:00 p.m. at the Pohaganott Road to look at the other side of the Pond.

Mr. Early then returned to Item #3

ITEM #3 - Minutes of April 6, 1989 Executive Session

It was motioned and seconded to approve the draft minutes as presented. There was no discussion. This motion passed with no opposition, 2 abstentions, Filley, Sibley. (Harney was in favor, Allen abstained.)

Mr. Early then moved back to Item #4

Mr. Young, Chairman of Land Use Planning Committee (LUPC), reported that there was no meeting this week and that LUPC would not meet again until May 1 at which time we will discuss the Martha's Vineyard Refuse District DRI, the Red Farm Modification DRI, and the Aquinnah DRI.

Mr. Filley, Co-Chairperson of the Comprehensive Planning and Advisory Committee (CPAC), stated that last week's meeting was to discuss transportation issues and identify major issues. We met tonight to discuss Land Use Planning policies and issues. CPAC will meet 2 weeks from tonight and then every Thursday in May. There will be 2 public meetings, May 21 and May 23rd.

ITEM #5 - Discussion - Marshall & Lewis DRI, Town of West Tisbury

Mr. Early introduced Greg Saxe, MVC Staff, to give an update on this DRI.

Mr. Saxe reviewed the location, access, and terms of the subdivision. He pointed out the new plan in relation to the old plan, both displayed on the wall. He stated the applicant had originally offered a 400' setback from Middle Cove to protect this highly prized natural area and the visual quality from the adjacent Reservation property. After discussion with the applicant they had agreed to put a 400' leaching restriction on the Thumb Cove side to allow addition protection, shown on the new plan. Also shown on the new plan is the easement on the lots. The exceptional value of the area in terms of wildlife is why the application has offered such a large setback. There was LUPC discussion to limit the lawn size, this area is now a dense oak forest and the applicant wants to do selective thinning to open up pockets of natural grasses. There was also discussion at LUPC about limiting the use of fertilizer, relocating the septic, (which is shown on the new plan), and for the Conservation Commission to act in an advisory capacity regarding any cutting from their 100' jurisdiction for another 100' into the property.

There were no questions for Mr. Saxe.

Mr. Young stated that LUPC had recommended approval with conditions, the conditions being: no fertilizer use, no lawns with the exception of natural vegetation used in landscaping, a leaching envelope (which is shown on the new plan submitted), and for the West Tisbury Conservation Commission to act in an advisory capacity regarding cutting between 100 and 200 feet from Thumb's Cove.

Mr. Filley, Commissioner, asked Mr. Young what the LUPC envisioned as an advisory capacity? Mr. Young responded that is it clear that the applicant will seek to find an individual to purchase this land who has the same interest in the Pond as he does and that they would seek the expert advise of the Conservation Commission regarding any cutting in this area.

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

ITEM #6 - Possible Vote - Marshall & Lewis DRI, Town of West Tisbury

It was motioned and seconded to approve the DRI with conditions as set forth by the LUPC. There was no discussion. The motion passed with 10 in favor, 0 opposed, 1 abstention, Early. (Harney was in favor, Allen abstained.)

ITEM #5 - Discussion - Langmuir Subdivision DRI, Town of West Tisbury

Mr. Early again introduced Mr. Saxe to give an update on this DRI.

Mr. Saxe showed the location on the wall display, reviewed the 2 previous DRIs on this land, and explained that this subdivision would create 2 lots, the South Pasture to be retained by the Langmuir and the North Pasture to be given to the Sheriff's Meadow Foundation. He stated that approximately one mile of horse trail easements have been granted and these trails will be maintained according to standards set forth in the deed. There is an area indicated on the plan that may be used for parking in the future, there was discussion at the public hearing and at LUPC about this lot and delineations of spaces. The way the deed reads they can improve the area if they wish and construct some fencing.

There were no questions for Mr. Saxe, so Mr. Early called on LUPC to make its recommendation.

