

THE MARTHA'S VINEYARD COMMISSION

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MINUTES OF MARCH 1, 1990

MARTHA'S VINEYARD COMMISSION MEETING

The Martha's Vineyard Commission held a special meeting on Thursday, March 1, 1990 at 8:00 p.m. at the Martha's Vineyard Commission Offices, Olde Stone Building, New York Avenue, Oak Bluffs, MA.

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

ITEM #1 - Chairman's Report

Mr. Filley reported that a check in the amount of \$40,000 from the State has been received and deposited in the Commission account.

ITEM #2 - Old Business - There was none.

ITEM #3 - Minutes of February 25, 1990

It was motioned and seconded to approve the draft minutes as presented. There was no discussion. This motion passed with no opposition, 4 abstentions, Ewing, Jason, Wey, McCavitt.

ITEM #4 - Committee and Legislative Liaison Reports

Mr. Morgan, Chairman of Land Use Planning Committee (LUPC), reported that they had met on February 26 to begin review of the DRI checklist. He gave a brief review of the discussion. There will be another meeting on March 12th and at this time the DRI Checklist review is the only thing on the agenda. He asked if any other members of LUPC would like to report on the DRI Checklist review.

Mr. Sullivan, Commissioner, stated that in addition to the size, square footage, acreage and lots, there was discussion regarding intensity of use being a detriment instead of area.

Mr. Schweikert, Commissioner, asked if this would be a topic of discussion at the next few LUPC meetings? The response was yes.

Mr. Jason, Commissioner asked why there is no LUPC scheduled for Monday, March 5, 1990? I would be willing to come and continue discussion on the DRI Checklist. Ms. Borer stated that no meeting was scheduled since there is nothing else for the agenda. Several Commissioners agreed that they would be willing to attend a LUPC meeting on March 5. The time and location was set at 4:30 p.m. at the Commission offices.

Mr. Morgan then reported as Legislative Liaison by stating that House Bill 2743, deed excise bill, was heard Wednesday. Now is the time to call people in other voting districts to asked them to call their representatives and request they call the Joint Committee on Taxation. The number is 722-2430. They should speak to Chairman Flood or Maureen, the Administrator. There is no need to lobby our representatives but support from other areas would be very useful. Telephone calls add to the written testimony.

Mr. Early, Chairman of the Planning and Economic Development Committee (PED), reported that they had not met since the last Commission meeting. The Oak Bluffs Planned Development District (PDD) Committee did meet with the Selectmen but I was not in attendance. Perhaps Mr. Wey, Commissioner and O.B. Selectmen, can report on this meeting. Mr. Wey stated that the Committee had met last night and basically discussed coming back to the Commission for the planning work. All agreed that the Commission is the group to do this planning, the members of the Committee are not planners.

Mr. Ewing, Chairman of the Edgartown Ponds DCPC Committee, reported that they didn't meet last week. A tentative date has been set for a joint public hearing with the Edgartown Planning Board on March 29, 1990.

When there were no further committee reports Mr. Filley proceeded to Item #5.

ITEM #5 - Discussion - West Tisbury Special Ways DCPC

Mr. Filley asked Mr. Adams, MVC Staff, to update the Commissioners on this nominated DCPC.

Mr. Adams began by reading a letter from the West Tisbury Planning Board, dated February 20, 1990, regarding documentation of the nominated special ways. This letter is available in the meeting and correspondence files in the Commission office and is summarized as follows: Tiah's Cove Road and Scrubby Neck Road and Watcha Path descriptions in the 1976 Island Road District are inaccurate and this amendment corrects and clarifies the descriptions; documented history through various sources and need for further research; Planning Board's opinion that the ways under consideration have sufficient documentation to justify their inclusion at this time; other special ways are under consideration but feel that we should take the present opportunity to protect and preserve those which are well documented while working to identify, research and document others which should be incorporated into a town and regional district; thanked Mr. Adams for this invaluable, enthusiastic assistance. Mr. Adams closed by stating that the draft decision is based on the Island Road District Decision and changes from that document are shown on this draft as follows: additions are shown with dots (...) under them and deletions are shown with strike outs through them. (The Draft Decision is available in the DCPC and Meeting files.)

