

THE MARTHA'S VINEYARD COMMISSION

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MINUTES OF APRIL 22, 1993

MARTHA'S VINEYARD COMMISSION MEETING

The Martha's Vineyard Commission held a Special Meeting on Thursday, April 22, 1993 at 7:30 p.m. in the Commission Offices, Olde Stone Building, New York Avenue, Oak Bluffs, Ma.

Michael Donaroma, Chairman of the Commission called the meeting to order at 7:40 p.m. He noted that Eric Wodlinger, MVC legal counsel was going to be a few minutes late and that the meeting would proceed with the business portion until his arrival.

ITEM #3 - Approval of Minutes of April 1, 1993
On a motion to approve as written, duly seconded, the minutes were approved on a voice vote with one (1) abstention (Sibley).

ITEM #4 - Reports -
Chairman's Report - Mr. Donaroma noted that Betty Ann Bryant was home from the hospital.

LUPC - Mr. Donaroma discussed the meeting that had reviewed the Boch proposal in anticipation of the April 26 meeting. He then discussed the meeting with Herring Creek Farm group and the presentation made by the wildlife group. A discussion of this matter followed.

PED -
Economic Task Force - John Schilling discussed the meeting which was attended by representatives of the SSA. A discussion of this matter followed.

Agricultural Task Force - no report
A discussion of the future of the Extension Service followed.

Legislative Liaison - Mr. Clifford discussed certain pieces of legislation that were going through the process.

ITEM #5 - Possible Discussion - Written Decision - Kelly's Kitchen
Mr. Colaneri raised the issue of an affordable housing gift. He discussed the need for such consideration.
Mr. Sullivan discussed the past activities of the A & P toward affordable housing and the need for the Planning

Board to be able to further review the traffic situation. Mr. Donaroma discussed the desire of the Planning Board for control of the traffic issue and possible changes in the future.

Mr. Schweikert questioned how the housing policy has been used in other cases. A discussion of this matter followed. A discussion of the status of the parking lot followed.

Mr. Colaneri discussed the issue of mitigation for the loss of a unit.

Ms. Sibley further discussed this issue with respect to the elimination of a housing unit.

Ms. Greene noted that the application was for the demolition of a structure and not the construction of a parking lot.

ITEM #6 - Possible Vote - Written Decision - Kelly's Kitchen
On a motion by Mr. Jason, duly seconded, the Commission voted by roll call vote to approve the application as presented with three (3) abstentions (Hall, Riggs, Sargent).

ITEM #5 - Possible Discussion - Written Decision -
Island Children's School (move to ITEM #6)

ITEM #6 - Possible Vote - Written Decision -
Island Children's School

On a motion by Ms. Greene, duly seconded, the Commission voted by roll call vote to approve the application as presented with two (2) abstentions (Hall, Gallagher).

ITEM #7 - Old Business
Mr. Clifford reported on the status of the MVC new home at the Extension Service old buildings. A discussion of this matter followed.

ITEM #8 - New Business - there was none.

ITEM #9 - Correspondence - there was none.

The Commission then took a brief recess pending the arrival of Attorney Wodlinger.

Mr. Donaroma introduced Attorney Wodlinger at 9:04 p.m.

Attorney Wodlinger discussed a number of issues related to development and the relationship between the roles of the MVC and the Cape Cod Commission.

He then went on to discuss the Lucas case which came out of South Carolina with respect to construction on a barrier beach. He discussed both the State Supreme Court and the U.S. Supreme Court. He discussed the issue of a temporary taking.

Attorney Wodlinger then went on to discuss the Wilson case in Massachusetts. He noted the Massachusetts Supreme Court indicated a temporary taking possibility. He further discussed administrative delays.

He then discussed the takings as related to economically valuable uses of land. He discussed the issue of determining the appropriate density of development on a given piece of land. He discussed the need to determine environmental constraints and then how to best use them.

He then discussed the MVC legislation and the issue of redesigning a proposal. He felt there may be a need to review that thinking in light of the various recent court decisions. He also discussed the issue of giving firm indications as to what problems were and to give indications of what changes would be useful in improving proposals.

He then discussed administrative measures that applicants should take to have plans reviewed rather than going to court.

He then discussed the legal term "bundle of rights". He discussed the problem with imposing public rights on private property. He also discussed the issue of taking so many rights that a taking occurs without compensation.

Attorney Wodlinger then discussed dispute resolution and how it has been used in other areas. He discussed how this would work in design issues.

He then asked for any questions from those present.

Mr. Sullivan raised a question of how the Lucas case related to Massachusetts and how does the MVC legislation insulate the Commission from the Lucas case. Attorney Wodlinger noted the Lucas case was a federal case applicable to all states; and the relation of the taking issue to the MVC Act.

Ms. Sibley raised a question of the use of carrying capacity of land to deal with developments. Attorney Wodlinger discussed the issue of police powers and common law rights with respect to the environment. A discussion of this matter followed.

Mr. Jason discussed the point of the MVC making a decision that could be construed as a taking. A discussion of this issue followed.

Mr. Sargent raised an issue regarding destruction of ones own property and how a Conservation Commission dealt with such possibilities and whether such was a taking. A discussion of this matter followed.

Mr. Sargent further questioned whether there was a formula for determining value of takings on temporary basis. Attorney Wodlinger indicated that it was generally the rental value of the property. A discussion of values, takings and eminent domain followed.

