

THE MARTHA'S VINEYARD COMMISSION

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

The Martha's Vineyard Commission (the MVC or the Commission) held its Regular Meeting on Thursday, March 21, 2002, at 7:30 p.m. in the conference room at the Commission Offices in the Olde Stone Building, 33 New York Avenue, Oak Bluffs, Massachusetts. At 7:35 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; C. Brown; M. Donaroma; J. Greene; T. Israel; M. Ottens-Sargent; K. Rusczyk; L. Sibley; J. Vercruysse; R. Wey; A. Woodruff; and R. Zeltzer. Ms. Cini arrived at 7:36 p.m., and Mr. Best arrived at 7:39 p.m.]

The Chairman handed the gavel over to Christina Brown, a Commission member at large from Edgartown, Acting Chair of the Land Use Planning Center (in the absence of Richard Toole), and the Hearing Officer that evening.

Public Hearing: Martha's Vineyard Arena Modification (DRI #49M).

Ms. Brown read into the record the Notice of Public Hearing for the Martha's Vineyard Arena Modification in the Town of Oak Bluffs (DRI #49M). *[See the Full Commission Meeting File of March 21, 2002 (the meeting file) for a copy of said notice.]* Ms. Brown then explained the Hearing procedure that would be followed that evening.

Applicant's Presentation.

Richard Barbini of Schofield, Barbini & Hoehn, representing the Applicant, introduced himself and explained that the Martha's Vineyard Arena was a 501(c)(3) nonprofit charitable organization. With him that evening, he said, was **Brion McGroarty, president of the organization**. "Our sole mission in life is to freeze water," he joked. "Once it's frozen, we then lease it and rent it to anybody that wants to have some sort of skating activity on it. That's all we do." Mr. Barbini then enumerated

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the various school and community groups that used the arena facilities. "We run on what we rent the ice for, as well as donations," he added.

Next, Mr. Barbini related that there was two things about the arena that were "way below standard": the public restroom facilities and the locker rooms. Thus, the Applicant was proposing to attach to the side of the arena an addition of 4,400 square feet (20 feet wide by 220 feet long, along the length of the existing building). He used a site plan to show where the addition would be built. Said area, he noted, would contain four locker rooms, shower facilities, bathroom facilities for the locker rooms and new public restroom facilities for both sexes.

Mr. Barbini described the existing lot, which was a little over 3 acres, and how in order to accommodate the addition, the Applicant would be swapping with the Town of Oak Bluffs Resident Homesite Committee a sliver of land that ran along the side of the existing structure for an equal sliver behind the rink. The swap had been approved by said committee, he noted, and would appear as an Article on the Annual Town Meeting Warrant in April. "We have the Selectmen's blessings, and we anticipate absolutely no issue to the Town allowing us to swap this piece of land," he stated.

Mr. Barbini explained that because of the swap the Applicant would be able to put a 20-foot-wide addition onto the side of the building, while keeping the setbacks exactly as they were currently. He then pointed to a three-dimensional rendering of the present arena and the addition, showing how the roof line of the present structure would be extended down and the addition put underneath it. Said walls would be block or metal, he said, whichever would be the more cost-effective. "But you will not see anything from the road," he stressed, "because between this addition and the road are where the cooling towers are now."

Noting that the Applicant hoped to carry out the project as soon as the money to do it was available, Mr. Barbini explained that they also needed to upgrade the septic system. "We will be putting in an advanced-treatment septic system behind the arena and existing parking lot," he related. He then invited Mr. McGroarty to speak.

Mr. McGroarty introduced himself and emphasized that the arena served "many hundreds of children here on the Island with a very wholesome activity for them to do." They also served around 100 adults who used the facility, he added. He thanked the Land Use Planning Committee (LUPC) for their recommendation that the Application fee be waived. He concluded by joking, "We've actually just recently unearthed some anthropological evidence on the site that we're actually a, it seems that we're a core habitat for high school hockey champions."

Mr. Barbini finished up by informing the members that during the winter months the Youth Hockey teams sponsored a number of tournaments, "which brings a lot of people to this Island on weekends that I know that book the hotels, use the restaurants. So it does bring a major financial impact in the winter."

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Staff Report.

Jennifer Rand, the Commission's DRI Coordinator, reported that she had the letter from the Resident Homesite Committee referred to earlier by Mr. Barbini. She also confirmed that the land swap article was on the Town Meeting Warrant. There would be no changes to the parking plan and the lighting plan, and the Staff had no issues with what the Applicant planned for the septic system, she added.

Responding to a question from Ms. Brown, Ms. Rand explained that the Applicant had two alternatives for the new septic system and had not decided yet which to use. "But Staff is comfortable that it would be over-designed because of Title V standards for what they need," she said, "so Staff has no concerns about that."

Questions and Comments from Commission Members.

Addressing a question from Jane A. Greene, the Chilmark Selectmen's Appointee, Mr. Barbini explained that they were looking at the BioClear, FAST and Amphidrome advanced septic systems. James Athearn, a Commission member at large from Edgartown, asked for further details about the alternative systems. "They're biological treatment processes that reduce the nitrogen, one," responded Mr. Barbini. "They also reduce the other waste products and make the waste stream going into the water much cleaner than the standard septic system. They all do basically the same thing, just different types of processes."

Noting that it was 60 feet to the western boundary, Tisbury member at large John Best wanted to know if the parking was only partly on the site plan displayed before them and partly on the adjoining lot. "Yes," answered Mr. Barbini, "the parking lot on the left is on a leased lot." Responding to another question from Mr. Best, Mr. Barbini said that the main parking area in the front was on the arena's lot.

Megan Ottens-Sargent, the Aquinnah Selectmen's Appointee, asked for some information on the third system Mr. Barbini had mentioned, the Amphidrome. "That's a trade name," replied Mr. Barbini, "and it's basically the same thing. It's just built a little different, and it's buried below ground so you don't have anything above surface, so you can drive over it. And it's getting very high marks as far as treatment abilities." He added that the first one of the Island would be installed in the very near future. "So we're going to investigate that one, also," he said.

