

THE MARTHA'S VINEYARD COMMISSION

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*Martha's Vineyard Commission
Minutes for the Special Meeting of
May 23, 2002*

The Martha's Vineyard Commission (the MVC or the Commission) held a Special Meeting on Thursday, May 23, 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 Special Meeting to order.

[Commission members present at the gavel were: J. Athearn; J. Best; C. Brown; M. Cini; M. Donaroma; J. Greene; T. Israel; M. Ottens-Sargent; L. Sibley; R. Toole; J. Vercruysse; K. Warner; R. Wey; A. Woodruff; and R. Zeltzer.]

Discussion: Vineyard Golf Club Guestrooms (DRI #484).

Commission Counsel Eric W. Wodlinger of Choate, Hall & Stewart, who was expected for an Executive Session on legal matters at 7:30 p.m., had not arrived yet. The Chairman suggested that while the Commission was waiting for him, they could take up another matter, namely, the issues surrounding some guestrooms in the clubhouse at the Vineyard Golf Club (DRI #484).

The Chairman asked Acting Executive Director Irene M. Fyler to read aloud Condition 1(a) of the Written Decision for that DRI, which she did. Said Condition read:

“That should there be any housing to be provided upon the golf course parcel, then said housing should be for the purposes of providing housing for the golf course employees/staff/help...”

Chairman Vercruysse explained that Edgartown Building Inspector Leonard Jason, Jr. had noticed the presence of a number of “lavish” rooms, each with its own bathroom, on the second floor of the clubhouse. “We didn’t give permission for guestrooms,” stated Jane A. Greene, the Chilmark Selectmen’s Appointee.

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Christina Brown, a Commission member at large from Edgartown and Assistant to the Edgartown Planning Board, said that Mr. Jason had assumed that only housing for employees would be permitted on the golf course parcel. She related that local Commission Counsel Ronald Rappaport had characterized the rooms as lavish and an affront to the spirit and intentions behind the Written Decision.

Chairman Vercruyse asked Ms. Brown what the Zoning Board of Appeals' view was on the guestrooms. "The ZBA said that the only housing should be staff housing," Ms. Brown replied, adding, "Lenny [Jason] says that nobody should stay overnight but staff."

Marcia Mulford Cini, a Commission member at large from Tisbury, wondered if it was possible for the Building Inspector to issue a Partial Certificate of Occupancy, thus ensuring that the guestrooms in the clubhouse could not be opened but that the club itself could be. Ms. Brown suggested that since Condition 1(a) stipulated that the only housing on the course site was to be for staff, the guestrooms could be opened, but only for housing staff. Tisbury Selectmen's Appointee Tristan Israel agreed with Ms. Cini that a Partial Certificate of Occupancy could be the answer they were looking for.

By this point, Attorney Wodlinger had arrived, and he suggested that the Building Inspector could do what he referred to as an "enforce."

Linda Sibley, a Commission member at large from West Tisbury, wanted to know this: If the guestrooms in the clubhouse had been presented as part of the submitted plan in 1999, would that get the Applicant "off the hook"? "The issue was," she stated, "were we just knocking out the possibility of condominiums on the site with Condition 1(a)?"

Referring to the Minutes of the Commission's deliberations on the Vineyard Golf Club, Aquinnah Selectmen's Appointee Megan Ottens-Sargent pointed out that the only mention of beds on the site explicitly stipulated that these were to be for employees only. Ms. Greene remarked, "I would hazard to say there wasn't ever any discussion about this. We clearly said 'Staff Only.'" "The staff can sleep there," suggested Ms. Sibley.

Edgartown Selectmen's Appointee Michael Donaroma noted that the Applicant could contend that members of the board of directors were club employees. He wondered if the Commission could add any verbiage to the Written Decision at this point containing a definition of employee that would not allow board members to be considered employees.

Attorney Wodlinger offered the possibility of adding a so-called scrivener's correction if the wording of the Written Decision did not accurately reflect what was actually voted by the Commission. "But if you're doing something to substantively change it, you have to follow due process," he cautioned. (Attorney Wodlinger noted later that by "due process" he meant a Public Hearing.)

Mr. Donaroma suggested that the Applicant submit a list of employees to the Building Inspector. Attorney Wodlinger responded, "The Martha's Vineyard Commission has no

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Building Inspector. We would need a formal amendment." He recommended that the Commission hand Mr. Jason a copy of the Meeting Minutes and state that what was contained in the Minutes reflected the Commission's intent.

