

THE MARTHA'S VINEYARD COMMISSION

BOX 1447 • OAK BLUFFS
MASSACHUSETTS 02557
(508) 693-3453
FAX (508) 693-7894

Martha's Vineyard Commission Minutes for the Regular Meeting of February 21, 2002

The Martha's Vineyard Commission (the MVC or the Commission) held its Regular Meeting on Thursday, February 21, 2002, at 7:30 p.m. in the first floor conference room at the Commission Offices in the Olde Stone Building, 33 New York Avenue, Oak Bluffs, Massachusetts. At 7:44 p.m., James R. Vercruysse – Commission Chairman and a member at large from Aquinnah – called the Regular Meeting to order.

[Commission members present at the gavel were: J. Athearn; J. Best; C. Brown; M. Cini; J. Greene; T. Israel; K. Rusczyk; M. Ottens-Sargent; L. Sibley; R. Toole; J. Vercruysse; K. Warner; R. Wey; and A. Woodruff. All of these members remained until the end of the Regular Meeting.]

Discussion: Proper Posting of the Regular Meeting.

Kenneth N. Rusczyk, the Oak Bluffs Selectmen's Appointee, asked for a Point of Order. He related that he had received a number of calls from people wondering if the Commission's Regular Meeting that evening was a fully posted Meeting. At some point it had been declared cancelled, he reported, and had been publicized as such in the local newspaper. *[Mr. Rusczyk was referring to a news item on page 2 of the February 21, 2002 edition of The Martha's Vineyard Times.]*

Mr. Rusczyk continued that it was his understanding that the Chairman had cancelled the Meeting. "I never did, no," responded Chairman Vercruysse. Mr. Rusczyk reiterated his concern about the legitimacy of the Meeting since a local newspaper had reported that the Meeting had been cancelled. "Whether you had to repost it or whatever, I don't know," he said. "I just bring it up to make sure we do everything in a legal manner."

John Best, a Commission member at large from Tisbury, wanted to know whether the cancelled Meeting had been posted in the newspaper – that is, if it had run as a legal advertisement – or if it had just been reported. "No, it was reported," said Mr. Rusczyk.

Martha's Vineyard Commission
Regular Meeting of February 21, 2002: Page 2

"It wasn't something that we put in?" asked Mr. Best. "Pia's quoted in it," noted Chilmark Selectmen's Appointee Jane A. Greene, referring to Staff Secretary Pia Webster.

Ms. Webster explained, "Yes, I was asked to call the newspapers and call the Commission members to tell them that it was cancelled." "By whom?" inquired Ms. Greene. "By Charles Clifford," answered Ms. Webster, referring to Commission Executive Director Charles W. Clifford. "Well, maybe we should hear from Chuck [Clifford]," suggested Ms. Greene.

Mr. Clifford recounted: "There was an issue that came up the other day. I called Jim [Vercruysse] and told him I was having difficulty getting the Decision written and would he want to put it off a week." The Chairman had indicated, continued Mr. Clifford, that he did not have a problem with that, but that Mr. Clifford should check with the rest of the Executive Committee before any decision was made. "I checked with all the people I could get," stated the Executive Director. Thus, he had spoken to (Clerk-Treasurer) Marcia Cini and (PED Committee Chair) Linda Sibley, he said.

"And I think that Jen called Richard," Mr. Clifford went on, referring to DRI Coordinator Jennifer Rand and LUPC Chairman Richard Toole, respectively. "Nobody called me," said Mr. Toole. "Okay," said Mr. Clifford, "I'm just reporting to you what I thought." Mr. Clifford again related that he had talked to Ms. Cini and Ms. Sibley: "Both of them felt that if I needed more time to write it, the Meeting should be postponed. I relayed that to Jim [Vercruysse]."

Mr. Clifford continued: "Last night, he [Mr. Vercruysse] called me and said, 'No, the Meeting is on,' I didn't know that they'd put it in the paper as fast as they did. I may have said, 'Call the papers.' I didn't realize that." Mr. Clifford emphasized that the Meeting had never officially been cancelled.

"Has anyone consulted counsel about this?" asked Ms. Sibley, a member at large from West Tisbury, who went on, "I don't think the Meeting's cancelled unless it's cancelled by the Chairman. He's the only person who's got the legal right to cancel." Megan Ottens-Sargent, the Aquinnah Selectmen's Appointee, suggested that they carry on that evening and, should counsel indicate that the Meeting had not been properly posted, they could deal with that then.

"You know, this is typical of this whole thing, one Meeting after another Meeting after another Meeting," observed Tristan Israel, the Tisbury Selectmen's Appointee. "So why not just, if the people on this board want to proceed tonight, then, let's, I say, why don't we poll the board? If they want to proceed, let's proceed." A number of Commission members murmured agreement, and the Chairman agreed to proceed.

Martha's Vineyard Commission
Regular Meeting of February 21, 2002: Page 3

Discussion: A Request from Oak Bluffs Selectman Michael Dutton.