Marcia Mulford Cini – a Commission member at large from Tisbury – inquired if the Applicant would need any local zoning relief. "At this point in time," responded Mr. Barbini, "we've gotten a preliminary indication that since we're not going any closer to the property line, as already existing, that we may not have to go to the Zoning Board of Appeals. But we have not investigated that to the full extent."

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When Ms. Cini started to comment, Mr. Barbini interrupted and stated, "I'm going to say we have to go to the Zoning Board of Appeals because it's a pre-existing, nonconforming use, too. So I think that we're going to the Zoning Board of Appeals for a Special Permit and then just the Board of Health." "That's what I thought," said Ms. Cini.

After more talk about the championship boys' team and the up-and-coming girls' team, Mr. Barbini mentioned that the arena was "well used. If you go up there on a weekend, you won't believe it." West Tisbury Commission member at large Linda Sibley wondered if the facility was open year-round. Mr. McGroarty answered that the arena was closed half of April, all of May and June, and half of July. "So we're a nine-month facility," he said. Mr. Barbini explained that in July the arena hosted hockey and figure-skating camps.

Ms. Sibley also wanted to know if the facility had been insulated. Mr. Barbini replied, "We started off with no roof and no sides, then it went half sides and then we closed it in a few years ago and insulated it all and put dehumidification in and everything else." He added that there was public skating time at the arena as well.

Mr. Athearn asked if the seasonality of the activity would affect the use of the biological wastewater treatment systems. "It will affect it," explained Mr. Barbini. "There's a start-up period on all these biological processes. There's two ways you do that. You either force-feed it in the off-season, and by force-feeding it, I mean you add carbon to it ... There's a lot of ways to do that. Or since this starts up slow in the summer, before we get our peak season, there's enough time to acclimate it. So we're not going to have an issue, I don't think. But seasonality does have an effect. Not as much as house seasonality, because it's not closed that long."

Ms. Ottens-Sargent inquired whether there were prospects in the future for a more energy-efficient cooling system. "Only if we get a windfall, a major windfall," replied Mr. Barbini. Ms. Ottens-Sargent mentioned that the school system and its gym classes also used the arena. Mr. McGroarty pointed out that they had just appointed an Energy Study Committee. "There are some technologies that the price is coming down low enough that I think we can get there," he said, "but we're getting to the point where we should at least be looking at it. That's where we stand."

"Do you know what our last year's bill was?" wondered Mr. Barbini. "Yeah, we spend about \$80,000 a year on electricity," responded Mr. McGroarty. Mr. Barbini stressed that there was no way that the organization could get a discounted rate on electricity.

If they were able to afford the energy changes, asked Ms. Sibley, would that save the facility a lot of money in the long run? Or was it altruistic? "No, it's not altruistic," said Mr. McGroarty. "We struggle for money, and if it's something we can do that will help us save, use less electricity and save money, you know, as much as we struggle financially, that'll be the one that tips the scales."

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The Hearing Officer asked for testimony from members of Town Boards; none was forthcoming. She then asked for testimony from members of the public.

Testimony from Members of the Public.

Theophilus Nix of Oak Bluffs had a question: "I wanted to know if the Applicant was going to ship the extra ice over to Cape Cod."

There being no other comments or testimony, Ms. Brown closed the Public Hearing at 7:55 p.m.

Special Land Use Planning Committee Session.

Chilmark Commission member at large Robert Zeltzer made a **Motion To Suspend The Special Meeting And To Move Into A Special Session Of The Land Use Planning Committee**, seconded by Ms. Greene. By Voice Vote, said Motion carried unanimously.

Ms. Brown, as Acting Chair of the LUPC, explained the committee's procedure. Ms. Greene made a **Recommendation That The Commission Approve The Arena Project As Presented**, seconded by Kenneth N. Rusczyk, the Oak Bluffs Selectmen's Appointee. Ms. Brown asked the committee if it wanted to recommend any conditions.

Ms. Cini wondered if the Land Use Planning Committee was the proper body to waive the Application fee that Mr. McGroarty had referred to. "That's a recommendation to the Commission," answered Ms. Greene. "Thank you for reminding us of that," said Ms. Brown.

Ms. Sibley observed, "It seems to be a project with no detriments. I mean, of course the benefits outweigh the detriments. I mean, there are benefits, there are no detriments. There is no extra traffic. There was a joke at LUPC at one point that the only real difference is that the traffic will smell better."

Ms. Greene amended her **Motion: That The LUPC Recommended That The Commission Approve The Arena Project As Presented And Furthermore That It Recommended That The Application Fees Be Waived**. Mr. Rusczyk amended his second. Said Motion carried unanimously.

Ms. Greene made a **Motion To Adjourn The Land Use Planning Committee Session**, duly seconded by Roger Wey, the County Commission representative. By Voice Vote, said Motion carried unanimously by Voice Vote.

Discussion/Oral Vote: Martha's Vineyard Arena Modification (DRI #49M).

Chairman Vercruysse took the gavel. Ms. Brown provided a brief report on the LUPC session that had just transpired. Ms. Greene made a **Motion To Move To Item Six:**

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Possible Vote – Martha's Vineyard Arena Modification (DRI #49M), duly seconded by Ms. Brown. Said Motion carried unanimously by Voice Vote.

Ms. Greene then made a **Motion That The Commission Approve The Modification To The Martha's Vineyard Arena And Furthermore That the Commission Waive The Application Fee**, duly seconded by Ms. Sibley.

Acting Principal Planner William G. Veno then conducted a Roll Call Vote on said Motion, with the results as follows:

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

NAYS: None.

ABSTAINING: None.

Messrs. Barbini and McGroarty thanked the Commission. The time was 8:00 p.m.

Re-Adoption of Down Island Golf Club Remand Plan Written Decision (DRI #543).

