

# THE MARTHA'S VINEYARD CC

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## *Martha's Vineyard Commission Special Meeting Minutes of July 8, 1999*

The Martha's Vineyard Commission held a Special Meeting on Thursday, July 8, 1999, at 7:30 p.m. at the Offices of the Commission in the Olde Stone Building, New York Avenue, Oak Bluffs, Mass.

At 7:36 p.m., a quorum being present, Richard Toole, Chairman of the Commission and the Selectmen's Appointee from Oak Bluffs, opened the Meeting.

### **Public Hearing Preceding Concurrence Vote: Pier 44, Town of Tisbury.**

Mr. Toole proceeded to read aloud the Notice for the Public Hearing scheduled for 7:30 that evening. [County Commission representative Lenny Jason, Jr., left the room for the duration of this Hearing.]

**"Pursuant to Section 14(e) of Chapter 831 of the Acts of 1977, as amended, the Martha's Vineyard Commission invites the public to a Hearing for the purpose of determining whether the following should be designated as a Development of Regional Impact (DRI):**

**Proposal:** Application of R.M. Packer Co., Inc. (Property Owner), Post Office Box 308, Vineyard Haven, MA 02568, and Island Transport, Inc./Pier 44 (Applicant), Post Office Box 1086, Oak Bluffs, MA 02557, to consider alterations to the property at 86 Beach Road, Vineyard Haven, Mass., Tisbury Assessors's Parcel No. 09-C-11.

**Designation  
Requested by:** Tisbury Board of Selectmen

**Date and Time:** Thursday, July 8, 1999, at 7:30 p.m.

**Place:** Martha's Vineyard Commission Offices  
Olde Stone Building  
New York Avenue  
Oak Bluffs, Mass.

A copy of the Application and Plan is on file at the Commission Offices for public inspection. Written testimony may be submitted prior to or during the Hearing.

This Hearing is held in accordance with Section 14 of Chapter 831 of the Acts of the Commonwealth of 1977, as amended, and Chapter 30A, Section 2, of the General Laws of the Commonwealth, as modified by said Chapter 831.

***THE PURPOSE OF THIS HEARING IS TO ENABLE THE COMMISSION TO HEAR FROM THE TISBURY BOARD OF SELECTMEN AS TO WHY THIS PROPOSAL SHOULD BE ACCEPTED BY THE COMMISSION AS A DRI. IT IS NOT A HEARING ON THE MERITS OF THE PROPOSAL.***

Tristan Israel, the Selectmen's Appointee from Tisbury, as well as a Tisbury Selectmen, spoke for his Board. He began by noting that the issue before them had in fact been brought to the Selectmen the year before, when the high-speed catamaran *Sassacus* had begun to dock at Pier 44. There not having been a concurrence by the Commission for the Board's initial referral, the issue had again arisen when it was proposed that a similar boat, the *Tatobam*, also dock at the pier.

Mr. Israel explained how several permitting processes connected to the property had been initiated during the past year, including one relating to the expansion of the bathroom in the building at Pier 44. Since there was a permit open on the property, and since the Selectmen believed that the discharging of passengers from the *Tatobam* would have a regional impact, they had chosen to refer the entire pier for the Commission review. Mr. Israel added that there were also Chapter 91 (Waterways) issues involved.

Mr. Toole asked if there would be a Staff Report. MVC Executive Director Charles Clifford replied that although usually there was not such a report at a Concurrence Hearing, he "would be very happy to reinforce what Tristan said." Mr. Clifford then explained that the requirements of the Commission's statute demanded that there be "any kind of permit outstanding that related to the property in question." If the proposal for the property did not meet the criteria of any of the DRI Checklist items, then in the presence of an outstanding permit, Section 14(e) allowed a referral like the present one. "The issue here, I think," said Mr. Clifford, "is the safety of the pier, not who's using it or what's using it. It's the issue of the safety of the pier and the amount of traffic that has increased on that particular pier in the past nine, ten months."

Mr. Israel added that he hoped the Commission would "look at the scope of what that pier and that property can handle because there are no parameters ... I'm not talking about whether the boats are good, bad or indifferent at this point."

Michael Colaneri, a Commission member at large from West Tisbury, asked if this meant that every time any property owner applied for a permit for any minor improvement or a transfer of sale, for instance, that the Commission could potentially be reviewing every piece of property that got a permit for any reason. "I think it's going to change the rules quite significantly," Mr. Colaneri observed, "and I'm still not quite sure if that's really what Eric's intent was when he explained it the way he did," referring to MVC Counsel Eric Wodlinger of Choate, Hall & Stewart. [See the Special Meeting Minutes of May 27, 1999.]

Mr. Clifford responded: "The only thing with Section 14(e) that is missing from the rest of this statute is the word 'development permit.' It says in Section 14(e) '*any* development.' In theory, yes, Michael [Colaneri], every Board on this Island could send every permit. Most of the Towns are going to be rational about it and look at something beyond that little permit. They going to look at the bigger picture ... My gut feeling is that this is what the Selectmen are trying to do here. You can say, No. You do not have to accept it as a DRI. It's your decision. They're here asking you to make that decision. If you decide it is not, then it goes back to the Town. If you decide it is, then you start the whole process just like a normal DRI, back to a Public Hearing ..."

Addressing Mr. Colaneri's concerns, Mr. Israel said that the Selectmen of Tisbury "had not taken lightly and frivolously this referral, nor would we be inclined to just refer every single thing up. That's not what this is about."

There was a brief explanation by Mr. Clifford of why there would be no presentation by the property owner. Then Mr. Toole asked if there were any other Town officials who wished to speak. [Michael Donaroma, Selectmen's Appointee from Edgartown, arrived at 7:48 p.m.] Then **Ken Barwick, Tisbury Building Inspector and a member of that Town's Planning Board**, rose and posed a question: "Is there going to be a breaking point with the Commissioners as to the extent or type of activity that occurs with respect to the current wording on the Checklist?" With respect to Mr. Colaneri's concerns, Mr. Barwick noted that he considered this was a small project; nonetheless, he was convinced that the Selectmen were "looking at this as [part of] a bigger, broader picture, if you will." But, he wondered, would there be some clarification from the Commission as to the criteria for referral?

Mr. Toole responded that his interpretation of Section 14(e) was that the permit was simply a way to "get in the door." Once inside, it was up to the Commission to decide whether or not the project merited consideration as a Development of Regional Impact. Mr. Barwick again appealed for some sort of concrete feedback from the Commission, perhaps in the form of a letter that indicated that, Yes, he as Building Inspector had done the correct thing in making a referral, or No, he hadn't, and why. Further discussion of this point ensued.

Linda Sibley, a Commission member at large from West Tisbury, thought that it was important to draw a distinction between referrals under the Checklist, which did set tangible thresholds, and a referral under "number one," in which case the permit was the "foot in the door." But the reason the Board was referring, she said, was that it felt there was, in fact, a regional impact that did not happen to be addressed by the Checklist. Then it had been brought to the Commission and the Commission would decide whether they agreed.

Mr. Barwick repeated his question about thresholds, once more appealing for concrete numbers. "I'm not sure we can get into that discussion tonight," replied Mr. Toole. "I mean, it's a good discussion." Mr. Israel then posed a number of questions about discretionary referrals. "It's a process matter we have to address, irrespective of whether you concur or not," he observed.

Mr. Colaneri then asked: "If it's the same permit that triggered this referral up here for us to act on, what difference does it make which Board ends up doing it? ... Why isn't this being treated as one [DRI]?" Member at large Robert Zeltzer of Chilmark remarked that most of the Boards that he had observed "do a fine job" and that he did not believe that Boards would use 14(e) to refer everything that had a permit attached to it. A Section 14(e) referral seemed to him to be a way to catch projects that merited Commission consideration, but that would otherwise manage to avoid the DRI process, for instance, buildings that were 1 foot short of triggering a Checklist item. More discussion of this matter followed.

Chilmark Selectmen's Appointee Jane A. Greene noted that all she saw was a change of use that would actually lower the use of the property; the property had been used for years for the discharging of passengers from the *Schamonchi*, which carried more passengers than the current craft that docked there, she said.

