

THE MARTHA'S VINEYARD COMMISSION

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MINUTES OF JULY 20, 1989

MARTHA'S VINEYARD COMMISSION MEETING

The Martha's Vineyard Commission held a public hearing on Thursday, July 20, 1989 at 8:00 p.m. at the West Tisbury School Gymnasium, Old County Road, West Tisbury, MA on amendments to Regulations of the Martha's Vineyard Commission for the control of Developments of Regional Impact pursuant to Section 3 of Chapter 831 of the Acts of the Commonwealth of 1977 as amended.

ADD: Section 2.611 TRAFFIC IMPACT ANALYSIS

This section will require DRI applicants to engage an engineering firm to prepare and submit a specific scope of traffic study and a traffic impact analysis. The submission procedures, content requirements, and mechanism for the Commission's engineering's review are included in this section.

ADD: Section 2.500 (5)

- (a) Withdrawal of DRI application procedures included in this section.
- (b) Modification of a previous DRI decision procedures included in this section for MVC to determine, by majority vote, if modification warrants a public hearing and full DRI review.

Mr. Early, Chairman, read the Public Hearing Notice, opened the hearing for testimony, described the order of the presentations for the hearing, and introduced Carol Borer, Executive Director, to review the proposed amendments distributed to the Commissioners and the public (available in their entirety in the Meeting file).

Ms. Borer began with Section 2.500 (5) (a) Withdrawal of Application. She stated that a policy was never adopted for DRI withdrawal in the Regulations. She read the proposed amendment and answered questions from the Commissioners.

Ms. Colebrook, Commissioner, asked if there are any guidelines for determining what portion, if any, of the fee would be returned to the applicant? Ms. Borer responded that she would meet with Norm Friedman, Administrator, to estimate how much money was spent on the

project to date, i.e. public hearing advertisements, certified mailings, staff hours, copying, secretarial time, etc.

Mr. Ewing, Commissioner, asked if there would be instances when the entire fee would be returned? Ms. Borer responded yes.

Mr. Geller, Commissioner, questioned why we would return a fee? He cited the example of a lawsuit and the fact that if the suit is withdrawn the fee is retained. Ms. Borer explained that there are instances when the referring board will send an incomplete application by certified mail and then the MVC proceeds to correspond with the applicant in order to deem the application complete. If during this process the application were to be withdrawn there would be virtually no work completed and then the majority of the fee, or the entire fee, would be returned. However, if we had proceeded with the LUPC meeting, the public hearing, staff preparation and presentation, and we are at the point of deliberation and the applicant chose to withdraw, then the fee would not be returned. Mr. Geller asked hypothetically, what if the applicant made the filing for the main purpose of gaining the publicity, the application is publicized and then the applicant withdraws, would the publicity on the application be a factor in determining what portion of the fee would be returned? Ms. Borer stated that the only factor would be the amount of work completed on the project.

Mr. Schweikert, Commissioner, asked if the filing fees differed from DRI to DRI? Ms. Borer responded yes and explained how the fees were based on square footage or number of lots involved in the project.

Mr. Sullivan, Commissioner, suggested that since we are so short of funds, perhaps we shouldn't be as generous as we might otherwise be.

Ms. Borer stated that this issue has been coming up for the past year and a half with heated discussion from applicants because nothing was returned. Now we would have something in writing to back that up.

Mr. Early stated that the filling fees are relatively new and the Executive Committee/Finance Committee will be looking at the filing fee structure again in the near future, but we also felt that it should be an equitable system of reimbursement.

Mr. Morgan, Commissioner, stated that if the filing fee is based on the complexity of the work and then nothing is done, I don't think it is fair to keep the money. Mr. Early responded that it is not based on the complexity of the project, it is based on the numbers and as we all know there can be a 10 lot subdivision that is a lot more complex than anything you have ever dreamed of, but we have to have an equitable fee schedule.

Mr. Lee, Commissioner, asked if we shouldn't consider a bottom line figure, a cost for just applying? Is that proper? Mr. Early stated that is something that the Executive Committee could examine.

