

THE MARTHA'S VINEYARD COMMISSION

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MINUTES OF APRIL 5, 1990

MARTHA'S VINEYARD COMMISSION MEETING

The Martha's Vineyard Commission held a public hearing on Thursday, April 5, 1990 at 8:00 P.M. at the Martha's Vineyard Commission offices, Olde Stone Building, New York Avenue, Oak Bluffs, MA 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 hearing will be for the Commission to receive testimony and determine if the proposed regulations conform to the guidelines for development of the Gay Head Cliff Area District of Critical Planning Concern specified in the Commission's Designation of this District on May 4, 1989.

Mr. Fischer, Chairman of the Gay Head Cliff Area DCPC Committee, read the Gay Head Cliff Area DCPC Legal Notice, opened the hearing for testimony, described the order of the presentations for the hearing, and introduced Greg Saxe, MVC Staff, to make his presentation.

Mr. Saxe reviewed the types of district listed in the designation, described the boundaries of the DCPC, and reviewed the major features of the regulations including special permit provisions. Special Permits are to be issued by the Planning Board in the Town for any developments as defined in Chapter 831. He stated there are a couple of specific restrictions such as height guidelines and a 50 ft. no build/no clear zone along the edge of the Cliffs. There is a provision for a variance based on hardship or special circumstances. Mr. Saxe showed maps of the area showing existing and proposed developments and stated that the only exemption granted during the moratorium was for the Land Bank Trail. Mr. Saxe then answered questions from the Commissioners.

Mr. Lee, Commissioner and member of the Gay Head Planning Board - co-nominators for this DCPC, stated that we have been speaking about 50 ft. being the no build/no clear zone for months. Would there be any legal problem with increasing that? Mr. Saxe stated that there are no legal problems that I know of in extending this but I want to point out that the lots that we are talking along the edge of the cliffs are generally about 200 - 250 ft. deep. Mr. Lee stated that personally he doesn't feel 100 ft. would be overdoing it. Ms. Greene, Commissioner, suggested 150 ft. because you are talking about the views from the water too.

Mr. Saxe showed the area that is susceptible to cliff erosion and the 100 ft. line from the edge of the cliff on a map. He stated that we would have to specify whether the no build/no clear zone would shift

as the cliff erodes.

There was further testimony and questions centering around the no build/no clear zone summarized as follows: 1. there is recourse, a safety valve, in the variance under #6 if there was hardship or someone under duress; variances will be made by the planning board review committee; statements were made that "specific circumstances" for granting variances were too vague 2. there should be some provision to allow for the fact that the edge of the Cliff is not a permanent geographical continuum but that it will inevitable erode back and that this protected area should remain as the topography shifts; 3. we have to be careful about the determination of what is the edge of the Cliff, legally; page 3, 5.b the second line says "at the time the action is being proposed", meaning that the edge of the cliff is measured at the time the permit is being applied for; a registered land surveyor might be able to shed some light on what they would use in their profession for a defined criteria; 4. a no build/no clear zone would also provide some protection for people who might build to keep them back from the edge to protect against erosion; 5. existing 100 ft. no build zone through the Conservation Commission; 6. must discourage clearing entire lots; 7. a building or a project that would otherwise be a DRI will still be a DRI; 8. the Planning Board would actually be issuing the special permits but the review committee will have in addition to the planning board members, the building inspector, the board of health agent, a member from the selectmen and the conservation commission; 9. suggestion of a 150 ft. no build and 100 feet no build/no cut; 10. Page 3, 5.b. the no build/no clear zone, "clear" could be ambiguous. Does clear mean you can't take one tree down or you can't trim trees? The Edgartown Conservation Commission usually says no cut/no build; agreement there should be no cut, any vegetation in that area is helping to hold the cliffs together and nobody should disturb it if it is that close to the edge.

Mr. Young suggested language changes as follows: Page 3, #6 change last sentence to "reasonable uses, or are demonstrated by a landowner to be unreasonable". The way it reads now doesn't make sense to me. Page 2, #1, the whole first paragraph seems to say it is going to include everything defined in Chapter 831 as development plus A-E below. So why not say "Act of 1977 as amended" then say namely and that long list and then say also including but not limited to A-E.

Mr. Fischer called for testimony from Town Boards.

Ms. Elise Lebovit, Gay Head Zoning Board of Appeals, testified that she would like clarification from Conservation what the buffer zone is. Before you decide what the town regulations are we should know them for sure. The erosion is 8.9 ft. per year and accelerating according to the last study that was made. Mr. Fischer asked Ms. Lebovit if there was any documentation on that? Ms. Lebovit stated that she heard this figure at a Planning Board meeting. The other question that I have is the property owners that wouldn't be able to use their lots, would they come before you for a variance or is this do you definitely can't do it? What happens to their lots? Is it like eminent domain? Ms. Lebovit stated she was also interested to

know if anyone has talked to the Tribe to know how their purchase plans are going.

Mr. Young responded to one of Ms. Lebovit's questions by stating that there is a variance procedure for anyone whose lot becomes unbuildable because of these regulations can apply and be eligible for a variance from the Planning Board. Ms. Lebovit asked and if they were turned down by the Planning Board they could then go to the Board of Appeals? The response was yes.

