The Martha's Vineyard Commission (the MVC or the Commission) held its Regular Meeting on Thursday, May 16, 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 7:36 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; T. Israel; M. Ottens-Sargent; L. Sibley; R. Toole; J. Vercruysse; K. Warner; R. Wey; A. Woodruff; and R. Zeltzer. Mr. Best arrived at 7:45 p.m.]

The Chairman handed the gavel over to James Athearn, a Commission member at large from Edgartown, Chairman of the Island of Chappaquiddick DCPC Exemption Committee, and the Hearing Officer for the first Hearing of the evening.

Public Hearing: Rescission of the Vote to Designate the Island of Chappaquiddick DCPC.

Mr. Athearn read into the record the Notice of Public Hearing for a consideration of the Rescission of the Island of Chappaquiddick District of Critical Planning Concern. [See the Full Commission Meeting File of May 16, 2002 (the meeting file) for a copy of said notice.] Mr. Athearn then explained the Hearing procedure that would be followed that evening.

Staff Report.

William G. Veno, Acting Principal Planner, provided a Staff Report, relating the history of the District. [See the document entitled “Island of Chappaquiddick DCPC: A History” in the meeting file.] He explained that with the Town's failure to vote the establishment of the District at their Annual Town Meeting, the Moratorium imposed with the acceptance of the District Nomination could be ended in one of two ways. It could simply expire by itself on June 7, 2002 – one year from the date of the District
Designation – or the Commission could vote to Rescind the Vote to Designate after a duly noticed Public Hearing. The latter course had been chosen, he said.

Testimony from Town Boards.

Mr. Athearn asked if there had been any input from the Town. Christina Brown, a member at large from Edgartown who also sits on the Conservation Commission, reported that at their last meeting the ConCom members had discussed the Rescission. They had acknowledged that the series of work sessions devoted to the formulation of District Regulations had been “a good planning effort.” But the Town Meeting felt it should not be a DCPC, she said, and at this point the ConCom agreed that the Designation should be rescinded.

Testimony from Members of the Public.

Mr. Athearn asked for testimony from members of the public in favor of the Vote to Rescind; there was none. He then asked for testimony from members of the public in opposition to it; none was forthcoming. He then asked for general comments and questions.

Lionel Spiro of Edgartown remarked that a good deal of effort had gone into the planning process for the District and that he had been disappointed by the debate and votes at Town Meeting, as had many others. He then offered his thanks to the members of the Commission for their efforts to establish the District. “But it’s good to stop now,” he said, “since there’s nothing to gain by extending the Moratorium for the few weeks.”

Steven Wardwell of Chappaquiddick wanted to know what the required delay was before petitioners could nominate the District again. “There’s a one-year waiting period,” replied Chairman Vercruysse. [Mr. Best arrived at this point, 7:45 p.m.]

Tristan Israel, the Tisbury Selectmen’s Appointee, made the points that 1) contrary to some of the things printed in the local newspapers, it was not the Commission that had originated the District, but the Town, and 2) the Commission had followed its process by responding to the petitioners and accepting the Nomination that had come from the Town.

Bob Clay, a part-time Chappaquiddick resident, related that he had been “on the other side.” “I didn’t like it,” he said, “but some of the things that came out of this were good.” He then thanked Christina Brown, Planning Board Assistant and member of the Conservation Commission, for all her hard work in the planning workshops. “A lot of people worked very hard,” he observed, “and their hearts were in the right place.”

Paul Adler of Chilmark suggested that in the future the Commission re-examine the method by which the DCPC was nominated. “If a board senses there might be no two-thirds vote, they may want to reconsider,” he said.
Mr. Wardwell, who had spoken earlier, made some recommendations about how the process could be changed.

There being no further testimony, Mr. Ahearn closed the Public Hearing at 7:48 p.m.

Discussion/Vote: Rescission of the Vote to Designate the Chappaquiddick DCPC.

Chairman Vercruysse took the gavel, and at his request, County Commission representative Roger Wey made a Motion To Move To Item Five, Possible Discussion, duly seconded by Michael Donaroma, the Edgartown Selectmen’s Appointee. There being no discussion, Linda Sibley, a Commission member at large from West Tisbury, made a Motion To Move To Item Six, Possible Vote, duly seconded by Mr. Donaroma.

Ms. Sibley then made a Motion That The Commission Rescind Its Vote To Designate The Island Of Chappaquiddick DCPC And Thus Dissolve Said DCPC, duly seconded by John Best, a Commission member at large from Tisbury.

Mr. Israel remarked, “I just need to say that this process was a success in the way that it was supposed to work... I don’t think of the time spent on it as wasted.” He added that many good things had come out of the planning process, then concluded, “The Martha’s Vineyard Commission did its job in facilitating that discussion.”

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

AYES: J. Ahearn; J. Best; C. Brown; M. Donaroma; T. Israel; M. Ottens-Sargent; L. Sibley; R. Toole; J. Vercruysse; K. Warner; R. Wey; A. Woodruff; and R. Zeltzer.

NAYS: None.

ABSTAINING: None.

The time was 7:50 p.m. There was a short delay while audience members who had come to attend the first Hearing left the room and others came in. At 7:53 p.m. the Chairman handed the gavel to Richard J. Toole, a Commission member at large from Oak Bluffs, Chairman of the Land Use Planning Committee, and the Hearing Officer for the second Hearing.

Public Hearing: Fairwinds Comprehensive Permit (DRI #548).

Mr. Toole read into the record the Notice of Public Hearing for the Fairwinds Comprehensive Permit Application (DRI #548). [See the meeting file for a copy of said notice.] Then he explained the format of the Hearing.
Applicant’s Presentation.

Tom Richardson, one of the Fairwinds partners, introduced himself and welcomed the members of the public who had come to the Hearing. He walked through a general description of the project, which would consist of 24 single-family affordable and moderately priced homes set on a 4.9-acre lot in the Town of Tisbury. The project, he said, would be located at the end of Greenwood Avenue Extension, with an entrance off Herring Creek Road which would be accessed from Franklin Terrace.

Mr. Richardson continued that a single main road would cut through the project, with another one breaking off into a cluster of four houses. A cul-de-sac at the end of the road would provide an area for turning around and would be large enough to accommodate emergency vehicles. The main road would be 20 feet wide and would belong to the condominium association that would govern the project, he explained, so as not to burden the Town’s taxpayers.

Mr. Richardson passed around color photographs showing the four styles of homes being built, with square-footage ranging from 1,200-plus to 1,750-plus. [See the meeting file for copies of the photographs.] The homes, he said, would be set in a “traditional-style” housing development arrangement, with houses on both sides of the street.

