

- **Christina Brown** said that Arthur Kreiger had requested he be allowed to enter into the record his comments on the proposed changes that different from the public hearing notice.
- **Chris Murphy** said it was his intent to invite Arthur Kreiger to give the Commission his comments at any time he wants on any of it. In terms of getting through the hearing he must close the hearing in order to move forward.
- **Christina Brown** said that Arthur Kreiger wanted his comments to be part of the record which would be looked at when the decision is reviewed.
- **Eric Wodlinger** said that it would be opportune for Mr. Kreiger to make his comments on the editorial changes and proposed findings before the close of the hearing. If they are not made now, it seems unlikely they will be included in the record.
- **Arthur Kreiger** said that he does not think the Commission is under the 30 day time limit. If the Commission is taking a break, he will use the opportunity to review the documents.

Chris Murphy recessed the public hearing for 15 minutes and recessed the meeting for 5 minutes.

5. MARTHA'S VINEYARD HOSPITAL PARKING – OAK BLUFFS DRI 324-M3 DELIBERATION AND DECISION

Commissioners Present: B. Bennett, J. Breckenridge, C. Brown, P. Cabana, E. Hammarlund, F. Hancock, J. Joyce, L. Jason, C. Murphy, K. Newman, N. Orleans, D. Sederholm, L. Sibley, B. Smith

Doug Sederholm gave the LUPC Report.

- The applicant was willing to make all of the conditions as offers as signed by Mr. Walsh as of February 15, 2011.
- The LUPC voted unanimously to recommend that the Commission accept the offers and approve the application incorporating the offers as conditions.
- There was discussion regarding the fence and its height, which has been worked out and is noted on the plans.
- The operation and maintenance plan was updated to address when the filters are to be cleaned out.

John Breckenridge said that the offer to install oil absorbent filters should be deleted. It had been agreed that it was unnecessary based on the bio-retention swells. **Doug Sederholm** agreed that Bill Wilcox had said they were not necessary.

Erik Hammarlund said that he is raising the following question because the Hospital is one of the few applicants that have outstanding conditions. He proposed that no work can begin on the project until they have either entirely satisfied all other previous conditions or entered into a contractual obligation to have all previous conditions satisfied. There is no point in placing conditions on a project which the MVC is willing to issue new permits when things remain unsatisfied without a timeline. It is fine to have a timeline and a contract.

Erik Hammarlund moved and it was duly seconded, that no work can begin on the project until the applicant has either satisfied all other previous conditions or entered into a contractual obligation with a set timeline.

- **Christina Brown** asked if the motion was specific to the Hospital or applied to any DRI that came back for modification.
- **Erik Hammarlund** said that it was not specific to the Hospital.
- **Christina Brown** said it should be discussed later. The Commission has been told that the Hospital has satisfied all of the other conditions.
- **Fred Hancock** said that the Hospital cannot satisfy the conditions unless the MVC approves the modification.
- **Erik Hammarlund** said that is not what was reported last and it is recorded in the minutes.
- **Paul Foley** said that one was a bike path did not go all the way around the perimeter.
- **Mark London** said it had been discussed and may need to be modified.
- **Christina Brown** suggested voting no on putting the request on the Hospital and discuss the general boiler-plate requirement that might make sense for future projects. It does not sound like there are any egregious problems with the Hospital.
- **Linda Sibley** said that if there are no egregious problems with the Hospital, the condition should not be a problem. If it is a condition that is put on everybody, if they have fulfilled their conditions, there should not be a problem.
- **John Breckenridge** said that the Commission has already voted that the Hospital has satisfied all their conditions by giving them the certificate of occupancy. The only exception was the parking. He suggested the motion for the future is admirable, but does not believe it should be done "on the fly" now.
- **Erik Hammarlund** said if there are no outstanding conditions than it would be easy for the Hospital to satisfy. The Commission cannot simultaneously maintain the position that it is too difficult to do and yet unimportant enough to skip.

Erik Hammarlund withdrew the motion.

Doug Sederholm moved and it was duly seconded to approve and incorporate as conditions the offers with the exception of oil absorbing filters.