Chairman Vercruysse said that he had something to address before getting to the vote on the Written Decision for the Down Island Golf Club Remand Plan (DRI #543). "I got a letter from Michael Dutton, Chair of the Selectmen," he explained, "with a request to delay the vote on the Written Decision for several reasons." [See the Full Commission Meeting File of February 21, 2002 (the meeting file) for a copy of said letter.]

The Chairman related that he had been thinking about this for the last couple of days and had spoken to several people about the possibility of postponing the vote. "I'm going to ask my fellow Commissioners to postpone the vote on the Written Decision on Down Island Golf for two reasons," continued the Chairman. "One, to have the knowledge of whether or not the MVC has review power, and to what extent, over 40B Applications, and two, to see if the Town is willing or able to go forward with the Eminent Domain procedure."

Chairman Vercruysse went on, "I feel we have nothing to lose and potentially a great deal to gain. I want to discuss this with everybody." "Excuse me ... Are these *your* comments?" asked Mr. Best. "These are my comments," the Chairman replied.

The Chairman then explained that there were substantive issues that the Applicant might work out with the Town to make the Remand Plan a better proposal. He asked the members to consider the following: If the Town could not proceed with the taking or if the judge ruled that the Commission had little or no power of review over Chapter 40B developments, would the Commission members still feel they had made the right decision?

"At this point I stand by my vote," said Chairman Vercruysse. "But I'd like to keep my ears open. I don't think we have anything to lose. We have a lot to gain. And this would require a request from the Applicant to extend, I assume, our deadline. Our timeline would run out. In a week we're not going to know either one of those factors, the Land Court proceeding, the 40B decision, and I'd like to have a little discussion about that, about what I just said."

"You mentioned working out something with the Town," noted Mr. Best. "Are you talking about to make it a better Application?" he asked. The Chairman answered yes. Mr. Best continued, "I'm not saying that isn't a good idea - I think it is - but I feel that, I've said this about everything that's come before the Commission, if there's a substantive change in it, you've got to reopen the Hearing." "Definitely," agreed Chairman Vercruysse.

Mr. Best had other questions: "Would there be a great deal to be gained by [delaying]? We'd have to rescind our vote, reopen the Hearing. Why would that be much different than voting it down, having them reapply, then opening the Hearing?" "It wouldn't be much different," acknowledged Chairman Vercruysse, adding, "It would *look* different."

Martha's Vineyard Commission
Regular Meeting of February 21, 2002: Page 4

He mentioned the petition being filed in the Town of Oak Bluffs to withdraw from the Commission.

"This is what I was talking about before," declared Mr. Israel. "From day one with this thing, there's been threats, there's been intimidation, there's been – I'm sorry, but I've got to lay out what I feel ... I stand by my vote. I don't feel the 40B thing, I hope it doesn't happen. I hope the Town does an Eminent Domain. That's the Town's, at this point that's the Town's process. I didn't propose the 40B. Nobody here on this board proposed the 40B. The *Applicant* proposed the 40B. People forget that."

Mr. Israel continued, "Number two, there is a process. I understand there are political processes on all sides of this issue that the Town of Oak Bluffs can now seek to undertake ... But at this point, that's an Oak Bluffs process." He suggested that the Commission allow that to play out.

"We have been through four golf course Applications in the past several years," emphasized Mr. Israel, "which have literally taken a lot away from our ability to plan on other issues. The Staff has done a lot of good work, the best they can on other issues, so I'm not being critical of Staff here. I'm just saying as a board, because we've been all-consumed with golf."

Mr. Israel concluded by remarking that no matter which way the Oral Vote had gone, he had planned to accept it. "That's the way it is," he said. "Let's move on to what's next." Chairman Vercruyse expressed the opinion that the Commission would enhance its ability to plan by thinking about the option before them.

"Is there something pertinent to this conversation that we should discuss in terms of the letter from Selectman Dutton?" asked Andrew Woodruff, a Commission member at large from West Tisbury. "I would suggest that you read it," said Ms. Greene. The Chairman read aloud the letter from Mr. Dutton, in which the Selectman strongly urged the Commission to delay its vote on the Written Decision.

Ms. Greene wanted to know if anyone had asked the Applicant if he was willing to waive the time elements related to the Decision. No, answered the Chairman, usually that request came from the Applicant. "I understand that," said Ms. Greene, "but can we hear from the Applicant, who's here in the audience?" "I'd rather not right now," replied Chairman Vercruyse. Ms. Greene remarked, "But if they're not going to be willing, there's no point in going on with this discussion."

Bob Mone, an agent for the Applicant who was in attendance, said: "Just to make it simple, we couldn't possibly answer that question tonight. It's moot."

Ms. Sibley pointed out that there was a key sentence in Mr. Dutton's letter, namely: "My hope is that the Commission could delay its Written Decision until all the relevant legal opinions and relevant court decisions have been rendered." "Well, that's the problem,"

Martha's Vineyard Commission
Regular Meeting of February 21, 2002: Page 5

argued Ms. Sibley, "because in my opinion the 40B issue is not answered until it's been answered by the State's Supreme Judicial Court. I mean, no matter how the judge rules, there's going to be an Appeal, and that could be two years."

