

THE MARTHA'S VINEYARD COMMISSION

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

Martha's Vineyard Commission Minutes for the Regular Meeting of June 20, 2002

The Martha's Vineyard Commission (the MVC or the Commission) held its Regular Meeting on Thursday, June 20, 2002, at 6:30 p.m. in the dining room at the Tisbury Senior Center, Pine Tree Road, Tisbury, Massachusetts. At 6:32 p.m., James R. Vercruysse – Commission Chairman and a member at large from Aquinnah – called the Regular Meeting to order.

[Commission members present at the gavel were: J. Athearn; J. Best; T. Israel; C.M. Oglesby; A. Schweikert; L. Sibley; R.L. Taylor; R. Toole; J. Vercruysse; R. Wey; and R. Zeltzer. Mr. Woodruff arrived at 6:36 p.m., while Ms. Brown and Ms. Ottens-Sargent sat down at 6:42 p.m. Mr. Donaroma entered the room at 6:45 p.m.]

Announcements.

Chairman Vercruysse welcomed **Alan Schweikert, the new Selectmen's Appointee from Oak Bluffs**, who had been appointed on June 3.

The Chairman announced that **former Commission member Marc Widdiss of Aquinnah** had died earlier in the week, and he requested that members sign the two sympathy cards that were being passed around the table. Roger Wey, the County Commission representative, mentioned that a graveside service for Mr. Widdiss was scheduled for 2:00 p.m. on Saturday, June 29, at the cemetery in Aquinnah. "I served with Marc on the Commission," Mr. Wey said, "and he was a great guy. He had a tough, long siege with his illness."

Mr. Wey also made some comments on the length of that evening's Agenda: "It's kind of like a marathon. I mean, a lot of us have to work the next day, you know, and it's hard." He said he would rather see a couple of shorter Meetings instead of a single long one. DRI Coordinator Jennifer Rand responded that there had been some quorum issues both for mid-June and late June.

New Business: Salary Matters.

Chairman Vercruyse offered some details on a **proposal to give present Staff members an additional 1 percent raise for the next fiscal year**, in view of an arrangement made with another Staff member by former Executive Director Charles W. Clifford. The Executive Committee, he explained, had agreed to the additional raise, and funds were available in the budget to accommodate the raise. As an amendment to the budget, he said, this change had to be voted by the full Commission.

"I'd like to move it," said Linda Sibley, a Commission member at large from West Tisbury. Her Motion was seconded by John Best, a Commission member at large from Tisbury. The Chairman asked for questions or discussion. Oak Bluffs Commission member at large Richard J. Toole remarked, "I just want to say that I hope the Staff knows that if we could come up with the money, it would be a hell of a lot more than 1 percent. And maybe once we get a new Executive Director on board, we can all put our heads together and figure out where we can get the money, because you're all doing a great job."

The Chairman conducted a Voice Vote on Ms. Sibley's Motion, which carried unanimously, with 11 Ayes, no Nays and none Abstaining. *[Mr. Woodruff arrived at this point, 6:37 p.m.]*

Vineyard Golf Club Island Membership Plan (DRI #484).

Mr. Toole, Chairman of the Land Use Planning Committee (LUPC), reported that the Edgartown Zoning Board of Appeals had expressed their preferences concerning the Island Membership Plan for the Vineyard Golf Club (DRI #484), with the ZBA favoring the plan already put in place by the Applicant. Staff had checked with Commission Counsel, he noted, who had concluded that the plan was not a regional issue that the MVC had to concern itself with.

"And so basically," said Mr. Toole, "we agreed that we're going to go with the plan that they [the Applicant] proposed and that the ZBA is happy with. And that's the bottom line. I don't think it's worth taking time to hash over it ... If we could do it again, we'd have done it differently ... and I just don't think it's worth making a big stink about at this point."

DRI Coordinator Jennifer Rand described the conversation she had had with Commission Counsel. "Counsel has had all the information and reported back to us," she said, "and he felt that the selection process was really not a regional issue, and if the ZBA wanted to deal with it, he recommended sending it back to the ZBA and letting it remain in the Town."

Mr. Best wanted to know what rights the Island members would have. "They have full rights in the clubhouse," answered Ms. Rand, who added that it was all spelled out in the packet of materials she had given to Commissioners a few weeks earlier. "And they have rights to use the restaurant," continued Ms. Rand, "they have rights to use the locker room, they have full rights after five o'clock. It's spelled out. They have full rights with the exception of summertime play. They, first of all, have one day[time] tee time a week, and they can't bring a guest, which is comparable to the Edgartown Golf Club, which is what they said they would reflect." In addition, she said, after five o'clock the Island members would not be required to hire caddies.

Robert Zeltzer, a member at large from Chilmark, remarked, "I read this with some concern." Although he had great respect for Commission Counsel Eric Wodlinger, he declared, "if this is not a regional issue, I don't know what is. The membership is not a membership to be selected from Edgartown. It's an Island-wide membership, as I understand it. It's a Martha's Vineyard membership, as I understand it."

"I'm troubled by it," Mr. Zeltzer continued. "Would I jump up and down and scream about it? No. But I think it's a cop-out. Tell me why it isn't a regional issue."

"I disagree with Bob [Zeltzer]," said Mr. Wey. "The golf course is in Edgartown. I believe it's an Edgartown issue with the membership and everything like that. That's my opinion." *[At this point - 6:42 p.m. - Ms. Brown and Ms. Ottens-Sargent arrived.]*

Tisbury Selectmen's Appointee Tristan Israel observed that when he had studied the Applicant's Island Membership Plan, he had drawn the same conclusions that Mr. Zeltzer had. Although he did believe that the Applicant's intentions had been good, he said, "I think it is elitist. I think I just can't get past, you know, that the people that are on there now may be fine. But boards change, people change, and it's people sitting in judgment, whether you're a charity, whether you're a Selectman, whether you're this or that ... I don't like that. It has the potential for discrimination." *[Mr. Donaroma arrived at this point, 6:45 p.m.]*

Mr. Israel also objected to the fact that that Applicant had not held to his agreement to return to the Commission with his Island Membership Plan before proceeding with it. "They didn't, until a week or two before," he said. "Here we are, two or three weeks before this thing is going to open, and we're the bad guys - or a *week* before it's going to open - and if we make the wrong decision, we're the bad guys."

Mr. Israel finished up by stating that he agreed with Mr. Zeltzer in that the golf club had been touted as being an organization that would be opened up to the people of the Island. "That's the pitch that they gave," he said. "It didn't say Island members who are Selectmen, it didn't say Island members who belong to charity. It said Island members."

Mr. Best expressed the opinion that having a lottery system to choose the Island membership would be a benefit of the project that would weigh in its favor. "I think

everyone thought a private, two-, three-hundred-acre parcel of land devoted to the recreational interests of 300 individuals is not what I would say is in the public benefit," he declared. "So we always said, at least if you're not going to do a public golf course, you at least should have Island membership. So to me we're talking about Island membership being a public benefit."

Mr. Best asked the DRI Coordinator if it was true that Edgartown would be getting 85 of the initial 125 Island memberships. Ms. Rand replied that as far as she knew, there was no set number of memberships for Edgartown. **Owen G. Larkin, Managing Partner of the Vineyard Golf Club**, corrected her, noting that the Island membership review committee had set aside 75 memberships for people from Edgartown. "Okay, so there is Edgartown getting already an additional benefit," said Mr. Best.

Mr. Best continued that he did not think it was an Edgartown issue, and he pointed out that the course, in fact, was closer to the West Tisbury borderline than it was to downtown Edgartown.

Ms. Rand offered another piece of information that had arrived at the Commission Offices late on the day that the LUPC had met. "I have a letter from the Applicant's attorney – and I actually have an article indicating where this came from – that a lottery would put the legal standing as a private club in jeopardy," she said. Should it lose its status as a private club, Ms. Rand explained, it would be in violation of local zoning.

Ms. Sibley pointed out that the Commission never should have let slip away such an important piece of the project before its Approval of the Application. She agreed, she said, that how this element of the project played out was in fact critical to an evaluation of the benefits. And she was not pleased, she emphasized, that the Island Membership Plan had been put into practice before it had been approved by the Commission. "We have to accept some of the responsibility for having allowed that to happen," she remarked.

Although it was not "a disastrous plan," Ms. Sibley continued, "it's not what some of us would consider to be ideal in terms of maximizing the public benefits to the Island." She pointed out that the ZBA had, in fact, already made its decision. "And they're quite adamant that this is what they approved and what they want," she said. "Now ... we have to decide whether this is not only regional but of such great importance that we want to be in a conflict with the Edgartown Board of Appeals."

Referring to the Minutes of the Commission's 1999 deliberations on the Vineyard Golf Club, Aquinnah Selectmen's Appointee Megan Ottens-Sargent stated that the intent of the Commission was clearly different from that of the ZBA, as presented in the latter's letter to the MVC. Said letter mentioned using the model of the Edgartown Golf Club, she continued, and she did not recall that club's ever having been mentioned during the Commission's deliberations. She then read from the Minutes that the Island Membership

*Martha's Vineyard Commission
Regular Meeting of June 20, 2002: Page 5*

Plan was to be based upon the plans used by the Farm Neck Golf Club and Mink Meadows.

Ms. Ottens-Sargent stated that although she understood that, for instance, there could not be 300 Island members because of the effect that would have on the managed turf, this did not preclude using a lottery system to choose the initial 125 Island members.

Ms. Ottens-Sargent concluded, "We really do have the right to force this, whether or not the ZBA is behind it . . . , and I think I left that evening under the impression that Vineyard Golf would come back to us with a plan that really did address public play in a way that would not be elitist, and that the Town, based on the zoning, et cetera, would basically accept whatever those details were. And I don't think that that has come out of this. And . . . I'd like to hear what [Commission Counsel] Eric Wodlinger has to say about the issue that Jen [Rand] raised, whether or not we'd be jeopardizing the definition of a private club."

Andrew Woodruff, a Commission member at large from West Tisbury, wanted to know how many people had applied for Island membership and how many Island membership applications had been denied by the review committee.

Mr. Larkin responded, "We did turn people down, but we turned them down based upon the criteria that we set up." Those criteria were: Island residency for a minimum of three years; proof of year-round residency; no concurrent membership in another Island golf club; and inability of the applicant to buy a regular membership. Five people had been turned down for the last reason, he noted. Altogether, Mr. Larkin said, there had been a total of 262 applications, with that number including all telephone inquiries and notes, in addition to formal applications.