- Commissioners discussed the benefits and detriments.
 - The added parking is contiguous to their site and does not involve pedestrians crossing major road ways.
 - It does not affect groundwater or wastewater.
 - It has a lot of trees and nice landscaping
 - The applicant has agreed to the MVC boiler-plate conditions regarding motion sensors and downward lighting.
 - Lighting will be on timers and motion sensors to conserve energy.
 - The scenic value has improved on the plan as opposed to the original plan.
 - The impact on abutters will have some negative effects.
 - It is a staff parking lot that will be used predominantly during the day so that the nighttime impact of lights and noise will be minimized.

- Having a modern hospital on Martha's Vineyard is an immense benefit to the community as a whole and having adequate parking especially for the staff to provide the community with the beneficial services.
- Any other benefits or detriments that may have been missed that were included in Commission discussions and at LUPC.

A roll call vote was taken. In favor: B. Bennett, J. Breckenridge, C. Brown, P. Cabana, E. Hammarlund, F. Hancock, J. Joyce, L. Jason, C. Murphy, K. Newman, N. Orleans, D. Sederholm, L. Sibley, B. Smith. Opposed: None. Abstentions: None. The motion passed.

6. RESUMPTION OF DCPC PUBLIC HEARING RECONSIDERATION OF 2007 EDGARTOWN SPECIAL WAYS NOMINATION

Commissioners Present: B. Bennett, J. Breckenridge, C. Brown, P. Cabana, E. Hammarlund, F. Hancock, J. Joyce, L. Jason, C. Murphy, K. Newman, N. Orleans, D. Sederholm, L. Sibley, B. Smith

Chris Murphy re-opened the public hearing.

Doug Sederholm moved and it was duly seconded, to extend the meeting until 10:30 p.m. A voice vote was taken. In favor: 14. Opposed: 0. Abstentions: 0. The motion passed.

Arthur Kreiger responded to the proposed changes from the public hearing notice.

- Some of the previous comments were explicitly applicable to the proposed language.
- The previous comments as a whole apply to the proposal as a whole.
- The proposed changes are not any better than the public hearing version and in some respects it is worse.
- In spite of the few minutes given to review the language, it was not a fair way to review the changes.
- Included is a page and a half of analysis of the Hall's access to the property which was not given in the public records response.
- The moratorium does not prevent the activity on private land, but prevents the town from issuing a development permit. The town regulations that follow the MVC's designation stop the cutting of trees. The regulations as well as the designation have been vacated. The prospect of tree cutting should not be a factor.

Chris Murphy closed the public hearing.

Christina Brown moved and it was duly seconded to enter into Executive Session for the purpose of discussing on-going litigation and to reconvene in open session following the Executive Session.

- **Arthur Kreiger** objected to the Executive Session. Nothing on the agenda has anything to do with the litigation. The case is over.
- **Christina Brown** disagreed. The Commission must enter into Executive Session to discuss on-going and pending litigation. There is a serious possibility of litigation and there is no door that has been closed on any of it.

A roll call vote was taken. In favor: B. Bennett, J. Breckenridge, C. Brown, P. Cabana, E. Hammarlund, F. Hancock, J. Joyce, L. Jason, C. Murphy, K. Newman, N. Orleans, D. Sederholm, L. Sibley, B. Smith. Opposed: None. Abstentions: None. The motion passed.

The Executive Session was held.

The MVC returned to Regular Session following the Executive Session.

7. DCPC RECONSIDERATION OF 2007 EDGARTOWN SPECIAL WAYS NOMINATION – DELIBERATION & DECISION

Commissioners Present: B. Bennett, J. Breckenridge, C. Brown, P. Cabana, E. Hammarlund, F. Hancock, J. Joyce, L. Jason, C. Murphy, K. Newman, N. Orleans, D. Sederholm, L. Sibley, B. Smith

Christina Brown moved and it was duly seconded to continue the meeting for an additional half hour. A voice vote was taken on the motion. In favor: 14. Opposed: 0. Abstentions: 0. The motion passed.

