

# THE MARTHA'S VINEYARD COMMISSION

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MINUTES OF MAY 17, 1990

## MARTHA'S VINEYARD COMMISSION MEETING

The Martha's Vineyard Commission held a continued public hearing Thursday, May 17, 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 Public Hearing 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 major aspects of the proposal and stated that the hearing was continued for reasons of traffic information. Mr. Saxe reviewed correspondence received since the last public hearing that included letter from Mr. Putziger, MVY Realty Trust, Vanasse Hagen Brustlin, MVY traffic engineers, Atlantic Design, Cronig's traffic engineers, revisions to traffic analysis, received April 12, 1990 and McDonough & Scully's review of these revisions. (These letter were distributed at this hearing and are available in the DRI and Meeting files.) Mr. Saxe also discussed correspondence between the applicant and Janet McCabe, Executive Office of Environmental Affairs (EOEA), regarding the fact that MEPA does not apply and no ENF is needed. Mr. Saxe stated that MVY had written to EOEA regarding this determination and the letter is one file. Mr. Saxe then answered questions from the Commissioners.

Mr. McCavitt, Commissioner, asked what was the reasoning for the decision from the EOEA office? Mr. Saxe stated it is below the threshold for review. The difference is whether you calculate only retail or total square feet.

When there were no further questions for Mr. Saxe, Mr. Morgan called on the applicant to make his presentation.

Mr. Doug Hoehn, Schofield Brothers, gave a history of correspondence regarding the MEPA issue. He read the last 2 paragraphs of the letter dated March 1st from EOEa that Mr. Saxe had referenced: "The proposed addition to the Market consists of a 4,100 square foot addition and an additional 4,100 square feet of basement space. The existing building is 11,596 square feet with basement area of 8,800 square feet. There will be 95 parking spaces associated with the enlarged building. On the basis of these facts, it is the opinion of the Secretary that MEPA does not apply and that no Environmental Notification Form need be filed." Mr. Hoehn then answered questions from the Commissioners.

Mr. Sullivan, Commissioner, asked if EOEa has seen the plans? Mr. Hoehn responded no, just a letter describing the project and including the numbers associated with it.

Jim Borreback, Atlantic Design, stated that at the last hearing we submitted additional information using local rates. They corresponded reasonably well to ITE over the 24 hours period. The peak volume ITE was substantially less than the local method. In subsequent analyses we used local methods not ITE. There were also a couple of issues raised regarding the days we took the counts and the viability of that data. We counted on December 29th and 30th, Friday and Saturday of a holiday weekend. We compared this data to the Nobnocket data from June of 1987. Using a 5% adjustment rate we developed 1989 figures and compared them to ours. He discussed the findings. We redid the initial analysis and found that overall the results were the same. The Road is close to capacity and will fail shortly with or without development. We recommend a full corridor study as soon as possible. Mr. Borreback submitted information on new analysis conducted (available in the DRI file) and reviewed this information. He discussed his meeting with McDonough and Scully of May 1st. Mr. Borreback then answered questions from the Commissioners.

Mr. Sullivan asked if McDonough and Scully has received these new analyses? Mr. Borreback responded no but I have discussed them with Mr. Scully twice.

When there were no more questions for Mr. Borreback and no further applicant testimony, Mr. Morgan called on Town Board testimony. There was none. He called for testimony in favor of the proposal. There was none. He then called for testimony opposed to the project.

Mr. Michael Putziger, MVY Realty Trust, stated that he is opposed to the method utilized and the results of the traffic information provided. I won't go over all the comments I made in my letter but I would like to highlight some. While I am not a traffic engineer it seems to me that the scope of traffic study requested by the Commission was not followed by Cronigs and still has not been followed. Although I can't be certain of that because there has been some new information submitted tonight that neither I, your traffic engineer nor my traffic engineer has had an opportunity to review. I

