DATE: December 15, 1988

TO: Planning Board, Town of Tisbury

FROM: Martha's Vineyard Commission

SUBJECT: Development of Regional Impact
RE: Commercial Subdivision

APPLICANT: MVY Realty Trust
   c/o Roche, Carens, & DeGiacomo
   One Post Office Square
   Boston, MA 02109

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DECISION OF THE MARTHA'S VINEYARD COMMISSION

SUMMARY

The Martha's Vineyard Commission (the Commission) hereby approves, with certain conditions, the Application of MVY Realty Trust, c/o Roche, Carens, & DeGiacomo, One Post Office Square, Boston, MA 02109, for a commercial subdivision as shown on the plans entitled: "Plan of Land in Tisbury, Mass., Prepared for MVY Realty Trust, Dated July 14, 1988, Prepared by Schofield Brothers, Inc., State Road, P.O. Box 339, Vineyard Haven, MA. 02568" consisting of one (1) sheet; "MVY Realty Trust, Statement of Potential Impact, A Proposal for the Commercial Subdivision of a 7.16 Parcel on State Road, Tisbury, MA., Received by the Martha's Vineyard Commission on October 7, 1988" consisting of four (4) sheets; making a total of five (5) sheets; (the Plan).

The Decision, with conditions contained herein, is rendered pursuant to the vote of the Commission on December 15, 1988.

The Planning Board of the Town of Tisbury may now grant the necessary development permits for the Applicant's proposal in accordance with the conditions contained herein or may approve in accordance with the conditions contained herein and place further conditions thereon in accordance with applicable law, or may disapprove the development application.

FACTS

The proposed development is a Development of Regional Impact as defined by the Commission's Standards and Criteria, Developments of
Regional Impact Section 3.104. The Application was referred to the
Commission by the Planning Board of the Town of Tisbury for action
pursuant to Chapter 831, Acts of 1977 as Amended (the Act). The
Application and Notice of public hearing relative thereto are
incorporated herein. Martha's Vineyard Commission staff document
exhibits are incorporated by reference.

A duly noticed public hearing on the application was conducted by
the Commission pursuant to the Act and M.G.L. Chapter 30A, Section 2
as modified by Chapter 831 on October 27, 1988 at 8:00 P.M. at the
Commission offices, Olde Stone Building, New York Avenue, Oak Bluffs,
Massachusetts.

The proposal is for Subdivision of land qualifying as a DRI since
the proposal is on property which has been in whole or in part the
subject of a previous DRI.

After reading the public hearing notice Mr. Young opened the
hearing and immediately continued this hearing to November 3, 1988,
8:00 p.m. at a place to be determined at a later date. This hearing
was continued due to the Oak Bluffs Fire Department's determination
that the room was overcrowded.

A duly noticed continued public hearing on the application was
conducted by the Commission pursuant to the Act and M.G.L. Chapter
30A, Section 2 as modified by Chapter 831 on November 3, 1988 at 8:00
p.m. at the Olde Whaling Church, Main Street, Edgartown, MA.

James Young, Chairman of the Land Use Planning Committee (LUPC),
read the MVY Realty Trust Public Hearing Notice, opened the hearing
for testimony, and immediately continued the hearing to November 10,
1988 at 8:15 p.m. at the Olde Whaling Church, Main St., Edgartown, MA.

A duly noticed continued public hearing on the application was
conducted by the Commission pursuant to the Act and M.G.L. Chapter
30A, Section 2 as modified by Chapter 831 on November 10, 1988 at 8:15
p.m. at the Olde Whaling Church, Main Street, Edgartown, MA.

Mr. Young read the MVY Realty Trust Continued Public Hearing
Notice, opened the hearing for testimony, described the order of
presentation for the public hearing and introduced Ms. Skiver, MVC
Staff, to make her presentation.
Ms. Skiver reviewed the following staff notes while making references to the maps and plans on display: Description:

Development proposes subdivision of 5.15 acres into five (5) commercial lots (including roadway lot). Size of lots as follows: Roadway lot (40' wide row) .40 acre; Lot (1) 2.18 acres; Lot (2) 1.14 acre; Lot (3) .60 acre; Lot (4) .83 acre. Present Zoning: Proposal located in B-2 District. Zoning Requirements - Permitted Uses: - Any wholesale or retail business, service, office, or public utility conducted indoors; - Light manufacturing; - Multiple dwelling units; - Food service establishments. Regulations: Minimum lot size; Commercial use, 0 sq. ft., Residential use, 20,000 sq. ft.; Minimum frontage; Commercial 0', Residential 100'; Minimum lot depth; Commercial 0', Residential 100'; Minimum front setback; Commercial 30', Residential 30'; Minimum side and rear setback; Commercial 15', Residential 20'; Maximum height; Commercial 30', Residential 30'. MVY Realty Trust DRI Subdivision Chronology: Subdivision Plan dated July 14, 1988. Preliminary Plan approved February 2, 1988. Definitive Plan submitted to Tisbury Planning Board July 22, 1988. Public Hearing by Planning Board held August 31, 1988. Planning Board filed Decision October 27, 1988. Tisbury Planning Board Decision - dated October 19, 1988 - Approval of proposed subdivision plan with following conditions: 1. This decision is based upon testimony entered at the referenced hearing and documents submitted in connection therewith; commitments which are not fulfilled or documents which are subsequently revised without Planning Board concurrence, may cause this approval to be revoked. 2. Planning Board will require drainage plans for each separate lot which contain run off to that particular lot as per covenant before construction is allowed. 3. That a Covenant be provided which specifies that each lot owner has equal but undivided interests in the ownership of the road and utilities and equal but divided interest in the liabilities for the road and utilities (lot 5). 4. That there be a crash gate provided by the Trust at the southerly end of the subdivision road (lot 5). 5.
The Trust will provide at their expense a Tisbury Police Officer for traffic control at such times as required by Tisbury Police Chief. 6. Traffic analysis shall be conducted, at the expense of the Trust, and the results shall be presented to the Planning Board before any development permit is granted.

