

# THE MARTHA'S VINEYARD COMMISSION

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MINUTES OF SEPTEMBER 12, 1991

## MARTHA'S VINEYARD COMMISSION MEETING

The Martha's Vineyard Commission held a re-opened public hearing on Thursday, September 12, 1991 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: Fisher Barn  
c/o Ed Cuetara  
P.O. Box 1262  
Edgartown, MA 02539

Location: Upper Main Street  
Edgartown, MA

Proposal: Construction of a commercial development qualifying as a DRI since the proposal would result in the creation of commercial space of 1,000 square feet or greater.

Alan Schweikert, Chairman of the Land Use Planning Committee, (LUPC), read the Hearing Notice, and opened the hearing for testimony, at 8:02 p.m. He called upon the applicant to make the presentation. Ed Cuetara, agent for the applicant, made the presentation. He noted that the plan had been considerably altered and hopefully would be more acceptable to the Commission. He described the new proposal as a residential looking structure with an el. He noted that there would be 2,800 square feet in the building. He indicated a 20% lot coverage. He noted that a planting plan had been previously submitted and that the parking would be eliminated. There may be two spaces for handicapped and no more than three stores. He discussed the possible inclusion of two apartments on the second floor. Mr. Schweikert asked for a staff review. Mr. Clifford noted that this was the first time anyone had seen the proposal and he didn't feel that a staff review was necessary.

Mr. Sullivan asked for a review of the parking proposal. Mr. Cuetara discussed the possible parking. Mr. Sullivan asked about the abutter Right of Way (ROW). Mr. Cuetara noted that there would be no interference with the existing ROW. A discussion of who the abutters were followed. Mr. Cuetara discussed the rights of the abutters with respect to the new proposal. Mr. Briggs questioned the surrounding uses. Mr. Cuetara pointed out the various uses and their locations. Ms. Sibley raised a question of whether patrons would be allowed to park in other areas. Mr. Cuetara felt that was a question for the local board. He further discussed his feeling on the issue. Ms.

Sibley raised the issue of monies in lieu of parking. The response indicated that the giving of the ROW should be used to satisfy that issue. Mr. Cuetara further discussed the matter of parking.

Ms. Greene raised a question of setback. Mr. Cuetara indicated five (5) feet at the corner.

Mr. Colaneri asked for some input from Mr. Donaroma with respect to the parking issue since he was the Edgartown Planning Board member. Mr. Donaroma discussed the issue of no parking and the feeling of the Planning Board. There had been no major discussion of the issue but the Board did like the change in the design and the smaller size. He indicated that the Board had discussed only briefly the shared parking. He felt the Board could deal with the issues later.

Mr. Jason questioned the capacity to handle the two apartments. Mr. Cuetara discussed the matter. Ms. Greene questioned further the capacity of the septic system. Mr. Cuetara was unsure but felt there was no problem. Mr. Donaroma questioned where the apartment residents would park. - on or off-site. Mr. Cuetara was unsure but discussed the possible location on-site.

Following a brief conference, Mr. Cuetara indicated that the apartments had been dropped. Mr. Cuetara further discussed the parking issue.

Mr. Colaneri asked for clarification from the Edgartown Planning Board member as to how the proposal met the Dodson plan. Mr. Donaroma felt the proposal was moving toward the goals of the report and clarified the issue of no parking on-site. He indicated that it was a concern of the LUPC and the Planning Board had only been asked to comment. A discussion of this matter followed. Ms. Greene questioned where the deliveries would be made. Mr. Cuetara indicated where there would be service. Access to the second floor would be inside.

Mr. Schweikert asked for clarification on what would be on the second floor - apartments, storage, whatever. Mr. Cuetara indicated that an issue would not be made of apartments. Ms. Bryant discussed accessibility to the retail spaces.

Ms. Sibley questioned whether the apartments, if any, could be low or moderate income. Yes, was the response.

There being no further questions, Mr. Schweikert called for comments from Town Boards. There were none.

Ms. Sibley questioned whether town boards were even aware of the new design. Mr. Cuetara commented on the matter with respect to the Historic Commission. Mr. Donaroma indicated that the Planning Board comment was limited to the fact that it was a move in the right direction.

Mr. Schweikert called for proponents.

Donald Gazell felt the proposal had parking available and could or could not be shown. He discussed the new design and discussed the apartments further.