Ms. Sibley continued: "So is it, 'Yes, I'll delay my opinion until all of the relevant information comes in'? Except that I don't think, the Applicant's just said that they can't give us a delay for that long."

Ms. Greene pointed out that what Mr. Mone had said was that he did not have the right to do it at that moment. Ms. Sibley noted that even if the Commission delayed for a week, there was the issue of the school district's winter break the following week. "We could still meet," said Ms. Greene.

Roger Wey, the County Commission representative to the Commission as well as an Oak Bluffs Selectman, stated, "I just want to clarify something. Obviously, I'm a member of the Board of Selectmen, and I've not seen the letter and I don't agree with the letter. For the record."

Mr. Best stressed that the Commission had already voted on the Down Island Golf Remand Plan. "In the past, we've always considered the Written Decision as mainly confirmatory, you know, we're saying, 'This is in fact what transpired during the discussion and the vote two weeks ago,'" he said. Chairman Vercruysse agreed that to change the vote on the Remand Plan would require a Reconsideration of the Oral Vote. "Just not voting the Written Decision isn't going to do it," he concurred.

"There has been precedent set in the past in Decisions that have been voted, then have been changed and reversed at the time of the Written Decision," argued Ms. Greene. "Which is a little difficult from extending," stressed Ms. Sibley, who added, "If we had an Applicant before us tonight who said he'd delay indefinitely, you know, give us an indefinite extension, I would be sympathetic to this."

Ms. Sibley elaborated: "But I have to say that twice now the Oak Bluffs Selectmen have stood before this body and suggested that there might be a better plan that we could accept. One was at the final information [session] of the Public Hearing, and the Applicant had an opportunity then, he [could have] asked us to keep the Hearing open. And at this point, I do understand that the Applicant's representatives may have just heard of this for the first time. But that's seems strange to me. I don't see why Mr. Dutton couldn't have contacted them as well as us."

Ms. Sibley concluded: "I just think that it's so much cleaner. We always said they could apply again tomorrow morning, literally, and it's just so much cleaner if we finish this deal. If the Applicant wants to come back to us tomorrow morning, after the court judgment, after the Town Meeting - I'm willing to listen to this all again. And I think that it's really a distortion of our process if at the last minute once again we start juggling."

Martha's Vineyard Commission
Regular Meeting of February 21, 2002: Page 6

Mr. Woodruff said that he concurred with Ms. Sibley, adding that he would not be prepared in 45 days to make a decision based on the outcome of the Town Meeting while still not knowing how the Chapter 40B case would resolve.

"This had been the most emotionally draining thing I think I've ever done in my life," declared Richard J. Toole, a member at large from Oak Bluffs. Mr. Toole elaborated: "To drag this out indefinitely is, I think, just torturing ourselves, torturing the community. I think we need to vote this. I've read the Decision. I think Chuck [Clifford] did a great job, got everything in there that we wanted to say. We voted."

Mr. Toole continued, "This happened last time. The Applicant came in. He said they wanted to meet, they wanted to go into Executive Session with counsel. What happened? Two of us got bumped off. They're going to chip away at us. Either that, or we're going to get sick, we're going to go on vacation – I feel like I'm a hostage here. We can't make plans with our life. Vote the Decision. They can come back tomorrow."

Christina Brown, a Commission member at large from Edgartown, commented that she had a simple reaction: "If the Selectmen had asked us in what appears to be good faith and for good reasons to wait one week, which is all we can do in terms of our procedure and our process, unless we have, and the Executive Director has acceded to, a request for an extension, which we don't have, the Commission has to make a decision by next week."

Ms. Brown continued that if the Selectmen had asked the Commission to wait for one week, she could see no harm in waiting a week, although she acknowledged Mr. Toole's comments about this having happened before, about exhaustion and illness, about not having a full board. Hers was a simple reaction, she repeated. If the Selectmen had asked the Commission to wait a week and if no apparent harm would come out of the delay, they should delay the vote out of deference to the role the Commission played in the Oak Bluffs community, which was not a judicial one, but a planning one.

Ms. Brown added that if the Applicant were to say next week that he would waive the time elements, that would, of course, be a different question.

Ms. Ottens-Sargent said that she thought that Mr. Dutton was asking for 45 days, not just a week. She then declared, "I think it's about trusting the process here." The process in which they were engaged, she continued, was that they were to approve the Written Decision, which was just a reflection of the Oral Vote taken two weeks before. She acknowledged Ms. Greene's remarks about there being precedent. "My guess is, that's not going to happen tonight," she added.

The impression she had gotten from reading Mr. Dutton's letter, Ms. Ottens-Sargent went on, was that after the Applicant worked with the Town, a changed plan would be before

Martha's Vineyard Commission
Regular Meeting of February 21, 2002: Page 7

the Commission anyway. In addition, in carrying out the Eminent Domain process, the Town was going to hear from its citizens how they felt about the issues on the table.