Member at large Christina Brown of Edgartown asked Mr. Barwick for details about the Special Permit that had allowed the proposal to be referred as a DRI, which Mr. Barwick then provided.

Referring to Ms. Greene's point, Mr. Zeltzer observed that the *Schamonchi* had moved just several hundred yards down Beach Road. "Now we're adding something," he said, "and I think that when you look at something which has regional impact, that that starts to add up. It isn't that the *Schamonchi* went to Edgartown and now we're using that for something else." Ms. Greene responded that the Commission was not looking at the entirety of Beach Road, only at one particular property.

Ms. Sibley pointed out that perhaps they were debating the merits of the proposal and not the question of whether or not the proposal should be considered as a DRI. Mr. Colaneri asked if the bathroom that started the whole process had been required by the Town. Yes,

answered Mr. Israel, the Board of Health had required it. Mr. Colaneri continued: "If a Town requires someone to do something, requires an owner of a piece of property to do something, and then uses that permit that they're requiring ... to make a broader review of the activities on that site ... [t]here doesn't seem to be something quite right about that." The Commission then debated Mr. Colaneri's point.

Mr. Toole stated that he now wished to hear from the **lessee of the property, Joe Forns of Island Transport**. Mr. Forns explained how the ownership of the property had changed last summer from Nancy Bailey to Ralph Packer. "The question of whether it should be referred as a DRI puzzles me because, again, this is a compliance issue that brought it to the Commission in the first place, as improving and upgrading the facility for handicapped accessibility," he said. "There was a Title V system that was approved and not referred. There are existing bathrooms that are on the site. The ability to incorporate handicapped accessibility for patrons of the property ... is something that is consistent with what the Health Department is looking for." The alterations, he added, were a 6-inch-wider door and the incorporation of the larger stall into the bathroom.

The second point that Mr. Forns wished to make was that Pier 44 was a private dock for commercial purposes. There were both scheduled and unscheduled activities, and the dock had had a history of use by commercial coastal cruisers, yachts, barges and so forth. He then enumerated a few of the many watercraft that had regularly used the pier. He explained how the *Schamonchi* backers had been unwilling to contribute financially for the needed improvements for the pier; therefore, Mr. Forns was no longer servicing them. One upshot of this development was that the use of the pier had actually de-intensified. In the past, 3,600 people passed over Pier 44 each day; now there was just one boat with 246 people. If the boat was sold out on the weekend, there would be 300 people at the most.

"So, I guess my question is," wondered Mr. Forns, "if we're looking at a regional impact that's projected to have great effect because the Selectmen feel that there's a different boat there, then look at the boat. And quite frankly, we don't really sell out. I wish we did ... And I don't think you can mix and match things and say that because the *Schamonchi* took off and didn't go to this property anymore, that this property's now going to suffer because the *Schamonchi* went to somebody else's dock. I think you ought to look at somebody else's dock and see if that has the capability to handle it."

In conclusion, Mr. Forns believed that from a technical standpoint the improvement being made to Pier 44 did not qualify as a DRI "as a substantial change in use or extension in the change in use because we're actually de-intensifying and only running one trip a day. The *Schamonchi* used to run to that dock three trips a day, and we used to have coastal cruises on the other side of the dock."

Mr. Forns then introduced **Cynthia Westervelt, Esq., of McDermott, Will & Emery**, who had submitted a document to the Commission earlier in the day. [See the Meeting

File of July 8, 1999 for the full document.] Ms. Westervelt said she would be happy to speak to Attorney Wodlinger about this matter since their interpretations of the enabling act differed. She disagreed, she said, that the Commission could accept a referral without an Application.

She continued that if the issue was the *Tatobam*, then no referral was possible because there was no permit involved. She then referred to Section 13, which states: "The governmental agency within each municipality which has responsibility for issuing a development permit shall in accordance with the standards and criteria approved pursuant to Section 7 determine whether or not a proposed development, for which Application for a development permit has been made, is one of regional impact; if so, it shall refer the Application for the development permit to the Commission."

The *Tatobam* and the *Sassacus* had not applied for any such development permits, Ms. Westervelt said. "To say that the bathroom issue allows the Commission to open up all issues that are relevant to the pier for public policy purposes that have already been discussed, I think that's a dangerous road to go down. And I'm not sure the enabling act, the Standards and Criteria, your own bylaws, your own regulations allow that, and I would urge you to talk to Attorney Wodlinger before you go down this road. Moving past your jurisdiction is probably a waste of your resources and your time ..."

When Ms. Westervelt had finished speaking, Mr. Colaneri remarked that it might be appropriate for the Commission to talk with Eric Wodlinger "since there are obviously far-reaching ramifications ..." Mr. Clifford responded that he had had many discussion with Attorney Wodlinger about this issue. "He told you when he sat right here -- You can look at the property," said Mr. Clifford, emphasizing the word "property." "And all activities?" asked Mr. Colaneri. "The property, whatever goes on on the property," replied Mr. Clifford. "The issue is not the ferry boat, it's the property ... What uses come into that property you take into account, but they are not the point of the review."

"Tristan [Israel], are you saying that you're not, the Town of Tisbury is not, concerned about the water activity and the boat dockage usage and the vessels coming in, that that is not part of the concern of the Selectmen ...?" asked Mr. Colaneri. Mr. Israel replied that, first of all, in his presentation he had not talked about what was going on in the harbor itself. "On a broader scale, am I concerned about that? Sure! ... I don't know if it's good, bad or indifferent. That's not what my reservation is," he said.

Secondly, continued Mr. Israel, there were the factors outlined in Checklist item number one, particularly the question of whether or not the proposal might have a regional impact. "I think that's also pertinent. I think there's plenty of latitude," he said. Moreover, there were many uses on the property, as well as issues like safety of egress, he added.

Attorney Westervelt pointed out that the language of 14(e) made it appear that there had to be some sort of permit or project with a defined parameter that was being looked at by the Commission. "I think one of the things this Commission is struggling with is, What exactly is the project here? If it's the bathroom, let's look at the bathroom and see if expanding the doorway 6 inches is a Development of Regional Impact. But nobody has really defined for me what the project is there or what the development proposal is." She added that Island Transport had met with the Tisbury Board of Health and had discussed the impact on the bathrooms of the passengers coming off the boats. "I don't think that's an issue," she said.

[Benjamin Hall, Jr., a Commission member at large from Edgartown, arrived at the Meeting at 8:18 p.m.]

Mr. Zeltzer referred to the letter from the Tisbury Conservation Commission, which mentioned work that had already been done without permits, including the installation of a concrete walkway. [A copy of this letter can be found in the Meeting File of July 8, 1999 and also in the General File for DRI #505.] "If, in fact, the Conservation Commission decided that this walkway was inappropriate and had been done without permit, could they require the removal of it?" Mr. Zeltzer asked. Yes, replied John Best, a Commission member at large from Tisbury and a member of that Town's Conservation Commission. Mr. Best explained that the ConCom could not do anything with regard to the Application because it was pending in some form before the Martha's Vineyard Commission. He noted that this was additional work on the property that would require a permit.

Ms. Sibley wanted to know the following from Mr. Forns: If they were de-intensifying the use of the property, then was it his testimony that if a boat larger than the *Schamonchi* were to use that dock, that it would not be allowed to do so? "No," replied Mr. Forns, "if it was something that was larger than the *Schamonchi* in passenger capacity and daily trips ... that would be an increased intensity of the property, and our obligation would then be to go back and review the authorizations for the use of the property, i.e., the first thing being the Title V system ..." And the current Title V permit would allow how much intensity of use? asked Ms. Sibley. A boat like the *Schamonchi*, responded Mr. Forns, and their agreement with the Board of Health was that they [the Board] would be notified if there was an increase in intensity from what there would be with the docking of that boat.

A discussion followed during which Mr. Forns and Mr. Best clarified for Ms. Brown which permits had been applied for from which Tisbury Boards, establishing that there was, in fact, another development application connected to the property in question and that this application was before the Conservation Commission and not yet before the Martha's Vineyard Commission. [The bathroom expansion permit, referred by the Building Inspector, and the "number one" referral by the Board of Selectmen, the latter the subject of that evening's Hearing, were already before the MVC.] Mr. Forns explained in some detail some of the projects that had been left over from the tenure of the previous owner

of the property. The walkway, for instance, had involved a safety issue that needed to be attended to promptly, he said. It had been strictly a matter of compliance.

