

# THE MARTHA'S VINEYARD COMMISSION

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MINUTES OF MAY 3, 1990

## MARTHA'S VINEYARD COMMISSION MEETING

The Martha's Vineyard Commission held a continued public hearing Thursday, May 3, 1990 at 8:00 p.m. at the Martha's Vineyard Commission Offices, Olde Stone Building, New York Avenue, Oak Bluffs, MA regarding the following Development of Regional Impact (DRI):

Applicant: Stephen Bernier  
Cronig's Market  
P.O. Box 698  
109 State Road  
Vineyard Haven, MA 02568

Location: State Road  
Vineyard Haven, MA

Proposal: Addition to an existing market qualifying as a DRI since the floor area is greater than 1,000 square feet.

Robert T. Morgan, Sr., Chairman of the Land Use Planning Committee, (LUPC), read the Cronig's Continued Public Hearing Notice, opened the hearing for testimony, and immediately continued the hearing to May 17th at the request of Mr. Bernier. This continuation is due to a conflict with Tisbury Town Meeting.

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Following the continuance of this hearing, Mr. Filley, Chairman, opened the special meeting of the Commission at 8:10 p.m.

### ITEM #1 - Chairman's Report

Mr. Filley introduced Mr. Tom Simmons as the Commission's new transportation planner.

### ITEM #2 - Old Business

Mr. Filley asked Mr. Morgan to review the old business regarding Mr. Adler/Spring Cove Realty Trust.

Mr. Morgan stated we have received a letter from Mr. Adler dated April 30th and we have discussed this at LUPC. This letter deals with the materials that will be used to construct the bridge and includes a copy of an arbitration agreement. The arbitration agreement states the parties agree not to go to the Department of Environmental Protection (DEP) for a continued hearing if the MVC agrees that non-CCA treated pilings can be used for the construction of this bridge. The hearing would be a 3 day hearing and would be a costly process for all involved. He stated that this agreement only has to do with CCA treated materials. He read portions of the MVC Decision on Spring Cove Realty Trust and stated that although the materials were not conditioned the CCA treated wood was listed in the proposal and testimony during the hearing as the materials to be used for the pilings. Mr. Morgan stated that the question before us tonight is, do we agree that he can use a different type of materials than what was specified in the Decision?

Mr. Ewing, Commissioner, asked he doesn't want to use CCA treated wood? Mr. Morgan stated that the abutters have agreed to drop their appeal if Mr. Adler agrees to change the material. Mr. Adler has agreed.

Ms. Harney, Commissioner, asked why was this material contested? It was stated that using CCA treated wood lasts longer, it may never have to be replaced, but may have a negative effect on the wetlands.

Mr. Fischer, Commissioner, asked whose decision is it what they do use? Mr. Morgan responded that the abutter say Oak entirely.

Mr. Ewing asked if what he would use would be less toxic? Mr. Morgan responded it would be untreated. Mr. Ewing asked if we conditioned the use of CCA treated wood? Mr. Morgan responded no but since it was the material presented, if it is changed it requires a modification.

Mr. Jason, Commissioner, stated I think the question before us is does it require a modification if the material is less toxic than what was in the Decision?

Ms. Sibley, Commissioner, stated I don't think it requires a full public hearing but it is a modification. When we accept a plan that is what is supposed to be followed. The plan includes the materials to be used. If they were changing to a material we wouldn't like we would want to look at it, would we? So changing the material is a modification and we should consider it as such. To do otherwise would set a precedent. That is not what is in the Decision.

Mr. Young, Commissioner, stated that is a valid point. What was approved was what was presented. We should reaffirm our approval.

Mr. Early, Commissioner, stated that if we agree it is not a significant modification we should know what the replacement material would be. Mr. Filley asked if he would like a letter outlining what would be used? The response was yes. Mr. Early responded but it definitely doesn't need to go through the public hearing process.

Mr. Morgan then read the arbitration agreement in full. The agreement states Mr. Adler agrees to use an "untreated, chemically free alternative to CCA for the bridge under appeal".

Mr. Jason asked, doesn't the decision say that after Commission approval they must go to the Conservation Commission for action on the notice of intent? The response was yes. Mr. Jason continued by stating that in other decision, for example a subdivision, a town permit granting authority will make changes to a plan, i.e., lot line changes, etc., without coming back to the Commission. I think the Conservation Commission should handle this.

Ms. Sibley stated that the arbitration agreement does say wood and that they need a response by tomorrow.

It was motioned and seconded that the proposed compromise doesn't require modification of the June 11, 1987 Commission Decision. The following was discussed regarding this motion. Mr. Young stated that his argument against this is that the environmental concerns were the single most important issues. I think we should reaffirm our approval after we know what he will be using. Mr. Ewing asked, couldn't we leave it up the Conservation Commission? Several people agreed that this could be done. The motion on the table was amended to include letters to the West Tisbury and Tisbury Conservation Commissions notifying them of our decision and acknowledging that they can exercise their rights to modify the order of conditions if they so choose. Ms. Sibley stated that her problem is one of formality. If he were doing something worse we would want to claim authority. Mr. Morgan asked why should we care if it is wooden and not treated? There are only a few types of wood that could be used. Mr. Lee, Commissioner, stated they say wood in the agreement. Maybe we should use the word wood so it won't be steel or fiberglass or something else used. The motion and second on the table was withdrawn.

It was motioned and seconded that whereas the applicant continues to use wood, the Commission doesn't feel it is necessary to modify the Decision but we will send letters to the Conservation Commissions to that effect. Discussion followed on this motion including that the letter to the Conservation Commissions should say we have no problem with the elimination of CCA treated wood and that the letter should really go to the DEP. The motion was withdrawn.