Doug Sederholm moved and it was duly seconded, the Commission designate the five ways that were nominated and that are set forth: Within twenty feet of either side of the center line of:

- **Ben Tom's Road: Begins at the north side of Edgartown-West Tisbury Road between Edgartown Assessors' Map 23 Lot 6 and Edgartown Assessor's Map 21 Lot 96 northwesterly and northerly following the west fork to Pennywise Path along the south border of Edgartown Assessors' Map 21 Lot 169.**
- **Middle Line Path: Begins at Ben Tom's Road at the easternmost point of Edgartown Assessors' Map 21 Lot 133.1 and runs northwesterly until it merges with Pennywise Path at the westernmost point of Edgartown Assessors' Map 22 Lot 125.20.**
- **Pennywise Path: Begins at the intersection of Tar Kiln Road and Three Cornered Rock Road easterly to the Vineyard Haven-Edgartown Road at northwestern point of Edgartown Assessors' Map 21 Lot 148.1 continuing easterly then northeasterly and ending at Edgartown-Vineyard Haven Road at the northeast corner of Edgartown Assessors' Map 21 Lot 36.33.**
- **Tar Kiln Path: Begins at the Manuel Correllus State Forest between Edgartown Assessors' Map 10 Lot 96 and Edgartown Assessors' Map 11 Lot 1.143 running east to its intersection with Three Cornered Rock Road in the interior of Edgartown Assessors' Map 11 Lot 86.1.**
- **Watcha Path: Begins at the northeast point of Edgartown Assessors' Map 25 Lot 4, west of the intersection of Edgartown-West Tisbury Road and Oyster-Watcha Road, extending westerly some 360 feet along a segment formerly known as Mill Path, then southwesterly to the northeast point of Edgartown Assessors' Map 40 Lot 4.2, continuing southwesterly to the**

West Tisbury town line at the southern boundary of Edgartown Assessors' Map 40 Lot 6.

Including the following additional Findings - Reasons for Designation:

- **The Commission notes that the Specific Qualifications for a Cultural or Historic Resource District require that in addition to meeting the main qualifications of the District, at least one of three secondary qualifications must be met.**
- **The Commission finds that the proposed Special Ways meet this requirement based on the main qualification of being "a place, landscape, way or view which is in some special way expressive of the character of the Island, traditions of the Island residents and of special interest to Island visitors" and they also meet the second and third secondary qualifications, namely:**
 - **is rare, unique, or makes an unusual contribution to the diversity of the Island character; and**
 - **is irreplaceable, or replaceable only with extraordinary effort or expense.**

With respect to the five nominated Special Ways in Edgartown, this finding is based on the following considerations:

- **These ancient ways are among the last vestiges of the historical path and road network of Martha's Vineyard. Some originate at least as early as the 18th century, possibly the 17th century, and may date to earlier Native American pathways dating much farther back.**
- **Middle Line Path and Pennywise Path were used to delineate some of the earliest property set offs on Martha's Vineyard. Ben Tom's Road, the southern end of which was actually the continuation of Middle Line Path, connects them.**
- **Tar Kiln Road runs through an area of native pitch pines and was named after the process for extracting pitch from these trees to waterproof ship hulls.**
- **Watcha Path was an early route running along the upper ends of the Great Ponds located along the south shore of the Island. It was laid out (as a two-pole road [32 feet]) by the Proprietors in 1754 and is the only east-west path running south of the Edgartown - West Tisbury Road. The Martha's Vineyard Commission designated the West Tisbury portions of Watcha Path as a Special Way in 1976 and 1990.**
- **For those paths that are open to the public, they provide a way to enjoy these parts of the Island in a tranquil environment, away from major roads.**
- **The present character of most of these ways is of narrow, dirt paths with varying amounts of adjacent residential development, open space or undeveloped land. This character would be significantly altered if these roads were paved and/or used as major vehicular roads.**

