

# THE MARTHA'S VINEYARD COMMISSION

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MINUTES OF FEBRUARY 1, 1990

## MARTHA'S VINEYARD COMMISSION MEETING

The Martha's Vineyard Commission held a public hearing on Thursday, February 1, 1990 at 8:00 p.m. at the Martha's Vineyard Commission Offices, Olde Stone Building, New York Avenue, Oak Bluffs, MA regarding the following Development of Regional Impact (DRI):

Applicant: Harold H. Sears  
P.O. Box 1501  
Oak Bluffs, MA 02557

Location: Oak Bluffs Harbor  
Oak Bluffs, MA

Proposal: Construction of bulkhead, piers and dredging qualifying as a DRI since the proposal will be located in the Oak Bluffs Harbor and is on property that has been the subject of a previous DRI.

Robert T. Morgan, Sr., Chairman of the Land Use Planning Committee, (LUPC), read the Sears Public Hearing Notice, opened the hearing for testimony, described the order of the presentations for the hearing, and introduced Tom Bales, MVC Staff, to make his presentation.

Mr. Bales reviewed staff notes for this project using wall displays to familiarize the Commissioners with the proposal. (Staff notes are available in their entirety in the DRI and Meeting files). The proposal is to construct and maintain a bulkhead, piers, floats and pilings. There are a number of additional permits that the applicant will need to apply for after the Commission level. Mr. Bales then reviewed correspondence (also available in its entirety in the DRI file). Following Mr. Bales presentation, he answered questions from the Commissioners.

Ms. Eber, Commissioner, asked how many boats will be able to use this facility? Mr. Sears, applicant, responded the same as exists now, 5-6 boats.

Ms. Colebrook, Commissioner, asked since boat pumpout is not allowed in the septage lagoons, where is the pumpout matter going to go? Mr. Bales responded that the pumpout is currently going to the septage lagoons and according to the applicant's engineers since the pumpout is not chemical treated it can continue to go there. Mr. Forns, applicant's agent, responded that there are only two sealed heads so

it is not chemically treated and can be accepted at the septage lagoons. Since the use is not commercial Mr. Sears can control what goes on.

Mr. Early, Commissioner, asked about the reference made to tenant's use of this facility made in the staff notes. Where are these tenants? Mr. Bales showed the location of his other property on the wall map. Mr. Early asked what type of dwelling this is? Is it a single family house that is rented out or a large structure where many rooms are rented? Since it was stated that this would not be a commercial use I want to determine how not-commercial it is. Mr. Bales responded that in his conversations with one of the Selectmen he felt that anyone using this property would be sort of a grey area as to whether it is commercial or not and I am unsure of how many rooms are rented in that building. Mr. Sears lives there now and rents rooms. Mr. Forns stated that to my knowledge only one of the boats that has ever used the facility has belonged to a tenant. It is not a rooming house operation.

Mr. Schweikert asked what exactly does it mean by no commercial use. Does it mean that they are not allowed to sell fish from the dock or rent the boats out from those docks? Mr. Morgan responded that LUPC was of the opinion that it was not commercial since the docks will not be rented and will accommodate 5-6 boats that the family owns. That is the testimony we have had at this point. Mr. Schweikert asked, if the man was a professional quahogger would that be a commercial use? Mr. Morgan stated that is a very good question. Mr. Forns stated that if Mr. Sears went into quahogging that would not be a commercial use. Mr. Schweikert said, so this restriction would not apply to that? Mr. Forns responded no, commercial is considered making a profit from either the sale or rental of the boat slips.

When there were no further questions for Mr. Bales, Mr. Morgan asked Mr. Forns to make his presentation.

Mr. Forns stated that he wanted to give a little history to show why this proposal has come forth. In the past few years the Town of Oak Bluffs has been able to improve their bulkhead and their configuration and the policy on navigational access has changed. So rather than have an operation where the boats that will be there, that are there now, rap parallel to shore, it was better, we thought, to improve navigation to make the slips perpendicular. That was the reason for the pilings. As was indicated, maintenance dredging will be required so you won't have to navigate the small shoal areas that come to an elevation of about 3 feet. What might appear to be an apparent discrepancy is that we are looking at 475 cubic yards of dredging and the West Tisbury Board of Health indicated that they can take about to about 900 cubic yards. Well before we did the actual design we went out to make sure we could get authorization so we gave them a figure that was very rough, which was less than 1,000 cubic yards as the maximum. As it turns out it will only be 475 cubic yards. As we have also pointed out, the material has been tested in the Harbor and they come out to be classified as category 1, type A. So they are below the thresholds of contamination and it makes the material available for any disposition. It has been brought out just recently that the

Town and the County Commissioners have been looking at the possibility of disposing of maintenance dredging on the Beach Road area to maintain the highway there. The applicant is perfectly amendable to do that if in fact that permission is ultimately granted. I don't think there is anything specific to add other than what Mr. Bales has already indicated except to point out that what is shown in this plan incorporates what is in existence and already licensed. Therefore, the number of piles will increase only by a very few because there are some that already exist there. The same thing with the floats that have been approved and the licensed existing dock. Mr. Sears owns not only the single lot that is fronted on Commercial Ave. but the three lots around it (he described thier location). Part of his agreement too is the fact that when the Town needed to extend on, it was felt engineering and environmentally more applicable to connect to his existing bulkhead and so they are actually building the Town sheet bulkhead beyond his property line. In fact the Town dinghy pier is on his property and the agreement was that he wouldn't extend beyond that so that we don't infringe on the existing dinghy dock. Mr. Forns stated he would answer any questions.

Mr. Early, Commissioner, asked what would be the procedure to determine if the sand that would be disposed of at Olsen's do not have unacceptable metal content? Mr. Forns stated that this has been done. What we do is a Water Pollution Control (WPC) certificate evaluation. A certified analytical lab does testing and this is submitted to the WPC to get a categorization. We have completed all of those processes. However, we can't get formal authorization because the triggering mechanism is the filing of the Notice of Intent's (NOI) Order of Conditions and so when we get through with this DRI process we would then go to the Town get the Order of Conditions signed and that would then go to Water Pollution Control, Chapter 91, and then we will be finishing the process. We have submitted those and gotten a few comments already.

Ms. Davis, Commissioner, asked if WPC looks at water or sediment? Mr. Forns responded sediment for dredging.

Mr. Wey, Commissioner, asked about the statement Mr. Forns made earlier that if Mr. Sears wanted to go into commercial quahogging he could? Now this is not suppose to be a commercial use. Mr. Forns stated that it is not a commercial use. If a person has a boat and ties it up to a personal dock it is not commercial use. If they go into business and use the dock for profit, for instance they rent a slip and make a profit then it would be considered a commercial use. Mr. Wey asked what about commercial use of it? Mr. Forns responded Mr. Sears is not intending to have a commercial use of it. Even if he went quahogging, he wouldn't be selling quahogs from the pier or that sort of thing. That would be a change of use. Chapter 91 is specific in terms of recreational boating use. Technically if the pier is licensed and down the road someone wants to change that use, go into a ferry service or something, that would be a change of use and require an amendment to the Chapter 91 law. Mr. Wey stated that he just wanted to make that clear to everyone.

When there were no further questions for Mr. Forns, Mr. Morgan called for testimony from town boards, there was none. He then called for public testimony in favor and then opposed to the project, there was none.