Mr. Young stated that LUPC had recommended to approve as presented. I personally had questions about the parking and if spaces should be more clearly delineated, however the applicant doesn't plan any heavy usage and they don't want to encourage or advertise the availability of parking. Since it will be up to them when and if to improve this area I think we should leave the improvements up to their discretion also.

There was no further discussion so Mr. Early moved to the next agenda item.

ITEM #6 - Possible Vote - Langmuir Subdivision DRI, Town of West Tisbury

It was motioned and seconded to approve the DRI as presented. There was no discussion. This motion passed with a vote of 10 in favor, 0 opposed, 1 abstention, Early. (Harney was in favor, Allen abstained.)

ITEM #5 - Discussion - M.V. Hospital Parking Lot DRI, Town of Oak Bluffs.

Mr. Early introduced Tom Bales, MVC Staff, to give an update of this DRI.

Mr. Bales reviewed the location of the proposed parking lot, the abutters and the basic features of the proposal. He stated that the main issues at the public hearings dealt with negotiations between the Hospital and the Downing family, abutters. He read 2 pieces of correspondence received, summarized as follows: To: Dr. & Mrs. Downing, From: David F. Federowicz, M.V. Hospital Foundation (MVHF), Dated: March 24, 1989. 1. The MVHF would widen the gate in the stockade fence on Linton Lane to allow the entrance of another auto. 2. The MVHF would allow you, Dr. & Mrs. Downing, and your immediate family, sons and/or daughters, the continued use of the land which was staked out. 3. If Dr. & Mrs. Downing sell their property, other than to their sons and/or daughters, then the MVHF would have first refusal to purchase this property. 4. If Dr. & Mrs. Downing and/or their sons and daughters as outlined in number three want to sell their property and the MVHF does not want to buy it, then the area identified in number two above would revert back to the MVHF for their sole use. 5. The MVHF would improve the plantings in like kind which form a visual buffer between the area to be a parking lot and the land the MVHF allows the Downings to use with similar plantings. Included in the improvements would be a pedestrian entrance through the shrubs for the Downings in order to provide continued access to their property. 6. The MVHF would also visually mark two parking spaces as private for the use of the Downings as long as they or their sons and/or daughters own the property. The above is what I understand our conservation to be regarding the use of the MVHF land, parking provisions, and an entrance through the shrubbery. If we are in agreement, I will have the MVHF attorney draft an agreement so that the clarity of this agreement can be expressed and signatures affixed. From: Dr. & Mrs. Downing, TO: MVC, Dated: April 4, 1989. The following will clarify the agreement we had with the MVHF. 1. The MVHF was to put up a fence at the rear of the house so we would be provided with some privacy on Linton Lane. They were also to make all repairs on the fence. 2. They put in a front walk, a few trees, and gave us the land up to and including the buffer. 3. We agreed to have our telephone and electric services placed underground per their request. 4. The three parking spaces assigned to us in the parking area are seldom available. 5. We were given the right to park in front of our home because the space in the rear was seldom available as a result of illegal parking. We are opposed to the parking lot being pushed to our property. The first compromise in 72-73, the closing of Linton Lane, required us to go out of our way to have access to our property. Whether we are ready to suffer a second incursion hinges on a more equitable solution from the MVHF. As of this date, we have not reached an agreement with the MVHF. (All correspondence is available in its entirety in the DRI file.)

Mr. Young stated that the LUPC recommendation was for approval as presented. He also pointed out that all three LUPC recommendations made tonight were by unanimous vote.

Mr. Early asked what had happened to the discussion about using porous blocks on this lot? Mr. Young responded that the manufacturer had advised that these blocks should not be used in a hospital parking lot due to difficulties that would be faced by wheelchairs, crutches,

and elderly on this surface. It was also stated that due to the volume of use no grass would grow between these blocks anyway.

Mr. Filley asked Mr. Barbini, applicant's agent, if anything has changed since the letters were written? Mr. Barbini responded no.