"Also, I want to say that I think, and I've heard counsel tell me this and tell us all, that we do function in a quasi-judicial way," stressed Ms. Ottens-Sargent. "We're not simply here as planners, and when we address regional impacts – not simply impacts to an individual Town – that is our unique role. It *is* judicial to some extent, and that's partly what this Decision reflects."

James Athearn, a Commission member at large from Edgartown, commented, "Personally, I worked hard to come to a decision about my vote, and it was done in light of the fact that there were threats out there, and the vote was taken to make a stand. And I knew the threats were there and that they could hurt us if they came to pass. That decision's been made. So to waffle on that stand and wait to see if those threats are going to be carried through or not is drawing it out."

Mr. Athearn added, "And personally, I can't be here next week. I've made plans. I've been watching this schedule like a hawk all winter and stayed close to the Island, not wanting to miss anything." "I don't think it's about next week necessarily," observed Chairman Vercruysse. Ms. Sibley argued, "But if the Applicant can't grant us an extension tonight, then it *is* about next week, because we'd have to come back and vote it next week if he doesn't give us ... the extension. And we would be doing that without people, who, like Jim, in good faith built ... their lives around that schedule."

Ms. Sibley further remarked that the Commission had been very accommodating toward Edgartown Selectmen's Appointee Michael Donaroma concerning his plans to go off-Island for a few weeks in February. "We made certain that the [Oral] Vote occurred before he left," she said, "and I think that the same courtesy needs to be extended to other people who have made plans based on this schedule."

Mr. Israel pointed out that although Mr. Dutton was the Chairman of the Board of Selectmen, his letter was not on Town of Oak Bluffs stationery but on his own. Moreover, Mr. Dutton's repeated use of the words "I" and "my" led Mr. Israel to believe that this was a personal opinion. "He may have talked to other Selectmen, but, but as far as what I'm reading in this communiqué, this was written by Mr. Dutton, and I guess what I would be interest in [is] did the full board sit down and take a vote on this. And again, it's not written on Town stationery," he concluded.

Kenneth N. Rusczyk, an Oak Bluffs Selectman and his board's Appointee to the Commission, related that he had had several conversations with Mr. Dutton during which they had discussed the merits of what the Town really wanted. "There are multiple issues going on, parallel issues running parallel tracks," he said, "and most of them are, in fact, legal. And we really need to find out what those are, if we can in fact do an Eminent Domain and what is the 40B ruling."

Martha's Vineyard Commission
Regular Meeting of February 21, 2002: Page 8

Mr. Rusczyk then requested that fellow Selectman Todd Rebello, who was present that evening, be allowed to speak. "That's different from a vote of the board," remarked Mr. Israel. Mr. Rusczyk argued, "A *consensus* of the board, if you allow Mr. Rebello to speak, you'll find out what [sic] a consensus, because then you'll have at least a majority of the board that would agree with this letter."

Ms. Greene said, "I feel the board is asking us to hold off for a lot of reasons that could have serious implications for the Town. I think we ought to ask the people sitting here who is going to be here next week, who will be able to come to a Meeting ... I mean, if we can't do it, that answers a lot of questions, we don't need to argue."

"I know this is a very emotional thing, I know people feel very strongly and go back and forth," continued Ms. Greene, "but if it's going to keep us out of court and a few other things, it makes a lot of sense." A show of hands, plus information provided by Commissioners about absent members, indicated that Messrs. Athearn, Vercruysse, and Donaroma as well as Ms. Sibley would not be able to attend a Meeting the following week.

"Can we move the question?" suggested Mr. Toole. "There's not a Motion," said Ms. Greene. "Then I make a **Motion That We Vote About Postponement**," said Mr. Toole. Ms. Greene pointed out that the Applicant's agent was at that moment placing a telephone call. Mr. Toole's Motion was seconded.

"I don't know," said Marcia Mulford Cini, a Commission member at large from Tisbury, "I see it the way Christina [Brown] sees it. If there's even the slightest opportunity to preserve some good will and regional unity, and it's not going to consume Staff time, and it's really not going to, it's not going to bother us any because it's going to be operating somewhere else, and if we can see our way clear to make just a short-term agreement on that, I don't see what's so hard about it. Maybe that's too simple an approach."

Ms. Sibley expressed the opinion that whether or not the Commission voted on the Written Decision did not necessarily affect what would be going on in the Town. "The Town has to make its decisions, we have to make our decisions," she said. "As Jim [Vercruysse] has suggested, there's an implication that the Martha's Vineyard Commission might change its mind, for example, if we learned that we did not have any real formal review power over a 40B Application, and we won't know that for a couple, two years probably ... and there's a suggestion that we'd make a different Decision if we delay. If that isn't the case, then there is no benefit in the delay."

