

# THE MARTHA'S VINEYARD COMMISSION

BOX 1447 • OAK BLUFFS  
MASSACHUSETTS 02557  
(508) 693-3453  
FAX (508) 693-7894

MINUTES OF MAY 31, 1990

## MARTHA'S VINEYARD COMMISSION MEETING

The Martha's Vineyard Commission held a continued public hearing Thursday, May 31, 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: Jane C. Brown  
Trustee of Keyland Realty Trust  
c/o Martin V. Tomassian, Jr.  
P.O. Box 355  
Edgartown, MA 02539

Location: Upper Main Street  
Edgartown - Vineyard Haven Road  
Edgartown, MA

Proposal: New commercial construction qualifying as a DRI since the proposal is greater than 1,000 square feet.

Robert T. Morgan, Sr., Chairman of the Land Use Planning Committee, (LUPC), read the Keyland Public Hearing Notice, opened the hearing for testimony, and continued the hearing to 8:30 p.m.

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Mr. Filley, Chairman, opened the Special Meeting of the Commission at 8:23 p.m. and proceeded with agenda items.

ITEM #1 - Chairman's Report

Mr. Filley stated he would report after the public hearing.

ITEM #2 - Old Business

A letter dated October 11, 1989 from Mr. Rosbeck was read regarding proposed modifications to the Magid Subdivision DRI Decision. It was stated that the West Tisbury Board of Health, Resident Homesite Committee and Planning Board are all in favor of these modifications. LUPC has recommended that this doesn't warrant a full public hearing and DRI review. Mr. Rosbeck was asked to address the Commission.

Mr. Rosbeck described the modifications: (1) relates to the meadow and is essential the same as the initial fertilization; (2) involves the changing of lots brought about on property held for 3 years in the

event the town or another group might want to pick it up as undeveloped land. At this time the 3 years has elapsed and nothing has happened. This change will put the 3-4 acre lots on the south abutting some neighbors who have had concerns in the past. There is no change in the number of lots just a reshuffling of the property so the larger ones are to the south; (3) this modification came about after meetings on affordable housing with the Resident Homesite Committee (RHC). I was to contribute \$130,000 to a housing fund if one was ever set-up. To the best of my knowledge one has still not been set up. There is some interest in acquiring land. I am asking for some flexibility regarding the RHC accepting land in lieu of the \$130,000 contribution. There has been some discussion on land that would provide 3 parcels. It is good land near my property. They seem to be in favor of that.

Mr. Filley asked Mr. Rosbeck if this has been discussed with the Resident Homesite Committee or the Dukes County Regional Housing Authority (DCRHA)? Mr. Rosbeck responded the RHC but they have discussed it with the DCRHA.

Ms. Borer stated they have letters from Town Boards. The following letters were available: West Tisbury Planning Board dated November 13, 1989; and West Tisbury Board of Health dated December 15, 1989. Ms. Borer read the letter from the Planning Board at the request of a Commissioner.

There were questions about the fertilization. It was stated that the Board of Health wrote the guidelines and they would have the final decision. Mr. Rosbeck stated that providing a system for review is the most important aspect. He then discussed affordable housing in relation to the timetables and needs of the Town.

It was moved and seconded that a full DRI review with public hearing is not warranted and these modification be approved. Discussion followed on this motion. Mr. Early, Commissioner, stated that he agrees with Mr. Rosbeck regarding the immediacy of affordable housing. Mr. Rosbeck has provided land that has still not been disposed of. The important thing is the scarcity of the land. The land being discussed is good land right next to the Magid Subdivision. I think this is an improvement over the original decision. The motion passed unanimously.

Mr. Filley then recessed the special meeting until after the public hearing.

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Mr. Morgan re-opened the Keyland continued public hearing, described the order of the presentations for the hearing, and introduced Greg Saxe, MVC Staff, to make his presentation.

Mr. Saxe explained that this public hearing is continued after several months. He described the background of this proposal including the change from 1 building to 2 then back to 1 building again. The 1 building scheme being the subject of the public hearing tonight.

Mr. Saxe stated there are lengthy staff notes provided which describe aspects of both proposal. He reviewed the main aspects of this proposal from the staff notes using wall displays. Mr. Saxe stated that no MEPA review will be required if the property on Beach Road is not involved since the Vineyard Haven/Edgartown Road is a County Road unlike Beach Road which is State owned. Mr. Saxe answered questions from the Commissioners following his review.

