

THE MARTHA'S VINEYARD COMMISSION

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Martha's Vineyard Commission Minutes for the Special Meeting of October 3, 2002

The Martha's Vineyard Commission (the MVC or the Commission) held a Special Meeting on Thursday, October 3, 2002, at 7:30 p.m. in the first floor conference room at the Commission Offices in the Olde Stone Building, 33 New York Avenue, Oak Bluffs, Massachusetts.

At 7:39 p.m., a quorum being present, the Special Meeting was called to order by James R. Vercruysse, a Commission member at large from Aquinnah and the Commission's Chairman. He noted that new Executive Director Mark London was present that evening. (Applause)

[The Commission members seated at the start of the Meeting were: J. Best; J. Greene; T. Israel; M. Ottens-Sargent; A. Schweikert; L. Sibley; R. Toole; J. Vercruysse; K. Warner; R. Wey; and A. Woodruff.]

Vote: Gervais-Goldsbrough Fueling Center Written Decision (DRI No. 489-2).

The members turned to a consideration of the Written Decision for the Gervais-Goldsbrough Fueling Center in Tisbury (DRI No. 489-2). *[See the Full Commission Meeting File of October 3, 2002 (the meeting file) for a copy of the Decision. The eligible members present that evening were: J. Best; T. Israel; M. Ottens-Sargent; L. Sibley; R. Toole; J. Vercruysse; R. Wey; and A. Woodruff.]*

Noting that there were only eight eligible Commissioners at the table, Chairman Vercruysse explained that a nine-member quorum was not, in fact, required for a Vote on a Written Decision, a point verified by DRI Coordinator Jennifer Rand with Commission Counsel Eric W. Wodlinger earlier in the day. Ms. Rand explained that the Written Decision vote required the participation of only a majority of those who had taken part in the Oral Vote. *[Eleven members had participated in the Oral Vote, and eight of them were present that evening.]*

The members spent some minutes looking over the Written Decision. Then Tisbury Selectmen's Appointee Tristan Israel remarked that the Decision was an accurate

reflection of the discussion that had taken place. He offered a **Motion To Approve The Written Decision As Written**, duly seconded by Linda Sibley, a Commissioner member at large from West Tisbury. There being no Amendments offered, Ms. Rand proceeded with a Roll Call Vote on the Motion, with the following results:

AYES: J. Best; T. Israel; M. Ottens-Sargent; L. Sibley; R. Toole;
J. Vercruysse; R. Wey; and A. Woodruff.

NAYS: None.

ABSTAINING: None.

Vote: Extension of Tom's Neck Subdivision Written Decision (DRI No. 383).

Jane A. Greene, the Chilmark Selectmen's Appointee, made a **Motion To Grant The Tom's Neck Subdivision Applicant An Extension Of One Year For The Decision's Sunset Clause Due To The Fact That The Archaeological Survey Of The Site Was Not Yet Complete**. Ms. Rand clarified with Ms. Greene that in fact the archaeological survey was complete but that some Conservation Restriction work with the Sheriff's Meadow Foundation was still in progress.

Thus, Ms. Greene amended her Motion: **That The Commission Grant The Tom's Neck Subdivision Applicant An Extension Of One Year Due To The Fact That The Applicant Was Still Trying To Fulfill Requirements Of The Written Decision, The Progress Of Said Requirements Having Been Out Of The Control Of The Applicant.**

At the request of Aquinnah member at large Megan Ottens-Sargent, Ms. Greene provided some background details on the project, noting that the Applicant had worked "long and hard" to fulfill the Conditions imposed by the Commission.

Ms. Rand pointed out that the **extension would have to be made retroactively to April 2002**, when the latest Sunset Clause had expired. Ms. Greene accepted that Amendment. Ms. Ottens-Sargent offered a Second. By Voice Vote, said Motion carried unanimously.

Reports.

The Chairman reported that the **Executive Committee** had not met.