Mr. Saxe read the currently special permit process and restrictions for the area.

When there was no further testimony from Ms. Lebovit, Mr. Fischer called for any other Town Board testimony. There was none. He then called on testimony from the general public.

Mr. Early asked suppose somebody owned a piece of property up there and they wanted to do something that was solely for protecting the cliffs from eroding. In the way of some sort of reforestation, planting of a hardy species, or perhaps somewhat more radically than that perhaps in cooperation with the Army Corp. of Engineer or the Town Conservation Commission. Would these regulations preclude them from doing this without going through the special permit variance process?

Mr. Lee stated that he personally doesn't believe that there should be any guesthouses in this area. I know guesthouses are a sore spot for many people for a number of reasons. I also don't want to deprive people but a lot of people use guesthouses for themselves and then rent their main house.

There was further discussion regarding guesthouses summarized as follows: questions about an existing by-law regarding maximum sq. ft. dwelling that is permitted on a lot; controversy surrounding this by-law provision; reasons for prohibiting guesthouse include limiting the volume of septage and the number of structures in the area; other towns' by-laws that have 15,000 sq. ft. per bedroom restrictions, if they have a large enough lot they could have a guesthouse; Mr. Saxe discussed the soils in relation to septic and nitrate loading; the guesthouses are concern too because the more land you disturb to build the worse it is for the area; discussion of a mechanism for restricting the number of bedrooms proportionately to how close the site is to the cliff edge; perhaps the bedrooms per lot has more clout than a blanket restriction on guesthouses and is a more sensible way to proceed.

Mr. Fischer then called for any other testimony.

Mr. Bill Sargent, Gay Head Conservation Commission and the Zoning Board of Appeals, apologized for being late. He stated that he spoke to a number of people about the 3,500 sq. ft. and the inconsistency that is in that comes from the State ruling about limiting the interior space. So actually it is written as correctly as you can get it. There is a way for improving that and that is to make it ok with

the State. But it was intended to limit to 3,500 sq. ft. Mitzi Pratt and I are presently working on trying to get the 100 ft. buffer increased to 200 ft. because we found out we can do that with by-laws. We are expecting to settle for about 150 ft. I want to include that. We met with the Army Corp. of Engineers about a year ago and defined the 100 ft. back from the edge of that cliff as conservation area. Also I was on the phone this afternoon with DEP talking about working in tandem with the Land Bank because of the Land Bank theory that they would have to provide public access by their mandate. That is just starting. We are working on going from 100 ft. to 200 ft. so nothing is saying that people are going to be walking out on the edge of that cliff.

Mr. Fischer then asked if there were any other members of the public who would like to testify, there were none. He then asked if Ms. LeBovit would like to give any additional testimony.

Ms. LeBovit stated that as far as the view goes, a guesthouse and a house would take up more view space so when you look down there the less clutter the better.

There was some discussion on Lot #10 again and the cliff edge shown on the drawings of this lot. It was stated that you have to tie limiting structures to the proximity of the cliff face and the permeability of the soil.

Mr. Sargent stated that the Army Corp of Engineers made the decision that the piece of wetland that has dropped away from the cliff, actually it is where it has broken off, that is the new beginning of the edge of the cliff. So it doesn't go out and include that piece. The other thing is that Conservation's understanding, very simplified, is that you have land sitting on clay. We recognize that it is not permeable as just a blanket of clay and it is safest for us to do that. It is our understanding that anyplace that you put up there you will have people walking around, etc. The only way that water that hits the cliffs is evacuated from the cliffs is by vegetation. If you have someone walking from one person's house to another, back and forth, even this sort of a situation near enough to the cliff where you trample down and stomp the vegetation you have not only created a gullet for water but it is water that can't get away and you may actually be creating a natural fault line. That is Conservation's position on that cliff. I think it is a good idea to go after the treatment of people on that cliff as a whole.

Ms. Colebrook asked Mr. Sargent if the Tribe has any further interest in this area? Mr. Sargent responded they are working on it. I have spoken to Mr. Widdiss and they are still meeting on it. Mr. Lee stated that Mr. Widdiss has told him that they would be making a statement about this within a couple of weeks.

Ms. Sibley stated that she thinks the goals need stronger statements about erosion as it was in the Designation Decision that can be used by the Planning Board during the special permit process. Ms. Greene stated when we first started reviewing this I remember us discussing the geological significance of this site on a national level and that

is something our goal is to protect.

Mr. Lee stated that she is correct. The Gay Head Cliffs were designated a National Historic Resource and it is unique in the world. You can read about it in geological text. This cliff was here long before the glaciers dropped the rest of the Island. The earliest fossils remnants included camels, early horses, etc. It does have massive scientific importance. The wildlife needs to be protected also in addition to the vegetation.

Ms. Borer stated that only the face of the cliffs are a national landmark. She stated that this will be inserted in the Gay Head Zoning By-laws after adoption. Is it my understanding that the Commission is interested in including the goals from the designation decision or are you satisfied with what is here. Ms. Borer stated we could just refer to the Gay Head Designation Decision.