Ms. Allen, Commissioner, asked if any further negotiations are planned? Mr. Bales responded that it appears the talks have stalled. Mr. Barbini added that the offer has been made and I believe that is it.

Ms. Bryant, Commissioner, asked considering these letters, why had LUPC voted unanimously? Mr. Young responded that in addition to continuing the public hearing, at the continued hearing we also left the record open for 2 weeks to allow the parties to come to some agreement. For the Commission to become involved in this dispute is not appropriate and it is not right to stall the DRI process in an area where litigation might be involved. The benefits of the proposal outweigh the detriment, with the only detriment being the lack of an agreement between these two parties. This parking lot is badly needed and the applicant did make some of the concession originally requested by the Downings.

Mr. Ewing asked if any LUPC members had visited the site and what their impressions were? Mr. Morgan stated that he did and believes the parking lot to be badly needed and was happy with the additional buffer proposed. Since there is nothing in the DRI process that allows another avenue we can't hold or deny this decision because of this dispute.

Mr. Young stated that staff had prepared an updated video and asked if the Commissioner would like to see it? The response was yes. Mr. Bales explained the video and showed the stockade and gate and the closing of Linton Lane with a rock depicted in the video.

Ms. Colebrook, Commissioner, stated that whether the parties agree or not, she wants to feel assured that the Downings wouldn't lose everything.

Mr. Early responded that everything the Hospital has presented as part of the plan will be binding on the applicant.

Ms. Allen asked if the proposals the Hospital has made in this letter would be accepted by the Commission as part of the decision? Mr. Early stated that the contents of the letter could be afforded as conditions to the plan as presented. Ms. Allen stated she would like this included although she feels distressed that there was no meeting of the minds.

Ms. Sibley asked, technically if we accept this and the provisions are revised, perhaps with additional concession to the Downings, would this have to come back to the Commission? Mr. Early responded no, as long as the conditions specified in the Decision are met. Ms. Borer added that we could request it come back to LUPC.

Ms. Sibley added that she had also visited the site and while she is sympathetic to the problems of Hospital encroachment faced by the Downings she doesn't believe that this DRI is the problem.

Mr. Morgan suggested that the Commission use care in preparing these conditions, we should word it that the Hospital is obliged to offer these concession not that the Downings are obliged to accept them.

ITEM #6 - Possible Vote - M.V. Hospital Parking Lot DRI, Town of Oak Bluffs.

It was motioned and seconded to approve the DRI with conditions as set forth in the Federowicz letter. There was further discussion about the additional requests of the Downings, that dealing with these negotiations are not in the scope of DRI review, that this DRI process has already continued longer than normal, and that negotiations of this type have in the past been resolved after DRI approval. This motion passed with a vote of 7 in favor, 0 opposed, 4 abstentions, Early, Ewing, Medeiros, Scott. (Harney was in favor, Allen was opposed.)

Mr. Early stated that while staff is preparing for the next item on the agenda I want to point out the handout in your packets entitled, "Development of a Site Planning and Design Review Process for Edgartown's B-2 Commercial District. He asked Commissioners to review this document prior to next Thursday's meeting with the Edgartown Planning Board at 7:00 p.m. at the Old Whaling Church.

Following a short recess Mr. Early continued with agenda items at 9:25 p.m.

ITEM #5 - Discussion - Swan Neck DRI, Town of Edgartown

Mr. Early introduced Melissa Waterman, MVC Staff, to give an update on this DRI.