Tom Fisher, owner, discussed the cooperation that had been given to the Town, the A & P and others. He discussed the traffic plan previously designed and that others had not implemented the program.

Mr. Schweikert then called for opponents.

Jack Butman discussed the new plan and other abutter feelings. He raised several points regarding the parking issue and his ROW. A discussion of this matter followed. Mr. Butman did not object to the

proposal but wanted assurance that his ROW was preserved.

Mr. Schweikert called for other testimony - there was none. He then called for other comments/questions or testimony from Commissioners. Mr. Sullivan questioned whether the ROW would be preserved if parking were required on-site; would there be room enough. Mr. Cuetara indicated yes. A discussion of what type of ROW was involved. Mr. Colaneri discussed the intent of pedestrian oriented areas and discussed the original square footage as compared to what now was being presented.

Mr. Clifford asked for a complete set of plans to be submitted.

There being no further testimony the hearing was closed at 8:31 p.m. with the record remaining open one week.

A brief recess followed.

Jennie Greene, Chairman of the MVC, reconvened the meeting at 8:43 p.m.

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ITEM #1 - Chairman's Report - there was none.

ITEM #2 - Old Business - Cape Cod Company request.

Ms. Greene called upon Ivo Meisner to explain the request. Mr. Meisner discussed the reasons for the request for modifications and had copies of the request distributed to all. He explained the request in detail. He noted that the major change was the request for the addition of alternate 'C' of two lots.

Mr. Colaneri asked for copies of the original vote for comparison purposes. Ms. Greene noted that the requested modifications were underlined. Mr. Colaneri asked for the reasons for the request. Mr. Meisner discussed the reasons for the request based on the past discussions and agreements reached. The difference being some \$50,000 greater.

Ms. Sibley discussed the means of determining the value of any house lots given and asked how they would be selected. Mr. Meisner explained what was being requested. Ms. Sibley felt that off-site lots needed to be comparable to on-site lots - comparable value. She discussed the issue of comparable value. Mr. Schweikert discussed the housing policy of the MVC. A discussion of comparable value followed. A discussion of the choices available to any applicant followed.

Mr. Schweikert questioned whether the applicant knew of the option of two (2) lots off-site. Yes was the response but the options created were a compromise.

Ms. Bryant discussed the past review of the steps taken by the MVC and she felt that the Commission had considered the issue of comparable value, the fragileness of the area, the off-site offer and the benefits and detriments and that both the written decision and reconsideration votes were right.

Mr. Lee discussed the current assessed value of the property. Some

thought three (3) something. Mr. Lee asked about the Beach lot. A discussion of the Town's request and what the real issue before the Commission was followed.

Ms. Greene noted the difference was money and timeframe. Ms. Sibley asked what other mitigation measures were offered because she felt the problem was the Beach lot. She felt there should have been two separate matters - housing and Beach lot.

Mr. Meisner discussed other mitigation measures and Mr. Racicot explained what some of them were.

Mr. Clifford read the mitigation measures contained within the decision.

Mr. Hall discussed the work done by the applicant had done with the Chilmark Planning Board and discussed the fairness of the MVC decision process.

Ms. Bryant questioned the usage of the beach on-site and would the off-site lots be allowed access. The response was no.

Mr. Lee discussed the assessed value of the property and how it related to the MVC housing policy.

Mr. Meisner again discussed the purpose of the subdivision. Mr. Lee further discussed his feelings on mitigation measures. Mr. Sullivan discussed the phrase in the housing policy with respect to special circumstances and felt the action of the MVC in its vote was appropriate.

Ms. Greene discussed the fulfillment of the conditions of the decision. Ms. Colaneri discussed mitigation vs good land planning and questioned assurance of compliance. He asked how certificate of compliance could be issued. Mr. Jason explained the various means available.

A further discussion of mitigation measures followed.

A discussion of the issue of on-site or off-site followed. Mr. Sullivan felt there was confusion over mitigation vs benefits. He felt that mitigations were attempts to solve detriments.

Ms. Sibley discussed the proposal and the were planned nature of the proposal but there were still detriments. She saw very little mitigation measures.

Mr. Donaroma noted that the only question was the housing policy.

A discussion what was comparable followed.

Mr. Best questioned the size of youth lots in Chilmark and could these lots being offered be less than zoning requires. A discussion of this matter followed.

