The Martha’s Vineyard Commission

Minutes for the Special Meeting of
July 11, 2002

[The tape recording of the Special Meeting did not commence until the segment containing the Concurrence Vote on the Black Dog Bakery/Café Modification below. Thus, the first part of these Minutes was prepared solely from the Staff Secretary’s notes.]

The Martha’s Vineyard Commission (the MVC or the Commission) held a Special Meeting on Thursday, July 11, 2002, at 6:30 p.m. in the first floor meeting room at the Commission Offices in the Olde Stone Building, 33 New York Avenue, Oak Bluffs, Massachusetts. At 6:42 p.m., a quorum being present, James R. Vercruysse – Commission Chairman and a member at large from Aquinnah – called the Special Meeting to order.

[Commission members present at the gavel were: J. Athearn; C. Brown; M. Donaroma; J. Greene; T. Israel; M. Ottens-Sargent; A. Schweikert; L. Sibley; R. Toole; J. Vercruysse; K. Warner; R. Wey; A. Woodruff; and R. Zeltzer. Mr. Best arrived at 6:49 p.m.]

Vote: B.A.D.D. Company, LLC, Written Decision (DRI #551).

The Commission took up the B.A.D.D. Company, LLC, Written Decision (DRI #551). [See the Full Commission Meeting File of July 11, 2002 (the meeting file) for a copy of the Decision. Commission members present and eligible to vote on the Decision were: J. Greene; T. Israel; M. Ottens-Sargent; R. Toole; J. Vercruysse; K. Warner; R. Wey; A. Woodruff; and R. Zeltzer. Ms. Brown, Ms. Sibley, and Messrs. Athearn, Donaroma and Schweikert were present but ineligible, and did not participate in the Discussion and Vote.]

Jane A. Greene, the Selectmen’s Appointee from Chilmark, pointed out that Condition 2(a) on page 3 was unnecessary, since the Applicant had already relocated the soda machine from the premises. After a brief discussion, the eligible members decided to leave said said Condition as written.
Robert Zeltzer, a Commission member at large from Chilmark, made a **Motion To Approve The B.A.D.D. Company, LLC, Written Decision, As Written**, duly seconded by Roger Wey, the County Commission representative. Acting Principal Planner William G. Veno conducted a Roll Call Vote, with the following results:

**AYES:** J. Greene; T. Israel; M. Ottens-Sargent; R. Toole; J. Vercriyssse; K. Warner; R. Wey; A. Woodrufl; and R. Zeltzer.

**NAYS:** None.

**ABSTAINING:** None.

**INELIGIBLE:** J. Athearn; C. Brown; M. Donaroma; A. Schweikert; and L. Sibley.

**Concurrence Vote: The Black Dog Bakery/Café Modification (DRI #522M).**

DRI Coordinator Jennifer Rand related that Applicant Robert Douglas had come to the Commission with the request that the Written Decision for the Black Dog Bakery/Café (DRI #522) be modified so that he would not have to do the landscaping around the railroad car display that had been required by the MVC. This evening, she explained, the only issue the members had to consider was whether or not they believed such a Modification called for a full Public Hearing. “The Land Use Planning Committee recommended to concur that it was a Modification worthy of a Public Hearing,” Ms. Rand concluded. [Mr. Best arrived at this point, 6:49 p.m.]

Ms. Greene made a **Motion That The Applicant's Request Constituted A Significant Modification And Required A Public Hearing**, duly seconded by Christina Brown, a Commission member at large from Edgartown.

Responding to a request from James Athearn, another Commission member at large from Edgartown, Chairman Vercriyssse explained that the MVC had reached a Decision more than a year earlier that the railroad car would be allowed to stay on the premises – but was not to be used as a dining car – if landscaping and safety measures were taken.

“This whole thing from day one, you know, the train wasn’t supposed to be there, we let it be there,” remarked Tristan Israel, the Tisbury Selectmen’s Appointee. “They were supposed to come in a couple of months later for the Hearing... It was six months until they finally came in, and then that went on and on forever.”

Mr. Israel continued: “We spent our time, Staff’s time, people’s time laying out a plan, you know, putting benches there, trying to make it as attractive...” “So you concur,” interjected the Chairman. “… as we could,” Mr. Israel went on, recounting other
benchmarks of the Applicant’s progress through the MVC process. He then concluded, "Every single thing has been, in one way or another, peeled away and backtracked."

By Voice Vote, Ms. Greene’s Motion carried unanimously, with 15 Ayes, no Nays and none Abstaining.

**Allen Moore Subdivision (DRI #503): Request for Sunset Clause Extension.**

Ms. Rand explained that Applicant Alien Moore had requested a 12-month extension for his Written Decision dated July 27, 2000 (DRI #503), which would be “sunsetted” as of July 28, 2002. “They have not begun substantial construction,” she related. Having spoken to the West Tisbury Planning Board as well as The Trustees Of Reservations land conservation specialists in Boston, Ms. Rand said she agreed that an extension would be in everyone’s best interests.