Ms. Colebrook, Commissioner, asked about the shared facilities, they will not be sharing the septic? Mr. Saxe responded no, access, parking, etc. will be shared. Ms. Colebrook asked if the septic system is mounded? Mr. Saxe responded that this question should be answered by the applicant. Ms. Colebrook then asked why there is no drainage plan? The applicant will be asked to respond to this during his presentation.

Ms. Eber, Commissioner asked about the bike path locations? Mr. Saxe stated that they do exist but are not shown on these plan. He continued by stating that this applicant has completed one of the largest traffic analysis we have had.

Ms. Sibley, Commissioner, stated that she does not understand the trip generation summary at all. Mr. Saxe explained this. Ms. Sibley stated that these estimates are done based on square footage. In traffic analysis it usually doesn't say the numbers are high but these appear outrageously high. Mr. Saxe stated they could be examined more closely.

Mr. Sullivan, Commissioner, asked about the funding for mitigation measures proposed by the applicant. Mr. Saxe stated that site specific mitigations should be born by the applicant. Town funding of mitigations was discussed in relation to off-site mitigations. We can separate on and off-site mitigations and discuss which are the most urgent.

Ms. Greene, Commissioner, asked about the septage and wastewater generation in regard to this project being in the Lilly Pond Well Zone of Contribution (ZOC) and the fact that the Town is anxious to protect it? Mr. Saxe stated that based only on this lot and the square footage, this septic is too big for the Lilly Pond Regulations. This applications is based on the whole contiguously owned properties.

Mr. Schweikert, Commissioner, asked if there are any restrictions on the type of retail this property can be used for? Mr. Saxe responded Dry Goods. The Lilly Pond Well Regulations control this. The septic is limiting, based on nitrate loading.

Ms. Colebrook asked about the location of the existing trees? Mr. Saxe referred Ms. Colebrook to the displays at the back of the staff notes and stated it is hard to tell the exact location without definitive plans.

Mr. McCavitt, Commissioner, asked about the traffic discussion relating to the 2 building plan and the MEPA determination? Mr. Saxe

stated that the 2nd building would have been on Beach Road which is a State Highway and would require MEPA review.

Mr. Filley asked, at the previous public hearing there was discussion about a shared access, have we received any new correspondence on this? Mr. Saxe stated that there was a letter sent to Mr. Sheehan by the applicant regarding the possibility of a shared access. Part of the B-2 Master Plan discusses decreasing the number of curb cuts. If this could be a shared access it would be good. There was also discussion about prohibiting left hand turns off of the Vineyard Haven Road. The applicant will be asked about the progress of these discussion.

Ms. Sibley asked if the plan includes the possibility of using the 30 foot right-of-way as the sole access for this proposal? Mr. Saxe stated that physically it is possible but I do not know if the applicant is willing to do this.

Ms. Greene asked if there were a left turning lane installed where would the land come from and still have room for the building? Mr. Saxe responded that the pavement doesn't encompass the full right of way and that the Planning Board still hasn't commented on this.

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

Mr. Tomassian, applicant's agent, responded to questions from the commissioners as follows: regarding the shared access, our plans have always shown our access entirely on Ms. Brown's property. We were asked to write to Mr. Sheehan, which we did. We never received anything in writing but understand that he isn't interested. Our access has always been on the Brown property but if you want it closer or moved you are welcome to make recommendations; regarding the Lilly Pond Well ZOC it is my understanding that we are not within this zone. He showed a map depicting the ZOC and submitted this into the record. He then described a group of plans he submitted into the record detailing the history of this property. (All submission, staff notes and correspondence are available in the DRI Meeting File.) Mr. Tomassian stated that last October we met with LUPC, the Edgartown Planning Board, Board of Health and Board of Selectmen and had long discussion on this plan. The discussion centered around the 3 lots. It was asked if Ms. Brown had plans for the third lot and she said that she did plan to build sometime. The Town said they would like to use the 30 foot way. It was tentatively agreed that we would build the road with the Town's assistance and deed our right-of-way to the Town if 2 buildings were approved. Everyone was enthusiastic about this. Phase II implementation of the Master Plan includes the use of this 30 ft. right of way. This is now in jeopardy. My client is not now of the mind to deed this to the Town. In our meetings with the Planning Board we didn't get approval but we got no negative reactions. The last page of the handout he distributed showed the plan of the 2nd building with septic and pump out to the lot presently being proposed. We were told this would not fly. I've probably been to 5-6 Board of Health meetings and 2-3 Planning Board meetings and it hasn't happened. From the Board of Health meeting last evening I