Richard J. Toole – a member at large from Oak Bluffs and Chairman of the Land Use Planning Committee – provided the **LUPC Report**, relating that the committee had met on Monday, September 30, when they had reviewed an expansion to the third floor of the **Wintertide Building (Anderson Irrevocable Trust, DRI No. 504-1)**. What had triggered its referral? inquired Chairman Vercruysse. "The size of the expansion, it's over a thousand feet," replied Ms. Rand.

Mr. Toole also reported on the committee's continuing review of the **Down Island Golf Club Three Application (DRI No. 556)** during the same meeting. Among the topics they had discussed were: the proximity of the affordable housing units to the trails; the possible future use of the Town Parcel in the center of the site; the impact of public play on the course and how that would, in turn, affect turf management; the project's impact on the cost of housing; and core habitat issues. They had also discussed the question of whether the full Commission should address possible Conditions for Approval in this Meeting, said Mr. Toole.

Ms. Ottens-Sargent added to the report, noting that the committee had talked about the issue of organic-versus-inorganic turf products and whether all the greens should be lined. Ms. Ottens-Sargent then related that she had polled most of the Commissioners to see if they thought that the Applicant should have his entire team of consultants present for the LUPC sessions. Most of the members, she said, did not think that would be necessary.

Ms. Sibley, Chair of the **Planning and Economic Development (PED) Committee**, reported that her committee had not met. "We should, but we haven't," she remarked.

Discussion: Whether the Commission Should Work on Conditions for Approval for the Down Island Golf Club Three Application (DRI No. 556) Before the Closing of the Public Hearing.

Chairman Vercruyse invited the Commissioners' comments on the issue of whether Conditions for Approval of the Down Island Golf Club Three Application should be discussed in special LUPC session while the Public Hearing and Written Record were still open.

John Best, a Commission member at large from Tisbury, stated that he shared the reservations expressed by Ms. Greene during the Special Meeting the week before. *[See the discussion found on pages 7 through 9 of the Full Commission Meeting Minutes of September 26, 2002.]*

Ms. Greene remarked that she had thought about this issue long and hard and that the only way a discussion of Conditions with the Applicant could be legal at this point would be if there were not a quorum of Commission members. "I totally disagree with this process," she said. "Until we have a Motion To Approve and the Hearing's closed, you can't do Conditions."

Ms. Ottens-Sargent disagreed that working on possible Conditions would be tantamount to discussing a Motion To Approve.

Ms. Sibley expressed the opinion that it would be acceptable at this point for Commission members to pose questions to the Applicant and his team. "I did think about the issues that Jennie [Greene] raised," she commented, "and I do think that there's a distinction

between our getting our questions out on the record for the Applicant to answer in the continuation of the Public Hearing and pretending that the Public Hearing is closed..."

Ms. Greene expressed the opinion that any questions the Commissioners had should be asked at the Public Hearing, which was how they customarily proceeded. "And you all can do what you want, but I will not partake if you're going to continue with the process that you're doing," she declared.

County Commission representative Roger Wey stated that he stood by the position he had taken in the Meeting of September 26 and that he would not participate in discussions of Conditions until the Public Hearing was closed. He saw nothing wrong, he said, with the Commissioners submitting questions to the Applicant that could then be answered in Public Hearing.

The Chairman related that on a number of occasions Commission Counsel Eric Wodlinger had told him that the Commissioners were permitted to discourse with the Applicant in the context of an LUPC meeting, even though the Public Hearing remained open. Ms. Rand assured the Commissioners that Acting Principal Planner William G. Veno had spoken with Mr. Wodlinger specifically about this, "and I'm pretty sure that Eric [Wodlinger] understands the process and is pretty comfortable with it."

Mr. Israel remarked that it would be acceptable to him if the Commissioners strictly limited themselves to an exchange of information with the Applicant.

Chairman Verduyze said that he wished the Commission would pose questions to the Applicant in the context of an LUPC session "all the time." "Because I feel like we very rarely get to ask all the questions we need to ask at Public Hearing, because the people [that is, those testifying] take up as much time as we have," he explained.

