The Martha's Vineyard Commission and the Edgartown Planning Board held a joint public hearing on Thursday, March 29, 1990 at 8:00 p.m. in the Old Whaling Church basement, Main Street, Edgartown, MA on proposed regulations for the Edgartown Ponds Area District of Critical Planning Concern. The Edgartown Planning Board hearing will be held pursuant to Chapter 40A of the Massachusetts General Laws. The purpose of the Planning Board hearing will be to hear testimony on the proposed regulations including the proposed amendment of the Edgartown Zoning By-laws by adding a new Section 14.6 Edgartown Ponds Area District. The Martha's Vineyard Commission hearing will be held pursuant to Chapter 831, Acts of 1977 as Amended, Section 10 and Chapter 30A, Section 2 of the Massachusetts General Laws. The purpose of the Martha's Vineyard Commission hearing will be for the Commission to receive testimony and determine if the proposed regulations conform to the guidelines for development of the Edgartown Ponds Area District of Critical Planning Concern specified in the Commission's Designation on May 11, 1989.

Mr. Ewing read the Legal Notice, opened the hearing for testimony, described the order of the presentations for the hearing, and introduced David Wessling, Edgartown Planning Board Staff Planner, to make his presentation.

Mr. Wessling stated he will be giving an overview of 2 things: 1) the process and 2) the document itself. 1) Mr. Wessling stated that the Planning Board began to address the Commission's guidelines last October. At that time we drafted a proposal that was very close to the one here tonight. We felt, after comments from abutters that we needed a more comprehensive review so we formed a committee in November to work on the second draft of these regulations. The second draft was much different from the first. Based on the comments at this stage we decided to come up with this alternative. That alternative was made into the formal notice to the public and into this warrant you see proposed tonight. 2) the document itself consists of 3 parts: 1. recommendation to form an Advisory Committee, recommendations to further protect the Wetlands and 3. Land Use, zoning and subdivision rules and regulations.
1. The Advisory Committee will be appointed by the Selectmen and will consist of 11 members. Five of the members will represent town boards, 6 members will be members at large (4 of which will be riparian owners). In addition to those, interested representation from conservation group(s) and someone to look out for the interest of the shellfish will be included. There could be some overlap of representation. The idea is for a broadly diverse group. The reasons for so many members is there is so much diversity in the Ponds. The Advisory Committee will have 3 functions: 1. management of the ponds, 2. regulations, which will be ongoing, and 3. public education.

2. The Wetlands protections have several key points. Jurisdiction of the Conservation Commission extended to 300 ft.; lawns, control size and location; surveys/reports; ban anti-fouling paints; piers; definitions, consistency and hydric soils.

3. Concerning zoning there are 3 zones and established uses allowed by right, by special permit and non-allowed uses for these 3 zones. Regarding habitable structures, Zone 2 allows houses guesthouses will not be allowed, Zone 3 allows houses and guesthouses.

Regarding subdivision rules and regulations he discussed management plans, the average 300 ft. district frontage and the authority of the Board to waive this requirement based on factors such as protection of wildlife habitat, quality of water, shellfish propagation. What we have tried to do is link the purposes of the guidelines with subdivision rules and regulations.

Mr. Wessling stated that this is a very brief review and you should take the time to read the regulations thoroughly. He then answered questions from the Commissioners.

Ms. Colebrook, Commissioner, asked for clarification, what can you do in the intermediate zone, Zone 2? Mr. Wessling explained that this will permit a house but not a house with a guesthouse. Mr. Ewing stated that originally, in the guidelines, only a guesthouse was permitted in this intermediate zone.

Ms. Sibley, Commissioner, asked, so the original guidelines said you could only have a guesthouse in the intermediate zone and the main house would have to be further back? The response was affirmative. Ms. Sibley then asked and now you can have a full house there? Mr. Ewing responded yes.

Mr. Wessling stated that there have been suggestions for tasks to be considered by the Edgartown Ponds Area Advisory Committee. A document was handed out which outlined these tasks.

When there were no further questions for Mr. Wessling, Mr. Ewing thanked him and proceeded by calling for nominator's testimony. There was none. He then called for testimony from Town Boards.