Mr. Best wondered why the Edgartown Zoning Board of Appeals had approved an Island membership plan before it had been approved by the Commission. "I know it's a little bit ambiguous here because we'd already approved the golf course," he said, "but we never approved . . . the golf membership plan for Island members. Perhaps it's not us being the bad guy here, coming in with too little too late, but rather the Zoning Board of Appeals jumping in perhaps a little bit prematurely with approving something that hadn't gone through us."

Mr. Israel made a couple of more points: 1) that he had raised this issue numerous times over the past few years with Staff; and 2) that the plan did not necessarily have to use a lottery system.

Ms. Sibley inquired if there was a waiting list. "Yes," replied Mr. Larkin. "Is it large?" asked Ms. Sibley. "No, it isn't," answered Mr. Larkin, "it's under 50 people." Was it not possible, though, that those people would be waiting for a very long time? wondered Ms. Sibley. She suggested as a compromise that perhaps a lottery system could be used if the

Island membership were allowed to expand, as provided for in the Commission's Written Decision, with the additional Island members being chosen by lottery.

Mr. Zeltzer commented on "the unusual occasion," when he, Ms. Ottens-Sargent and Messrs. Israel and Best all agreed on something. "It's refreshing," he remarked. Turning to the proposed membership plan, Mr. Zeltzer pointed out that at the Farm Neck Golf Club, Island members could play every day after two o'clock from June 21 through September 15, after arranging for a tee time. "It's a reasonably liberal approach," he observed, "and I thought we were going to review the entire [Island Membership] plan."

After describing one type of lottery system that he knew of used for a swim club membership, Mr. Zeltzer said, "I'm just having a lot of problems here, because it was clear to me – and I think when you read the Minutes, it should have been clear to everybody – that we were expecting to get back a plan, and the reason was we saw this plan as having an overall impact on the Island, not just on Edgartown, not just on the members from Edgartown."

Mr. Zeltzer continued, "But certainly this golf club is not suggesting that they are going to offer their membership primarily to people who live in Edgartown, because I know a bunch of people in Chilmark who are in the process of belonging or already belong, and it's an Island-wide event, and I think it has to be treated as such."

The Chairman stated that if the Commission wanted to reopen the whole Island Membership Plan issue, they could not do it that evening, when time was limited. He reminded the members that if they did revisit the issue, they would be "butting heads with the Zoning Board of Appeals." He added, "That's a big issue that's not so easily brushed aside."

Edgartown Selectmen's Appointee Michael Donaroma suggested that the Commission vote that evening to see if a Motion To Approve the Island Membership Plan As Presented By The Edgartown Zoning Board Of Appeals would carry. And although, he said, he sympathized with what the Commission should have done, their options were limited at this point. Like Ms. Sibley, he recommended that if in two years' time the Applicant found that he could allow another 25 Island members, then those members could be chosen by lottery. Ms. Rand reminded him that at this point the Commission could not write a new Condition.

When Mr. Donaroma persisted along this line of thinking, Ms. Rand reiterated that the Commission could not write a new Condition. "My concern is that by defining the 'more,' which I feel like you've just done," she explained, "you're essentially writing a new Condition, whereas allowing them to come back with a plan for expansion which they've actually [done] ... if you start to define the numbers, I think you're stepping into a new Condition versus the plan for expansion. I would be very careful on that."

William G. Veno, the Acting Principal Planner, remarked, "All these things, if they were so important, they should have been part of the initial, the original Conditions ... and I think the point that Eric [Wodlinger]'s making is ... the time to play that role, to decide that, is gone."

The Chairman asked for a **Motion To Approve the Island Membership Plan As Presented By The Edgartown Zoning Board Of Appeals**. Before anyone offered such a Motion, Ms. Sibley said that she wanted to emphasize the consequences of refusing the plan offered by the ZBA, in addition to the disruption of the lives of a large number of people that that refusal would cause. "I make a **Motion To Approve This As Written**," declared Mr. Wey. Mr. Toole seconded said Motion.

Edgartown Commission member at large Christina Brown requested that the **Motion Include The Plan As Presented By The Applicant On May Seventh And As Amended And Accepted By The Zoning Board Of Appeals On May Sixteenth**. Mr. Wey agreed to this Amendment, as did Mr. Toole.

The Chairman then conducted a Hand Vote on the Motion, with the results as follows: nine Ayes, four Nays and two Abstaining.

Regarding the next Agenda item – the **Vote on the B.A.D.D. Company, LLC, Written Decision**, Ms. Rand announced that a quorum of those who were eligible to vote on it was not present. With a waiver of time elements from the Applicant, she said, the issue could be taken up in the next Full Commission Meeting, which was set for July 11.

Discussion: Designation of Ferry Routes as Part of the Federal Highway System.

Mr. Veno referred to some materials that the members had received some time before about a proposal by the Southeastern Regional Planning and Economic Development organization to designate the ferry routes that connected New Bedford, the Vineyard, Nantucket and the Cape as part of the Federal Highway System. Nantucket had voted to oppose the proposal, he said, and MassHighway would not approve the plan unless all the ports were in support of it. "I checked with the Steamship Authority, and they could see no reason why it would benefit them," he reported, adding, "Money doesn't seem to depend upon it because the Feds don't recognize waterways as highways."

"If the waterways don't count as Federal Highways, why are we involved?" asked Ms. Brown. "Because it's been proposed to be added as a designation," replied Mr. Veno. He agreed with Ms. Brown that the proposal did not seem to make a lot of sense.

Ms. Sibley suggested that absent a compelling argument in favor of the designation, it would be wise not to support the proposal, lest some "unknown possible bureaucratic snaggle" be imposed on the Island. She reminded the members about the State's having imposed their road standards on the Vineyard. Ms. Sibley then offered a **Motion To**

Oppose The Proposal To Designate The Ferry Routes As Part Of The Federal Highway System, duly seconded by Mr. Wey.

Ms. Brown suggested that the **Motion Include Wording Along The Lines Of "Absent Any Compelling Reason Or Compelling Benefit To Us As Communities."** Ms. Sibley and Mr. Wey accepted this Amendment.

The Chairman conducted a Voice Vote on the Amended Motion, which carried unanimously, with 14 Ayes, no Nays and one Abstaining.

Discussion/Vote: New DRI Application Fee Schedule.

DRI Coordinator Rand referred the members to the two DRI Application fee schedules contained in their packets, one dated May 1, 2001 and the other dated June 1, 2002. *[See the Full Commission Meeting File of June 20, 2002 (the meeting file) for a copy.]* She related that she had begun to review the fee schedule after she noticed that an application of the current schedule would have resulted in a \$22,000 fee for the reconstruction of the Tisbury Inn. "We as a nonprofit are not allowed to make any money," she explained.

Recently in the case of another project, Ms. Rand said, the fee schedule had not made sense because the resulting figure was too low and would not have covered the expected amount of time that Staff would have to spend on the Application.

Consequently, Ms. Rand continued, she had researched this issue thoroughly, and after running a number of tests on the proposed new fee schedule, she was confident that it would work better than the previous one. She gave the example of a project before them now where the application of the earlier formula would have resulted in a fee of less than \$2,000 for the review of a 366-residential-unit proposal; under the new formula, that Applicant would be charged \$39,000.

"So an Applicant still has the ability to ask for a fee waiver?" inquired Mr. Donaroma. "Always," replied Ms. Rand.

Ms. Sibley made a **Motion To Approve The New DRI Application Fee Schedule As Presented By Ms. Rand**, duly seconded by Mr. Donaroma. After Ms. Rand answered more Commissioner questions, the Chairman conducted a Voice Vote on the Motion, which carried with 13 Ayes, no Nays and two Abstaining.

Approval of Meeting Minutes.

In view of the scarcity of time left before the opening of the first Public Hearing, Mr. Donaroma made a **"Blanket" Motion To Approve The Full Commission Meeting Minutes Of March Fourteenth, Two Thousand Two; April Fourth, Two Thousand Two; April Eighteenth, Two Thousand Two; May Second, Two Thousand Two;**

May Ninth, Two Thousand Two; May Sixteenth, Two Thousand Two; And May Twenty-Third, Two Thousand Two, duly seconded by Ms. Brown.

The Staff Secretary asked the members if they had any revisions or corrections to offer; none were forthcoming. She then offered a correction to the Meeting Minutes of April 18, 2002. Mr. Toole should have been listed as having been present, she noted.

The Chairman then conducted a Voice Vote on Mr. Donaroma's Motion, which carried unanimously. Ms. Sibley requested that the Recording Secretary figure out which Commissioners had been ineligible for which Minutes.

[Minutes of March 14, 2002: Ayes – J. Athearn, J. Best, C. Brown, M. Donaroma, T. Israel, M. Ottens-Sargent, R. Toole, J. Vercruysse, R. Wey, A. Woodruff and R. Zeltzer; Nays – None; Abstaining – C.M. Oglesby, A. Schweikert; L. Sibley and R.L. Taylor.

Minutes of April 4, 2002: Ayes – J. Athearn, J. Best, C. Brown, M. Donaroma, T. Israel, M. Ottens-Sargent, L. Sibley, R. Toole, J. Vercruysse, R. Wey, A. Woodruff and R. Zeltzer; Nays – None; Abstaining – C.M. Oglesby; A. Schweikert and R.L. Taylor.

Minutes of April 18, 2002: Ayes – J. Best, C. Brown, T. Israel, M. Ottens-Sargent, L. Sibley, R. Toole, J. Vercruysse, R. Wey, A. Woodruff and R. Zeltzer; Nays – None; Abstaining – J. Athearn, M. Donaroma, C.M. Oglesby; A. Schweikert; and R.L. Taylor.

Minutes of May 2, 2002: Ayes – J. Athearn, J. Best, C. Brown, M. Donaroma, T. Israel, M. Ottens-Sargent, L. Sibley, R. Toole, J. Vercruysse, R. Wey, A. Woodruff and R. Zeltzer; Nays – None; Abstaining – C.M. Oglesby; A. Schweikert; and R.L. Taylor.

Minutes of May 9, 2002: Ayes – J. Athearn, J. Best, C. Brown, M. Donaroma, T. Israel, M. Ottens-Sargent, L. Sibley, R. Toole, J. Vercruysse, R. Wey, A. Woodruff and R. Zeltzer; Nays – None; Abstaining – C.M. Oglesby; A. Schweikert; and R.L. Taylor.

Minutes of May 16, 2002: Ayes – J. Athearn, J. Best, C. Brown, M. Donaroma, T. Israel, M. Ottens-Sargent, L. Sibley, R. Toole, J. Vercruysse, R. Wey, A. Woodruff and R. Zeltzer; Nays – None; Abstaining – C.M. Oglesby; A. Schweikert; and R.L. Taylor.