"May I just say," declared Ms. Greene, "if you're going to close the Hearing without having Commissioners ask their questions, you're doing a great disservice to the Commissioners and to this Island... It has got to be done in Public Hearing. It has got to be done before the public, when it is advertised to the public that we are going to be doing this, not just arbitrarily saying, 'Oh, we'll just talk about it tonight.' And we're setting ourselves up for some good lawsuits if we keep going down this path."

Mr. Israel stressed that if the LUPC session involved negotiating or trying to reach a Decision or any sort of deliberations, "then we shouldn't be doing that." He added, "If what Jennie [Greene]'s saying is taking place, I don't want to be here either. But I don't see that taking place."

West Tisbury Commissioner at large Andrew Woodruff remarked that as long as the Commission was "not trying to hammer out Conditions," the discourse with the Applicant was acceptable to him.

Chairman Vercruyssen wanted to know how the others felt about the September 26 LUPC session, which he believed to have been very productive. Mr. Israel agreed that good work had been done the week before.

The discussion continued for some minutes longer. Among the comments were Ms. Sibley's about how clearing up certain issues with the Applicant was a good use of the time between now and the next session of the Public Hearing, on October 10.

Mr. Wey wanted to know how the questions and answers would be repeated at the Public Hearing session. If they were not repeated, he emphasized, it would be a disservice to the public. Ms. Ottens-Sargent suggested culling the questions and answers from the Minutes of the LUPC sessions and presenting these to the public in written form.

Chairman Vercruyssen requested input from **Brian Lafferty, an agent for the Applicant who was present that evening**. Mr. Lafferty related that, to his knowledge, an agency or board only had to advertise the Public Hearing the first time. Chairman Vercruyssen asked Mr. Lafferty if he had written down all the questions that had been posed by the Commissioners in the September 26 LUPC session. No, the meetings were recorded, Mr. Lafferty said, referring to the cameraman the Applicant had hired to tape all proceedings related to this Application.

Mr. Lafferty returned to his point about responsibility to the public. After the advertisement of the first Hearing session, he said, the onus then was on the public to attend any further Public Hearing sessions. In addition, he stressed, "you can discuss anything you want, because you're open to the public... The fact that they decide they don't want to come, shame on them, not shame on the Commission."

He could not see himself, Mr. Lafferty remarked, how one could reiterate in the Public Hearing session everything that had transpired in five or six or eight hours of LUPC sessions.

"The truth is, Mr. Lafferty declared, "in this particular instance, I mean, it's been rehashed a thousand times, you know, at Public Hearing. I mean, there's nothing that I haven't heard [or] anything new that's come up this time that wasn't discussed the last time."

The Commissioners then discussed the best way to bring the results of any discourse to the public. It was agreed that Staff should take specific notes on the LUPC sessions. The Chairman, though, did not think it necessary to read through "every last question," no matter how minor. *All* the material had to be repeated, insisted Mr. Israel.

Mr. Best made a **Motion To Proceed As The Commission Had Been, That Is, To Go Into Special LUPC Session For Questions To Be Presented To The Applicant**, so that this discussion could be wrapped up. Mr. Woodruff offered a Second. By Voice Vote, said Motion carried, with Messrs. Best, Israel, Schweikert, Toole, Vercruyssen and

Woodruff and Ms. Ottens-Sargent, Ms. Sibley and Ms. Warner in favor, and Ms. Greene and Mr. Wey opposed. *[Ms. Greene and Mr. Wey left the Special Meeting at this point. The time was 8:31 p.m.]*

**Special LUPC Session: Continued Mid-Public Hearing Review of the Down
Island Golf Club Three Application (DRI No. 556).**

Mr. Best posed the first question. There had been mention at the end of the September 5, 2002 Hearing session of an offer from the Applicant providing that if proposed agreements with the Department of Environmental Management (DEM) and the Land Bank were not acted upon, they would nonetheless remain on the table in their present form for three years.