Mr. McCavitt, Commissioner, suggested that perhaps staff should forward this information to my office at Coastal Zone Management. Mr. Forns stated that the bulkhead already exists and it is licensed. The only thing they are doing is putting a timber deck out in front of it. There is no new bulkhead.

When there was no further testimony and Mr. Forns had no further statements, Mr. Morgan closed the hearing at 8:25 p.m. with the record remaining open for one week.

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Following a short recess, the Martha's Vineyard Commission held a public hearing on Thursday, February 1, 1990 at 8:30 p.m. at the Martha's Vineyard Commission Offices, Olde Stone Building, New York Avenue, Oak Bluffs, MA regarding the following Development of Regional Impact (DRI):

Applicant: Edmund F. Leland III  
c/o Thomas E. Counter  
One North Water Street  
P.O. Box 210  
Edgartown, MA 02539

Location: "Poucha South",  
Chappaquiddick Island,  
Edgartown, MA

Proposal: Division of land qualifying as a DRI since the land is of a related or contiguous ownership of 20 acres or more.

Robert T. Morgan, Sr., Chairman of the Land Use Planning Committee, (LUPC), read the Leland Public Hearing Notice, opened the hearing for testimony, described the order of the presentations for the hearing, and introduced Carol Borer, Executive Director, to make her presentation.

Ms. Borer stated that she would be reviewing staff notes (available in the DRI and Meeting files) prepared by Greg Saxe, MVC Staff, in his absence. She reviewed the staff notes using wall displays, aerial photographs and subdivision plans to show the location and the proposed building envelopes. Ms. Borer reviewed correspondence (also available in the DRI file.) She then answered questions from the Commissioners.

Ms. Colebrook, Commissioner asked with the closing off of the trail is there still the possibility of a fisherman or a horseback rider still gaining access to the beach? Are any trails open? Mr. Morgan, Chairman of LUPC, stated that the beach is approached either by foot,

horseback or vehicle over a way somewhat west of this location. The location was shown on a wall map. Ms. Colebrook asked, so it is still accessible by foot traffic or horseback? The response was yes.

Mr. Early, Commissioner, asked what in the world does beach access have to do with affordable housing? If affordable housing is not addressed then it is not addressed. Ms. Borer stated there is a statement from proposal's Environmental Impact Statement. Commissioners requested Ms. Borer read the statement. Ms. Borer stated that on page 13, under Affordable Housing, 6th paragraph it says: "The family has asked me to express to the Commission that their recognition of the public interest in this property is their offer of the 108 acres of barrier beach to the TTOR for an amount of over \$1,000,000 below appraised market value by at least three different appraisal firms." That is their offer. There was some discussion of this point among the Commissioners.

Mr. Young, Commissioner, asked if the covenants addressed at all the height of the buildings? Ms. Borer responded no. Mr. Young asked if it is addressed in any other way besides the Edgartown Zoning By-Law? Ms. Borer stated that it is probably addressed in the Cape Pogue DCPC. Mr. Morgan stated that certainly will be a question for LUPC as well.

Ms. Greene, Commissioner, asked are there any guarantees that the Trustees will keep this beach open to the public if they do sell it to the Trustees? Chris Kennedy, Assistant Regional Supervisor for the Trustees of Reservations, stated that we are currently negotiating with the Leland family for an option to purchase the beach. It is the intent of the Trustees if we do acquire the beach, it will be kept forever open to the public under management by the Trustees of Reservations.

Mr. Schweikert, Commissioner, stated he just wanted to get this clear in his mind for the affordable housing situation. The Trustees will pay \$1,000,000 for an option to buy land? Mr. Morgan stated that he believes the Leland's will be selling to the Trustee's for a figure that is claimed to be a million dollars less than the appraised value. Mr. Schweikert then asked, and that money that they do get will go to regional housing? The response was no.

Mr. Early stated that this appears to be one of a number of possible benefits that is unrelated to affordable housing. I think thier statement was to the effect that it is a benefit to the public interest.

Mr. Ewing, Commissioner, asked, regarding the covenants, specifically #2 the establishment of no build zone to be shown on the plans, are these shown on this plan here? Ms. Borer stated that it is not specific but she gave approximations using a wall map. Mr. Ewing stated that it also says that driveway, view channels and other proposed vegetative clearing will be subject to review by the Edgartown Conservation Commission where appropriate.... What does that mean where appropriate? Ms. Borer stated within the 200 foot line from the wetlands. Mr. Ewing stated so they just mean within the Conservation Commission's jurisdiction because there was a note that

says the Conservation Commission wants to review the actual building permit applications. That is not the same, correct? Ms. Borer stated that is correct.

Mr. Jason, Commissioner, asked about the road shown on the plan that goes all the way down that section of land, is that road going to be put in or is it already built? Ms. Borer, using the wall display, explained that this is an existing dirt road that continues. Mr. Jason stated the staff notes say it is 10 feet wide, is that 10 feet wide or is that a 40 foot way? Ms. Borer stated that it is a 40 foot way that centers on an existing dirt road. Mr. Morgan stated that there is quite a bit of detail on that Road and on off-chutes of that road and we will probably get that during the applicant's presentation.

When there were no further questions for Ms. Borer, Mr. Morgan called for the applicant's presentation.

Mr. Tom Counter, applicant's agent, stated that he would try to address some of the more current questions before we deal with the overall plan. This plan is a preliminary plan which was submitted to the Planning Board prior to the definitive plan and there are some differences. I think this is called a 40 foot way on here instead of a Right of Way. The purpose of this 40 foot layout is that 40 feet is a familiar number that is often required and secondly it is a matter of simply defining for purposes of an agreement with the Trustees of Reservation who own the land. This doesn't exist. I simply choose 40 feet as a number that is familiar to all of you as a roadway right of way width and within that, proposed that the existing road be used except for this small piece here (he showed them on the map) would be required to get access to these two lots. The reason this is 40 feet and the reason these are 100 foot frontages is because that then brings it up to zoning which it is not now but exists as a .... use as far as the subdivision control law goes. Thirty foot is possible but this is not proposed to be owned by the Leland family. The Leland family now has certain rights which Dick McCarron can address and clarify for you, to cross existing old 1913 grid subdivision that exists on this road and they have the right to build roadways and bring utilities within those rights of way. It is a fairly ugly grid system that was done. Although there has not been an agreement with the Trustees, because we haven't sat down at a table and hammered it out yet, the proposal that I am making with this is, yes they do have access along other lines here (which he showed on the wall map) to access their property, historically and by deed, however I am saying why don't we extinguish in agreement the right to build those ugly roads which they have the right to build anyone of them in preference of simply defining the existing road as a preferred way and agreed that these other once will never be used. These others are now in a conservation area. So this is not a right of way that is proposed it is simply a way of defining the existing road in the way that is usually done, which is to say OK we've picked the width of the right within there because we know over the years that it wanders as people use it, and you grade it and so forth and that is all that amounts to. In that I have provided 100 foot frontage which is what zoning would like to see to all these lots including this fifth lot over here which

already exists. Mr. Counter asked if there were any questions on that issue.