Mr. Richardson related that the project would call for waivers from some local bylaws, rules and regulations, specifically, the minimum lot size, frontage requirements and setbacks. Furthermore, he said, the developers were applying for a Comprehensive Permit, to be issued in lieu of all of the aforementioned permits, inclusively.

The project would comprise six affordable housing units with an approximate sale price of $167,000, Mr. Richardson went on, and these units would be deed-restricted to remain affordable for no fewer than 15 years. The other 18 units would be moderately priced in the $275,000-to-$375,000 range. The project qualified under the New England Fund, he explained, which required that the developer’s profit not exceed 20 percent of total development costs. He then provided details on how a potential owner would qualify to buy one of the units.

In concluding, Mr. Richardson remarked that the developers’ vision was “a well-planned, attractive and cohesive development that will blend with and enhance the social fabric of the Tisbury community.” Mr. Richardson then identified members of the Applicant’s team who were present that evening.

Edward Marshall, a landscape architect with Stimson Associates of Falmouth, went over a mounted site plan, pointing to the entrance to the main road of the development off Herring Creek Road, which, he said, was “a public way by prescription.” Also included, he noted, would be a cut-off road following Elisha’s Path to service the easternmost cluster of four houses.
Mr. Marshall related that there had been concerns voiced about the topography of the site. “We have it graded as gently as 6 percent for six of the homes,” he said, adding that this then increased to 7 percent for the next cluster. The average grade for the site would be 8 percent. He described the playground and garden-planting areas and stated that the landscaping plan called for preserving and planting vegetation and trees so as to limit the impact the development would have on neighboring property owners.

Mr. Marshall showed drawings of two site sections and described the 20-to-25-foot setback that each structure would have. “The relation of the homes to the street is 20 feet,” he said, and each home would have parking for two cars, either with a bay or a pull-off. He also provided details on the trees and shrubs that would be planted to establish buffers.

Mr. Richardson spoke briefly about the development’s density, holding up a drawing that showed how the project would relate to the present configuration of homes in the area. Referring to the four home-styles that would be used, he said that the project “fits in texturally with the neighborhood with regard to size and scaling.” Wherever possible, he added, the designers had used the topography to provide for a walk-out basement.

Doug Hoehn of Schofield, Barbini & Hoehn related that his firm had done base mapping as well as the topographical work and percolation testing for the site. There were no problems with the soils, he said. Originally, he continued, the Applicant had planned to install six traditional Title V septic systems for the entire site, with each servicing several homes. “That design didn’t meet Tisbury’s requirements,” he said. He then described briefly the three advanced-treatment systems that the Applicant was proposed to use instead.

Regarding any possible nitrogen-loading impact on Tashmoo Pond, Mr. Hoehn went on, he had first suggested adding denitrification units on the six systems originally planned for. However, after consulting with Water Resources Planner William Wilcox, he said, he had looked at the possibility of a having a central-treatment-type system. “But because the site is long and narrow,” said Mr. Hoehn, “that’s an impractical solution. So we’re looking at a way of combining septic systems and trying to cost it out.”

Mr. Hoehn explained that this solution would be considerably more expensive than what the developers had expected. “So we’re looking at it,” he said, “but it’s kind of a late-breaking kind of thing. But the septic systems will work and be Title V no matter how we do it.”

Mr. Richardson introduced Yarmouthport attorney Peter Freeman, who teaches affordable-housing law at Boston University. Mr. Freeman described some aspects of Chapter 40B, which, he noted, had been passed by the State Legislature 33 years earlier. Thus far, about 30,000 affordable units had been created under Chapter 40B, which came to fewer than 1,000 units per year, he related.
Mr. Freeman spoke of “the dire need for affordable housing” on the island and emphasized that the legislation stipulated that at least 10 percent of a Town’s housing stock had to be low-priced or moderately priced. “Tisbury doesn’t have that 10 percent,” he said, “so this creates an opportunity for a developer.” This project, he noted, was being carried out under the New England Fund.

The attorney then explained how the Applicant was requesting a Comprehensive Permit so that he only had to apply to the Zoning Board of Appeals, which would then get input from other Town Boards. “The State says that a lot of the dimensional requirements of zoning bylaws have created an obstacle to creating affordable housing,” he related, “so the great density of a plan like this is purely economic.” Thus, the Applicant would be asking for waivers from frontage, lot-size and setback requirements, he said.

Mr. Freeman described Chapter 40B as “a good planning tool” that worked best when all of the parties involved worked together. “That standard is a balance test between the affordable housing need and local planning concerns and requirements,” he observed, adding, “Generally, the affordable housing need is primary, but the other considerations are weighed.”

The State requirements that did have to be adhered to, the attorney went on, were Title V, the best management practices called for by the Massachusetts Department of Environmental Protection, and the standard guidelines for traffic and safety. Should the ZBA not approve the plan, the developers could go to the Housing Appeals Commission for an adjudication of the Application, which had the power to issue a Comprehensive Permit itself. Mr. Freeman finished by reminding the Commission members of the dire need for affordable housing on Martha’s Vineyard.

William Scully of MS Transportation Systems, Inc. described how his firm had returned to continue earlier traffic studies in order to access the impact of the proposed development. In March they had done a preliminary analysis, which he had submitted to the Commission’s Transportation Planner, David Wessling. Subsequently, he went on, he had sat down with Mr. Wessling and gone over the study scope, with his firm trying to accommodate Mr. Wessling’s recommendations and to incorporate those in their new report.

Mr. Scully showed a drawing of the network of nearby streets. At first his firm had concentrated on Franklin Street, he said, but had expanded the scope following Mr. Wessling’s input. Thus, they had included Spring Street, Pine Tree Road, Main Street and State Road traffic counts. They had also estimated the impact of the development on the traffic at Five Corners. Counts were taken in the morning, mid-day and late afternoon, and they had compared the counts from a local subdivision to the national data base. “The local numbers compared quite reasonably,” he said.
The firm had also analyzed the accident history of the area, Mr. Scully went on, as well as background growth, and had incorporated data on State Road that they had already gathered for earlier studies.

Mr. Scully then held up a chart containing the Trip Generation Summary, which showed that in peak season at peak hour there would be 27 additional vehicle trips in the morning and 30 additional trips in the afternoon. Over the course of the day, this worked out to a projection of 156 additional vehicle trips entering and 156 additional vehicle trips leaving, for a total of 312 additional vehicle trips per day during peak season.

Mr. Israel wanted to know how much less the increase in vehicle trips would be during the off-season. “Thirty percent less,” answered Mr. Scully.

Mr. Scully returned to the schematic drawing of the local roadway network, explaining that the firm had looked at the overall distribution of traffic in the area and then had assigned trips to the different roads. “Most of the traffic is oriented toward the Spring Street-State Road area,” he reported. He pointed to the different routes that cars going to and from the proposed development would take and spoke about the assumptions that underlay the analysis.

