

THE MARTHA'S VINEYARD COMMISSION

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MINUTES OF JUNE 14, 1990

MARTHA'S VINEYARD COMMISSION MEETING

Mr. Young, Vice Chairman, opened the Special Meeting of the Commission at 8:03 p.m and made the following announcement: Mr. Ewing, Edgartown appointed Commissioner, has resigned his post. Mr. Tom Durawa has been appointed as his temporary replacement until the Selectmen can find a permanent replacement. Mr. Young then turned the gavel over to Mr. Morgan for following public hearing.

The Martha's Vineyard Commission held a public hearing Thursday, June 14, 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: Dept. of Environmental Management
Division of Waterways
Eugene Cavanaugh, Director
100 Cambridge Street
Boston, MA 02202

Location: Lake Tashmoo
Tisbury, MA

Proposal: Dredging of Lake Tashmoo qualifying as a DRI since the proposal is for development within a water body or Great Pond of 10 acres or more.

Robert T. Morgan, Sr., Chairman of the Land Use Planning Committee, (LUPC), read the Tashmoo 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 staff notes using a wall map to depict the location of dredging and site for disposal of dredged material. (Staff notes are available in the DRI and Meeting files.) Mr. Saxe then answered questions from the Commissioners.

Mr. Fischer, Commissioner, asked who will plant the beach grass you mentioned if the material is placed on the dunes. Mr. Schilling, Acting Executive Director, stated that DEM has altered the proposal and all of the dredged materials will go on the beach so there will be no need for planting.

Mr. Sullivan, Commissioner, asked if the location for the disposal is town owned land? Mr. Saxe responded Town owned and private lands are proposed. Mr. Sullivan asked if the private owners are agreeable? Mr. Saxe stated this should be addressed by the applicant.

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

Mr. Rob Braham Jr., Braham Engineering, stated they have sampled the proposed dredging materials and it is Category 1, type A. A very clean material. This is compatible with the disposal area.

Joseph Yetman, DEM, responded to an early question by stating that whoever gets the contract will be responsible to plant any grasses needed.

Mr. Fischer asked about the tern nesting areas. These are threatened birds. What will be done to protect them? Mr. Braham stated that they have maps showing the locations of tern nests and will avoid them. Mr. Fischer asked, so no spoils will be put in the nesting areas? The response was no.

Mr. Sullivan asked the applicant if the private owners have agreed to this? Mr. Braham responded all but one. We had a meeting Tuesday and it went pretty well regarding a positive response that they would sign off on it. We just have to talk to the one property owner and see how he feels about this.

Ms. Sibley, Commissioner, asked if this would increase the size of beach property? Mr. Braham responded slightly but only for a short period of time.

Mr. Morgan asked if this one person doesn't agree could you alter the plan to provide for this? Mr. Braham responded yes. We can alter the design and put the disposal site further down.

Ms. Greene, Commissioner, asked Mr. Braham to show this possible location on the map? Mr. Braham did this stating that it would be further east.

Mr. Yetman stated that the Division feels there is a great need to have this done as does the Town and the people who make use of the harbor. We would like to have this project completed maybe sometime in the fall or winter.

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

Mr. Don King, Harbormaster, stated that he has approached the one property owner discussed and he is allowing us to run the pipe over his property. We told him there would be some sand deposited and he said it would be alright. We are getting the papers together now for him to sign. Every time you do a dredging you have to have all the people sign off a \$1.00 for their considerations. So that is the only

problem we have. We also got a letter from the spokesman for the property owners. The property owners didn't want to sign off themselves to allow foot passage over their land even though they allow everybody to walk across their land. They don't want to publicize it.

Mr. Early asked Mr. King if there are private piers or groins? Mr. King responded there are no piers at all until you get further down. There are 2-3 groins along that thinner edge and then there are 2 further down.

Mr. Young asked if this opening has been dredged previously? Mr. King responded in 1972-73. We have been doing mini-dredging for the past 15 years or so. Mr. Young asked so this is something that continually silts up? Mr. King stated that last time it was done it lasted 7 or 8 years. Then you have to do your mini-dredges after northeast storms and whatnot. Mr. Young stated that dredging should be expected every 10-15 years? Mr. King stated we tried to get the Army Corp of Engineers to do it. If that was done we wouldn't have to go through this all the time. Going through the State we have to go through this process all the time.