Mr. Jason asked so what you are saying is that you just have that road where it presently is to avoid having a road that goes through the conservation land and all the rest of that land is in conservation and it can't be subdivided? Mr. Counter responded that it is not an issue of subdividing. The Lelands own the right to build roadways across this land. Mr. Jason asked if the conservation land could be subdivided? Mr. Counter stated he would have to defer to the Trustees' representative. Mr. Kennedy responded that he doesn't know for sure but it would not be the Trustees intention to ever ask for a subdivision in the Wasque Reservation, that is a forever wild area. Mr. Jason asked it is under conservation restriction and all that? Mr. Kennedy stated no, the Trustees own it and they are a conservation organization but we have never gone through the formalities of having it restricted as a conservation restriction. We feel it is implicative.

Ms. Bryant, Commissioner, asked Mr. Ewing as a member of the Conservation Commission if they would be able to build roads on that Trustee land? Mr. Ewing responded yes, it is out of our jurisdiction.

Mr. McCarron, applicant's representative, stated that basically there was a subdivision called Chappaquiddick By the Sea which was laid out about 1908 and covered the southern portion of the Island of Chappaquiddick. Fortunately the Trustees of Reservations acquired most of that, I think 15-20 years ago. In 1913 when that was still Chappy by the Sea and a possible lower Manhattan by the subdivision, the Leland's predecessor in title petitioned the Land Court on their property and got a Land Court decree. In that decree there was finding by the Court that the Leland predecessor, and it followed to the present owner, that they have the right to travel over any of those roads. The right to pass and repass those roads in the Chappy by the Sea subdivision. Most of you people are familiar with these old 50 X 100 foot subdivisions and there is probably 10 miles of roads crisscrossing every hundred feet or so in there. That is what Mr. Counter was referring to, that it would be far better to wipe out the Leland's right to travel any place in there, better for the Trustees and the use of the land, if they chose one road that would given them access and then they would extinguish their rights to travel in that area. The Trustees would be happy because if they every wanted to completely dedicate this land and get rid of the crisscrossing of roads they could.

Mr. Early asked if the Trustees hold a Land Court subdivision? Mr. McCarron stated that theirs is not Land Courted only the Leland's land is Land Court Decision.

Mr. Counter continued by responding to one statement that was made that it is a common thing to do that the 200 foot setback be a no build zone, that is not true. Under the Conservation Commission regulations that is simply a zone of review just as the 100 foot setback is. But, because this is a shore zone the first 100 feet is definitely restricted against buildings other than the shellfish

processing plants, and the usual shore zone uses. The reason I bring this up is that this one no build zone, which he showed, is completely voluntary by the applicant. In other words, these building envelopes, by right, could have gone right down to the 100 foot line but they don't because the Lelands want to respect the area and have it be reviewed by the Edgartown Conservation Commission as an area that is really one of a high caliber protection area. So I drew that line right along the 200 foot setback from the wetland vegetation as a voluntary area for protection. The 50 foot and 25 foot setbacks on the lots lines is in fact a zoning requirement on Chappy. I didn't endeavor to try to speculate about what the Leland family members using these parcels would want to do on them. One building envelope became very small, about 7/10th of an acre of what turned out to be an 11.1 acre lot. In fact about 26% of this 22 acre parcel is what is being proposed as building zone, so 74% is being proposed as non-building zone. It gives you an idea of how the numbers come out. Over here you will see a small lot, about 3 acres, because this is Land Courted and this particular piece is not. It has nothing to do with anything else. The height of the buildings is controlled by the Coastal District, a pitched roof is restricted to 26 feet a flat roof 18 feet and that is the control that is proposed there. I have gone out and measured the trees in this area and done a section drawing showing elevations. There are some open areas through there that are just scrub but there are quite a few evergreens along here that will screen the building, I can show you that later. The Conservation Commission (CC) review where appropriate is an issue that came up. What I meant by that, and I am certainly not always clear about what I mean, is that the Conservation Commission is in this case empowered to protect the special "Nantucket Shadbush" which happens to exist on this property in certain areas. We had the CC review person come and she found this Nantucket Shadbush and we felt that it was appropriate that they be able to review these sites in order that any future person building on those sites would not destroy those bushes or so would move them if the needed to be in an area. So they were actually invited into the picture and I think that it is part of their process to protect those bushes. So that would seem appropriate. As far as the view of the property, like they do in the Great Ponds, I think that is not inappropriate to discuss with them at that time. The issue of affordable housing was, as Ms. Borer said, several paragraphs and what I tried to explain in that was that this is not a subdivision for profit. This is a family plan to settle an estate which was left to 2 brothers and a cousin who are now mature adults who are trying to settle their own future estates and they have some adult children with families too. So what we are trying to do here is find a way to define what the maximum use would ever be in the context of the conservation format. There are about 139 acres that they own together, out of that they are proposing 5 house sites that comes out to about 28 acres per house site as an average density proposed for the whole family estate on Chappaquiddick. I am somewhat proud of them to reach that density and to have proposed, and there is no million dollars, that selling to the TOR for what some professional appraisers have estimated to be a million dollars below market price is a real contribution. It is a passive approach to settle the land use issues in this whole area and it is in concert with what the Leland have traditional done which is allow the TOR to actually use

the area as if it were theirs, issue sticker and manage the property. They think that is a good future use for it and compatible with the overall concept. No affordable housing has not been addressed in the proposal. We think it would be an inappropriate place to have more houses than are absolutely necessary to accommodate the family's needs and the matter of money on that issue was what I was trying to address in that there is already a big contribution happening for the public interest. I am ready to answer any questions. I made a whole book here and I don't want to read it.

Ms. Colebrook asked, you have to have stickers to go to the beach now? Mr. Counter responded that the TOR have always had stickers for 4-wheel drive vehicles. Ms. Colebrook asked, but I can still ride my horse through there without getting a criminal complaint. Mr. Counter responded, true. Mr. Kennedy responded also by stating that there is a trail that runs from the bathing beach parking lot over to what is called fisherman's lot that was originally put in for the purpose of horses and it is still very much an active trail by horse riders.

Mr. Bryant stated in the past when we have considered subdivision and the affordable housing issue has been criteria for the Commission to decide whether a subdivision is for profit? Mr. Counter mentioned that this subdivision wouldn't be for profit. Mr. Early, Commissioner, stated that the affordable housing policy of the Commission is for subdivision of 10 lots or more. I was just asking about it before because I heard the words affordable housing and beach access in the same context during the presentation.

Mr. McCavitt, Commissioner, asked Mr. Counter to outline the 108 acres that would be for sale? Mr. Counter stated that the map on display doesn't quite go up high enough but he gave a general description stating that it is to the Dyke bridge all the way down, the whole barrier beach.

