

## THE MARTHA'S VINEYARD COMMISSION

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Date: March 25, 1999

To: Building Inspector, Town of Tisbury  
All Permit Granting Boards - Town of Tisbury

From: Martha's Vineyard Commission

Subject: Development of Regional Impact  
re: commercial development

Applicant: Steven Wehner  
#10 Northline Road  
Edgartown, MA 02539

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Amended Decision of the Martha's Vineyard Commission

Summary

The Martha's Vineyard Commission (the Commission) hereby denies permission for the granting of permits for the development contained in the Application of Steven Wehner, #10 Northline Road, Edgartown, Mass. 02539, as shown on the plans entitled: "Site Plan, Land in Tisbury, Mass., prepared for Island Service Center, June 22, 1998, scale: 1" = 20', David E. Taylor, Professional Land Surveyor, P.O. Box 854, Vineyard Haven, Mass. 02568", consisting of one (1) sheet; plus "Conceptual Site Plan, Mass. State Highway, High Point Lane, Island Service Center, Tyree Engineering, P.C., 9 Otis Street, Westborough, Mass. 01581, Civil and Consulting Engineers, Scale: 1" = 10', date: July 17, 1998, Drawing No. 98409.CP6, Project No. W98409", consisting of one (1) sheet; plus "Proposed Parking Plan for the Island Service Center, Map 22A, Lot 9, Tisbury, Mass., Sourati Engineering Group, P.O. Box 4458, Vineyard Haven, Mass., scale: as shown, Job No. 98117, Drawing No. SU8-117A, date: October 28, 1998", consisting of one (1) sheet; plus "New Sewage Disposal System in the Town of Tisbury, site: proposed gas station auto repair shop, Map 22A, Lot 9, State Road, scale: as shown, Job No. 98117, Drawing No. SP8-155, date: July 31, 1998, Sourati Engineering, P.O. Box 4458, Vineyard Haven, Mass.", consisting of one (1) sheet; plus "Proposed Canopy of Gas Pumps, Vineyard Service Center, State Road, Vineyard Haven, Mass., dated March 4, 1999, scale: 1/4"

= 1', Sam Sherman, Assoc., A-9", consisting of one (1) sheet; plus "The Vineyard Service Center, view from State Road, rendering prepared from photos by P. MacLean, Sam Sherman, Assoc., Vineyard Haven, Mass., undated", consisting of one (1) sheet; plus "Vineyard Service Center, State Road, Vineyard Haven, Mass., June 25, 1998, scale: 1/4" = 1', Sam Sherman, Assoc., Permit 7.15.98", consisting of seven (7) sheets as follows: "A-1 Concrete Block Building", "A-2 Concrete Block Building - Existing Elevations", "A-3 Floor Plan Proposed", "A-4 Existing Concrete Block Building - Proposed Elevations", "A-5 Wood Frame Building - Existing Conditions", "A-6 Wood Frame Building - Existing Conditions and Noted Changes", and "A-7 First Floor Plan - Proposed Interior Remodeling"; and totaling thirteen (13) sheets (the Plan).

This Decision is rendered pursuant to the vote of the Commission on March 25, 1999.

The Commission disapproves the Application and denies permission to the permit granting authorities of the Town of Tisbury to grant the necessary development permits.

#### FACTS

The proposed development is a Development of Regional Impact as defined by the Commission's Standards and Criteria, Developments of Regional Impact, Section 3.109(c). The Application was referred to the Commission by the Building Inspector of the Town of Tisbury for action pursuant to Chapter 831 of the Acts of 1977, as amended (the Act). The Application and Notice of Public Hearing relative thereto are incorporated into the record herein. Martha's Vineyard Commission staff document exhibits are also incorporated into the record by reference.

A duly noticed public hearing on the Application was conducted on Thursday, February 4, 1999, at 7:30 p.m. in the Commission Offices, Olde Stone Building, New York Avenue, Oak Bluffs, Mass. The hearing was closed the same night.

A summary of the testimony provided at the hearing is provided as Exhibit A attached hereto. This summary is for the convenience of the reader only and was not relied upon by the Commission in reaching its decision on this matter.

The proposal is for the conversion of a vacant commercial structure into a gas station and service center.