The following correspondence was received for the record: TO: MVC, FROM: Mark Racicot, Executive Director, Vineyard Open Land Foundation (VOLF), DATED: October 27, 1988, RE: Proposed subdivision of the 5.15 acre MVY Realty Trust site into 4 commercial lots and a roadway parcel. 1) Notes that total MVY Trust acreage should be included for purposes of planning and analyzing the impacts of development. Assumes that any potential proposed uses of total acreage could generate the same intensity of use and traffic impacts as proposed bank and supermarket project. Suggests placing subdivision covenants on property to specify type of uses, maximum size of buildings, etc. to lower potential traffic volumes. 2) Feels MVC should require same mitigating measures as were required for bank/supermarket project approval (such as sidewalks, bike lanes, improvements to State Road, payment of police costs, maintenance of storm drains, etc.) 3) Feels that condition of approval should require any construction in subdivision be reviewed as a DRI by the MVC. Notes the need for design standards for commercial construction. Suggests condition requiring design of structures be of typical New England rural village style architecture and requiring a buffer strip of vegetation from State Road and Old Holmes Hole Road. TO: MVC, FROM: John Gahan, Attorney for MVY Realty Trust, Roche, Carens, & DeGiacomo, DATE: October 25, 1988, RE: Details chronology of the MVY Realty Trust Site and bank/supermarket project. Believes the subdivision plan filed with the Tisbury Planning Board is entirely separate from the modified DRI pending before the MVC. The Trust does not believe that Section 3.104 (of the Standards and Criteria of the MVC) can independently confer jurisdiction on the MVC to review the subdivision as a DRI when in the absence of a prior filing the plan would not qualify as a DRI. Believes that this regulation violates the rights of the Trust under M.G.L. Chapter 41 to protect its land
from zoning changes. At this point, the Trust is willing to agree that it will not proceed to develop its land without MVC review. However, it is not willing to confer jurisdiction on MVC or limit its rights to deal with its property consistent with the law. Therefore, the MVY Realty Trust is filing the MVC checklist regarding the subdivision plan under protest and with reservation of its rights to challenge the MVC's consideration of the plan.

Ms. Skiver stated that the letter referred to from Mr. Racicot is actually excerpts from a letter which relates to both DRI #291 Modification of previous DRI decision, and #292 proposed subdivision of land, the entire letter will be distributed to the Commissioners at a later date. Ms. Skiver then answered questions from the Commissioners.

Mr. Early, Commissioner, according to the Chronology on page 2 of the staff notes, the Tisbury Planning Board held a public hearing on August 31th and filed a decision on October 27th is that correct? Ms. Skiver responded in the affirmative.

Mr. Young, Commissioner, Regarding number 4 of the Tisbury Planning Board's approval conditions, concerning the crash gate at the end of the subdivision road. That crash gate is to separate the subdivision road from the existing road, is that correct? Ms. Skiver that is my understanding, although the minutes from the public hearing do not specifically address why a crash gate is required. Ms. Skiver indicated the location of the proposed crash gate on the maps.

Mr. Jason, Commissioner, What exactly was the action taken on October 27th, did they endorse the plan? Ms. Skiver responded that they approved the plan. Mr. Jason, did they sign the acceptance. Ms. Skiver responded that the decision was filed with the Town Clerk.

Mr. Young asked Ms. Eber, Commissioner and Chairman of the Tisbury Planning Board, to clarify this. Mr. Young then asked is the decision recorded with the town clerk but the plan is not? Ms. Eber, Yes.

Mr. Young then asked Ms. Eber to clarify the purpose of the crash gate. Ms. Eber stated that the purpose of the crash gate was to

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prevent other people from using that road. Mr. Young, in others word
the traffic on that road would be from the subdivision only? So there
would be 2 roads? Ms. Eber responded yes, the existing road will be
used for residents and business to the south.

Mr. Evans, Commissioner, Has the staff had the opportunity to do
any work on the proposed traffic that would be generated by full use
of this subdivision? Ms. Skiver responded that there is no way to
determine the "full use" since there is no minimum lot size and the
permitted uses are broad and traffic generation figures are based on
the number, size, and type of business. Mr. Evans, is there any
method for reasonable calculations? Ms. Skiver, If the types of
business were known it could be estimated. Mr. Evans, so there is no
reasonable way to assess the amount of traffic that could be
generated? Ms. Skiver responded not with the information provided.

Mr. Ferraguazzi, Commissioner, Concerning the letter from the MVY
attorneys stating this should not be a DRI. I understood once a DRI
always a DRI. Mr. Young responded that is why we are reviewing it
now.

Mr. Filley, Commissioner, Is there a maximum building size? Ms.
Skiver responded no, just a maximum height of 35'.

Mr. Geller, Commissioner, Hypothetically could you condition how
many buildings/businesses could be put on this site? There is no
minimum size, you could put a building completely on a lot as it
stands. Ms. Skiver, As long as it conforms to the setback and other
requirements, it would also have to meet the parking requirements.
Mr. Geller, is there any way to calculate working backwards? Ms.
Skiver, that would depend on the type of store or business, all have
different parking requirements according to Tisbury By-laws. Mr.
Geller, What would be the minimum parking requirement? Ms. Skiver,
Can't give you that answer with the information provided. I could
give you examples of the types of business existing in the area now
and the size.

Mr. Ewing, Commissioner, If this subdivision plan is approved, in
the future, when building is planned, would it come back to us? Mr.
Young, the way the DRI checklist stand now I don't believe it would have to, however, we would put a condition on the approval of this subdivision that would require that any uses proposed on these lots come back to the Commissioner.

Mr. Widdiss, Commissioner, What would be considered the frontage for these lots, State Road or the Subdivision Road? Ms. Skiver, it would be the subdivision road.

Mr. McCavitt, Commissioner, If this subdivision where to be approved with the subdivision road, and considering the crash gate condition, what would be the impact along Old Holmes Hole Road? It appears people using Old Holmes Hole Road would have to travel along the perimeter of the subdivision to exit onto State Road? Ms. Skiver, Old Holmes Hole Road would exit and enter on State Road. A portion of the road is on Trust land now, which will be lot 4 of the subdivision. Use on Lot 4 may or may not impact that road.

Mr. Early asked under the Tisbury By-Laws could the parking requirements be accommodated in the setback areas? Ms. Skiver stated that would depend on the building size. Mr. Early then asked, doesn't Tisbury require a buffer? Ms. Skiver stated that 10' from the road has to be screened. Mr. Early from State Road only? Ms. Skiver responded from the private road also.