Based on his own calculations, Mr. Best noted, it looked as if DEM would be paying something like \$160,000 per acre for its 12.5 acres, which, with the three-acre zoning in force, came to \$480,000 for a building lot. His concern, he said, was that at that price DEM would have no interest in the purchase, "unless something incredible happened to the real estate market."

Mr. Lafferty began his response by pointing that the land in question was effectively 15 acres. Using the site plan, he indicated the area in question. Then he explained that he had proposed the moratorium because many Commissioners and members of the public had seemed concerned that the agreement with DEM might fall through. He assured the Commissioners that DEM was, in fact, "firmly committed" to the purchase.

However, if DEM did not go through with the purchase, Mr. Lafferty continued, the land would then be offered to other conservation groups under the same terms, plus a Consumer Price Index increase, for a three-year period. At the end of that period, Mr. Lafferty added, if the Applicant wished to develop the land for residences, he would of course have to return to the Commission. "So, effectively, for three years, nothing happens," he concluded.

What if an appraisal set a price that was two-thirds or one-half of the amount stated in the Settlement Agreement? asked Mr. Best. Mr. Lafferty replied that in that case the Applicant would have to make a value judgment on how best to proceed. *[The next four minutes of the tape were too scratchy to be understood.]*

Responding to a question from Ms. Ottens-Sargent about the Windfarm purchase, Mr. Lafferty explained how originally the Applicant's exposure had been \$350,000. His exposure currently was \$1.35 million, and the rest of the money would come from the Land Bank and the Town of Oak Bluffs.

Ms. Ottens-Sargent also wanted to know if there had been any professional appraisals of the properties earmarked for the Land Bank and DEM. No, answered Mr. Lafferty,

adding that the project was "proposed as it was proposed." If something changed in the proposal, it would have to come back before the Commission, he again stressed.

Responding to questions from West Tisbury Selectmen's Appointee Kate Warner about the Windfarm property purchase, Mr. Lafferty explained that the Applicant had made an agreement with the Land Bank as part of the Settlement Agreement with the Town to absorb the additional million dollars. He would stand by that, he said. But, he added, if the Commission did not think that agreement was good, that was another issue altogether.

Ms. Sibley asked the Applicant to address the issue of the viability of the project as a business proposition. Specifically, she said, if the full memberships could not be sold within the Martha's Vineyard community, then they would have to be offered to those outside the community. This, in turn, brought into the picture one of her pet peeves, she noted, namely, that people who belonged to the club should have Island connections, for instance, a residence on the Vineyard.

"I respectfully disagree with your entire basis and contention," answered Mr. Lafferty. "First of all, ... I don't think the Commission has any right to get into the financial aspects of our business or anybody else's business nor the competitive nature, should there be a competitive nature." In this particular case, he said, the Island was extremely underserved with respect to golf, so the competitive aspect was not at issue here.

Mr. Lafferty argued that it would be illegal for the Applicant to put all kinds of restrictions on the qualifications for membership. "I can't believe that somebody would suggest that," he said.

Ms. Sibley pointed to the case of the Augusta National Club, a private club which was arguing that it could restrict its membership to males. So the Applicant could in fact establish a restriction about Island connections, she said. "Well, we're not going to make that rule," declared Mr. Lafferty. Ms. Sibley then requested that Mr. Lafferty make that statement at the next Public Hearing session.

Mr. Toole suggested that perhaps what Ms. Sibley was getting at with the first part of her question was that if the project failed, the long list of benefits to the community would not materialize. Mr. Lafferty replied, "Most of the benefits that we've been asked to provide are all benefits that are provided basically up front." Some of the ongoing benefits, like the donations to the Martha's Vineyard Arena, were contractual obligations, he said.

If the world were to fall apart and the Applicant could not sell memberships, Mr. Lafferty stressed, the golf course would still get completed, and the Conservation Restriction would still be in place.

Ms. Sibley wished to clarify the point she had been trying to make about members being part of the Island community. If, say, all the memberships could not be sold to people

with Vineyard ties and if 40 percent of the memberships were sold to people with no ties to the Island, then in weighing the benefits and detriments, the project would be offering less of a benefit. That 40 percent, for instance, would be jetting in to play golf, thus increasing the already troublesome level of air traffic coming to the Island, she pointed out. "This is what I'm concerned about," declared Ms. Sibley.