Mr. Ewing asked if they have Board of Health approval? Do you have septic permits? Mr. Counter responded no, because there are no building permits applied for. Right now the perk tests have been done and they are found to accept the wastewater that would be generated. Mr. Ewing then asked if the plan showed the proposed septic locations? Mr. Counter responded that this plan simply shows that the setbacks can be met. Because it is kind of type, in the Coastal District the setback are kind of severe, or great. The options aren't that many but I do have a map that shows that more graphically. In other words it shows circle around the areas that would not be built in. Mr. Ewing stated that his concern is Pocha Pond and shellfish propagation when I am thinking about septic systems. Pocha is considered to be one of the major nurseries for Cape Pogue Pond and I just think that every effort should be made to keep those septic system as far away from the Pond and the groundwater as possible. Mr. Counter stated that regarding the issue of groundwater it is reasonable to assume that the groundwater is a few feet above the Pond level so when you talk about the building zones (he used a new display) he showed the 20 foot contour location. He continued by stating that the well being right at the property line and because of the 200 foot setback almost force the septic systems down hill to a certain degree, but it is not

a severe slope. In the green zones shown on this map are the only options for septic location because of the setbacks from the water, well locations and I discussed that with John Lowley and we were talking about things such as should we have more leach fields to spread it out more and so forth and he has said actually the leach field is closer and that the bugs do a better job. So we are addressing this bit by bit. It is obvious this can meet Title V, the issue is to beat Title V. Mr. Ewing asked the Board of Health wanted you to put in monitoring wells? Mr. Counter stated they want a monitoring well. The part per billion that these would generate in nitrate, however you say it, is very, very low. The distance to groundwater is very far so those things are in the favor of the Pond. The monitoring well that they are asking for is simple one to fit into their network of monitoring and we have agreed to do that. It is an overall how does Chappy look type of situation.

Ms. Greene stated that she is still hung up on this beach issue. When you say you had an appraisal done and the cost is going to be less by 1 million dollars is this appraisal just for the beach and not these lots? Mr. Counter stated that the appraisal that was done was for the 108 acre beach parcel. Ms. Greene then asked with the access through the TOR only? Mr. Counter stated that it didn't address access that I know of. It is a matter of how much this piece of land is worth. Ms. Greene stated that the only access is through the Trustees Reservation, right? Mr. Counter stated except that the Lelands have the right of access across the Trustees property. Ms. Greene then asked so once this is subdivided there is no access to this property, right? Mr. Counter stated that is a good question but I don't know the answer to it. All I can say is that now we have an appraisal that says it is worth \$3 Million dollars and the others are a little less, we are offering it to the TOR for \$1.5 Million so I used the figure of trying to sell it to them at a Million less than appraised value feeling that the range was safe. Now access was not an issue in that discussion other than the fact that it probably effects the value. The fact is that it does have access through the present sellers. Ms. Greene asked, would the sellers be providing access through these lots to that beach? Mr. Counter responded no. Ms. Greene then asked so if this get subdivided off and sold the only access would be through the Trustees? Mr. Counter stated I believe you are right. I don't know there are some people who claim to have some ownership near the Dyke Bridge but that is an issue that I don't think has been resolved yet.

Ms. Sibley, Commissioner, asked if this beach property is not sold to the Trustees what possible uses are there for it? What is permitted? Mr. Counter responded that for this particular parcel, the family plan is to try to resolve it by having the subdivision, the house and the other 9 acre piece. There are three parcels and we are taking about three owners now, if we can't solve it in any other way then we sell the whole piece. Ms. Sibley asked what are the possible uses on that beach? How could it possibly be worth \$3 Million dollars if you can't build on it or get to it? Mr. Counter stated that one of the ways they have made money on this Island is to sell 40 foot lots or undivided interest for private beach clubs without building, the other is a private preserve or hunting club.

Ms. Davis, Commissioner, asked if there would be access if it were sold that way? Mr. Counter stated that is why we got into selling the whole thing then the access comes with it. Ms. Davis stated that it is worth \$1.5 Million if it is sold all together or if you owned one of the parcels connected to it because if someone bought a 40 foot parcel for a beach club then they wouldn't have access. Mr. Counter stated you are taking out of my range of expertise. Ms. Davis stated that she is just trying it figure out how much it is worth. We are trying to figure this out because that piece of land is only worth \$1.5 million if you own the other half or you are the Reservation who wants to keep it as a beach front. Because if someone buys it from you for \$1.5 Million they will want access to it. If not it is not worth \$1.5 Million.

Mr. Jason stated that he doesn't think we should get hung up on what the parcels worth. We should be concentrating on what is going to happen to the parcel once it changes hands. Is there a draft management program? Mr. Counter stated he believes the Trustees are working on a draft management plan for their entire holding out there. Mr. Kennedy stated yes we are in the final stages of rapping up a management plan to address how the property will be managed from Cape Pogue all the way around to Wasque Reservation. We have not specifically been dealing with the Leland barrier beach at this point simply because there is no signed agreement but there will be a very comprehensive management plan for how this land will be managed in the future. Mr. Jason asked if this plan is being in house, or in conjunction with local authorities? Mr. Kennedy stated this is being done in house. If you know anything at all about the history around it, we've over the last 6 years commissioned 4 various studies to deal with rare and rare and endangered habitats, nesting shore birds, visitor use, opinion polls as well as an human impact study. Those 4 studies have now been reviewed and have been amalgamated into one management plan. It is still in the internal draft stage and we are planning on bringing it before the DCPC advisory committees very shortly, it has already gone out to our volunteer committees. So it will obviously be a public document very soon. We are proposing for their to be implementation of this plan beginning this year. Mr. Jason asked get any specifics on this plan? Mr. Kennedy stated that he would rather not get into specifics at this time. It suffices to say that it is the intent of the Trustees at this point to manage Cape Pogue wildlife refuge as a wildlife refuge, Wasque Reservation as a passive recreation refuge which conserves the land. The plan is so fluid still it would be preliminary for me to really get into specific. Mr. Jason asked if people will still be allowed to go fishing? Mr. Kennedy responded yes. One of the things that differentiate the Trustees from other organizations is that in our mission it says our job is to conserve the land and keep them open providing for public access. This is a very important part of our mission.

Ms. Bryant asked if people hunt there now? Mr. Kennedy stated that the only hunting that is allowed on Trustee's property is water fowl hunting on the Cape Pogue and Wasque Reservations with written permission of the superintendent. We do no allow any other type of

hunting on either property.

Mr. Early stated that I understand the building envelopes are quite restrictive and that there is a height restriction of 26 feet, what about the scale of the buildings? Are there any restrictions on the mass other than the size of the septic tanks that can be designed there? Ms. Borer reminded the Commissioners that this is within the Cape Pogue DCPC which means that any development as we define it in Chapter 831 requires a special permit from the Planning Board (PB) so the clearing of land, house construction, etc. would require PB review. I am just concerned because this configuration lends it self to what I like to call mis-development like places on Long Island where you have high priced, fairly narrow lots with a low profile and you have high houses on them. These lots are not very big.

Mr. Ewing asked if the special permit process she mentioned would take care of the architectural renderings of the house? Ms. Borer read sections from the Cape Pogue DCPC Guidelines from the designation decision as follows: they have to find that it won't materially impair the physical integrity of the beaches, will not have a significant adverse effect on wildlife, will not have significant effect on rare and endangered species including associated vegetation, soils, etc., will minimize disturbance to existing vegetation, will minimize obstruction of view of public waters, scenic and historic structure and natural and open landscapes from within and without the site, will not contribute to surface and groundwater pollution in particular contamination, siltation, salt water intrusion, etc. The Planning Board will have to find these in order to grant the special permit. Mr. Ewing asked who would be the special permit board and who is on that board? Mr. Borer stated it would be the Cape Pogue DCPC Special Permit Planning Board and they have a Cape Pogue advisory committee which consists of the CC, MVC staff, Board of Health, Selectmen, Marine Advisory, Shellfish Department.