Ms. Brown reiterated her argument that given that the Selectmen had asked the Commission to delay, it would be an act of good faith to grant them that. She added that although she had voted against the Motion to Deny the Application, she would abide by the procedures and the precedent of the Commission and vote the Written Decision solely on the question of whether it reflected the Oral Vote.

Martha's Vineyard Commission
Regular Meeting of February 21, 2002: Page 9

Ms. Brown remarked, "Now there is a fine point in our regulations and our law about which vote is the legal vote, but we have always said to each other that, except in unusual cases, the vote on the Written Decision is an affirmation that it is the correct reflection of the Oral Vote."

Kate Warner, the West Tisbury Selectmen's Appointee, commented, "I think the thing about Michael Dutton's letter that moves me isn't so much the 40B issue as the Eminent Domain issue, because I think that nobody around this table would like to see the 40B go into effect."

Ms. Warner explained, "Even if the Commission had jurisdiction over it, [the 40B] would still result in a significant number of houses on that property, anywhere from 91 to 366. And none of us would be happy with anything other than a small, clustered bunch of houses and a large open space. So really what the issue is, Could the Eminent Domain happen?"

If the Eminent Domain process was not an option, Ms. Warner continued, the next level would be, Can we make this golf course better? "And we'd come to some sort of compromise plan," she said, adding, "I can understand that the Applicant would be loathe to go into a long, extended Hearing process again. But I guess what I'm trying to say is, it would be nice to get some sort of a feeling about the Eminent Domain aspect, and if that's not at all possible, it would be nice to act as a planning agency and do the best we can with what's a really lousy situation. And it does require two years for the 40B, because the 40B would be as bad, no matter what."

Mr. Wey stressed that Mr. Dutton's letter reflected the opinion of a majority of the Board of Selectmen and not of the entire board.

Mr. Woodruff wondered how all of this was relevant if the Commission were to wait. For him personally, the plan would have to be changed significantly for him even to consider approving it, and for that to happen, the Applicant had to come in with a new Application. "No, if we extend, they could come in with a revised plan," said Ms. Greene, adding, "We'd have to reopen the Hearing." "So I don't really understand ... what the difference is," said Mr. Woodruff. "Probably a few lawsuits," responded Ms. Greene.

Mr. Israel reminded the Commissioners that the Applicant had testified that an Approval of the Remand Plan would not preclude him from doing the Chapter 40B development anyway. Moreover, a delay would set "a terrible precedent," he said.

Mr. Israel continued: "The Town of Oak Bluffs belongs to the Martha's Vineyard Commission. This Application came before us with the parameters that you belong to the Commission, you subscribe to Chapter 831 and those parameters in Chapter 831 which triggered the checklist, which put this before us as a regional body. We have made a regional Decision. We've listened to the officials, we've listened to everything... and we

Martha's Vineyard Commission
Regular Meeting of February 21, 2002: Page 10

made a Decision. We put this off, we're ... doing serious damage to our ability to make Decisions." "I would disagree," said Chairman Vercruysse.

Mr. Toole remarked, "There seems to be a movement afoot lately that if you don't like the process, you don't like the results, then you try to change it. I mean, the process has taken place. We laboriously went through the process. This is just another attempt to circumvent the Decision that we came to, to erode away, to do something, to come up with something."

Mr. Toole went on: "I understand all the questions out there. Where were all these questions when we went through the process? The questions, hopefully, will someday be answered. But I think we made a Decision. I think we should vote it, put an end to this process and start another process. It's just dragging this out."

Ms. Greene reminded everyone that the person who had suggested the delay (Chairman Vercruysse) at the request of the Board of Selectmen had voted to deny the Application. Secondly, she said, they needed to consider that the Town of Oak Bluffs paid a huge amount of money to the Commission, and that when a majority of the Town's Selectmen made a request, she thought it was appropriate at least to give them a week to try to "get their ducks in line." "It's not going to change the Oral Vote unless somebody who voted in favor [of Denial] chooses to step up to the plate and ask us to reconsider," Ms. Greene concluded.

"'Unless' is a big word," observed Mr. Toole. "A lot of things can happen. We know that two people aren't going to be here next week," he said. Ms. Greene responded, "We also know that some of the people that were in favor of the golf course won't be here as well." She then urged the members to look at "the big regional picture."

The discussion continued. Ms. Greene spoke of the threat of 366 units and the possibility of "15-story high-rises" if the Chapter 40B Application were to go through. Ms. Sibley cautioned that the Chapter 40B issue was one that would affect all the Towns, not just Oak Bluffs and so she could not allow herself to be intimidated into making a bad decision and voting for a bad land use because someone had envisioned a even worse land use. She again posed the question of why Mr. Dutton had not approached the Applicant in the last two weeks.

Ms. Greene said, "The bottom line is, if in this next week they can sort out a lot of stuff within the Town's issues, legal issues, it may be that we would be back at the drawing board - maybe we wouldn't be, we don't know yet, but it might be that in this particular case the court case could be dropped on the 40B and that would carry our control on."