FINDINGS AND CONCLUSIONS

The Commission has considered the Application and the information presented at the public hearing and, based upon such consideration, makes the following findings pursuant to Section 14 of the Act:

- A. THE COMMISSION FINDS THAT THE PROBABLE DETRIMENTS OF THE PROPOSED DEVELOPMENT WILL EXCEED THE PROBABLE BENEFITS OF THE PROPOSAL AS EVALUATED IN LIGHT OF THE CONSIDERATIONS SET FORTH IN SECTION 15 OF THE ACT (SECTION 14(A) OF THE ACT).**

It is necessary and worthwhile to repeat the overall purpose of the Commission which is contained in Section 1 of the Act.

"The purpose of the Commission created by this Act shall be to further protect the health, safety and general welfare of Island residents and visitors by preserving and conserving for the enjoyment of present and future generations the unique natural, historical, ecological, scientific and cultural values of Martha's Vineyard which contribute to public enjoyment, inspiration and scientific study by protecting these values from development and uses which would impair them, and by promoting the enhancement of sound local economies."

1. **Based upon the record and the testimony presented therein, the Commission finds that the proposed development at that location is not essential or especially appropriate in view of the available alternatives (Section 15(a) of the Act).**

While the Commission has considered the appropriateness of the location and has recognized that the site had previously been used for a commercial warehousing and product distribution center, the proposed intensity of activity and the accompanying problems, in particular, traffic and circulation issues, outweigh the potential beneficial factors associated with the location.

2. **Based upon the record and the testimony presented therein, the Commission finds the proposed development will have an adverse impact upon the environment (Section 15(b) of the Act).**

The Commission has listened to the testimony of the Applicant and of others regarding the issue of impacts upon the natural and man-made environment and has not been persuaded that the proposed development will not further exacerbate matters related to traffic around and within the proposed development.

3. **Based upon the record and the testimony presented therein, the Commission finds that the proposed development will adversely affect other persons or property and, due to the circumstances peculiar to the location, believes that the effect is likely to be greater than ordinarily associated with a development of the type proposed (Section 15(c) of the Act).**

The Commission has listened carefully to the testimony of the Applicant and others regarding the impact upon other persons and property and has not been persuaded that all possible impacts, with respect to traffic on State Road and/or High Point Lane, have been adequately addressed nor has adequate mitigation been set forth to indicate the Applicant has recognized and taken into account such impacts. The lack of submittal of pertinent information and data, in the form of a site-related traffic impact study, was a major piece of information that the Commission had sought but which was not produced by the Applicant. The Commission also lacked any information as to how the Applicant planned to mitigate the impact upon High Point Lane of having all traffic from the site exiting onto said lane, which is already a narrow, congested means of getting to a municipal park and ride lot.

The Commission has considered the factors set forth in Section 15(d), (e), (f), (g) and (h) of the Act and found that either such factors were not pertinent to the issues raised by the proposed development, or that such factors were relatively minor in their effects in comparison to other factors.

- B. THE COMMISSION FINDS THAT THE PROPOSED DEVELOPMENT WILL NOT SUBSTANTIALLY OR UNREASONABLY INTERFERE WITH THE ACHIEVEMENT OF THE OBJECTIVES OF THE GENERAL PLAN OF ANY MUNICIPALITY OR THE GENERAL PLANS OF THE COUNTY OF DUKES COUNTY.**
- C. THE COMMISSION FINDS THAT THE DEVELOPMENT, AS PROPOSED, IS CONSISTENT, TO THE BEST OF THE COMMISSION'S KNOWLEDGE, WITH THE DEVELOPMENT ORDINANCES AND BYLAWS OF THE TOWN OF TISBURY.**
- D. THE COMMISSION FINDS THAT THE PROPOSED DEVELOPMENT IS NOT WITHIN ANY DISTRICTS OF CRITICAL PLANNING CONCERN AND THEREFORE THIS ISSUE IS NOT PERTINENT TO THE PROPOSAL.**

The Commission disapproves the Application and denies permission to all Permit Granting Boards of the Town of Tisbury to grant the necessary development permits.

The Applicant may modify the development proposal and/or submit a new proposal to the Permit Granting Boards of the Town of Tisbury.

The Decision is written consistent with the vote of the Commission: March 25, 1999.

Any party aggrieved by a determination of the Commission may appeal to Superior Court with twenty (20) days after the Commission has sent the 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.