Ms. Brown also wanted to know the following: "Does all the activity on a site come under review when one activity on the site is the subject of the permit that has come to us?" Yes, replied Mr. Clifford, if it's one single property with multiple uses.

Jim Vercruysse, a Commission member at large from Aquinnah, noted that Beach Road was "taxed to its max, right?" He continued, "And even though there's testimony that this is lowering the intensity of use, in reality it's not because the cars that are coming and going just move down the way. While we can't consider another project in different area, that's going to actually increase the traffic in that area, I would think."

Mr. Donaroma made a Motion that "we've got enough information to close this and discuss this. We're just running around and around here." The Motion was seconded. The time was 8:26 p.m.

Jack Dario, owner of Island Transport, stood and said he wished to speak. "I'm a little confused," he said. "I've been here since '76, and at one point in time ... in one week's period two clipper ships, the *Pilgrim* boat that sunk, ... the jet boat from Boston, the bigger jet boat that they built afterwards that went to the Vineyard and Nantucket, the *Schamonchi*, all came in at the same time. One would move off, another would come in ... And now you want to say that there's more traffic coming because they moved next door and I've got two boats coming in?"

Mr. Dario added that the traffic coming in a few years back was probably 10 times more than what was coming in with just the *Schamonchi*. There had been three cruise ships coming in every day, two fast ferries from Boston and the New Bedford ferry. "Where is the increase?" he asked. "I don't see. I just don't understand where everybody's talking about increases," he said. Mr. Dario then provided detailed information on how much he had spent attempting to comply with the requests of the Tisbury Board of Health.

Mr. Israel then referred to Definitions 2.18 (Related Ownership) and 2.19 (Contiguous Ownership) from the Standards and Criteria pursuant to Section 12 of Chapter 831, indicating that Ralph Packer owned Tisbury Wharf, where the *Schamonchi* docked, as well as Pier 44. Moreover, there was before the Commission a referral regarding the *Schamonchi*, said Mr. Israel. Mr. Dario responded that he had a long-term lease with complete control of the property. "I spent \$85,000 in court proving that point," he said. "I have a court order that says I have control of the property ..."

Mr. Colaneri asked Mr. Israel if the Selectmen had intended for all the property in contiguous ownership down to the breakwater to be reviewed by the Commission if its referral was accepted that evening. "I don't need to," replied Mr. Israel, "the *Schamonchi*

is going to be before this Board ... My only point was to address what Jim [Vercruyssen] was saying, to say that this is contiguous ownership by one property owner." Mr. Colaneri asked for further clarification from Mr. Israel on this point, which the latter provided.

Mr. Donaroma repeated his Motion that "we've heard enough from the people who sent the referral to make a decision." The Motion was seconded by Michele Lazerow, a member at large from Oak Bluffs. You don't want to vote on it now? asked Mr. Toole. "We've got to close the Hearing first," replied Mr. Donaroma. So Mr. Donaroma made a Motion to Close the Hearing, duly seconded. Mr. Toole asked for all in favor of closing the Hearing. All voted Aye, with no nays or abstentions. The Hearing was closed at 8:38 p.m.

**Decision: Concurrence Vote on the Pier 44 Referral by the Tisbury Selectmen.**

Mr. Donaroma then made a Motion to Move to Item #6, Decision, duly seconded. John Early, Selectmen's Appointee from West Tisbury, made a Motion Not to Concur, seconded by Ms. Greene. Mr. Toole asked for discussion.

Ms. Sibley said that she had been persuaded that the Commission should concur with the Selectmen's referral. It was clear to her, she said, that "absent any regulation, there could be an unbridled increase in the activity on this property, and it isn't clear to me that there would be a permit open at that time." There was no doubt, she added, that the activities on this property had regional impact.

Mr. Donaroma said that it seemed to him that the Board of Selectmen and the Conservation Commission were asking for the Commission's help. "I haven't had any real problems with the project," he said. "There's only one harbor in Tisbury, and boats are going to come and drop people off and leave. I don't see anyone trying to stop this project ... The only concern I've heard is that they want it to be reviewed so we have some input into some futuristic thing that might happen. Or the possibility of looking at how the traffic flows, how people go in and out of there, just to give it some intelligent thought. Hopefully, this Board can just bring it in and get it out and get it over with." "So we're going to look at the bathroom?" asked Ms. Greene.

Mr. Vercruyssen noted that high-speed ferries in general made a lot of noise and also had an impact on the harbor and shorelines in terms of wake. He said he trusted in the people of Tisbury who had referred it and understood that they were concerned. Therefore, he said, he supported a Concurrence.

Megan Ottens-Sargent, the Selectman's Appointee from Aquinnah, asked if the Commission members could consider other points from the DRI Checklist in making their

decision. And could they consider the contiguous ownership issue? she asked. No, replied Mr. Clifford, they could consider that property only.

Ms. Greene said, "I do want to point out that we are looking at the property. We cannot control the ferries, we cannot control the speed of the ferries, we can't control them in the harbor. That would not fall under this. All we're looking at is the absolute use on that property. We can't do anything about anything else." A brief discussion of this point ensued.

Ms. Lazerow observed: "I agree with Linda [Sibley], and personally I think that all harbor usages have major regional impact. I think by definition all the piers and all of the activities around there should be considered such."

Mr. Colaneri wanted to return to the issue of why this property had been referred to the Commission. He was concerned that the lessee had only been complying with the Town's demands in trying to acquire the needed permits. "Once a DRI, always a DRI," he said, "and once you end up burdening a piece of property and a landowner with that sort of cumbersome bureaucracy without real good solid purpose, I don't think it's serving the community or the private landowner or this body very well." He argued along these lines for a few minutes.

Mr. Zeltzer commented that he was becoming confused. "It looks like a DRI that we're trying to turn into a DCPC," he said. He wondered whether it would be more appropriate for the Town to consider DCPC status for the area of the harbor. "We're doing it, we're doing it," said Mr. Israel. Ms. Sibley reminded the other members that this was not a Hearing on the merits of the proposal. "What is the issue is whether or not we concur that there is a regional impact," she said. Ms. Ottens-Sargent said that what she was hearing was that the use was much less on the property. "Today," interjected Ms. Sibley.

Ms. Brown said she agreed with Mr. Donaroma that in general it was a good thing to do a straightforward review of activities on properties that might have a regional impact. "This may not be the most opportune time in terms of bureaucratic procedures, but here it is," she added.

Mr. Donaroma said, "I know I said all that. But listening to Michael [Colaneri], if this Board doesn't behave, we can really get carried away talking about wakes and harbors and the effect of people coming in purple shorts ... I think the property could be reviewed, and especially now that we can see there will be a lesser impact, it should be easy for us to go through this."

Mr. Toole then conducted a roll call vote on the Motion Not to Concur with the Tisbury Board of Selectmen's Referral. The vote went as follows:

AYES: M. Colaneri; M. Donaroma; J. Early; and J. Greene.

NAYS: J. Best; C. Brown; T. Israel; M. Lazerow; M. Ottens-Sargent; L. Sibley; R. Toole; J. Vercruysse; R. Zeltzer; and T. Henson, Jr.

ABSTAINING: B. Hall, Jr.; and L. Jason, Jr. [who had left the room for the duration of the Hearing].

Mr. Best then made a Motion to Concur, duly seconded. Mr. Toole asked for discussion. It appeared there would be none when, amid several ongoing conversations among other Commission members, Ms. Greene said, "I would like to see the Motion to Concur be a Motion that this be a straightforward DRI ..." [The end of Ms. Greene's sentence could not be heard either on the tape or by the Secretary in the room.] Mr. Toole responded by saying, "We've had this discussion already." The roll call vote went as follows:

AYES: J. Best; C. Brown; T. Israel; M. Lazerow; M. Ottens-Sargent; L. Sibley; R. Toole; J. Vercruysse; R. Zeltzer; and T. Henson, Jr.

NAYS: M. Colaneri; M. Donaroma; J. Early; and J. Greene.

ABSTAINING: B. Hall, Jr.; and L. Jason, Jr. [who had left the room for the duration of the Hearing].