Minutes of May 23, 2002: Ayes – J. Athearn, J. Best, C. Brown, M. Donaroma, T. Israel, M. Ottens-Sargent, L. Sibley, R. Toole, J. Vercruysse, R. Wey, A. Woodruff and R. Zeltzer; Nays – None; Abstaining – C.M. Oglesby; A. Schweikert; and R.L. Taylor.]

PED Committee: Assignment of Themes from Facilitation Session of May 2, 2002.

Ms. Sibley, Chair of the Planning and Economic Development (PED) Committee, referred the Commissioners to a sheet in their packet entitled *Themes from Facilitation with Roxanne Kapitan*, written by West Tisbury Selectmen's Appointee Kate Warner. *[See the meeting file for a copy.]* Ms. Sibley explained that the PED Committee had

pulled together a number of themes with possible actions attached to them out of the feedback from the facilitation process. They had then assigned each theme to a Commission committee, which was noted on the sheet, she said.

Ms. Sibley encouraged the members to read through the feedback sheets as well as the theme sheet and to return to the next Full Commission Meeting prepared to offer additional themes and different committee assignments, if they so wished. Christine Flynn, the Staff member who works with the PED Committee, pointed out that it should have been noted that the theme about streamlining the DRI process would be assigned to the Land Use Planning Committee.

The Chairman called for a brief recess. The time was 7:31 p.m.

Public Hearing: Gervais-Goldsborough Fueling Center (DRI #489-2).

The Regular Meeting resumed at 7:35 p.m. The Chairman handed the gavel over to Mr. Toole, the Chairman of the LUPC and the Hearing Officer that evening. Mr. Toole read into the record the Notice of Public Hearing for the Gervais-Goldsborough Fueling Center (DRI #489-2) and explained the procedure he would follow. *[See the meeting file for a copy of said notice.]*

[Commission members seated for this Public Hearing were: J. Athearn; J. Best; C. Brown; M. Donaroma; T. Israel; C.M. Oglesby; M. Ottens-Sargent; L. Sibley; A. Schweikert; R.L. Taylor; R. Toole; J. Verduyck; R. Wey; A. Woodruff; and R. Zeltzer.]

For the record Ms. Sibley made the disclosure that she owned a business which operated across the street from the site of the Applicant's proposal. "I do not own the property," she said, "and I have spoken to the Ethics Commission. They say because I do not own the real estate abutting this property that I am not in conflict because I don't have a financial interest as understood by the ethics law." None of the members objected to Ms. Sibley's participation.

Applicant's Presentation.

Thomas Gervais, who, along with partner Robert Goldsborough, was the Applicant, introduced himself and said he was there to make a presentation about what he described as "the most beautiful gas station there could be on Martha's Vineyard." He referred the members to the booklet with narrative and photographs that he had submitted for each of them. *[See the meeting file for a copy.]* The Hearing Officer interrupted briefly to let the audience members know that the Hearing would be ended for the evening at 9:00 p.m., so that the second Hearing could proceed.

Mr. Gervais stressed that there were only two owners – himself and Mr. Goldsborough. He provided some details about his background as a building contractor on the Island and about Mr. Goldsborough's as a filling station owner in Baltimore, Maryland. He

introduced members of his Application team, which included: Ken Petraglia, traffic engineer; Douglas Hoehn, civil engineer, of Schofield, Barbini and Hoehn; and Nancy Fitzpatrick and Judy Holland, Island gardeners who had designed the landscaping.

Mr. Gervais pointed out that a number of facts had been omitted from the booklet. First, the booklet stated that his would be the only service station on the Island with an advanced sprinkler system. This was not true, he said, because the Airport Mobil station had such a system. Secondly, he had changed the affordable housing offer letter contained in the booklet to reflect the fact that there was no "Affordable Housing Committee" in Tisbury.

Thirdly, continued Mr. Gervais, the booklet indicated that he had spoken with the Tisbury Police Chief, who had offered no comments. In fact, he said, the Police Chief had questioned the ability of a tanker tank delivering fuel to turn from High Point Lane onto State Road. The Chief's concern was that the rear wheels of the tanker would cross over into the oncoming traffic lane, he explained.

The Chief of Police had also suggested that there be more lighting on the corner of High Point Lane and State Road, Mr. Gervais went on. "I said ... the Commission usually does not like a lot of lighting on the street," he noted, "and he said 'Okay, I'll take care of that with the Town of Tisbury.'"

Finally, the Chief of Police had pointed out that when a tanker truck exited out of High Point Lane and made a right turn onto State Road to head back down to the Steamship Authority terminal, the front of the truck would cross over into the lane of the oncoming traffic. "And there's no way that you can stop that," remarked Mr. Gervais.

Referring to a mounted site plan, Mr. Gervais pointed to where vehicles would enter via the existing driveway and where they would exit the site from a new curb cut on High Point Lane. Mr. Best wanted to know where the tanker trucks would enter the site. Referring to a drawing of the traffic pattern on the site, Mr. Goldsborough pointed to the entry curb cut off State Road.

Mr. Israel asked how many feet it was from the new High Point Lane curb cut to State Road. At first Mr. Gervais answered that it was 197 feet, but corrected that to "about 80 feet" and then to "somewhere in the range of 40 to 50 feet" after Mr. Israel and Mr. Zeltzer clarified Mr. Israel's question. DRI Coordinator Rand said she would check that figure.

Mr. Gervais continued his presentation, emphasizing that the current Application was, in fact, different from the Applications submitted in 1999 and 2000. *[See DRI Nos. 478, 489 and 489-1, as well as their Modifications.]* "This is a DRI for a gas station," he said. "The other DRI was for a tent building, a service station and The Clay House." Mr. Gervais then offered reasons why another gas station was needed, including a rise of 60

percent in the Island's population from 1980 to 2000. In addition, two gas stations had closed during that period, he noted.

As for a marketing analysis, Mr. Gervais went on, he had broken down his potential customers as coming from five corridors: 1) Old County Road and State Road from North Tisbury to Vineyard Haven proper; 2) the Lambert's Cove loop, including Longview and Makonikey; 3) Franklin Street, Vineyard Haven sector, including Mink Meadows and West Chop; 4) Edgartown-Vineyard Haven Road sector, including Oklahoma Heights; and 5) pass-through traffic to and from Up-Island to Main Street, the post office and the ferry.

Based upon his analysis, Mr. Gervais said, he had concluded that about half the cars entering the station would come from the Up-Island direction and half from the Down-Island one.

As for the land contours and drainage plan, Mr. Gervais related that the loading dock next to the rear building would be eliminated. Moreover, after changing the land contour somewhat, a new drainage system would be incorporated to eliminate the large basin of water that formed after heavy rain, and a Vortechs oil separator would be incorporated to remove hydrocarbons from the runoff water. He added that a new septic system, up to current standards, would be installed on the Vineyard Home Center side of the property.

Mr. Best asked if there would be a restroom. "Yes, there's one public restroom," answered Mr. Gervais, who pointed to where it was in the former Clay House building. Did it meet ADA standards? wondered Mr. Best. Yes, replied Mr. Gervais.

Next, Mr. Gervais described the two gas-storage tanks that would be on the site – one holding 15,000 gallons and the other, 10,000 – as well as one diesel-fuel-storage tank of 8,000 gallons. An automatic fire-suppression system would be installed, he said.

Mr. Gervais explained why he wished to have three fueling stations. For one thing, as the day went on, different customers came in for different reasons, like having their car fluids checked. Also, credit card or cash transaction difficulties could take time, as would a diesel truck with large tankage. Pumping failure was another possibility. "So in reality where we're saying we'd like three fueling stations, we're only asking for two, possibly one," he said, adding, "In reality, three are not going to be [operating] there all the time."

Mr. Gervais pointed to where the pumps would be situated, with two in a lane behind the property's central landscaped section and one closer to the long white building in the back. There would be no canopy, and the lighting would be on two 14-foot-high poles, with two downward-pointing fixtures in each.

Mr. Israel asked if the pumping station separate from the other two was for diesel fuel. "No," responded Mr. Gervais.

The hours of operation would be from 7:00 a.m. until 11:00 p.m., although that could change in the future, Mr. Gervais continued. An attendant's office with a window onto the whole fueling area would be in the long white building, he added.

Nancy Fitzpatrick, a Vineyard gardener who had helped design the landscaping, related that, to start with, there had been more than 40 percent green space on the property and that this had not been fully utilized. Some of the trees that had been incorrectly planted had been dug up and replanted, she said, and all of the plantings were fertilized and mulched, something that had not been done previously. She then walked through the numerous new planting beds (containing more than 300 flowering perennials) and noted that the entire green space had been roto-tilled. Later in the year, she concluded, many of the trees would be pruned.

Turning to the subject of signage, Mr. Gervais referred the Commissioners to the photographs of the type of discreet "Enter" and "Exit" signage they would use. As for the long, white building toward the rear of the property, he said, they would install shingles all over the north and east elevations to match those on the former Clay House building. The only change to the interior of the building would be to move a doorway to accommodate the attendant's office, he pointed out.

The question had arisen, noted Mr. Gervais, about what the future use or uses of the two buildings on site would be. "If at a later date, if everything seems to work right," he said, "we might come to the Commission and say, 'Maybe in the long white building we'd put long-term parking for cars of people that go off-Island for the winter, some very-little-usage item.' And another thought that has come up for what was the Clay House building is to put in an art gallery." He assured the Commissioners that any additional uses would have to be reviewed by them.

"There is currently a new use at the Clay House," Mr. Zeltzer pointed out. Mr. Gervais responded, "That is a three-day use which was approved by the Building Inspector." "But that's where I was going," said Mr. Zeltzer. "Is this a usage that you are committed to?" "No," replied Mr. Gervais, "that's a three- or four-day sale ... of the Chinese antiques that you're talking about.... That was run past the Commission, too, and the Town, and they all said it was okay."

Mr. Israel confirmed with Mr. Gervais that the sale of Chinese antiques would last for only four days. "Because the gentleman I met in there told me he could be there for a month," remarked Mr. Israel. "Don't think so," said Mr. Gervais, adding, "I don't know anything about that."

Responding to a question from Ms. Ottens-Sargent, Mr. Gervais explained that the left side of the long white building had been a tent-rental business and the right side, an automobile repair business. "And there was also vehicle storage?" asked Ms. Ottens-Sargent. "Well, there're vehicles in there right now," replied Mr. Gervais. Ms. Ottens-

Sargent said she was referring to the tent-rental end of the building. Mr. Gervais answered that there would be some long-term future use for it, as yet unknown.