Chairman Vercruysse read into record a Public Notice drawn up by Commission Counsel regarding the Ratification and Re-Adoption of the Written Decision for the Down Island Golf Club Remand Plan (DRI #543). *[See the meeting file for a copy of said notice.]* The Chairman explained that this was a response to the Assistant District Attorney's request for a re-vote of said Decision because of allegations regarding the validity of the Full Commission Meeting of February 21, 2002, when the Written Decision was originally voted.

Chairman Vercruysse emphasized that this was not a Public Hearing and that he would not recognize members of the public. In addition, he requested that the Commission members restrict their questions to a clarification of the matter at hand. "That was written by Counsel?" inquired Ms. Sibley. "This was written with the aid of Counsel," replied the Chairman, adding, "He recommended that we take this step."

"And what was the language?" asked Ms. Sibley. "Ratify and re-adopt the Written Decision," answered the Chairman. "So moved," said Ms. Sibley, referring to the Motion on the other side of the Public Notice, which read: **That The Commission Does Hereby Ratify And Re-Adopt The Written Decision Of February Twenty-First, Two Thousand Two On The Down Island Golf Course DRI Application As Accurately Reflecting The Oral Vote Of The Commission On February Seventh, Two Thousand Two.** Said Motion was seconded by Mr. Israel.

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Referring to the Assistant District Attorney's letter dated March 15, 2002, which contained the D.A.'s request, Ms. Brown pointed out that the letter read as follows: "Wherefore, the District Attorney's Office recommends that the Martha's Vineyard Commission re-hold the meeting in accordance with the provisions of Massachusetts General Laws Chapter 39, Section 23B." [See the meeting file for a copy of said letter.] She emphasized that the Assistant D.A. had written that it was the longstanding position of the District Attorney's Office that the Open Meeting Law must be construed liberally in favor of openness.

Ms. Brown continued that the Public Notice referred simply to a Ratification and Re-Adoption of the Written Decision and not a re-holding of the Full Commission Meeting of February 21, 2002. This, she remarked, was contrary to the Assistant D.A.'s request. "The District Attorney recommended that we re-hold the Meeting," she said. "There were other things at that Meeting. Are we going to re-hold the Meeting?"

The Chairman replied, "Advice from our Counsel was that this is what we need to do, is ratify and re-adopt the Written Decision, which was, if everyone remembers, a unanimous vote with one abstention. And that's what we're going to do." **Irene M. Fyler, the Commission's Acting Executive Director**, explained, "I spoke with the District Attorney and I asked about him about that specific statement, 're-hold the meeting.' He said what he meant was to re-vote the question. I asked him specifically about that wording, 're-hold the meeting,' and what it meant." "We've got to re-vote the Written Decision," said Mr. Wey.

"I understand we want to re-vote," said Ms. Brown, "but my question is, there were other votes at that Meeting, and if the District Attorney says in the most liberal interpretation of the Open Meeting Law we shouldn't hesitate, as he suggests, to re-do it, wouldn't it logically make sense that we re-do the other votes?" Chairman Vercruysse reiterated that the Re-Vote was the advice of Counsel, noting that he had had several consultations on this matter. "He feels that this is what we should do," he said.

Ms. Greene remarked, "Jim [Vercruysse], I think the question at that particular Meeting was the fact that the newspaper published that we would not be voting on the Written Decision that night. It did not say that we wouldn't be holding a Meeting, so I don't think there's any issue about the Meeting. It's just that one vote." "I'd like to clarify that for the record," responded Ms. Brown, who added, "I don't remember it that way." "That's what it said," stressed Ms. Greene.

"The question appears to have been raised with regard to this particular vote," stated Ms. Sibley. "If anyone want to raise a question with regard to some other vote, then let them do so. But we spoke to Counsel yesterday. This is what he recommended that we do, and I think we should be pretty careful to follow the advice of our Counsel."

Several members of the audience became audibly disruptive throughout the discussion. The Chairman continued to ask for order.

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Michael Donaroma, the Edgartown Selectmen's Appointee, posed this question: "Are there any members here that voted in favor of the Denial that would like to air or discuss or reconsider, to reconsider their vote?" There was silence. Mr. Donaroma went on, "If the answer is no, the answer is no."

As three or four audience members continued to object, Mr. Veno read from a list the names of the Commission members who had voted the Written Decision on February 21, 2002. "Ms. Cini remarked, "It seems to me we voted two things that night. We voted whether or not to vote or to wait, and we also then voted the Written Decision as conforming to the actions taken by the Commission. So it seems that was two things."

"We're going to vote," said the Chairman. "No discussion?" asked Ms. Brown. "I think we need a Motion before we can vote," noted Ms. Greene. "We have one," responded Ms. Sibley. "From whom?" inquired Ms. Greene. "My Motion," answered Ms. Sibley. "I'm sorry," said Ms. Greene, "I didn't hear that."

"I'd like to repeat that there is a Motion," stressed Ms. Sibley. "I made the Motion, and it was to do what Counsel told us to do, to ratify and reaffirm or whatever the language was ..." Ms. Greene requested that the audience members speaking out of order be removed if they would not be quiet. "Call the question," said Ms. Sibley.

Mr. Veno then conducted a Roll Call Vote on Ms. Sibley's Motion, with the following results:

AYES:	J. Athearn; J. Best; J. Greene T. Israel; M. Ottens-Sargent; L. Sibley; J. Vercruyse; and A. Woodruff.
NAYS:	K. Rusczyk.
ABSTAINING:	C. Brown; M. Cini; M. Donaroma; and R. Zeltzer.
INELIGIBLE:	R. Wey.

There was some confusion about the tally. The Staff Secretary noted that there were abstentions from Brown, Cini, Donaroma and Zeltzer. "And Mr. Rusczyk said, 'I will not vote a bad Decision,' so that was a Nay, I assume," she said. Mr. Rusczyk nodded. The Staff Secretary then mistakenly reported that there had been 10 Ayes, one Nay and four Abstentions. *[The correct tally was eight Ayes, one Nay and four Abstentions.]*
The time was 8:11 p.m.