Mr. Paul Bagnall, Shellfish Department, stated that he wanted to clarify the status of two of the ponds. The Division of Marine
Fisheries now has Oyster and Job Neck Ponds under management closures. Edgartown Great Pond is open. He stated he would be available to answer any questions that might arise regarding shellfish.

When there was no further town board testimony, Mr. Ewing called for testimony from proponents. There was none. He then called for testimony from opponents, there was none. He then called for testimony neither pro nor con.

Mr. Sanford Evans stated he would like to ask some questions and does not expect an answer to them tonight but would like them on the record. Page 5, #1: I am interested in how people who are administering this section might distinguish between meadow, grasslands and lawns; #2: rehabilitation is a hot topic and there are a lot of different thoughts on how to do this. I am very much concerned with the seed stock that exits in these soils and protects a variety of species, false heather, native little bluestone, rockrose, etc. All of these lie in soils of existing moors that are now being overgrown. So how you go about this project of restoring things makes a lot of difference; #9: I am interested in what is meant by organic fertilizers. I notice there is no distinction made between fertilizers which are for nitrates and minerals, elements which we commonly use such as lime. Page 8, Wetlands Definition: in expanding the definition of wetlands, there is no indication of how you would make a determination. In the Wetlands Protection Act it says very specifically. I am concerned with new agricultural use in Zone 1 (Page 9, A.1). I don't know exactly what is meant by agriculture, who will determine this. Some of you who have followed my comments throughout this process know that I do site planning and landscaping. What I am very concerned about is that some properties have been laid out, accepted, sold and can be built on. People own them and intend to build on them. Now we have land that has been designed and I am concerned with Zone 1 and Zone 2 for buildings. I see there has been a flip of the guesthouses in Zone 2. But there are some properties which I maintain that building outside of Zone 1 is not wanted. That you get detriments by doing it because of the way the land is and it is better to build in Zone 1. What I propose is that under special permit, 14.6.7, to make #1, rather than boathouses, single family dwellings on those lots established prior to adoption of this section when (a) to build in Zone #1 can be shown by the applicant to create fewer detriments to the purposes of this section than to build in Zone 2 and (b) that to build within Zone 1 can be reasonably shown to not adversely effect the purposes of this section. So my proposal is 2 parts: (1) that the owner of this property would have to demonstrate that the benefits of building in Zone 1 rather than Zone 2 outweigh the detriments and that (2) that building in Zone 1 could be perceived as responsible given the interests of this section. Not to have this as a safety valve would be a detriment to the interest of this section. When people are forced to build in some of these areas in Zone 2, I will suggest and I believe that I am right from experience, there is much more damage than building in Zone 1. The last question I had has to do with average of frontage. I haven't done any practice with your 300 ft. averages but I assume that you have and it is an interesting idea.
Ms. Colebrook asked Mr. Evans, when you referred to the potential damage outside the shore zone, can you be more specific? Mr. Evans stated that there are areas in the ponds, depending on where you are, where there is almost no wetland vegetation at all. There is only a few feet of it. So 100 ft. in those areas is actually 100 ft. from the shore so you could go ahead and build houses. There are other areas in the ponds where the wetlands vegetation is very deep going back as much as 200 feet. Approximately half of the property is covered by this vegetation. Because the land is low there is enough water table much of the year to support the vegetation that creates action under the Wetland Protection Act. So what happens is that you push the people back 300 ft. from the pond to get out of that area. Now to get any view at all they have to cut more and more stuff, more and more trees. Meanwhile they are up on a road and can be seen from the other side. They hack half the woods for a view. You can tell them they can't but I'll tell you from personal experience that they will. I hate to be a cynic but that is usually what happens. So in areas like this I would like somebody to be able to come and make an argument that you could listen to and say yes or no. You could get some leverage out of it, keep the scale down, etc. But stick them back in the woods and they'll hack away and you'll have buildings you'll see from all over the place. There are several areas where this would apply.