Ms. Medeiros, Commissioner, what is the distance from the subdivision road to Old Holmes Hole Road? Ms. Skiver responded approximately 40'. Ms. Medeiros, the opening to lot 4 would be 40'? Ms. Skiver stated the right of way is 40' whether or not they would have the entire 40' is not known.

Mr. Jason, Commissioner, When does the appeals process expire on the Tisbury decision, what is the date? Ms. Eber responded 20 days from October 27. Mr. Jason then asked if it is possible that this will be signed by the Town Clerk before our next meeting? Ms. Eber responded yes. Mr. Jason then asked, shouldn't we be doing something to notify the Town that we object? Ms. Borer responded that it would be taken care of. Ms. Eber stated that she has requested a time extension from the applicant and has not received a reply. Mr. Jason
stated he felt it was a little late for that. Mr. Young agreed since the decision has already been rendered. Ms. Eber, the request was made before the decision was filed. Mr. Young, at this point as far as the Commission is concerned, the clock has stopped, but regarding the 20 day appeal period I believe it is correct that the Town is obliged to sign it at the end of that appeal period. Mr. Early stated this was a legal issue which should be handled by counsel.

Mr. Filley, Commissioner, In the first condition of the Planning Board's decision it states that commitments not fulfilled or documents subsequently revised without concurrence may cause this approval to be revoked, is there something we should know? Ms. Eber responded that drainage had been an issue with a request for a plan for drainage for each separate lot, this does relate to the remainder of the conditions as well.

Mr. Young stated that the minutes from the Planning Board public hearing on this proposal and their decision are in the proposal file for Commissioners review.

Mr. Young then asked if the lot designated as parking on the previous proposal was in the commercial district as well? Mr. Skiver responded yes.

Mr. Early stated that he feels the Tisbury Planning Board Decision and conditions would be more appropriate for the Town Board testimony than in the Staff notes and presentation.

When there were no further questions for Ms. Skiver, Mr. Young called on the applicant to make this presentation.

Mr. Gahan, Attorney for the applicant, Roche, Carens, & DeGiacomo, stated that Mr. Hoehn would speak with respect to the plan. He wanted to review the chronology again. He stated that the preliminary subdivisions plan, which starts the clock ticking, was filed in December of 1987, mind you the Trust has already taken a proposal to the Commission, been approved, been sued, made proposals at Town meetings, had a road turned down in an area where the Planning Board, Selectmen, and Commission found it was appropriate. Quite frankly, in consideration of my clients interests, I advised him that
he should file the preliminary subdivision plan. Specifically so that as we started through this process to get the approvals that we had been given before, which carried over a lengthy process, we didn't find the value of the land being taken away from us by changes in zoning by-laws. I never expected, and it is purely coincidental, that I am now here in front of the Commission on consecutive weeks on a modification that I tried to have before you in June and a subdivision I didn't expect would ever be in front of you if I had my modification. The bottom line is what we did and what we are hear for tonight is that we took our land and made a subdivision plan in a manner which we believe is consistent with Tisbury Zoning By-law to give the land owner the same benefit that other land owners have, to try and build something on State Road that is consistent with local zoning. Mr. Ferraguzzi asked the question concerning the fact that I am here tonight because of a regulation that this land is a DRI since it was the subject of a previous DRI. What I said in my reservation letter to the Commission and to Mr. Wodlinger was that if some other land owner on State Road had 5.15 acres of land and came in with this identical subdivision plan and had no buildings on it and nothing other than what is on that plan I don't think they would have to come before the Commission. When they decide to build a building they may have to come before the Commission and all the question of what will be done with the land, the buildings, the parking, and then the questions would be appropriate. Right now I don't want to build on this land other than a bank and a supermarket. We are trying to protect the client from changes in zoning by-laws. Concerning the extension that the Tisbury Planning Board requested, that was requested after the board voted 4-0 in favor of the plan to allow them an additional week to prepare the decision before filing it. It was not an extension for the purpose of coming before the Commission. However I am here and I am not interested in becoming involved in a "turf struggle". At this point I don't see there is necessarily a conflict. I do point out that, as far as we are concerned, if we had come to you with this plan in 1986 it would not be before this.
Commission. It would be a matter of Tisbury Planning Board decision. Then when it came time to develop it, for this bank/supermarket project it would come before you and indeed that would fall in the scope of the other things that give you jurisdiction. Mr. Gahan then answered questions from the Commissioners.

Mr. Geller, Commissioner, Why isn't the other 2 acres included in the subdivision plan? Mr. Gahan responded that they weren't sure of the future uses of this land and since it has separate access onto Old Holmes Hole road it wasn't included. Mr. Geller then asked it is in the Commercial district? Mr. Gahan responded yes and it is separate but in the same ownership. Mr. Geller, the plan as it exist now, is it completely registered land? Mr. Hoehn will have to address that, the portion which abuts State Road, near the proposed supermarket and in an upisland direction is registered, there may be some portion of the land acquired from the Goodales that is not registered land. I would also like to point out that the subdivision road is located on the exact location of the existing curb cut. There is an existing curb cut totally on my property right now.

Mr. Filley, Commissioner, the existing curb cut is in addition to the Old Holmes Hole Road? Mr. Gahan there is an existing curb cut shown on our plan at the end of the proposed subdivision road, there is a curb cut near Old Holmes Hole Road. Clearly if we were to put the bank/supermarket access road in the location specified in the modification we would need to get a curb cut where there is not one now. Mr. Filley the proposed access road would be a 3rd curb cut? The response was yes.

Ms. Skiver, MVC Staff, showed the location of the existing curb cut and that a permit to pave this would be required. Ms. Skiver responded that a permit is needed to improve it. Mr. Gahan said the point is that I am not creating a curb cut, I have one. I may have to speak to the State about certain things but it is an entirely different process to say to the State I have a curb cut in this place and I want to widen it than it is to say I want to put one where none exist, and the chances of them telling me no are quite different in one process than the other.
Mr. Young, Not withstanding the obvious efforts of the Tisbury Planning Board's decision to try to keep this subdivision road distinct from Old Holmes Hole Road and the use of Old Holmes Hole Road, could you provide the same rights of passage for Old Holmes Hole Road users for this subdivision road as you did for the modification road? Mr. Gahan are you asking if the people using Old Holmes Hole Road could use the subdivision road? Mr. Young, yes to access State Road? Mr. Gahan I might have to think about that. I could allow them to use the road, but I couldn't stop them from using Old Holmes Hole Road. Mr. Young so it is essentially the same problem we had with the modification road.