would certainly like the opportunity to do that. But the essence of that concern is that more information is coming in without an opportunity for everyone to review it and it is all based on a series of historic counts that at least in other contexts concerning my efforts before the Commission have been stated to be inappropriate. Some information in the traffic study that has submitted by Cronig's seems, as I said in my letter, to be inaccurate and inconsistent with known facts. The summer time projections are not consistent with prior recorded summer time counts that exists by virtue of the traffic study that I performed in 1987. Beyond that, even extrapolated from the New Year's weekend count and historic count, the conclusion is wrong. Cronig's is currently approximately a 1/3 contributor to the traffic in this area as it now exists and to further expand this market without some material mitigation contributions to the traffic situation on State Road seems to be inappropriate. As I said before, the lack of mitigation is almost incomprehensible to me in light of the concern with regard to traffic that have been expressed by the Commission on State Road over the last few years regarding development on that Road. While what is proposed by Cronig's and its study's of growth activity are independent of other activities I would like to note that currently I have a proposal before this Commission where I proposed a scope of traffic study essentially identical with the scope of traffic study that was suggested to Cronig's but not followed by Cronig's. My scope has been suggested by Scully to be totally inaccurate and inadequate. Numerous additional current summer time counts have been asked of me. Which I am very willing to do but it seems to me appropriate that a similar burden be imposed on all who wish to develop on this road. So I think that equal treatment is appropriate and that comparable standards should be imposed for all developments along State Road.

Mr. Geller, Commissioner, asked Mr. Putziger about his statement that he thought there should be an obligation on the part of Cronig's to mitigate the traffic situation. What is your recommendation? Mr. Putziger stated as I indicated I am not a traffic engineer but when you look at their parking lot for example, even as proposed it is archaic and will result in internal congestion. The general use of that site is extremely intense in light of its peak use. A total reconfigurration to parking, internal circulation, stacking driveways, widening of State Road at that location, turning lanes, and perhaps other road improvements would be appropriate to make this site a more useful site during peak use activities. The scope of where that work is appropriate is really beyond my expertise. These are the types of suggestions made to me to make my site more usable during peak conditions so it is the type of mitigation efforts that might be helpful in this subject.

Mr. McCavitt, asked if 1 Post Office Square, Boston, MA is the office of MVY Realty Trust? Mr. Putziger responded that is correct.

Mr. Morgan then called for any further testimony. There was none.

Mr. Morgan asked Mr. Bernier if you would be willing to accept another continuance giving the Commission a period of time to work out the details whatever they might be, whether it be a District of Critical

Planning Concern, etc., to study this corridor? Mr. Bernier responded yes, the applicant would agree to that.

Mr. Morgan asked Mr. Bernier if he wished to respond to any comments, statements or questions? Mr. Bernier stated that the applicant will choose not to rebut those comments from MVY Realty Trust.

When there were no further questions or comments, Mr. Morgan continued the hearing to a later date at 8:35 p.m.

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Following the continued public hearing, Mr. Filley, Chairman, opened the regular meeting of the Commission at 8:50 P.M. and proceeded with agenda items.

ITEM #1 - Chairman's Report

Mr. Filley announced the birth of Mr. Fischer's, Clerk/Treasurers, daughter. He then introduced Mr. Jeff Benoit, Director of MA Coastal Zone Management (CZM).

Mr. Benoit stated he is please to be here. He stated that he took over as Director in August of 1989 and that he has been spending most of his time getting caught up. He gave a review of his background both with DEQE, Lakeville and CZM. He stated that today himself, Mr. McCavitt, and John Schilling, MVC Coastal Planner, toured the Island and visit many project sites. He hopes that CZM can continue to work closely with the Commission. They will continue their support of the Commission and hopefully can increase this support.

Mr. Filley thanked CZM for all of their support and stated it is very much appreciated.

ITEM #2 - Old Business

Mr. Filley asked Ms. Borer, Executive Director, to review correspondence received regarding the Alder, Spring Cove Realty Trust issue since the discussion on May 3rd.

Ms. Borer read the letter sent to the Dept. of Environmental Protect (DEP) as a result of the May 3rd MVC meeting and a statement received from DEP regarding a petitioners' motion to withdraw conditional on the arbitration decision. Ms. Borer stated that since there was no quorum on May 3rd the Commission will take a full vote on this issue tonight.

Mr. Filley called for discussion. There was none.

It was motioned and seconded to write to DEP and inform them that 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 Commission to inform them of our decision. There was no discussion on this motion. The motion was approved unanimously.

Ms. Borer then reviewed a request for modification of the Deer Run Decision. The request was from the new owners, the Co-Op Bank, and the Dukes County Regional Housing Authority. Ms. Borer read letters from the Dukes County Regional Housing Authority (DCRHA), the Co-Op Bank and the Oak Bluffs Board of Selectmen. All agreed to a cash settlement of \$100,000.00 for the Oak Bluffs Resident Homesite Committee (OBRHC) and \$10,000.00 for the Regional Housing Authority. Mr. Bradbury representing the Co-Op Bank is here tonight as is Mr. Ferraguzzi from the Regional Housing Authority. The Commission must, by majority vote decide if this modification is significant enough to warrant a public hearing and full DRI review.

