



PO BOX 1447, OAK BLUFFS, MASSACHUSETTS, 02557, 508-693-3453
FAX 508-693-7894 INFO@MVCOMMISSION.ORG WWW.MVCOMMISSION.ORG

**Minutes of the Commission Meeting
Executive Session
Held on March 10, 2011
In the Stone Building
33 New York Avenue, Oak Bluffs, MA**

DCPC 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 called the Executive Session of the Commission meeting to order.

Christina Brown moved and it was duly seconded to invite Commission Counsel Eric Wodlinger, and Commission staff members Mark London (Executive Director), Jo-Ann Taylor (DCPC Coordinator), and William Veno (Senior Planner) to participate in the Executive Session. Voice vote. In favor: 14. Opposed: 0. Abstentions: 0. The motion passed.

Eric Wodlinger touched on the following issues:

- The latest staff notes of March 10 have a few suggested editorial changes compared to the previously distributed document, but these changes are not substantial.
- He recommends that the decision on the redesignation of the five special ways in Edgartown be done under the existing Findings, Goals and Guidelines for the Island Road District, as well as under the existing Specific Qualifications for a Cultural or Historic District. He suggested that the Commission may want to amend these other documents, since they merit some clarification, but that this be dealt with after the redesignation of the five ways.
- The Specific Qualifications are in the disjunctive, not the conjunctive. There is no requirement that they all be met, only that at least one be met. Therefore, there is nothing in the statute or the Qualifications that requires that these special ways have public access in order to be designated.
- There was a letter from Edgartown Town Counsel saying that the ways are probably public, but we don't have a way of determining this and we don't need to know. Nothing the Commission does would change the legal accessibility.
- He will have to go back to the judge and explain that the existing qualifications have been satisfied.

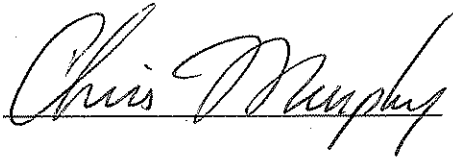
Mark London distributed draft findings so Commissioners could consider whether there were any other questions for Counsel with respect to existing or possible future litigation. There were none.

John Breckenridge moved and it was duly seconded to end the Executive Session and return to the open session. Voice vote. In favor: 14. Opposed: 0. Abstentions: 0. The motion passed.

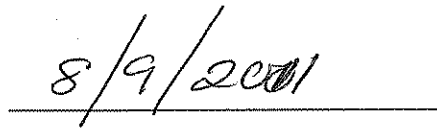
Chris Murphy closed the Executive Session of the Commission meeting.

DOCUMENT PRESENTED AT THE MEETING

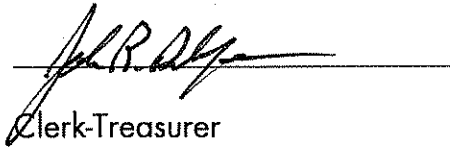
- Possible Findings for the Five Additional Special Ways in Edgartown, MVC Staff, March 10, 2011.




Chairman



Date



Clerk-Treasurer



Date

Possible Findings for the Five Additional Special Ways in Edgartown

Reasons for Designation: The Commission notes that the Special 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 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.

* The Commission is advised by Commission Counsel that title research shows that these five ways were laid out by the Proprietors between 1737 and 1798 in the course of dividing large tracts of land held in common by the Proprietors and setting off the resulting smaller lots into individual ownership. However, substantial uncertainty still exists as to (1) were these ways offered by dedication to the Town, (2) were they accepted by the Town, and if so, as public ways or as 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, or (4) were the Proprietors acting during some part or all of the 18th century as the de facto town government such that their layout 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 has not yielded an answer to these questions.