Mr. Schweikert asked if the suggested building site would be at the top of the ridge, the highest point of the lot? Mr. Counter stated that nearest place they could build is 50 feet off the property line and that it is a little higher at the property line. In the context of the entire parcel one of the planning process that I find keeps coming up is when we look at this parcel is that of Poucha Pond the Lelands own the majority of the shoreline of Poucha Pond so to look at the entire shoreline of Poucha Pond what we are proposing here is a cluster of buildings which even include the existing Leland house and the guesthouse. Because of the vegetation that exists here, evergreens all along here, there isn't an absolute 100% barrier, but certainly any buildings are going to be backdropped on both sides by those. That is why even though there are small lots they will be clustered right here. There are other building zones that could be done but we want to cluster this area because it seems the most appropriate area, it gives the best views and also happens to locate the houses in one area and yes, the lots aren't wide and aren't spread out because cluster development seems to be a good planning method. Keep in the mind the balance that almost half the existing shorefront is not going to have buildings.

Mr. Lee, Commissioner, asked if there is only going to be 1 building per lot? Mr. Counter stated that there are no restrictions against guesthouses proposed? The concept that I would like to pursue is that the guest facilities would be connected visually as a cluster building within. They should be allowed to have a guest facility, but I do not want to see 8 houses there I would like to see four clustered with guest house uses. They don't wish to relinquish their rights to guesthouses if the zoning people allow it.

Ms. Greene asked if there are any nesting areas for birds on this parcel? Mr. Counter stated I am sure there are. The experts that I had go through there did not come up with any special nesting areas that should be protected. There is a letter to that effect.

Mr. Schweikert stated there seems to be some high elevations and some no build zones down below the 200 foot setback and yet it is buildable? Mr. Counter responded yes. Mr. Schweikert asked if consideration was given to building in that zone in that there might then be a more low profile situation in terms of the visual from the public areas rather than building 20 feet up? Mr. Counter responded that there are decision that you have to make when you are working this out. My concept was, and it is not original, open the areas up where you are going to build, non geometrical areas, don't build on the ridge lines. These trees buffer from several sides. But would it be better to move them close? The trade out seems to have to do with the septic system and the proximity to the shellfish beds. To me it seemed a better change to absolutely restrict everything to 200 feet back from the wetlands. That doesn't mean it is 200 feet from the shoreline because there is a beach then the wetlands so it is over 200 feet. That seems to be a good place to start and say no you can't build here even though there are building areas that the contours would allow. Mr. Counter then showed a drawing depicting proposed elevations.

Mr. Young, Commissioner, stated that 3 Commissioners did make a site visit out there and one of the things I was impressed with is the fact that the building sites chosen are naturally occurring building sites by virtue of the fact that they have a fairly substantial backdrop with much higher trees and they also have in front of them a pretty substantial vegetation, not scrub oak. They are nestled between one group of vegetation which screens them from the Pond and another would act as a backdrop.

Mr. Counter stated that he would like to add that he has the Planning Board minutes which he would like to be part of the presentation to the Commission. It is worth noting that Sherman Horr from Chappaquiddick spoke in favor of the proposal at the Edgartown Public Hearing, Edith Potter spoke in favor of it an is nearly an abutter and involved in conservation on Chappy, and Joe Cressy also spoke in favor of the subdivision plan, he is an abutter.

Mr. Jason asked if that is an existing lot between the 2 roads? Mr. Counter responded it is all the Trustees of Reservations.

Mr. Morgan read the following excerpt from a letter from Tom Counter dated August 22, 1989: In an effort to clarify the name references, at the request of my clients Timothy Leland and O. Stevens Leland, I submit the following information. The tax records shows the above parcel as 31.6 acres and owned by Leland Edmond F. II et ux. Tr. and O. Stevens Leland and Timonthy Trs. The fact is they were all undivided owners in the past. More recently the land has been subdivided into two parcels.... In spite of all past references to the contrary, it would help us to keep things clear if all future communication references would exclude the name of Edmond F. Leland et. ex. regarding this subdivision. Since Edmond F. Leland has, and will also, come before you with his separate projects, I think we will all benefit.

Mr. Morgan then called for Town Board testimony, there was none. He then called for testimony in favor or opposed to the project, there was none. When there were no further questions from the Commissioners or statements from the applicant, Mr. Morgan closed the public hearing at 9:40 p.m. with the record remaining open for one week.

Mr. Jason asked if it is possible to see a draft of the management program from the Trustees within that week? Mr. Kennedy stated he doesn't believe so, sections are now scattered and there is a meeting scheduled for February 13th to try and bring all the pieces together. He stated that he would be more than happy to bring this before the Commission when it is prepared. Mr. Jason stated perhaps this could be a conditions.

Ms. Harney asked if it is pertinent to ask what Mr. Leland's plans are? Mr. Edmund Leland stated that plans have now been finalized and construction has begun. Mr. Morgan stated that the 9 acre parcel exists with a house and a new guesthouse.

Mr. Morgan suggested that anyone who could, should visit the site. Mr. Counter stated that anyone wishing to visit the site should call him and arrange a visit anytime before Tuesday.

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Following the close of the public hearings and a short recess, Mr. Filley opened the Special Meeting of the Commission and proceeded with agenda items.

- ITEM #1 - Chairman's Report - There was none.
- ITEM #2 - Old Business - There was none.
- ITEM #3 - Minutes of January 25, 1990

It was motioned and seconded to approve the draft minutes as presented. There was no discussion. This motion passed with no opposition, 1 abstention, Greene. (Harney and Davis abstained.)

ITEM #4 - Committee and Legislative Liaison Reports

Mr. Morgan has no report to make as Legislative Liaison. He did report as Chairman of LUPC by stating that they will be meeting February 5, at 4:30 p.m. at the Commission offices with representatives of the Vineyard Assembly of God and Playhouse Theatre.

Mr. Early, Chairman of Planning and Economic Development (PED), stated their report would be covered under Item #5.

Mr. Ewing, Chairman of the Edgartown Ponds DCPC Committee, reported that they had met earlier tonight and reviewed and exemption for the Edgartown Water Company to create an area in which to install a well. An exemption was granted. We also met with representatives of the Planning Board and Conservation Commissions to discuss finalizing the proposed regulations for Town Meeting warrant. There will be a workshop tomorrow at noon at the Planning Board offices everyone is welcome.

Mr. Lee reported for the Gay Head Cliff Area DCPC Committee in the absence of the Mr. Fischer, Chairman, by stating that there is nothing new to report this week. Mr. Sullivan and myself visited the site again last weekend.

Ms. Sibley, Chairman of the West Tisbury Special Ways DCPC Committee, also stated there is nothing new to report.

Mr. Filley reported for the Comprehensive Planning and Advisory Committee (CPAC) by stating that Ms. Borer, Executive Director, Mark Adams, MVC staff, and myself have met. We have been going through the final draft to develop a plan which will be discussed during the February meeting schedule.

When there were no further committee reports Mr. Filley moved to the next agenda item.

ITEM #5 - Discussion - Regulations of the Oak Bluffs Planned Development District DCPC

Mr. Filley reminded Commissioner and the public that this is a discussion for the Commissioners. If the Commissioners have specific questions for members of the public please address them through the chair. He then introduced Carol Borer to give an update.