"I don't recall any discussion of housing in the clubhouse," said Tisbury member at large John Best, who added, "Why would we ever allow that? Unless it [the guestrooms] shows in the plan, have Lenny [Jason] enforce it." "I think they were on the plan," noted Chairman Vercruysse.

"The only issue is whether these are housing," declared Ms. Sibley. "Is a guestroom housing? If so, just reiterate Condition 1(a)." Attorney Wodlinger explained that under zoning the guestrooms did not qualify as housing. "I don't think that housing will do the trick," he said. "What it is is a transient accommodation."

Robert Zeltzer, a Commission member at large from Chilmark, recommended that Staff check the record. "Where we've said 'employees,' can we write a definition of that?" he wanted to know. The discussion continued, and Attorney Wodlinger again recommended that the Commission send Mr. Jason a copy of the Minutes.

County Commission representative Roger Wey inquired about the number of guestrooms in the clubhouse. "There're 10 rooms," answered Ms. Brown. "Well, my impression is that housing in the clubhouse was never discussed," said Mr. Wey, acknowledging that he had not been a member of the Commission during the Vineyard Golf Club Public Hearing and deliberations.

Mr. Israel asked if the guestrooms would constitute a bed-and-breakfast establishment, which would require a permit. "And we certainly didn't discuss wastewater generation from that," he added. Attorney Wodlinger answered that they should find out first if the clubhouse guestrooms had been included in the plan submitted with the Application. Since DRI Coordinator Jennifer Rand was not expected to arrive until 8:15 that evening, it was agreed that the discussion would be continued at that point.

Executive Session.

Next, Ms. Greene made a **Motion To Move To Item Ten, Executive Session**, duly seconded. Then Ms. Greene made a **Motion That The Special Meeting Be Suspended So That The Commission Could Go Into Executive Session To Discuss Legal Matters And That The Commission Would Return To The Special Meeting When The Executive Session Was Finished**, duly seconded. The Staff Secretary conducted a Roll Call Vote on the latter Motion, with the following results:

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

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NAYS: None.

ABSTAINING: None.

The Commission went into Executive Session. The time was 7:58 p.m.

Continued Discussion: Vineyard Golf Club Guestrooms (DRI #484).

The Special Meeting resumed at 9:45 p.m. Acting Principal Planner William Veno distributed to the members copies of the second-floor plan for the Vineyard Golf Club clubhouse that Ms. Rand had found upon her arrival.

Mr. Donaroma asked if under Edgartown zoning a private club needed a permit to have overnight guests. "Yes, a club can do that for their members," responded Ms. Brown. Referring to the plan, Ms. Green said, "This is six [guestrooms]. Lenny [Jason] said 10." "I've got nine," noted Ms. Brown.

Mr. Best pointed out that the plan referred to "rooms" and not "bedrooms." "These aren't the final drawings," noted Ms. Greene. Ms. Brown said, "Lenny [Jason] has different plans."

Had the Zoning Board of Appeals addressed this matter? inquired Ms. Ottens-Sargent. Ms. Brown explained that Mr. Jason had assumed there would be no sleeping quarters in the clubhouse. "Lenny thinks that the ZBA means the same thing in their decision," she said.

Chairman Vercruyse reminded the members that Attorney Wodlinger had told them that it was not possible to write a new Condition at this point. Ms. Brown pointed out that Mr. Jason was not asking for a new Condition, only a statement of some kind to guide him. Something that would have some weight, said Ms. Sibley.

Mr. Israel remarked, "They [the Applicant] paid their nickel and came before us with their proposal. It'd be intrusive and invasive to ask them for a list of employees. Just say, 'We stand by our Decision. If he [Mr. Jason]'s asking for a list, that's invasive."

Attorney Wodlinger suggested that Mr. Veno write a letter to the Building Inspector, attaching the Minutes and the excerpt from the Written Decision showing Conditions 1(a) and 3(a). He stressed that Condition 1(a) says *any* housing and that Condition 3(a) simply accepted the Applicant's offer of 40 beds for employees. "So moved," said Mr. Israel, whose Motion was duly seconded.