Ms. Brown again raised the issue that re-voting the Written Decision was different from re-holding the meeting. "That doesn't make sense," she said. Mr. Donaroma explained to her that he had been at the Executive Committee meeting the day before and that Counsel had told them to re-do the vote. "It was clear that we were told to re-do the

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vote," he reiterated. There was nothing said about discussing anything else that happened that night [February 21], he emphasized. "I wasn't there," he continued, "But we're not taking any input from the public." "Why would you need input from the public?" inquired Mr. Wey. "We *serve* the public," responded Mr. Donaroma. "It was a Written Decision, already written," Mr. Wey pointed out.

"The Chairman has a right to make these decisions, and we made it," remarked Mr. Donaroma. Chairman Vercruysse observed that said the decision had been made very carefully and that he wanted to do just what he had been advised to do, no more. He had not wanted to open it up to public testimony because, he stressed, it was not a Public Hearing. The exchange between Mr. Donaroma and the Chairman continued for two more rounds. Then Mr. Donaroma said, "I'll go by your decision. You're the Chairman."

"I don't want to put words into Christina [Brown]'s mouth," said Ms. Ottens-Sargent, "but my impression was the question Christina asked was would we also be voting on the other issues that came up that night. It was not about testimony from the public." Ms. Ottens-Sargent then pointed to the statement by Ms. Fyler regarding her having specifically inquired of Counsel what the meaning was of the term "re-hold the meeting." "I think Michael [Donaroma]'s point is a different point," she concluded.

Ms. Fyler responded: "Christina [Brown], when I read the D.A.'s letter, the first thing that I questioned was 're-hold the meeting,' because that seemed to me, you know, why is he asking us to do this? So I called him, and I said, 'What do you mean by this? Do you mean talk about everything that went on in the meeting, or re-vote that issue?' And he said, 'Re-vote the Written Decision.' That's all I asked him. To me, that's pretty clear."

Mr. Israel pointed out that re-voting the Written Decision meant that the Commission was re-voting an affirmation of events that had taken place. "That's my understanding of what this is," he said. "It's not whether you like something or don't like something. We apparently did it in a way that was totally, the Attorney General [*sic*] is not totally happy with. He made a suggestion as to how we should do it ... and so that's what we're trying to follow."

Mr. Israel said that his only other point was that if another item, like a posted Public Hearing, had been on the February 21 Agenda, then the Commission should go through the same protocol. "As far as the Down Island Golf thing is concerned, I think we dispensed with it adequately this evening," he concluded.

Ms. Sibley remarked that Commission Counsel had read the letter from the Assistant D.A., and though she fully understood why Ms. Brown would ask about the meaning of re-holding the meeting, the Assistant D.A. had directly told Ms. Fyler what the remedy would be for the possible illegality of the vote. "We're aren't attorneys," she reminded the members. The time was 8:17 p.m.

**Discussion/Vote: Conformance of the Proposed Amendments to the Edgartown
Ponds Area District with the Commission's Guidelines.**

[The Commission members present who were eligible to vote on the Conformance questions were: J. Athearn; J. Best; C. Brown; M. Donaroma; T. Israel; M. Ottens-Sargent; J. Verduyck; R. Wey; A. Woodruff; and R. Zeltzer. During the course of the discussion, those member who were not eligible to vote – M. Cini, J. Greene, K. Rusczyk and L. Sibley – left the room for all or part of the discussion and vote.]

Mr. Veno related that during the March 14 Conformance Hearing on the proposed Amendments to the Edgartown Ponds Area DCPC, the Commission had chosen to keep the Written Record open so that the Planning Board's report on its own Hearing on the Amendments could be submitted for the record. In addition, the Commission had received a letter dated March 21, 2002 from Attorney Eric L. Peters in which he reiterated his concerns about the proposed footprint and height limitations. *[See the meeting file for a copy of the letter.]*

Mr. Peters had also objected to the fact that the Ponds Advisory Committee, which, he believed, did not have the authority to do so, had submitted the proposed Amendments. Mr. Veno reminded the Commissioners that the committee had, in fact, been delegated this authority by the Board of Selectmen.

Mr. Donaroma, a member of the Edgartown Planning Board, reported that his Board had held a Public Hearing on the proposed Amendments on March 19. The Hearing had been closed the same evening, and the Planning Board had voted not to recommend the proposed Amendments to the Annual Town Meeting. *[Mr. Donaroma corrected himself shortly thereafter. Articles 20 and 21 had been recommended by the Planning Board, while Articles 22 and 23 had not been. See below.]*

Responding to a question from Mr. Ottens-Sargent, Mr. Donaroma related that it had been a 3-2 vote not to recommend and that when he had asked for their reasons, "I didn't get a straight answer." He thought in general, he remarked, that the people who had had a problem with the Amendments believed that the restrictions on house footprints and height did not serve the public well. "There was also discussion on how it was a lopsided effect on the one landowner that's left now who has been a good steward for their property for all these years," he said. "Everyone else has built, he hasn't. Now the Regulations are going to be different for that person, stricter."

Mr. Donaroma added that the Planning Board had recommended the other proposed Amendments. "But you didn't recommend any of the Regulations?" Ms. Ottens-Sargent inquired. No, just the Articles that related to footprint, replied Mr. Donaroma. "So that we as a Commission can still vote that this is consistent with the Guidelines and it would not undermine your process?" Ms. Otten-Sargent wanted to know. "Yes," responded Mr. Donaroma, who explained that the other Planning Board members had felt that the footprint Article needed to be worked on further. "The Planning Board is the one who

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would have to administer, and we thought it cumbersome the way it was written at this time, which does not have to do with whether it's consistent," he concluded.

Ms. Sibley remarked that although she had not attended the Public Hearing, she wanted to say that what the Planning Board had voted had nothing to do with the consistency of the proposed Regulations with the Commission's Guidelines. Mr. Best observed that the Regulations still had to go to the Town Meeting floor for a vote. Mr. Donaroma stated that in his opinion the Regulations were not consistent with the Guidelines. "I don't think that we originally talked about making every house out there a nonconforming structure," he said. "I don't think it was about architectural review, heights. I think it was written mostly, it was environmental and wildlife and protection of views and vistas."