Getting into more specifics, Mr. Scully related that the junction of the Greenwood Avenue Extension with Franklin Street would produce the greatest increase in vehicle trips, with 27 additional trips in and 27 additional trips out at peak hour. From there, the traffic was expected to disperse. “The majority of the peak hour increases are less than 10 vehicle trips,” he said. “These are very minimal increases. It really is a minimal impact.” As an example, he pointed to only a 0.3 percent expected increase at the Five Corners intersection in the summer as a result of the development.

As for the Level of Service at the Greenwood Avenue Extension-Franklin Street junction, “you will be able to exit,” said Mr. Scully, adding, “It won’t change daily hardly at all onto State Road.” The firm had also analyzed the accident history of the area, concluding that there were “no out-of-the-ordinary accidents” to be expected, he related.

Mr. Scully continued that he had tried to follow the guidelines suggested by Mr. Wessling and to address the comments made in March. “Safety problems don’t exist,” he pointed out, “and the project will be a relatively small generator of traffic, plus the impact does spread out as you move away from Greenwood Avenue Extension.” He added that at the junction heading out of the project there would be clearing and re-grading to improve visibility for drivers.

Chairman Vercruysse asked where the nearest public transit stop was located. There’s one on Franklin Street, replied Mr. Scully, plus a rider can just flag down the buses. And would the Applicant be clearing some sort of footpath from the project up along Greenwood? wondered Chairman Vercruysse. No, there are no sidewalks planned, responded Mr. Scully. Ms. Sibley wanted to know how long a walk it was to the nearest
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VTA stop. About a third or a half of the mile, murmured a number of people seated in the audience.

Mr. Richardson then summed up the Applicant’s goals. Primary among them, he stressed, was to help address the need for affordable housing on the Vineyard. “Adapting 40B to our purposes will go a long way toward filling the housing gap,” he said. “This is an opportunity to begin the process in earnest in Tisbury.” He added, “These are certainly nice homes, and the moderately priced 18 will be sold at a 21 percent discount.”

Staff Reports.

DRI Coordinator Jennifer Rand referred the Commission members to her Staff Report dated May 10, 2002 and provided on an update on information that had been received at the offices since preparing that report. [See the meeting file for copies of all the Staff Reports mentioned in this section.] She described a letter written by the Tisbury Board of Health and addressed to the Tisbury Zoning Board of Appeals stating that the former was opposed to granting waivers to the Applicant. Ms. Rand emphasized that the Board of Health had had no formal septic system plan to look at when the letter was written. “I think it was based on the standard Title V guidelines,” she added.

Since May 10, said Ms. Rand, Staff has also received Mr. Scully’s traffic report and one more letter in opposition to the development, critical of the lack of green space and so forth. “The presence of Camp Jabberwocky and there being no sidewalks has been a concern,” she concluded.

Aquinnah Selectmen’s Appointee Megan Ottens-Sargent asked Ms. Rand what the normal zoning requirements were in the neighborhood of the development. Ms. Rand answered that the site measured 4.93 acres and that a raw calculation would allow for 18 units. In reality, though, she added, local regulations would probably allow for something like 14 because of the local topography. “It’s a densely developed area already for the most part,” she remarked.

Mr. Best asked about the 20 percent-profit issue and how the Commission might treat that. The short answer is, said Ms. Rand, the New England Fund would review the pro forma and assure that the Applicant had met the 20 percent maximum profit requirement.

Concerning the letter to the ZBA, Ms. Ottens-Sargent inquired about the issue of prescriptive rights for Herring Creek Road. Ms. Rand responded that Staff was operating on the assumption that the Applicant had control of the site and a 40-foot right-of-way. “For our purposes, until the Town tells us otherwise,” she said, “that information has been submitted to us to our satisfaction.”

Transportation Planner David Wessling referred the Commission members to his Staff Report dated May 16, 2002. “I found the traffic study inadequate,” he declared. “The study does not conform to the checklist items.” He explained that his report contained a
chart which showed how well Mr. Scully’s study had met the checklist items issued by the Commission.

Ms. Brown inquired if Mr. Wessling’s comments applied to the report Mr. Scully had presented that evening. Yes, replied Mr. Wessling, the Staff Report covered the traffic analysis that had come in the day before. Referring to his report, Mr. Wessling reiterated that the checklist items concerning the proposed site’s physical location and physical characteristics had not been addressed.

In addition, Mr. Wessling continued, “the quality of the information is less than desirable.” The annual traffic growth rate of 1 percent used by Mr. Scully, for instance, was based on an extrapolation of 1999 State Road data and not on the 2 percent typical growth rate used in what he referred to as “conservative” traffic analyses. Regarding the trip distributions and assignment, he said, “I have different information upstairs.”

Mr. Wessling reported that he had also found that not enough attention had been paid to weekend travel and that Mr. Scully’s statement about the Level of Service could be “easily disputed.” Furthermore, he concluded, he considered some of the mitigation issues “questionable.”

Mr. Israel wanted to know more about the Level of Service that Mr. Wessling had referred to. Mr. Wessling explained that the LOS was a qualitative indicator of travel, specifically, the amount of time one had to spend waiting to make a turn at an intersection. The data sheets showed that the Franklin Street-Greenwood Avenue Extension intersection had a Level of Service ranging from “A” to “C” during morning peak hour and from “A” to “E” during evening peak hour. Yet Mr. Scully’s report stated, he quoted, “the operational performance of this intersection will continue as LOS ‘F’.”

Ms. Sibley remarked, “The more regional the impact is, the more it’s our problem. Obviously, the impact of the project is a drop in the bucket at Five Corners.” She said that what she wanted from Mr. Wessling was an assessment of the quality of Mr. Scully’s information about the neighborhood and its safety. “That’s difficult,” responded Mr. Wessling. “You’re asking about perceptions. We rely on local Town Boards and Officials to assess safety aspects.”

The Commission moved on to the Staff Report from Water Resources Planner William M. Wilcox. Mr. Wilcox referred them to his report dated May 8, 2002 as well as a supplement produced on May 16. The soils on the site were Carver loamy coarse sand on slopes ranging from 8 percent to 35 percent, he related. The site elevation varied from 76 feet at Herring Creek Road to a low of 42 feet in the depression near the middle of the property.

Mr. Wilcox continued that the groundwater elevation was at about 3 to 4 feet, that is, about 40 to 70 feet below ground level, and that the groundwater flow was toward Tashmoo Pond, located some 1,100 to 2,300 feet away. The nitrogen-loading study on
that pond was in process, he said, and he had just received some related data from Coastal Planner Jo-Ann Taylor, who was conducting the study.