Mr. Tom Wallace stated that he has an interest in a number of pieces of property within this area and has worked with the Committee on the Planning Board level in rewriting and changing these bylaws. There are a few points that Mr. Evans hit on that are significant even though I am certainly proud of where we eventually ended up with these rules and regulations. Areas of these ponds have such significant diversity that one set of rules won't necessarily apply to the opposite side. In fact each side of the ponds are quite different. So I think that the points are well taken. Mr. Wallace handed in three letters. One of the letters is from Wheaton College who owns a lot that they intend on using eventually to educate young people. I think regarding Mr. Evans' point, this is a good example. They included site plans with their letter basically arguing that in some cases being closer to the pond has less impact on what can be done. The Edgartown Conservation Commission has demonstrated in a few cases where closer sometimes has less impact. That may not be standard but there are cases once in a while where there are instances that make sense. The other general comments that are made in some letters, I think that people read the article, were in the process of starting, had individual lots and based on the first draft of the regulations were frightened about what was going to happen. Because of that they really went off running building a house and this has effected what they have built. Either they built far larger than what they thought they would ever need just because they might not be able to build later on or that they have taken the attitude that they might have built in 5 years or for the next generation but if they don't build now they may lose that right. The article has a lot of merit but it concerns me regarding the shock process that effects people and maybe there is a better way to deal with this. My summary is that these aren't perfect but every time we've had a meeting, I feel, we have had some real constructive cooperation from a diverse group and have
basically gained a better by-law each time we have met. I am really impressed with how diverse the group can be and how significant the results can be. The Committee will continue to be involved and to fine tune this thing.

Mr. Eric Peters stated that he is familiar with this district since childhood and is familiar with these regulations. I have participated in the working group which helped formulate the present draft that is here. I agree with what Mr. Evans had to say regarding the need to be flexible with the siting as they regard these regulations. I have seen houses going up recently and they have probably had more impact on me and my family than most of the people in this room. We are quite happy with what they have done and we found it very acceptable. I support Mr. Evans' recommendations of a possible amendment. I would also support his point that the definition of wetlands is too vague. It is different than what is used by other Island towns, it is different than the definition of wetlands in the state law and is in fact, different than the definition of wetlands in other areas of Edgartown. This is an agricultural/residential zone and although agriculture sometimes takes 2nd place on Martha's Vineyard it is something that people say they want to protect and expand. This is one of the few counties in the State where agriculture is increasing. If someone wants to put some land back in agriculture it is different than someone wanting a lawn and should be allowed. We have shellfish. Well only 2 of the ponds have salt water and actually have shellfish in them. So what is the relationship. People talk about water pollution. To the best of our knowledge it is really birds and wildfowl that is depositing fecal coliform and polluting the water. So I think it is not unreasonable for the land owners to say why don't you do something about the birds instead of putting more regulations on us when nobody has shown that we have anything to do with it. During the past year when we were working on the regulations no one was working on the issues of what to do about the birds, the possibility of dredging, the pollution of the ponds. Most of the regulations people suggested really have to do with the Great Pond not the other ponds.

Ms. Colebrook asked Mr. Peters if he finds the wetlands definition, too vague, too restrictive, what? Mr. Peters stated that it is too vague and capable of too much disagreement. It is subject to misinterpretation. I would like to know exactly what I am looking for so I can go out and find it and be able to determine the boundaries of the zones. The wording "including but not limited to" is confusing and might end up in protracted arguments.

Kathy Shortsleeve testified representing Herring Creek Farm which owns property in the Edgartown Ponds Area DCPC. Herring Creek Farm has worked along with the advisory committee to come up with regulations which are acceptable to achieve the goals set out by the MVC as well as the ends the property owners themselves would like to achieve. I think the by-law is not perfect. It leaves many unanswered questions. One important aspect of it is the creation of an advisory committee which will answer many of the questions that we have heard on the floor. The Wetlands by-law extends quite a bit the jurisdiction of the Conservation Commission in this area. States law provides for 100
ft. We are now approaching 300 ft. State law doesn't include hydric soils and this by-law does include hydric soils as wetlands indicators. I think the zoning should compromise and accept the jurisdiction extension at the request of the Conservation Commission. However, as a compromise I feel that indicative wetlands plants that are used under the State Wetland Protection Act should be used. There is a pamphlet listing those indicative species that is actually published by the State Fisheries and Wildlife Service, and the Department of Environmental Protection uses this list when they are reviewing appeals from Conservation Commissions for determination of applicability. For fairness and standards by which a developer can use to look and see which wetlands species, indicative species, will indicate wetlands. There should be a fair compromise such as a definitive list.