It was motioned and seconded that we write to DEP and say we agree with the terms of the arbitration agreement concerning the replacement of CCA treated wood with untreated wood and also that we write to the Conservation Commissions to inform them of our decision and acknowledge their rights to modify the order of conditions if they so choose. Mr. Geller, Commissioner, stated that since this arises out of litigation they are looking for a definitive statement. It was stated that we will inform DEP that we agree to the terms of the arbitration agreement. Mr. Early asked if we can vote on this matter without a Tisbury representative present? Ms. Borer stated that we could respond to the letter by stating there was an unofficial vote and that an official vote will be taken at the next Commission meeting. This motion was approved unanimously.

ITEM #3 - Minutes of April 19, 1990

It was motioned and seconded to approve the draft minutes with one correction as follows: Page 10, paragraph 6, remove the "z" from LeBovitz. This motion passed with no opposition, 1 abstention, Early. (Harney was in favor, Geller abstained.)

ITEM #4 - Committee and Legislative Liaison Reports

Mr. Morgan, Chairman of LUPC, reported that LUPC had met Monday with representatives of the Cronig's DRI and the primary discussion was on traffic. We also met with representatives of the Vineyard Assembly of God proposal. We will be meeting with them again since there are still some unanswered questions. On May 7th we will be meeting with MVY Realty Trust for a discussion with traffic engineers. On May 14th we will be meeting on the Keyland Realty Trust DRI and the Vineyard Assembly of God. Hopefully we will have time for another DRI working session. Transcripts were completed from previous LUPC discussion on the DRI process, review and thresholds. There are now 43 pages of typed discussion that we will be cutting down into a synopsis for distribution to the LUPC members.

Mr. Morgan then reported as Legislative Liaison by stating that there are currently 4 bills pending dealing with impact fees and exactions. I expect that any one of these bills passing would clear the air on exactions. Each bill speaks to having a Capital Plan or Master Plan for the area on which to base impact fees or exactions. He then reported that Bill #2743 dealing with excise tax has been separated and extended to September 26th and is now with several other bills in Committee. I make the following recommendations: the Executive Director should prepare letters to the members of the committee expressing the need for #2743; the administrator prepared a budget and copies of annual reports; and that Representative Turkington, Senator Rauschenbach, the Executive Director, Administrator, and Chairman of the Commission should visit the Taxation Committee. He then reported on House Bill #5618 that was filed on behalf of the Mass. Aeronautical Assoc. that would give funding for needed safety provisions. This would help the M.V. Airport immensely, as well as other airports.

Ms. Bryant, Commissioner, reported on Mr. Studds visit on Earth Day. Mr. Studds met with a group from the MVC, had several hundred people at his keynote speech and about a hundred at his open meeting. She then reported that the Joint Health Care Committee voted Senate Bill #499 ought not to pass and it is now dead. If anything else comes up on this I will alert you. Regarding Bill #2743 I just want to say that lobbying does pay off. For instance, I know how hard Ms. Harney has worked for this bill.

Ms. Borer, Executive Director, stated that Mr. Morgan is also being modest and deserves a lot of credit for the separation of the bill. A round of applause followed.

Mr. Early, Chairman of Planning and Economic Development Committee (PED), reported that they had met last Thursday. They had a committee meeting at 7:00 and then a meeting with the Oak Bluffs Planned Development District (PDD) Committee at 8:00. They were good meetings. We agreed to divide the tasks. It was felt that the Commission is under tremendous burden with our other work, limited staff, and no money and that Oak Bluffs had to realize the amount of the commitment required. The course we chose to take was to proceed in a phased fashion. Develop a concept plan first that will go to town meeting, hopefully this fall, for town approval. If it is approved we will proceed with the other stages. The phased pattern will allow the Oak Bluffs' voters to comment on this fairly early in the process. We will draft a memorandum of agreement (MOA) to be signed by the Town and the MVC.

Mr. Saxe, MVC Staff, stated that the MOA will provide for a detailed concept plan and if this is approved at Town meeting then we will get involved in the detailed planning and more thorough analysis.

There was some discussion about the phasing of the process and the fact that the 1st town meeting approval would constitute the approval required in the regulations. It was asked what guarantee we would have that nothing would happen between phase 1 and phase 3? The response was there is still no access to the majority of the property.

Mr. Filley stated that PDD will develop the MOA and come back to the full Commission then.

When there were no further committee reports, Mr. Filley moved on to the next agenda item.

ITEM #5 - New Business

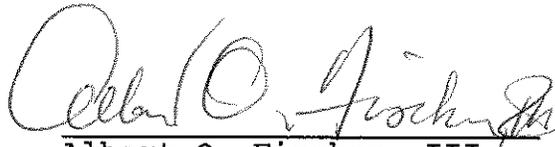
Mr. Filley noted the following changes to the Long Term Agenda: Keyland Continued Public hearing is rescheduled from May 24th to May 31; there will be no Commission meeting on May 10th; and Cronig's continued public hearing will be May 17th.

ITEM #6 - Correspondence - There was none.

The meeting was adjourned at 8:53 p.m.

ATTEST

 5/17/90  
J. Woodward Filley, Date  
Chairman

 5/24/90  
Albert O. Fischer, III, Date  
Clerk/Treasurer

Attendance

Present: Bryant, Colebrook, Early, Ewing, Filley, Fischer, Greene, Jason, Lee, Morgan, Sibley, Young, Geller, Harney.

Absent: Eber, Schweikert, Sullivan, Wey, McCavitt, Davis.