The Title V flows for 72 bedrooms, said Mr. Wilcox, would amount to 7,900 gallons per day, although those figures were high, accounting for maximum flow. He himself had used a figure of 5,000 gallons per day in his calculations, which would result in an annual nitrogen loading of 240 kilograms, assuming 35 milligrams per liter of nitrogen in the effluent as well as a 35 percent rate of seasonal occupancy, with 4.77 people in the seasonal homes and 2.21 people average in the year-round ones.

Tashmoo Pond was a nitrogen-limited system, Mr. Wilcox went on, and the exact nature of that limitation was still being determined. Conventional Title V treatment, he calculated, would lead to a loading rate of 49 to 79 kilograms per year per acre, which he considered “an excessive loading rate.” A nitrogen-reducing system could cut that back by 40 to 60 percent, he said, although these figures accounted only for wastewater flow and did not include things like lawn fertilization.

Mr. Wilcox saw as an option the installation of an advanced denitrification system. “A cluster is the right way to go at it,” he commented. Having a single advanced wastewater system would cut the numbers further still, halving the load again, since this would maintain a year-round flow and would raise the level of nitrogen removal even more than a series of smaller advanced systems would. “The cost of a single large system would be more,” he added, “although the cost of its maintenance would be less than for, say, three advanced systems serving three clusters.”

Mr. Wilcox also recommended low-maintenance lawns, thereby reducing the need for fertilizers, as well as keeping the allowable fertilized lawn area to “an absolute minimum.” Lawn fertilizer potentially added 8 to 20 kilograms to the nitrogen load, he said. He suggested that no fertilizer be allowed once the grass was established and that common areas that were trod on heavily be fertilized once yearly with a slow-release fertilizer.

Mr. Best wanted to know where the figure of 2.21 people per year-round unit had come from. The U.S. Census, replied Mr. Wilcox. Mr. Best proposed that the fact that six of the units were affordable housing – and therefore year-round – be factored into the calculations. Mr. Wilcox agreed that factoring this in would result in a higher nitrogen-loading figure. He recommended that the calculations take out the six affordable units and apply the year-round/seasonal average to the other 18 units.

West Tisbury Selectmen’s Appointee Kate Warner asked if composting units had been considered. No, responded Mr. Wilcox, who added that those would remove about 90 percent of the nitrogen load. Ms. Warner mentioned that such units were used in the Co-Housing project in West Tisbury.
Chairman Vercruysse wondered about the size of the Tashmoo Pond watershed. About 460 acres, replied Mr. Wilcox. And in what part of the watershed would the proposed development be? inquired the Chairman. The project would be on the eastern side of the watershed, answered Mr. Wilcox, although the divide was only an approximation.

Mr. Israel proposed that it would make more sense to use a larger number for the portion of the units that would be year-round, since six of them would be affordable and the others would be moderately priced. Ms. Sibley wanted to know if the Applicant had planned anything in the marketing strategy or the association covenants that would assure that the units went to year-round residents. Mr. Wilcox said that he did not know.

Mr. Wey noted that there would be a lot of fill on the site, and he asked if the septic systems would be built in the filled areas. Mr. Wilcox said that he did not know, that the finalized septic plan was still being worked on. Mr. Wey theorized that perhaps the flow toward Tashmoo Pond would be “easier” through fill than it would be through stable soil. “I don’t think so,” answered Mr. Wilcox, “although I can’t give you a good factual basis for that.”

Ms. Brown requested that Mr. Wilcox show the entire Tashmoo Pond watershed with all the properties in the area contributing nitrogen to it. She also wanted to know if Mr. Wilcox could share Ms. Taylor’s study with the Commission. “I don’t have it now,” replied Mr. Wilcox, “but yes, we should look at the dedicated open space in the area, which might help offset the nitrogen-loading impact.” He added that he would have the study results by the next Full Commission Meeting.

Mr. Best inquired if the 4.93 acres included property under option and property with easements. “I want your figures on what they actually own now,” he said, “and if other people have that easement, do they have the right to develop it?” Mr. Wilcox said he would check into that.

Responding to a question from Ms. Ottens-Sargent, Mr. Wilcox said that the recommended nitrogen-loading limit for Tashmoo Pond for an SA water quality classification was 17.2 kilograms per acre. For the Outstanding Resource classification, it would be 5.7 kilograms per acre per year, he related, and conventional Title V treatment would lead to a loading rate of 19.9 kilograms per year per acre.

Ms. Ottens-Sargent also wanted to know if Ms. Taylor’s results had altered Mr. Wilcox’s analysis. “I more firmly believe that we need denitrification systems,” Mr. Wilcox replied. Ms. Ottens-Sargent observed that overseeing the proper management of the denitrification systems would be difficult. In addition, a year-round flow was necessary in order for the systems to work optimally, she said; so a centralized system that all the units were hooked up to would be more effective.

Mr. Wilcox agreed with this observation. Another possibility, he said, was adding a carbon source so that there would be an extra step leading to greater nitrogen removal,
that is, an additional processing of the effluent. Adding that extra step, though, would wind up being more expensive if they were to cluster with three systems instead of one, he noted.

There being no more questions for the Applicant or Staff, Mr. Toole asked for testimony from Town Boards.

Testimony from Town Boards.

Ms. Brown requested that Ms. Rand note for the record the correspondence that had been received from Town Boards. [Copies of the three letters referred to in this section can be found in the meeting file.] Ms. Rand described a letter from the Zoning Board of Appeals dated May 8, 2002 in which said Board listed its concerns about the Applicant’s right to use the easement and questions about the site control of the property. The Board also had problems, she said, with whether fire engines would be able to access the development.

Ms. Rand continued that in its letter the Board of Health had expressed concern about waiving the Town’s regulations on the number of units that could be hooked up to one septic system because of the issue of an effluent plume working its way down to Tashmoo Pond.

A third piece of correspondence, said Ms. Rand, was a letter from the Board of Selectmen to the Compass Bank for Savings, responding to the bank’s request that the Board of Selectmen review the project. (Said letter, she said, had been submitted by the Applicant.) At the request of Ms. Brown, Ms. Rand read the third letter into the record.

The Hearing Officer then asked for testimony from members of the public in favor of the proposal; none was forthcoming.

Testimony from Members of the Public in Opposition to the Proposal.

Edward Vincent identified himself as a lawyer for Linda Gorum, Jean Duggan and several other abutters. He submitted for the record his letter dated May 16, 2002 regarding the Fairwinds DRI, then went through the contents of said letter. [See the meeting file for a copy.]

First of all, said Mr. Vincent, there was no viable legal access for the project; moreover, the Applicant had proposed in the submittal an access that involved the use of a portion of Herring Creek Road that ran across the property of Mark Jenkins, who had not given approval to the Applicant. Furthermore, Mr. Vincent continued, Herring Creek Road was an Ancient Way and was of insufficient width or condition to support a project of this magnitude.