John Flynn, member of the Flynn Family and Trustee of the Pohaganet Trust, stated we have some 1500 acres in this zone in Edgartown. I think we are effected by these regulations more than anybody else. I made my comments, questions and concerns in a letter to the Planning Board on the 16th of February and rather than reiterate all of that I would like to say that I congratulate the Ad Hoc Committee for having worked so diligently to amend these regulations to a point that again, as was said before, they're not perfect but with some small changes that have been discussed tonight, I am happier than I was in early February. I think as a family we will reserve judgement until we see how the Planning Board acts and the Martha's Vineyard Commission acts. But I think that a lot of work has been done and a lot of people should be congratulated on this.

Ms. Edith Potter, Chairman of the Board of Selectmen, wanted to say that we are very much in favor of these regulations as written. I think the process has been rather extraordinary and that the Committee has worked very hard. I personally feel that the regulations are very much watered down from what the Martha's Vineyard Commission had originally in their guidelines. But I think that what has come out of this is good and to me the best part is the Advisory Committee. They are the key and I'd like to see this Advisory Committee really get going and come up with ideas on how to protect the ponds. There is a study being done by Art Gaines, who is working on the pond, and there is a lot more work to be done. I think the riparian owners can be very helpful and a lot can come out of this committee. If this works, and I think it will work, I would like to see this happen to all the other ponds in Edgartown. Our ponds are absolutely the most key thing, and the harbor, that we have in our Town and we must protect them. This is a good start towards that end.

Mr. Paul Bagnall stated that they have done a sanitary survey on the pond and most studies do blame most of the fecal coliform on the birds. The Edgartown Shellfish Department has done limited water testing and the Sewer Plant has done some limited chemical analysis. Before that we had a graduate student doing a master thesis out there. Various studies have been done that indicate good water quality in the Edgartown Great Pond and Oyster Pond.
Ken Gustefson stated he has a question regarding the wetlands regulations, particularly paragraph A. Do I understand that every single situation that arises where you are within 300 feet of a wetlands or pond or wetland vegetation that you will be subject to these regulations? In particular to regulations 1-6 or does the Conservation Commission have the ability to say yes or no as to whether or not you are going to be required to follow all of these items? Particularly I am interested #6 (page 5) which has to do with a rather lengthy number of items such as survey/plan outlining topography, plant communities, wildlife habitats, wildlife corridors and wildlife surveys and perhaps additional requirements depending on the Commission. I am very unclear as to how that works.

Mr. Ewing stated as a member of the Conservation Commission in Edgartown I would answer that by saying that one of the intents is to develop a wildlife management plan for the whole area and therefore when every applicant comes in with a new lot that hasn't been built on, we would like for our benefit and the benefit of the applicant to know what is actually on that lot as far as wildlife is concerned. It doesn't have to be a formal plan, an engineer or wildlife specialist doesn't necessarily have to do it.

Mr. Peter Vincent, Edgartown Planning Board, stated that the applicant can file a request for determination and if it was determined that the activity taking place in that area did not impact on the interest of the by-laws then there would be a negative finding and there would be no need to file a Notice of Intent. Mr. Gustefson stated that this is as long as you can make a request for determination first.

Mr. Richard Brown, riparian landowner on the pond, stated that he would like to see some kind of transfer of development right. I think a lot of times the regulations are negative, I would like to see some positive regulations. Transfer of development rights would take peoples values away but they would be rewarded for doing certain things and it would be better for everybody. This whole DCPC boils down to the fact that it is a public pond and people don't want to see our houses. Well I think the people who are moving their houses back so they can't be seen from the pond and now can't see the pond themselves should have some protection from what they will see of the public. If you don't want to see our houses fine, then we don't want to see your stuff either. It is all one sided. There is no give, everything is take, take, take. I think these regulations are protecting some things that should be eliminated for the protection of the pond such as vegetation growth, which is by far much more detrimental to the pond than the ducks and geese are. I think the idea of transfer of development rights is something that should be addressed and at the very least reviewed by the Advisory Committee.