Ms. Waterman began by stating there are two plans on the wall, one is the original submission and the second is a plan submitted yesterday by the applicant. Ms. Waterman then reviewed the staff update, (available in the DRI file) which gave a comparison of the two proposals. She referred the Commissioners to copies of a letter from Mr. Wallace dated April 17, 1989 in their packets, which outlined the features of the new proposal. Ms. Waterman then reviewed new correspondence received which is summarized as follows: From: Tim Simmons, Dated: March 22, 1989. Letter contained the following points: Interrelated character of the many habitats found along the south shore. Subdivision as presented will likely result in disturbance and fragmentation of a rich and diverse wildlife resource area. Believes a more sensitive and less damaging proposal can be created. From: Edgartown Shellfish Committee, Dated: March 23, 1989. The letter makes a correction, there is not a 4' rise above sea level in Edgartown Great Pond, closer to 2.5'rise. Mentioned problems such as overfishing, waterfowl population increase, and acid rain contributing to decline of Pond. From: Edo Potter, Dated: March 23,

1989. Proposed subdivision will destroy the wildlife habitats along the Pond's edges. Large lots will not preserve the Pond shore. Suggests clustering of homes, even at a density below minimum zoning, so that habitat is preserved in large chunks. Encloses West Tisbury Flexible Zoning By-Law as example. Believes that there is a better way to subdivide that will give the developer a fair return and also create a viable conservation area. (All correspondence is available in its entirety in the DRI file.) Ms. Waterman then answered questions from the Commissioners.

Mr. Morgan, Commissioner, asked if Ms. Potter's letter referred to old subdivision plan? Ms. Waterman responded yes, all of the correspondence was received prior to receiving the new plan.

Mr. Ewing asked where the 5 acres, that would be retained if the development rights were sold, would be located? Mr. Wallace, applicant, responded by stating they are flexible on this and would be happy to come back to LUPC for agreement on the site.

Ms. Bryant asked how many affordable housing lots are there? Ms. Waterman stated that the applicant proposes one affordable housing lot, off-site, on 1.7 acres which would contain 3 units, with one of these units for the caretaker who would be selected from the list supplied by Regional Housing Authority.

Mr. Early then asked the Commissioners to read Mr. Wallace's letter and give any questions or comments they had.

Mr. Young asked Mr. Wallace about the statement that the \$2,500 donation is tied to the subdivision approval, wouldn't it be better to tie it to the creation of the homeowners association, otherwise you might be funding the program yourself at the beginning? Mr. Wallace stated it would be economically more attractive to us but we felt that this is an important year to do these studies. The Edgartown Shellfish Department is trying to obtain funding from the Clean Lakes program but if they don't then these funds will be vital.

Mr. Early stated that concerning the mechanics, it states that this information will be made available to the Shellfish Department and the MVC, who will the money be furnished to? Mr. Wallace stated that they didn't want to tie that too tightly since the Shellfish Department may receive alternative funds they might possibly use the money for other water quality related purposes.

Mr. Young asked if the Homeowners Association would make this decision? Mr. Wallace responded yes, but it is specified for water tests or other studies relating to the Edgartown Great Pond.

Mr. Early asked if it is possible for the Edgartown Conservation Commission or a like agency to make that determination since they are experts in the field? Mr. Wallace stated that he had no objections to this if it could be worked out. We have demonstrated our intentions. Mr. Early stated that he is concerned because several past DRIs had marvelous conditions that were not fulfillable due to lack of stipulations.

Mr. Ewing asked what Mr. Wallace foresees as uses of the property if the developments rights were purchased? Mr. Wallace responded increasing the special habitat. The idea was to return the property to the way it was 30-60 years ago, which may have been a better habitat with open field, etc. Mr. Ewing asked if Mr. Wallace saw a potential for limited public access? Mr. Wallace responded that the conservation experts had argued against public access, it has been stated that this would be a big detriment to the wildlife habitat and that other portions of the Pond are clearly open to the public.

Ms. Sibley asked in reference to allowing the MVC to assign the development rights to non-profit agencies as it sees fit, have you tried to sell them directly? Mr. Wallace stated there has been some discussion with the Land Bank. He stated that they had given the Land Bank a lot of information but had yet to receive a response, although we did tell them we were not in a hurry. Ms. Sibley asked, then why the 30 day time limitation? Mr. Wallace responded we do have a large mortgage payment every month.