believe that the Board of Health isn't inclined to approve this plan. So we are back to Phase I and the 1 building plan. Regarding why there is no drainage plan, there is no hardtop in this area. We have chosen to go with bluestone. The mutual easement was purposely not drawn on the plan because we were unsure which direction you'd like this access. LUPC and the Planning Board have been told that we would be willing to do anything your members wanted. My client was the Chairman of the Edgartown Planning Board and has always said there should be a plan for this area. We are now back to the original 1 building scheme and we are not holding our breath for approval of the 2 building scheme. Mr. Tomassian then answered questions from the Commissioners.

Ms. Colebrook asked about the existing leaching trench in relation to the existing trees and the access? Jane Brown, applicant, stated that 90% of the existing trees are on the Sheehan property. It was stated that the existing septic is located in the area where there is no grass now. About 3 weeks ago someone drove a hugh tractor trailer over the septic and broke the line and the septic was rebuilt. During this rebuild we corrected a mistake that was made during the initial installation. Ms. Brown stated that this system was rebuilt with Mr. Look, BOH Agent, standing over it.

Mr. Jason, Commissioner, asked for explanation of the first page of the handout. This shows the 30 ft. right-of-way outside the line of the business district. If this is outside the business district it can not be used for business purposes. Mr. Saxe stated that he will heck into this but assumes it is within the business district.

Mr. Filley asked in light of the fact that you will not be going with the 2 building plan what is the proposed use for this right-of-way? Mr. Tomassian stated that we proposed to use a portion of it, probably half way through, for an access and we may decide to open it up all the way in the future. At a bear minimum it will be an access to the rear parking. Mr. Filley asked if the Town has discussed what they would like? Mr. Tomassian responded yes, but unfortunately the good intentions of the Board of Selectmen and Planning Board have not come to being because they can't get by the Board of Health. It could possibly be a different situation as you see in the past plans. Mr. Filley asked if it were possible to not put the leaching area in the road in case the Town decides it needs to use it in the future? Mr. Tomassian responded that there will be nothing in the road layout. If the Beach Road lot is built there is nothing in the road to prevent opening it. However the septic has to cross 2 property lines with easements, it is not a popular plan but has happened in the past. That is what we hoped would happen. It would be good for the Town as well as us.

Mr. Morgan asked if the proposed trench is necessary for lot 1 or for this lot and the Beach Road lot? Mr. Tomassian responded that the Beach Road lot septage would be pumped to this lot with a new septic but the Board of Health has not approved it. Mr. Morgan asked if the existing and the proposed systems are tied together? Mr. Tomassian responded no. The existing services the liquor store, deli and Poole's. The proposal before you is only for the new building. We

had a different layout which included the Beach Road lot but that is not before you at this time. Mr. Morgan asked where would the Beach Road lot leaching field go on this lot? Mr. Tomassian stated that if it were to be pumped from the Beach Road lot we would have to come back and ask for your review of this septic plan.

Ms. Colebrook asked does the plan that was approved by the Board of Health have the potential for future expansion? Mr. Tomassian responded no. Ms. Colebrook asked is it planned only for 150 gallons? Mr. Tomassian responded no, it is overdesigned. But we couldn't hook up without the MVC and Board of Health approval.

Mr. Sullivan asked so if you could get the Board of Health approval for the Beach Road lot you would be willing to deed a right-of-way to the Town for the 30 ft. way? Mr. Tomassian responded yes, we have been straight forward on that from the start.

Ms. Colebrook asked if this had been discussed with DEP? Mr. Tomassian responded yes, they turned it back to the Town.

Ms. Sibley asked regarding the 30 ft. access, the Town doesn't want other access on this road? The response was affirmative. Ms. Sibley continued by stating that all the traffic engineers felt that all access from these commercial lots should be off this 30 ft. way. Would this plan allow for other accesses to be closed and this to become the primary access? Ms. Brown responded there is a 20 ft. corridor between the buildings that would allow this but the Town of Edgartown doesn't want that.

Ms. Greene asked if there would still be adequate access to the service entrance of the existing building? The response was yes.

When there were no further questions for the applicant, Mr. Morgan called for testimony from Town Boards.