When there were no further questions for Mr. King, Mr. Morgan called for testimony in favor of this proposal.

Mr. Pat Nicolatchi stated he lives on the pond and has for about 20 years. I do shellfishing with a power boat. I found when we first moved in, I bought the property in 1970, immediately after the dredging there was quite a bit of shellfishing, including scallops, and as it began to silt we lost the scallops. We lost them within 5 years. I am not a biologist and I can't tell you why but I have been there for 20 years and they have not reoccurred. I am a member of the Tashmoo Pond Committee, which was asked to be formed by the Selectmen, and I am also a member of the Harbor Management Committee. I am speaking however as an individual. The reason I give you my credentials, if you will, is because I have spent time in and about the pond. We have taken a count on the number of moorings and whether or not there is a direct relationship I don't know but there certainly will be more contamination unless we can get the water to change. My primary concern is not the number of boats in there, it is whether or not the pond can handle the number of boats in there because of the lack of, or the amount of, interflow between the Sound, the bay and the pond. This is my primary concern. This is why I am for this proposal. We do have over 350 permits out for that pond. That is a greater number of moorings than both the Lagoon and the Harbor combined. I think this should be taken into consideration. If this is the way we are going to keep it we are going to lose a lot more than the scallops.

When there was no further testimony in favor of the proposal, Mr. Morgan called on testimony in opposition. There was none. He then called for testimony neither pro nor con.

Mr. Dick Johnson, Executive Director of Sheriff's Meadow Foundation, testified that he is glad to see that people are considering the terns

already. There is also 1 pair of piping plover nesting in that area. It is interesting that where the birds are nesting this year is on some previous dredge spoils that was dumped there last year and graded out with fence added. Right now it's one of the largest tern colonies on the Vineyard. I would like to have you consider the birds when you do this. It is possible that the dredge spoils can do a lot of good it is also possible that it can do some harm. I would like to state that myself or Mark Humpert from Felix Neck would be happy to offer any assistance we can. Mr. Humpert is really the tern expert and we would be glad to offer any assistance we can when the time comes regarding the birds or the effect on wildlife habitat.

Mr. Morgan thanked him for this offer and suggested that they should make that fact known to the contractor who will be involved. We certainly will take it into consideration.

Mr. Braham stated that he would like to add that when they went through the MEPA process and their decision that an EIR wasn't required it also stated that they would like to see this project done in coordination with the Mass Audubon Society. I don't see any problem with coordinating at the same time with Felix Neck Wildlife Sanctuary.

Mr. Don King testified that Felix Neck came to us last year and asked if we would put materials on that nesting area because the birds were not nesting on the grass. We said we would even though I didn't like to put it in that area because it would eventually come back into the pond. But we did put the spoils there at the request of Felix Neck and it has done pretty well.

When there were no further questions or comments Mr. Morgan closed the public hearing at 8:23 p.m. with the record remaining open for one week.

Following a short recess, Mr. Young reconvened the Special Meeting of the Commission at 8:34 p.m. and proceeded with agenda items.

ITEM #1 - Chairman's Report

Mr. Young asked Mr. Friedman to report on Carol Borer's condition. Mr. Friedman stated that he spoke to Carol's husband today. Carol has had a little setback and they are working on it now. So whereas she thought she would be out of the hospital by this time she will probably be in the hospital most of next week. So if anybody can and would send her a card or anything at all I am sure she would appreciate it. She is in Falmouth Hospital, Room 215.

Mr. Young then reported that the Commission has now signed a contract with the Land Bank and Mark Adams for the Open Space Plan that we are going to be doing in conjunction with the Land Bank and it is also part of the regional master plan that Mark is doing. We have taken on and signed a contract with Barry DiDato to work on the PDD Master Plan. We also have one other intern, Mike Concillia, who is going to be working on the Data Report.