Ms. Borer gave a brief review of the meeting held the preceding night and noted that there were a few changes and these are shown in underline in the new draft regulations. This is what the Committee agreed to bring before the Commission as the final draft of the regulations.

Mr. Early, Chairman of PED, stated that the substance of the meeting last night, in addition to a meeting between Ms. Borer, Mr. Saxe, MVC Staff, and Ann Mechur, was to discuss the proposed amendments Ms. Mechur had made. One of the recommendations was that a special permit

granting authority be created. Our counsel has advised us that this is not possible because it is not legal under M.G.L. to create that entity. Some of Ms. Mechur's suggestions were incorporated into the revised draft and some were not. The Oak Bluffs Committee has worked very hard on this document and they were nearly unanimous in their approval of the draft and the various changes made to the draft.

Ms. Davis, Commissioner, stated that she thinks a plan for this area is great but she has 2 major concerns. Part of the plan was to put a wastewater treatment plant in part of the area, is that correct? The response was correct. We talked about the water shed divide, part of it goes west and part east and there is municipal drinking water southwest of that about 5,000 feet so I am wondering if we have to go through MEPA process. I called MEPA to find out and there was some discussion about groundwater discharge but they couldn't give me an exact answer. That is one of my concerns. To make sure that we are protecting the drinking water supply over there with what we are going to put in for a wastewater treatment plan. Environmentally I have a question on the access to the wastewater treatment plant and the location of that well. I think that this is in Zone 2 of the Zone of contribution. Secondly I just have kind of a moral problem in the fact that if we approve of this, and the land is locked up for what we are putting in these regulations, and the Town takes the land by eminent domain, will the Town have the money to actually take it by eminent domain? If the Town doesn't have the money to take this by eminent domain the owners are still locked into what the regulations say. Now does that devalue the property because all of the sudden the only thing you can do with it is what the regulations say? What does it leave it open to? Have we just destroyed or devalue someone's property in that area for something that we have already put into these regulations? Not knowing if they can use it for the purpose they might want to use it for? I have kind of a problem there and if someone can explain it to me please do. Ms. Borer stated that she would like to explain that in the regulations it explains that the Town has 18 months to have a Master Plan adopted and if the Town cannot get the Master Plan adopted then the zoning reverts back to what it presently is, residential. Ms. Davis asked suppose the Town does get the approval of the master plan with a 2/3rd vote, and they can't take the land by eminent domain because of financial constraint? I think we are putting a burden on the landowners there for something that the Town can't afford to do and we are just locking people in?

Mr. Jason stated that we have to look at the use no matter who owns it? Is this is an appropriate use for this land? If the answer is yes then we should move ahead. It doesn't make any difference who owns it. The Town may go ahead and decide it doesn't want to own it but it should at least be planned properly if this is the right location. That is what the process is all about.

Ms. Iris asked shouldn't there be an option for residential use because a person may own a 1/2 acre and not be able to build a home on it? Mr. Jason stated if the town takes a residential parcel and says this is now light industrial what would be the difference? It is not really taking it, it is just exchanging a right. Mr. Jason stated that frankly I think we increased the value. Ms. Iris asked because

commercial land is supposedly more expensive than residential? Mr. Jason stated there is no supposedly about it, it is. Ms. Iris asked are you still going to be able to build a residential home there? Mr. Jason stated that I personally don't think you could now build any residences in there now because there is no road or access to the bulk of the property therefore they cannot determine that they front on a way. Mr. Wey stated it is my understanding that there is no access to this land, it is all landlocked. Ms. Iris stated so unless someone buys the whole parcel they would be in the same lockup.

Ms. Eber, Commissioner, asked section 22.1.3 lists the uses and there is no mention of residential or commercial use? Mr. Early stated not by right by special permit by the Planning Board?

Ms. Sibley asked about 22.1.2 at the top of the page, sections C and D appear to contradict each other? Mr. Jason stated that C give the Planning Board more flexibility on a site by site basis rather than trying to lock everything in one parameter. Mr. McCavitt stated that C is for the District and D is for specific sites within the District is that right Mr. Jason? The response was yes.

Ms. Davis asked if that is why B is the way it is regarding no specific MVC review, because of C & D? Mr. Jason stated hopefully it is because we are going to do this right and most of the questions will have been addressed so everyone knows what the parameters are they have to deal with within the district. If they feel that there is a project that hasn't been considered then they would refer it as a separate DRI.

Mr. Sullivan, Commissioner, stated that he is concerned about the Lagoon, the Lagoon Well and Segekontacket. I think that if we give up our regulatory powers over this area we may regret it. The criteria for DCPC guidelines is very strong on water pollution among other things and then he read section of the DCPC guidelines A-D. I don't know if we can live up to this in an advisory role. Mr. Filley stated that there is an approval process built into this, the Commission will make a final approval of the PD Master Plan before it goes into full force. Mr. Sullivan stated yes but that is a general plan and I'm not sure if it will be stronger than Chapter 831 or better written and also it would put us potentially in an adversarial position with the Town meeting which is not smart politically. Mr. Filley stated that there are also addition provisions for a review afterwards and he read the top of page 4. .... We were actually asked to add the architectural elements. Mr. Sullivan stated yes I have read it. We can pick it apart and condition it to pieces but these things have a momentum once it start rolling. I don't know, I would just feel more comfortable pursuing it with our current regulatory powers rather than turning it over to a Planning Board.

Ms. Sibley stated that while she is not sure she feels as strongly as Mr. Sullivan does, she feels as though, at this stage in the decision making process, it is premature for us to be talking about waiving specific DRI review. She stated I feel that the appropriate time to be doing that is when we review the master plan. What I see happening here is a statement that says when we approve the master plan we will

waive further DRI review, but we might take some of that back. I would simply rather not promise at this state to waive DRI review but to wait until the master plan comes before us. If the master plan is of the detail and sophistication that Mr. Jason described as doing the job right then it will follow naturally that we will approve that DRI with none of these clauses. I don't see why B on Page 2 and G on Page 4 are appropriate at this stage of our decision making.

Mr. Young stated that as I understand it the only reason for requesting the waiver of DRI review is so that undue burden is not put on small developers or business who wish to move into the PDD. Is that right? Mr. Jason stated yes. I thought it was a good planning concept to try to do the job right rather than try to do the job piecemeal. Mr. Young stated but in order to do that you would need an extremely comprehensive master plan is that right? Mr. Jason stated yes. Mr. Young then stated that he would have to echo what Mr. Sullivan and Ms. Sibley are saying. If a master plan is developed which Town meeting approves and it then comes to the Commission and is not satisfactorily comprehensive enough for the Commission we are in a politically untenable situation if we are considering denying the master plan that has been approved by the Town.

Mr. Wey stated that along this process the MVC is going to be working along with the Town planners on this master plan and the Commissioners are going to be aware of the plan along the way. It isn't like the Town is planning this themselves. The Town and the Commission are working hand in hand planning this development and they are going to continue on doing that.