"It certainly wasn't the intention when we approved this back whenever it was, the Dark Ages," remarked Ms. Greene, referring to the 1989 Designation of the Edgartown Ponds Area DCPC. "And other Amendments we've made since then have been not that kind of a change," she added. *[Ms. Sibley left the meeting room at this point, 8:25 p.m.]*

Andrew Woodruff, a Commission member at large from West Tisbury, asked for a copy of the Staff Report written by William M. Wilcox and dated March 15, 2002, which had been mailed to the Commissioners the Friday before. *[See the meeting file for a copy.]* While Mr. Woodruff studied the Staff Report, Ms. Brown remarked that the Guidelines she had before her did not seem to be the same as the ones that had been mailed to the Commission members three weeks before.

Regarding Mr. Donaroma's observation that the original intent of the DCPC had not been to turn every house in District into a nonconforming structure, Ms. Ottens-Sargent pointed out that some of the changes that she saw in Overlay Regulations and perhaps even Zoning Bylaws related to looking lots on a case-by-case basis. Page 13 of the Decision, for instance, referred to "flexible zoning" with regard to housing clusters, she noted. "I do think, you know, the point was made at the last Meeting by somebody in the audience that Zoning Regulations change based on how the community changes," Ms. Ottens-Sargent concluded.

Mr. Zeltzer commented that he had left the March 14 Meeting feeling much as Mr. Donaroma had. "It's almost after the fact," he remarked. "I'm just thinking that a lot of people have theirs. There is very little that hasn't been developed, and that was done on purpose, I think." He recalled the definition of a conservationist told to him by a friend: A conservationist was someone who already had his and who had nothing at stake. This was what he was hearing that evening, he said, and he did not believe it was the intent of the original Guidelines to engender Regulations that would be discriminatory against particular parties. *[Mr. Rusczyk had left the room by this point.]*

Ms. Israel expressed reservations about Article 23, which proposed to limit the footprint of a structure in Zones 1 and 2 to 5,000 square feet. Mr. Woodruff observed that,

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contrary to what Mr. Zeltzer had said, many of the current structures in the District would be subject to the new Regulations, for instance, in the cases of expansions or teardowns.

"I wasn't here last week," said Ms. Greene, "but I would like to just point out that there is one huge landowner who's been an incredible steward of the land in that area, and they have never built for this 50, 75 years, and now that family may be forced financially to sell something, and they're now going to be discriminated against as to what they can and can't do, and that seems a little unfair."

Remarking that he could not help but have in mind Mr. Peters, with whom he had often worked, Mr. Athearn stated that the Flynn family had been "hugely beneficial to Edgartown in keeping the land open. But I don't think that's necessarily the issue. Also, I'm not sure we should be debating the merits of the issue here, because it's about consistency, and Edgartown Town Meeting should argue that."

Referring to Mr. Wilcox's Staff Report, Mr. Athearn noted that on page 1 in the paragraph about Section 5.00 Guidelines, there was mention of the restriction of structure heights in open terrain. Yet, he said, he could not find that in the Guidelines that had been distributed to the Commission members. *[See the meeting file for a copy of the Guidelines.]* Ms. Brown remarked that she too felt that something was missing from the Guidelines materials.

A discussion ensued about the apparent discrepancy, without any satisfactory resolution. *[The Staff Secretary left the conference to get the binder of original DCPC Decisions from an office upstairs.]* Ms. Brown pointed out that it seemed to her that the height restrictions had been part of the 1999 Amendments to the District Regulations. The Staff Secretary returned with the Decision binder but was unable to find the 1999 Amendments.

[Ms. Greene left the room at this point.] The Chairman got the Commission members' agreement to consider and vote on the Conformance of each of the Articles separately. Turning to Article 20, which concerned the operation of two-stroke engines, the Chairman took a Voice Vote on whether or not it conformed to the Guidelines. There were 10 Ayes, no Nays and none Abstaining. (Ms. Cini was ineligible.)

Moving on to Article 21, which prohibited the use of 'cides in the District, Mr. Donaroma reminded the Commissioners that the Planning Board had voted to recommend this Article. By Voice Vote, it was decided that said Article was in conformance with the Guidelines (10 Ayes, no Nays, none Abstaining; Ms. Cini was ineligible).

Regarding Article 22 on height limitations, Mr. Donaroma reported that the Planning Board had not recommended this Regulation. "Now if we find this inconsistent, it doesn't go to the Town?" asked the Chairman. "Correct," responded Ms. Brown. "It would mean we'd go back to work on it," said Mr. Donaroma.

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Mr. Israel wanted to know what the Guidelines stated about height. Ms. Brown directed him to Mr. Wilcox's Staff Notes on Section 5.00. "Bill [Wilcox] makes a reference that we don't have available at the moment, because Bill's not here and we can't find it," she said. Mr. Donaroma confirmed with Ms. Brown that the Town-Wide height restriction was currently 26 feet. Mr. Woodruff asked about the Coastal District height limits. Ms. Brown explained that the Coastal District and the Edgartown Ponds Area District had the same height limits. *[Ms. Cini had left the conference room by this point.]*

The discussion about the Amended Guidelines continued. It was agreed that the Town had never followed up on the Amendment to the Guidelines concerning height restrictions. At this point the Staff Secretary realized that page 12 of the Edgartown Ponds District Decision was missing and that this was the page that contained the Amended Guidelines about height. Copies were made and distributed.

Returning to a discussion of Article 22, Mr. Best observed that he was not willing to strike that Regulation unless it was inconsistent. Mr. Israel again expressed concern that a height restriction might result in sprawling ranch-style structures. Mr. Athearn pointed out that the Regulation stated that if an owner wanted to build within 300 feet of the water, then he needed a Special Permit if he wished to build higher than the Regulation allowed. "So somebody isn't compelled to build a big, flat house unless that's better to him than having to go for a Special Permit," he said.