Mr. Young then discussed the Search Committee. We have had 2 Executive Committee meetings wherein we discussed the procedure and the Search Committee make up. If you recall the Search Committee that was proposed was the Executive Committee plus 3 extra members to round it out so that all 6 towns are included. Those were Alan Schweikert, Lenny Jason and Edith Eber. Larry McCavitt was also appointed. We have since decided that this Committee stands and that any other Commissioners who wish to be on the Committee are welcome to be on it. As many members as want to be on it can be on it. It should be understood though that the Search Committee is going to have certain responsibilities which I will outline in a minute throughout the search procedure. Anybody who wants to be on the Committee is going to have to partake all the way through. He can't come to the 1st round of interviews and not come to the decision making, or 2nd round. You have to come to the whole thing. We will want until Woody Filley, Chairman, is back next week to finalize the makeup of the Search Committee. So between now and then anybody who wants to be on it should let John Schilling know and then Woody will finalize the Search Committee next week. The procedure for the search is going to be as follows: The deadline closes tomorrow at midnight; right now we have 40 applications. Resumes are in the office and what we would encourage all the Commissioners to do is to read all the resumes. There is a cover sheet on each resume with room for comment, there is a grading section, and room for signature. We don't want anonymous comments on the resume sheets. We haven't resolved a time frame to finalize that. But based upon the comments on the resume cover sheet, the Search Committee will narrow the field down to a first round interview selection. Which may be any number of people. Those interview are going to be conducted in Executive Session. Incidentally, up until the 2nd round of interviews, all the resume information is confidential. Jobs are possibly jeopardized by applying for this job and any information contained in the resumes, names of applicants, etc., should remain in house, absolutely. Any Commissioners who want to can attend the 1st round interviews. It would probably be very good if you did. I think as much participation from the full Commission as possible the better. It should be understood though that questions during the interview will be asked only by the Search Committee. If any of the other Commissioners would like to have questions posed they should let the Search Committee know in advance. Subsequent to the first round of interviews, any Commissioners who have comments on those interviews should let those comments be known to the Search Committee so they can be weighed in the decision making process to narrow down the field further. The next step would be to have a 2nd round of interviews. As John pointed out depending on the number of qualified applicants and the number of people we narrow it down to after the 1st round, there may be a 3rd round of interviews. These will be conducted in open session. They are public. Again, and this is something that the Search Committee has to decide on, I would think that the 2nd round of interviews and any subsequent round would be conducted the same way the 1st round was. In that the Search Committee is the only body asking questions. Participation of the full Commission prior to and subsequent to these interviews is welcome. At some point the full Commission will be presented with a selection of finalists which may be 2 or 6 finalists.

Hopefully it will be as tight a field as possible. The full Commission will vote. Again the process is closed and confidential through the 1st round of interviews and Commissioners are invited to attend. Are there any questions.

There was lengthy discussion among the Commissioners centering on the make up and size of the Search Committee and procedures for interviews. Many Commissioners expressed desires to be allowed to question the candidates during the interviews. This could be done through the Chair.

Mr. Young stated that this would be discussed again when Mr. Filley, Chairman, is present and will be finalized then.

ITEM #2 - Old Business

Mr. Schilling, Acting Executive Director, stated that regarding the Deer Run DRI Modification, we have received correspondence from the Coop Bank stating that they have forwarded checks in the amounts of \$10,000 to the Dukes County Regional Housing Authority and \$100,000 to the Oak Bluffs Resident Homesite Committee. When we receive notification from these two groups that the checks have been received and cleared the Commission has been asked to send a Certificate of Compliance.

ITEM #3 - Minutes of May 31, 1990

It was motioned and seconded to approve the draft minutes as presented. There was no discussion. This motion passed with no opposition, 2 abstentions, Wey and Young.

ITEM #4 - Committee and Legislative Liaison Reports

Mr. Morgan, Chairman of LUPC, reported that they had met Monday and discussed the Playhouse Theatre DRI and Spring Cove Realty Trust (Adler) DRI. Greg Saxe, MVC Staff, will discuss the Adler matter under Item #5. MVY Realty Trust got fogged in at Boston and were unable to attend. They are rescheduled for June 25th. On June 18th we have Vineyard Assembly of God, Wesley Arms and the Martha's Vineyard Hospital on the agenda. Regarding the Wesley Arms, I have some question as to how far we should proceed with this without Department of Environmental Protection (DEP) authorization. How far should we go if the DEP question has not been answered?