Richard J. Cook  
Chair

March 31, 1999  
Date

Irene Miller Fyler  
Notary

March 31, 1999  
Date

**IRENE MILLER FYLER  
NOTARY PUBLIC  
MY COMMISSION EXPIRES  
JUNE 10, 2005**

**EXHIBIT A****Public Hearing. Vineyard Service Center.**

The Martha's Vineyard Commission held a public hearing on Thursday, February 4, 1999, in the conference room at Commission Offices, Olde Stone Building, New York Avenue, Oak Bluffs, Mass., on the following Development of Regional Impact (DRI):

**Applicant:** *Vineyard Service Center  
William White and Steven Wehner  
P.O. Box 2591  
Oak Bluffs, MA 02557*

**Location:** *412 State Road  
Tisbury, MA 02568  
Assessor's Map 22A, Lot 9*

**Proposal:** *To convert the Coca-Cola distribution center to a gasoline fueling station; auto repair/service center; accessory offices, retail sales and storage; and one apartment.*

Ms. Brown announced the following format for the hearing: Applicant's presentation; questions from the Commissioners; staff reports; Town Board testimony; proponent testimony from the audience; opposing testimony from the audience; general comments; correspondence; Applicant's answers to general questions; and Applicant's summary.

Ms. Brown read the official announcement of the Public Hearing (above) and noted that the present Hearing was being held in accordance with Section 14 of Chapter 831 of the Acts of the Commonwealth of 1977, as Amended, and Chapter 30A, Section 2 of the General Laws of the Commonwealth, as modified by said Chapter 831.

**Applicant's Presentation.**

Ms. Brown asked for the Applicant's presentation. Sam Sherman, agent for the Applicant, started by describing the old Coca-Cola plant and building and how it would be converted into a gas filling station and service center. With plan and elevation drawings in hand, he outlined the front building renovations and plan, noting that the exterior would be upgraded but that the building's footprint would not change. The back or concrete-block building would be the service center. He discussed the layout of the interior and the upgrading of the exterior.

Mr. Sherman described the new septic system and told of the Applicant's plans for more plantings and landscaping, with a large treed island serving as a vegetative screen, hiding the gas pumps as much as possible.

Mr. Sherman discussed the storage tank, describing it as "state of the art." It is to be buried underground and encased in a bladder impervious to rupture by earthquake or other natural disaster. He also described the vapor recovery system.

Mr. Sherman said that the lighting would be minimal, for instance, under the canopy and at the door locations, but that there would be no overall general lighting. He added that the site is already in a heavily commercial area.

The hours of operation would be 6 a.m. until midnight, with the Applicant estimating an average of 300 cars a day. The Applicant's estimate is for 54 cars an hour at peak hours (late Friday afternoon, Saturday morning), with a 23-second delay for cars exiting out onto High Point Road. The Applicant expects to pump about 6,000 gallons of gas each day.

Mr. Sherman reminded the Commissioners that the site lies outside Zone II and that even in the event of a disaster, the aquifer would not be affected.

Mr. Sherman characterized a filling station as a nonspecific destination and not a traffic generator in that sense; however, it would provide an essential service. From another standpoint, it would perhaps have a positive effect on Five Corners traffic, drawing cars that would usually go to the Beach Road stations. He discussed further the effect that eliminating 300 cars a day from Five Corners.

Mr. Sherman pointed out that the service facility would be capable of and certified for handling all makes of cars, obviating the need for trips off-Island. He noted that the upstairs apartment had been eliminated from the second story of the wooden (front) building and that a house would be bought instead.

Mr. Sherman said that the housing would be available in one year.

Ms. Brown asked whether any of the Commissioners had questions for Mr. Sherman or the Applicant.

John Best questioned why the housing on-site had been eliminated. Mr. Sherman answered that the Tisbury Zoning Board of Appeals felt that its inclusion would hinder the Application. Steven Wehner, the Applicant, emphasized that there would be no house or residence on-site. Ms. Brown spoke of the ZBA codes and housing located on sites with hazardous materials. A discussion of this matter ensued.

John Early asked how the housing would be administered. Mr. Wehner answered that rent would be charged that would meet the criteria for affordable housing.

Tristan Israel wondered how the figure of 300 cars per day had been arrived at by the Applicant, noting that a traffic assessment presented at the Public Hearing for the first Application had estimated 1,400 cars per day. Mr. Sherman deferred to Mr. Wehner. Mr. Wehner discussed his consulting Mobil, looking at other traffic counts and figuring on selling 6,000 gallons of gas a day. Dividing that by the average fill-up of 20 gallons, he arrived at the 300-car figure. He added that fill-up time was expected to be five minutes. Mr. Israel and Mr. Wehner discussed the estimate further.