Mr. Morgan agreed that they should leave it up to the Executive Committee but he sees nothing wrong with charging a minimum amount

since there is usually, at minimum, Executive Director and secretarial time expended.

When there was no further questions or discussion on the Withdrawal amendment Mr. Early asked Ms. Borer to review the next amendment.

Ms. Borer read Section 2.500 (5) (b) Modification of a previous DRI Decision, explained that we have followed this procedure in the past and this amendment adds the issuance of a certificate pursuant to Section 2.630 (4) of the Regulations. She then asked if there were any questions.

Mr. Ewing, Commissioner, asked if we can put conditions on our decision that a modification doesn't warrant a public hearing? Ms. Borer stated that we have done so in the past and gave the example of Mr. Cournoyer's request to change the lot lines and the fact that the Commission added, in its response that DRI review was not necessary, an emphasis that any development on the lot would have to come before the Commission.

When there were no further questions of this Section, Ms. Borer moved on to Section 2.611 Traffic Impact Analysis. She stated that the first page dealt with the process involved among the applicant, the engineers, and the Land Use Planning Committee and the following pages were the checklist. Ms. Borer read the first page and explained that LUPC had met on this issue several times and there had been debate over the process and the checklist. This was given to LUPC at the Monday meeting so feel free to ask them for their input. She went on to state that there had been LUPC discussion on a threshold for requiring traffic impact analysis. We examined using numbers for the threshold, square footage or number of lots, but naturally some areas of the Island would be impacted more than others by the same absolute numbers involved in a development. We then examined targeting certain areas of the Island or roads that were of major concern and what resulted covered almost the whole Island. Another problem discussed with setting thresholds is that inevitably some people will come in just below this threshold to avoid the analysis. Since all projects have impacts the applicant, in his scope of services, could state what has been omitted, and why, or if all components should be waived and then our engineer will review this scope and all or some components may be waived.

Lengthy discussion followed among the Commissioners regarding the selections of a MVC Engineering Firm. The following points were raised: Executive Committee selection vs. full Commission selection, with the example of LUPC decision making authority given as an example for Executive Committee selection and Section 4.442 of the MVC By-laws given as an example for full Commission selection; open advertisement of the position for full public disclosure vs. MVC Counsel's determination that no open bid or advertisement is necessary; the fact that the MVC has worked with one firm in the past and when the decision was made that the MVC should retain its own firm this one was not put on the list of potential firms for applicants; provisions preventing an applicant from hiring the MVC firm right after they disassociate themselves from the Commission and the fact that this

could be addressed in the contract; the potential difficulties of 21 Commissioners coming to agreement on this decision.

Mr. Early curtailed this discussion and stated that it is more appropriate to entertain this type of dialogue under the Discussion item, which is on tonight's agenda. This is a public hearing for questions and general input from the Commissioners and the general public. He asked Ms. Borer to continue with the review of the amendments.

Ms. Borer continued with her review by stating that the checklist was prepared by Ann Skiver, MVC staff, with input from several traffic engineers and LUPC. We used the ITE, MEPA checklist as a base but there are modifications specific for the Island, i.e. mopeds, bikes, pedestrians. She explained that in Item II.A. the streets would be classified by State, town, main, minor, paved and unpaved. Item V.A. would take into account other projects in the area and growth factors. Item VI.D. deals with the applicant making a commitment to fund mitigative measures. She asked the Commissioners to take a few minutes to review this checklist.

Mr. Filley, Commissioner, asked how the mitigative measures would be formulated? Ms. Borer responded that the applicant would propose mitigative measures and our engineer would determine if these measures were adequate to counter the proposed impacts.

Mr. Geller asked about Item 2.A., specifically daily hourly traffic counts, our engineer will accept data provided by the applicant's engineer if the applicant's engineer follows an approved process for getting his data? Ms. Borer stated that in addition to the applicant's data the MVC engineer would be given historical data to see how the applicant's data fits in. Mr. Geller asked if the Commission has done traffic studies independent of an applicant? Ms. Borer responded we do traffic counting on the entire Island.