Mr. Jason stated that he doesn't think we have any options as far as that is concerned. The MVC Decision states that an applicant is allowed to come back to the Commission for a modification or to submit a revised plan. Mr. Early agreed. Mr. Young also agreed. However, the applicant should be made to understand that the issue that prompted our denial on his previous submittal is still unresolved. But he is free to come back again.

Mr. Morgan then reported as Legislative Liaison by stating that they have found a Senator to carry the budget amendment of \$100,000 for the MVC to the Senate.

ITEM #5 - New Business

Mr. Young stated, as many of you read in the paper today there is a draft proposal for a Southeast Mass. Marine Transit Symposium. Mr. Young asked Mr. Simmons, MVC Transportation Planner, to update the Commission on this proposal.

Mr. Simmons distributed copies of the draft proposal to the Commissioners. He stated that some changes have been made since the last draft which incorporates suggestions from the Executive Committee. He reviewed the draft proposal and stated that he is asking the Commission for their comments and approval to proceed with this symposium.

Mr. Early stated that this is a very good idea and very viable in the climate that we have right now. It is already getting good press.

There was a consensus to approve this draft proposal and proceed with the planning of this symposium.

Mr. Early stated that he believes that the Commission itself should host this event. Since we will be coordinating this but not underwriting it I think it should be held here and hosted by the MVC.

This was also agreed by consensus.

Mr. Young asked any Commissioners who wish to be involved to contact Mr. Simmons during the week. If no one volunteers Mr. Filley will deal with appointments to the committee next week.

Mr. Bales, MVC Staff, reported that as requested by the West Tisbury Planning Board, updates of the assessor's maps have been completed through January 1, 1989.

Mr. Young then asked Greg Saxe, MVC Staff, to review the Spring Cove DRI (Paul Adler).

Mr. Saxe reported that as the matter of the appeal by the abutter has been resolved Mr. Adler has written us requesting several clarifications and modifications to the Decision. We had a meeting with LUPC and clarified everything we could for him. We also clarified for ourselves that we are going to get copies from DEP of their order of conditions before discussing the most substantial modifications. However, prior to that time he has someone who has owned a lot for several years that you see next to Lambert's Cove Road on the plans. This owner is anxious to begin construction and the applicant would like the approval to build the section of the road just leading up to this one lot prior to requesting modifications, possibly, of the Decision which will be reviewed by LUPC in the future. So the question tonight is can he go ahead building this section of the road which is before the bridge as to the lot on the Lambert's Cove Road side of the wetland? In addition to that, one of the modifications that he is eventually going to request relates to one of the conditions of the decision that stated that hay bales,

drainage swales, infiltration basins, and other erosion control measures will all be installed prior to construction of the road. He pointed out that if he constructs the drainage basins and infiltration basins prior to constructing the road he will then destroy them when he builds the road. So he would like to put in hay bales, then build the road, then put in the infiltration basins. That is up for discussion.

Mr. Young asked, the Decision was on the bridge right? That was the DRI? Mr. Saxe responded the bridge and the roadway. The roadway is referred to in the Decision and conditioned therein.

Mr. Sullivan, Commissioner, asked does he have approval to do what he wants to do already? Mr. Saxe stated that the subdivision was a Form A. The bridge was approved by the West Tisbury Conservation Commission and the MVC and it had attached to it a road. That approval was appealed to DEP. That appeal has since been dropped and the matters of the appeal resolved. Therefore they are ready to go ahead with their project. They are ready only to go ahead with the road for the lot next to Lambert's Cove because he feels there was information that became available during the appeal process that warrants modification to the Decision. So LUPC will in the future see some modifications to the conditions requested. But for now, he would like to be able to get this one property owner in and that involves constructing part of the road that is on the Lambert's Cove Road side of the bridge. So he wouldn't be constructing the bridge, just the first 100 yards or so of the road up to this driveway. Mr. Sullivan stated he doesn't understand. If he already has approval to do this why is he asking? If he doesn't how can it be something as informal as this that approves it? Mr. Saxe stated that he wasn't sure whether or not he needed the Commission's approval. Because it is a matter of such controversy he wanted to make sure we are aware of it.