Mr. Israel asked if trucks would fill up at the station. Mr. Wehner answered that he didn't like that idea, that in any event the canopy would not accommodate them. He suggested that if the demand was there, a high-speed diesel pump could be placed at a different location on the site.

Mr. Israel questioned what the impact of the 23-second exiting wait would be on the area. Mr. Wehner replied that the answers would be found in the staff traffic assessment to be presented later in the Public Hearing. Mr. Israel reworded his question, whereupon Ms. Brown suggested that the Commissioners wait for the staff report.

Mr. Israel then asked whether there would be car inspections at the facility. Mr. Wehner answered yes.

Mr. Early questioned what exactly would be done with the wooden (front) building. Mr. Sherman said there would be a waiting room, a service counter, a bathroom, and an office or extra storage area, the last not having been decided yet. Mr. Best posed more questions about the wooden building, which Mr. Sherman answered.

Mr. Israel asked if the owners planned to retail food and beverages or auto products. Mr. Sherman answered that food and beverages would not be sold and that he wasn't sure about auto products. Mr. Wehner said there would be no auto product sales.

Michael Colaneri questioned whether diesel fuel would be sold and if there would be service to trucks. Mr. Wehner answered that diesel fuel would be sold to cars only, that the trucks could not fit under the canopy, which would have about a 14-foot clearance.

Mr. Colaneri asked about the underground storage tanks. Mr. Wehner described the three 10,000-gallon storage tanks for gas.

Michael Donaroma wanted to know if the large gasoline-delivery truck would be able to maneuver onto and within the site. Mr. Sherman answered that the delivery trucks would arrive early in the morning and that there was adequate room to maneuver. As an aside he added that traffic in the area was already stop-and-go, that it moved slowly anyway.

Mr. Israel expressed concern about the location of the storage tanks and their proximity to a Zone II area. Was there anything the owners or their agent would like to add? he asked. Mr. Sherman replied that the storage tanks would not be in Zone II. He then described again in some detail the bladders that would encase the tanks and the fact that they could withstand the stress of a large earthquake.

Mr. Israel questioned how the waste oil would be handled. Mr. Sherman discussed how much of it would be reburned in the heating system. Mr. Wehner offered that the waste oil would be stored in a double-hulled container and that it would be picked up and taken off-Island. He added that Speedy-Dry, a kitty litter-like substance, would be used to clean up floor spills in the repairs area. In addition, oil rags, which would be picked up and taken off-Island, would be used a second time to wipe up the floor.

Marcia Cini asked about the handling of spillage from the tanker trucks. Mr. Sherman answered that he was not aware of any specific plan. Mr. Wehner explained that an oil separator was planned for the area to which the runoff flowed; there was no other plan.

Mr. Donaroma asked whether all spills, then, were to be handled by drainage. What would happen, for instance, if a tanker truck split in half? He wondered if there was any other plan. Mr. Wehner replied no.

Mr. Colaneri questioned whether there were any Title V aspect to the handling of the rain runoff and the storage tanks. Mr. Wehner replied that the Sourati engineering firm had drawn up plans and that the Tisbury Board of Health had reviewed them and approved the septic system.

Mr. Colaneri asked about environmental insurance. Mr. Wehner explained that the enterprise was insured for \$1 million, the figure that his insurance company had recommended. Mr. Colaneri thought that this figure was too low, and a discussion followed.

Mr. Best noted that with regard to burning waste oil in the heating system, he was concerned about the particular type of burner to be used. Mr. Wehner said that the only problem was the efficiency of the system, which probably wouldn't burn enough of the waste oil. Mr. Best expressed concern about what sort of emissions would be produced by burning dirty oil. Mr. Wehner said that he supposed that the system would have to be up to EPA standards.

Mr. Israel asked once more about any additional traffic generated by the enterprise. Ms. Brown advised him that the Commissioners would wait for the staff report on the traffic assessment done by the MVC.

Mr. Donaroma asked if there would be a car wash on the site. Messrs. Wehner and Sherman answered no.