Mr. Evans asked if there is any way his proposed amendments could be discussed and voted on by the Commission tonight? Mr. Ewing stated not tonight. The Planning Board is the group that should review this amendment since they are the ones who provided the proposed regulations.
Mr. Vincent asked Mr. Evans to submit his proposal in writing to the Planning Board.

Mr. Ewing read sections from a document entitled "Buffer Zones: The Environment's Last Defense" which was submitted by the Mass. Audubon: North Shore and prepared by Peg Brady, Director and Robert Buchsbaum, PhD, Coastal Ecologist, as it relates to the buffer zones around the Great Ponds specifically to wildlife within these buffer zones. (This document is available in its entirety in the Meeting File.)

Correspondence was then read into the record. (Copies of all correspondence and a correspondence summary is available in the DCPC and Meeting files.)

When there were no further questions or testimony, Mr. Ewing closed the joint public hearing at 9:31 p.m. with the records of both the MVC and the Planning Board remaining open for one week.

Following a short recess, Mr. Filley reopened the special meeting of the Commission and proceeded with agenda items.

ITEM #1 - Chairman's Report

Mr. Filley stated that he is happy to report that the Cape Cod Commission act did pass. A round of applause followed.

Ms. Bryant, Commissioner, suggested sending a letter of congratulations and extending an invitation to visit the MVC and to Earth Day. This was agreed unanimously.

Mr. Filley continued by reporting that we met with the Tisbury Planning Board. It was a good meeting to discuss the upcoming projects in the B-2 District. We will be meeting again on April 18th at 7:30 p.m.

ITEM #2 - Old Business

Mr. Filley asked Mr. Schilling, MVC Staff, to review the information on the Packer Proposal. We will be reviewing a previous DRI determination.

Mr. Schilling stated there had been 2 DRI referrals on this proposal. 1 referral was from the Building Inspector and addressed only the threshold regarding square footage. The other referral was from the Conservation Commission which addressed the issue of the pier and shore facilities. In acting on these, the LUPC and the MVC only acted on the square footage because the dredging/pier was withdrawn. No action was taken on the expanded facilities on the shore which included going from 2 to 4 bathrooms and from 0 to 3 showers. It was felt that this should be brought before the Commission again to review their determination. Regarding the square footage there is a net loss of 350 ft. Neither the Planning Board, Building Inspector,
Conservation Commission or Board of Selectmen has opted to bring this back to the Commission as a DRI.

Mr. Filley asked if there are any questions for Mr. Schilling?

Mr. Young, Commissioner, asked are we talking about 2 DRI referrals, 1 for the building with expansion and 1 for the piers, dredging, etc.? Yes. Mr. Schilling stated that the Building Inspector used item 6.a. on his referral and that is all the Commission ruled on. The Conservation Commission referral was filed on 9.b. expansion on water and shore of facilities. That proposal was dropped because of the problems with the bulkhead and piers. Both Mr. Packer and M.V. Shipyard withdrew their applications at that time. Mr. Young asked, so now there is a pending permit for the building only from the building inspector that has not been referred? Mr. Schilling responded that is correct. Mr. Young asked who requested the ruling from us? Mr. Schilling stated some of the members of the Planning Board and some of the Commission members.

Mr. Filley asked Mr. Morgan, Chairman of the Land Use Planning Committee, to give a report.

Mr. Morgan stated there were several questions and discussion on the Board of Health granting the septic permit, the Conservation Commission approving their request, the Building Inspector's questions, the Planning Board's vote of 3 to 2 not to refer it, there are so many different issues here that LUPC thought that it had to come before the full Commission. LUPC has not taken a stand on this nor did we vote one way or the other. There were 7 of us present when this was discussed. One of the questions is when we said this was ok did we say the square footage was ok or the whole project was ok. That is a question that each individual must answer.

Mr. Filley stated that the applicant is here if any of the Commissioners have a question for the applicant at this time.