Chairman Vercruysse made a final observation: "Allowing the Town to consider Eminent Domain is essentially going to give us a vote from the Town as to what they feel about this property, which I've been longing for." Ms. Sibley pointed out that in any event the

Martha's Vineyard Commission
Regular Meeting of February 21, 2002: Page 11

Applicant could return with a revised plan. Mr. Woodruff urged the members to take a vote on this question and then move on.

The Chairman called for a short break. The time was 8:26 p.m. At 8:32 p.m. the Chairman ended the recess.

Executive Director Clifford noted that there was a Motion on the floor: **That The Commission Should Delay The Vote On The Written Decision For The Down Island Golf Club Remand Plan.**

Mr. Rusczyk wished to make clear before the vote that he had spoken to Mr. Rebello during the break and that Mr. Rebello had told him that he as well as Town Counsel Ron Rappaport had had a hand in drafting Mr. Dutton's letter. "And he would like to speak to the board, if possible, to the Commission, to fill in some blanks," said Mr. Rusczyk. Ms. Greene encouraged the Chairman to allow Mr. Rebello to speak.

With the Chairman's permission, Mr. Rebello rose and began to speak: "Well, I did work on this, and Ron Rappaport did work with Michael [Dutton], we did talk by phone, including pretty much Kenny [Rusczyk] and even Richard [Combra, Oak Bluffs Selectman] while on vacation, and we agreed there were too many unanswered questions. Yes, we're asking for a delay, and we're hoping the Applicant, we didn't feel it was appropriate to contact the Applicant without coming to you first."

Mr. Rebello continued, "What we're looking for, what we're trying to offer, is good faith. We think that needs to be done under the circumstances that the Commission plays such an important role. I mean, how can I fight – Mr. [Theophilus] Nix here has turned in a Petition about withdrawal from the Commission – how can I a month from now, five weeks from now, March 29, whenever that Article appears on our Town Warrant, stand up there and fight for the need for the Martha's Vineyard Commission?"

Mr. Rebello went on, "If you're not going to fight for *our* role, for what the Town of Oak Bluffs needs – this is a very, very important issue for the Town, and it would be irresponsible, I believe, not to, and I'm hoping the Applicant agrees, to have some 45-, 60-day delay until we can get some questions answered, we can find out what the effect a 40B's going to have and what your role's going to be. We can get a determination, and I will say the early indications are not very favorable on the opinion that we're going to get Eminent Domain."

Mr. Rebello explained that the Applicant needed a couple of days to get back to the Commission with his answer on whether he would grant the 60-day extension. In that time, the Town and the Commission would perhaps not get an answer on the Chapter 40B question, although it was his hope that they would. However, he said, there was a good chance that the Town would have an opinion from Counsel by the following week on the Eminent Domain question.

Martha's Vineyard Commission
Regular Meeting of February 21, 2002: Page 12

Mr. Rebello emphasized that his board was trying to have a working relationship with the Commission. "It's not going to hurt the Commission to put this on the back burner so that we can get all our eggs in order," he remarked, adding, "It's not a delay. It's just good faith." Mr. Rebello spoke for some minutes longer, stressing the point that his Town would be in jeopardy if the Eminent Domain taking were not possible and the Commission was not deemed to have review power over Chapter 40B Applications.

Mr. Woodruff expressed the concern that in waiting for one week, "the cards are going to get shuffled." In addition, he agreed with Ms. Sibley that the Commission had made "an extraordinary effort to accommodate everyone through this process." Finally, he raised the possibility that "the whole outcome of this vote could be changed." He turned to Mr. Clifford and asked if this was so.

"Voting on the Written Decision, Andy, means that you are simply reaffirming that your Oral Vote has been cast in words on paper correctly," replied Mr. Clifford. "It cannot change it." But could somebody reopen the proceedings? wondered Mr. Woodruff. Mr. Clifford answered, "If you were to vote down the Written Decision, you'd still have a No Vote on the table. You would have to get a Vote to Reconsider that No Vote. It has to be somebody who voted to Deny. There are too many steps involved, that just one Vote on the Written Decision can't overturn it."

Mr. Toole pointed that before the Written Decision Vote on the original Down Island Application, the Applicant had requested a delay and the Commission had ended up "dragging it out."

Mr. Toole went on, "The upshot was, I walked in here, Jim [Vercruysse] walked in here, we were immediately told that we were in conflict, we couldn't vote. As it turned out, we weren't in conflict. Now fortunately, somebody else changed their vote and the Decision still went down. But that's what happened when we waited two weeks." "On that principle, I cannot consider this," said Mr. Woodruff.

Ms. Greene tried to confirm with Mr. Clifford that all that was required for the Commission to meet the following Thursday (February 28) was a quorum. Then she asked, "And the vote is just to reaffirm what was stated, so even if some of the parties aren't here, as long as we have a quorum and we're affirming the vote – unless the Applicant asks for an extension – and we're affirming the verbal Decision? Anybody that changed their vote would be not voting to agree with what we had said previously."