Mr. Morgan, Commissioner, The lot not on this plan, proposed for parking in the modification plan, in the southeast, what is that lot number? Mr. Gahan responded that it is labelled on the Tisbury Tax Assessors map as lot 22-A-4.2. It consists of 2 pieces of land purchased by the Trust's predecessor. This lot was purchased long before Tisbury purchased lot 7.2.

Mr. Early stated he had been handed 3 photos of the Nobnocket site and he wants to know who they came from and if they were submitted for the record? Ms. Medeiros, Commissioner, responded they are from her. Mr. Early, from you personally or from the Tisbury Planning Board. Ms. Medeiros from me.

Doug Hoehn, Scofield Brothers, Inc., a lot of the questions asked to John Gahan and Ann Skiver will be addressed in my testimony. The perimeter of the land is 5.15 acres which actually consists of two pieces of land, one a registered land court parcel and a butterfly parcel purchased by the Goodales. The proposal doesn't include the 2 acres in the south because it is already 2 lots, there is no need to subdivide it. Ms. Skiver has gone through zoning and uses and since the conditional uses are numerous I will not list them. I will add that the State requires 20' of frontage on State Road. The topography coming off from the State Highway is flat with an open dirt parking lot, the grade rises slightly up to about the 2/3 mark. There is a bluff that runs in a semi-circle around the existing building with a
8-10 ft. rise along approximately 30 ft. At top of the bluff in the back, the property is more or less flat with 2-4 ft. of elevation in a rolling fashion. Above the bluffs, behind the existing building there is a ridge that runs along the property and drops off sharply toward the State highway and in the other direction also, it is very sharp with over 20% slopes in that area. There is an existing building on the site. That building was constructed in the '60s and has seen a number of uses, it was a garage, Helios restaurant which was a popular restaurant for quite some time, it was used as studios, offices, the hall was used for dances. What I am suggesting is that this building has seen very intense use in the late '60s, '70s, and maybe even the early '80s with basically the same entrance and parking scheme you see right now, it was used heavily for 10-15 years. The proposal is for technically 5 lots, 4 buildable lots and based on the Tisbury rules and regulations that you call the road a lot, it is 5 lots. There is no specific plans for use of any of these lots. As far as what buildings can be put on here, there are other things beside zoning that limit the size of a building in a commercial area, septic system and parking requirements. Tisbury zoning by-laws also have a 5' buffer requirement around a parking area. The size of the building is determined by use, parking, zoning, septic systems, etc. The private way is not designed to be a through way although it may look that way. It is a way designed just for these 4 lots. It is about 420 feet in length. It is sitting right on top of the existing curb cut. The road by Tisbury Planning Board rules and regulations is classified as a collectors road, that is the most intensely designed road that they require, it is for subdivisions of 50 or more lots or for a road that serves commercial lots. What a collector road means is that the minimum center line is 300 ft. and a grade of 6%, 10% allowed on a regular road. The road itself is designed to be 20 ft. wide, Planning Board requirement is 18 ft. but they are trying to change to 20 so we have used that here. They are also trying to change 20 year storm base to 25 years which is why we used that calculation. There is 4" of pavement instead of the required 3". The proposed road will have a
negative slope into the property for about 100 ft., at about the 100 ft. mark the road is designed to rise in a 6% slope up to about the 400 ft. mark and then level out. Therefore all the drainage is designed at about the 100 foot marked. The drainage designed here is for 2 holding catch basins, one on each side of the road, and 3 leaching catch basins of 6 foot depth by 10 foot diameter. That ends up giving you, based on the perk tests and the 25 year storm, approximately 7% greater capacity than required. Also there will be 5' shoulders. The reason the road stops there, and as I mentioned the road is not designed to be a through way, is that in a dead end situation you are usually required to build a cul de sac which would take up a lot of area to allow turnaround and emergency vehicles, so we continued the road all the way back and agreed on a crash gate. I will now address the Tisbury Planning Board conditions and how they came to be. Condition 1 just deals with performance and what we are expected to do. The 2nd one states that a drainage plan is required for each individual site prior to construction being allowed. This is fair and clear and the purpose is to make sure that the lots if built do not drain onto the road and therefore overburden its capacity. We will provide drainage plans prior to any construction. The roadway covenants and association will be provided to assume that the roadway is maintained like a standard subdivision. The remaining 2 conditions hinge on the future use of the site. The police officer at the corner of State Road and the private way at the expense of MVY if so required by the Tisbury Police and the traffic analysis and results that should be presented to the Planning Board before any development permit is granted. Since we don't have any specific uses for these lots right now, rather than try to make analysis now the Planning Board has hinged this on future building permits.

Mr. Young then called on questions from the Commissioners for Mr. Hoehn.

Ms. Harney, Commissioner, I'm a little confused about the crash gate. Doesn't that road continue on to feed into the proposed parking lot? Mr. Hoehn responded that is a separate proposal.
Mr. Ewing, Commissioner, What is the average size of building lots in this area? Mr. Hoehn responded that it varies, my office on State Road is on a 1/2 acres lot, the Merchant Mart is on a lot of small lots. Mr Ewing, So this isn't extreme one way of the other? The response was no. Ms. Skiver, MVC Staff, stated that she can tell you the ranges at a future time.

Mr. Geller, Commissioner, To meet the parking requirements could you utilize the 2 acres not part of the subdivision? Mr. Hoehn responded that he did not know. Mr. Geller, Can you help me to visualize the maximum utilization based on the lowest use for parking requirements? Mr. Hoehn, I cannot do that with the information available. Mr. Geller, Can you speculate? Mr. Hoehn, It could be done, but not now, and I hate to speculate.

Mr. Morgan, Commissioner, Regarding the parking lot, do you consider this as not part of subdivision because it is separated by the way? Would you give an explanation as to how you can have a subdivision and not involve that? Mr. Hoehn because these are separate lots because they came from a separate subdivision. It could be considered 1 lot because of continuous ownership or 2 lots that more than meet the minimum requirement.