Mr. Ewing asked, you plan on adding 2 bathrooms and 3 showers to a building that you are going to construct? Mr. Packer stated we were going to build 2 showers for normal use and 1 shower for handicap use. We now find out that we must have 2 handicap showers, men and women, according to State regulations as of January 1st. Mr. Ewing then asked who would use the showers? Mr. Packer stated that the showers would accommodate the people who use the wharf. The wharf is not undergoing any changes. People who use the wharf would use the shoreside facilities.

Ms. Greene, Commissioner, asked if they have plans for further expansion? Mr. Packer responded yes, probably. We previously discussed a bulkhead and piers but because of the state of the economy, permit time, etc. it has caused us to withdraw.

At the request of a Commissioner, Mr. Filley then read the revised minutes of the November 16th MVC Meeting (revised as transcribed). These minutes are available in the Packer proposal file.
Mr. Filley then asked Ms. Eber to review a letter she submitted which was received from the Planning Board counsel relating to this proposal. Ms. Eber summarized this letter by stating counsel was asked to give us his interpretation of Zoning By-Law 06.04.01 as it relates to this proposal. Specifically question #1. Can the second story space be counted in order to arrive at the square footage on the proposed building or does the indicated size constitute an expansion of use and implicate the provisions of ZBL 06.04.01? His response to this question is as follows: You should make a finding of fact as to the use which was made of the second floor space. If you find that that use was quite limited because of the physical configuration of the space, then you may find that building up the space to full height in the proposed building constitutes an expansion of use and requires the full showing to meet the requirements of ZBL 06.04.01. If the space could only be used in a limited way previously, and now the way in which that space would be used is quite different, then that would literally be an expansion of use.

Ms. Colebrook asked are we talking about only the change of use upstairs or is there an overall change of use? Ms. Eber stated that this is in answer to a question about the expansion of use of the attic. There was another letter about the 3 showers. Ms. Colebrook asked if that is a change of use? Ms. Eber responded yes. The letter about the 3 showers dealt with the fact that it must appear before the Planning Board for a special permit.

Ms. Sibley, Commissioner, asked if anyone knew how we figured that attic space when we were calculating the square footage in November? Did the calculations include the 2nd floor or not? Mr. DeSorcy stated we discussed the footprint only. Mr. Schilling stated it is still less than 1,000 ft. net increase including the expansion of the second floor. Mr. Filley asked we are still less than 1,000 feet including the attic? The response was yes.

Mr. Jason stated I believe the issue is: "Are 4 showers and 2 baths a development of regional impact?". Mr. Schilling stated that is all this is brought back for.

Mr. Jason stated, I can't for the life of me figure out how those showers and baths could be considered a DRI.

Ms. Greene stated that she does agree with Mr. Jason but now we are talking about an additional shower that is required by the State. Will that increase the size of the footprint? Mr. DeSorcy stated that he doubts it. We have to stay within the guidelines that have been established. We have a guideline from the Commission that we cannot exceed 1,000 sq. ft. of what was there before. Then we have Planning Board requirements in requesting a special permit and we have to stay within those guidelines. The handicap guidelines are something that we can't do anything about, they are required by the State.

Mr. Packer stated that we did submit our plans and proposal to the Building Inspector, being extremely careful made 2 visits to the LUPC to verify where he stood and then we were asked to come to your meeting to go over the checklist items. We were not aware until it
Mr. Sullivan stated that unfortunately the Building Inspector didn't make it to those meetings and that might have lent to some of the confusion. 9b doesn't talk about the number of showers or bathrooms that constitute a DRI. It talks about creation of new facilities or expansion of existing facilities related to use of the pier located on the landward portion of the property, that is located in Edgartown, Tisbury, Oak Bluffs, or Menemsha harbors. The fact that there is a special category for the harbors shows that there is a sensitivity. It is not 3 showers in the middle of the Island or in a less sensitive area. As I read it is definitely an expansion or increase in an existing facility. I can't read 9b and think that this doesn't trigger it.