Mr. Athearn also stressed that the height restriction did, in fact, appear in the Amended Guidelines on page 12 of the Decision and that this was what they should be comparing the Regulations to in assessing Conformance. A discussion ensued about what it meant that the Town had not followed up on that particular Guideline. Responding to a question from Ms. Brown, the Staff Secretary explained that page 12, which contained Guideline 1(f) regarding height restrictions, had come out of the Decision for the District.

Mr. Donaroma returned to his argument that any Regulations based on Guideline 1(f) that were passed by the Town would make all the existing houses in the District nonconforming. Mr. Woodruff observed that he struggled with height restrictions; for instance, in the Town of Chilmark there were houses that were "more appalling in length and size" because of such restrictions. Ultimately, he concluded, he was more concerned about footprint size than about height. "I think it's a good idea," said Mr. Donaroma. "It just needs more work."

Mr. Zeltzer described how Articles 22 (about height) and 23 (about footprint) acted upon each other. The discussion about height limits continued. Responding to a question from Ms. Brown, Mr. Israel said that he thought that the height limit for a pitched roof in Tisbury was 24 feet. Houses in the Roadside District in Chilmark were limited to 18 feet in height, noted Mr. Woodruff.

The Staff Secretary cautioned, "All you're voting on tonight is the consistency with our Guidelines. Are they consistent with page 12? If you want to amend the Guidelines, then

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we need to have a new Public Hearing and amend the Guidelines. We can't do that now. I'm just saying, this is what it is. Look at Bill [Wilcox]'s report. It talks about consistency in the third paragraph of this report."

The discussion about Articles 22 and 23 continued. The Staff Secretary pointed out that there was more input from Staff on the consistency of the Articles with the Guidelines on page 2 of the Staff Report entitled *Edgartown Ponds Area District – Public Hearing March 14, 2002, 7:45 p.m. – Staff Notes (Taylor)*. [See the meeting file for a copy.] Mr. Donaroma noted that there were "some serious legal concerns" that had been expressed about those two Articles.

Ms. Ottens-Sargent drew attention to the fact that in the Town of Aquinnah District the Town had developed Regulations on height that were consistent with the intent of view and vista protection. "And it's up to the Town to decide," she said.

Responding to a question from Mr. Israel, the Staff Secretary directed him to page 3 of the Taylor Staff Notes, where the exact wording of the Articles was laid out. The Chairman then conducted a Voice Vote, then a Hand Vote on the Conformance of Article 22 with the Commission's Guidelines. The result was six Ayes (Athearn, Best, Ottens-Sargent, Vercruyse, Wey and Woodruff), three Nays (Brown, Donaroma and Zeltzer) and one Abstaining (Israel).

Moving on to the question of Conformance for Article 23, Ms. Brown remarked that she did not feel that said Article was consistent with the Guidelines. "It's strictly addressing the vista and visual aspects," she said. However, it did not address the issue of wildlife protection, which had been a primary concern during the conception of the District. (She recalled how at the time naturalist Gus Ben David had recommended a 300-foot buffer along the shoreline.)

"I might agree with Christina [Brown]," said Ms. Ottens-Sargent, "and I'm also concerned, based on discussion at the Meeting last week, about the procedural issues, whether it's with the Ponds Advisory Committee, which I understand is an advisory committee. But that was raised, and I really didn't get a clear answer on that; and then the exemption issue as well." She pointed out that the opportunity for the landowner to work with the Conservation Commission already existed, "and I'd rather see the Town go back with something more progressive that's truly consistent with the Guidelines."

Mr. Israel cleared up with Staff a question he had about Section 8 of Chapter 831. He again expressed his concern that the height and footprint restrictions would result in structures that would have an even greater impact. "If I were to ignore the height thing, I don't have a problem with eliminating the footprint," he said. "I think that *is* consistent with, you know, the Goals of the Martha's Vineyard Commission in an area that's like the ponds, you know, not in every area on the Island, but in an area that is of special concern."

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Mr. Zeltzer observed that this was an example of "the-egg-and-the-chicken routine." He continued, "Clearly, to me at least, the height has far less of an impact on the environment and [on] whoever or whatever is living there than the footprint. And 5,000 square feet is a big footprint. On the other hand, if you're going to restrict the height ..."
Mr. Zeltzer's voice trailed off.

He then continued, "It's brutal ... I think it's the kind of thing where – again, I compare it to the nets at the driving range – you know, it's going to come back to haunt us at some point, I fear. But I didn't support 22, and I can't support 23. I think that they go hand in hand."

Mr. Athearn remarked that the bulk of houses had not always been one of his primary concerns. "But I have heard it from an awful lot of other people, that seems to bother a lot of people," he said. "It has to do with how it affects the scenic vistas that Michael [Donaroma] was talking about.

Mr. Athearn went on: I'm very aware of the field that I'm cultivating on West Tisbury Road ... It used to look really big until houses were built on the back of it. Now it looks a little smaller because now you have some scale to judge against. And then the Rosbeck houses that went in are a few times the bulk of the other houses, so you've got house, house, house, then muumph! And so now that changes the whole scale of the thing. And so if you're sitting on Edgartown Great Pond and someone manages to get a giant house out there, it could really dominate the pond. I think it's less likely to happen now if it's set back more." Mr. Athearn added that he found Articles 22 and 23 to be consistent with the Guidelines.

Ms. Brown said that she recalled Ponds Advisory Committee member Steve Ewing describing in the March 14 Hearing the two-step thinking that had gone into the idea for the District's Designation. "And the hope was that this is for wildlife habitat protection," she related, "and Gus Ben David's three- or five-hundred-foot band, which we don't have on the books."