When there were no further questions from the Commissioners, Mr. Early called on testimony from Federal or State Agencies, there was none. He then called on testimony from town boards, there was none, however, he read the following piece of town board correspondence: TO: MVC, FROM: Edgartown Planning Board, DATED: July 20, 1989. The Planning Board has reviewed your suggested changes for traffic impact analysis regulations for DRIs. The Planning Board is concerned that these regulations may place too heavy a burden on small projects that have limited impact. The Board disagrees with requiring such full analysis for all DRIs and suggests that waiver provisions be added, based on specific criteria for smaller developments. Signed by Christina Brown.

Mr. Early then called for public testimony.

Gary L. Hebert, Fay, Spofford & Thorndick Engineering Firm, testified that they would probably be conducting one of the first traffic impact analysis under these guidelines for the Edgartown National Bank project in Vineyard Haven. His comment was that he thought the guidelines were excellent, well prepared, well thought out, and very

comprehensive. According to the 1st page the applicant surely has enough mechanisms to determine which of the appropriate parts of the guidelines apply. However from a standpoint of clarification I would like to make a couple of comments and possibly some improvements to the guidelines that I think would benefit them. My first comment specifically pertains to the definition of the study area and the 10% or more of the projects traffic. I don't know what specific thresholds were being considered other than 10% of the projects traffic but one suggestion I would make is if it involves less than 25 trips per hour that you might not want to carry beyond that threshold even if it is more than 10% of a projects trips or a specific distance from the site itself. It is a little tricky when your are in an area of heavy congestion but I would suggest that perhaps you might want to clarify that a bit more. In terms of the site generated traffic you did mention identified trip generation units, measures, and rates but I think there should be 2 specific units; off season and peak season generation rates, historical data has shown there is a definite difference in trip generation rates on the Island. My next comment has to do with how you might develop a long term data base for those rates. I would suggest that as part of the applicants submission that a commitment be obtained from the applicant to obtain traffic counts from a single week in July or August, depending on what the Commission deems is most appropriate, and one in the off-season, perhaps October or May, that would occur one full year after the development is opened beyond the first July. For instance if a project opens in October, not the following July, but the July after, they would be required to submit data of a certain form. The suggestion would be to take manual and automatic tube counts, perhaps this should be done by the Commission, so the MVC will be able to develop a database of information to provide better review of the applications as they come rather than solely just projections. Concerning the mitigation measures you might want to develop these a little more fully perhaps similar to the State guidelines. These are some things you might want to consider to further clarify what these guidelines are meant to provide.

Eric Peters echoed the sentiments of the Edgartown Planning Board with respect to the traffic impact analysis. It seems to me that you have a number of DRIs of which you could present a good argument whether they should be DRIs to begin with and I have seen a number of DRIs where such analysis is unnecessary, a couple you have just reviewed and a couple that are on your list of pending DRIs now. There are also a number of DRIs where even the exercise of hiring an engineer to say I don't need an analysis and paying that engineer and your engineer to review the reasoning and agree that no analysis is necessary is really putting a burden on small projects and is really a waste of time for the applicant and for you. There are a good number of your criteria that I think I could probably come in and say I know about land use, I know about the site and the neighborhood, a lot of these things you are probably going to see anyway as part of your DRI checklist. Furthermore, in looking at your DRI checklist of criteria I see 2-3 items that on their face wouldn't appear to require a traffic impact analysis, i.e. developments on Noman's Land, demolition of an historic structure, and construction of piers. In my opinion, you really don't need to worry about cars in these types of

developments. I have some agreement that you need a coherent set of regulations but it is also nice to know when they are applicable and when they are not. Concerning the procedure as a whole I am concerned with how it will fit into an already nebulous process of determining when the application is complete and when the public hearing can be scheduled. Are you going to say come back in a year when the data is finished? Another question I have is, while you do make mention that the application will have some idea to review or at least be apprised of what the engineer's budget, that the MVC hires and the applicant will pay, should the applicant have some right to contest that fee. I can imagine situations where things might get out of hand one way or the other. I think that this traffic analysis is great for things like the Bank, the A&P, there are a lot of big projects that generate a lot of traffic. However, everything we do here on the Island creates more cars and I think thresholds are important. Concerning the withdrawal and modifications of DRIs, I think the proposed amendments are good ones.