Mr. Jason stated it's conceivable that it might fit the checklist. Just like several weeks ago the Chappy Beach Club could have conceivably fit the checklist. But what is being proposed is a facility that people on boats can use rather than flushing into Vineyard Haven Harbor. I don't see how three toilets could have regional impact, I see them as a benefit. Mr. Sullivan asked what about the showers? Mr. Jason responded that will go into a septic system. Do you want to see the soap and everything going into Vineyard Haven Harbor?

Mr. Morgan stated that he finds it very difficult because regardless of what 9b says, 9b of itself is of a context because we are talking about regional impact, developments of regional impact? If there is a properly designed and approved septic system to handle the number of showers and the number of toilets it would be a tremendous boom to the people who are here in the summertime when there appears to be generally in the communities a shortage of such facilities. I don't see the regional impact. I see it as an advantage.

Ms. Eber stated there are 5 offices and retail spaces. Is that correct? Mr. DeSorcy responded that is correct, there are 5 units. Ms. Eber stated that you are overlooking the fact that there are 5 retail stores and/or offices in this building. Before that it was only 1.

Mr. Filley asked Ms. Eber how the Town define a change of use? I know different towns use different definitions. Could you illustrate what a change of use is as defined by the Planning Board in the Town of Tisbury? Ms. Eber stated that as far as retail and office space is concerned, that is not a change of use.

Mr. Ewing asked the applicant what the new space is going to be used for? Mr. Packer responded that we will actually have 5 separate rooms. Presently we have 5 rooms plus a bathroom and a boiler room. We don't have a defined concept. We have talked about having 1 office used by a marine surveyor - we don't have one located in Tisbury. After our storm in July it would be very nice to have one. One of the rooms will be for relaxation, if you want to read the newspaper or make long distance calls there will be a room slated for that use. As far as retail sales, we have not negotiated for that. That would
leave 2 offices/retails spaces for others. We had a cesspool with a 
"caching pit. We are now building a Title V system to take care of 
both buildings. It will be the only Title V system on Vineyard Haven 
Harbor. We had 2 bathrooms that were existing, we proposed 2 showers. 
Then we found we had to put the handicap units in because of Mass. 
Law. Then we found we had to put in 2 handicap showers, again because 
of Mass. Law. So really when you go back to it, we have 2 bathrooms 
and 2 showers, the others are by special design to benefit the 
handicap.

Mr. Filley asked Ms. Eber if any town board or the Building Inspector 
plan to refer this as a DRI that you are aware of? Ms. Eber responded 
no.

Ms. Colebrook asked when the Conservation Commission reviewed the 
plans were the showers on the plan? Mr. DeSorcy responded yes. Ms. 
Colebrook then asked if their septic design has a reserve area in case of failure? Mr. DeSorcy responded yes.

Mr. Filley stated that usually in the process we have a town 
board/permit authority refer the DRI application to us. The 
Commissioners have to be aware that if in fact we feel that this is a 
DRI the next question is how we get this reviewed by the Commission? 
We have to have the cooperation of the Town.

Mr. Sullivan stated if the original 2 referrals of this as a DRI don't 
count then how do we get this referred? That is the question.

Mr. Filley stated or does the Town want it referred? That is one 
issue. I think Mr. Jason's question is something that the Commission 
as a whole can decide. Mr. Sullivan stated the Town wanted it 
referred to the point that they sent it over twice. Unfortunately, 
they didn't represent themselves in person to discuss it in any detail 
and there was some confusion that came out of that.

Mr. Ewing stated that in his mind the original building itself was not 
considered a DRI whatever the use is in it. Now it is brought up that 
there may be some use that might expand the facility. But as I read 
9b it says that expansion has to be or existing facilities related to 
the use of that pier. I would hate to see any existing facility like 
this that maybe wanted to put in showers, 2 new showers or 4 because 
they have to meet a State requirement, have to come before us as a 
DRI. I think we have other things to do.

Ms. Bryant asked Mr. Packer if they plan to build those handicap 
bathrooms or do they plan to get a waiver? The applicant responded 
that we plan to build the handicap bathrooms.

Mr. Early motioned that we stand by our previous consensus and that 
this not be reviewed as a DRI by the full Commission. Mr. Jason 
seconded this.