Ms. Sibley, Chairman of the West Tisbury Special Ways DCPC Committee, stated regarding the decision, most of changes made from the original

Island Road District Decision are to Section 5 and some of the changes are somewhat significant. I suggest everyone takes some time to read them. Ms. Sibley stated that additions, shown in underline dots, are related in goals and guidelines and are meant to clarify the purposes and goals of designating. There was concern that there be some management guidelines developed, even though they can't be enforced, there should at least be some guidelines. This is also meant clarify that the process does not intend to establish public rights of way where they don't exist. Under the Development Guidelines we felt there would be certain instances where it would be appropriate to install gates, bars and stiles.

Mr. Early asked on Page 8, under Development Guidelines, #2, what is an example of an obstruction? The response was a wood or dirt pile. Both of which, in fact, have been done in some cases.

Mr. Sullivan, Commissioner, asked if crash gates would be installed for fire access? Mr. Adams stated that this is not specifically spelled out but the Town would definitely have to deal with this in their regulations. Since the Town is intending to preserve the vehicular access that is necessary I'm sure this will be considered.

Ms. Bryant asked about Page 7, paragraph E, what is the purpose? If it is not a goal why is it needed there? Mr. Adams stated that the purpose is to clarify some questions raised at the public hearing regarding whether this was an attempt to establish public rights of way on private ways. Ms. Bryant stated that she thought it was also a concern of some of the people at the public hearing that this was an attempt to try and take some of those rights away. Mr. Adams stated that the point is to clarify that neither one of those is the case. Ms. Colebrook, Commissioner, stated but it doesn't say the reverse, nor is this an attempt to take away those rights. Mr. Adams stated that he doesn't think it is possible to extinguish rights that exist, it is beyond the power of this designation. Ms. Sibley stated if the Commission wants, we could add a few words about not extinguishing existing rights. Mr. Jason stated that on Page 6, it states that in A.

Mr. Sullivan stated that following along Ms. Bryant statement, because I was confused to, if E applies then why do we have this at all. The idea, I guess, is to just identify these trails as they exist in hopes of keeping them as they are, at least for now. Is this accurate? Mr. Adams stated it says a little more than that but that is the main purpose. To set up a process that would manage conflicts that might happen on those ways, i.e. conflicts between abutters. Not to change any uses but to manage possible conflicts better.

Ms. Sibley stated that what we were trying to say that there isn't an attempt, through this designation, to declare rights of way or rights of the public. The issue of what the public rights may be for these ways will either have to be clarified through the courts or through the granting of easements or purchase. The main focus of the designation is to identify the ways that are important to the Town. Mr. Jason stated that B on Page 6 covers that quite well.

Ms. Sibley stated that if the Commission doesn't feel E is necessary, or feels that it is confusing, it could be eliminated. It is somewhat of a disclaimer because there seemed to be some people who were afraid that the process was trying to declare or create public rights.

Ms. Bryant stated that on the flip side of that some people were hoping that it was. I foresee a time in the future when someone might want to establish public rights and will look at this decision and say the guidelines states that we didn't want to establish public rights.

Mr. Jason stated that his problem with E being under goals is that it is not a goal. I don't think we need E at all. Mr. Lee, Commissioner, agreed.

Ms. Colebrook stated that a lot of us don't know who owns what and have been using ways for years and years without knowing. We should not encumber possibly future activities. We should either make E complete with both sides of the argument or dismiss it entirely.

Ms. Sibley stated there seems to be a consensus to eliminate E.

Mr. Filley stated that #5, under Development Guidelines more or less address the issue asking the Town board, where there is question of ownership, to iron those out so this doesn't become a problem. However, it probably should be moved.