Mr. Geller expressed his concern that this might establish a precedent that the applicant can negotiate with the towns after the Commission has rendered a decision.

Mr. Bradbury stated that this modification wasn't our idea. The DCRHA and the OBRHC felt they would have a difficult time finding individuals qualified to purchase these houses even at the reduced rates. They suggested the cash alternative.

Mr. Ferraguzzi, DCRHA, stated that the OBRHC really wants to do this and has discussed it with the Board of Selectmen. They feel that the cash will have more advantage to the town in land acquisition projects. OBRHC is very aggressive and has probably done more in the Town of Oak Bluffs than all the other towns combined. The DCRHA feels they should be encouraged.

Mr. Jason, Commissioner, asked how many families have you placed now? Mr. Wey, Commissioner and Oak Bluffs Selectmen, responded 12 now and 5 - 6 are in stages of completion. Mr. Jason stated it seems we have a choice of 3 houses or more lots to place a lot more people.

Mr. Early, Commissioner, asked the date of the original decision? The response was 1987. Mr. Early stated that he thinks this decision superceded the OBRHC's active participation. That could have been a consideration in our decision for lots. I worked on the West Tisbury Resident Homesite Committee and I think we should support Homesite Committee efforts. I don't feel this should require a public hearing.

It was motioned and seconded that the proposed modification of the Deer Run Subdivision Decision regarding a cash donation as an alternative to the 3 lot donation does not warrant a public hearing and full DRI review. Discussion followed on this motion regarding the fact that the houses are estimated to cost over \$130,000 and low-moderate income people couldn't afford a mortgage and the comparison of the two donations as far as dollar value is concerned. Mr. Ferraguzzi stated that if you read the decision the lots are offered at 1/2 value and the houses are sold at cost. It is not like there is a profit in between. Therefore the Bank is actually offering more money with this alternative. The motion passed unanimously.

ITEM #3 - Minutes of May 3, 1990

It was motioned and seconded to approve the draft minutes as presented. There was no discussion. This motion passed with no opposition, 3 abstentions, Wey, Sullivan, Benoit. (Geller and Harney were in favor.)

Mr. Filley then took the agenda out of order and proceeded to ask Ms. Borer to discuss new business.

ITEM #5 - New Business

Ms. Borer stated that there is a question pending from the towns of Edgartown and Oak Bluffs regarding a re-paving project by the Department of Public Works (DPW). Using a literal interpreted of the checklist this could be a DRI. Some similar projects were reviewed as DRIs. A DPW representative is here tonight to explain the project.

Mr. Jason asked for some background on similar DRIs and literal interpretation of this as a DRI? Ms. Borer stated we reviewed the bike path proposal. It crossed town boundaries and was a impervious surface in the Coastal District.

Mr. Pudgy DeCosta, DPW, discussed a letter that Mr. Smith, DPW, had submitted to the Commission (available in the Meeting file). All we want to do is maintain the road. There will be no widening of the road or the bike path. The Edgartown Conservation Commission met last night and gave us a negative determination on this. Both Conservation Commission were concerned with the work within the beach area. We have worked several conditions into our contract for this project that he outlined as follows: 1. No piles of mix or excavated materials will be left on the shoulder areas at any time. 2. No equipment will be driven off the paved surface in the beach area at any time. 3. The disposal of excavated material will be subject to the rules and regulations of the local authority. Edgartown was also concerned that with the addition of a 3 inch mix there would be a 3 inch lip on the edge of the roadway. We will put sand, topsoil and vegetation, etc. at their request. The Oak Bluffs Conservation Commission also gave us a negative finding after they saw the conditions on page 2 of the contract.

Ms. Borer read the letter from Mr. Smith, District Highway Engineer dated May 14th.

Mr. Filley asked if there were any questions for Mr. DeCosta?

Mr. Saxe, MVC staff, asked if the guard rails on the bike path would be the same material? Mr. DeCosta replied we won't touch the guard rails between Beach Road and the bike path on the beach stretch. There will be some modification to guard rails in other sections and we will replace the material with wooden posts, which seem more fitting for the area.