- **The character of segments of Pennywise Path, Ben Tom's Road, and Watcha Path – termed "Special Vehicular Ways" by Edgartown – with their hard-pack dirt or hard surfaced roadways often exceeding 12 feet in width, and routine motor vehicle use is not typical of most Special Ways. They are continuations of the more lightly traveled segments of these ways and evidence of the development and change in character that may befall the entire way. These traveled segments are provided limited protection by Special Way designation.**
- **Destructive, uncontrolled development of these ways and the immediate abutting land would destroy the historic pattern and scale of development and constitute a major loss to the Island and its visitors.**
- **Counsel has advised* the Commission that neither public nor private existing regulations can assure that these ways and the immediately surrounding landscapes will be adequately protected against inappropriate development because of the uncertainty as to whether public or private means of regulation apply to these ways. Special Ways protection of these ways is needed to prevent the destructive, uncontrolled development of these ways and the immediate abutting land that would destroy the historic pattern and scale of development and constitute a major loss to the Island. Public Access: With respect to public access to the Special Ways, the Commission notes that designation as a Special Way does not require, grant, or extinguish any access rights, public or private that may exist in a way. While the nomination and designation of old ways since the District's inception have largely been based on the presumption that public access previously existed in these old ways and people commonly continued to use them, public access has never been a prerequisite for designation. The Commission previously found in conformance Edgartown's District regulations with the language "it is beyond the jurisdiction of the Planning Board ... to either grant or extinguish public or private rights-of-way that may exist in the Special Way." (Edgartown Article 14.2.2.h.)**
- **The intention of the Commission in designating these Special Ways is to protect these significant cultural resources for future generations, whether or not there is public access. The Commission notes that while having public access would be an additional benefit, the determination of whether a given way has public access can be a complex, lengthy, and costly process that might only be settled by the courts.**

***Access to Property: Regarding the issue of Special Way designation potentially denying all vehicular access to some abutting landowners, the Commission notes that even without clarification of the District Guidelines, the goal for the Special Ways has always included in the limitation on development as a "primary vehicular route" the exception for "access to properties where no alternative exists." The designation allows for vehicular access to a property if there is no alternative and the Commission previously**

found Edgartown's district regulations to be in conformance with the guidelines. Commission Counsel has advised the Commission that neither private nor public existing regulations can assure adequate protection. Commission Counsel has advised the Commission that title research shows that the five ways were laid out by the proprietors between 1737 and 1798 by dividing large tracts of land held in common by the proprietors in setting off the resulting smaller lots in individual ownership. However substantial uncertainty still exists as to the following: 1. Were these ways offered by dedication to the town? 2. Were they accepted by the town and if so as public ways or by statutory private ways? 3. Whether they have the character of common scheme ways for the benefit of all the lots laid out fronting on those ways? 4. Were the proprietors acting during some part or all of the 18th century as the de facto town government such as the lay-out of these ways conferred right of public passage? Town Counsel advises that a review of the 18th century records of the inhabitants and freeholders of Edgartown have not yielded an answer to these questions.

These findings are based on the current Special Qualifications, not on any proposed changes to the Special Qualifications that the Commission might discuss later in the meeting.

Note: The descriptions used were from the Assessor's Book in 2007.

The Commissioners discussed the motion.

- **Bill Bennett** said that the core reason for meeting had to do with public access. During the original designation, he was under the impression that the ways were public and had a right to be there. He is now finding that is not the case. He understands the desire to preserve them, but the Halls need to be compensated by either having the land bought at an acceptable rate or by giving exemptions to subdivision restrictions. It is a taking. If he had known it wasn't a public way he would not have voted for it.
- **Linda Sibley** said that the Commission has always been extraordinarily clear on the question of public access. It has always been stated by the Commission they could not confer public access. It is in the Martha's Vineyard Commission's purview to protect the character of the Island even if no one ever gets to see it.
- **Doug Sederholm** compared it to the coastal and historical regulations. The analysis of Bill Bennett is flawed. It is no more a taking than what has been adopted under the Coastal District. It is not a taking, but a protection of the values that the Commission was created to do.
- **Brian Smith** said the person still has use of their property, but it is a reduced use. The use of the property has not been eliminated.
- **Bill Bennett** said the Commission has eliminated the ability to create a real subdivision. The roads will never qualify as an access road for a subdivision. They have lost value.

- **Erik Hammarlund** said that he thinks public access is being confused with public benefit. Even if the public does not have the right to access something, there can still be a public benefit.
- **Lenny Jason** said that it had nothing to do with public access. It was the Commission's attempt in protecting an ancient/old road system that the Commission believes is historically valuable to the community. There have been many discussions regarding linking all the roads together as it used to be. If the road system is not important it should not be designated, but if it is important then designate it.
- **Linda Sibley** said that she does not know Edgartown's subdivision law, but in Chilmark it says that widening the road is not allowed. It cannot be presumed that protection of the dirt road would prevent a subdivision.
- **Bill Bennett** said the remedy could be the town allows the Halls the rights to their properties and use the ways to do that without modifying the character of the road.
- **Doug Sederholm** said he does not think it is a public access issue and does not think anyone has established if there is public access or not. Access is not what is being protected.
- **James Joyce** asked if the Commission has designated in the past any ways that had no public access.
- **Bill Venno** said that the Commission does not make a determination of public access; 21 ways have been designated and all are different.
- **Kathy Newman** said the Commission determines what are special ways and the towns determine how they are used.