Mr. Filley asked Mr. Peters and Mr. Hebert if they had any specific recommendations for thresholds? Mr. Peters responded that he would be happy to think about this. Certainly large traffic generating projects such as banks and supermarkets or a subdivision of 10 or more lots, for instance, warrant such analysis but a subdivision of 30 acres into 2 lots does not. Mr. Hebert responded that this is probably the most difficult decision facing the Commission. There are some reasonable thresholds that we know would be appropriate for low impact areas but in high impact areas we would want lower thresholds since any impact in those areas would be a high impact. A database would help to identify the congested areas are from historical data and if thresholds were to be developed these would have to be taken into account.

Ms. Sibley asked Mr. Hebert about the suggestion he made for mitigation measures, did I understand that you suggested that we establish some form of level of service, can you be more specific? Mr. Hebert responded that there are several ways you could do this. The Vineyard is so unique in that the difference in traffic between peak and off-peak is so substantial that mitigation measures that would be adequate in off-peak seasons won't be adequate during peak seasons and this must be examined.

When there were no further questions or public testimony, Mr. Early closed the public hearing at 9:10 p.m.

Discussion followed among the Commissioner as to whether or not the record for this public hearing should remain open for an additional week and consequently Items 5 & 6, discussion and possible vote, should be removed from tonight's agenda and placed on the agenda for next week's meeting.

It was decided by consensus vote that the record would remain open for one week and Items 5 & 6 would be placed on next week's agenda.

Mr. Early opened the regular meeting of the Commission at 9:15 p.m. and proceeded with agenda items.

ITEM #1 - Chairman's Report

Mr. Early reported that a Statement had been prepared by the Executive Director after an Executive Committee meeting, it appeared, I believe in its entirety, in the M.V. Times today. He stated the Executive/Finance Committee had met with the Executive Director and Administrator and they are still formulating a general plan. Our representative to the General Court has been quoted as saying that it is a mistake and we were mistaken for a "study commission" but that doesn't seem to be the case. We have received the official veto list in which we lost 100% funding and it is available if anyone would be interested in pursuing it. It seems rather amusing that the Tufts University program to fostering the breeding of greyhounds in Massachusetts and a similar project breeding horses is still funded. There is no good news. The Executive Committee will meet with town boards after they have had a chance to fully examine the implications of these cuts. I assure everyone that the Commission is still in business.

ITEM #2 - Old Business - There was none.

ITEM #3 - Minutes of July 13, 1989

It was motioned and seconded to approve the draft minutes as presented. There was no discussion. This motion passed with a vote of 0 opposed, 0 abstentions. (Allen abstained).

ITEM #4 - Committee and Legislative Liaison Reports

Mr. Morgan, Legislative Liaison, reported that the Barnstable Land Banks is virtually dead, at least as far as the House is concerned.

Mr. Jason stated that the vote was put off until September so it is still alive, but just barely. There was further discussion on the status of the Barnstable Land Bank.

Mr. Morgan continued by stating that 2 bills should be signed any day now: the bill establishing an Oak Bluffs recall policy and the bill allowing reimbursement to Mr. Diaz for fill provided to the Tisbury Landfill.

Mr. Jason asked if there was any rough time frame for when discussion on reinstatement might begin? Mr. Morgan said it is difficult to tell. This will probably have to be decided by the courts according to House Speaker George Keverian who questions whether 150 people or one person should make these decisions.

Mr. Early applauded everyone's efforts in this matter and stated that the cuts had wide-ranging effects, we were not targeted, although we did lose 100% funding.

Ms. Bryant, Commissioner, stated that she met with a representative from the Department of Environmental Management and Secretary DeVillars and they want to meet with both Anne Harney and Carol Borer to review the options available to the Commission.

Mr. Filley, Co-Chairperson, reported that the Comprehensive Planning Advisory Committee (CPAC) had met tonight and he handed out worksheets to the Commissioners and asked that they spend a few minutes completing them and return them at next week's meeting. He stated that next week there would be a conservation workshop on Thursday from 4:30-6:00 p.m. at the Wakeman Center.