"You're misunderstanding our proposal, Ms. Sibley," responded Mr. Lafferty. "We are not proposing that this golf course, as a golf course, provides huge community benefits in that three hundred members and a few people get to play golf. What this golf course does effectively is take two hundred and eighty acres away from development, puts it into open space to recreational use and provides an economic engine for the Town of Oak Bluffs and significant community benefits."

"The three hundred people that get to be members," Mr. Lafferty continued, "that's ancillary. That's just, that's extra, those three hundred get that benefit specifically because they are buying it and they are paying for it. The Island memberships? That's a giveaway. Public play? People come and pay their money. The benefits that this project brings to the community and the Island have nothing to do with three hundred memberships. And the truth of the matter is, I would propose that it's of more benefit to the Island if all three hundred members flew in here and played and weren't increasing the values of property on the Island."

Mr. Woodruff interrupted and remarked to Mr. Toole that he did not think Mr. Lafferty's prolonged argument was appropriate in this setting. "I think he answered the question," said Mr. Toole. Ms. Sibley agreed. She added, "I'd appreciate it if he repeated that statement at Public Hearing."

"I want to say, I'm beginning to understand what Jennie [Greene] was talking about," related Mr. Woodruff, "and I'm about to walk out of this room... There is no excuse why this conversation shouldn't be taking place in front of two or three hundred people... If everything we're hearing tonight is just going to get repeated, then we're just sitting here wasting our time."

Mr. Toole explained that the problem was that at Public Hearing the public tended to get "a little out of control" and little time was left for a discussion with the Applicant. Mr. Israel argued that this statement downplayed the value of public testimony. Mr. Toole responded that what he had meant was that it was not as easy to have this type of discourse in a Public Hearing setting.

Chairman Vercruysse asked Transportation Planner David Wessling if the Commission ever considered the impact on air traffic of a project. "It hasn't been required," replied Mr. Wessling, adding, "The members haven't asked for it." "I think that's something we should look at," said the Chairman.

Ms. Warner observed that it was not the presence of the public at Public Hearing that prevented the kind of exchange with the Applicant they had been discussing but the fact that the Commission gave all the time to the public. She suggested that the Hearing Officer restrict the public testimony at the next Hearing session to, say, an hour and then commit two hours to a discussion with the Applicant.

Mr. Best remarked that although he was in favor of expediting the process, if the exchanges with the Applicant were to take place in Hearing session, then the Commissioners and Applicant should be prepared to have the process take longer. "Because that is the only fair way to do it," he added.

"I think we should take as long as it takes," commented Mr. Israel. He had not supported the idea of going into an expedited process to begin with, he said, but he felt it his duty to make a good-faith effort to move along the process. "But I've also stated that 'quickly as I can' doesn't mean excluding part of the process," he stressed.

Mr. Israel then proposed that the Applicant address in the next Hearing session the need for another golf course on the Island. He was also interested in seeing some detailed demographics on this subject. In addition, he said, he wanted the Applicant to address some correspondence that had questioned the methodology used in the Applicant's evaluation of wildlife and habitat.

Furthermore, Mr. Israel was interested in knowing exactly how much evaporation would occur during the irrigation of the turf. Lastly, he wanted the Applicant to address whether the number of Island memberships had been decreased because of the addition of housing to the plan.

Mr. Lafferty suggested a compromise. The fact was, he said, that in all the Hearing sessions since the first Down Island Golf Application, very little that was new had been presented. Therefore, he recommended, he did not see anything wrong with restricting public testimony to, say, two minutes. In addition, if he were to get the Commissioners' questions beforehand, it would take him less time to present the answers in the next Public Hearing session.

Mr. Lafferty then reiterated his argument that the full membership at the club was not meant to be a benefit to the Island. When Mr. Israel repeated his question about the addition of a housing component to the plan, Mr. Lafferty replied, "September eleventh is what created the change in the financial market."