Responding to a question from Mr. Israel, Ms. Rand described the project, which was a three-lot subdivision up by Long Point in West Tisbury. “They’re hammering out the details of a CR,” she added, “and if we don’t vote an extension, I think that would put a crimp in those conversations.”

Ms. Brown made a Motion To Grant A One-Year Extension On The Allen Moore Subdivision Written Decision Sunset Clause, duly seconded by Linda Sibley, a Commission member at large from West Tisbury. Ms. Greene said, “For the record, I’m abstaining from this discussion.” By Voice Vote, the Motion carried unanimously, with 14 Ayes, no Nays and one Abstaining.

**Vineyard Golf Club (DRI #484): Conditions 2(b) and 6(d).**

Ms. Rand related that there were two items related to the Vineyard Golf Club Written Decision – Conditions 2(b) and 6(d) – left to be voted on. Condition 2(b) stipulated that the Applicant return with a plan for public play on the course. The Applicant had requested the elimination of that Condition, Ms. Rand said, since public courses were not allowed in the Town of Edgartown. “I’ve spoken to the Town, and they don’t feel that there’s any support for a zoning change in any fashion … and on top of that, it would put [the Applicant’s] private club status at risk,” concluded Ms. Rand.

Ms. Greene made a Motion That Condition Two-B Of The Vineyard Golf Club Written Decision Be Eliminated, duly seconded by Kate Warner, the West Tisbury Selectmen’s Appointee.

“Is it agreed by all parties that it would be a violation of zoning for [public membership] to happen?” asked Mr. Athearn. Ms. Brown explained that the Town’s Zoning Bylaw stated that in a residential neighborhood an Applicant could request a Special Permit for a private club so long as it was operated for members only and not for profit. “It’s quite clear,” she stressed.
Ms. Sibley and Mr. Israel argued that the Condition should not be eliminated entirely but that public play should be provided for if the Town’s zoning ever changed to allow it. Ms. Rand pointed out that the facility’s status as a private club – in terms of the Applicant’s being vulnerable to a lawsuit by members – would be threatened by permitting public play. “But you have to wonder how it works at Farm Neck, which is clearly a private club,” remarked Ms. Sibley. “Well, I haven’t checked with [Commission Counsel] Eric Wodlinger,” said Ms. Rand.

“Was that information available to us back when we voted?” inquired Megan Ottens-Sargent, the Aquinnah Selectmen’s Appointee. “No,” said Ms. Sibley. “That bylaw’s been on the books for a long time, Megan,” noted Ms. Greene.

“Linda [Sibley] makes a tantalizing point,” observed Mr. Zeltzer, who argued that it would be nice if the Town bylaw changed and public play were allowed. The discussion continued a few minutes longer.

When the Chairman began to conduct a Voice Vote on Ms. Greene’s Motion, the Staff Secretary pointed out that a Roll Call Vote was required since the Motion’s carrying would result in the Modification of a Written Decision. Mr. Veno conducted a Roll Call Vote, with the following results:

**AYES:** J. Athearn; C. Brown; M. Donaroma; J. Greene; T. Israel; R. Toole; J. Vercruyssse; K. Warner; R. Wey; and R. Zeltzer.

**NAYS:** M. Ottens-Sargent; and L. Sibley.

**ABSTAINING:** J. Best; A. Schweikert; and A. Woodruff.

John Best, a Commission member at large from Tisbury, commented that while driving by the golf club on West Tisbury Road, he could see members lined up at the driving range. “And just about every single one of them has a golf cart,” he said. It was his understanding, he stated, that the carts were to be used only in the case of medical necessity.

Secondly, Mr. Best continued, he had learned that at least eight to 10 people working at the facility were in rental housing, “and they had originally anticipated moving into housing that would be provided for them. It has not [been], and it was never built.”

**Applicant Owen G. Larkin**, who was present, asked to speak. “Issue number one, we have 20 electric golf carts,” he said. “Most golf courses have nearly a hundred. The only way you can take the golf cart on the golf course is if you have a medical reason to have it. It is quite a distance from the clubhouse to the far end, which is the place where people hit balls at the practice range.” Therefore, he said, members could use either the clubhouse shuttle or a golf cart to get there.
“Number two,” Mr. Larkin went on, “we have had the foundations poured. We’re getting knocked around … with the company that we entered into a contract with to build the units.” It had cost him, he stressed, nearly $120,000 to provide the rental housing. “So there’s no advantage whatsoever for me to spend an extra $120,000 to do it,” he said. “As soon as I can get it done, I’m going to get it done.”

Responding to another query from Mr. Best, Mr. Larkin said, “The foundations are poured, and three of the buildings are up.”

Moving on to Condition 6(d), Ms. Rand referred to a write-up on what the Applicant can proposed with regard to off-season public access, which the LUPC had looked at and voted to recommend. [See the meeting file for a copy of said plan.] Ms. Ottens-Sargent requested that the Condition be read aloud, which Ms. Rand did.