Mr. Filley asked what is the timeframe for this project? Mr. DeCosta stated that we hope to begin in the Fall and if we don't finish by

winter we will start again in the Spring. There will be no work done between June 15-September 10th.

Mr. Wey stated that the towns of Oak Bluffs and Edgartown have worked on this for a couple of years. The Oak Bluffs Board of Selectmen have submitted a letter of support. (Available in the meeting file.) I hope the Commission can expedite this.

It was moved and seconded that the DPW project for re-paving of the Beach Road from the County Jail in Edgartown to Town Hall in Oak Bluffs not be considered as a DRI. There was no discussion on this motion. The motion passed unanimously.

Mr. Saxe addressed the next item of new business regarding the County Testing Lab. This lab was discussed last year including the loan of Commission equipment to this lab in exchange for providing services. Mr. Saxe stated that our equipment is very expensive and is not fully utilized at the Commission. This lab would also be a certified lab, where the Commission's was not. This could increase our water quality data base as they will be doing more testing. Mr. Saxe stated that the Commission is being asked if they are willing to enter into a loan agreement with the County Testing Lab.

Ms. Greene, Commissioner, stated that the agreement should be in writing and should include maintenance provisions? Mr. Saxe stated that is the intention. Currently one of our machines is in need of repair and they have agreed to pay the cost for replacement parts.

It was moved and seconded to draft a memorandum of agreement regarding the loan and maintenance of testing equipment to the County Testing Lab. There was no discussion. This motion passed with no opposition, 1 abstention, Jason. (Geller and Harney were in favor.)

Mr. Geller, Commissioner, asked to address the Commissioners on another topic. I am dismayed with respect to the fact that litigators against the Commission have sold property to the Land Bank without dropping the litigation. It seems to me with the current budget constraints and the high cost of legal services that this should be addressed. If the Land Bank buys property that is in litigation the least they could do would be to get the applicant to agree to drop the litigation against the MVC. I understand that the Tradewinds' litigation is still going on after its sale to the Land Bank. I am dismayed by this and willing to draft a statement regarding this that the Commission could approve and send to the Land Bank.

All agreed that this would be a worthwhile undertaking. Mr. Filley stated that Mr. Geller could work with Ms. Borer regarding this statement. Mr. Jason suggested that copies should also go to the local Land Bank Advisory Councils. This was also agreed.

#### ITEM #4 - Committee and Legislative Liaison Reports

Morgan reported for LUPC on Ferry Boat Village and read a letter dated May 14th from the Tisbury Conservation Commission to Mr. Reid A. Dunn, Ferryboat Village. This letter states that the Form A requests a

change in the site plan that is part of the Order of Conditions 74-115 and will require an amendment to the Order of Conditions with a public hearing. He then asked Ms. Eber for the Planning Board position on this Form A.

Ms. Eber, Commissioner and Planning Board members, stated that she thinks if the applicant was willing to agree to state on the plans that the lots are subject to the conditions originally placed on Ferryboat Village by the Conservation Commission that this would be satisfactory to the Planning Board. That way anyone buying this property would be aware of the conditions.

Mr. Morgan stated that LUPC would take this up again after the Conservation Commission has reviewed it. He continued with his LUPC report by stating that on May 14th we met with representatives of Vineyard Assembly of God and MVY Realty Trust. Keyland was postponed until May 21st. Also on the agenda for May 21st is a modification to the Magid Subdivision Decision and discussion of Lake Tashmoo dredging.

Ms. Greene asked if we will be discussing the proposed amendment to the Island Road District? Mr. Morgan stated that would be addressed later under Item #5.

Mr. Schweikert asked regarding the Vineyard Assembly of God proposal, do we have a legal decision on the contention that this is not within our jurisdiction? Ms. Borer responded yes. Commissioner can see me if they wish to read it.

Mr. Morgan reported as Legislative Liaison by reviewing the schedule for meeting on House Bill #2743. We will meet with members of the Taxation Committee and have 15 minutes with each to present budgets, annual reports and a letter in support of the bill. Mr. Morgan continued by stating that nomination papers are available for the County Charter. There has been discussion on the number of signatures needed. The figure is 25 and they can be from one town or a combination of towns. However, each town needs a separate nomination paper for the purposes of certification. Representative Turkington filed a bill, #2696 that received a favorable report. This bill speaks to reimbursing the community that provided the training if the policeman quits or moves to another community.

Ms. Bryant, Commissioner, stated that the nomination papers for Martha's Vineyard Commissioners are also available now.