### **Staff Report.**

David Wessling, MVC staff, began by outlining the three main concerns for the staff: the effect of the facility on traffic in the area; the effect on the groundwater and surface drainage; and the aesthetics of the site.



As to the issue of traffic in the area of the development, Mr. Wessling outlined his analysis of the level of service at the facility. The peak hours would be Friday afternoons and Saturday mornings, he said. He explained that there would be a problem exiting and that the level of service for State Road had been assigned a "D" or "poor" rating.

Mr. Wessling described how within the site there were to be 31 parking spaces. He did not anticipate a significant bottleneck and thought that the current plan was better than the first one. He suggested rationing services. For instance, customers who had left their cars for repairs would not be allowed to pick them up during peak hours.

Mr. Wessling discussed a memorandum by Bill Wilcox, MVC staff, which outlines groundwater flows. He said that an agreement had been entered to monitor the site and that there would be an oil separator at the low point of the runoff pattern. He also spoke of the double-walled storage tanks.

As to the aesthetics of the site, Mr. Wessling noted that the platform canopy was now designed more simply than the earlier gabled plan and that it would be 13 to 14 feet high. He added that the bulk of the lighting would be from the canopy.

Ms. Brown asked if the landscaping planned was limited to what was shown on the illustrative plans posted on the wall. Mr. Wessling said yes.

Ms. Brown invited the Commissioners to question Mr. Wessling.

Mr. Israel questioned how the development would relate to the businesses across the street, like Cronig's, Island Tire, and so forth. For instance, with the 23-second exiting delay, would there be a significant effect on State Road? he asked. Mr. Wessling replied that there wouldn't be much difference, that perhaps three or four cars would stack up at some points.

Mr. Israel asked whether the turn into the road to the Tisbury refuse facility was wide enough for vehicles coming from Up-Island. Mr. Wessling answered that right-hand turns are typically easy to make. Mr. Israel reworded his question. If a car was stopped on High Point Lane and another vehicle was trying to make a righthand turn onto High Point Lane from State Road, would there be a problem making the turn? he asked. Mr. Wessling answered that if the car on High Point Lane was making a left-hand turn, then naturally there might be a problem.

Mr. Colaneri discussed the fact that right-hand turns are not a problem but that the crossing of traffic was a problem. He wanted to know if the traffic calculations were based upon real traffic counts, for instance, counts of turning movements. He pointed out that the refuse facility was in that area, as well as the Department of Public Works, which generates considerable traffic. Mr. Wessling replied that real traffic counts were done four times a year of the number of cars traveling State Road; however, there were no turning movement counts. A discussion of this matter ensued.

Mr. Colaneri described the intensity of the activities going on around the site. Ms. Brown offered that 16,000 cars went by the site during a one-day period. Mr. Wessling said that the Friday afternoon peak would not be as much of a problem, when people would not be going to the dump, as the Saturday morning peak.

Mr. Colaneri insisted that he wanted real numbers. Ms. Brown asked him which ones specifically. Mr. Colaneri replied that there should be "a real traffic analysis," a full study with real numbers. More discussion of this issue ensued.

Michele Lazerow asked Ms. Brown if she could ask the Applicant a question. Mr. Brown said no, not at that moment.

Mr. Israel returned to the issue of entering High Point Road, where, he said, the turn was already tight. He added that the Park & Ride lot (off High Point Road) would expand by 250 spaces and wondered what the impact of that expansion would be. He also wanted to

know how many cars would be inspected at the facility. Ms. Brown asked if Mr. Israel wanted this point taken under advisement; he answered yes. Mr. Wessling suggested that Mr. Israel ask the Applicant these questions.

Mr. Donaroma asked how the Town was to deal with the stack-up of cars on State Road. He mentioned that numerous large trucks went down the dump road (High Point Road). He asked how the staff felt about the increased numbers of cars. Mr. Wessling answered that the level of service was already poor, that the drivers were already inconvenienced. So, it's going to go from "poor" to "double F"? asked Mr. Donaroma. Mr. Wessling responded that *something* was going to go on the site in any event.

Benjamin Hall, Jr., questioned further the data on the level of service and trip generation, as well as the degree of the increase of traffic on State Road from year to year. Mr. Wessling acknowledged that the traffic did increase every year.

Mr. Colaneri wanted to know if there were accurate counts of the number of cars generated by Cronig's, Shirley's Hardware and Dr. Michael Jacobs' office. He asked if there were real numbers on crossing turns and if the data being presented could be substantiated. Charles Clifford, MVC Executive Director, noted that the number of cars traveling State Road was counted every three months, but not the crossing turns.