Mr. Paul Sheehan, abutter and members of the Edgartown Planning Board, testified that he had discussed with Mr. Tomassian the possibility of changing access. I am not against the change in access/egress. I am willing to discuss it. He stated that as an abutter he can't vote as a Planning Board member on this project.

Mr. Morgan then called on testimony in favor of this proposal. There was none. He then called for testimony opposed to this proposal. There was none. Mr. Morgan called for testimony neither for nor against the proposal, there was none.

Mr. Morgan then read a letter of correspondence from the Edgartown Board of Health dated May 31st (available in the DRI file). When there was no further correspondence Mr. Morgan called on the applicant to make his closing comments.

Mr. Tomassian stated that regarding the access to the property owned by Keyland we have always said that we would be willing to put the access anywhere the boards and agencies want us to put them. Various suggestions have been made but we have always said that whatever you

want to do is fine with us. Ms. Brown continued by stating that the main reason we moved closer to the Sheehan property was a request by the Planning Board to centralize accesses as part of the Master Plan.

Mr. Sheehan stated that other tenants of the property would want to vote on any changes to the access.

When there was no further testimony Mr. Morgan continued the hearing to a later date at 9:50 p.m.

Mr. Morgan then asked Christina Brown, Edgartown Planning Board, if the Commission will be hearing from them? Ms. Brown responded that they are waiting until they have all the information. They have nothing to say at this point.

Mr. Jason asked about the 2 accesses within 1000 ft. in the Island Road District, does this apply? Mr. Tomassian stated that this District concludes on Beach Road. Christina Brown added that it doesn't start on the Vineyard Haven Road until the MSPCA. However if the Beach Road lot is built it will require a special permit. She then stated that if you have any specific questions for the Planning Board please let me know. Mr. Morgan asked if Ms. Brown could see that the MVC gets copies of all Planning Board meeting minutes and discussions. Mr. Morgan suggested a joint hearing with the Edgartown Planning Board when the MVC hearing is continued.

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Following a short recess Mr. Filley reconvened the special meeting of the Commission at 10:03 p.m. and proceeded with agenda items.

ITEM #1 - Chairman's Report

Mr. Filley reported that as you know Carol Borer will be leaving us shortly. We have already started receiving applicants and it is time to appoint a search committee. The Search Committee was appointed to consist of the Executive Committee members and Commissioners from towns not represented on the Executive Committee as follows: Edith Eber, Alan Schweikert, Lenny Jason and Larry McCavitt.

Mr. Sullivan, Commissioner, asked about the mechanisms for the search. I thought it was a Commission wide search? Mr. Filley outlined the procedure which he stated has worked well in the past. First we go through a preliminary review of applicants, hold initial interviews which are open to the public, then when we get down to the finalists it goes to the entire Commission for a vote. We decided it was appropriate to continue this process. Mr. Sullivan stated that from reading the By-Laws he didn't see how the Executive Committee fit into this? Mr. Filley stated that they are appointed as members to the Search Committee.

Mr. Jason recommended that we be sure our search procedure is within the law. We don't need any negative press.

Mr. Filley stated that in the interim we decided we need an individual to act in Ms. Borer's absence. The Executive Committee has asked Mr. John Schilling, Regional Planner, to act in this capacity and he has accepted. I think the staff is ready to work with John and I hope all the Commissioners will assist during this interim period.

Ms. Colebrook asked how they happened to choose John Schilling when his tenure with the Commission is much less than other staff members? Mr. Filley stated that Mr. Schilling has political experience on Martha's Vineyard and managerial experience from several other jobs that we felt would be helpful in performing these duties. Ms. Colebrook asked if they considered other staff? Mr. Filley responded yes, definitely.

Mr. Morgan stated that several other staff members will be leaving shortly.

ITEM #2 - Old Business - There was no additional old business.

ITEM #3 - Minutes of May 24, 1990

It was motioned and seconded to approve the draft minutes with one correction: change Engle to Engley. This motion passed with no opposition, 3 abstentions, Lee, Jason, Colebrook. (Harney abstained.)

ITEM #4 - Committee and Legislative Liaison Reports

Mr. Morgan, Chairman of LUPC, reported that they will not be meeting on June 4th. The next meeting will be June 11th on the agenda will be Playhouse Theatre DRI, Spring Cove Realty Trust DRI and MVY Realty Trust.

Mr. Morgan reported as Legislative Liaison by stating that an amendment was made to the house budget to include \$100,000.00 for the Martha's Vineyard Commission. We have Eric Turkington to thank for that. I hope you will all drop him a line or call him with thanks. He did a lot of work and had to ask a lot of favors to get this in. Call any Senate friends you have and lobby for this. I have reached 11 so far.