Mr. Jason returned to the Meeting Room, and Mr. Toole called for a short break. The time was 8:52 p.m.

**Item #3, Approval of Meeting Minutes, June 24, 1999.**

Regarding page 3, paragraph 1, sentence 4, Ms. Lazerow wanted to know if "an at-large member" correctly described her. Mr. Clifford replied that it did. Ms. Lazerow also stated that said sentence "wasn't exactly what I said. What I said was ... that I thanked the Planning Board for referring, that they were right in referring to the Commission, but after some consideration, that it was not a change in use and that I proposed that the Commission vote not to concur, which is different than saying I disagreed that the Commission had to concur. It sounds as if I was disagreeing. It just gives a different taste to what I said."

Mr. Zeltzer said he wished to correct paragraph 11 on page 29. He noted: "I did say my mouth got ahead of my brain, but I was referring, I believe, to the fact that I had, in the heat of battle, referred to a private, personal conversation, which I thought was not the appropriate thing to do, and I apologized for it and swore in blood that I would never do it again." Ms. Sibley said, "It doesn't say that I accepted his apology ... and it should."

Mr. Toole wanted it to be noted that on page 12, paragraph 8, he was listed as having voted against the Motion for no development between the western edge of the frost bottom and Metcalf Way. In fact, he said, he thought that he had voted for that Motion. Mr. Jason said he also thought that Mr. Toole had voted for the Motion. Mr. Best said that he had voted in favor of that Motion as well, although he was listed as having voted against it.

There was some discussion of whether or not the tape recorder was working properly. Mr. Colaneri stated: "If we don't have a machine that's recording everything that's being said here, I think we need to get one." "That wasn't spoken," noted Mr. Best. "You need a video machine because people raise their hands," said Mr. Jason. "Do we really need to list who voted which way on each one?" asked Ms. Greene. There appeared to be a consensus that this was, in fact, what the Commission members wished.

Then Mr. Clifford said: "If you want the things recorded properly -- I said this months ago when you wanted it -- you have to do it by name, by voice. We cannot look at a tape and see a hand go up. It's impossible ... You'd have to do a roll call on every ... thing you voted on." "Let's do that, then," said Mr. Colaneri. A discussion of whether or not to do this ensued. No apparent conclusion was reached.

Ms. Ottens-Sargent pointed out that on page 16, paragraph 7, sentence 1, the phrase "Ms. Sibley thought that being the Applicant had to return ..." was grammatically incorrect. "I might have said that," said Ms. Sibley.

Ms. Greene noted that on page 6, paragraph 5, sentence 3, the word "accessments" should be "assessments." Then, on page 7, paragraph 6, sentence 1, Ms. Greene indicated that the words "Mr. Hall, who was ineligible to vote on the next DRI considered" should be changed to state specifically the name of the next DRI.

Ms. Greene continued that on page 15, paragraph 6, sentence 1, the words "in order to fund an administrative position" had not been contained in her Motion. "That should be taken out," she said.

Ms. Ottens-Sargent thought that there had been a Motion to provide for a membership program similar to the one at Farm Neck. MVC Secretary Pia Webster, who had compiled and typed the Minutes, pointed out that this Motion was recorded in the Minutes [page 17, paragraph 2, sentence 1], but that it had been withdrawn in favor of a differently worded Motion [Condition H].

Ms. Greene pointed out that on page 19, paragraph 4, sentence 5, regarding the phrase "... the Applicant shall ensure said access by plowing the roadways on site as necessary": "I don't think our intention was that they have to plow every road on the site." "No, it wasn't," agreed Mr. Best. "And the way it's written," continued Ms. Greene, "it's not clear

who decides what's necessary, and it does indicate that it could be possible that somebody could say that it's necessary for everything to be plowed. I think the intention was somebody would have a place to get off the road and park so they could cross-county ski."

A discussion followed regarding whether such corrections to the Motions for the DRI #484 Conditions should be made at that time, under Item #3, Approval of Meeting Minutes, or later, under Item #5, Discussion, Martha's Vineyard Golf Partners, LLC. It was decided that since the Minutes had to reflect the reality of what had occurred in the Meeting, that the Commission members should address those issues then and there, under Item #3.

Ms. Brown said that her notes showed the wording of the Motion on page 19, paragraph 4, sentence 5, to include the wording "from October to April." [In fact, per the taped account of the Meeting, Ms. Brown's Motion was first stated including that phrase. However, after three rewordings, "from October to April" had been dropped and the adjective "off-season" had been substituted.] Moreover, Ms. Brown said, the clause about plowing the snow was from John Best, not her. "But it's okay with me," she added. [According to page 19, paragraph 4, sentence 2, of the Minutes of June 24, 1999, "Mr. Best suggested that 'providing plowed access' be added to the Motion." There was no objection to this amendment by Ms. Brown at the time.]

A discussion followed about who would decide when plowing was necessary and which of the roads on the site would be plowed. The talk then turned to what the Minutes should reflect and whether they should continue to correct the Minutes or handle the revisions during Item #5, Discussion.

Ms. Brown then pointed out that on page 8, paragraph 8, sentence 1, some wording about the parcel for staff housing being 5 acres instead of 18 acres had been left out. "It's not on the tape," said Ms. Webster. Three or four Commission members agreed; the issue was dropped.

The time was 9:14 p.m. Mr. Toole conducted a vote to Approve the Minutes, as Amended, which vote went as follows:

AYES: J. Best; C. Brown; M. Colaneri; M. Donaroma; J. Greene; T. Israel; L. Jason, Jr.; M. Lazerow; M. Ottens-Sargent; L. Sibley; R. Toole; J. Vercruysse; R. Zeltzer; and T. Henson, Jr.

NAYS: None.

ABSTAINING: J. Early; and B. Hall, Jr.

#### **Item #4: Reports.**

Ms. Brown, Co-Chair of the Land Use Planning Committee, provided the **LUPC Report**. She related how representatives of the Herring Creek Farm Trust had attended the last meeting, on June 28, and had presented a formal proposal. (A preliminary proposal had been reviewed and voted on the November before.) Ms. Brown reported that after the presentation, the LUPC had felt the Application was complete. She then summarized the highlights of that presentation and ended by announcing that the Public Hearing for the proposal was slated for Thursday, July 29.

Regarding the **Aquinnah DCPC Exemption Committee**, Ms. Greene announced that the next meeting would be one week from the following Tuesday [July 20].

MVC Staff member Christine Flynn provided the **Affordable Housing Subcommittee Report**. The group had met the Wednesday before and had discussed funding alternatives. The members of the Dukes County Regional Housing Authority who were present had expressed a desire to review all past DRI Written Decisions and their affordable housing provisions. The DCRHA members also wished to find a way to have the Commission be a reviewer of all comprehensive permits. Finally, all had discussed the to-build-or-not-to-build-on-the-Island question. The next meeting was scheduled for July 14 at 4:30 p.m.

Mr. Colaneri asked if the Affordable Housing Subcommittee would be looking into the compliance of Applicants with the affordable housing provisions in the Commission's Decisions. He also wanted to know how far back their study would go. "To the beginning," said Mr. Jason, a member of the subcommittee.

As for the **Cell Tower Study Group Report**, Ms. Lazerow noted that she had gone to an All Island Selectmen's Association meeting the night before that she was told was to have been about cell towers; however, it had not been.

Mr. Hall wanted to know if the Cell Tower Study Group was going to be looking into what Adelphia [the local cable company] and the Dukes County Cable Advisory Committee were proposing to do regarding the Internet. He said, "We're supposed to be the body that helps to plan and develop a sustainable economy. Maybe we should be looking at whether Adelphia is actually meeting ... reasonable criteria for providing adequate cable service. And we should probably be looking at the same thing with the cell tower stuff, whether the cell services that are being established here on the Island are providing the kind of service that we'll need in the coming millennia, so that we can operate in conjunction with the rest of the world."

Mr. Toole wondered if perhaps this was an issue for the PED Committee to look into. A discussion ensued about which committee should explore this issue. Mr. Early explained

that the Dukes County advisory board was already operating and had, in fact, invited anyone who was interested in the process to attend their meetings. He also pointed out that the Internet was not statutorily a part of that committee, a position that Adelphia was taking as well. A discussion followed about the jurisdiction, so to speak, of this committee as well as about the means by which the Commission could get involved. It was agreed that the Commission members should be made aware of future meeting of the advisory board.