Mr. Evans, Commissioner, Show us where the proposed road is in relation to the drive for the apartments across the street. Mr. Hoehn showed the location on the map. It was designed to use existing curb cut. Mr. Evans, the new road is not directly across the street, it is slightly off. Why wasn't it aligned? Mr. Hoehn the reason for it's placement is that it was put right on top of the existing curb cut and dirt drive and secondly it had to meet the 30' setback for the existing building.

When there were no more questions for Mr. Hoehn, Mr. Young called on Town Boards for testimony, there were none. He then called on public proponents, there were none. Mr. Young then heard testimony from public opponents.

Richard Gsottschneider, Economic consultant, was asked by the I.V. Conservation Society to review not only this plan but the earlier
submission relative to the bank/supermarket. Mr. Young asked if he understood that testimony tonight was just on the subdivision? Mr. Gsottschneider responded that he knew that he just wanted to give the Commission a history of his involvement. I first reviewed that plan and offered some observations and now I will offer some observations on the subdivision plan. By my calculations you can get as much square footage, using conservative planning methods, of building on this proposed subdivision of 4 lots as you could under the original. The declines of downtowns have typically been fostered by development, suburban development or development out of the downtown area. If we can potentially use 50-60,000 sq. ft. of retail here that is going to have a material impact on downtown Tisbury. Your market place is simply not growing fast enough to allow both places to be vibrant. I haven't seen any analysis that has been done to counter that observation and I think it is relevant and that it ought to be evaluated. The other observation, when looking around New England, where this issue has been raised many times, over and over again, if you put a magnet like this, whether it be a retail or an office magnet out on the end of a strip like State Road you are obviously going to generate a lot of traffic to this particular magnet which in turn is going to increase the rate of commercialization of State Road. Many of you have seen the strip developments not only on the Vineyard but on the mainland as well. Looking toward intensifying the commercialization of State Road, it seems to be not part of the overall development plan of the Island to allow that to occur. Mr. Gsottschneider summarized by saying you could get a development of equal size on this subdivision as on the previous proposal. It will have a major impact on State Road and downtown. You will see a rapid development of commercial property along the road, you will see I believe a deterioration of your downtown business. I think that those issues warrant further study before you approve such a project.

Mr. Geller, Commissioner, asked Mr. Gsottschneider, Did I understand you to say we could have the same square footage on this parcel which is 5 acres as the 7 acre parcel? Mr. Gsottschneider
responded that he hasn't tried to lay it out but mathematically, typical standards allow for 30% lot coverage for commercial developments which could occur within this zone. The standards that exist for retail is approximately 6.7 parking spaces per square foot, allowing about 300 sq. ft. per car you end up consuming 2.9 acres in parking. You actually have 4.75 acres after you take out the road. 30% of that which could be the footprint of a building is 1.4 acres, parking would require 2.9, you would still have .47 acres left over which would be your buffers. That is an ideal situation, admittedly you have some funny shaped lots so after you adjusted for the funny shaped lots you probably wouldn't get all of what I said but you would come pretty close to it. I also assumed that all that would occur on 1 level, this zone would allow a 2 or 2 1/2 story building. So you could easily, particularly if you go to 2 levels, as much on this site as you could on the other one. Mr. Geller, bearing in mind there is an additional 2 acres that can also be built. Mr. Gsottschneider responded that is correct. Mr. Geller have you calculated the other 2 acres? Ms. Gsottschneider responded that he hadn't look at what the other 2 acres could do.

Ms. Medeiros, Commissioner, Are you telling us that you have in your mind how much building could go on that property? Mr. Gsottschneider responded that he doesn't know exactly what the developer has in mind, I've simply looked at the site planning requirements, the zoning, the normal planning standards for a zone such as this, and I've calculated mathematically what theoretically could occur on this site. You can put on the site a very similar project to what you have on the other site. You would have to organize the buildings differently, they might no be as square, because you would have to keep them away from the property lines but you could still put some very substantial buildings on here. Ms. Medeiros stated that she is a little bit frightened by what he is saying. In 5 acres you could put the same size project as on the 7 acre lot? Ms. Gsottschneider, yes, roughly, you would have to lay it out to be sure.
Mr. Young stated that clearly development on these parcels could substantially impact the area. We could condition that any future development return to the Commission for review as a DRI. Your point is well taken that the potential is an issue we should consider.

Craig Whitaker said he would talk about traffic again. There are a number of issues from the previous submittal that have bearings here and I think they should be part of the consideration of this plan. First is that Mr. Gahan said that in the summer of '88 there were approximately 1370 vehicles on State Road. That was existing traffic for the summer that just past. He also suggested through his traffic consultant that the capacity of State Road was somewhere around 1800 vehicles. Later in the environmental impact report he suggested that in the vicinity of the intersection or cut onto State Road that with allowance for a bike lane the actual capacity of the road was about 1750 vehicles. He then showed us that the capacity without the bike climbing lane was about 1600. In our analysis the bike lane analysis was incorrectly done. Our own estimates are somewhere in the neighborhood of 1500-1550 vehicles. Essentially there is room for some 200 more cars before the road reaches breakdown. I think in a common sense way, driving it during the peak hours, you can tell that yourself. The question that is still remaining before us is how much more traffic can be put on the road. Obviously if the developers were to say we are going to put a single family house on each of these 4 lots there would be very little traffic and particularly very little traffic during the peak hours. But the point still remains that there are a number of uses that could go on this site which would generate far more traffic than the uses that he has shown before (i.e. video stores, banks, convenience stores, etc.) Added to the fact that there is a potential for considerable more traffic than the road can handle, our own previous analysis has shown that if it were done properly using the commonly accepted methods of planning and traffic analysis, that it could probably get 1000 cars in and out of it, they could actually get more up to 1200, when compared with the capacity on State Road we have reached a level far in excess of what the road can
handle. Exacerbating the situation further is that most of the retail uses going out of Vineyard Haven and heading up-Island are on the right hand side of the road as you leave town, the north side of the road. Here of course they are going to be making a not a right hand turn but a left hand turn and that has a detrimental effect on that intersection for traffic. We criticized the intersection before because in addition to breaking down the traffic that they showed on it at the time, movements such as the exit and entry into Sears, the apartment building across the street, the conflict from Old Holmes Hole Road which has been analyzed further reduce the capacity of that intersection. You are left also now with a plan that doesn't include the widening of the road. The plan before doesn't include widening State Road to attempt to handle the left turns out of and into the subdivision. There is a considerable body of knowledge that is not known and that rather than conditioning approvals for this project, what we think ought to be done is without prejudice the developer ought to be asked to come back before you with a more definitive plan, on that show the parking, the buildings, the traffic impacts to the fullest extent. At that point you can make an intelligent judgement which may include conditioning or the rejection of the proposal. But to have approval of this before those kinds of analysis is done seems to be putting the cart before the horse. Traffic has been, and continues to be one of our major concerns, by any standards you care to put on it, that road is arguable one of the most important roads on the Island in that it connects up-Island with business of Tisbury and Oak Bluffs as well as the ferry and the hospital. If this project goes ahead with retail uses on it, it is our analysis that State Road will come to a halt. I don't want to sound gory but you can think of yourself in an ambulance faced with the distinct possibility that taking people in and out of Vineyard Haven may mean taking people back to West Tisbury, past the airport to get to the hospital rather than just continuing into town.