Mr. Young stated that he realizes this but again I would say the idea of how comprehensive that master plan is going to be is far more important to the Commission than it is to the Town. What hinges on the comprehensiveness of that is the waiver of DRI review process and that is very important to the Commission. If they are going to waive that they want to be absolutely assured that the elements of DRI review that normally take place here have already been covered in the master plan at the time it is voted. If that is not the case I think it is extremely unlikely that the Commission would vote to waive DRI review. So there is the possibility that they would turn down the master plan after the Town has approved it and I think that that is playing with fire.

Mr. Ewing stated that when the public hearing took place he had the same concern since he has also thought that this is a large piece of land and it seems that a fairly small percentage is actually going to be developed in even a light industry kind of a way. The major concern I had was the wastewater treatment facility and the location of it. If it is going to be located in the center of the property with some sort of a buffer from the residences I think that is a good idea. I don't know how this affects the municipal well. I think that the master plan will have to be incredible comprehensive and I hope that the Commission can work with the Town. I don't believe that the Town has less at stake than the Commission does. This is a good opportunity to take a large piece of land and try to protect the two ponds and the watershed. It all boils down to the master plan and I'd

like to give it to Oak Bluffs and let them do a real good job of it.

Mr. Jason stated that he agrees with Mr. Ewing and thinks that the Town has more at stake than this Commission. Mr. Young stated that he isn't saying the Town has less at stake. I am saying that the Town is less likely to deny the master plan on the basis that it is not comprehensive enough than the Commission is. Mr. Jason stated that we have adopted master plans, open space plans, there has never been a conflict. I don't see why you envision a conflict. Mr. Young stated that there have been none that have involved waiver of DRI review.

Ms. Colebrook asked if we have correspondence on record from any downtown business district people? Ms. Borer stated we have a letter from Ann Mechur and from Mr. Harold Sears. Ms. Colebrook asked if there was any input during subcommittee review? Mr. Schweikert stated that he is on the committee and a downtown businessmen and has spoken frequently with many of them. Certainly many have questions and I suggested that they come to the meeting and some of them did. In the regulations here we have made reference to downtown, that was one of the changes put into the purposes last night. On the second page B, about the economic viability of the downtown area as an important asset, so I think we are giving that special consideration. In my opinion, when it comes to making up the master plan I think these people should be invited even to a greater extent to partake in what is going to happen and give more input when it comes to a master plan. We have put it in here in the rules and regulations that they do have that input and they will have that opportunity and I for one being down there, I'm sure Mr. Wey feels the same way and I think may people who are close to the downtown area do to, that the Selectmen know the people on the boards feel strongly that we want input there. We do want to protect it and we do want to work hand in hand with that whole section. So it certainly isn't going to be discounted in any way.

Ms. Sibley stated that she is still really concerned about the timing of our waiving the DRI review. I hope, as Mr. Jason does, that what will result from this whole process is the goal of this DCPC from the very start being a comprehensive and very detailed plan. This is something we don't see enough of on the Island and anything that the Commission can do to encourage that kind of pre-planning of an area we should do. I just fear that by the wording of the B on page 2, and G on page 4, that we are boxing ourselves and the Town in. We don't allow them the flexibility of possible coming up with a master plan which is general in some areas and not as specific as they might have ideally wanted. If in an 18 month period of time they cannot come up with a fully detailed master plan we could be faced with the prospect of having to say no to it. This is almost a requirement of them. By our saying we are going to give up the DRI if you give us a detailed master plan, we are forcing them to come up with an extraordinarily detailed master plan. If they fail this whole project could fail. If we give up this wording now then there is the possibility that a master plan might come before us that might be highly detailed for some areas and more general for others and we won't have to reject it. We will simply fill the DRI decision that acknowledges the level of detail and requires them to come back for certain area and not for others. I do not believe that the disclaimer at the end of G on page

4 give us enough of that leeway. I think it is a trap. I think B and G should be eliminated and this would solve everyone's problem. They'd have 18 months to come up with a master plan and bring it back to us. If it is everything that we hope it is, at that point, we will waive DRI review as appropriate for the various areas.

Mr. Filley asked if there are elements that are lacking in this, as you called it, disclaimer in G?. I don't think it is so much of a disclaimer as it is the Commission saying that we realize that there may be some things that aren't comprehensive and that may require future review. Are there other elements that are missing from our normal DRI review that you fear something might happen? Ms. Sibley stated that if this really covers everything then it negates the beginning of the paragraph. Nullifies it and it would be simpler and clearer for the whole world if we just took it out. If taking it out is offensive to someone then it must be that this doesn't solve the problem.

Mr. Jason stated that it seems to be a problem only with you. It was the Town that suggested the 18 months. Ms. Sibley stated that it is not the 18 months she is talking about it is the stringency of the requirements.

Mr. Morgan stated that I think this gives plenty of responsibility to the MVC even after the Town vote. The most important issues are spelled out here very clearly, septic and so forth. If we have done this right in conjunction with Oak Bluffs then we have decided what the development is going to be, what the total wastewater discharge should be for that site, that the Town has decided that it isn't going to compete with itself from one end of Town to the other, etc. If we have gone through all of those things in conjunction with Oak Bluffs, and a serious part of any development really has to do with wastewater and how it is treated and whether or not you might pollute or contaminate a water body, we still reserve that right to talk about those things. I would hate to think that we have gone through this for the first effective PDD on the Island and then have to have the individual items in the once approved plan come back to us. As Mr. Ewing said if we are going to talk about 200 or 300 acres we are talking about a very small portion of this that is going to be business. What is the acreage for development? The response was approximately 30 acres are scheduled for business.

Ms. Sibley stated that she is not at all opposed to the notion that we are going to waive individual DRI review. I see that as a goal. I am bothered by the timing now. Mr. Filley asked the question are there element missing from this list? Ms. Sibley stated well of course there is an etc. and we could say that etc. means anything but immediately I can say yes. One of the things that they are talking about is a golf course. People are going to raise questions about the use of pesticides and certain kinds of herbicides and fertilizer on the golf course, those aren't on this list. Can we think of the whole list or are we trusting that etc. covers everything? We won't think of something and it will be important.

Mr. Wey asked don't you think the Town will be thinking about these

problems? Ms. Sibley stated yes I think the Town will be thinking about these problems but we have a statutory obligation to think of these problems and we can't waive it lightly.

Mr. Filley stated that he would like to get a general consensus on this specific issue. Whether people feel it is appropriate as written or whether people would like to see changes?

Mr. Ewing asked on Page 2, section B that Ms. Sibley has been talking about, it says at the end that no further review will be required unless the Town requests that it be? Does that mean that a Town could request that the whole project goes before the Commission as a DRI if it wanted it to? A full review as a DRI? Ms. Borer responded yes. Mr. Ewing continued so it is still in there that a project can be a DRI? The response was yes. Mr. Early stated that it says "a town" the cross town referral is always open.

Ms. Davis stated that if this is a stumbling block maybe we should flip-flop it. Say that the Commission looks at the master plan first and sees whether it is comprehensive or not while we are working with the Town and then submit it to the Town floor. If that is the major problem is there any mechanism in which we could do it that way? It alleviates a lot of problems that way.

Ms. Bryant stated that we should go back to Mr. Filley and what he suggested. I'm not sure there are that many Commissioners having a problem and I think a consensus is important. I'm scared about this plan but when I think of which of all the Towns could work towards it and do what they have to do, it is Oak Bluffs. An example was last summer with the pollution in the Harbor and how quickly they began to mobilize. Let's find out if there is a consensus. Do we want to change it or do we want to keep it the way it is?