In providing the **Legislative Update**, Mr. Clifford started by saying, "We may have fared reasonably well," referring to the State budget process. "We're still in the same hole that I mentioned before, however, and I'm not going to give you a lot of detail because I don't want anyone running around mucking up something that's going to happen," he said. He added that he had gotten word that day from Peter Weber that the Commission "should not panic." Mr. Hall wondered if Mr. Clifford meant that the members should not "badger" Bob Durand, appointed Secretary of the Executive Office of Environmental Affairs, at his talk at the Wakeman Center the following evening. "Do not touch Bob Durand," replied Mr. Clifford, "don't even touch it." The time was 9:31 p.m.

**Item #6: Decision, M.V. Golf Partners, LLC, Written Decision.**

[Mr. Hall and Mr. Early left the room for the Decision and related discussion on the M.V. Golf Partners Written Decision.] Mr. Toole moved the Meeting on to Item #5: Discussion, M.V. Golf Partners, LLC, Written Decision. Mr. Colaneri suggested that the Commission simply move instead to Item #6: Decision, M.V. Golf Partners, LLC, Written Decision; Mr. Toole agreed. Mr. Colaneri made a Motion to Approve the Written Decision as Written, duly seconded.

[In perusing the discourse that follows, it may be useful to consult "The Vineyard Golf Club (DRI #484): Offered 'Conditions' and Staff Recommendations" by David Wessling and Bill Wilcox, dated June 17, 1999, and "Draft Decision of the Martha's Vineyard Commission Regarding Applicant Martha's Vineyard Golf Partners, LLC," dated July 8, 1999. Both documents can be found in the Meeting File of July 8, 1999, as well as in the General File for DRI #484.]

Ms. Greene said: "I'm really kind of struggling with the fact that a lot of the Minutes as well as the Decision came off as something put together that was never really talked about." She then pointed to page 8 of the Decision, Item 5.c., which described an acceptance of the Applicant's offer to hold an annual fund-raising tournament which would include a block of 25 starting position to be auctioned annually at the Possible Dreams Auction. "Who said that?" asked Mr. Colaneri. "Where'd that come from?" "That's my question," said Ms. Greene. She felt that perhaps the funds raised should not go exclusively to the Possible Dreams Auction. "Would you like me to get the other tape recorder and play the tapes for you?" asked Mr. Clifford. This was discussed further, and

Mr. Clifford explained that the members could not change the terms of the Applicant's offer. If they did not like it, they could simply strike it. "You can't change an offer made by an Applicant," he repeated.

More discussion ensued. Finally, Ms. Greene said that if the Commission's acceptance of that offer was on the tape, she would not object to its inclusion in the Written Decision. She added that she wished to have the changes made regarding the plowing that she had referred to earlier. [See pages 12 and 13 of these Minutes. That Motion found its way into the Written Decision as Item 6.d.]

The members then decided to go through the Decision methodically, Condition by Condition, in order, as written.

Ms. Lazerow pointed out that on page 8, item 5.b., there needed to be some clarification that of the 10 fund raisers allowed annually, one of them would be the one with the 25 starting times that would have been auctioned off at the Possible Dreams Auction. With the group having jumped forward to page 8 of the Decision, Ms. Sibley suggested that all members go back and review page 5, where the Conditions began, for any items they wished to revise, clarify or strike.

Mr. Colaneri had questions regarding Condition 1.a. on page 5. "Wait, that was my Motion," said Mr. Jason. "That's accurate." A brief discussion of the Condition followed, and it was decided to leave the wording as it was.

Mr. Toole had a question about the buffer described in Condition 1.d. He wanted to clarify whether the buffer would be a product of restoration or left in its natural state. "It should just say 'provide a buffer,'" said Ms. Greene. Further discussion ensued. Mr. Toole said, "As long as nobody has a problem, that's fine." The members moved on.

Regarding Condition 1.e., Mr. Best thought that the maximum of 71 acres of managed turf "should be verified, perhaps by the first aerial survey that this office does periodically after the completion of the course." Otherwise, he said, the Commission would never know if the Condition was being complied with. After some discussion, the members agreed to revise the Condition according to Mr. Best's suggestion. The amended Condition was worded thus: "That the managed turf area shall not exceed seventy-one (71) acres, to be verified by the Martha's Vineyard Commission by the first aerial survey taken after completion of the project." Mr. Best made said Motion, which was duly seconded by Mr. Jason. The vote on the Motion went as follows:

AYES: J. Best; C. Brown; M. Colaneri; M. Donaroma; J. Greene; T. Israel; L. Jason, Jr.; M. Lazerow; M. Ottens-Sargent; L. Sibley; R. Toole; J. Vercruysse; R. Zeltzer; and T. Henson, Jr.

NAYS: None.

ABSTAINING: J. Early, and B. Hall, Jr.

Regarding Condition 1.i., Ms. Brown wanted to know to whom the annual \$5,000 donation to advance the surveying and research of sandplain grassland and frost bottom habitats would be contributed. Ms. Greene replied that the recipient would be the Sheriff's Meadow Foundation per the Applicant's offer. It was agreed to so amend the Condition.

The same revision was discussed for Condition 1.j.. It was agreed to add "to the Sheriff's Meadow Foundation" to that Condition.

Regarding Condition 2.a. (Island memberships), Mr. Israel asked how membership would increase depending upon the condition of the managed turf area. "Because you can't put 500 people on the grass, as I understand it," explained Mr. Jason. "It would just destroy it." Mr. Zeltzer said, "I don't remember it clearly, but at one point I thought that Jennie [Greene] had suggested that there be a reflection of the average income in Dukes County." "I got shot down on that," noted Ms. Greene. "Forget it, then," said Mr. Zeltzer. A short discussion about the Island membership structure ensued.

Ms. Sibley noted that it had been understood that the Applicant would be coming back to the Commission with the Island membership plan, at which point they could evaluate it. Ms. Brown noted that in Conditions 2.a. and 2.b., the phrase "before the golf course opens" was missing. Ms. Sibley suggested the words "prior to the golf course opening" be added. "And did we mean that we want to see those membership plans and approve them?" asked Ms. Brown. Yes, replied three or four Commission members at the same time.

A discussion followed about Certificates of Compliance. Mr. Clifford explained that these required notification of the Commission by Town Boards and that it was up to the Towns to enforce them. Ms. Sibley moved that the following language be added to Conditions 2.a. and 2.b.: "That prior to the commencement of activities on the course, that the Applicant shall submit to the full Commission for approval a plan which will include an initial number of 125 Island memberships ..." The Motion was seconded, and there were no objections to the amended wording.

Ms. Greene said she thought that Condition 2.d. (accepting the offer to hold annual fund-raising tournaments to benefit local not-for-profit organization) contradicted Condition 5.b. (that there would be no more than 10 such fund-raising tournaments per year). A discussion of this issue followed. Ms. Greene moved to remove Condition 2.d., duly seconded.

In the midst of the discussion that ensued, Mr. Zeltzer wondered what had happened to the Motion about having no off-Island, professional tournaments. It was agreed to put that Condition in later if they did not come across it in the Decision. Then the Commission members returned to the Motion on the floor, which was, per Ms. Sibley, "to eliminate [Condition] 2.d. as redundant." The Motion failed: five members voted for the Motion, six against, and Mr. Best abstained.

There was some discussion of Condition 3.a. (the creation of 40 new beds for seasonal workers). Ms. Brown said: "I thought there was a Motion that talked about reducing that 18 acres delineated on the plan to 5 acres in which would be any housing, limited to staff housing." No, said two or three members in unison. Mr. Jason noted that the Commission had agreed that having the 18 acres would afford more flexibility. Mr. Best asked Mr. Jason, the Edgartown Inspector of Buildings, what the Town considered a normal bedroom capacity. "Nine square feet minimum," replied Mr. Jason. A discussion of the Condition continued.