Mr. Jason questioned that the capacity of State Road is 200 cars away from breakdown? Mr. Whitaker responded that is using 1550 as the
total capacity. The road will be registering what we call level F, that means that at the peak hours it will be stop and go traffic. There are actually 2 capacities we are looking at, we are also looking at the capacity of that intersection. Obviously if the intersection block the traffic you can't get into town using State Road. Mr. Jason what would be the increase per year without the development. Mr. Whitaker stated that one gentleman last week said that maybe it wouldn't grow at all. But using the reasonable assumption of 5% increase per year, added to the 1370 vehicles Mr. Gahan says are already on the road by 1990 you get to somewhere around 1500. Meaning that in order to avert a breakdown on that road we have maybe 2-3 years of time within remedial measures could be taken. We actually think 5% growth per year is low. Mr. Jason what you are saying is that the road will reach breakdown even with the normal rate of growth. Mr. Whitaker I am saying there is a window here and that measures can be taken to mitigate that growth. This kind of commercial strip would eventually go to 4 lanes to keep the traffic moving while you are allowing traffic in and out of the business along the way. But as a 2 lane road, yes it will breakdown.

Brendon O'Neil, Director Conservation Society, as you know this proposal for a subdivision of a portion of the MVY Realty Trust property is before you because of the protection that the Commission engineered into the DRI checklist process several years ago. That is where the project qualifies as a DRI is that it is on property that has been wholly or in part the subject of a previous DRI application. So from a planning perspective our concern is obviously similar to the issues you raised tonight. In that there be continuing review of the use of this entire property. That your decision be adequately conditioned so that any structures proposed for this site and adjacent property must come back to the Commission for site review, parking, drainage, landscaping and so forth, regardless of the square footage of the proposed buildings that we may see in the future. From the conservation prospective it is clear that many of these issues raised at last week's hearing are relevant to this one as well. One of the
more difficult issues continues to be the subject of ancient ways that I raised both at the Tisbury Planning Board meeting, at the October 6th scoping session, realizing that the place for any decisions on this is during your discussion with commission counsel. Mr. O'Neil discussed his ancient way brief and urged the MVC to read this brief, we have given individual copies for the Commissioners as well as Mr. Wodlinger, MVC Counsel. I ask the commission to examine the developers proposal and how it addresses the section of the ancient way that meanders off site over the town lot 7.2 and out to the road. Mr. Evans, Commissioner, All of this legal discussion it seems takes place outside the public debate, outside the realm of me being there, without the Commissioners, and I would suggest that if we have people coming to speak before us that we allow them to say what they want to say. I'm here to listen to them.

Mr. Young stated that the point here is that this is testimony and briefs that have been submitted to the Commission in writing and forwarded to counsel for legal opinion. The testimony submitted is available to the Commissioners in its written form as well as the counsels opinion as to the validity of that testimony which will be available to the Commissioners.

Ms. Borer, Executive Director, added that at the scoping session, which Mr. Wodlinger, MVC Counsel, attended he advised us that we should not entertain legal testimony as we are not attorneys and that any written legal testimony should be forwarded to him to be reviewed and passed on to us as briefs and findings. He will meet with us again shortly to present that to the full Commissioner. If there is any testimony tonight on legal issues it will not be included in the written record.

Mr. Young if we as Commissioners got into legal issues and how to clarify them we might be here all night it is a matter for the lawyers to deal with it is not a matter for this public hearing.

Mr. Evans stated that he wanted it go on record that he objects to the strict way this is being handled. Mr. Early stated the record would reflect it.
Jeff Bernstein, Legal Counsel for Vineyard Conservation Society and Citizens for a Liveable Island, I will try not to talk about legal issues that are outside what you think you can hear tonight. What I have heard and reading about Mr. Gahan's letter which I have not seen, you have a very sticky situation on your hands. Without getting into the turf issues, as they have been called, with Tisbury Planning Board, based on Mr. Gahan's letter he may well be in the position, has reserved his right to take the position, that whatever decision you make tonight, that is whether you approve the subdivision with conditions or not, it is a nullity. He's got Planning Board approval in place and he can proceed. I think what you are seeing and what Mr. Gsottschneider and Mr. Whitaker are talking about, as well as some others, this is the backdoor to a bank/supermarket or to another kind of commercial use. Mr. Gahan stated that because there is an existing curb cut while he may need State approval it would be subject to a different standard. I'm not sure if I agree with him but he has made that point. This is a very dangerous precedent and I think this is what the Commission regulations to get control of projects that were formally the subject of a DRI is for. This project, and the uses for these lots, might require an environmental impact report. The whole MEPA process is out there. Acting now, approving this project, even approving it with conditions just opens up several different possibilities which I don't think anyone can anticipate. It is not the best way to go. I think the best way to go is to reject it without prejudice and ask the developer to give you all the information that you need. We are looking at a whole series of issues, about Old Holmes Hole Road and how it meanders and how this project affects it, how the subdivision affects it. We have a range of uses, anything is possible under the current Tisbury zoning by-laws and your staff has said I think quite rightly and the proponent has said they don't know what the uses are going to be here. The best way to handle something like this, the most efficient way, so that it isn't a continuing process for years and years is to get some more information from the proponent as to what they would like to do here
and obviously that is going to depend on the Commissions decision on
the revised access plan that you had your public hearing on last week.
Obviously if you approve that revised access plan that is what the
developer, or MIVY trust would like to do. If you don't approve it
they may come back with a different plan but they can build a
bank/supermarket they can build a whole range of use buildings and no
set of conditions in the world is going to anticipate all of those. I
have some respect for Mr. Gahan's legal ability and I would perhaps
make the same argument if I were he, that any Commission decision
made tonight doesn't stand, there is a Planning Board decision in
place. It is such a dangerous situation. I think the public is
best served by the Commission having a full range of information in
front of it. Given the fact that there is the possibility of an
additional environmental impact report you will find yourself in the
position of having approved the subdivision with conditions with the
possible outcome of an environmental impact review that is at odds
with what you do here. I think the Commission, unfortunately because
of the issues with the Tisbury Planning Board, is going to have to do
something fairly quickly to clarify where it stands.

