

THE MARTHA'S VINEYARD COMMISSION

BOX 1447
OAK BLUFFS
MASSACHUSETTS
02557
617-693-3453

DATE: September 27, 1984
TO: Conservation Commission of the Town of Chilmark
FROM: Martha's Vineyard Commission
SUBJECT: DEVELOPMENT OF REGIONAL IMPACT
RE: TIDAL DIVERTER - MENEMSHA POND
APPLICANT: Town of Chilmark
c/o Board of Selectmen
Town Hall
Chilmark, MA 02535

DECISION OF THE MARTHA'S VINEYARD COMMISSION

SUMMARY

The Martha's Vineyard Commission (the "Commission") hereby remands the Application of the Town of Chilmark, c/o Board of Selectmen, Town Hall, Chilmark, Massachusetts 02535 for a tidal diverter in Menemsha Pond to the Conservation Commission of the Town of Chilmark and said Conservation Commission shall take such steps as necessary to insure that the Town of Chilmark files a Notice of Intent for said project within 30 days of receipt of this decision.

There were no plans submitted with the referral which was referred to the Commission by the Selectmen of the Town of Gay Head.

This decision is rendered pursuant to the vote of the Commission on September 27, 1984.

FACTS

The proposed development is a Development of Regional Impact as defined by the Commission Standards and Criteria, Developments of Regional Impact, Section 3.501. The application was referred to the Commission by the Board of Selectmen of the Town of Gay Head for action pursuant to M.G.L. Chapter 831, Acts of 1977, as amended (the Act). The application and notice of public hearing relative thereto are incorporated herein.

A duly noticed public hearing on the Application was conducted by the Commission pursuant to the Act and Massachusetts General Laws, Chapter 30A, Section 2, on September 27, 1984 at 8:00 p.m. at the Commission offices, Olde Stone Building, New York Avenue, Oak Bluffs, Massachusetts. The proposal is for the construction of a tidal diverter in Menemsha Pond.

The hearing was chaired by Marc Widdiss, Chairman of the Land Use Planning Committee. Mr. Widdiss read the legal notice and opened the public hearing for testimony at 8:00 p.m.

Herbert Hancock, Board of Selectmen, Chilmark discussed the background of the project. He noted that the Town had always had scallops in the Pond until they (Army Corps of Engineers) put a new channel in but then very few. He indicated that the proposal was an attempt to improve the shellfishing in Chilmark. He discussed the tidal effect on the young scallops and the speed of the water across the flats on the Chilmark side of the Pond. He noted the area was only a foot deep at high tide. He noted that the Town would like to have the right to keep the diverter in place. He felt that the project might help the improvement of scallops in Chilmark and didn't think that it would hurt anyone. He discussed the reasoning for making the attempt and if it didn't work, it could be removed.

A discussion of the past straightening of the channel and its effect on the shellfish in the area followed. A discussion of scalloping in the general area followed. Mr. Widdiss asked if any tidal effect studies had been done. Mr. Hancock noted that it was just an experiment and didn't feel that it did much to the tide except perhaps slow a bit of the tide to permit the seed to settle.

A discussion of the past scalloping activities in the area followed. A discussion of the location and the current status of the project followed. Mr. Hancock noted that the pole did not float, but rested on the bottom and a discussion of the concept followed.

Carol Borer, Martha's Vineyard Commission staff discussed the project and the license requirements for the proposal. She noted the State law which covered projects of this type. She read some of the

Town's (Gay Heads) concerns regarding the project and their reasons for their concerns. She read the shellfish reports from both the Towns of Chilmark and Gay Head. A discussion of the reports and their meanings followed.

Joe Palzarski, Fisheries Biologist, Coastal Zone Management discussed the project and the application process. He noted that the State was not against shellfish enhancement projects but did want due process followed. A discussion of due process to follow. A discussion of whether the project was a benefit or detriment to the shellfishing in the area followed. No determination could be made. A discussion of shellfish enhancement programs followed. It was noted that the State would need to see a plan and a monitoring program to determine the effectiveness of any project.

Mr. Widdiss called for proponents - there were none.

Rick Karney, Martha's Vineyard Shellfish Group, being neither pro nor con, discussed the proposal and its potential effectiveness or detriment. He felt that the straightening of the channel actually caused the problem.

Mr. Widdiss called for opponents. Jeff Madison, Selectmen of Gay Head noted that he did not consider himself directly in opposition to the proposal but that the Selectmen had received a number of inquiries regarding the matter and they just did not know. He discussed the concern of Gay Head with respect to the matter. He felt that due process should have been followed and if indeed the project goes forth, that it should have some mechanism to determine the effects. He noted that he believed that what Chilmark did on their side of the pond was their business but that Gay Head's portion should not be detrimentally effected by the proposal.

Mr. Widdiss called for other opponents - there were none. He then noted that he had received 25 surveys from Gay Head fishermen regarding the matter.

A question regarding the Corps of Engineers had any responsibility to rectify a situation they had created. There were no answers. A discussion of the effectiveness of the proposal followed.

A discussion of the matter followed. Mr. Hancock indicated that the Town was now attempting to apply for the permits.

There being no further testimony, the hearing was closed at 9:19 p.m.

FINDINGS and CONDITIONS

The Commission has considered the Application and the information presented at the public hearing, as well as due process as set forth in the General Laws of the Commonwealth and makes the following finding:

That due process has not been followed in the case of this Application and thusly the Commission remands to the Conservation Commission of the Town of Chilmark the Application for a tidal diverter in Menemsha Pond and Further,

That said Conservation Commission take such steps as necessary to insure that the Town of Chilmark files a Notice of Intent for said tidal diverter, and Further,

That said Conservation Commission take this action to begin the process within 30 days of receipt of this decision.

This Decision is written consistent with the vote of the Commission: September 27, 1984.

Any party aggrieved by a determination of the Commission may appeal to the Superior Court within twenty days after the Commission has sent the development Applicant written notice, by certified mail, of its decision and has filed a copy of its decision with the Town Clerk of the town in which the proposed development is located.

Margaret Harris
Margaret Harris, Vice Chairman

10/11/84
Date

Norman Friedman
Notary

10/11/84
Date

NORMAN FRIEDMAN
NOTARY PUBLIC
My commission expires Nov 2, 1990



Edgartown, Mass. October 15, 1984
at 10 o'clock and 32 minutes AM
Received and entered with Dukes County Deeds
book 491 Page 235.

Attest: *Suevery W. King*

Register