Mr. Best further discussed the issue of less than standard lots.

A discussion of this issue followed.

Mr. Sullivan felt the issue was commensurate value relative to the benefits and detriments. Mr. Meisner questioned value. A discussion of this matter followed.

Ms. Sibley read the housing policy and discussed the issue of equal value or comparability. A discussion of monetary justice between developers followed.

Mr. Hall further discussed the issue of on-site or off-site lots followed. A discussion of this matter followed. Mr. Hall further discussed the matter.

Ms. Bryant discussed the previous decision and indicated that the only change that she would consider was the timeframe. Mr. Schweikert further discussed the housing policy with respect to the economics of a development. He felt it was unfair to alter previously agreed to measures and also to not give them the option of two lots alone. He didn't feel value should be part of any discussion. Mr. Colaneri discussed option `C' and the relationship to the housing policy. A discussion of the housing policy followed.

A discussion of whether the applicant was attempting to renegotiate or not followed. The cost of a lot in Chilmark followed. A discussion of the wording in the decision as previously passed followed.

A discussion of what had been negotiated followed. Mr. Briggs read a portion of the housing policy again for clarification. He discussed adjustments to that policy. A discussion of what was considered fair and what was not followed.

Mr. Hall discussed the rights of land owners and what were the options of the applicant. He felt that the dislvement of the company could be handled by the courts.

Ms. Bryant felt that the decision was proper and made a motion to let the decision stand, seconded by Ms. Sibley. Mr. Best discussed his feelings on the matter. He expressed problems with the housing policy. Mr. Lee raised a question regarding the possible change of the time span. Ms. Bryant felt that a change would be ok as did Mr. Meisner.

Mr. Clifford explained how the Commission must deal with the issue of reconsideration as per MVC Regulations. A discussion of this matter followed. He further explained the process.

Ms. Bryant made a motion that the requested modification was not significant to warrant a public hearing. On a roll call vote the Commission voted, with one abstention (Clarke) in the affirmative.

Ms. Bryant then moved that the timeframe contained in the previous decision on the Cape Cod Company DRI be changed from five (5) years to ten (10) years, seconded by Ms. Sibley. A discussion of the possibility of adding alternative `C" followed. On a roll call vote, the Commission voted 10 to 2 to approve the motion, with one abstention (Clarke).

Mr. Hall moved to amend the decision to include alternate `C', seconded by Mr. Schweikert. Ms. Sibley wanted the Beach lot included. Mr. Colaneri discussed the relationship of this amendment to the original. Mr. Hall discussed his feeling on the matter of the housing policy and the Beach lot relationship. Mr. Schweikert discussed the MVC policy and the fairness of giving the applicant that option.

Mr. Best discussed the MVC decision as previously written and discussed the relationship of the Beach lot to the whole matter. He further discussed the tax burdens upon low or moderate income persons. Mr. Jason reminded all that the issue of the Beach lot came from the Chilmark Planning Board since the lot being offered would be the first off-site lot in the town.

Ms. Sibley discussed the relationship of Chilmark's wishes vs the MVC housing policy. Ms. Sibley felt the Beach lot needed to be included or there was no mitigation. Mr. Colaneri questioned where the Beach

lot came into question. Mr. Clifford further discussed the reasons for the inclusion of the Beach lot. Mr. Colaneri further discussed the options available and their relations to each other as well as to the rest of the decision.

Ms. Greene explained the relations of alternative A and alternative B to the housing policy. Mr. Donaroma sought clarification of the entire discussion and noted that the applicant had more or less been satisfied with a change in the timeframe.

Mr. Best discussed the Beach lot and its relation to the motion being made.

Mr. Hall sought a consensus on adding the Beach lot to Alternative C. A discussion of this matter followed. Ms. Greene restated the motion and called the roll. On a roll call vote the Commission voted down the motion with one abstention (Clarke).

Mr. Hall moved amendment to include alternative 'C' plus the Beach lot, duly seconded.

Ms. Sibley indicated that there needed to be a clause to give the applicant an alternative should the Town not accept the Beach lot. A discussion of this matter followed. Mr. Best asked for a re-reading of the motion. Mr. Hall obliged. Mr. Hall obliged. Mr. Best indicated a problem with the motion and explained why. A discussion of various reasons for the "escape" clause followed. A discussion of a mechanism to permit choices to the applicant followed. Mr. Sullivan questioned a timeframe for town acceptance of the beach lot. It was noted that the time of two (2) years was in the decision already. Ms. Sibley wanted an added \$50,000 to alternative 'C' should the Beach lot be excluded. Mr. Colaneri questioned the reason for alternative 'C' and felt it was a radical change to the decision. He questioned whether the choices were equal.