Ms. LeBovit stated that the majority of the people that came to the last town meeting about this place were in favor of keeping it wild and we haven't given up in trying to find the money to buy it.

Mr. Filley asked the members of the Gay Head Town Boards and the public if these regulations adequately address what they envisioned the DCPC to do? Mr. Mike Stutz, Zoning Board of Appeals, stated that he read carefully through the proposed regulations and in my view it seems to do a reasonable good job of setting out some parameters for development. I'm not sure legally how much more restrictive you could be. That really becomes the question. The extent to which you can limit development on each parcel of land that are all awaiting with baited breath the action of this Commission and the Town of Gay Head. The place is already riddled with well holes and there are going to be a whole bunch more septic systems coming in. This Commission's letter to the Land Bank was very useful and I would like to compliment you for taking that stance. I have had a conversation with one member of the Land Bank Commission who indicated that the public access issues, which was the primary objection by the Gay Head populace at the public hearing a couple of weeks ago, is not a closed subject. In fact substantial restrictions or total restrictions on public access is possible. The door is open so I would hope that the seed would be planted in everybody's mind that it is still possible for the Land Bank to purchase a substantial portion of that property up there. I hope that whatever anyone here feels they can do in that regard they will do. I don't think it is over.

Mr. Early stated that he doesn't have any problems incorporating the goals from the designation in these regulations but I sometimes wonder if by laying this out specifically we are limiting the board's latitude in their decision making.

Mr. Lee stated that the Moshup Trail goals are lengthy and spelled out well. I don't think we should shy away from detail.

There was agreement to add the goals from the Designation Decision into the proposed regulations.

There was no further testimony or correspondence. Mr. Fischer closed the hearing at approximately 10:00 p.m. with the record remaining open for one week for any further testimony.

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

ITEM #1 - Chairman's Report - There was none.

ITEM #2 - Old Business

Mr. Early asked about the investigation into the handicap facilities at the Aquinnah Shop? Ms. Borer stated we are looking into the Aquinnah DRI requests.

ITEM #3 - Minutes of March 29, 1990

The minutes from this meeting are not available at this time. There is a draft prepared and we will be dealing with them next week.

ITEM #4 - Committee and Legislative Liaison Reports

Mr. Morgan, Chairman of the Land Use Planning Committee, reported that LUPC has met 7-8 times on the DRI checklist and thresholds. On April 9th we will discuss the Leland Subdivision on Chappy and an update on the Adler/Spring Cover Realty Trust DRI. Mr. Morgan continued by reporting as Legislative Liaison. He reported on House Bill #2743 which was appended to another bill as a method of not killing it outright but having it die a slow death. We are in the process of extracting that from the other bill and starting over again. I will let you know the minute House Bill #2743 is pulled, Ms. Borer has a list of all the members of Taxation and we will make some calls and do some letter writing. I have here House Bill #5277 which is called the greenhouse bill and it pertains almost entirely to promoting clean and efficient energy. Yesterday Gardner Auditorium was standing room only with groups opposing gun legislation. There was a bill yesterday, Senate #950, this bill would allow the Director of Fisheries and Wildlife to designate areas of significant habitats of rare or endangered species of plants or animals. Any owners of lands so designated would be required to get an extra permit to develop this. The Homebuilders Association opposed that. It seems that we will not be running into the same opposition on SSA measures as we had in the past. I don't think we will see any serious opposition to the make up of the Board. Each time we file a moped bill we haven't done well before the Public Safety Committee. However last year when we were testifying we were advised that the towns have the right to do it themselves and gave some regulations. E.B. Collins in Edgartown took that to Town Counsel and he said that he didn't see it that way and wrote to the Attorney General and asked for an interpretation. The Attorney General said he could not do that for him but could for committees. So I went back and asked Public Safety but they had no bills before them so they couldn't ask. But we have 2 bills before us now and Public Safety has promised me that they will ask the Attorney

General for his interpretation of how towns can rule and regulate mopeds. So we will finally get an answer.

Mr. Ewing reported that the Edgartown Ponds DCPC Committee will be meeting tomorrow at 4:00 p.m.

Mr. Early, Chairman of Planning and Economic Development, stated that there have been no meetings. We will be meeting next Thursday at a time and place to be announced.

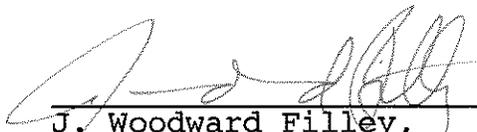
There were no further committee reports.

ITEM #5 - New Business - There was none.

ITEM #6 - Correspondence - There was none.

The meeting was adjourned at 10:15 p.m.

ATTEST

	<u>4/12/90</u>
J. Woodward Filley, Chairman	Date

	<u>4-12-90</u>
Albert O. Fischer, III, Clerk/Treasurer	Date

Attendance

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

Absent: Jason, McCavitt, Allen, Geller, Davis.

* Mr. Schweikert arrived at 9:00 p.m.