Mr. Filley called for discussion. Mr. Jason stated that he believes 
this can best be addressed by local authorities at the local level, it 
is a local issue. Mr. Fisher stated that his main concern is the
potential for possible retail stores and what are these retail stores for, just for the boats or for vehicular traffic? Is this going to create more traffic, more cars for the public? Mr. Filley stated that the question is, is this covered by the checklist? 9b seems to be directed towards a marine facility. I don't know that an expansion of an existing facility under 1,000 sq. ft. constitutes a DRI. That is my reaction to it. Mr. Sullivan stated that he is concerned with harbor traffic.

Mr. Young stated for clarify sake, because our vote before dealt strictly with square footage and was relating to 6a and 6b and the issue tonight is 9b, is the motion saying that this does not qualify as a DRI under 9b? The response was yes.

Mr. Lee stated that he would have to agree with Mr. Jason on this. This is a really tiny thing and I think it is a local issue. Mr. Packer has assured us that he is going to expand in the future. He has plans. We should ignore this as a DRI right now. We are going to get it back in the future.

There was a call for a vote.

The motion is that this proposal not be considered a DRI under item 6a, 6b and 9b of the DRI checklist. This motion passed with a vote of 10 in favor, 4 opposition and 2 abstentions, Greene, Colebrook. (Harney was in favor.)

There was no further Old Business, so Mr. Filley moved to the next agenda item.

ITEM #3 - Minutes of March 15, 1990

It was motioned and seconded to approve the draft minutes with the following correction: Page 5, paragraph 2, 2nd line Dr. Nazer is spelled with a "z" and Dr. Nieder has an "e". This motion passed with no opposition, 1 abstention, Young.

ITEM #4 - Committee and Legislative Liaison Reports

Mr. Morgan, Chairman of the Land Use Planning Committee, reported that they had met this week to continue discussion on the DRI Checklist. He reported as Legislative Liaison by stating that tomorrow Representative Turkington and Senator Rauschenbach will be at the Special Parents Meeting at the Grace Church from 4-6 in Vineyard Haven and 6-9 with Marine Fisheries at the Seaman's Bethel.

Mr. Early, Chairman of the Planning and Economic Development Committee (PED), reported that they had not met. There was a tentative meeting for next Thursday, April 5th.

Mr. Fischer, Chairman of the Gay Head Cliff Area DCPC, reported that the summer season is about to begin and the Aquinnah Shop is about to open. I would like to have a letter sent to the Gay Head Board of Health requesting that they give us an update on the Aquinnah Shop. That they have followed the order of conditions that we agreed on last
year and I would like to see a report of the water meter to make sure these things are done.

Mr. Early stated that he would like to know the status of the handicap facility up there too.

Mr. Filley asked if there is a general consensus that we should write such a letter. There was.

Mr. Filley stated that we would look into that and it is the consensus of the Commissioners we will draft a letter to the Board of Health and other appropriate agencies to get an update.

Mr. Lee made an inquiry if the MVC received a checklist from the Gay Head Planning Board referring the Hugh Taylor project this week? Ms. White responded not to my knowledge. Mr. Lee stated that the checklist was mailed via certified mail on Friday. Mr. Lee stated that he spoke to the Building Inspector and was told that a cease and desist was issued by him on Monday.

ITEM #5 - New Business - There was none.

ITEM #6 - Correspondence

Mr. Filley read a letter dated March 23rd from the West Tisbury Planning Board to the Cape Cod Times and the Falmouth Enterprise asking for the support of Cape Cod voters for the Cape Cod Commission Act. (This letter is available in its entirety in the Meeting and Correspondence files of the Commission.)

Mr. Filley thanked the West Tisbury Planning Board for such a fine letter and stated that he also faxed a letter but it was never received.

Ms. Bryant stated that Marc Widdiss, former Commissioner, was at a meeting last Saturday and was very persuasive in favor of the Cape Cod Commission Act.

The meeting was adjourned at 10:38 p.m.

ATTEST

J. Woodward Filley, Chairman
4/12/90

Albert O. Fischer, III, Clerk/Treasurer
4/12/90
Attendance


Absent: Wey, Allen, Geller, Davis.