Ms. Brown continued: "If the permitted use is a limited size and/or a limited height, but if you go back 300 feet, you can do whatever the underlying zoning lets you do, this would be an encouragement to people to put their houses 300 feet back, leaving that wildlife habitat ... I'll only repeat the consistency-with-the-Guidelines issue. I'm not sure that that encouragement is as strong as perhaps it should be if whole purpose is the wildlife corridor."

Ms. Ottens-Sargent commented, "I think that they do go hand in hand, the two of them, and I'm not sure how I'm going to vote on this Article. But my hope would be that the Town would, should it not be after Town Meeting or here tonight, would work on coming up with something that would work with 22 and address the big houses."

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Mr. Woodruff remarked that he was prepared to let the Town make a decision on Article 23. It did need more work, he said, and something told him that it would, in fact, be worked on further. In any event, he concluded, he believed the Article to be consistent with the Commission's Guidelines.

The Chairman then conducted a Hand Vote on the Conformance of Article 23 with the Commission's Guidelines. The result was five Ayes, four Nays and one Abstaining. The time was 9:10 p.m.

Report on the Search Committee.

[Ms. Cini, Ms. Greene, Mr. Rusczyk and Ms. Sibley returned to the conference room. Thus, the Commission members present from this point until the end of the Regular Meeting were: J. Athearn; J. Best; C. Brown; M. Cini; M. Donaroma; J. Greene; T. Israel; M. Ottens-Sargent; K. Rusczyk; L. Sibley; J. Vercruysse; R. Wey; A. Woodruff; and R. Zeltzer.]

Chairman Vercruysse reported that the Search Committee would be meeting on Monday, March 25, at 5:15 p.m. He explained that the committee needed to vote to approve the Minutes for their March 9 interview of Stephen Cofer-Shabica so that they could be released. "At least, the Executive Committee is recommending that," he said.

"Did you get the permission of the applicant?" asked Mr. Zeltzer. "We didn't," replied the Chairman. "You'd better," advised Ms. Greene and Mr. Zeltzer at the same time.

Ms. Sibley related that she had been asked to take notes during the March 9 session and so she had created draft Minutes. Requesting the other committee members' fax numbers, she said she would fax them the draft the following morning. She added that she had taken "action" Minutes and not detailed ones. "And I cannot be sure how much that can be reconstructed," she said. "I put down what I did, but I think others may have to add to it, if that is in fact going to be our goal. I'm not sure it can be done at this point."

Ms. Fyler pointed out that at the end of the Search Committee meeting the following Monday, the committee might be obligated to release the approved Minutes to the press. Chairman Vercruysse said that he would call the candidate to obtain permission to release the interview Minutes.

The Chairman noted that at 4:15 on March 25 – just before the Search Committee meeting – the LUPC was conducting a visit to the site of the proposed Fair Winds subdivision (DRI #548) in Tisbury.

Chairman Vercruysse reported that on the advice of Counsel, the Executive Committee had met and conducted a conference call with Attorney Eric W. Wodlinger concerning the next interview, that is, whether it should be in open or closed session. "And his

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advice and Executive Committee's recommendation is to do it in open session, the next one, unless we want to spend a bunch of money," he said.

Mr. Israel related that it seemed to him that the reason one would conduct interviews in closed session was to protect a candidate who did not receive a job offer from his employer's knowing about his plans. "I assume we don't have anything to hide in our interviews," he commented, "and I don't know what the big deal is, except maybe to try and cast aspersions on this body as a whole, which is fine, if that is what somebody wishes to do."

Mr. Israel continued: "I think this is getting way kind of nuts and complicated, and I guess maybe, should we only interview people who don't care whether their boss would know they're interviewing or not? Because I think I'd just like to see us go ahead with the interviews and get this thing over with, and I don't think we're doing anything devious or wrong here."

Mr. Zeltzer, a member of the Search Committee, explained the rationale behind the way the committee had been proceeding. Unlike, for instance, the Steamship Authority, which was amply funded, the Commission would not afford to hire a search firm, he said. "We were acting as the search firm, if you will," he remarked.

Mr. Zeltzer then described what a search firm did: "By the time the candidate comes to you, he knows that he's being, he or she knows they're being seriously considered, and they will make a decision as to whether or not they're willing to have that be public, and they probably said that to the headhunter upfront, and so the whole thing is done out in the open."

Mr. Zeltzer continued, "So the committee had viewed what they were doing up to that point as a screening process, that once we get down to bodies that were serious, that we were going to send those bodies to the Commission, and that at that point [it] would be public, because we felt that we were doing the job of the search firm. Clearly, that's not how it was taken by other people. It cost us applicants because they didn't want to go public because they know they're very early in the game, they're just being checked out. They're being checked out, and all of a sudden they're going to be in the paper, and the world is going to know it."

"So that's the problem, and that was the only reason – and no other reason – that we tried to do it quietly, as we were acting as a search firm, and when it got to the point that it was a Commission function, it was going to be public all the way," Mr. Zeltzer concluded.

Responding to another question from Mr. Israel, Mr. Zeltzer explained that if the candidate they had interviewed objected to the interview being made public, then the committee would throw away his application. "Because we can't cost somebody their livelihood if they're not going to get hired," he said.

"If we're not doing anything illegal, then who gives a damn?" wondered Mr. Woodruff. Ms. Fyler replied that she had discussed this matter extensively with Counsel. "He says the D.A. and he disagree. But that doesn't really matter whether they disagree or not. The D.A. is saying that we need to do this in open session. If we want to go into litigation and spend thousands defending this point, we can't."

When Mr. Israel started to compare the Commission's process with that of the Town of Tisbury, Ms. Fyler pointed out that the Town of Tisbury had considerably more funds to spend on a candidate search.

Ms. Sibley stated, "We are not at this table tonight going to solve the problem. Part of the problem is that nobody tried to accuse you [Mr. Israel] of doing something wrong. We're in a situation where we're losing face, we're losing candidates, and Counsel's suggestion was that while he could go back and defend our right to be in private, it would cost us money and ill public opinion." If the Commission wound up not finding a new Executive Director during this round of the search process and the committee started all over again, she said, "I think we will clarify this so that we won't run into the problems we did this time."

