

THE MARTHA'S VINEYARD COMMISSION

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MINUTES OF AUGUST 9, 1990

MARTHA'S VINEYARD COMMISSION MEETING

The Martha's Vineyard Commission held a special meeting Thursday, August 9, 1990 at 8:00 p.m. at the Martha's Vineyard Commission Offices, Olde Stone Building, New York Avenue, Oak Bluffs, MA.

Mr. Filley, Chairman, opened the special meeting and proceeded with agenda items.

ITEM #1 - Chairman's Report

Mr. Filley introduced Theophillus Nix, Jr., Director of the Regional Housing Authority, and stated he will address the Commission under Item #6, New Business.

ITEM #2 - Old Business - Ship's Inn, Town of Oak Bluffs

Mr. Filley introduced Tom Simmons, MVC Staff, and stated he will be updating us on information that we requested.

Mr. Simmons stated I have passed around a real quick sketch, which is not to scale. He described the sketch and the area that had been added. He stated the two buildings are connected. He showed a video of the site including the existing Inn and the addition. He described the video including the addition, the garage/kitchen, the restaurant area, the second floor plywood and lattice work, the window cuts, and the access to the addition.

There was discussion regarding conversations with Town Counsel stating that the Selectmen had said this had to go to the MVC, the fact that no permit was granted for the change of use from garage to a kitchen, the occupancy permits granted for storage only, and the square footage of the building.

After lengthy discussion it was motioned and seconded that this not be considered a DRI providing that the applicant place the following covenants on the property: 1) the first floor not exceed 999 sq. ft., 2) that any addition or alteration to this structure would be a DRI. After lengthy discussion on this motion the motion and the second were withdrawn.

There was further discussion. It was then motioned and seconded that the Commission advise the Oak Bluffs permit granting authorities that the Commission would consider this as a DRI if it were referred in the appropriate manner. There was lengthy discussion on this motion. The

motion failed with a vote of 5 in favor, 7 opposed, 1 abstention, Durawa.

There was discussion regarding the manner in which it was referred and precedent for acting on this without proper referral.

There was discussion from the applicant's attorney, Rosemarie Haigazian, the Town Counsel, Mr. Coogan, and an attorney for an abutter, Mr. Rappaport. They stated that they had reached an agreement on this issue. After Mr. Rappaport read the proposed agreement Mr. Mavro, Oak Bluffs Building Inspector, stated he had not agreed to what was stated.

Mr. Filley stated that since the parties involved seem to be working out an agreement we will take a short recess and see if they can't resolve this amongst themselves.

Following a short recess Mr. Coogan stated that they had reached an agreement and it would be sent to the Commission for their review and record.

ITEM #2 - Old Business - MVY Realty Trust, Town of Tisbury

Mr. Filley stated there is another item of old business that we discussed last week. We have the MVY Realty Trust issue of the earth removal and replacement. He asked Ms. White, acting Executive Director on this project, to give Commissioners an update.

Ms. White stated that we have videos to see. At Mr. Jason's, Commissioner, request I have dug up the video of the site that was done before this work. She showed a video done on April 27, 1987 and pointed out the access road and rear bank views. She then showed the video done on August 1, 1990 for comparison. She stated it appears there was a more gradual slope to the cliff in 1987 but there was still a cliff. They got all the dirt/sand they placed along the access road from this cliff. So those are the changes they made to the cliff. Ms. White stated that she wasn't at LUPC Monday so someone else must report on that but her understanding is that they gave Mr. Putziger the letter dated August 3rd. again. He requested to have a day to respond to the issues that were raised. As of today we hadn't heard from him. This morning I took it upon myself to call Brian Cook, MVY Realty Trust. He informed me that they had asked Doug Hoehn, Schofield Brothers, to evaluate the site and recommend what needs to be done to secure it, putting back the soil or putting in stabilization. Mr. Cook stated that he feels moving the dirt back would make it more unstable since it would be even looser than it is or was. We discussed the Board of Health and Building Inspector's statement that they wanted it blocked off and he stated that they thought this method was OK. He stated that they read the decision and didn't think it applied to dirt removal. They are in litigation now over this decision. They felt that the conditions were too stringent and that is why they are in litigation. They didn't think that this applied. They don't think that anyone can tell them they can't do anything on their property. He said he would call Doug Hoehn and ask him to come to this meeting tonight and review his report of the site.