Mr. Early, Chairman of Planning and Economic Development (PED), reported that they had met this evening to review a draft memorandum of understanding between the Commission and the Selectmen in the Town of Oak Bluffs regarding Phase I Master Plan preparation. It is of limited scope and provides for the preparation of Phase I over the summer for possible approval at town meeting by mid-Fall. We will be meeting again on May 24th at 7:30 p.m. to finalize the language. It will then be brought to the full Commission.

Mr. Filley then returned to Item #5.

ITEM #5 - New Business (cont.)

Mr. Filley stated that Ms. Skiver and Mr. Simmons, MVC transportation planners, attended a meeting with the Tisbury Parking & Traffic Management Advisory Committee yesterday. A proposal was presented that scoped out a study and action plan for an area in Tisbury from the Beach Road to State Road Corridor area and asked Mr. Simmons to report on this meeting.

Mr. Simmons, MVC Staff, reported that in general the members of the Committee were more concerned with some type of short term immediate actions on the Main Street/Water Street/Union Street area than the long term planning. They were not adverse to looking at impacts in the long term. There were some members that were interested in seeing some sort of comprehensive plan but there was also a lot of vocalized feelings that we have had study after study after study and we have to do something now. Ms. Skiver and I are to meet with the Board of Selectmen next Tuesday night to bring the feelings of the Committee about this proposal to them. The general feeling I got was that they would be willing to look at some sort of more comprehensive plan for the entire Town if they saw that the Selectmen were going to act on some of the plans and studies that they had done already. They really didn't take the idea of the comprehensive plan any further than that.

Mr. Filley stated that there has been discussion by LUPC members regarding amending the Island Road District to include this area. There is also a lot of concerns from Commission that as we embark on some major projects and make the decisions in the B-2 area on State Road in Tisbury that we try to do so with a coordinated plan so we are not getting mitigations and other things on a piece meal basis. We had a meeting with the Planning Board and discussed issues there.

Mr. Morgan, Chairman of LUPC, asked Mr. Jason to describe the possibility of amending the Island Road District to encompass this area.

Mr. Jason stated that all the facts we have on State Road state that if nothing else is built in the business district the Road will reach failure within 5 years with the current rate of growth. It doesn't make sense to me to ignore that traffic. I think it would be more appropriate to consider the business district as part of the Roadside District and do a comprehensive traffic study and come up with a plan that can deal with that traffic. If the Town wants to see that business area continue to expand there must be a way they can deal with that traffic.

Mr. Sullivan stated that he thinks it is important that we bring the Selectmen as well as the rest of the Town along with us as soon as possible. We should get their input regarding this possible amendment before we put it forward as a hard idea.

Mr. Jason stated that one way to bring this about would be to nominate the business district as an amendment to the Island Road District.

After lengthy discussion it was decided to hold off on the possible nomination of an amendment to the Island Road District until after the meeting with the Tisbury Board of Selectmen.

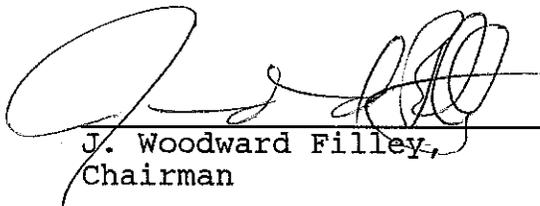
ITEM #6 - Correspondence

Mr. Filley read a letter of resignation from Carol Borer, Executive Director. The effective date of resignation is August 1 and the decision is based primarily on health considerations on Ms. Borer's part, as well as other personal family reasons. (This letter is available in the meeting file.)

Ms. Borer stated that as some of you know I will be having surgery shortly and there will be a long recovery period. I would also like to spend more time with my children and husband following my recovery. I have enjoyed working here, I have learned a lot and wish all of you luck in the future.

The meeting was adjourned at 10:05 p.m.

ATTEST

  
J. Woodward Filley,  
Chairman

5/24/90  
Date

  
Albert O. Fischer, III,  
Clerk/Treasurer

5-24-90  
Date

Attendance

Present: Bryant, Early, Eber, Ewing, Filley, Greene, Jason\*, Lee, Morgan, Schweikert, Sibley\*, Sullivan, Wey, Benoit, McCavitt, Geller, Harney.

Absent: Colebrook, Fischer, Young, Allen, Davis.

\* Mr. Jason and Ms. Sibley were not present during the Cronig's Public Hearing.