Rez Williams from West Tisbury and I want to clarify a point.
The developers agent indicated that the traffic flow from the Old Art
Workers Guild was excessive or used heavily. I would like to just
clarify this and Sandford Evans can corroborate this. It was used
very sporadically, occasionally people would come in to use there
studios. There was a boat shop. Occasionally there was a party but
again quite sporadic. So again that shouldn't be considered. The
more important question that was touched on earlier and should be
emphasized is what this project would do to the downtown area of
Tisbury. It is true that right now it is crowded but if you look
carefully at the kind of stores that are there, you will find that a
lot of them aren't geared to year round residents. They are tee-shirt
shops and so forth. Is this going to be the wave of the future. Are
all the vital stores that would impact and be useful for year-round
residents going to move out of the town's thereby creating ghost towns
or Disneyworlds.
Kate Scott stated that it does seem it is hard to oppose something when you don't know what it is going to be. It could be anything. It does seem that the issue of keeping the downtown area of Vineyard Haven and also the Islanders that have business here deserve some consideration.

When there were no more people who wanted to speak in favor of the proposal Mr. Young asked if there was anyone to speak neither pro nor con, when there was no response Mr. Young called on the applicant to make his closing statement.

Mr. Gahan stated that he would just like to make one clarification of a comment that Mr. Jason made as to the road and I think the question was wasn't our position last week different last week than it is tonight. What I think I heard you say that it doesn't seem you should have it both ways. I don't want it both ways, I want it one way. I would like to build the bank and supermarket. I tried to do that and I was turned down. Where I tried to do it was where everyone told me was the most appropriate place it should be done, the planners told me, the Commission told me, my experts told me that. But when I went to the Town meeting, the Town meeting told me it wasn't right so I said I'm not going to have this piece of property, which incidentally is the last piece of commercially zoned property going up Island, this piece of property being the only piece of property on State Road that isn't developed the way State Road is now developed. So I advised my client to do what is a protection. I don't think it is inconsistent on the roads at all and all I am asking with my zoning freeze is to be able to have it one way like every property owner on State Road does.

When there were no further questions from the Commissioners Mr. Young closed the public hearing at 10:15 p.m. with the record remaining open for one week for written testimony.

Following the close of the public hearing, the following correspondence was received for the record: TO: MVC, FROM: James Joyce, DATE: November 15, 1988. RE: Believes the current subdivision proposal uses the land effectively without overcrowding

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the lots. Notes that land lies in a commercial zone. Feels the MVC should approve the subdivision with conditions to review the buildings later. TO: MVC Members, FROM: Judith Miller, Tisbury resident
DATE: November 14, 1988. RE: Has concerns regarding the probable consequences of any commercial development on MVY property to the water quality of Lake Tashmoo, Tashmoo Springs and the Spring Street wells. Notes discrepancies in applicant's consultants regarding direction of groundwater flow. Cites William Willcox's letter to MVC stating that groundwater flow off site may change direction and believes there is likelihood of eventual flow into Lake Tashmoo not Vineyard Haven Harbor. Urges Commission to recognize fears of Tisbury citizens and consider consequences of subdivision proposal. TO: Mr. Joseph Solitto, Jr., Clerk of Court, Dukes County Superior Court, FROM: Timothy Courville, Choate, Hall & Stewart, DATE: November 14, 1988. RE: Letter encloses copy of Civil Action Complaint Plaintiff, MVC vs. Defendant, Tisbury Planning Board arising from Tisbury Planning Board endorsement of the subdivision plan filed on behalf of MVY Realty Trust. TO: Members of the MVC, FROM: Craig Whitaker, Craig Whitaker Architects, DATE: November 16, 1988. RE: Raises question about the growth of traffic on State Road as it relates to the road's capacity to absorb that growth. Believes State Road will reach capacity within 2-3 years which is important to give the MVC and the Town time to plan and implement strategies to improve parking and traffic situation. Feels the MVC should ask the developer to return with an environmental assessment containing definitive plans and traffic projections. TO: MVC, FROM: Kevin Begley, Tisbury resident, Citizens for a Livable Island (CLI) Member, DATE: November 17, 1988. RE: Believe that MVY Realty Trust should give the MVC a complete picture of what they intend to build there, so that all traffic and visual impacts can be assessed. Feels that the hilly, rolling topography of the site should be protected regardless of what is developed within the subdivision. He is also concerned about the run-off created by additional parking lots. TO: Members of the MVC FROM: Jeffrey Bernstein, Esq., DATE: November 16, 1988. RE: VCS &
CLI submit comments concerning the subdivision plan and urge the MVC to reject this proposal at the present time and allow the proponent to resubmit it with more complete information subsequent to decision on the revised Nobnocket access plan. Believes the MVC cannot adequately assess the potential impact of the proposal with no specified uses or information beyond the bare map of the subdivision provided. TO: MVC Members, FROM: Norma Van Buskirk, DATE: November 17, 1988. RE: As a resident on West Spring Street she is concerned that if the plan is approved, West Spring Street will become a heavily travelled bypass for those wishing to avoid the gridlock of State Road. Believes this is a safety hazard for school children. TO: Members of the MVC, FROM: Richard Gsottschneider, RKG Associates, Inc. DATE: November 17, 1988. RE: Discusses issues that warrant careful study as part of the permitting process before any development approvals are granted for the subdivision. Issues include what could be developed on reconfigured lot lines, impact on B-2 district and downtown Vineyard Haven, impact on existing commercial activities and businesses, and impact on traffic patterns on State Road.