Mr. Filley asked if there is anyone who has any new to address on the floor before the consensus is taken?

Mr. Sullivan stated that it has been suggested that it is a small percentage that is going to be developed, things have been changing quickly on this thing over the past few weeks but from the meeting on the 18th Mr. Martin said of the 300 acres the Committee believes that less than 90 acres should be developed other than a possible golf course. So you have 90 acres plus golf course which is not small percentage at all. It is quite a large percentage. Unless that has changed? Mr. Martin responded that the whole developed area would be less than 90 acres but not all business. Civic, municipal, senior housing needs are included. Of what you consider the intensive use, light industrial or retail, it is something around 35 acres. Mr. Sullivan asked if the 90 acres included the golf course or would the 90 acres be in addition to the golf course? Mr. Martin stated that the golf course would take about 120 acres. Mr. Sullivan stated so there is 210 acres out of 300 acres. That is a large percentage.

Mr. Filley stated again that he would like to get a general consensus from people as to whether or not they feel that they would like to see G as is or changed to encompass to have full DRI review on each.

Ms. Sibley stated that is not what I am suggesting at all. That is part of the misunderstanding here. I am suggesting that B and G should probably be this: at this stage of the game this it is a goal but the decision should be made when we are doing the DRI review of the master plan, that's all.

Ms. Davis stated like flip-flopping it, the Commission reviews it first and then it goes to the Town. Mr. Young stated that he agrees. Ms. Davis continued you then don't have the problem of being in a political fight with the Town of Oak Bluffs. Even though you may work with them and not be in a fight with them it alleviates all the problems. We will have looked at the plan, if we have a problem with it, it goes back and we work it out until we like it and then submit it to the Town. If they don't like it they can amend it.

Mr. Early stated that he thinks Mr. Wey made a very good point. We are not going to be operating in a vacuum. The Town and the Commission is going to be working together to develop this plan. It is not going to come as a great surprise to us all of the sudden that the Town approved it and we aren't going to like it. I can't conceive of that happening. The way this whole process has gone so far the Town has really taken a planning initiative in this case. I think it is an insult to the Town at this point to start fooling with this.

Mr. McCavitt stated the whole issue is the DRI but we have the same actions as in other DRIs to approve as is, approve with conditions or deny. Referring to section G, these things are just suggestions of what conditions could be. We could be reviewing a DRI a week.

Mr. Filley called for the consensus. Rephrasing the question for the consensus as follows: a yes will be to leave 22.1.3B and 22.1.4G sections as is, a no will be to delete those section. The vote on this consensus was as follows: 12 in favor, 4 opposed, 0 abstentions. (Davis was opposed.)

Mr. Filley asked if there were any other issues for discussion before moving on to possible vote on the regulations.

Ms. Colebrook asked has the PDD gone far enough along in their master plan to tell me what has been planned for that 90 acre, pre-existing conservation Brine lot? Mr. Jason stated that I think the one thing we have learned from this is that what is there is not what the Town thought was there. Ms. Borer stated I believe it is about 45 acres. Mr. Jason continued that PDD has not developed the master plan for that parcel. Ms. Colebrook asked so you can tell me that you are going to use approximately 120 acres scheduled for a possible golf course and that there is a plan for 35 acres of light industrial but no one knows what is being planned for that pre-existing conservation land? Mr. Martin stated that we can tell you that we are going to have more than double the conservation and buffer land than there is presently on this property. Obviously we don't have the architects and we don't know exactly. There is a possibility there may be a fairway on part of what is now the Brine 45 acres. We don't know for certain yet.

Ms. Sibley stated I have been told that a fairway in fact is not a permitted use of conservation land. That passive recreation only is allowed. Would this need to go to get some special changes to be able to use this as part of the golf course? Mr. Ewing, Conservation Commission, stated it depends on how the land was given to the Town probably.

Mr. Morgan asked Mr. Martell, Oak Bluffs Committee, this 45 acre Brine piece, will that part of the golf course or will that be considered part of what we thought the original 90 was going to be, conservation purpose? Mr. Martell stated that he thinks the best way he could answer that is to tell you about it, again it is not cut in stone. Conservation land, according to general laws, can be used for recreation uses. There is nothing about passive in there at all and recreational use allows fixed objects for recreation use. As far as if that 45 acres is going to be used for a golf course, it could conceivably be used but a golf course could be considered an allowable thing on conservation land. Obviously we are not going to put the business end of it there. As far as the deeds from Mr. Brine, they are in tough shape. The best we can do in the title search is two small parcels that he had absolute control over the deed and one other one he has 3/4 interest which constitutes 45 acres not 90. The other parcels that he thought he deed to the Town are in the middle of subdivisions so the deeds are very shaky. Obviously with Mr. Brine's reputation as a developer, he wouldn't have given it to the Town if he could have found a way to develop it.

When there was no further discussion, Mr. Filley moved to the next agenda item.

ITEM #6 - Possible Vote - Adoption of Regulations for the Oak Bluffs Planned Development District DCPC

It was motioned and seconded to approve the draft regulations for the Oak Bluffs Planned Development District DCPC as being consistent with the Guidelines of the DCPC Decision and to adopt the Regulations. There was no further discussion. The motion carried with a vote of 13 in favor, 2 opposed and 1 abstention, Sibley. (Davis abstained.)

Mr. Early thanked the PED and Oak Bluffs Committee for all the work they have done. He stated that he hopes that people don't feel that the job is over. There is a long road ahead of us. The Commission is here to help you people and assist you where possible. We can have a good working relationship over the next 18 months.

Mr. Martell thanked the Commission and PED for their support during the Town's struggle to put this thing together properly. He is glad we got this one step over with so now we can go on to the next one.

ITEM #6 - Possible Vote - Written Decision, M.V. Shipyard DRI, Town of Tisbury.

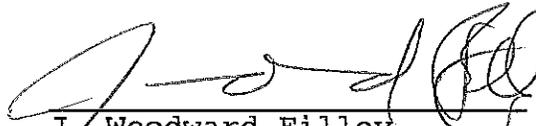
It was motioned and seconded to approve the written decision on the M.V. Shipyard DRI, Town of Tisbury. There was no discussion. This motion passed with a vote of 13 in favor, 0 opposed, 2 abstentions, Eber, Ewing. (Davis abstained.)

ITEM #7 - New Business - There was none.

ITEM #8 - Correspondence - There was none.

The meeting was adjourned at 10:52 p.m.

ATTEST

  
J. Woodward Filley, 2/20/90  
Chairman Date

  
Albert O. Fischer, III, 2/22/90  
Clerk/Treasurer Date

Attendance

Present: Bryant\*, Colebrook, Early, Eber, Ewing\*\*, Filley\*\*\*, Greene, Jason, Lee, Morgan, Schweikert, Sibley, Sullivan, Wey, Young, McCavitt, Harney\*\*\*\*, Davis.

Absent: Fischer, Allen, Geller.

- \* Ms. Bryant arrived at 8:25 p.m.
- \*\* Mr. Ewing was not present at the table during the Sears DRI.
- \*\*\* Mr. Filley was not present at the table during the Leland DRI.
- \*\*\*\* Ms. Harney left at 9:40 p.m.