Ms. Sibley agreed that submitting Commissioner questions to the Applicant before the next Hearing session would save time.

Mr. Best wanted to know if the Applicant had any interests in the properties abutting his 277 acres of land. "No," replied Mr. Lafferty, "I think anything we have any interest in shows in the plan, anything that I'm aware of." Then, Mr. Best said, his question would

be whether the Applicant had any knowledge of what the status was of the pieces of abutting land, particularly those that were not landlocked along County Road.

Mr. Lafferty responded that the Applicant had aggressively bought the parcels that made up the current plan. "What you see is what you get," he said. If there had been any other parcels, he added, in which the Applicant could have owned a reasonable interest, "then we would have bought them."

Mr. Israel pointed out that getting people to service a facility like the golf course was difficult and costly on the Island. Who would be providing those services at the golf club? he wondered. "Well, as you reminded me, there's going to be mostly rich people in here anyway," said Mr. Lafferty. "Obviously the logistics of living on this Island are very different that way. Any developer and any businessman strives to use local businesses because it's easier and usually more cost-effective. That's what we intend to do."

"The golf course would provide the majority of the landscape services," added Mr. Lafferty, "because the whole thing will be condominium-ized and everything will be a condominium."

Ms. Warner suggested that these answers from the Applicant be put in writing. **She also recommended that since there did not seem to be further Commission questions, the LUPC session be wrapped up. Ms. Warner then made the latter suggestion into a Motion.** Ms. Rand inquired if that meant she could cancel the LUPC meeting set for the following Monday. Mr. Toole, the LUPC Chairman, agreed to that.

Chairman Vercruysse noted that he had another question. He wanted to know, he said, if any of the facility's structures would be visible from public ways. "There's none that I'm aware of," answered Mr. Lafferty, who added, "I think you'd have to work at it."

Mr. Toole clarified the Motion, that what Ms. Warner had meant was to wrap up the discussion of golf. By Voice Vote, the Motion carried. The time was 9:18 p.m.

Discussion: Guidelines for Energy Efficiency.

Mr. Best pointed out that there were two projects before the Commission where the developer wished to build the residential units himself. Traditionally, he said, the Applicant would come before them for Approval of a subdivision and then sell off the lots to people who would build the residences themselves.

In view of what appeared to be a new trend, Mr. Best recommended that the Commission develop some guidelines that exceeded the Commonwealth's Building Code to address the issue of energy efficiency.

Ms. Warner related that she had at one point been working on such guidelines and that it would take a grant for the Commission to obtain the energy data it needed to have more of a basis upon which to develop them.

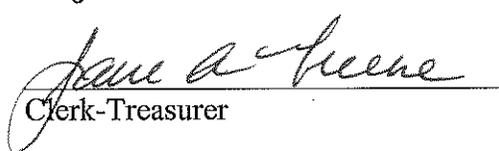
Responding to a question from Mr. Israel, Mr. Best outlined how along with requiring the Applicant to submit a landscaping plan and so forth, the Commission could ask for the Applicant to submit a plan for energy efficiency.

The discussion continued for some minutes and then wound down.

The Special Meeting adjourned at 9:28 p.m.



Chairman 1/12/03
_____ Date



Clerk-Treasurer 1/16/03
_____ Date

PRESENT: J. Best; J. Greene; T. Israel; M. Ottens-Sargent; A. Schweikert;
L. Sibley; R. Toole; J. Vercruyse; K. Warner; R. Wey; and
A. Woodruff.

ABSENT: *J. Athearn; A. Bilzerian; *C. Brown; M. Cini; *M. Donaroma;
E.P. Horne; J.P. Kelley; C.M. Oglesby; R.L. Taylor; and R. Zeltzer.

* Messrs. Athearn and Donaroma as well as Ms. Brown, all of Edgartown, were obliged to attend a Special Town Meeting that evening.

[These Minutes were prepared by the Staff Secretary using notes taken by the Acting Executive Director as well as a tape recording of the Special Meeting.]