Ms. Greene added that although she did not like the Oral Decision, she would have to vote that the Written Decision was right. Ms. Brown nodded and murmured agreement.

Mr. Clifford explained that a quorum was necessary for any public meeting and that with a quorum present the Commission could conduct a Vote as business. "And it is nothing more than a reaffirmation of the Oral Vote in written form," he added.

Martha's Vineyard Commission
Regular Meeting of February 21, 2002: Page 13

Chairman Vercruysse wanted to know what would happen if the Written Decision was not approved on February 28. "Well, you've got yourself in a bind, then," answered Mr. Clifford. "You'd have to stay until two o'clock in the morning to get it done." He recounted a case in 1983 where that had occurred.

Mr. Israel said that he was not really clear about what waiting a week would achieve. There was no way of knowing what the judge would decide in the Chapter 40B case, he remarked, and in any event that decision was not part of the Application before them, which was for a golf course. He also objected to what he characterized as the vagueness of the timeline given in Mr. Dutton's letter.

Ms. Sibley stated that although she had a great deal of faith in Ms. Brown and Ms. Greene, when this situation had arisen during the first Application process, the Applicant had found what he, the Applicant, alleged was a procedural defect, which required the Commission to revoke the Oral Decision and which later turned out not to be the case.

Mr. Israel pointed out that if the Commission approved the Written Decision that evening, that would not preclude the other things, like the Eminent Domain taking, from happening. "And they can come back to us next week with a new Application," he said.

The Chairman then conducted a hand vote on the **Motion That The Commission Should Delay The Vote On The Written Decision For The Down Island Golf Club Remand Plan**. The results were as follows:

AYES: C. Brown; M. Cini; J. Greene; K. Rusczyk; and J. Vercruysse.

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

ABSTAINING: K. Warner.

The time was 8:58 p.m.

Discussion/Vote: Down Island Golf Club Remand Plan Written Decision.

Ms. Sibley made a **Motion To Move To Item Six, Possible Vote: Down Island Golf Club Remand Plan Written Decision**. [See the meeting file for a copy.] Said Motion was seconded and carried by voice vote.

Responding to a query from Ms. Sibley, Mr. Clifford suggested that the members make any changes to the Written Decision first, then make a Motion To Approve The Written Decision As Amended. The members spent a few minutes reading the Written Decision.

Regarding paragraph 10 on page 11 [beginning with the sentence "The Commission believes that the introduction ..."], as well as paragraph 11 on page 13 ["The

Martha's Vineyard Commission
Regular Meeting of February 21, 2002: Page 14

Commission has continued to maintain a concern for the impact...], Ms. Sibley pointed out that there was language about pesticides, herbicides and fertilizers.

Having just spoken to Water Resources Planner William Wilcox, Ms. Sibley said, she had learned that there was some question as to whether the Applicant had even proposed the use of herbicides. In any event, Mr. Wilcox had indicated that the category of herbicide was subsumed under the term "pesticides."

"So it would be safer if we eliminated the word 'herbicides,' so we don't imply that they proposed something that maybe they haven't," Ms. Sibley concluded. No Commission members objected verbally to the suggested deletion.

Ms. Sibley also believed that the Written Decision did not adequately convey the idea that the difficulty of nitrogen-loading remediation and monitoring was one of the reasons for the Denial. Ms. Warner referred her to the fifth paragraph on page 6. "That covers it," commented Ms. Greene. "No, I really mean that we're not, that the whole monitoring and remediation program seemed iffy," said Ms. Sibley.

Mr. Israel recalled that part of his argument for the Denial was that the monitoring program was overly complex. "That's what I've driving at," agreed Ms. Sibley, "overly complex, not reliable enough because of its complexity."

After further discussion, paragraph 11 on page 13 was amended to read as follows:

"The Commission has continued to maintain a concern for the impact of the introduction of large quantities of pesticides and fertilizers to an area that feeds into the coastal waters of Lagoon Pond and Sengekontacket Pond. Each of these ponds are significant shellfish habitats and breeding grounds, and the Commission has not been persuaded that the mitigative measures proposed by the Applicant will, in fact, protect these important resources to the fullest extent possible, particularly in view of the complexity of monitoring and enforcement."

Mr. Israel turned to paragraph 6 on page 7 ["The Commission does recognize the potential benefits offered by the Applicant..."], where he suggested that the wording be changed to the following: "The Commission does recognize the potential benefits of remuneration to various Island entities in and out of the Town of Oak Bluffs, but the offers have little or no mitigative measurement with respect to the proposal."

Discussion ensued. At Ms. Greene's suggestion, the word "remuneration" was changed to "contributions," and the phrase "in and out of the Town of Oak Bluffs" was eliminated. Then the words "of contributions" were deleted. The word "offered" was

Martha's Vineyard Commission
Regular Meeting of February 21, 2002: Page 15

inserted just before "to various Island entities." This was changed to having the phrase "offered by the Applicant" just after "to various Island entities."