Secondly, Mr. Vincent went on, the proposed development would place 24 dwellings on what was alleged to be 4.93 acres, which parcel was located in the back yards of all of the
abutting neighbors. The impact of the development on this quiet residential neighborhood would be intense, he said, and he did not believe that the planned buffer would adequately address this issue.

Thirdly, said Mr. Vincent, a review of the proposed septic system for the project indicated that it would be putting an immense amount of septic wastewater into the ground over a small area, possibly affecting the groundwater and Tashmoo Pond.

Mr. Vincent’s fourth point concerned the impact of the increased traffic expected to be generated by the project which would destroy the character of the existing neighborhood and would also pose a danger to the clients of Camp Jabberwocky. And fifth, said Mr. Vincent, the proposed topography of the property would indicate that the project required considerable filling of certain areas, which in turn might alter the direction of rainwater runoff and adversely affect the neighboring properties.

Roland Jann identified himself as an abutter for 10 years to the site of the proposed development. He had serious questions, he said, about some of the traffic generation numbers that had been offered by the Applicant. “Twenty-seven cars for 24 houses in the morning seems very optimistic,” he remarked. Mr. Jann was also concerned, he continued, that the housing would bring more children to the neighborhood who would be endangered by the increased traffic as they walked to and from their school bus stop.

Mr. Jann concluded by stating that he questioned the whole transportation report and that he wondered if the study had taken into account the pre-school programs that ran during the winter.

Ray LaPorte identified himself as being a member of the board of directors of Camp Jabberwocky. “Camp Jabberwocky obviously is a wonderful camp for handicapped individuals,” he said, “that’s been operating for 50 years, with the last 34 on the present site.” Greenwood Avenue Extension, he stressed, was “a very substandard route, 18 feet wide with no sidewalk. “The traffic on that road would double,” he declared.

Mr. LaPorte also spoke of the camp as offering “quiet enjoyment of a rural setting,” which would be “seriously compromised” if the project were approved. “If the Applicant could offer a sidewalk,” he said, “it might mitigate it somewhat.”

At the request of Ms. Warner, Mr. LaPorte showed on the schematic lot map where the camp was located.

Helen Lamb identified herself as the founder of Camp Jabberwocky 50 years before. “Let’s get down to the nitty-gritty,” she declared. “Greenwood Avenue isn’t a very wide road, and on murky, dull afternoons, the campers go into Vineyard Haven in wheelchairs, but the wee ones could dart out into the road.”
Ms. Lamb described how many younger people drove awfully fast on Greenwood Avenue Extension. "In 50 years no one has hit us," she related. She then suggested that "sidewalks would help on both sides" and that a five-mile-per-hour speed limit enforced by the Tisbury police with electrical devices be imposed.

Responding to a question from an unidentified Commission member, Mr. Jami said that the current speed limit for Greenwood Avenue Extension was 20 miles per hour. "Now they speed," he said.

Ms. Lamb then invited the Commission members to "come and have supper with us" and asked if anyone had questions for her.

Brian Nunes-Vais identified himself as an abutter to the property in question. From looking at the Applicant’s plan, he said, it seemed to him that there would be a leaching field underneath Elisha’s Path. He also wanted to know if the traffic study had taken into consideration the existence of Elisha’s Path and the fact that people might use it to turn around.

Mr. Hoehn, the Applicant’s engineer who had spoken earlier, answered that yes, there would be a teaching field under Elisha’s Path and that said area would be restored after the installation of the leaching field. Moreover, he said, Elisha’s Path would “not be any more passable” after the development was completed than it was currently. “But people drive through there all the time,” responded Mr. Nimes-Vais.

Mr. Hoehn again stated that it was acceptable to put a road over a leaching field and that Elisha’s Path would not, in fact, be a road but an access to a cluster of the four easternmost units. Mr. Nimes-Vais granted that that might be the intent; however, the reality might turn out to be something else.

Jean Duggan, an abutter, stated that currently there was not enough room for two vehicles at the intersection of Greenwood Avenue Extension and Herring Creek Road and that there was no room to expand. Mr. Richardson referred Ms. Duggan to the site plan.

Dennis Lopez, another abutter, referred to a letter he had sent to the Commission and then added some points to that testimony. [See the meeting file for a copy of his letter.] He sat on the Tisbury Planning Board, he said, and it was his impression that a 40-foot roadway would be required. “That doesn’t exist,” he declared, “and it cannot exist… Even 40B can’t create an access that doesn’t exist.”

Mr. Lopez continued that since the project was being funded by the New England Fund, the developers were allowed no more than a 20 percent profit. He wondered, he said, if the broker fee or marketing fee would be included in that 20 percent, since a broker stood to make around $648,000 on the sale of the units. “How does that show up as an expense on the pro forma sheet?” he asked. “Is the real estate dealer a partner?”
Mr. Lopez also had questions about whether there was any relationship between the modular home supplier and any of the partners, specifically, if any of the partners would collect a commission on the unit sales and, if so, whether that commission would be included in the 20 percent profit allowed.

Regarding Mr. Lopez’s question about real estate brokerage fees, Mr. Richardson replied that yes, there was a line item for brokerage of the homes, specifically, the standard 6 percent fee. “People are working for that,” he explained. Regarding marketing, accounting and administrative fees, Mr. Richardson stated that this too was an allowable line item under project expenses.

As for the question about the commission on the modular home sales, Mr. Richardson responded, “There is no commission to the modular home dealer out of Canada.” He added that a general contractor would assemble the units and that the fee for that was also a line item.

“So the broker fee would not be included in the profit?” inquired Mr. Lopez. “Right,” answered Mr. Richardson, “it’s considered outside the 20 percent... It [the broker] could be anybody, and the person would be working for that fee, so he would be entitled to it.”

Margie Aldrin, another abutter, related that she lived in the last house on Franklin Terrace. She described how during the last few years, four new houses had been built nearby, two of them modular. “They wrecked my front yard when they brought them in,” she said. “I don’t want them in my front yard or in my trees.” She recalled the destruction wrought by the contractors trying to maneuver the modular units around the corner and how the trees and shrubs they had wrecked were never repaired. “They do not speak English,” she said, “and they took something out of my car. No one repaired anything.”

Jean Duggan, who had spoken earlier, wanted to know if the “exclusives” would go to one of the developers. The Hearing Officer answered that the Applicant had already explained that the brokerage fees were a line item outside the allowable profit of 20 percent. Ms. Duggan then asked who the general contractor would be. “We haven’t identified it yet,” replied Mr. Richardson.

Questions from Commission Members.