"What about a convenience store?" wondered Ms. Ottens-Sargent. "There is no idea in our minds thinking of a convenience store," declared Mr. Gervais, who then added, "Okay? That's not our agenda."

Mr. Wey queried Mr. Gervais' earlier comment about the hours of operation possibly changing in the future. *[See page 13 of these Minutes.]* "I'm going from seven until eleven," Mr. Gervais replied. "What I'm saying [is] in the future, if things change, I can't say it's going to be seven to eleven forever." "Well, what is it going to be?" Mr. Wey wanted to know. "Seven to eleven, all right?" said Mr. Gervais, explaining, "I'm just saying, that's our original plan, seven to eleven." Mr. Goldsborough interjected that if the hours of operations changed, it would probably be to an earlier closing hour. "Okay, that's what I was getting at," noted Mr. Wey, adding, "I wouldn't consider it open around the clock or anything."

Next, Mr. Gervais introduced **traffic engineer Ken Petraglia**, who began by outlining his qualifications. He explained that the data base for the project was "very local," coming from two major sources. The first was a 1999 MS Transportation Systems on-site traffic study, albeit for a different use. He had used those traffic counts as well as trip-generation numbers with the permission of Commission Staff. In addition, Mr. Petraglia continued, he had done some primary data collection, including a gap study (which determined the capacity of drivers to exit) and a pass-by study.

Mr. Petraglia explained that he had developed the 2002 traffic counts by taking the 1999 numbers and factoring them up at a growth rate of 2 percent per year. This, too, had been done with the permission of MVC Staff, he emphasized. The periods studied were weekday afternoons and Saturday mid-day for both summer peak season and off-peak season.

The other things Mr. Petraglia had looked at, he went on, were accident data, sight distance and transit service. He had gotten the accident data from MassHighway records," he said, then remarking, "There's really a very low incidence of traffic accidents in that area."

As for intersection sight distance, he related, he had measured from the intersection of High Point Lane with State Road as well as from the existing curb cut adjacent to the site to State Road. "And in these cases, there's more than adequate sight distance," he stated. And although he had looked at transit service, which was standard for a traffic analysis, he noted that it was really not germane to this particular project.

Mr. Petraglia related that he had also considered the projected conditions in the year 2007 under a "build" as well as a "no-build" scenario. For the no-build condition, he had taken

the 2002 figures and factored them up to the year 2007 with a background growth rate of 2 percent.

As for the build analysis, Mr. Petraglia said, there was the potential for another filling station up the road on High Point Lane. [See the *Tisbury Fueling Services Application, DRI #552.*] Because the two business would be competing against one another, neither one could be expected to generate its full capacity. So he had first used the assumption that each of the gas stations would lose about 10 percent of their business. He had later decided – in order to be conservative – to put all the reduction (20 percent) on the competing site so that in the analysis the Gervais-Goldsborough site would be generating 100 percent of its potential vehicle trips.

James Athearn, a Commission member at large from Edgartown, asked what was meant by a no-build situation. “No-build is basically what’s going to happen if this project does not go through,” explained Mr. Petraglia. “So we have to assume what’s going to be on the roadway system without the Gervais-Goldsborough site.” Thus, the no-build numbers included the 2 percent expected growth factor of background traffic through the year 2007 plus the effects of another gas station that was currently in the planning stages, he said.

“But I did reduce the trips we expect from the other facility because I do think there would be some competition,” Mr. Petraglia explained. “So with the build model, we took 100 percent of the trips that we would expect for the Gervais and Goldsborough facility and added that on to the no-build. So the difference between the build and the no-build is really on-site.”

“Would it be difficult for you to show us no build at all?” inquired Ms. Sibley. “I could do that,” answered Mr. Petraglia, “and I would be happy to. But normally that’s not what we do.” “Well, the other one hasn’t been approved yet,” noted Ms. Sibley.

Mr. Israel wanted to know if Mr. Petraglia had considered the maximizing of the future sewerage treatment plant as well as a maximizing of the use of the Tisbury Park-and-Ride. “They’re not factored in,” replied Mr. Petraglia, “but they could be.” Mr. Best asked Mr. Israel, who is a Tisbury Selectman, if trucks carrying septage would be using High Point Lane in the future. “There will be septage trucks, yes,” responded Mr. Israel.

Mr. Zeltzer wanted to know when the gap study had been done. “It was June of this year,” said Mr. Petraglia. “I don’t know the exact date, around, I want to say, the seventh, the eighth.” So the gap study was not done in peak season? asked Mr. Zeltzer. “No, that’s not a peak area,” replied Mr. Petraglia, elaborating, “I don’t think that’s relevant for the pass-by trips, maybe for the gap trips, and I ... actually address that when I get into the gap study. In fact, I’ll talk about the gap study now, if that would help.” Mr. Zeltzer nodded.

Mr. Petraglia then explained the gap study. "What we did was we actually stood at High Point Lane with a stopwatch and measured gaps in the traffic... Now High Point Lane is, I think, a little bit unique for most corridors because in that area there are a lot of attractions even though it's not peak season... There are vehicles that are taking lefts and rights going in and out of the facilities. And what they're doing by holding up traffic, in effect they're creating gaps."

Mr. Petraglia continued, "Now, this is not the normal condition ... I think it's unique, what we're seeing in this section of State Road. The fact that it's not during an actual peak period, I can turn that around to my advantage by saying if it were during the peak period, while there might be more traffic, there would also be more cars turning into and out of these attractions, potentially creating more gaps."

Mr. Zeltzer pointed out that there were times when one could simply not make a left turn in the area in question, when the traffic was so heavy that one would choose either to go at a different time or to patronize an alternate facility. "I'll make a lot of left turns when I'm headed Up-Island in June that I'm not going to make in August," he remarked.

Mr. Petraglia noted that he had spent many summers on the Island and that it appeared to him that many drivers were making many left turns on that part of State Road. "And I'll come back again in the peak season and do the same thing, and probably I'll get the same results," he said. "You're going to see those artificial gaps there. And that's not taking into account what some people would call the 'wave-through,' where there seems to be a lot of courtesy on State Road where people seem to stop and allow people to go through. But I'm not factoring that into it. This is even without the 'wave-throughs.'"

As for the pass-by trips, Mr. Petraglia related that he had done a study at what he considered a comparable facility, the Up-Island Texaco station. Such a study could be done on two levels, he said. For one, the Institute of Transportation Engineers (ITE) had a recommended practice for trip generation under which they would say that for the period he studied, pass-by trips for a stand-alone gas station were generally in the range of 42 percent. This conclusion was based on observations and driver interviews, he said.

Mr. Petraglia pointed out that he had not done interviews but that he had done the observations. What he had seen was that if a vehicle was traveling in one direction, pulled into the gas station and then continued on, "then it's a pretty safe guess that that's what we would call a pass-by trip. On the other hand, if somebody pulls in, gets gas and goes back the way they came from, that's not a pass-by trip. That's somebody that came to the facility just to get gas. So that's a new trip that's generated on the road."

Mr. Petraglia reported that the ITE recommended rate was 42 percent and that the rate he had come up with based on his observations was 45 percent. "I think what it shows is we're in the ballpark," he observed." So, he continued, he had decided to be conservative and to use 40 percent as the pass-by component.

His conclusion, said Mr. Petraglia, was that compared to a no-build situation, building the Gervais-Goldsborough facility would result in an increase in new traffic at a rate in the area of 2 to 2-1/2 percent.

Mr. Petraglia then explained how he had done his evaluation, using the circulation pattern that Mr. Gervais had shown earlier. During the off-peak season, one of his analyses had shown "no problems." As for the peak season, State Road was, admittedly, congested, he said, and the side street – High Point Lane – really suffered from some significant delays.

However, Mr. Petraglia noted, the Level of Service (LOS) for the side streets during peak season would be an "F" under both build and no-build conditions. "The only major change appears to be at High Point Lane," he reported, "where, because traffic will be coming out of the facility to High Point Lane, the delay does increase. The Level of Service is going to be 'F' either way, but the actual delay would increase."

Mr. Petraglia said that he had also looked at the gap study on another level. "We determined that by counting the number of acceptable gaps – now, by acceptable gaps, we're told by ITE that, for example, that a left turn would be approximately 7.1 seconds of a gap of no traffic to be able to pull out of a side street and get into the Main Street. People turning right get something less than 6.2 seconds."

Mr. Petraglia continued: "Well, we took those figures and we examined the data we'd collected – and there were some approximations because in our gap study we were not able to measure each and every gap, we got a sampling – [and] we estimated that sampling to be about 50 percent. So if we count the number of gaps we counted and doubled that, that's an approximation."

Mr. Petraglia concluded, "Based on that kind of analysis and comparing the amount of gaps we found to the projected number of vehicles that would be exiting High Point Lane during the build conditions, there appears to be enough gaps." He reiterated that during the peak season he would expect to see even more gaps because the other facilities on State Road, like Island Cove Mini Golf, would be attracting more interest.

Mr. Petraglia then listed his recommendations: appropriate stop signs, stop lines and do-not-enter signs; and improvement of the High Point Lane sight distance (although the current distance was adequate) by moving back the existing telephone switchbox at the corner.

Mr. Israel pointed out that trucks entering the site for diesel fuel would create a greater impact than cars. What will be the impact on the gaps and the whole traffic scenario? he inquired. Mr. Petraglia said he would get that information.

Ms. Sibley wanted to know if Mr. Petraglia's gap study included the "wave-through" factor. "No, we didn't account for that," Mr. Petraglia replied, adding, "So to the extent that that would happen, that would be in addition to what we measured."

Ms. Sibley then proposed that if Mr. Petraglia returned to the corridor on a rainy day in July, he would find the traffic trying to turn left into Cronig's backed all the way up past Vineyard Home Center. Mr. Gervais pointed out that someone heading Up-Island taking a left turn into Island Cove Mini Golf would create a gap that would allow a driver to turn onto State Road from High Point Lane. "But we've got something close to gridlock there," stressed Ms. Sibley.

By this point, Mr. Gervais had come up with the figure Mr. Israel had asked for regarding the distance from the proposed High Point Lane curb cut to State Road. [See page 11 of these Minutes.] "It's about 65 feet," he said. He then reiterated what the Police Chief had said about having brighter lights at the corner and emphasized that the Chief had otherwise seen no safety issues.

Mr. Zeltzer asked if the business would be selling items like windshield wipers or car batteries. Mr. Gervais answered that they would only deal with checking car fluids. Mr. Zeltzer had a further question: "Is there any other ownership interest in this project other than the two of you?" "It's the two of us, that's all," replied Mr. Gervais.