Mr. Colaneri asked if any sort of extrapolation would be made from the numbers available. Mr. Wessling replied that there was already so much travel on that stretch of road that the saturation point has been reached. Therefore, he said, there would be no huge leaps in the numbers of cars.

Mr. Colaneri asked what percentage the annual increase in traffic was. Mr. Wessling referred the question to Andrew Grant, MVC staff. Mr. Grant answered one to two percent a year.

Mrs. Israel asked if there was a official State rating for the corridor. Mr. Wessling answered no.

Mr. Hall questioned whether there were numbers for the traffic from Cronig's, Shirley's Hardware and Island Tire. Mr. Wessling responded that the volume capacity ratio had been met already.

Ms. Brown asked if any of the Commissioners wanted to question the MVC staff about the groundwater issue.

Ms. Cini asked if Mr. Wilcox was familiar with the technology used to protect the groundwater. Mr. Wilcox said no but that he understood that the system had redundancies built into it. His impression was that the system would catch any waste before it hit the groundwater. He added that he thought the system was "workable."

Ms. Brown asked Mr. Wilcox if there were any other points to be made about the groundwater issue. Mr. Wilcox asked the Applicant about the number of storage barrels. Mr. Wehner described the system, which he said would handle about 1,200 gallons of waste a month. He added that there would be two pickups a month to take the waste off-Island.

#### **Correspondence.**

Mr. Wessling read into the record a letter dated February 4, 1999, from Michael F. Kemly, a representative of the group Tisbury First. In the letter Mr. Kemly requested that the hearing be continued for two weeks since the traffic assessment had not been available for his group's perusal by 4:30 p.m. on February 3, the day before the hearing.

#### **More Questions for the Applicant by the Commissioners.**

Ms. Lazerow asked if there was any other system in place to monitor leaks. Mr. Wehner said no, then described the monitoring system, explaining that it could detect a leak as small as eight ounces. He discussed the alarm and pager system, how the manager would be notified immediately, how the Fire Department would be informed in seconds. Mr. Wehner described the tank liners as a second line of protection and described in detail how all the waste-holding containers had been developed for the handling of aggressive hazardous chemicals.

Ms. Brown questioned whether all the specifications that Mr. Wehner had just enumerated were in the file he'd submitted. Mr. Wehner answered yes.

Mr. Hall asked about the vapor recovery system. Mr. Wehner replied that it was the best and the latest technology and that he had spared no expense.

Mr. Hall asked about signage on the site. Mr. Wehner replied that he had commissioned Paul Uranker of Oak Bluffs to carve a "tasteful" wooden sign with the Mobil Pegasus logo on it. He described where the sign would be placed.

Mr. Hall wanted to know if the lighting would be like that at the service station at the airport. Mr. Wehner replied that it would be similar and would be on from dark until closing at midnight. Mr. Sherman added that the building code required lights at the exits. Mr. Wehner joked that it wouldn't be anything like the very bright lighting at Island Cove Mini-Golf, located next to the proposed facility.

Mr. Hall questioned the exact nature of the landscaping. Mr. Wehner said it was designed to lessen the impact of the pumps, that all existing trees would stay, and so forth. He noted that Carlos Montoya would be doing the landscaping. A further discussion of the landscaping followed.

Mr. Colaneri asked further about the lighting. Mr. Wehner went into more detail and referred him to the file submitted.

Mr. Best questioned if there was a secondary vapor recovery system between the storage tanks and the delivery trucks. Mr. Wehner replied that he didn't know but that he and his associates were using the latest technology. Mr. Best asked again about secondary vapor recovery. Mr. Wehner said that he would find out about that and that he had requested every piece of environmental protection equipment available.

Mr. Israel asked about the kind of excavation that would be required and whether soil tests had been done on the property. Mr. Wehner responded that Craig Saunders, engineer, had reported on the soil and that his conclusions were in the file. Further discussion on this matter ensued.

Mr. Donaroma wanted know about the parking and park area for the public. Mr. Wehner replied that there would be picnic tables, a park area and a bicycle rack.

Mr. Best pointed out a typo in a report submitted by the Applicant, which the Commissioners found humorous.