Ms. Greene requested that the Acting Executive Director get from the District Attorney an outline of how he believed the Commission should be proceeding, step by step. "That's a good idea," said Ms. Fyler. "It might be a way to protect ourselves," added Ms. Greene, who continued, "I'm not sure he understands the process that we really were under as a subcommittee, because if we have to say [who the candidates are] after the preliminary looking at a resume, there's something wrong."

Ms. Sibley pointed out that all the Search Committee would be doing at the March 25 meeting would be voting on the Minutes. Ms. Brown wondered if there would be an opportunity at that meeting to discuss these issues further. The Chairman said that such a discussion could take place at another meeting. Ms. Fyler reminded Chairman Vercruysse that the Search Committee also had to vote on the question of whether to accept the Executive Committee's recommendation that the rest of the search process be conducted in public session.

Staff News.

The Chairman announced that DCPC Coordinator and Coastal Planner Jo-Ann Taylor had had her baby on March 18. "How'd she decide without a vote?" joked Mr. Best. Responding to a question from Ms. Sibley, Chairman Vercruysse reported that Sarah weighed 9 pounds 6 ounces. Mr. Israel moved That **The Commission Members Take A Collection For A Gift**, duly seconded. Said Motion carried unanimously, and a collection was taken.

New Business: Extension for the Airport Laundromat Decision (DRI #486).

DRI Coordinator Jennifer Rand explained that she had spoken with Allan Dorfman, the Applicant for the Airport Laundromat expansion. "It has been, apparently, a very arduous process, and he's asking for yet another year's extension, due to no fault of his own," reported Ms. Rand. "He's struggling to get through the process up there [at the airport]." She then recommended that the Commission grant him another one-year extension.

Ms. Greene made a **Motion To Extend For Another Year The Sunset Clause For The Airport Laundromat Expansion Development Of Regional Impact**, duly seconded by Mr. Best.

Responding to a query from Ms. Cini, Ms. Rand explained that the Applicant was having problems with the Airport Commission regarding waste. Ms. Greene and Ms. Sibley remarked on the harm that would be done to the Island if there were no laundromat.

By Voice Vote, Ms. Greene's Motion carried unanimously. The time was 9:26 p.m.

Planning and Economic Development Committee Report.

Ms. Sibley, the Chair of the Planning and Economic Development (PED) Committee, reported that although her committee had not met, the idea of having a focusing session open to all Commissioners regarding planning and prioritizing had been circulating informally. She asked Ms. Rand if April 11 was available. Ms. Rand answered that she had been reserving that date for a possible continuation of the Tisbury Inn Reconstruction Public Hearing (DRI #550). It was agreed that this would be looked into and that in the meantime a tentative special PED Committee session could be posted for April 11. The time was 9:29 p.m.

Appointment of New Member to the Joint Transportation Committee.

The Chairman announced that Ted Leslie of Aquinnah had been nominated by his Board of Selectmen to represent his Town on the Joint Transportation Committee. Transportation Planner David Wessling reminded the Commission members that at the time they had approved a slate, Ms. Brown had made a Motion that each Town be represented on the committee.

Ms. Greene pointed out that Mr. Leslie worked as a driver for the Martha's Vineyard Regional Transit Authority and wondered if this would constitute a conflict. Mr. Wessling clarified that point: "He works for a contractor who's *hired* by [the VTA]."

Mr. Israel remarked that if the Town of Aquinnah wanted Mr. Leslie to represent them, the Commission should accept that. Ms. Sibley noted it was not unusual on the Island to

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have some sort of connection to the committee one served on. Mr. Wessling pointed out that Mr. Leslie's appointment would be a courtesy to the Town.

After still more discussion, Mr. Zeltzer made a **Motion That The Commission Accept Ted Leslie As The Representative From The Town Of Aquinnah To The Joint Transportation Committee**, duly seconded. Said Motion carried by Voice Vote, with 13 Ayes, one Nay (Greene) and one Abstaining.

Discussion: Endorsement of the Million Solar Roofs Program Proposal.

The Chairman referred the members to a memorandum from West Tisbury Selectmen's Appointee Kate Warner regarding a possible letter of support from the Commission for the Island's participation in the Million Solar Roofs Program. *[See the meeting file for a copy of the memorandum as well as a draft letter of endorsement.]*

Ms. Brown pointed out what the role of the Commission members would be: co-hosting a speaker series; and providing volunteer leadership for the energy survey teams. Neither activity would involve Staff time or Commission funding, she noted.

Ms. Brown made a **Motion That Based On The Noble Purpose And The Limited Expenditure Of Commission Funds, The Commission Send The Letter Of Endorsement For Participation In The Million Solar Roofs Program**. Mr. Zeltzer seconded said Motion. After a brief discussion, the Chairman conducted a Voice Vote on Ms. Brown's Motion, which carried with 13 Ayes, no Nays and one Abstaining.

Report: Refinancing of the Olde Stone Building Mortgage.

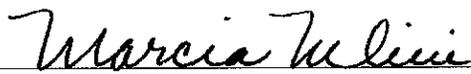
Ms. Cini, Chair of the Finance Committee, reported briefly on the verbal commitment she had received from the Edgartown National Bank to refinance the Commission's mortgage, thus enabling the MVC to get rid of its second mortgage. Once she had received a letter of commitment, Ms. Cini added, she would pull together a Finance Committee Meeting to go over the particulars.

Ms. Greene made a Motion To Adjourn, duly seconded. The Regular Meeting adjourned at 9:37 p.m.



Chairman

April 24, 2002 _____
Date



Clerk-Treasurer

May 23, 2002 _____
Date

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

ABSENT: A. Bilzerian; E.P. Horne; J.P. Kelley; C.M. Oglesby; R.L. Taylor;
R. Toole; and K. Warner.

[These Minutes were prepared by Staff Secretary Pia Webster using her shorthand notes as well as a tape recording of the Regular Meeting.]