What is the definition of 'dwelling'? wondered Ms. Sibley. "I don't think that in the 1(b) Condition rooms are dwellings," responded Attorney Wodlinger. "It just says 'rooms,'" noted Ms. Brown. James Athearn, a Commission member at large from Edgartown,

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clarified with Attorney Wodlinger that although a transient residence was not allowed by zoning in that part of town, a private club was exempt from that regulation.

Chairman Vercrusse then conducted a Voice Vote on Mr. Israel's Motion, which carried, with 14 Ayes, no Nays and one Abstaining (Ms. Brown). Commission Counsel asked if he could be excused, and the Chairman nodded. Then the Chairman called for a short recess. The time was 9:57 p.m.

Discussion/Vote: B.A.D.D. Company, LLC, Subdivision (DRI #551).

[Mr. Athearn, who had a conflict, left the Special Meeting at this point. Mr. Donaroma, who was one of the DRI Applicants, also left the room. Ms. Cini, who was ineligible to vote, left, as did Ms. Sibley, who was not feeling well. Shortly after this segment of the Meeting commenced, Ms. Brown recused herself due to a conflict. (See below.)]

Thus, the Commission members seated for the entirety of this segment were: J. Best; J. Greene; T. Israel; M. Ottens-Sargent; R. Toole; J. Vercrusse; K. Warner; R. Wey; A. Woodruff; and R. Zeltzer. All of these Commissioners were eligible to vote on this DRI.]

Richard J. Toole, Chairman of the Land Use Planning Committee and a Commission member at large from Oak Bluffs, provided a report on the LUPC's "sparsely attended" Post-Public Hearing Review of the B.A.D.D. Company, LLC, Subdivision (DRI #551).

Mr. Toole related that the committee was recommending Approval with two Conditions: 1) that the lots must be hooked up to Town water; and 2) that the brightly lit soda machine must be moved. He added that the second Condition had, in fact, already been carried out. Who was present at the LUPC meeting? asked Mr. Best. "Me and Andrew [Woodruff]," replied Mr. Toole. (Mr. Woodruff is a Commission member at large from West Tisbury.)

At this point Ms. Brown stated, "I should abstain. I am the landlord of the abutting property." She then left the meeting room.

Mr. Toole continued, "We did talk about requiring lysimeters and testing and a more thorough hazardous-waste study, checking for VOCs [volatile organic compounds]." But if the lot owners were to hook up to the Town's water system, he explained, such testing would not be necessary. "I thought the Board of Health and the ZBA could deal with it," he concluded.

Would the lot owners have to adhere to the three-bedroom limit under Title V in that zone? inquired Mr. Best. Ms. Greene suggested, "We can condition Town water and three bedrooms." **Richard Barbini, an agent for the Applicant**, pointed out that the Town would allow the lot owners to build five bedrooms. Ms. Greene responded, "I think there was concern about density." Mr. Barbini pointed out that the land was being subdivided into 30,000-square-foot lots so that they could have more bedrooms.

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Chairman Vercruyse wanted to know if the LUPC had discussed stabilizing the filled zones. Yes, answered Mr. Toole, but the committee had decided that this was a matter of "Buyer Beware" and not their responsibility. "My concern was stump-dumping by the previous owner," noted Mr. Woodruff, "but the Board of Health can take care of that."

The discussion turned to VOC testing. Ms. Greene emphasized that such testing could only be required if the lot owners were to put in individual wells. So with Town water, there would be no monitoring? asked Mr. Wey. "That's right," replied Water Resources Planner William Wilcox, who added, "I think Town water is the best solution ... You just avoid the whole issue of the quality of the groundwater."

Responding to a query from Ms. Ottens-Sargent, Mr. Wilcox said, "I have no information that a more intensive survey is worth going through." "We have to rely on local knowledge and local concerns and the Board of Health," said Mr. Woodruff.

Mr. Israel expressed concern about families with small children moving in without the soil's having been thoroughly tested. In addition, he said, he wanted to ensure that the Commission would review this DRI again if the nursery portion of it ever became a full-scale retail operation. "There's a lot of traffic in and out of those places," he remarked, "so we should make them come back for review ... Just state that in the Decision."

Mr. Zeltzer disagreed: "If this was on State Road, fine. But I see this as an Edgartown issue and not one of regional impact." "It was also stated they'd only be selling what they are growing on site," Ms. Greene pointed out, referring to the Minutes of the Public Hearing on May 9, 2002. West Tisbury Selectmen's Appointee Kate Warner noted that the Applicant would have to come back due to an increase in intensity of use if the nursery operation were to be expanded.