I asked Mr. Cook to give me calculations on the amount of dirt moved, the size of the berm and the measurements of the cliff face. When I hadn't heard anything by 4:30 p.m. I called Mr. Hoehn myself. Mr. Hoehn informed me that yes Mr. Cook had spoken to him 2 days earlier and asked him to look at the site. He had not however heard from him at all today and no request was made of him to come to the meeting tonight. He further stated that he did not complete a "report" but merely sent a letter to MVY. He stated he could not release this letter to me since it was correspondence between himself and a client. He wanted the Commissioners made aware of the following: he was not involved in the planning or execution of the work that was done at all; he made them aware of the potential for problems before they did the work; and he advised all who contacted him regarding this to check with all authorities before they took any action. Ms. White stated we received a letter from Mr. Putziger at 6:00 p.m. tonight. She distributed copies and Mr. Filley read the letter aloud. (This letter is available in the DRI and Chron files at the Commission.) Ms. White then answered questions from the Commissioners.

Ms. Colebrook, Commissioner and Tisbury Board of Health Agent, stated this was discussed at last night's meeting and the Board of Health decided to send the Commission a letter stating they felt the work done was OK. Have you received this letter? Ms. White responded no, I've heard of it but have not seen it yet. Ms. Colebrook stated that the Board of Health voted to send a letter. The Town is in favor of these berms.

Mr. Wey stated that one of the main points we brought up was that of the safety of the bank where it is very sharp. We were concerned with children playing on or around the bank. That is the main issue that hasn't been addressed. Did the Board of Health address that? Ms. Colebrook stated that they felt the bank is no more dangerous than it was before the work was done. Ms. Colebrook continued by stating that the Building Inspector stated that they intend to monitor the run off as well. The Board of Health and the Building Inspector/Zoning Official had, on more than one occasion, called MVY and told them they have problems with the dumping. Although it was not their fault MVY has, on every occasion, cleaned it up at their cost. They have had people dumping cars and trash, sleeping in the building, etc.

Mr. Morgan, Chairman of Land Use Planning Committee, reported that Mr. Cook and Mr. Putziger were present Monday and we discussed this. I informed them that the Commission was very unhappy with what had happened. They stated they had just received the letter Friday and would respond to it. In the article in the newspaper this week Mr. Barwick, Building/Zoning Official, stated that when he gave his approval he thought they had taken care of all other avenues of approval. Mr. Morgan stated that I then read the Conditions from Decision #292. He read them again to the Commissioners. Mr. Putziger stated that they interpreted it as meaning if they were going to develop the site. However this decision gives the definition of development and this is included. According to the decision they had no right to do this. There was discussion of using fencing. When they said they didn't think the bank was dangerous I reminded them of a similar incident in Edgartown where a child was killed under similar

circumstances. My opinion is that they treated this very lightly even after this was discussed.

Ms. Eber stated she was at the LUPC meeting and while Mr. Putziger agreed it was important to resolve this he wouldn't commit himself to a time frame.

Mr. Sullivan asked Ms. Colebrook if at the Board of Health meeting the Board and the Selectmen indicated that they like what they had done? Ms. Colebrook stated they indicated they thought it was ok? Mr. Jason asked if they had viewed before and after pictures or videos? Ms. Colebrook responded no but they are familiar with the site. Mr. Jason stated that perhaps they should look at the before and after videos that we have seen. Ms. Colebrook stated that I was in attendance as the Board of Health agent and I didn't hear any discussion on the safety of the lip of that cliff. I don't believe it was ever addressed. My understanding is that a letter will be sent from both Boards. I think that the Commission's concern for safety is a valid concern.

Mr. Lee asked what do we have to do to get this done. As a child I saw one of my friends killed in a similar circumstance and I am very concerned with this. It is stupid to assume that we are not going to follow up on this. We should send a letter reaffirming our stance.

Mr. Schweikert asked what enforcement powers do we have? Ms. White responded none that I know of. Mr. Jason stated we do have litigation.

Mr. Filley asked Commissioners if they would like counsel made aware of this situation.

Mr. Geller moved that we refer the materials relating to the recent earth removal/berm placement to MVC's legal counsel and express our concerns for the health and safety of the public resulting from said actions. That we asked legal counsel to review this information and if legal counsel deems it advisable to take appropriate action toward litigation. This motion was seconded and approved unanimously.

Ms. White asked if we should send a copy to the applicant. Perhaps making them aware of our steps on this matter will encourage them to act on it. This was agreed.

Ms. Bryant stated it is most important that we stress the issue of public safety, particularly for children in light of the past incident in Edgartown. I am sure they don't want anyone hurt on their property.

Mr. Schweikert stated there are 2 issues: 1) the issue of public safety and 2) the fact that we asked them to do something and they didn't. That is still confusing me, our enforcement powers.

Mr. Lee suggested that perhaps the Health and Safety officers of Tisbury should make another visit to the site and determine if the cliff is unstable. Rather than just simply say they think it is OK.

I would like to see a hands on investigation by the person that wears the public safety hat.