Mr. Lee discussed the Beach lot and whether the Town really wanted the liability. Mr. Best discussed whether each of the alternatives were equal or not. Mr. Sullivan felt that a monetary inclusion was acceptable. Ms. Sibley sought a clarification of the motion. Mr. Clifford re-read the motion and "escape" clause.

Ms. Greene restated the motion of alternative 'C' with the Beach lot. On a roll call vote the Commission voted in the affirmative 7 to 6 with one abstention (Clarke) to include alternative 'C'.

ITEM #3 - Minutes of August 8, 1991

It was moved and seconded to approve as written. A brief discussion of what should be shown in the Minutes followed. The motion was approved on a voice vote.

ITEM #4 - Committee and Legislative Liaison Reports

PED - Mr. Early discussed the DCPC meeting with Oak Bluffs. The public hearing was to be held on October 10. The next meeting was to be held on September 17 at 4:15 p.m.

LUPC - Mr. Schweikert discussed the meeting with Ed Cuetara on the Fisher DRI. He discussed the discussions with Cape Cod Company and the Crow Hollow applicants.

Mr. Clifford reported on the up-coming tour of the Department of

Environmental Management (DEM) facilities by Commissioner Webber, Representative Turkington and Senator Rauschenbach to access storm damage, Friday at 1:00 p.m.

ITEM #5 - Possible Discussion - Crow Hollow DRI

Ms. Greene turned the Chair over to Mr. Lee, Vice-Chairman and left the room. Mr. Lee asked if there was anything new to be brought forth by the applicant. Rob Kendall discussed briefly the status of the proposal. Mr. Colaneri asked for an explanation of what LUPC had discussed. Mr. Schweikert discussed what the members of the LUPC were concerned about. He discussed the need for any future development meeting flexible zoning and further discussed the Agricultural Preservation Restriction (APR) program as related to the abutting property. A discussion of this matter followed. Mr. Colaneri discussed the APR program as related to the abutter and not to increase the value. He hoped that there would be an option to have something happen in the future. A discussion of increasing values of abutting property followed. Ms. Sibley discussed her feeling on the ROW going to the property line and the feelings of the West Tisbury Planning Board. Mr. Sullivan further discussed the matter as related to certain wording with respect to future development.

Mr. Colaneri discussed what would trigger a return to the Commission. A discussion of how significant a change might be followed. Mr. Donaroma discussed his feelings on the matter. Mr. Lee discussed the sole access to the abutting property and that the ROW line had been drawn to a specific spot because the Planning Board had wanted it to stop there.

Mr. Jason discussed the intent of including the APR proposal. Mr. Hall raised a question of where the ROW was. It was noted that it was a prescriptive right and not an ROW. Mr. Colaneri felt that the inclusion of the APR issue was a mitigation measure.

Ms. Sibley felt that the reason for the need to meet the flexible zoning would allow the addressing of other issues. She discussed incremental development. Mr. Jason discussed the matter of Form A and that the Planning Board should move forward. A discussion of this matter followed.

Mr. Sullivan felt there was consensus on the matter of the Form A at the LUPC meeting.

Mr. Hall raised a question regarding part of the staff report. Mr. Wilcox explained what was meant by certain suggestions in his report. Mr. Hall read the suggestions for all. A discussion of this matter followed. Ms. Sibley questioned whether there would be major problems with the issues raised. Mr. Wilcox felt no.

Mr. Sullivan discussed his feelings on the matter.

A discussion of this matter followed. Ms. Sibley further discussed the flexible zoning process.

A discussion of the inclusion of recommendations of staff followed.

ITEM #6 - Possible Vote - Crow Hollow DRI

Mr. Jason moved approval with conditions as follows:

- Planning Board may grant Form A lot 5
- Fertilizers applied in split application
- Future development cumulative and meet flexible zoning



In accordance with the Martha's Vineyard Commission By-laws Section 6.528, the following minority reports have been submitted for the record and are herewith attached to and made a part of the record of the meeting of the Martha's Vineyard Commission, July 25, 1991.