Mr. Barbini emphasized that what the Commission had before them was a Form A subdivision. "I feel concerned that the neighbors don't know about the jump in the number of bedrooms," commented Ms. Warner. "Right, that's a 30 percent jump," observed Chairman Vercruyse. "We should focus on the building lots," stressed Mr. Wey, who added, "We have the Board of Health, the Board of Selectmen, et cetera to deal with the other issues. The only thing in front of us is the subdivision."

Ms. Greene made a **Motion To Move To Item Six, Possible Vote**, duly seconded by Mr. Zeltzer. Then Ms. Greene made a **Motion That The Commission Approve The Application With The Condition That The Applicant Install Town Water**. Said Motion was also seconded by Mr. Zeltzer.

Ms. Ottens-Sargent pointed out that the Minutes for the Public Hearing stated that the farm would be limited to slow-release fertilizers. "Who is saying that?" she asked. Mr. Barbini answered, "Mike Donaroma, and it's in the plans we submitted to the Board of Health ... It's stipulated on our plan before the Board of Health."

Responding to a question from Ms. Ottens-Sargent, Mr. Wilcox said, "I know very little about Katama Bay. I'm sure it's nitrogen-limited, but what the limits are, I have no idea." "The issue is that the greenhouses are 3 feet above the groundwater," said Mr. Woodruff. The Staff Secretary mentioned that the Applicant had testified in Public Hearing that the greenhouses would be lined. *[See page 3 of the Full Commission Meeting Minutes of May 9, 2002.]*

Ms. Greene pointed out that although the May 9 Minutes had not yet been approved, the Applicant had in fact presented that the greenhouses would be lined and thus the Commission should accept that. Ms. Ottens-Sargent recommended that the Commission also accept the Applicant's offer to use only slow-release nitrogen fertilizers. "We can just accept what the Applicant presented," said Mr. Zeltzer.

Thus, Ms. Greene's Motion was amended to the following: **That The Commission Approve The Application With The Condition That The Applicant Install Town Water And That The Commission Accepted The Applicant's Offer To Line The Greenhouses And To Use Only Slow-Release Nitrogen Fertilizers.**

Mr. Best returned to the issue of limiting each lot to three bedrooms, and Mr. Barbini again argued that these would be 30,000-square-foot lots and that the owners ought to be able to build as many bedrooms as the Board of Health and the Zoning Board of Appeals allowed.

Chairman Vercruysse reiterated Ms. Greene's Motion, and Mr. Veno conducted a Roll Call Vote on it, with the following results:

AYES: J. Best; J. Greene; T. Israel; M. Ottens-Sargent; R. Toole;
J. Vercruysse; K. Warner; R. Wey; A. Woodruff; and R. Zeltzer.

NAYS: None.

ABSTAINING: C. Brown.

The time was 10:25 p.m. Ms. Greene made a Motion To Adjourn, but withdrew it when DRI Coordinator Jennifer Rand asked to speak.

Miscellaneous Announcements.

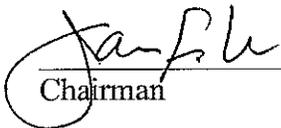
Ms. Rand announced that the next LUPC meeting, on June 3, would begin with a site visit at 5:30 p.m. at the Black Dog Bakery/Café railroad car outdoor display (DRI #522M). Then the committee members would return to the Commission Offices for a Pre-Public Hearing Review of the Tisbury Fuel Services Application (DRI #552).

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Mr. Veno announced that EOE staff would be coming down to the Island to present a workshop of the buildout map program. The workshop would take place at the Howes House on Thursday, June 6, from 6:00 to 8:00 p.m., he said.

Ms. Warner requested that the Planning Boards be called or faxed and given that information. "Okay," said Mr. Veno.

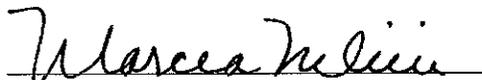
Ms. Greene made a Motion To Adjourn, duly seconded. The Special Meeting adjourned at 10:27 p.m.



Chairman

24 June 2002

Date



Clerk-Treasurer

24 June 2002

Date

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

ABSENT: A. Bilzerian; 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.]