Staff Reports.

DRI Coordinator Jennifer Rand referred to her Staff Report dated June 13, 2002 and then reported on additional information and observations. The Commission had received a total of around 32 letters in support from the public, she said. In addition, she had received four letters that afternoon in which the writers expressed support for the other gas station facility being proposed and opposition to the Gervais-Goldsborough Fueling Center.

Ms. Rand related that she had also spoken with the Chief of Police and the Fire Chief and that the Applicant's report on their comments had been correct, that is, the Fire Chief had no safety concerns and the Police Chief had expressed concern regarding exiting gas delivery trucks possibly blocking traffic attempting to go up High Point Lane and regarding the lighting as proposed.

Ms. Rand mentioned that **Water Resources Planner William M. Wilcox** would be presenting a Staff Report on wastewater issues and that there was currently no Staff Report on traffic issues in the file. Was there going to be a traffic Staff Report at some point? wondered Mr. Israel. "I would certainly hope so," responded Ms. Rand.

Mr. Wilcox reported that the site was about 47,543 square feet in area and was situated about 250 feet outside of the Zone of Contribution for the Tisbury public supply well on West Spring Street. Groundwater under the site was at a depth of about 100 feet below grade, and the flow was toward Vineyard Haven Harbor and away from the Zone of Contribution.

The soils on the site were Carver loamy coarse sands with a high capacity to infiltrate rainfall or runoff, Mr. Wilcox continued. Stormwater would be generated from 5,800 square feet of roof area and from the 16,500 square feet of paved area, for a total of about 22,300 square feet of impervious surface. The proposal, he said, was to run the stormwater runoff through a catch basin with a gooseneck outlet pipe that would help contain any hydrocarbons in the basin. The stormwater would then flow to a detention basin, which would also have a gooseneck pipe, and from there it would go into the Vortechs storm treatment system.

The Vortechs system, Mr. Wilcox explained, would pretreat the runoff before discharge into the leaching pits, removing hydrocarbons, sediment and phosphorus. He had met earlier in the day with George Sourati, he said, to talk about flow rates, "which is very important as to the capability of the Vortechs system to remove the hydrocarbons." In the case of the system being proposed – the Vortechs 2000 – the removal rate was 90 percent for 10w40 motor oil. "Those figures are based on Vortechs company materials," he added.

The fueling islands, Mr. Wilcox went on, were not covered to exclude rainfall, and the fueling area would be grooved to help retain small spills and drips. But under steady rain conditions, he noted, some portion of these hydrocarbons would be carried into the stormwater treatment system. "Under normal operating conditions I don't believe that this is a substantial amount of hydrocarbons," he remarked.

Mr. Wilcox referred to the brief Spill Response Plan included in the Applicant's narrative, which comprised an emergency contact list and a three-component Emergency Response Plan, with the latter including notification procedures and evaluation process guidance. He had requested information on the kinds of materials that would be used on site for spill cleanup and had been told they would use a product called Speedy-Dry.

The fuel would be stored in three underground tanks, Mr. Wilcox went on – an 8,000-gallon tank for diesel fuel, a 10,000-gallon tank for premium gas and a 15,000 gallon tank for regular gas. Said tanks were made of double-walled fiberglass with interstitial monitoring. In addition, the tanks as well as the Geoflux tubes that would carry the fuel to the pumps would be under-lined with a PetroGard VI liner, whose purpose was to retain any kind of hydrocarbon leakage.

Mr. Wilcox noted that the Applicant's narrative mentioned four wells that would be installed around the tanks. It was not clear to him, he said, whether these were groundwater wells or wells attached to the PetroGard liner to monitor any leakage caught by the liner. He described how leak sensors would be attached to the three lines carrying the fuel to the pumps and how all of the leak detectors would be linked to a monitoring system equipped with audio and visual alarms. In addition, a vapor recovery system would be in place for the gasoline dispensers, he said.

The monitoring system, Mr. Wilcox continued, had a 3.0-gallon-per-hour leak detection test after each fill-up, and he was recommending a more advanced model which would perform line tests that would be accurate to 0.2-to-0.1-gallons-per-hour detection.

Mr. Wilcox related that he expected the site to generate 150 gallons of wastewater per day associated with the two fueling islands and 500 gallons per day from the public bathroom. The system was designed for 200 percent of that or 1,300 gallons per day, he said, and there would be leaching trenches along the west side of the property that would be capable of infiltrating 1,474 gallons of wastewater per day.

Chairman Vercruyse asked Staff to find out what the most common accidents were at gas stations. "Plus if there's any statistics on the nature of accidents on the road on the way to the gas station," interjected Ms. Sibley.

Ms. Sibley offered another observation. A couple of years back, she said, "when the County was looking to try to locate a transfer station, the Water Superintendents met with the County Commissioners and basically said that as far as they were concerned, all of Martha's Vineyard was a potential Zone II with the exception of the area below the ... Edgartown-West Tisbury Road.... And I just wonder if you can look into the question, maybe ask the Tisbury Water Superintendent whether or not there's any possibility, fantasies anyplace in his mind for additional wells down the line that might put this in a Zone II." Mr. Wilcox pointed out that the Town's landfill was "right in their [the Applicant's] backyard."

Ms. Rand clarified with Ms. Sibley that the kind of accident statistics she was looking for related to fuel delivery trucks.

The Hearing Officer asked for testimony from members of Town Boards; there was none.

Testimony from Members of the Public in Favor of the Proposal.

June Parker of Leonard Circle on West Chop remarked, "All I can say is we'd like to see a gas station anywhere outside of Five Corners." She added that it was important to mitigate the effects of the Citgo station at that insection.

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

Joe McCarthy of Oak Bluffs described himself as **the manager of the X-tra Mart at the Citgo gas station at Five Corners**. He related how in 1999 in the course of an earlier proposal for the site in question, a statement had been submitted for the record by Alan Norman, the leader of a citizens group opposed to that proposal. He requested that Mr. Norman's statement be entered into the record for the current proposal.

Alan Wilson of Tisbury related that he ran his own business on State Road and that he was a 28-year resident. "I know the traffic there," he stressed. "My concern is not so

much with the gas station itself but with the 14,000-gallon delivery trucks that would be servicing that station or any other station." He had found out, he said, that there had been six spills in New England and that two of the trucks had been on their way to the Vineyard. "If we had a spill anywhere on this Island," he went on, "it would be very bad." Mr. Wilson then submitted for the record a document from the Department of Environmental Protection regarding spill sites that were being investigated.

General Testimony from Members of the Public.

JuleAnn VanBelle of West Tisbury characterized the Applicant's offer of \$2,000 for affordable housing as "woefully inadequate." Ms. VanBelle asked how many employees the station would have and what their wages would be. The Hearing Officer said that he was noting her question, then asked if anyone else wished to speak. There being no more testimony from members of the public, Mr. Toole inquired if any of the Commission members had more questions.

Questions from Commission Members.

Mr. Israel stated that he had numerous questions, and he wanted to know if he should save them for the second session of the Public Hearing, since it was five minutes before nine. The Hearing Officer indicated that Mr. Israel could pose one or two questions. Mr. Toole then asked the Applicant if his whole team would be back for the second Hearing session. "I hope not," joked Mr. Gervais, who inquired if there were particular team members that the Commission wished to question in the second session. "Well, I think the traffic guy should come back, that's for sure," suggested Mr. Toole.

Mr. Israel said he had a question for the second session regarding the Applicant's demographic about a 60 percent increase in the number of cars on the Island. What he wanted to know, he said, was whether the pumping capacity on the Island – not the number of gas stations – had increased during the same period.

Chairman Vereruyse suggested that Commission members submit any questions they had to Staff so that they could be answered in the second Hearing session.

Applicant's Summary for the First Hearing Session.

Mr. Goldsborough wished to correct for the record the statement by Mr. Wilson about 14,000-gallon fuel delivery trucks – The trucks carried up to 9,000 gallon of fuel, he said. When Mr. Wilson began to dispute that, the Hearing Officer silenced him.

Mr. Gervais noted that currently a total of 35 letters in favor of the proposal had been submitted to the Commission as he handed Ms. Rand two more pieces of correspondence. He listed the sources of said letters: 15 from Vineyard Haven; five from Oak Bluffs; 11 from West Tisbury; two from Chilmark; one from Edgartown; and one from a summer resident.

"I'd like to say in summary that we're turning a Vineyard Haven eyesore into a showplace," remarked Mr. Gervais. "Between 40 to 50 percent of the place is green lands ..." Mr. Goldsborough, he pointed out, had experience in ownership of a service station, and the drainage plan would get rid of the ponding and accompanying mosquito problem following rainstorms. The presence of a new gas station would eliminate a lot of the waiting for fill-ups, he continued, and the facility would be protected by a sprinkler system. Finally, he noted, the project would be a good addition to the Upper Main Street commercial district and would draw cars away from the Five Corners intersection.

Mr. Toole asked the Applicant to address Ms. VanBelle's question and comment regarding an affordable housing contribution and the number of people the facility would employ. *[See page 21 of these Minutes.]* Mr. Goldsborough replied that he would likely employ a minimum of five attendants at about \$2 to \$3 above minimum wage. Ms. VanBelle remarked, "I would like to just say ... that at eight or nine dollars an hour, that person would be earning 50 percent of the median income." Such person would be able to afford up to a \$500 monthly rental, she said. Thus, the Applicant would be creating a greater need for affordable housing, she concluded.

Mr. Toole announced that the Public Hearing was being continued to Thursday, July 11, 2002, at 7:30 p.m. at the Martha's Vineyard Commission Offices in Oak Bluffs. The time was 8:59 p.m. A short recess was called while the room cleared out.

Continued Public Hearing: Fairwinds Chapter 40B Subdivision (DRI #548).

At 9:06 p.m. the Hearing Officer reopened the Regular Meeting. The Staff Secretary read into the record the names of the members who were thus far eligible to vote on the Fairwinds Chapter 40B Subdivision (DRI #548). *[The Commission members seated for the second Public Hearing of the evening were: J. Athearn; J. Best; C. Brown; M. Donaroma; T. Israel; C.M. Oglesby; M. Ottens-Sargent; A. Schweikert; L. Sibley; R.L. Taylor; R. Toole; J. Vercruysse; R. Wey; A. Woodruff; and R. Zeltzer. Of these, all but Messrs. Oglesby, Schweikert and Taylor were eligible to vote on this DRI.]*

Mr. Toole read into the record the Notice of Continued Public Hearing for the Fairwinds Chapter 40B Subdivision – JE&T Construction, LLC (DRI #548). *[See the meeting file for a copy of said notice.]* He then outlined the Hearing procedure.