Mr. Hall raised a question regarding public access issues with respect to imposition of such requirements.

Attorney Wodlinger indicated that there was no way to predict how any cases would be decided if things were imposed and not challenged within the appeal period but later.
A discussion of this issue followed.

Mr. Schweikert raised a question regarding the seeking of an easement for access roads over a number of lots and whether it was a taking. He wanted to know if an applicant said no what would happen.
A discussion of this matter followed.

Ms. Greene raised an issue of administrative delay and how long one could continue to request data.
Attorney Wodlinger discussed this issue and if the request was reasonable he saw no problem. He cited the problems with DEP and their delays.
A discussion of this matter followed. A discussion of the criteria that the MVC gives to each applicant followed.

Mr. Colaneri discussed the issue of design and of an applicant offering multiple choices and how the MVC should deal with such an issue.
Attorney Wodlinger didn't think the MVC should be the sole arbiter of taste. He felt a process of workshop review might work. He also indicated that a hearing should not be closed but continued until such a matter is worked out.

Ms. Sibley discussed when such a case, keeping the hearing open, would be appropriate. She questioned when the MVC should point out problems.
A discussion of the process of review followed. A discussion of how local boards dealt with the issue of working with the MVC followed.

Mr. Sargent raised a point of applicants using the MVC decision as leverage or argument with local boards.
Attorney Wodlinger discussed taste and design issues.

Mr. Donaroma discussed the use of design alteration as a method of mediation.
Attorney Wodlinger felt the MVC had design issues as a tool in the legislation that could be used.

Mr. Colaneri raised a question regarding the process of changing designs and then denying the proposal. Attorney Wodlinger felt that following much work on design alteration that a denial should not be based on aesthetics. He discussed other impacts that may be available for denial. A discussion of this issue followed. Attorney Wodlinger stressed the need to be up front with the applicant and make all parties know what the issues were.

Mr. Hall raised a question of municipal liability and how it might affect the Commission.
Attorney Wodlinger noted the MVC role was discretionary and therefore may not be a major problem. A discussion of this issue followed.

Mr. Best further discussed the matter of aesthetics or taste and the

use of work shops to resolve these matters.

Attorney Wodlinger discussed this method and what may be the results. A discussion of this matter followed.

Mr. Colaneri raised a question regarding the timing of negotiations and asked when dispute resolution would be proper.

Attorney Wodlinger discussed the issue of mediation vs arbitration and the matter of good faith.

Mr. Schweikert questioned when to return to public hearing. Attorney Wodlinger explained that anything of a substantial change needed to return to public hearing.

Mr. Best discussed exactions according to policies and questioned mitigation for environmental damages. Attorney Wodlinger discussed the need for rational nexus or a solid basis in planning before addressing any form of exactions. He further discussed this issue and the relationship between the development and the problem. Mr. Best further discussed the issue of exactions related to transit. A discussion of this matter followed.

A discussion of the MVC Housing policy followed.

Ms. Sibley discussed the issue of environmental exactions and the issue of replacement of lost resources.

Mr. Sargent further discussed the question of replacation. A discussion of this issue followed.

Mr. Donaroma discussed the issue of affordable housing and commercial developments and how the MVC dealt with such matters. He questioned the waiving of such matters.

Attorney Wodlinger discussed the issue of waiver of policies or requirements and the need for justification for such actions. He discussed trade-offs and the need for consistency in application of policies.

Mr. Hall raised a question of the once a DRI always a DRI issue and indicated a need for some form of time limit or other rational means of dealing with such cases.

Attorney Wodlinger indicated that the rational means was that if a project was big enough to be a DRI then any change thereto needed to be viewed as significant or not.

Mr. Hall questioned the cases of denials.

Attorney Wodlinger discussed the matter related to segmentation of proposals in order to avoid review.

A discussion of this matter followed.

Mr. Best questioned what the MVC should be doing now in light of the economic slowdown.

Attorney Wodlinger felt the MVC should be reviewing the DRI and DCPC thresholds; coordination of development regulations and plans; and the like.

A discussion of alternative funding sources for the MVC followed.

Attorney Wodlinger then discussed various litigative matters that were pending. He then discussed how to give clear directions to applicants in denials. He discussed how the MVC should focus on determining appropriate levels of development for parcels.

Ms. Sibley discussed how applicants deal with the MVC and their implication that since they are below certain levels of development then the project must be good. Attorney Wodlinger discussed limits to zoning powers. He then discussed differences between the MVC Act and the Zoning Act. A discussion of this matter followed.

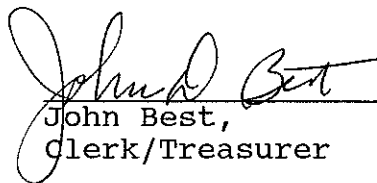
There being no further questions the meeting adjourned at 11:00 p.m.

ATTEST



Michael Donaroma,
Chairman

4-29-93
Date



John Best,
Clerk/Treasurer

4-29-93
Date

Attendance

Present: Best, Colaneri, Donaroma, Early, Greene, Hall, Jason, Riggs, Sargent, Schweikert, Sibley, Sullivan, Vanderhoop, Gallagher

Absent: Briggs, Bryant, Marinelli, Clarke, Allen, Bolling, Chapin