Mr. Filley asked what is the consensus about E? Ms. Greene asked if anyone could speak to keeping E? There was no response. Mr. Filley stated that he feels some of the concern that came up in the public hearing dealt with the perception of this DCPC. That the perception of this DCPC is that we are saying, through this process, that we are trying to establish rights on these roads. Thereby using the Commission powers to say that since the land has been used it is now going to be used for public ways. There are questions as to whether or not we really have that authority and what is the correct legal process to go through. I don't know if there is going to be confusion among individual as to whether the DCPC is trying to say that we are trying to take those rights. I think that we say under #5 in the Guidelines, that we are encouraging Town Boards and other agencies to look at areas where rights are in question and try to establish those rights by whatever means are correct.

Ms. Sibley agreed, I think that #5 does what E on Page 7 tried to do but in a more positive and constructive way and in many ways less confusing. I was one of the people that advocated E. It was an attempt at clarification but when taken in the context of this whole document it is not a clarification, it is confusing.

Mr. Early stated that redundancies and vagueness really detract from the Decision in a lot of ways. I think we should eliminate E to pare this down and make it as precise as possible.

It was moved and seconded to delete paragraph E on Page 7. There was no further discussion. This motion passed with no opposition, no abstentions.

Mr. Early asked regarding the Guidelines on Page 8, #4. What is appropriate etiquette? I think some of these terms are vague. Ms. Sibley stated that she is sure she knows where it came from but this exact wording was not worked out by the subcommittee. We did discuss the notion that in addition to developing specific management for the trails, that as a general goal one would hope that there would be a way to educate the public on how to use these ways. I am not sure that the subcommittee, in their discussion, actually intended this to be included in the guidelines. But there were concerns. Mr. Adams stated that some of the issues that have been brought up have been, noise after 10:00 p.m., dirt bikes going on and off the trails, there was also discussion about setting up some kind of a walking club that would help to promote caring for the environment, picking up litter, basic manners, etc.

Ms. Bryant stated that there are instances where public use ways to access their summer camps, etc. Is this use going to be considered inappropriate because it may bother an abutter?

Ms. Sibley stated that one of her concerns is that the first sentence says shall and that sort of means it is mandatory perhaps it could be changed to should. We were concerned with it but may not be necessary in the guidelines.

Ms. Greene asked, could we just say that management plans should contain consideration of the concerns of users and abutters, protection of private uses and property rights.

Mr. Jason stated that he believes we should end that entire paragraph after the words "designated special ways". (The end of the third line.) This was agreed by consensus.

Mr. Sullivan asked should we change shall to should? Shall is mandatory.

Regarding the concern over the word shall, it was decided to eliminate the words "cooperate to". It should read shall develop. If this is a good idea it should be mandatory. There was a consensus on this change.

Ms. Sibley asked in this case, does it imply that the development of the management plans must occur during the regulations establishment process? Or could the regulations specify that the management plan will be developed? The response was that the regulations can specify the management process.

Mr. Early stated he has a question on enforcement. In West Tisbury some DRI issues, which are much more specific than these are, have had difficulties with enforcement. It is very difficult to make sure they are enforced. This Commission has no police powers. I am very concerned in creating a situation where regulations that are essentially unenforceable may be imposed. Mr. Early stated that one of the problems is notification to all parties that are responsible for carrying out the mandate of the Commission. I like to see some

language incorporated into all our decision to ensure that all the enforcing agencies are made aware of the decision.

Mr. Filley asked Ms. Jones if she has any feedback on the Planning Boards perspective on that or any proposed regulations? Ms. Jones stated that I would hope this is something that can worked out while developing the regulations. It is possibly something that needs to be addressed for the whole Island. We will consider it. A lot of it has to do with infringements being reported. Each board should be working on enforcement.

There was further discussion on enforcement. If these become zoning by-laws then the building inspector will be enforcing them. Mr. Jason asked how #5 could be enforced.

It was motioned and seconded to move #5 under Guidelines to Section #3, Why the area was designated. There was no further discussion on this motion. The motion passed with 1 opposition vote and no abstentions.

There was discussion regarding Page 8, paragraph E at the top and #6 near the bottom. These are set up to establish a variance procedure. Discussion followed regarding permitted uses and whether these permitted uses match the zoning by-laws.