Mr. Israel noted that it did not necessarily have to be a new structure, that the point was to house the employees. Yes, it does, responded Mr. Colaneri. "Well, I don't read it that way," said Mr. Israel. Mr. Zeltzer thought the wording should be "That the Commission accepts the Applicant's offer to provide new housing for 40 seasonal employees." Ms. Brown called a Point of Order and asked for the exact wording of the Applicant's offer. "The word 'new' and the word 'beds' -- that's all the man offered," replied Mr. Clifford. "He also said he'd work with the people working with the dormitory housing at the airport. If it didn't work out in a couple of years, he would provide it himself," added Mr. Colaneri.

Mr. Colaneri asked if the Commission members would find acceptable housing like that found at the youth hostel in West Tisbury. "I don't consider it the type of housing that we should be requiring of Applicants to provide," he said. "That's not acceptable to me." He elaborated on why he felt this way, and a discussion ensued. Ms. Sibley pointed out that naturally the Applicant was going to want to provide the employees with competitively decent housing or they would not get employees. "I really don't think we have to worry about what they do," she said. Ms. Greene noted that in any event the Applicant would have to adhere to the building and health codes of the municipality. It was decided not to change the wording of Condition 3.a.

Ms. Ottens-Sargent asked if the word "their" (as in "for their seasonal employees") should be added. A majority of the Commission members agreed that anyone's employees could use the beds.

Regarding Condition 3.b. (the affordable housing provision), Mr. Vercruysse said he thought that the offer was a long-term lease to the housing authority. No, it would be

deeded, said Ms. Greene and Mr. Colaneri. "That's why it's not part of the golf course," noted Ms. Sibley.

Did the 100-foot buffer affect the siting of those lots? asked Ms. Ottens-Sargent. No, responded three Commission members at the same time.

Ms. Greene wanted the words "in order to fund an administrative position" struck from Condition 3.c. Having been discussed earlier during the approval of the Minutes [page 12], this was agreed on quickly.

Regarding Condition 4.b. (the establishment of a Review Committee), Ms. Greene pointed out that the Martha's Vineyard Commission had been removed as a participating member of the proposed committee. "That's correct," said Mr. Clifford, "and I took it out." He added that he changed whatever was necessary "to make it legal." Mr. Israel wished to add the words "one member of," referring to the Edgartown Board of Health, the Edgartown Ponds Advisory Committee and the UMass/Amherst Extension Service. This change was agreed to.

Ms. Brown noted that the Review Committee might not be able to accept money because it was connected with the Town. Mr. Clifford responded that the Commission was creating the committee and that it was not a Town committee. "The Extension Service is not a function of the Town of Edgartown," he explained. "This committee can accept money."

Mr. Israel was concerned that the "ball wouldn't get rolling" with regard to the Review Committee. "The Board of Health will take care of it," said Ms. Greene. Mr. Clifford elaborated on how this would work. Mr. Israel added that the wording should be "at least one member."

Regarding Condition 4.c. (payment in lieu of taxes), Mr. Colaneri wanted to know, "What is that going to be based on?" "He [the Applicant] picked the number," replied Mr. Jason. Then that should be mentioned in the Condition, said Mr. Colaneri, because it was not in relationship to anything like the tax rate, the full cost of services provided or anything like that. Ms. Brown wanted to know, "Does it mean, 'what you would pay if you were being taxed at full market rate?'" "No," replied Mr. Jason, "usually it's a deal that a non-profit works out that says 'I don't have to pay in because I'm a nice guy, you know, I'm a part of the community. I'm going to give you X amount of dollars.' That's in lieu of taxes."

Mr. Colaneri repeated that he thought there should be a number provided in the Condition. Ms. Greene said that although she didn't remember the number, one could get around that by saying that the Applicant and the Town would negotiate the amount in lieu of taxes. Ms. Brown pointed out that a non-profit golf club in the Town Edgartown would, in fact, pay taxes. So the phrase "in lieu of taxes" was something she did not

understand. Mr. Jason noted that the Applicant could file under 61(b), Recreational Land, "and the value drops like a rock." Further discussion of Condition 5.c. followed.

Then Mr. Jason stated: "I don't want to see them pay at a recreational land rate." Ms. Sibley said, "I don't remember what the number, but I do remember that the testimony was that they were going to pay at the present rate, which was property which was approved for subdivision." Mr. Colaneri suggested they ask Tom Wallace, the Applicant's agent, who was sitting in the audience. Mr. Wallace indicated that Ms. Sibley's recollection was correct and that the exact amount was \$25,000.

Mr. Best then suggested that the figure should be adjusted. The Commission discussed to what standard the figure should be adjusted. In addition, Mr. Jason thought that a 145-lot parcel would have a higher assessment than \$25,000. It was then discussed whether this amount was in addition to taxes due or instead of taxes due. "How about saying, 'no less than \$25,000, adjusted annually,'" suggested Ms. Sibley. Ms. Lazerow said that "it should be made clear that it is not in lieu of the taxes." "It's an additional donation to the Town, it's not in lieu of," agreed Ms. Greene. Mr. Jason disagreed: "He is not suggesting that he is paying 25-plus. He's saying, 'I'm going to give you 25. You're not going to lose any tax revenue from this piece of land. This is what I'm going to pay.'" "Then you can leave 'in lieu of,'" said Ms. Greene.

Further discussion ensued. It was agreed finally to include the figure \$25,000 in the Condition, along with the requirement that this amount be adjusted every three years per the Consumer Price Index.

Regarding Condition 5.b. (10 special events allowed per year), Mr. Israel felt that if the Applicant wished to hold more than 10 fund-raisers for Island organizations annually, "it seems a little foolish to limit him on that." It was clarified that the specific number 10 had been voted for, and the Condition stayed as it was.

Mr. Colaneri wanted to know if Condition 5.c. (the Possible Dreams Auction and the fund-raising tournament) was part of the Applicant's Offered Conditions document. [The MVC Secretary heard no answer to this question, nor could any response be heard on the tape. The annual fund-raising tournament and the block of 25 starting positions to be auctioned at the Possible Dreams Auction was, in fact, an item in the Applicant's list of Offered Conditions. Refer to page 1, paragraph 7, of "The Vineyard Golf Club (DRI #484): Offered 'Conditions' and Staff Recommendations."]

Mr. Zeltzer once again raised the omission of a Condition regarding the prohibition of tournaments with non-member participants. "That wasn't what he said," said Ms. Sibley. "Well, then, no professionals," said Mr. Zeltzer. Referring to the Meeting Minutes of June 24, 1999, Ms. Greene pointed out that they had discussed whether or not the tournaments could include professionals and that this point had been dropped. "Who's going to want to

play if Jack Nicklaus isn't there?" asked Mr. Jason. More discussion of this issue followed. Finally, Ms. Sibley said: "The Applicant did, however, testify that he would not have -- I don't know quite what the word for it is -- PGA tournaments. ... And he did testify to that, and I think it should be reflected in the Decision." Mr. Clifford indicated to the members where such a Condition could be inserted, should they so decide.

There was further clarification of what the 10 allowable special events could include. "My understanding in going back over this testimony for the 31st time," said Mr. Clifford, "[is] he [the Applicant] said the number 10 specifically. That would be the maximum ... He did say that one of those would be a tournament and that he would sell or give to the Possible Dreams to auction off 25 slots. The Possible Dreams is not the party that is getting that special event. They're just getting starting positions. So out of the 10, there is one he is guaranteeing will be an annual event." This discussion of this matter continued, and in the end the Condition remained as it was.

Regarding Condition 6.b. (Middle Line Path), Ms. Brown said: "I believe my Motion was that Middle Line Path is not only on the map but is also in the conservation restriction. Is that clear?" Then, answering her own question, she said, "Yeah, I think it's clear."

Ms. Sibley had a suggestion for handling the wording difficulties of Condition 6.d., which dealt with off-season use of the course and provision of access by snowplowing, if necessary: "... and that, in addition, the Applicant shall insure said permitted access by plowing access to parking as necessary." Ms. Greene thought that the way the wording had been amended during the approval of the Minutes "was actually not allowing any parking. ... You can just say, 'said access be plowed.'" She suggested that the sentence be ended after the word "plowed." More discussion continued. Mr. Toole offered the opinion that what Ms. Greene had said was fine. The Commission agreed to move on.