A roll call vote was taken on the motion to designate the five ways as Special Ways, based on the 1975 standards and criteria known as the Qualifications, including the findings. In favor: J. Breckenridge, C. Brown, P. Cabana, E. Hammarlund, F. Hancock, J. Joyce, L. Jason, C. Murphy, K. Newman, N. Orleans, D. Sederholm, L. Sibley, B. Smith. Opposed: B. Bennett. Abstentions: None. The motion passed.

Doug Sederholm moved and it was duly seconded to amend the Island Road District as a District of Critical Concern as set forth in Part II A in the memo MVC Staff Notes.

4.42 Cultural and Historic Special Ways.

Special Ways are typically historical by definition, including roads which have been virtually abandoned or left to infrequent use, are historical by definition. Also by definition, however, they have not been part of Island life and commerce for some time. In some cases, they may have been laid out by the early Proprietors in the course of dividing commonly owned land into individually owned lots. They are a unique resource because they may have archeological significance or may provide public rights of way, either as a statutory private way or as common scheme ways, but are generally not committed to major vehicular travel. They do tend to may link origins and destinations that people will frequent; therefore they may offer a resource which can be developed as a means to experience

the Island landscape by slower means of transportation, such as walking, horse-back riding, or possibly bicycling. Regardless whether such ways are wholly private or subject to public rights of travel, this is clearly a case where proper development guidelines at this time could preserve the historic aspects of old rights-of-way while enhancing them for existing or potential use by Island residents and visitors. Development near the Special Way is not so injurious as might be along major vehicular transportation corridors, because it could be pleasant to walk or horseback ride through populated, as well as unpopulated areas. However, new vehicular roads in the area should be on new rights-of-way, unless providing the only access to property with access and development rights prior to nomination of the Special Way, thus preserving the Special Ways for alternative forms of transportation.

Bill Bennett moved and it was duly seconded, to continue the deliberations on the amendments until there could be a public hearing allowing more time for consideration and public comment.

- *The Commissioners discussed the motion.*
 - **Linda Sibley** said the meeting tonight was a duly noticed Public Hearing about this.
 - **Doug Sederholm** said the changes were not earth shattering and were a clarification of the actions the Commission had been taking.

A voice vote was taken on the motion to continue the hearing. In favor: 1. Opposed: 13. Abstentions: 0. The motion failed.

- **Christina Brown** suggested amending the motion to include "archeological" because it is a very important resource to the island. **Doug Sederholm** agreed to the amendment.

A roll call vote was taken on the motion to amend the Island Road District as a District of Critical Concern as set forth in Part II A in the memo MVC Staff Notes. 4.42 Cultural and Historic Special Ways. With the addition after the first sentence of "They may also have archeological significance." In favor: J. Breckenridge, C. Brown, P. Cabana, E. Hammarlund, F. Hancock, J. Joyce, L. Jason, C. Murphy, K. Newman, D. Sederholm, L. Sibley, B. Smith. Opposed: None. Abstentions: B. Bennett, N. Orleans. The motion passed.

Doug Sederholm moved and it was duly seconded to amend the Goals and Guidelines of the Island Road District as follows:

Section 5B Goals for Special Ways Zone.

To protect historic places, and / or to retain these ways and their abutting landscapes open primarily for uses such as walking and horseback riding, but not developed as a primary vehicular route, except for access to properties where no alternative access exists.

Section 5V.B. Uses Within the Special Ways Zone

1. Permitted Uses: Any use permitted by the applicable town zoning district, provided that (1) the development does not result in direct vehicular access to the Special Way, or (2) property had legal access and development rights prior to nomination of the Special Way. However, continued vehicular use may be allowed where a Special Way, or a portion thereof, is specifically identified by the town as routinely traveled by motor vehicles prior to nomination of the Special Way and provided that the continued vehicular use is of the same nature and extent as that which existed prior to the nomination of the Special Way.