Mr. Young stated that he must abstain from this vote since I missed the continuation hearing. LUPC had no formal recommendation on this DRI, however there was a consensus that the applicant had responded to the input from the public hearing in a way that probably exceeded what we anticipated for conditions. Although I don't know how the additional offers could be translated into conditions.

Mr. Early asked if any other members of LUPC wished to comment.

Ms. Sibley stated that while everyone was impressed with the concessions offered by the applicant I still have questions. With all the conservation experts expressing desire to retain large chunks of habitat, and specific requests to eliminate lots 8 & 9, why is this plan still allowing only segmented habitat. Merging lots 8 & 9 is not as good as eliminating them and I don't see the benefit in merging lots 1 & 2 and 3 & 4. I would be happy to give back lots 1, 2, 3, and 4 if we could eliminate lots 8 & 9 and get a large continuous habitat in this critical area.

Ms. Colebrook stated that she might feel better about it if there were more structured restrictions on lots 8 & 9. If the houses were way up in the northwest corner for example, I might be more able to accept it. It is difficult to call. The restriction aren't enough or appropriate for those lots. Ms. Colebrook asked what the distance is from the building envelope to the neck? Ms. Waterman responded approximately 400 ft. Ms. Sibley stated that she does not consider, nor do the experts, that the neck is the only wildlife habitat in the area, the whole area is a wildlife habitat and a large continuous area should be protected.

There was further discussion among the Commissioner on this particular issue and also the issue of guesthouses and the fact that only 2 would now be permitted with a total of 8 structures and that the previous approval would have allowed 9 house lots each having the ability to put in a guesthouse. Several Commissioners used the wall displays to depict what they felt the wildlife preserve should encompass.

After lengthy discussion on the options available to the Commission at this time, it was decided by consensus to hold the vote and allow the applicant to return to LUPC with a revised plan on May 1st.

ITEM #7 - New Business - There was none.

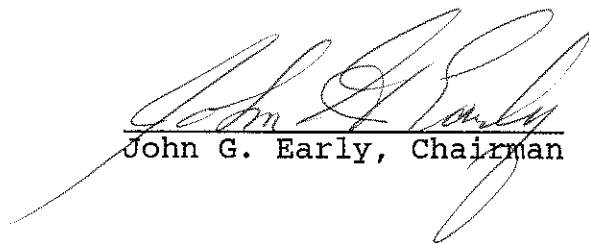
ITEM #8 - Correspondence

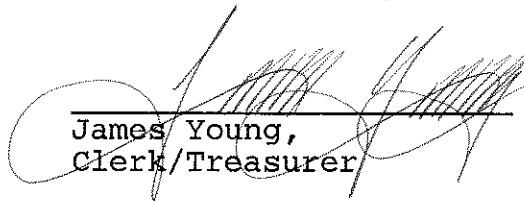
Mr. Early read one piece of correspondence from Mr. Pachico, Superintendent of Schools requesting that the member appointed to the Space Needs Committee be a staff member not a Commission member. Mr. Early stated that a staff member would be appointed.

Ms. Medeiros took this opportunity to ask about assistance with a EOCD grant for Tisbury and the procedures for requesting this assistance? Ms. Borer stated that she would be happy to discuss this request with Ms. Medeiros. Ms. Medeiros also asked about her request to have a meeting among the MVC, and DEQE Lakeville and Boston offices. Ms. Borer stated that our new governor's appointee, Iris Davis, is a member of DEQE and as soon as the formalities are dispensed with she will be joining us and we can discuss this with her.

The meeting was adjourned at 10:30 p.m.

ATTEST


John G. Early, Chairman 4/27/89
Date


James Young,
Clerk/Treasurer 4/27/89
Date

Attendance:

Present: Bryant, Colebrook, Early, Ewing, Filley*, Fischer, Medeiros, Morgan, Scott, Sibley, Young, Allen, Harney.

Absent: Eber, Evans, Jason, Lee, Wey, Delaney, McCavitt, Geller.

* Mr. Filley was not present at the table during Item #5, the Swan Neck discussion.