Ms. Green stated I would also like to see an investigation on the sign that they built. Is it ok by the by-law to build such a sign?

ITEM #3 - Minutes of August 2, 1990.

It was motioned and seconded to approve the draft minutes with the following correction: Page 2, paragraph 2, sentence 9, change clear to clean; Page 3, paragraph 3, change reek to wreck; Page 4, change Mr. Green to Ms. Green. The motion to approve the minutes as corrected passed with no opposition, 1 abstention, Early.

ITEM #4 - Committee and Legislative Liaison Reports

Mr. Morgan, Chairman of LUPC, reported that they had met Monday with MVY Realty Trust and approved the revised scope of traffic study. We also discussed the earth removal. We then continued with our working session on the DRI checklist. The Vineyard Assembly of God has approached us to begin discussion on the landscaping plan. We will meet with them on August 20th. There will be no LUPC meeting on August 13th.

Mr. Morgan then reported as Legislative Liaison by stating that the \$100,000.00 for the Commission is safe and sound in the Department of Environmental Management budget.

Mr. Early, Chairman of Planning and Economic Development (PED), thanked Mr. Morgan for his effectiveness in getting the \$100,000 for the Commission. He then reported on PED by stating that they had met at 7:00 p.m. tonight with Barry DiDato on the work he has done on the Oak Bluffs Planned Development District. He has all the graphics ready, maps that show various things, and he is working on the text. We will be meeting with the Oak Bluffs' town boards soon. The work is really coming along.

Mr. Morgan, Mr. Filley and Ms. Eber stated they were all very impressed with Mr. DiDato's presentation.

Mr. Sullivan reported for the Roads DCPC Committee by stating that Mr. Lee, Chairman Pro-temp, appointed me as the new Chairman.

Mr. Lee reported that there was general discussion at tonight's meeting on what the focus is going to be and the hot spots that need to be examined. There was a concensus that we had already found the hot spots. The Island roads are a closed system but we need to zone in on specific areas and based on input the business community feels the same. The next meeting is scheduled for Thursday, August 16th at 7:00 p.m. at the Commission offices.

Ms. Green suggested we invite the Tisbury Planning Board and Board of Selectmen to that meeting. This was agreed.

ITEM #5 - Possible Vote - Written Decision, Playhouse Theatre DRI, Town of Edgartown

Mr. Filley stated before we vote on the written decision there is one item Mr. Friedman, Administrator, wanted brought to your attention. There is still an outstanding bill for \$741.07 for the traffic engineer's review.

Ms. Green stated we shouldn't vote until it is paid. It was stated that the Commission does have a deadline on when they must render a decision.

Mr. Jason suggested that we vote and then notify the applicant that the decision will not be released or recorded with the Registry of Deeds until the outstanding invoice is paid.

Mr. Filley then asked Commissioners to review the written decision and opened the floor for discussion.

There was discussion regarding condition #4.a. relating to the payment to the Regional Transit Authority. Mr. Geller stated that the way it reads now it appears we are exempting them from current by-laws.

It was motioned and seconded to change the 2nd sentence of this condition to read as follows: This contribution will not constitute an exemption from "the present" or any future policy the Town of Edgartown "has or" may adopt . . . This motion passed with one abstention, Eber.

It was motioned and seconded to approve the written decision as amended. There was no discussion on this motion. The motion passed with a vote of 11 in favor, 0 opposed, 1 abstention, Eber. (Geller abstained.)

ITEM #6 - New Business

Mr. Filley stated that Mr. Nix wasn't able to stay tonight so we will invite him back at another time.

ITEM #7 - Correspondence

Mr. Filley read a petition from Edgartown citizens received at the Commission on August 9th complaining about the A&P. Mr. Filley then read a letter dated August 9th from the Vineyard Conservation Society expressing concern over a proposed sale of a five acre parcel in the State Forest to the Department of Public Works. (Correspondence is available in its entirety in the Meeting and Chron files at the Commission offices.)

Mr. Jason stated he would like to discuss this possible sale at next week's Commission meeting.

The meeting was adjourned at 10:45 p.m.

ATTEST


J. Woodward Filley, Date
Chairman


Albert O. Fischer, III, Date
Clerk/Treasurer

Attendance

Present: Bryant, Colebrook, Early, Eber, Durawa*, Filley, Green, Jason, Lee, Morgan, Schweikert, Sullivan, Wey, Geller**, Harney***.

Absent: Fischer, Sibley, Young, Benoit, Allen, Davis.

- * Mr. Durawa was not present during the vote on Playhouse Theatre.
- ** Mr. Geller arrived at 8:29 p.m.
- *** Ms. Harney was not present during the vote on Playhouse Theatre.