Mr. McCavitt asked if this was the same in the senate budget? Mr. Morgan responded no.

Ms. Harney asked where this money came from? Mr. Morgan responded from Retain Revenue from DEM. This is in Section 2 of the Department of Environmental Management budget, line item #2100-001. The Senate will have to include it in their budget.

Ms. Bryant, Commissioner, stated that it is real important to lobby our own Senator as well.

It was motioned and seconded to have the Executive Director draft a letter of thanks to Representative Turkington. This motion passed unanimously.



Mr. Early, Chairman of Planning and Economic Development (PED), reported that they have not met but the Chairman of the Board of Selectmen in Oak Bluffs has signed the Memorandum of Agreement with the Commission. An agreement has also been reached with Barry DiDato to work on the Planned Development District (PDD) Master Plan with Greg Saxe, MVC Staff, this summer. We will be meeting again shortly. Mr. Early stated that some Senators will be at the Convention this weekend and those of you going should contact them there.

Ms. Greene reported for the Cape Pogue Advisory Committee by stating that she had met with the Planning Board and public to discuss the Management Plan presented by Mr. Chris Kennedy. There were many concerns including a walking gate at Dyke Bridge and questions of reducing vehicles north of that area. Many people felt that the plan didn't give enough information and ....

Ms. Greene's report was interrupted by phone correspondence. Mr. Morgan answered a call from Governor Dukakis for Ms. Borer. The conversation between Ms. Borer and Governor Dukakis follows: "Carol, this is Mike Dukakis. How are you?" Ms. Borer "I'm fine, thank you." Governor Dukakis "I just wanted to call and say thank you and congratulations and best wishes. You have been terrific and we are very proud of you and proud of the Commission." Ms. Borer "Well thank you very much and thank you for all the help you have given us over the years." Governor Dukakis "Well I wish we could have done a little more on the financial side. I know it hasn't been easy the last few months. But we are grateful to you. What are you going to be doing now? What is ahead?" Ms. Borer "A nice slow summer, recovery, lay on the beach, read some books." Governor Dukakis "Great, and then?" Ms. Borer "Then, a further recuperation in Ireland. I look forward to you and Kitty coming to visit." Governor Dukakis "Great. O.K." Ms. Borer "You can continue to look for your roots." Governor Dukakis "O.K. God's Speed. Thank you again." Ms. Borer "Thank You very much Mike". A round of applause followed from the Commissioners.

Ms. Greene continued by stating that Tuesday night, June 5th, at 8:00 p.m. there will be a full public hearing on the Cape Pogue Management Plan.

Mr. Morgan reported that Joe Cressy has been appointed as the County member to this Committee.

ITEM #5 - New Business - There was none.

ITEM #6 - Correspondence

A letter from Raul B. Medeiros, Contractor, received by the Commission on May 18, 1990 regarding the Rogers Building, DRI #311, was read into the record and is summarized as follows: Letter to inform the Commission of a change in the status of a tree. During construction damage to a tree made it unstable during a wind storm and resulted in the tree tipping toward new construction. Received permission from the Building Inspector to remove, which it was. The remaining tree will be protected before the macadam is laid.

Ms. Colebrook questioned the reference to laying a macadam, isn't the paving suppose to be done only in the event of failure of bluestone? The response was yes that is correct. Ms. Colebrook asked to have this looked into? Mr. Filley responded we will get information on this for the next meeting.

Mr. McCavitt, Commissioner, then presented Ms. Borer with a map of Martha's Vineyard produced by the GIS system. He thanked her very much for here work here at the Commission. There was a round of applause.


Mr. Morgan then presented Ms. Borer with citations from the House and Senate in recognition of her 9 years of service to the Commission and the Commonwealth. Another round of applause followed.

Mr. Filley thanked Ms. Borer for all the work she has done for the Commission and wished her good luck and a speedy recovery.

The meeting was adjourned at 10:28 p.m.

ATTEST

  
James Young, Vice-Chairman      Date 6/21/90

  
Albert O. Fischer, III, Clerk/Treasurer      Date 6-21-90

Attendance

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

Absent: Ewing, Wey, Young, Benoit, Allen, Geller, Davis.

\* Mr. Fischer arrived at 8:10 p.m.

\*\* Mr. Jason arrived at 8:23 p.m.