Applicant's Presentation.

Tom Richardson, one of the Fairwinds partners, began by addressing the issues raised in the first Hearing session on May 16, 2002 as outlined by DRI Coordinator Jennifer Rand in her letter to engineer Douglas Hoehn dated May 22, 2002. *[See the meeting file for a copy of said letter.]*

Regarding the possibility of targeting all the units to Island residents, Mr. Richardson stated, "We have decided to pursue a marketing plan that would result in the moderate[ly priced] homes at Fairwinds to be offered to Islanders for a period of 30 days prior to them being offered to the general public." He provided the details of this plan, which included a lottery system.

Mr. Richardson noted that he had learned from Ms. Rand that it would be possible to deed-restrict a portion of the moderately priced homes so that a profit of not more than 10 percent could be realized if a buyer choose to sell his unit within a certain number of years after purchase. The Applicant, he said, would offer these units at a price of \$275,000, although they would be worth in the range of \$295,000 to \$315,000. And although it was not economically feasible to deed-restrict all of the 18 moderately priced homes, it would be possible to do so with about nine of them, he concluded.

"Thirty days to do what?" inquired Ms. Sibley, who added, "I mean, it would be immensely difficult for people in many cases to get financing in 30 days." "We're not exactly sure what would happen in the 30 days," responded Mr. Richardson, "but we met with the Dukes County Housing Authority the other night and made our proposal to them ... So we would first communicate with people on [the DCRHA and Town waiting] lists and then hopefully in this process develop some type of way that they could be pre-approved, but in any case, come before us with some type of a first-come-first-served basis or a lottery system where they would have an opportunity to buy those homes, if they're qualified for them."

Would that also apply to the units in the \$295,000-to-\$325,000 range? asked Ms. Sibley. No, replied Mr. Richardson, although the people on the waiting list could certainly make an offer for those. He added that even in the higher range the units would be competitively priced. Would the nine higher-priced units be deed-restricted to Island residents? inquired Ms. Sibley. No, answered Mr. Richardson.

Referring to the possibility of requiring a state-of-the-art septic system for the development, Ms. Ottens-Sargent wanted to know if this would impact the price of each unit. "Yes," said Mr. Richardson, "and at this point we'll be addressing the nitrogen[-removing] system that is there, and that will be factored into our price." "So the price could go up?" asked Ms. Ottens-Sargent. "No," responded Mr. Richardson, "at this point we don't anticipate that causing enough of an expense that we're going to have to raise the price of the \$315,000 [units]."

Ms. Ottens-Sargent also wanted to know about the income qualifications for the moderately priced units. Mr. Richardson answered that those making 120 percent of median income could afford the \$275,000 units and those earning 140 percent of median income would afford the \$295,000 units.

Another issue raised was the possibility of installing composting waste systems, continued Mr. Richardson. "We've decided to pursue the enhanced-nitrogen-system

alternative that was discussed at the last Meeting," he said, "and I've directed Doug[las Hoehn] and we will discuss that shortly."

The possibility of eliminating the 10-foot way that the Applicant did not own had also been examined, Mr. Richardson went on. "We respectfully decline," he said, "the Commission's request that the 10-foot strip along the eastern edge of the lot be removed because one, the revision of the plan represents a significant and unnecessary expense when the distinction between currently owned land and that which is under option has been and can be further clarified."

"Secondly," argued Mr. Richardson, "JE&T Construction is entitled to include the optioned land in its site plan to the same degree it would be if the entire site were subject to an option or purchase and sale agreement, that is, one does not need to be an owner to be a proper Applicant before a local board and thus before the Martha's Vineyard Commission."

"And thirdly, the current site plan does show a 10-foot way and will be pointed out on request [inaudible]," concluded Mr. Richardson.

Moving to the subject of safety for the clients at Camp Jabberwocky, Mr. Richardson referred to his letter of June 5, 2002 to the camp's board of directors outlining the mitigation measures the Applicant had in mind. *[See the meeting file for a copy of said letter.]* The first proposal, as shown on a site plan displayed by **Edward Marshall, a landscape architect with Stimson Associates of Falmouth**, was to have a one-way entrance from Franklin Terrace onto Herring Creek Road. The second part of the plan was to exit the property using the Greenwood Avenue Extension. "What this would do in effect is eliminate half the traffic on Greenwood Avenue that was originally proposed," explained Mr. Richardson.

Acknowledging that many might wonder how the traffic flow could be restricted to one way, Mr. Richardson pointed out that a) this would be part of the covenants of condominium association and b) it would probably be a self-policing effort. Mr. Marshall pointed to where the various new planted areas would be located and showed how an emergency vehicle could swing down Greenwood Avenue Extension and then onto Irene's Way.

The second proposal relative to the Camp Jobberwocky issues, continued Mr. Richardson, was a contribution to the Town of Tisbury for a sidewalk, the funding of which would, he hoped, be shared. In addition, the Applicant would offer a contribution for the installation of speed bumps along the road near the camp as well as a contribution toward the cost of creating new signage for the area.

Lastly, Mr. Richardson addressed the issue of access, namely, whether access to the property via Elisha's Path was legal. "Our position on this," he stated, "is that through proscriptive easement we believe that we do have the rights to that, and we're willing to

(

(

(

stand behind that further if and when it becomes an issue with the Town. It is my further understanding that [DRI Coordinator] Jen[nifer Rand] is recommending to the Commission that that not be part of any Conditions or any Decisions the board makes at this point."

"Jen, is that correct?" asked Ms. Ottens-Sargent. "Slightly," responded Ms. Rand, adding, "The answer is, I have received a letter from Town Counsel ... that came in too late to put in your packet indicating that the Town at this moment does not think they have enough proof. They don't feel the Applicant's met its burden that it possesses the right to use the road."

Ms. Rand continued: "I have a letter that I did put in your packet from an abutter who feels strongly that he owns the property and does not allow access. And I have had a conversation with our Counsel about this issue, because this is clearly a legal tangle that we cannot solve here and will not solve here. And Counsel's recommendation was that if we choose to approve this project, then we would write a Condition that says, 'This issue must be resolved to the satisfaction of the Town before construction can begin.'"

Ms. Rand concluded: "So we don't need to have an answer to that question in order to make a positive Decision, if you so chose, on the project."

Chairman Vercruysse wanted to know if the new mitigation proposals that Mr. Richardson has just presented were in writing. "Yes," answered Mr. Richardson. "I have them all," said Ms. Rand. Mr. Wey requested copies of all the letters related to the access question, some of which had been only summarized in Ms. Rand's Staff Report. Mr. Israel asked that all the members be sent copies of those letters.

Mr. Wey returned to a question he had raised in the May 16 session of the Public Hearing, namely, how the new elevations was going to affect the neighbors' properties with runoff and so forth. Mr. Marshall explained that essentially the Applicant could re-grade the entire lot by trucking off about 1,400 yards of soil. "We *will* have a balance of cut and fill on this site," he said. Using a site plan, Mr. Marshall then walked through the various elevations of the land in question, beginning with 6 and 7 percent grades. (A handicapped ramp was at an 8.3 percent elevation, for example, he noted.)

As for the runoff, said Mr. Marshall, "we haven't done a finalized runoff. But for any grading we would meet natural grade along the perimeter of the property, and we'll contain any excess runoff because naturally this runoff that's coming off the site today, that's running off onto other people's properties. What we would do is, we would never increase off-site runoff." He described how a series of dry wells could be used to meet that goal.

"So you're telling me that none of the abutting properties would be devastated with runoff?" asked Mr. Wey. "We cannot increase off-site runoff," replied Mr. Marshall. "Who determines that?" wondered Mr. Wey. Mr. Marshall answered, "We will do a

runoff study, looking at the amount of pavement and looking at the amount of roofs, and we will look at where water is collected, how it's collected."

"The twelve hundred yards – does that include septic systems and cellars?" asked Mr. Donaroma. "Yes," replied Mr. Marshall, "it would be only 1,200 we'd have to pull off according to this plan." The Staff Secretary interrupted to ask if the figure was 1,200 yards or, as stated earlier by Mr. Marshall, 1,400 yards. Mr. Marshall verified that, in fact, the 1,400 figure was correct.

Mr. Richardson requested that Mr. Marshall address the issue of the elevations of the houses. Mr. Marshall showed examples of the various elevations and what would be seen from the neighbors' properties. "What we would look to do is have a landscape buffer that would vary between 8 to 12 feet with a variety of shrubs," he said. They would also provide a lawn area behind the homes, he noted, and obviously they would look to saving as many plantings on the property as they could, although they had not yet completed their survey of the plantings.

Mr. Woodruff wanted to know what the relation was of the slope of the new homes to the homes that already existed. Specifically, he was curious about how many of the new houses would have the appearance to the neighbors of being three stories high because of new homes' walk-in basements. Mr. Marshall pointed to the houses that would have those conditions.

"Was your testimony that at no place will there be any runoff leaving the property?" inquired Mr. Donaroma. "We will not increase the off-site runoff from current conditions," replied Mr. Marshall. *[At this point the tape recording ended, picking up again with Ms. Ottens-Sargent's question on page 29 of these Minutes. Thus, this segment of the Minutes is based solely on the Staff Secretary's notes.]* **Yarmouthport attorney Peter Freeman, a member of the Applicant's team**, pointed out that this was standard engineering practice and was mandated under State law.

Ms. Brown concurred with what Mr. Freeman had just said, adding that perhaps it was the Commission's hope that the Applicant would *decrease* the amount of runoff as compared to current conditions. Mr. Marshall explained that about 90 percent of the land would have to be re-sculpted, although the Applicant would try to save as much of the existing vegetation as possible. He then went through the road elevations on the site plan.

Mr. Best asked to see the profile of one of the new houses that would not have a walk-in basement. He also wanted to know how far from their neighbors these houses would be. Mr. Marshall displayed the elevations of such a house and said that about 25 feet would separate a new house of this type from an existing house.

Mr. Best also wondered about the height of this type of house, surmising that it would have to be at least 34 feet tall. Would that not cast a shadow on a nearby existing house

during the winter? he asked. Mr. Marshall confirmed that the height would be 34 feet. **Edward Herczeg, another Fairwinds partner**, pointed out that there were homes already existing near the back end of the property that had the same type of topography. When Mr. Best disputed this, Mr. Herczeg reiterated his view that "a lot of houses back there, their elevation comes right back up."