As for Condition 6.c. (\$10,000 for the coordination of land use goals, byways planning and the design of signs), Ms. Brown pointed out that this Condition had omitted the recipient's name. "Who gets the money?" she asked. A discussion followed, and it was agreed that the Edgartown Conservation Commission should receive the money.

Returning to Condition 6.d., Ms. Sibley proposed adding "such defining plan to be submitted to the Commission for approval." The phrase "prior to opening" was suggested by Ms Lazerow. The Commission agreed on this wording. The time was 10:28 p.m.

Regarding Condition 6.e. (the sale of four lots by the Sheriff's Meadow Foundation), Mr. Donaroma was concerned that the "qualified conservation organization" referred to might use the money to purchase land that was inaccessible to the public. Mr. Clifford explained that there was an agreement between the Sheriff's Meadow Foundation and the Applicant, which the Commission could not change. "If you don't like, drop it," he said.

Ms. Sibley wondered, "Does the agreement specify that it's offered first to the Town of Edgartown, and only if they turn it down, it's then offered to someone else?" Because no one at the table knew the answer to that question, Mr. Wallace, the Applicant's agent, was asked. He responded that Sheriff's Meadow had agreed to give the money to the Town of Edgartown for the purpose of buying land accessible to the public and that the "other qualified conservation organization" was simply a fallback provision. Mr. Donaroma then agreed that Mr. Clifford was right and that the wording should stay the same.

Ms. Greene noted that paragraph 5 on page 10, which stipulated that all submitted materials, including the Applicant's offers in Hearing testimony, be made part of the record and incorporated into the Decision, should lay to rest any concerns about not including a specific Condition prohibiting any PGA-type tournament. Mr. Clifford explained why this paragraph had been included and how it ensured that any offer made by the Applicant would be considered part of the Decision.

"But," said Ms. Sibley, "we agreed when we were talking about compliance problems that one of the things we needed to do was, if something was important to us that the Applicant had offered, that we should reiterate it in the Decision so that it would be clear to posterity. And I think that that offer was important to the board." Some discussion of this matter followed, and after numerous rewordings, the following Motion was made by Ms. Brown for a new Condition, 5.d.: "Accept the Applicant's testimony that there will be no PGA or PGA-like tournaments." Mr. Israel seconded the Motion. All voted in favor, except for Ms. Greene and Messrs. Donaroma and Toole.

Mr. Colaneri then made a Motion to Approve the Written Decision as Amended, seconded by Mr. Jason. Mr. Toole conducted the roll call voted, which went as follows:

AYES: J. Best; M. Colaneri; M. Donaroma; J. Greene; L. Jason, Jr.; M. Lazerow; M. Ottens-Sargent; L. Sibley; R. Toole; J. Vercruyse; R. Zeltzer; and T. Henson, Jr.

NAYS: C. Brown; and T. Israel.

ABSTAINING: B. Hall, Jr.; and J. Early.

Mr. Hall and Mr. Early returned to the Meeting Room. The time was 10:37 p.m.

**Item #6: Decision, Island Propane (DRI #495).**

Ms. Greene made a Motion to move to Item #6: Decision, Island Propane, which Motion was duly seconded. [Mr. Hall and Mr. Henson, both of whom were ineligible to vote on the Island Propane project, left the Meeting Room at this point and did not return.]

Ms. Sibley asked if the LUPC had made a recommendation for this project. Mr. Jason replied that the committee had recommended Approval with Conditions. MVC Staff member David Wessling explained the Conditions, which were: 1) that the Commission would accept the Applicant's offer of a \$1,000 contribution to the Affordable Housing Fund; and 2) that the Commission would accept the amended license obtained by the Applicant, which permitted a maximum storage capacity on the site of 90,000 gallons. Ms. Brown and Mr. Donaroma provided further details on the second Condition.

Had the LUPC discussed the issue of whether or not it was safe to have the facility unattended? asked Ms. Sibley. Yes, replied Mr. Israel, the members had been satisfied with the Applicant's explanation of the safety mechanisms associated with the facility.

"What exactly were the benefits of this project?" asked Mr. Jason. More gas, more competition, lower prices, suggested Mr. Colaneri. "And no one's concerned about the amount of gas that's going into one area?" Mr. Jason wanted to know. He added, "If something goes sour there, they're all clustered up." Ms. Greene noted, "The Fire Department thought it was okay." Ms. Brown reiterated Ms. Greene's point.

Mr. Best then said, "It kind of begs the question: Where do we draw the line with certain businesses, if we ever do draw the line? I mean, do we need 10 gas companies? We're rapidly moving in that direction, the same direction we're moving with gas stations ... I'm not saying I'm for or against it, but it seems like it is a question, it is something we have to consider. I have yet to see gas prices go down, even though we've gone from, I think, two gas companies to the present four. And we have higher prices than anyone in New England to the best of my knowledge ... It's a good question. I'm not sure there is any benefit."

Mr. Donaroma observed that there was still the question of service. "They all have different hours, they all have different attitudes, they all have different services. We give people options. Generally, I usually think more is better." He added that the Commission had asked "the powers that be" the questions and they had said it was safe.

Mr. Israel noted that the Airport Business Park was an area developed for this kind of use and that there was the benefit of competition.

Mr. Colaneri thought it was important to hear from the Airport Commission. "Whenever we've had a project in the industrial park," he said, "well, I don't even know who the park manager is now." He asked Ms. Sibley, who is on the Airport Commission, if that body had looked at the issue of whether another gas company might be overburdening the area. Ms. Sibley replied: "I would say that there was some discomfort ... with propane and fuel oil and the whole sort of ambiance. The Airport Commission doesn't have quite the same powers to evaluate the intangibles."

Was the Airport Commission satisfied that it was safe? asked Ms. Brown. Ms. Sibley explained that at that stage the Airport Commission had less information before them than did the Martha's Vineyard Commission. There was a bidding process and then a preliminary approval, she added. Then Ms. Sibley concluded: "We asked the Fire Chief, and if the Fire Chief says it's okay, we believe him ...". Further discussion ensued about the clustering of toxic materials in the Business Park and possible disasters.

There followed a discussion of the Condition regarding affordable housing and whether or not the Commission should ask for more than the policy required. "We have a policy," said Mr. Jason. "The Applicant more than meets it." But we're basing it on just that little shed, objected Mr. Colaneri. "Then, change the policy," said Mr. Jason.

"I'd like to know why Lenny [Jason] is against this," said Ms. Brown. "I just think enough is enough," Mr. Jason replied. "They asking for 60,000 gallons of storage. What do the others have?" There was a brief discussion of the capacities of the other propane companies.

Mr. Toole repeated that the Motion was to Approve with Two Conditions: the acceptance of a \$1,000 contribution to the Affordable Housing Fund and the amendment to the license. The Commission members began to talk about the 90,000-gallon limit on the storage capacity of the site; some remained confused about what this meant. Ms. Greene methodically explained the Condition, and it appeared that all now understood it. More discussion of the Condition ensued.

Mr. Colaneri proposed a Condition that, should the business go under, that the Applicant remove the tanks and so forth from the site. This option was not pursued.

Ms. Sibley then said: "I think we've got an ample supply of gas companies on this Island. So, where's the benefit? ... We have not seen that the law of supply and demand has brought prices down anywhere on this Island ever because of competition, let alone in this field. But there's also the issue of the Airport Business Park, and frankly, as an Airport Commissioner I didn't think about this issue really clearly, though I sort of felt uncomfortable about it. That Business Park is getting built out ... You can look at it two ways. Not only is the Business Park full of propane, but what about other needed facilities that won't have a place to go if we fill it all up with one category?" "I think that should have been thought of before it was referred up here," said Mr. Colaneri.

Mr. Colaneri thought that Ms. Sibley had implied that the Airport Commission had been opposed to the project. No, it had not been, she said. "I'm speaking as a Martha's Vineyard Commissioner now and saying that, having weighed all of these factors, I don't see where the benefits are." The time was 10:55 p.m.

Mr. Toole once more repeated the Motion, then conducted a roll call vote, which went as follows:

AYES: M. Colaneri; M. Donaroma; J. Greene; T. Israel; M. Ottens-Sargent; and R. Zeltzer.