Mr. Athearn thought that the word "contributions" should be reinserted, since he considered the word "benefits" too broad. "But there were many broad things that they were doing," said Ms. Greene, "and they weren't all straight contributions." After more discussion, the words "of contributions" were put back in.

Ms. Sibley wondered why the words "little or" were necessary, since it was her opinion that the proposed benefits had no mitigative measurement with respect to the proposal. This was discussed, and the words "little or" were left in.

Ms. Ottens-Sargent suggested that the phrase "to the Town of Oak Bluffs and other members of the Island community" replace "to various Island entities." Ms. Greene recommended "to the Town of Oak Bluffs and other Island entities." In addition, she did not think the words "of contributions" were necessary. "[O]f contributions" was again deleted.

The final wording agreed upon was as follows:

"The Commission does recognize the potential benefits offered by the Applicant to the Town of Oak Bluffs and other Island entities; however, the offers have little or no mitigative measurement with respect to the proposal."

Next, the Commission members turned to the next-to-the-last paragraph on page 9 ["The Commission has carefully considered this matter and has not been persuaded that there will be less of an impact on municipal services..."]. Ms. Sibley wished to change "less of an impact" to "less of a negative fiscal impact." After some discussion, this was agreed to.

The members then looked at the last paragraph on page 9 ["The Commission has very carefully considered the materials submitted for the record with respect to the comparison of a standard subdivision ..."]. Ms. Sibley wished to add to the first sentence the words "negative fiscal" as she had in the preceding paragraph and to add to the end of the sentence the phrase "consisting significantly of seasonal homes."

Ms. Greene pointed out that they did not know that these would mostly be seasonal homes. Ms. Warner characterized the entire paragraph as "muddy." More suggestions were offered and rejected.

Ms. Ottens-Sargent asked Mr. Clifford to comment. The Executive Director related that he had had difficulty composing this paragraph and that he would be amenable to deleting or amending it.

Martha's Vineyard Commission
Regular Meeting of February 21, 2002: Page 16

After still more discussion, the entire paragraph was deleted and was replaced by the following:

“The Commission remains of the opinion that a recreational facility similar to that which has been proposed will generally generate less revenue in taxes, given that the site will be under a conservation restriction, such land being taxed at a reduced rate, the reduction being dependent upon the practices of each individual community.”

Ms. Warner directed the members' attention to the second paragraph on page 9 [“To the contrary, the Commission has considered the impacts of providing dormitory housing ...”]. Ms. Warner said that she thought the paragraph should be struck, and Ms. Greene expressed agreement with this, as did Ms. Sibley and Ms. Brown. The paragraph was struck.

Ms. Ottens-Sargent referred the members to the end of the last paragraph on page 6 [“Additionally, the concentrated discharge of nitrates from one single, large source...”]. She thought, she said, that Sengekontacket Pond should be mentioned in addition to the upper reaches of Lagoon Pond.

Mr. Clifford explained that he had not included Sengekontacket Pond because in the Land Use Planning Committee discussion as well as during the deliberations preceding the Oral Vote, the major concern expressed had been the impact on the Upper Lagoon and particularly on the shellfish hatchery.

After some discussion, which included Ms. Greene's pointing out that the issues surrounding impacts on Sengekontacket Pond were covered later in the document, it was agreed to leave the last paragraph on page 6 as it was.

Mr. Israel made a Motion That The Commission Approve The Written Decision As Amended. Ms. Brown said she would be more comfortable if the Motion included mention that the vote signified that the Written Decision reflected the Commission's Oral Vote. Mr. Israel accepted said Amendment. Thus, the Motion became **That The Commission Approve The Written Decision As Amended And As Reflecting Accurately The Commission's Oral Vote**. Ms. Brown provided a second.

Mr. Clifford conducted a roll call vote on Mr. Israel's Motion. The results were as follows:

AYES: J. Athearn; J. Best; C. Brown; M. Cini; J. Greene; T. Israel;
 M. Ottens-Sargent; L. Sibley; R. Toole; J. Vercruysse;
 K. Warner; and A. Woodruff.

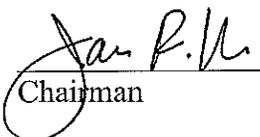
NAYS: None.

*Martha's Vineyard Commission
Regular Meeting of February 21, 2002: Page 17*

ABSTAINING: K. Rusczyk.

(Mr. Wey was ineligible to vote on the Motion.)

Ms. Greene made a Motion to Adjourn, duly seconded. The Regular Meeting adjourned at 9:24 p.m.



Chairman

April 24, 2002
Date



Clerk-Treasurer

May 23, 2002
Date

PRESENT: J. Athearn; J. Best; C. Brown; M. Cini; J. Greene; T. Israel; K. Rusczyk;
M. Ottens-Sargent; L. Sibley; R. Toole; J. Vercruysse; K. Warner;
R. Wey; and A. Woodruff.

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

[These Minutes were prepared by Staff Secretary Pia Webster, who used her shorthand notes as well as a taping recording of the Regular Meeting.]