Mr. Hall questioned whether a "back road" like the one suggested some years ago would be built. Mr. Wessling said no.

Ms. Brown asked for comments from Tisbury Town Boards; there were none. She asked Mr. Wessling if there were any written comments from Town Boards; there were none.

Ms. Brown asked for comments from proponents of the development; there were none.

Ms. Brown asked for comments from opponents of the development; there were none.

Ms. Brown asked for general comments; there were none.

### **Letter from Michael Kemly of Tisbury First.**

Ms. Brown then read aloud the letter from Michael F. Kemly of Tisbury First dated February 4, 1999, requesting a continuance of the hearing for the new application because the traffic assessment had not been available by 4:30 p.m. on February 3, the day before the Public Hearing. Mr. Kemly also requested that the first traffic assessment done by the Applicants be resubmitted and be made part of the record of the present Application.

Charles Clifford, MVC Executive Director, stated that that wouldn't "fly," that the study was no longer in the hands of the Applicant because the traffic engineer who had produced it was forbidding its use due to lack of payment. Mr. Colaneri suggested that one couldn't "monkey around" with the public record like that. Mr. Clifford discussed the situation further.

Mr. Hall wondered why the Commission could not appropriate the study. Mr. Israel insisted that the study should be part of the public record. Mr. Clifford responded that there were legal ramifications and that he would have an attorney look into the matter. Ms. Lazerow queried this, and Ms. Brown asked how the Commission should respond to Mr. Kemly's letter. Mr. Colaneri opined that if the study were submitted as part of the Application, then the Commission shouldn't have to worry about law suits. Further discussion of the matter ensued.

Ms. Brown outlined the two questions posed in Mr. Kemly's letter. She asked fellow Commissioners if they should accede to the request for a continuance of the Public Hearing, allowing more time to study the present traffic assessment. Mr. Colaneri offered that it was "not okay" that the traffic assessment had been made available only that morning and asked Mr. Wessling about the timetable. Mr. Wessling replied that the study had been requested on December 21, 1998, and that the report was ready but not typed up until late the day before. Mr. Israel stated that there had not been enough time to absorb its contents and suggested a continuance.

Ms. Brown asked if there were any more questions. Audience member Michael Rotondo, referring to the geological or other studies submitted by the opposition during the Public Hearing for the first Application, asked if this material would be part of the public record. Ms. Brown replied no.

### **Applicant's Summary.**

Mr. Sherman offered that in any event the reports could be interpreted in many ways. He appealed to the Commissioners to "rely on common sense." He argued along similar lines briefly.

### **Motion to Continue Hearing.**

Ms. Brown posed to the Commissioners the question of whether to continue the Public Hearing or to leave the written record open for two weeks. She favored the latter course of action. She noted that as Chair, she could make that decision herself. Ms. Cini questioned whether the Public Hearing could be closed if the landscaping plans were not available yet. Ms. Brown said that the procedure for this had been changed. Mr. Hall wondered about a specific lighting plan, which Ms. Brown said that it had been provided only verbally. More discussion followed.

Mr. Best pointed out that whenever an Applicant withdraws and then comes back, the public is confused, not realizing that the old testimony would not be incorporated into the new record. Mr. Toole noted that the hearing had been legally advertised and worried that the Commission would "run out of people to vote on it" if it continued. Mr. Colaneri, on the other hand, objected to the idea that an Applicant could choose to "wear the people out." Mr. Donaroma agreed that the Tisbury public ought to be informed. More discussion followed.

Ms. Brown then suggested that the Commission close the Public Hearing and have the Land Use Planning Committee (LUPC) look at it and make a recommendation. Mr. Hall wondered if the landscape planning would be ready by then. Mr. Wehner asked to be given two weeks, that he would have to hire a different landscaper because Carlos Montoya would be off-Island for a month and a half. Ms. Brown also noted that the public record would remain open for four weeks longer.

Mr. Colaneri asked Mr. Wehner if everything displayed on the posted boards was in the Application file. Mr. Wehner answered yes.

The Hearing was closed at 9:16 p.m. with the record open for four weeks.

Edgartown, Mass. Apr 1 1999  
at 11 o'clock and 51 minutes A M  
received and entered with Dukes County Deeds  
book 760 page 816

Attest: Deane E. Powers. Register

DIVINE E. POWERS  
REGISTER OF DEEDS  
COUNTY OF DUKES  
REC'D APR 1 1999