Mr. Young, Chairman of Land Use Planning Committee (LUPC), reported that they had met Monday to discuss the proposed amendments and they also met with the representatives for the Playhouse Theatre DRI. As you may remember the public hearing was continued so that additional information could be provided, this meeting was to define what information we wanted submitted. The following items were identified Atlantic Designs scope of service and traffic impact analysis; parking concerns, run-off contamination; shadow projections; tree removal concerns; theatre management concerns; air conditioning; fencing, benches and plantings; and location of dumpsters. If there is anything else that anyone wants please let us know. There is no continuation hearing scheduled since Atlantic Design, the applicant's consultant, will be submitting a scope of study for the traffic impact analysis as discussed in the earlier public hearing tonight. We will review the scope of services and then when the study is completed we will schedule a public hearing. There will be no meeting on July 24th, there will be one on July 31 but the agenda has not yet been set.

Mr. Early stated there is a long list of pending DRIs on the long term agenda. Mr. Geller asked for an explanation of these pending DRIs. Ms. Borer reviewed each one with brief explanations of the project, when it was received and why it is still pending.

Ms. Marinelli, public, stated that in reference to the M.V. Racquet Club pending DRI, weren't they a no show? Ms. Borer responded that they were placed on the LUPC agenda and failed to show up. Ms. Marinelli then asked, regarding their recent action, use of the courts, and the Building Inspectors \$1,000 fine for such use, what will happen now? Is it the Town's responsibility? Ms. Borer stated that she had discussed this with the Board of Selectmen and Town Counsel and at this point it is up to the Town to take action.

Ms. Skiver, MVC Staff, reported that the Planned Development District DCPC Subcommittee would be meeting next Thursday at 4:30 p.m. with the Oak Bluffs Committee.

Mr. Jason, Chairman, stated that the Planning and Economic Development Committee would be meeting on August 2nd.

Ms. Sibley reported that the Oak Bluffs Committee on the Harbor Area had met this week. Mr. Wey, Commissioner and Oak Bluffs Selectman, added that there was discussion about the septic systems and possible

tests on the Harbor including tests in the summer and winter seasons and test from water in the culverts after heavy rains to determine road runoff.

Mr. Ewing, Chairman of the Edgartown Ponds DCPC Committee, reported that they would meet next week, Tuesday at noon, at the Dukes County Extension Service. Everyone is welcome to attend.

Ms. Skiver reported that the Katama Airport DCPC did not meet, however the Edgartown Planning Board did publish, in Tuesday's Gazette, the proposed guidelines for the District and the Commission should follow suit by scheduling a public hearing.

Ms. Bryant, Commissioner, reminded everyone of the Architectural Barriers Board workshop on Thursday, July 27th at the Oak Bluffs Town Hall.

ITEM #5 - Discussion - Amendments to the MVC Regulations for the control of DRIs.

ITEM #6 - Possible Vote - Amendments to the MVC Regulations for the control of DRIs.

These agenda items were withdrawn to be placed on next weeks agenda.

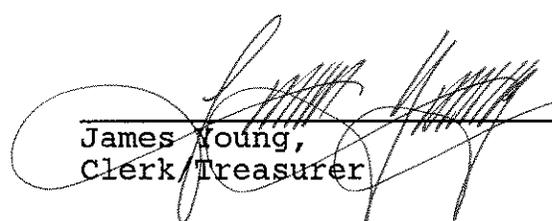
ITEM #7 - New Business - There was none.

ITEM #8 - Correspondence - There was no further correspondence.

The meeting was adjourned at 9:40 p.m.

ATTEST


J. Woodward Filley, Date 8/3/89
Vice-Chairman


James Young, Date 8/3/89
Clerk/Treasurer

Attendance

Present: Bryant, Colebrook, Early, Eber, Ewing, Filley, Fisher, Jason, Lee, Morgan, Schweikert, Sibley, Sullivan, Wey, Young, Allen, Geller, Harney.

Absent: Scott, McCavitt, Davis.