Mr. Best turned to the 10-foot buffer on the south side of the site plan. "I know there's an easement for power lines there," he related, "but you say you have an option. What happens if all of a sudden something happens and that access is not allowed?" Mr. Herczeg responded that on paper this was their legal access. "But that is not legal access for people now living there," countered Mr. Best.

Engineer Douglas Hoehn explained, "The 10-foot strip is part of the waterfront property. They don't use it for access. They all use that power line easement." "How can they own it?" asked Mr. Best, "How can you have an option on something you cannot own?" "They'd have to transfer the road frontage to somewhere else," said Mr. Hoehn.

Anthony Peak of the Tisbury Planning Board pointed out that the purchase of the easement would have to provide better access to the current owner. "It seems as though this is an elaborate shell game," observed Ms. Sibley, who added, "The option is meaningless. This is a planning exercise, and we care about what happens in the future." Mr. Hoehn responded, "The crux is whether the 10 feet can be counted in the current plan." "Well, you don't count it as a buffer unless you can prove [that you can use] it," said Mr. Best. "Or we should assume it isn't there at all," suggested Ms. Sibley. The discussion continued for some minutes, with each of the parties sticking to his or her position.

Mr. Israel expressed concern that with only a small buffer and a 34-foot-high new house, noise would be a problem for the neighbors. "Only one house will be affected," responded Mr. Herczeg. Mr. Marshall said that the buffer in that case could be increased. "We can address it with more aggressive landscaping," he added.

After still more exchanges between Commission and Applicant regarding the 10-foot strip, the subject for dropped for the time being, and Mr. Hoehn turned to wastewater issues. He began by describing the original plan, under which three denitrification units would handle the wastewater for the entire development. They had also examined having just one treatment area, he said, "but we found that to be difficult. So we stuck with the three separate leaching areas, one serving the four east units, one serving the next seven west, and the third serving the 13 remaining units."

"Who will be responsible for maintenance and monitoring?" Mr. Toole inquired. "The condominium association will structure that," replied Mr. Hoehn. Mr. Best asked about the type of system. "There'll be three Bio-Clear systems," answered Mr. Hoehn. "But Bio-Clear requires a constant flow," said Mr. Best, "so wouldn't a portion of the year-

round houses have to be in each of the three areas?" "There will be some year-round use," explained Mr. Hoehn. "Fifteen of the 24 units will be year-round," said Mr. Richardson, who added, "We'll make sure they're distributed."

Mr. Woodruff wanted to know if the Applicant had considered a single, more advanced wastewater treatment system. Mr. Hoehn responded, "No, one treatment area would be difficult because of the slopes."

The Applicant's presentation moved on to traffic issues, with a report from **William Scully of MS Transportation Systems, Inc.** "I believe we have addressed Staff concerns given in the May 16th Staff Report," he said, referring to an assessment by Transportation Planner David Wessling. "We've worked on the growth rate and the traffic forecasting methods," he continued, "and it appears they're satisfied with our forecast."

Mr. Scully referred to his June 14, 2002 memorandum to Staff in which he had responded to Mr. Wessling's concerns. *[See the meeting file for a copy.]* "And we received a Report from Staff last night requesting some additional information," he continued, "and we've got that information. In addition, the Staff Report does acknowledge the mitigations we've offered." Mr. Scully concluded, "Our data supports our assumptions on growth."

Ms. Ottens-Sargent asked Mr. Wessling to respond to what Mr. Scully had just said. "There *is* sufficient information now," confirmed Mr. Wessling, who then referred the members to his Staff Report contained in that evening's packets.

Staff Reports.

DRI Coordinator Rand referred the Commissioners to the Staff Report in their packets wherein was summarized much of what the Applicant had just presented. *[See the meeting file for a copy.]* Regarding the issue of affordability, she said, she had had a lengthy conversation with an employee of the Department of Housing and Community Development as well as with someone at a Federal home loan bank that handled such loans. What she had found out was that one could deed-restrict the Chapter 40B units in perpetuity, while the moderately priced houses could be deed-restricted within the limits of the law to some percentage of median income and could also show local preference.

The Applicant had indicated, said Ms. Rand, that he would be willing to deed-restrict half of the market-rate homes to 120 percent of median income, with Island preference on a first-come-first-served or a lottery basis. Additionally, she explained, the units could be deed-restricted to limit profitability on sale within a stated timeframe.

Ms. Rand then went over briefly some of the other materials contained in the Staff Report: reports from Transportation Planner David Wessling and Water Resources Planner William Wilcox; Mr. Marshall's letter to Camp Jabberwocky offering mitigative

measures to address safety issues; and correspondence from the Tisbury Planning Board, the Dukes County Regional Housing Authority and members of the public.

Mr. Athearn asked how much money the Applicant was offering for the sidewalk, the new signage and the speed bumps. "Fifteen thousand," answered Mr. Herczeg. Ms. Ottens-Sargent inquired about the length of the proposed sidewalk. About a thousand feet, answered Mr. Richardson. *[The recording picks up again at this point.]*

Next came a report from Mr. Wilcox, who related that the only thing he had revised from his earlier report for the May 16 Hearing session was on page 2 of his Staff Notes dated June 17, 2002, where he had created a table showing the nitrogen loads that would be produced by different treatment options.

Mr. Wilcox explained: The lowest loading – as little as 2.3 kilograms per acre annually, that is, 11.3 kilograms for the whole property – would result from installing a single advanced-type denitrification system. The loading from the three-unit denitrification cluster that the Applicant was proposing would result in a loading rate of 11.7 kilograms per acre for a total of 57.5 kilograms; and under the standard Title V systems, that figure would rise to 21.6 kilograms per acre or 105.9 kilograms annually.

Mr. Wilcox also mentioned that there was conservation land within the Tashmoo Pond watershed and that this could offset to some degree the loading from the residential areas. On the other hand, he pointed out, the MVC nitrogen-loading study of that body of water was still in draft form. The recommended nitrogen-loading limit for Tashmoo Pond for an SA water quality classification was 17.2 kilograms per acre.

"These numbers I consider to be on the low end," Mr. Wilcox added, referring to the figure on the chart. "They're based on Title V flows. They're based on the number of occupants estimated times the number of days they're in residence times the ... 48 gallons of water consumption per day. So I think these are low numbers."

Mr. Athearn wondered which of the options shown on the table on page 2 was the one being proposed by the Applicant. Mr. Wilcox replied that it was the third one down, which was labeled "as proposed – advanced – 19 ppm." Mr. Athearn also wanted to know if there was an acceptable – if not an ideal, practically ideal – level of nitrogen loading into the Tashmoo Pond watershed that they should be aiming for. "With the present type of sewerage system, how many houses could the project be reduced by to meet that number?" he inquired.

"I think it's going to be closer to 50 percent," replied Mr. Wilcox, "because ... as proposed the advanced denitrifying system comes out to about 11.7 kilos, and for the Outstanding Resource classification, it's got to get down to 5.7. It's be roughly 50 percent."

"Any environmental impact from having to clear such a large percentage of the property?" asked Mr. Best. "Yes," said Mr. Wilcox, "beyond the ecosystem impacts, when you clear a large area, there's nitrogen that's stored in the plant materials' root systems and top soil. So there would be sort of an initial flush of nitrogen when you really started the clearing process. I've never seen any really good figures [on that]. I'd be happy to look into that."

Ms. Sibley pointed out that a letter from the Dukes County Regional Housing Authority reproduced in her packet indicated that one way to ameliorate the effect of the development would be to obtain State and local funding to reduce the density of the project. "What are these sources of funding and, realistically, how much density could be reduced?" she wondered. Ms. Sibley also wanted to know whether in the case of the remaining market houses ending up being seasonal rentals, would some consideration be given to the finding that short-term rentals tended to behave badly and be noisy.

Based on these concerns, Ms. Sibley requested copies of the condominium association's regulations as well as evidence that the issue of noisy tenants would be addressed. "We don't have condo docs yet," replied Mr. Richardson. He added that the Applicant could explore what other associations did, for example, the Campground Association.

Mr. Zeltzer expressed concern about the possibility of a fire truck being blocked because a vehicle was coming down the road from the opposite direction. "Speaking as a firefighter from the Town of Tisbury," responded Mr. Richardson, "that could happen on any street ... There are other access ways into the project." Mr. Herczeg pointed to the alternate access routes a fire truck could take. Mr. Zeltzer requested that other options be presented.

Mr. Israel asked Mr. Scully to reiterate what the effect of the project would be on the Level of Service on Franklin Street during peak hours. Mr. Scully replied that the most critical point would be at the Franklin Street intersection. "That can operate at Level of Service C," he said. What Mr. Wessling had referred to, he explained, was the intersection of Spring Street and Franklin Street during the peak season. "Our calculations show in the future, five years down the road, with or without the project, it's going to be a Level of Service F, with a long delay on Franklin Street," he said.

Mr. Scully pointed out that although Spring Street had less traffic than Franklin Street, vehicles on the former street had the right of way. He suggested, he said, a four-way stop at that intersection, although he had not, he added, approached the Town about this. In any event, he concluded, whether or not the project was developed, the Level of Service would remain the same.

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

The Hearing Officer stated that he would defer testimony from Public Officials for the time being. He then asked for testimony from members of the public in favor of the

proposal; there was none. Next, he asked for testimony from members of the public in opposition to the proposal.

John Thayer of the Tisbury Department of Public Works read aloud a letter dated June 6, 2002 from the Chairman of the Board of Public Works Commissioners to the Zoning Board of Appeals. It read in part: "It should be noted that Herring Creek Road, as well as the section of Greenwood Avenue Extension which intersects Herring Creek Road, are both private ways, connecting eventually to the public way entitled Greenwood Avenue Extension. There is no direct access to the property for which this project is proposed." [*See the meeting file for a copy of said letter.*]

Mr. Thayer continued that he was not an abutter to the project, but he had lived farther down on Herring Creek Road for the last 25 years. "And I realize this is a part of Town where people have been drawing lines on paper ever since I've been there," he observed. He believed, he said, that Herring Creek Road was an easement from the 1940s.

Mr. Thayer related that in the early 1970s Franklin Terrace had opened and that it had been taken by the Town in 1978. Then, in 1995, one of the abutters on Herring Creek Road named Warren Stone went to the Town to subdivide his property. Surveyors found that Mr. Stone owned all the land up to Franklin Terrace. The Town gave him the Herring Creek Road right of way and the right to subdivide, which he did not do immediately. After his death, his widow portioned off two lots and sold them, and Mr. Thayer said that he assumed that the buyers still owned the northern portion of Herring Creek Road.