A roll call vote was taken. In favor: B. Bennett, J. Breckenridge, C. Brown, P. Cabana, E. Hammarlund, F. Hancock, J. Joyce, L. Jason, C. Murphy, K. Newman, N. Orleans, D. Sederholm, L. Sibley, B. Smith. Opposed: None. Abstentions: None. The motion passed.

Erik Hammarlund moved and it was duly seconded to extend the meeting to 11:10 p.m. A voice vote was taken. In favor: 14. Opposed: 0. Abstaining: 0. The motion passed.

Peter Cabana moved and it was duly seconded to amend the Part 1 Special Qualifications for a Cultural or Historic District to read: ". . . is of exceptional symbolic, historic, or recreational value or has the history or potential to become a symbolic, historic, or recreational asset or amenity."

- The Commissioners discussed the motion.
 - **Fred Hancock** said that it may better to put off this amendment for another time because it appeared to be reactionary to the litigation. The actions already taken already provide for the amendment.
 - **Linda Sibley** said it was a "belt and suspenders" measure.
 - **Erik Hammarlund** said that in the present tense it required "exceptional", but in the future tense it did not.
 - It was agreed to add the word "exceptional" to the second portion.

A roll call vote was taken to amend the Part 1 Special Qualifications for a Cultural or Historic District to read as follows: : "is of exceptional symbolic, historic, or recreational value or has the history or potential to become an exceptional symbolic, historic, or recreational asset or amenity." In favor: J. Breckenridge, C. Brown, P. Cabana, E. Hammarlund, F. Hancock, J. Joyce, L. Jason, K. Newman, N. Orleans, D. Sederholm, L. Sibley. Opposed: B. Bennett, B. Smith. Abstentions: C. Murphy. The motion passed.

8. SCHEDULING

8.1 PED

Katherine Newman said the scheduled PED meeting for March 15, 2011 was moved to Wednesday March 23, 2011 at 12:00 p.m. at the West Tisbury Town Hall.

The meeting adjourned at 11:05 p.m.

DOCUMENTS REFERRED TO DURING THE MEETING:

- Martha's Vineyard Commission Meeting Minutes July 15, 2010
- Martha's Vineyard Commission Meeting Minutes September 2, 2010
- Martha's Vineyard Commission Meeting Minutes February 3, 2011
- Martha's Vineyard Commission Meeting Minutes February 10, 2011
- Muckerheide Housing Oak Bluffs DRI 615 Modification Request
- Muckerheide Housing Oak Bluffs DRI 615 LUPC Report
- Vineyard Golf Members Room DRI 484-M6 Staff Report
- DCPC Edgartown Special Ways Public Hearing Notice
- Chapter 831 of the Acts of 1977 as amended
- DCPC Qualifications 1975
- DCPC Decision of the Martha's Vineyard Commission designating the Island Road District as a District of Critical Planning Concern, 1975 as amended 1976, 1990, 1999, 2007, 2008, 2009, 2010
- DCPC Island Road Edgartown Reconsideration Maps 1 & 2
- DCPC Qualifications and DCPC Island Road Hall Judgment February 11, 2011
- DCPC Qualifications and DCPC Island Road Memo from Counsel for March 10, 2011
- DCPC Qualifications and DCPC Island Road PH Staff Notes
- DCPC Qualifications and DCPC Island Road Special Ways Reconsideration Memo
- DCPC Edgartown Special Ways Eric Wodlinger's and Arthur Kreiger's packets containing: Eric Wodlinger's March 10 letter and documentation regarding research into the public character of the five ways, DCPC Decision of the Martha's Vineyard Commission designating the Island Road District as a District of Critical Planning Concern, 1975, the court's decision, notices of decisions, and judgment that was entered; the public records request and response for certain documents; and request for privilege log for anything that was withheld or redacted on the basis of attorney client privilege; a letter from Arthur Kreiger, a letter from Ben Hall with maps and descriptions of ownership.


Chairman

5-4-11
Date


Clerk-Treasurer

5-5-11
Date

A True Copy, Attest:


Clerk Treasurer
Martha's Vineyard Commission