Mr. Morgan stated that he doesn't think it is a question of the road as much as the procedure.

Ms. Sibley states yes and the question of putting in the swales before or after the road is constructed.

Mr. Morgan stated I agree. It is more the question of if he puts in the drainage in the area and then ruins them putting in the road, why can't he build the road and the very next day do the drainage. It is a question of the way it is worded in our decision. Mr. Morgan asked Mr. Jason if there was a question in his mind as to whether or not he had an existing right to build his road on that property?

Mr. Jason stated that I think he has the right to build the road. I am just not sure if what he says is accurate. He had experts there and they gave testimony as to how the road was to be built. Why can't they now do that?

Mr. Saxe stated that it is hard to tell from his erosion control plan whether or not it is appropriate. You can't tell if the infiltration basins are meant to control construction related erosion or just runoff after the road is built.

Mr. Jason asked, for a practical matter, shouldn't we be concerned with the wetlands. The idea that all he has to do is put up hay bales I have questions about. Mr. Saxe stated he has the same concerns. It would seem that there would be a lot of erosion during construction. Mr. Jason added and measures should be taken to prevent it. Mr. Saxe stated that not being a roadway engineer and not finding enough information in the record or public testimony I don't know whether the infiltration basins and run-off channels are necessary in addition to the hay bales to control construction run-off.

Mr. Morgan read the following section from the Decision: "The applicant and/or homeowners association shall place straw bales and install run-off channels, settling areas and velocity reduction filtration areas as indicated on the plan prior to road and bridge construction." He is saying that if he does those items prior to road and bridge construction they will ruin those items on either side of the area being constructed.

Ms. Sibley stated that it seems pretty clear that the expertise doesn't exist around this table to determine whether or not that can be done. His claim is that this must be an accident the way it is worded because it really can't be done. Can we show this to a road construction engineer and asked whether it is in fact possible as the condition states?

Ms. Greene stated that logically, in order for him to set up drainage and stuff, he is going to have to pull up some tree stumps, etc. to do it. I think that he could then set up drainage properly and then build up the road.

Mr. Young asked, he has obtained an order of conditions from the Conservation Commission for construction of the road, is that correct? Mr. Saxe responded I don't know exactly what the Conservation Commission's approval consists of.

Ms. Sibley stated that it is her understanding that the Conservation Commission inadvertently approved the road while approving the bridge. That was part of the issue of the suit. So, yes they have approved the road but I don't think they placed any conditions on it.

Mr. Young asked Mr. Saxe to find out what their decision said. It might be that the way to deal with it is to file for a determination of applicability on that one section of the roadway and get an order of conditions on that section of the roadway.

After continued discussion the Commissioners instructed Mr. Saxe to review the plans and discuss with roadway engineers the effectiveness of using only hay bales as protection prior to construction. This will be addressed during future LUPC and Commission meetings.

ITEM #6 - Correspondence

Mr. Young read the following letters of correspondence: Letter to Representative Turkington from Carol Borer, Executive Director, dated June 1, 1990 thanking him for playing such a key role in obtaining additional funds for the Commission; Letter to the MVC from Steve Ewing resigning as the Edgartown appointed representative to the MVC. (Correspondence is available in the Meeting and Chron Files at the MVC offices).

The meeting was adjourned at 9:40 p.m.

ATTEST

	<u>6/21/90</u>
J. Woodward Filley, Chairman	Date
	
James Young Vice Chairman	
	<u>6-21-90</u>
Albert O. Fischer, III, Clerk/Treasurer	Date

Attendance

Present: Bryant, Early, Eber, Durawa, Fischer, Greene, Jason, Morgan, Schweikert, Sibley, Sullivan, Wey, Young, McCavitt*.

Absent: Colebrook, Filley, Lee, Benoit, Allen, Geller, Harney, Davis.

* Mr. McCavitt arrived at 8:20 p.m.