It was motioned and seconded to remove #1 and #2 as is and insert in their place, #1 Permitted Uses: list permitted uses; #2 Uses allowed by special permit: list uses allowed by special permit. This motion passed unanimously.

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

ITEM #6 - Possible Vote - Designation of the West Tisbury Special Ways DCPC

It was motioned and seconded to amend the designation of the Island Road District West Tisbury Special Ways Zone and adopt the guidelines with the corrects as stated above.

Lengthy discussion followed this motion including: what will happen if this is voted down by the town?; the response was that the existing Island Road District will still be in effect; discussion on exempting divisions and subdivision that have already been through the DRI or West Tisbury Planning Board for approval.

It was motioned and seconded to amend the previous motion to include insertion of the following: These guidelines exempt divisions and subdivisions of land that have received endorsement and/or approval from the West Tisbury Planning Board prior to March 1, 1990. There was no discussion on this motion. This motion passed with 1 opposition, no abstentions. It was decided to insert this after #2 on page 9.

The motion to amend the designation of the Island Road District West Tisbury Special Ways Zone and adopt the amended guidelines passed with a vote of 16 in favor, 0 opposed, 0 abstentions.

Following a short recess, Mr. Filley reconvened the special meeting of the Commission at 10:25 p.m. and proceeded with agenda items.

ITEM #5 & ITEM #6 regarding the Regional Comprehensive Plan Goals, Policies and Actions Plans will not be addressed tonight.

In addition ITEM #5 and ITEM #6 regarding the Leland Subdivision will also not be addressed tonight as LUPC has not made a recommendation.

ITEM #6 - Written Decision, Harold Sears DRI, Town of Oak Bluffs

It was motioned and seconded to approve the written decision as presented. There was no discussion. This motion passed with 13 in favor, 0 opposed, 3 abstentions, Bryant, Ewing, Fischer.

ITEM #7 - New Business

Mr. Filley read a letter to the Commissioners dated February 25, 1990 regarding the Paul Adler, Spring Cove Realty Trust DRI from a group of abutters. In summary this letter dealt with the issue of the bridge in the wetlands and the test borings performed to date and to be performed. Copies of engineering reports and a videotape of the test has been forwarded to Land Use Planning Committee so that they might evaluate Mr. Adler's method of test boring and to make a recommendation to you for the method you should choose for Mr. Adler's tests required in the DRI Decision.

It was asked if LUPC will be viewing this video and reviewing the information provided? Ms. Borer, Executive Director, stated that Greg Saxe, MVC Staff, has the information now and will review it first and then it will go to LUPC.

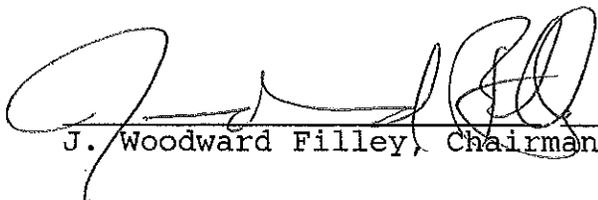
ITEM #8 - Correspondence

Mr. Filley then read a letter dated February 20, 1990 from the West Tisbury Planning Board regarding the meeting held between the Board and Commissioner and staff. In part, it states that the Board would like to state that of all the information exchanged during the meeting, it would like to see the MV Commission pursue: 1. Using coherent language in all documents; 2. Have all consultants and authors of Environmental Impact Statements be independent; 3. Follow through on written conditions to ensure enforcement; and 4. Address staff morale and room for advancement. We are very concerned at the rapid rate of turnover, and the loss of knowledgeable, experienced staff.

There was no further correspondence.

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

ATTEST

 3/8/90
J. Woodward Filley, Chairman Date

 3-8-90
Albert O. Fischer, III, Date
Clerk/Treasurer

Attendance

Present: Bryant, Colebrook, Early, Eber, Ewing, Filley, Fischer*,
Greene, Jason, Lee, Morgan, Schweikert, Sibley, Sullivan, Wey,
McCavitt.

Absent: Young, Allen, Geller, Harney, Davis.

* Mr. Fischer arrived at 9:10 p.m.