Ms. Sibley asked if some sort of language could be put into the covenants that would favor year-round residents as buyers. Mr. Richardson responded, “We’d like to think these are for local and Island residents. But I’m not sure we can legally do that.” Ms. Sibley wondered what the timeframe would be to find out the answer to her question. “For me that affects the benefits and detriments,” she remarked. Ms. Rand noted that she had a couple of calls into the State to find out about that.
Ms. Brown requested more details about the 18 moderately priced homes, for example, how “regular folks” would have the opportunity to buy them. She also wanted to know what kind of set-up would be in place to get the six affordably priced homes to people who qualified to buy them and how the Applicant would keep those units affordable.

Mr. Freeman, the attorney, replied, “All the units would be deed-restricted in perpetuity by deed rider, if you and the Selectmen want.” To get qualified buyers, he said, the Applicant would be talking to local housing agencies. Mr. Richardson noted, “We’d like to sell them to Island residents on a first-come-first-served basis.” In addition, he explained, there were a number of approaches for determining qualification limits. For example, the moderately priced units could be sold to families with an income of, say, 140 percent of the median for the State, with such a family being able to afford a $295,000 asking price.

Mr. Freeman related that the Applicant had looked into the Island Co-Housing project and that the same kind of affordable-housing restrictions could be put into place.

Ms. Brown wondered if the permanent covenant deed rider would also apply to the moderately priced homes for families making up to 140 percent of the median income. Mr. Richardson said that this was a possibility. “But our first priority is to sell to Islanders. The $295,000 threshold comes from the pro forma.”

Ms. Warner encouraged the Applicant to head in the direction taken by Island Co-Housing. “There’s a desperate need for housing in that next level up,” she said. She asked Mr. Richardson if the house in the upper-right-hand photograph that had been distributed was one of the moderately priced units and if complete plans were available. Mr. Richardson answered yes to both questions, noting that the house she was referring to was the Cape model.

Ms. Warner expressed concerned about upstairs cross-ventilation in the Cape model. Mr. Richardson responded that the design was standard. Ed Herczeg, one of the developers, said that it would be covered with white cedar shingles and would have a concrete foundation.

Referring to the lot schematic that had been distributed earlier, Mr. Israel asked, “Are you claiming that the project will have the same density as the neighborhood there now? It clearly shows a very heavy density.” He also inquired about the number of trees now standing that the Applicant intended to leave on the site.

Mr. Herczeg answered no to Mr. Israel’s first question. Addressing the second question, Mr. Marshall, the landscape architect remarked, “Most of the site gets the vegetation taken out. Then we’ll reintroduce a series of shade trees running down the heart of the site.” Tom Lee, another landscape architect from Stimson Associates, listed some of the tree species that would be used: London plane, American beech, red oak and American holly. Among the shrub species chosen for the buffer were inkberry and
viburnum, and the common areas would be seeded with a fescue-based grass that required less water than standard species.

Mr. Israel inquired how much fill would be needed for the site. Mr. Lee replied that he did not know offhand.

Ms. Warner wanted to know what a London plane was like. “It’s similar to sycamore,” answered Mr. Lee. “It’s a little more rugged and has a nice crown. Also, it’s drought-resistant and needs low watering.”

Mr. Best asked about the grading of the site. “On average we’re getting the grading down to 6, 7 percent,” responded Mr. Marshall. “But you’re showing 1 to 2 feet on the site plan,” said Mr. Best. “That’s vertical difference,” noted Mr. Lee.

The Chairman summarized the issues that remained to be resolved: the access issue; water runoff; the impact on Camp Jabberwocky; the possible opening of Elisha’s Path; and the possibility of leaving as much of the present vegetation as possible.

Mr. Israel asked Mr. Scully what he was using for the number of average vehicle trips generated per family. Mr. Scully answered, “What we’ve presented is a daily trip estimate, and that would be between 11 and 13 vehicle trips per day.”

Mr. Israel said that he wanted to hear more about the Level of Service F on Franklin Street and the discrepancy between Mr. Scully’s conclusions and Mr. Wessling’s. In addition, why was the Applicant proposing 24 units? he wondered. “Why not 30?” responded Mr. Richardson, who explained, “We came upon it after studying the possibility of 30. It was dictated by how many you can cram in before you have to go to condos.”

Mr. Hoehn expanded on this: “We tried to keep space between the houses. They did ask me originally if they could get more onto the site.” Had they thought about multi-family housing? asked Mr. Toole. “Not a lot,” replied Mr. Richardson, who added that his idea of being a homeowner was owning one’s own separate home. “I grew up in the double-decker in a city,” observed Ms. Sibley, “and it allowed us to have a backyard. You would get more usable open space with multi-family structures. I don’t think it’s a slam-dunk that separate structures are necessarily the best way to do it.”

Ms. Rand pointed out that with so many issues still open, the Applicant would be coming back. There ensued a discussion about when a Continued Public Hearing could be scheduled to suit the Commission members and the Applicant. The date finally settled on was June 20, 2002. Ms. Rand said that considering how many interested members of the public had attended that evening, it should take place in the Town of Tisbury. Notices with details would be sent out, she added.
The Hearing Officer then banged the gavel and continued the Public Hearing to June 20. The time was 10:01 p.m. A short recess was called while most of the audience members departed from the Meeting.

**New Business: Martha’s Vineyard Golf Partners, LLC (DRI #484) – Modification of Condition and Endorsement of Access and Membership Plans.**

Chairman Vercruysse took the gavel and called the Meeting back to order at 10:10 p.m. He announced that the Commission would now address the Modification of a Condition as well as the endorsement of access and membership plans for the Vineyard Golf Club (Martha’s Vineyard Golf Partners, LLC, DRI #484). [The Commission members seated for this segment of the Meeting were: J. Athearn; J. Best; C. Brown; M. Donaroma; T. Israel; M. Ottens-Sargent; L. Sibley; R. Toole; J. Vercruysse; K. Warner; R. Wey; A. Woodruff; and R. Zeltzer.]

DRI Coordinator Jennifer Rand read aloud Condition 2(a) of Written Decision No. 484:

“That the Applicant shall submit to the full Commission for approval prior to the opening of the golf facility a plan which will include an initial number of 125 Island memberships, said plan being designed to expand on a gradual basis the number of Island memberships as will be allowed by the resulting condition of the managed turf area …”

She then referred the members to the Applicant’s Island Membership Expansion Plan dated May 16, 2002. This, she noted, was a revised plan and different from the one that had been distributed to them in the mailing the week before. [See the meeting file for a copy.]

Ms. Rand explained that in a meeting the night before, the Edgartown Zoning Board of Appeals had reviewed the earlier plan. “The ZBA was not happy,” she said, adding, “They thought the plan was not reflecting what the Commission had heard from the Applicant.” The Applicant had subsequently responded to the ZBA’s comments, she said, resulting in the modified plan before them. “It’s a good step in the right direction,” she remarked.