FINDINGS AND CONDITIONS

The Commission has considered the application and plans, testimony at the public hearing, and discussion during its decision deliberations and based upon such consideration, makes the following findings pursuant to Section 14 of the Act:

1 a. The Commission finds that the probable benefits of the proposed development, as conditioned herein, will exceed the probable detriments of the proposal in light of the considerations set forth in Section 15 of the Act. The approval of the subdivision plan will preserve the existing municipal zoning scheme under G.L. c. 40A, Sec. 6; thus allowing the owner to plan for future development in a deliberate and unhurried fashion without fear of local zoning Amendments. The numerous traffic, aesthetic, and planning issues affecting the site make such municipal
regulatory stability desirable for careful planning. (The municipal zoning freeze does not, however, apply to regional land use regulations under c. 831.)

b. The Commission finds that the proposed development will not interfere substantially or unreasonably with the achievement of the objectives of any general plan of the Town or of Dukes County, but instead, is consistent with such plans.

c. The Commission finds that the proposed development as set forth in the application and plan will be consistent with local development ordinances and By-laws in place at the time of the submittal.

d. The Commission finds, as conditioned herein, that the development proposal will be more beneficial than detrimental when compared to alternative manners of development or developments occurring in alternative locations. This plan creates the potential for commercial development of a smaller scale and on a less intense basis than has previously been proposed for this site. The possibility of creating a variety of different, smaller commercial uses is worth exploring.

2. Pursuant to Section 15 of the Act, the Commission has considered whether the proposed development is essential or appropriate at the proposed location in view of available alternatives, and believes that a more diverse and smaller scale development should be explored at this site.

3. Pursuant to Section 15 of the Act, the Commission has considered the question of whether the proposed development will have a favorable or adverse impact on the environment in comparison to alternative manners of development. A potentially smaller scale and more diverse commercial development may well have fewer and smaller environmental impacts.

4. Further and pursuant to Section 15 of the Act, the Commission has considered the question of whether the proposed development will favorably or adversely affect other persons and property and if so,
whether because of circumstances peculiar to the location, the effect is likely to be greater than is ordinarily associated with the development of the types proposed. No adverse impacts are expected from the creation of separable lots and smaller scale development.

5. Pursuant to Section 15 of the Act, the Commission has considered whether the proposed development will use efficiently or burden unduly existing public facilities, whether the proposed development will favorably or adversely affect the provision of municipal services and whether the proposal will aid or interfere with the ability of the municipality to achieve the objectives set forth in the municipal general plan. Although no concrete uses are proposed, potentially, the smaller scale and more diverse commercial development which could arise from this plan may well be desirable on this criterion.

6. In light of the considerations set forth in numbers 1, 2, 3, 4, & 5 of this decision, the Commission finds that the proposed development is located within the Town's business district and the plans, as presented, with unknown uses, warrants review in the future to weigh the benefits and detriments of the considerations as to any future development proposals pursuant to the Act, and listed herein. Therefore, the Commission sets forth the following conditions:

   a. ANY DEVELOPMENT AS DEFINED IN C. 831 OF ST. 1977 PROPOSED, WITHIN THE BOUNDS OF THE LAND SHOWN ON THE PLAN, IS SUBJECT TO THE COMMISSIONS REVIEW AS A DEVELOPMENT OF REGIONAL IMPACT TO EXAMINE THE AGGREGATE IMPACTS OF PROPOSED USES ON THE LOTS. THE LIKELY IMPACTS FROM THE USE OF ONE OR MORE OF THE LOTS MUST BE CONSIDERED IN LIGHT OF THE POTENTIAL IMPACTS FROM THE USE OF ALL OF THE LOTS AND EACH WILL HAVE TO SHARE IN MITIGATION MEASURES ARISING FROM THE DEVELOPMENT OF THE OTHER LOTS, WHETHER ARISING BEFORE OR SUBSEQUENT TO SUCH LOT'S DEVELOPMENT. THIS CONDITION SHALL BE DULY NOTED ON THE SUBDIVISION LINEN PRIOR TO RECORDING AT THE REGISTRY OF DEEDS.

   b. THE TERM "DEVELOPMENT", FOR THE PURPOSES OF THIS DECISION, IS DEFINED IN SECTION 6 OF CHAPTER 831 OF THE ACTS OF 1977,
AS AMENDED, AND READS, IN PART: ANY BUILDING, MINING, DREDGING, FILLING, EXCAVATION, OR DRILLING OPERATION; OR ANY MATERIAL CHANGE IN THE USE OR APPEARANCE OF ANY STRUCTURE OR IN THE LAND ITSELF; OR THE DIVIDING OF LAND INTO PARCELS; OR A CHANGE IN THE INTENSITY OF USE OF LAND, OR DEMOLITION OF A STRUCTURE; OR THE CLEARING OF LAND AS AN ADJUNCT OF CONSTRUCTION; OR THE DEPOSIT OF REFUSE, SOLID OR LIQUID WASTE OR FILL ON A PARCEL OF LAND.

The Commission finds that the proposed development is consistent with local ordinances and by-laws to the extent it is required to, only the subdivision application being before it at this time. The Applicant must, consistent with this Decision, apply to appropriate Town of Tisbury Officers and Boards for any other development permits which may be required by law.

The Decision is written consistent with the vote of the Commission: December 15, 1988.

Any applicant aggrieved by a Decision of the Staff or Committee hereunder, may appeal to the full Martha's Vineyard Commission which shall decide such Appeal, after notice and hearing, within 21 days of the close of the public hearing.

The Executive Director may issue Certificates of Compliance which shall be conclusive evidence of the satisfaction of the conditions recited therein.

Any party aggrieved by a determination of the Commission may appeal to the Superior Court within twenty (20) 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 in the Town in which the proposed development is located.

Edgartown, Mass. Dec 16, 1988
9 o'clock and 51 minutes A.M.
Received and entered with deeds

John G. Early, Chairman

Attest: Beverly W. King 12/15/88

Notary Public
Norman Friedman
My commission expires Nov 2, 1990