"I can't see ... how that ruling by the Planning Board, as surveyed by the surveyors, would allow the developers to think that in any way they're not crossing over somebody's private property," declared Mr. Thayer. As for himself, he said, he owned 15 feet into Herring Creek Road. "There is no access to a public Town road as to this proposal," he concluded.

Philippe Jordi, Executive Director of the Dukes County Regional Housing Authority, read aloud an amended version of a letter he had submitted to the Commission earlier in the month. [*See the meeting file for copies of both letters.*]

Among the points Mr. Jordi presented in the letter were the following recommendations:

That the Applicant provide preference to income-eligible Island residents administered through either the Tisbury Housing Committee or the DCRHA;

That the Applicant deed-restrict the maximum resale value of the affordable houses in perpetuity for households making 80 percent or less of median income and enter into a monitoring agreement with the

DCRHA for compliance, with said deed restrictions requiring Department of Housing and Community Development certification;

That the Applicant provide a greater range of affordability by making half of the remaining houses affordable to households making 120 percent or less of median income and the other half of the remaining houses affordable to households making 140 percent or less of median income, as well as deed-restricting the maximum resale value of the houses for a minimum of 30 years;

That the Applicant seek State or local grant funding to reduce the project's density in order to fit better within the existing fabric of the neighborhood;

That the MVC help plan for affordable housing, including Chapter 40B developments, on both a Town and regional level, in order to lessen the burden on individual Towns; and that the MVC provide creative ways to generate affordable housing that is appropriate to the needs and traditions of the Vineyard; and

That a housing partnership be established, with the MVC Land Use Planning Committee membership being expanded to include advisory members from various housing organizations and Town housing committees.

Shayne Fennell of Tisbury, who lives on the low point of the area on the third lot down from the beginning of the proposed project, stated, "If they clear-cut that area, it's going to flood my lot." He said that he had just spent quite a lot of money correcting the water problem at the front end of his property. As for the noise issue, he concluded, the house on the second lot down already had noise problems.

Paul Menton, another abutter, pointed out that although the Applicant might be proposing to help build a sidewalk on Greenwood Avenue Extension, there would be no sidewalk on Herring Creek Road or on Franklin Terrace, where students of the Tisbury School walked on their way to school. "I'm real concerned for my children," he said.

Abutter Linda Gorham, who lives at the beginning of Herring Creek Road, thought that the traffic studies should take into account the impact the development would have all the way down to the Town beach and the Land Bank beach. People in the neighborhood did walk down to the beaches using Herring Creek Road, she remarked.

Abutter Jean Duggan, who lives on the corner of Franklin Terrace and Herring Creek Road, argued that the 5-foot-wide sidewalk being proposed would not accommodate two wheelchairs that were passing each other going in opposite directions on the Greenwood Avenue Extension.

Martha's Vineyard Commission
Regular Meeting of June 20, 2002: Page 33

Abutter Roland Jann expressed concern about: 1) the width of the proposed sidewalk; 2) the noise problem which would surely affect more than the one house indicated by Mr. Herczeg [page 27]; and 3) the one-way entrance and exit plan.

Juleann VanBelle of West Tisbury began by stating that she was speaking as a private citizen. Although she felt deeply about the issue of affordable housing, she said, "I don't think that this project provides the benefit that ... an affordable housing project should provide." There were other Chapter 40B projects being examined at this time, she continued, and one principle that should guide decision-makers was that such housing "should not be put on the backs on any neighborhood ... and not at the expense of the integrity of the neighborhood."

In addition, Ms. VanBelle went on, she did not believe that affordable housing should be the burden of any one Town. Therefore, she was recommending that the Commission do some regional planning so that this did not happen. If the Commission continued to address these developments piece by piece by piece, she explained, it would result in bad Decisions and bad planning.

Thirdly, Ms. VanBelle wished to correct what she called "erroneous information" presented by the Applicant that indicated that low-to-moderate-income families would be able to afford these homes. "In the 80 percent of median, the *only* households that can afford a \$167,000 house is a four-person household," she declared, "and so basically what that means is that a young couple starting out now will not be able to buy any of the 80-percent affordable homes. I think we've just got to be very clear about who will be able to afford them and who won't be able to afford them."

Ms. VanBelle added that the only family that could afford the houses in the \$275,000-to-\$315,000 range would be a four-person household at 140 percent of median income.

Ms. VanBelle concluded by stating that Chapter 40B was not about affordable housing but about developing. In fact, she said, Chapter 40B imposed additional economic hardships on the community. "I think we need to be very careful about what kind of housing we want, where we want it ... and for how long," she cautioned. [Applause]

Ms. Sibley asked if Ms. VanBelle meant that a hypothetical family at 140 percent of median income could afford one of the homes or could be *eligible* to buy one. "To afford," answered Ms. VanBelle. To be able to afford the more expensive homes in the development, she explained, the family would have to earn about \$75,000 per year.

And then you're saying that if a young couple with no children earned that much, they wouldn't be eligible? inquired Ms. Sibley. Ms. VanBelle replied that that was the case. She also emphasized that condominium association fees were another factor to consider.

Mr. Thayer, who had spoken earlier, wondered if the Applicant had cleared the idea of the 1,000 feet of sidewalk with the Tisbury Department of Public Works. Messrs.

Richardson and Herczeg answered that they were planning a contribution *towards* the sidewalk. Mr. Thayer asked his question once more, reminding the Applicant that Greenwood Avenue Extension was a public way. When his question was still not answered directly, he declared, "I don't believe it's ever been before the DPW." The Hearing Office gavelled down the exchange.

Abutter Margaret Aldrin, who lives on Franklin Terrace, had three questions: 1) Would the Town even *allow* speed bumps on Greenwood Avenue Extension?; 2) What would be the traffic impact of the project on Franklin Terrace and would that street need speed bumps or a sidewalk?; and 3) Why had she and her neighbors not been invited to any of the Public Hearing sessions? Ms. Aldrin stressed that the Franklin Terrace neighbors should have been notified if the Applicant intended to make it a one-way access into the development.

The Staff Secretary explained that Notices of Public Hearing had been mailed to all abutters and abutters of abutters within 300 feet of the parcel boundaries. This was standard practice, she added. *[Later, the Staff Secretary checked book mail records and confirmed that Ms. Aldrin and her husband had in fact been sent notice on April 23 of the May 16, 2000 Hearing session and on June 3 notice of the June 20, 2002 Hearing session.]*

Abutter Laurel Chapman expressed "great concern" about the effect the proposed development would have on the Tashmoo Pond watershed. She also related that a few years before, a six-to-nine-unit proposal for that area had been turned down due to the density of the project.

Abutter Brian Nunes-Vais offered the opinion that some sort of traffic study should be done for Elisha's Path, considering that this was going to be an access to part of the development. Furthermore, he said, he was concerned about the one-way access and increased traffic via Franklin Terrace because there was a day school that operated on that street. The Camp Jabberwocky clients also used Franklin Terrace and Herring Creek Road, he added.

Anthony Peak, who had spoken earlier, made three points: that the 10-foot piece at the rear of the property was referred to by the Applicant as a "way," when in fact there was uncertainty about that; that best management practices would require a plan for enforcing the inspection and maintenance of what would be required of the condominium association; and that in order to obtain the use of Elisha's Path, the Applicant would have to provide 10 feet of frontage to the owner of that property.

Abutter Jeff Condlin spoke of the possible traffic that might come out of the development from Briarwood Avenue, and he wondered if that impact had been looked at. He also mentioned a lawsuit that had been initiated by JE&T Construction, the goal of which was to open up Elisha's Path at the Greenwood Avenue Extension. "And I would just like to know what their [the Applicant's] opinion is," he said.

*Martha's Vineyard Commission
Regular Meeting of June 20, 2002: Page 35*

Abutter Kim Baptiste related that his family had lived in the area in question since 1966 and that he had bought land there in 1977. "And I agree with this idea of affordable housing," he declared, "but that's the wrong place for it." He added that it was already hard to negotiate Herring Creek Road, even without the added development.

Jean Duggan, who had spoken earlier, expressed concern about the affordability of the condominium association fees and what financial burden the association would have to carry.

The Hearing Officer then turned to the other Commission members to gauge their opinion on whether or not the Public Hearing should be continued for a third session.

Mr. Zeltzer said he thought that at least the Written Record should be kept open, since a number of questions had been asked of the Applicant that had not been answered.

Mr. Israel remarked that the comments made by Ms. Aldrin about notification were relevant. *[See the Staff Secretary's note on page 33.]* DRI Coordinator Rand assured him that standard procedure had been followed.

Mr. Donaroma observed that perhaps the Applicant might want to have a little more time to consider some of the questions and possible revisions to the plan that had been posed by the abutters.

Mr. Herczeg wanted to know whether the public would again have the opportunity to comment if the Applicant were to return for a third Hearing session. "When you come back, the public gets to hear it," answered Mr. Donaroma.

Mr. Richardson wanted to be sure that the Commission and the public understood that as far as the septic system, for instance, was concerned, the Applicant would not be revising the plan, since Staff had already stated that the Applicant was in compliance. On the other hand, he said, "there is potentially something we can do on density issue."

Mr. Richardson then asked if the Hearing could be closed and any revisions could be discussed with the Land Use Planning Committee. The Hearing Officer advised him that a change in density would be too substantial a modification not to be heard publicly. "Yeah, once the Hearing is closed, the conversation ends," concurred Ms. Donaroma. "If we close the Public Hearing but leave the Written Record open, you can write some letters."

The discussion continued, and the arrangement agreed upon was for the Applicant to meet with the LUPC for a Mid-Public Hearing Review for an assessment of any revisions before returning to Public Hearing. Mr. Toole announced that the Applicant would return to the LUPC for further review on Monday, July 8, 2002, at 5:30 p.m. at the Commission

*Martha's Vineyard Commission
Regular Meeting of June 20, 2002: Page 36*

Offices and that the Public Hearing would be continued to Thursday, July 11, 2002, at 7:45 p.m. The time was 10:50 p.m.

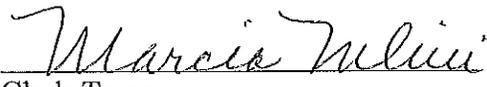
The meeting place cleared out before the Meeting continued. At 10:56 p.m. Ms. Sibley made a **Motion That The Full Commission Go Into Executive Session For The Purpose Of Discussing A Legal Matter**, duly seconded by Mr. Best. The Commission went into Executive Session and then adjourned at 11:20 p.m.



Chairman

Sept. 12, 2002

Date



Clerk-Treasurer

Sept. 12, 2002

Date

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

ABSENT: A. Bilzerian; M. Cini; J. Greene; E.P. Horne; J.P. Kelley; and K. Warner.

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