Chairman Vercruysse asked Ms. Rand if she had received anything in writing from the ZBA. No, she had not, replied Ms. Rand, but she had spoken at length that afternoon to a member of the ZBA after talking to that Board’s Chairman. “Their conclusions were based on the plan they saw last night,” she related. “He [the ZBA member] can’t speak for the body, but he said he was far more comfortable with the revised plan.”

Mr. Donaroma wanted to know if the revised Island Membership Expansion Plan would go to the Zoning Board of Appeals after the Commission had voted on it. “It will go back,” answered Ms. Rand. “It wasn’t a formal Public Hearing last night … The ZBA
Chairman Vercruysse asked Ms. Rand what the Commission was expected to do with the plan that evening. “Approve it or not,” said Ms. Rand, “with approval meaning that the plan fulfills Condition 2(a).”

Mr. Attearn wondered what was different about the modified plan. Ms. Rand explained that in the original plan the times of play for Island members were at 11:30, 1:30, 2:30 and 3:30, with Island members being allowed to play one round each week. In addition, the Island members were to be required to use caddies and would be restricted to four guests at the club’s restaurant; more guests would be permitted during the shoulder seasons.

Mr. Best inquired if the Island Membership Expansion Plan stated explicitly how members were to be chosen. Yes, responded Ms. Rand, that was in the original plan that was mailed to the Commissioners the week before. Mr. Best asked if a lottery system would be used. Ms. Rand said that she did not know. Owen Larkin, Managing Partner of Martha’s Vineyard Golf Partners, LLC, stood to speak. “No, it’s not a lottery,” he stated.

“Well, I think that’s a significant point,” remarked Mr. Best. Mr. Larkin responded, “A lottery system was never part of our discussion. The criteria for Island members are almost the same as for the regular members.” He then listed some of those criteria: Island members had to have been residents of the Vineyard for at least three years; they did not have to be homeowners but had to live on the Island 12 months of the year; and they had to state what they had done to contribute to the community. “We have an Island Membership Advisory Committee,” explained Mr. Larkin, who added that this was not the same group of people that had vetted the applications of the regular members.

Ms. Brown posed this question: “Say they’re all equivalent. Who then chooses?” “That’s up to the Island Membership Advisory Committee,” answered Mr. Larkin, who referred to the list of committee members contained in the earlier handout.

Ms. Brown then asked what would happen if, say, the club did not get 125 Island members right now and then, later, others wanted to join. Mr. Larkin replied, “Anyone that’s interested knows that this is the only golf course that’s going to be approved. I doubt we’d get to the third category of people waiting, which is those who already belong to another club.”

Mr. Larkin continued, “The Zoning Board of Appeals had a different take on it, although we were responding to the Martha’s Vineyard Commission … But we’ll be happy to change the plan, if that’s what you want.”
Mr. Israel commented that all of this sounded vague to him. “Did the Written Decision say 125 [Island members]?” he wondered. “Yes,” replied Ms. Rand. Mr. Israel remarked that it seemed to him that “some kind of value judgment” was being used in the original plan and that a lottery would be fairer. Mr. Larkin responded, “The criteria and rules that govern for Island members are similar to the ones for regular members.”

Mr. Larkin explained further: “In Edgartown only private clubs are allowed. The subjectivity is based in part on things like that they have to live here 12 months of the year and how many years they’ve lived here... It’s very rare that everyone [on the committee] said they had no idea who the person is... The selection is a responsibility to every member. Everyone must be vetted to the same process.”

“So what’s the relevance of being from a Town, County or regional board?” asked Mr. Israel. Mr. Larkin answered, “Because that’s one way of making a contribution to the community.” “But does that have any relevancy?” wondered Andrew Woodruff, a Commission member at large from West Tisbury. “The relevancy to us was [to measure] any way a person was willing to make a contribution to Martha’s Vineyard,” responded Mr. Larkin.

“What if you don’t get enough Island members?” Mr. Woodruff wanted to know. Mr. Larkin said, “We have more than enough.” He then commented on why the committee had set the tees times that it had in the original Island Membership Plan, adding, “When we put down 11:30, we thought we would have a parade in my honor.”

Ms. Sibley remarked, “I have a big problem with this. I think you should have a list of the people who are interested in Island memberships ... and then it should be done by lottery. That’s the only way to keep the group from playing favorites. I mean, going home from work every night and caring for your kids is a contribution.”

Mr. Larkin defended the approach of judging a potential member’s contributions to the community. He then pointed out, “If that [having a lottery system] had been a Condition, I would have had to deal with it. But we’ve received applications, and we’ve maintained the ability to select all our members.” Ms. Sibley argued that since Mr. Larkin had not submitted his Island Membership Plan to the Commission, he had not been in a position to promise those memberships to anyone.

Robert Zeltzer, a Commission member at large from Chilmark, commented, “You had a plan, but there’s an awful lot of subjectivity involved here. The people on the committee, they’re people I respect. But its seems to go against what most of us were expecting.”

Mr. Best observed that in weighing the benefits and the detriments of Mr. Larkin’s Application three years before, “I was thinking this should provide the greatest benefits to the greatest number of Islanders... I thought it would be a lottery ... and it should be an annual lottery. That’s only 125 members for the whole Island, selected by eight people. That’s goes against everything we intended.”
Mr. Woodruff remarked, "As a person who sits on this Board, I would feel uncomfortable if I was eligible and someone who did carpentry and went home to his kids wasn't."

Ms. Ottens-Sargent recalled that when reviewing the Application, the Commissioners had talked about modeling the Island membership program after the one at the Farm Neck Golf Club. "But the zoning is different in Oak Bluffs," she noted, "and in Edgartown you can only have a private club."

Ms. Ottens-Sargent continued, "My support was based on public access. We haven't touched on Condition 2(b) yet ... This [2(a)] was a Condition you presented to us, and that should take precedence over what's been done so far. My impression was it was going to be a lottery system ... I'm frustrated that zoning wasn't stressed when we took this up." "It was," said Ms. Sibley.

Ms. Ottens-Sargent went on: "We were changing the Conservation Restriction to create a greater benefit for the general public, but that hasn't happened." After again emphasizing the degree to which the Island Membership Plan had affected her decision on the Application, Ms. Ottens-Sargent concluded, "I hope we can flesh this out and work this out."

Ms. Sibley expressed concern that under the proposed plan only one member of a couple could have an Island membership. Mr. Larkin responded, "Listen, I passed math in grade school. I can count and I can hear. If you are to mandate a lottery, I don't want to be set up in a lawsuit ... Please tell me what the criteria would be to be eligible for the lottery. Please give me some more guidance."