NAYS: J. Best; C. Brown; J. Early; L. Jason, Jr.; M. Lazerow; L. Sibley; R. Toole; and J. Vercruysse.

ABSTAINING: B. Hall, Jr.; and T. Henson, Jr.

"I don't think we should do this to Applicants," observed Mr. Colaneri. "I think the questions about this and these concerns should have been raised during the Hearing," agreed Mr. Israel, "not coming out of thin air."

Then John Rancourt, Executive Vice Present of Island Propane, Inc., who was in the audience, began to speak, stating that all three gas companies had run out of gas the winter before. "The Island had no gas," he said. "There's not enough storage. The question never came up. Well, anyway, we're out of it."

Mr. Clifford indicated to Mr. Toole that now a Motion to Deny was required. Mr. Early made that Motion, seconded by Mr. Jason. The roll call vote went as follows:

AYES: J. Best; C. Brown; J. Early; L. Jason, Jr.; L. Sibley; and J. Vercruysse.

NAYS: M. Colaneri; M. Donaroma; J. Greene; T. Israel; M. Ottens-Sargent; R. Toole; and R. Zeltzer.

ABSTAINING: B. Hall, Jr.; M. Lazerow; and T. Henson, Jr.

Ms. Greene then made a Motion to Approve, seconded by Mr. Colaneri. Discussion ensued, and Mr. Jason asked how much more time was left before a Decision had to be made on this project. [The answer to that question was July 26. The Secretary did not hear the question answered during the Meeting, nor could she hear any answer on the tape.] The Commission agreed to continue with the Motion to Approve.

Ms. Sibley was concerned that new testimony had materialized after the Public Hearing. "I have to say I think it seems fairly evident that people's votes were affected by something said in this room that was outside a Public Hearing," she said. "If that's a legitimate issue, then I think this Commission should vote to reopen the Hearing. But it is not fair for someone to say something and then nobody else can rebut that statement, and [then that] that vote should depend on that or be affected by it." Ms. Brown thought that when Mr.

Rancourt had announced that the winter before gas had been in short supply and, therefore, this company would be of benefit, "it might have changed somebody's vote."

"I could make some testimony about that," said Ms. Greene, "but I chose not to." Mr. Israel wondered if there was a Motion on the Table; he was told there was. "Let's vote on it," said Mr. Israel. Mr. Colaneri, however, wished to discuss the issue further. So Mr. Toole called for discussion. Mr. Colaneri continued, "Then my question is kind of along the lines of what Linda [Sibley] was talking about. I mean, if we're at ground zero and nothing's happening, can we reopen the Public Hearing? I don't know what else to do here." Mr. Colaneri said that that might be the fairest thing to do. The discussion continued.

"The Motion was to approve," said Ms. Greene, "and I think we should request, again, the affordable housing. I don't think the issue about the permit is really a Condition, because that is something we've been straightened out on. I will also throw into the pot ... I don't feel real good about it because the situation's at this table right now and I will bring up. In the housing in Gay Head we have a gas dealer who gave us a price way back to supply the tanks. We have a second gas dealer on the Island who has told the tenants they will not deliver gas to Gay Head. Period. End of subject. They don't go to Gay Head. You see their trucks up there every day. They refuse to deliver to these tenants. If a tenant runs out of gas, the present gas supplier charges them \$56 on a weekday, \$75 on a weekend, to make a delivery. They need a chance for some competition here."

Ms. Greene continued: "I've gone to the State. The State does not regulate propane. So we are caught with no way ... unless I can catch these people in fraud. The fact that they collected a \$200 deposit from these people, and everywhere else on the Island, it's 150 -- I can't do anything and these people can't do anything."

Ms. Greene said that she would be "perfectly happy to put a Condition on that these people [Island Propane] will agree to sell gas to low-income housing units or whatever. That would be appropriate." "Is that part of your Motion, Tristan [Israel]?" asked Mr. Donaroma. "Yeah," Mr. Israel replied. The Motion was seconded. The time was 11:07 p.m.

Mr. Donaroma noted: "If gas is hard to get, then the price is going to stay high. If there's enough gas people out there, they're going to start competing ... We shouldn't be turning something down because we think there's too many of them."

Mr. Best then observed: "I feel that Jennie [Greene]'s testimony is really somewhat in the same vein as a comment from the audience and that it really should be part of the Hearing. I don't say it's not valid. It should be valid, but I would say we should reopen the Hearing. I don't feel it's appropriate for us to accept any substantive information like that without reopening the Hearing."

"The comment about the shortages is true," said Mr. Colaneri. "They were bringing trucks over from the mainland during the cold spells every single day. They were really worried about capacity. And they were running people right down to the very low end of things." He added: "It's too bad that this didn't come out in an earlier discussion."

"Why don't you ask the Applicant if he'd like to withdraw so we can open the Hearing?" said Mr. Jason. Then Mr. Zeltzer asked Ms. Greene to restate her amended Motion. Ms. Greene said: "The amendment would be that the Applicant be required to provide propane delivery service at the same rate as other customers on the Island to low-income housing, whether it be the housing in Gay Head, whether it be Dukes County Regional Housing. I don't even know what kind of heating they have, but they have housing rental units as well."

Mr. Zeltzer responded, "But then they still have to be able to exercise good business practice, they have to get paid. I mean, if somebody isn't paying them ..." Ms. Greene explained that "these people were paying C.O.D., they were paying for their gas. They just couldn't get anybody to deliver it." Mr. Israel was concerned that if the other propane gas companies were not under the same constraint, the Commission would be "hamstringing the competition before it started."

"It's after 11. We've violated our policy. Let's get it over with," suggested Mr. Jason. "I'm beginning to hear some benefits," said Ms. Sibley, "but I think that almost everything that has been said is something that should have come up in the Public Hearing, because these are issues where other members of the public might have other explanations for what's going on that would then influence our Decision. I'm going to continue to vote against this, and if this Motion fails, I will bring a Motion to reopen the Public Hearing."

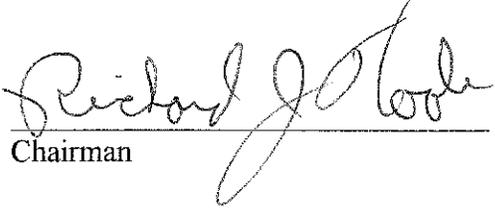
Mr. Toole stated that the Motion was to Approve with the Two Conditions. There was a brief discussion to clarify what the Conditions were. The Motion carried, with 8 ayes, 6 nays and 2 abstentions. The roll call vote went as follows:

AYES: M. Colaneri; M. Donaroma; J. Greene; T. Israel; M. Lazerow; M. Ottens-Sargent; R. Toole; and R. Zeltzer.

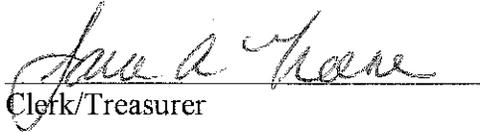
NAYS: J. Best; C. Brown; J. Early; L. Jason, Jr.; L. Sibley; and J. Vercruysse.

ABSTAINING: B. Hall, Jr.; and T. Henson, Jr.

A Motion to Adjourn, duly seconded, was brought at 11:13 p.m. The Meeting was adjourned.

  
Chairman

Aug 19, 1999  
Date

  
Clerk/Treasurer

AUG. 30, 1999  
Date

PRESENT: J. Best; C. Brown; M. Colaneri; M. Donaroma; J. Early; J. Greene; B. Hall, Jr.; T. Israel; L. Jason, Jr.; M. Lazerow; M. Ottens-Sargent; L. Sibley; R. Toole; J. Vercruysse; R. Zeltzer; and T. Henson, Jr.

ABSENT: M. Cini; M. Allen; M. Bolling; and A. Gallagher.

*Summary of Revisions to the  
Meeting Minutes of July 8, 1999  
Proposed by Commission Members  
in the Meeting of July 29, 1999*

[An excerpt follows immediately from the Meeting Minutes of the Special Meeting of July 29, 1999, describing the changes as they were proposed by the Commission members during that Meeting.]

Page	Paragraph	Sentence	Revision
18	2	6	Note that normal bedroom capacity is 70 square feet, not 9 square feet.