"Here we go again," commented Mr. Donaroma. "We could have easily stated that we wanted a lottery system, but we didn't ... and now at the 11th hour you're changing everything ... The Conditions are the Conditions. This is a lot of people in this room who are ready to move forward. Town Hall has been in an uproar over this." Mr. Donaroma related some of the complaints that had been voiced, among them one about the cost of hiring caddies.

Mr. Donaroma concluded, "The lottery sounds like a great idea. I just don't know how you do it at this point."

Mr. Israel pointed out that the issue of Island membership had not been defined at the time of the Public Hearing and deliberations on the Application. "It was a concern not totally addressed," he said. "There are creative ways of doing a lottery, and that's what we should do. Otherwise, we're going to end up with a system like when I grew up."

Mr. Israel suggested to Mr. Larkin that he return to the Commission with a less restrictive plan. "The criteria [for Island membership] should be for living and working on the
Island. If someone went to reform school and then ... became a productive member of the community, say, even a Selectmen or whatever, he should be able to join.”

Mr. Wey remarked, “The only fair way is the lottery. They said for us to come up with the criteria.” Mr. Best stressed that he had raised these issues during the Public Hearing and deliberation process: “We were told, ‘Don’t worry, they’re going to come back,’ and it was said that we would deal with those issues then. We certainly didn’t say, ‘You come up with a membership plan and we’ll approve it.’”

Ms. Sibley compared the membership plan approval process to an Applicant’s coming back before the Commission for approval of a landscaping plan. “This plan could have been approved two years ago,” she declared. “I don’t know why they didn’t do it before. Now we have to solve it.”

Ms. Sibley stressed that the system for choosing Island members could not be “selective and subjective.” She added that Island members ought to be able to bring guests to the club during the peak season. Ms. Brown pointed out that during the summer, Island members of the Edgartown Golf Club could not bring guests.

Mr. Larkin said, “It’s clear to me that the mandate of the Martha’s Vineyard Commission is to go to a lottery ... This [the submitted plan] was entirely a good-faith effort on my part.” He explained that he had wanted to come before the Commission with the Island Membership Plan a year ago but that then-Executive Director Charles Clifford had requested that he wait until the Application process for the Down Island Golf Club had been completed.

Mr. Larkin stressed that the club was set to open in nine days. “I would request this of you,” he said, “that you allow me to go forward and that you direct me specifically on the lottery system.” He asked that the Commission issue some sort of tentative approval so that he could obtain his Certificate of Occupancy. “I have acted in good faith,” he reiterated.

“We’re starting to repeat ourselves,” noted the Chairman. Mr. Woodruff pointed out that the lottery would have to be advertised.

Harvey Heinz, who described himself as “a former Island member of the club,” asked if he could speak. With the Chairman’s permission, he related his experience in the past with membership plans and how at one point the club did not have enough Island members and then a “plethora of candidates” had applied. “What we have offered is the best deal you could get anywhere,” he declared. “How do we choose? All right, do the lottery.” He stressed that the plan being offered was “an unheard-of good benefit.”

Mr. Israel recommended that Staff set up a date when the Commission could look at an Island Membership Plan based on a lottery system. Ms. Rand suggested that the
following Thursday, May 30, was a possibility, although there were no prior plans to meet that evening.

Ken DeBettencourt, who had been chosen to be an Island member under Mr. Larkin’s system, said, “I’ve lived here for 56 years and I’ve waited 56 years to play golf ... I was preliminarily selected, and I hope this doesn’t ruin this.”

Ms. Sibley remarked, “I think it’s reasonable to give him [Mr. Larkin] a preliminary Certificate of Compliance. Then we should try to address this again with the ZBA.” Ms. Rand responded, “The Chairman [of the ZBA] said the ZBA preferred not to interfere with the workings of the MVC. Between now and next Thursday, we can talk to them ... I want to know if we can put forward that this plan with a lottery is where we’re headed ... The Building Inspector needs Certificates of Compliance.”

Ms. Rand explained that the Building Inspector could not issue a Certificate of Occupancy until the Commission had indicated the Applicant’s compliance with Conditions 2(a), 2(b) and 6(d).

It being 10:59 p.m., Ms. Brown made a Motion That They Extend The Regular Meeting By Fifteen Minutes, duly seconded Ms. Sibley. Said Motion carried unanimously by voice vote.

Mr. Best asked if the Applicant had submitted the aerial photograph analysis that was stipulated in the Written Decision. Ms. Rand replied that it would make no sense to evaluate any picture taken before September 2003, when the growth on the course would be complete. Mr. Best wondered if the Applicant would then have to rectify any areas that were not in compliance with the Decision. Yes, said Ms. Rand.

The discussion returned to the Island Membership Plan. Mr. Wey thought that the specifics of such a plan would be left up to the Applicant. Mr. Israel stressed that the system had to be “more blind and impartial.” After still more discussion, Mr. Larkin made a request: “My creativity has only gotten me in trouble. I would make a formal proposal that I get a Certificate of Compliance and then if we’re to do a lottery, I’ll come back within 30 days with a plan.” Mr. Larkin added, “I’m between a boulder and a hard place.”

Ms. Sibley proposed a compromise. “Nobody who presently has it [an Island membership] gets kicked out. Then any waiting list will be dealt with in a lottery.” “So within 30 days the Applicant comes back with a lottery plan, but to be fair to the people already offered Island memberships, they can retain them,” clarified Ms. Brown. Mr. Israel said that he felt bad for people like Mr. DeBettencourt who had already been promised Island memberships.

Chairman Vercruysse recommended that the Applicant return with an amended Island Membership Plan and meet with the Land Use Planning Committee. “But give him what

Ms. Rand then requested that the Commissioners ask Mr. Larkin to set a temporary policy for the Island members who had already been chosen. Mr. Larkin answered, "They can play after 5 p.m. during the month of June." More comments followed from an unidentified member of the audience as well as Commission members. [Mr. Zeltzer left the Regular Meeting at this point, 11:15 p.m.]

Ms. Rand confirmed with the Commission members that she could write a letter to the Building Inspector that stated that the Applicant still had three issues outstanding with the Commission and that the Applicant would return to the Commission within 30 days to resolve those issues. "So moved," said Ms. Sibley. Ms. Brown provided a second, and the Motion carried unanimously by Voice Vote with none Abstaining. [Those voting were: J. Athearn; J. Best; C. Brown; M. Donaroma; T. Israel; M. Ottens-Sargent; L. Sibley; R. Toole; J. Vercruysse; K. Warner; R. Wey; and A. Woodruff.]

Mr. Israel made a Motion to Adjourn, duly seconded. The Regular Meeting adjourned at 11:17 p.m.

Chairman

Clerk-Treasurer

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

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

[These Minutes were prepared by Staff Secretary Pia Webster from her notes. The tape recorder was not working properly that evening.]