Ms. Greene made a Motion To Approve The Applicant’s Plan For Off-Season Public Access, seconded by Michael Donaroma, the Edgartown Selectmen’s Appointee.

Mr. Israel wanted to know when and if the public could walk on Dr. Fisher Road. “You can reach Dr. Fisher from three different points,” explained Mr. Larkin – from the main road, from Middle Line Path and from Metcalf Drive. Ms. Brown tried to clarify that. Year-round, she said, the public was allowed to walk the entirety of Dr. Fisher Road. The perimeter trail, she continued, was the one that was open December through March. Mr. Larkin corrected Ms. Brown, noting that the perimeter trail was open to the public all year as well.

Andrew Woodruff, a Commission member at large from West Tisbury, asked about the frost bottom and the hole nearby. Mr. Larkin explained the controversy about that, which, he said, had arisen when a competitor had persuaded a group of 10 citizens to initiate a lawsuit against the M.V. Golf Partners; said lawsuit, he added, had been summarily dismissed. He said that originally he had planned a “flyover” – that is, the golfers would have been hitting their balls over the frost bottom – but that plan had been discarded.

Mr. Athearn wanted to know if the December-through-March reference was being left in the document on public access. Ms. Greene replied, yes, that it had to stay because of the concurrent reference to the Applicant’s providing parking for the public during that period. “And if he takes that out, he’d be providing parking year-round, which he’s not in a position to do,” she said. Ms. Brown explained that one could always walk on the perimeter trail but that one could not always park there.

Mr. Zeltzer suggested that the document read: “That the public will have year-round access, but that parking will be available only from December 1 through March 31.” Ms. Rand reminded Mr. Zeltzer that he had to request an amendment of Ms. Greene’s Motion
and Mr. Donaroma’s Second. Ms. Greene pointed out that she would go along with the amendment but that the title of the document had to be changed.

After more discussion, it was decided to change the name of the plan to “Public Access Plan.” Ms. Sibley confirmed with Mr. Zeltzer that the final paragraph would be taken out. Ms. Brown commented, “It’s a good thing to get ... Middle Line Path back in public access.”

Ms. Greene and Mr. Donaroma accepted the amendments to the original Motion. By Voice Vote, said amended Motion carried unanimously, with 15 Ayes, no Nays and none Abstaining.

**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 packets 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 concerns that had been raised during the May 2, 2002 facilitation session, and that the committee had attached actions to each of those concerns, to be looked at by various MVC committees.

Ms. Sibley related that a number of members had commented on Full Commission Meeting dynamics, and Mr. Veno had supplied them that evening with a model covenant that might be used in this regard. “PED felt that that was something the Full Commission should discuss and deal with,” she said, then requesting feedback from members on the issues and their assignments.

“I don’t think the Search Committee can address what you’re looking for,” remarked Ms. Greene, “because that’s not what our charge is.” In addition, she said, the committee did not have time to look into that.

Ms. Warner pointed out that many comments had been submitted regarding the qualities that Commissioners and Staff would want in an Executive Director. “The point of that one,” she explained, “was to just read the text and know when you’re interviewing people what were some of the qualifications or the wishes of the Staff and Commissioners about what kind of role this person might have. There’s not a real action to it.”

Ms. Warner added that it would be a shame not to move forward on some of the issues raised, particularly with regard to the Commission’s relationship with the community and the agency’s being more of a planning board rather than a reactionary one.

Mr. Athearn said he agreed that some kind of regular planning item should be on the Agenda each Meeting, including, perhaps, idealism planning “and how we want to shape the future.” Mr. Wey concurred with Ms. Warner and Mr. Athearn, “that we should take
Ms. Wamer commented that she thought all it would take would be for the members to read the feedback document that had been compiled by the Staff Secretary.

Ms. Brown recommended that the committees set aside time in their meetings to tackle the issues assigned to them, one at a time. Chairman Vercruysse remarked that it would be a good idea for the Search Committee to review the comments on the Executive Director position in the feedback document.

Ms. Wamer requested that time be set aside in a Full Commission Meeting for the discussion of meeting dynamics and Commissioner behavior. After some discussion, this was scheduled for August 1.

Report on the Search Committee.

Chairman Vercruysse reported that the Search Committee had met on July 2 and July 9. The deadline for applications for the Executive Director position had been July 1, and the committee had received 24 applications. Out of those, he said, the committee had selected 10 who would come in for a preliminary interview. “It’s pretty tight,” he observed. “I think there[re] some really good people. It’s going to be a lot of work for us. The interview dates are being set up now.” “We’ve got seven of nine committed to interviews,” noted Ms. Greene.

The Chairman also mentioned that a press release about the selection process, which they were waiting for Commission Counsel to approve, would be available shortly. “So, it’s happening,” he concluded.

Alan Schweikert, the Oak Bluffs Selectmen’s Appointee, wanted to know if the Search Committee would be making the final decision. “No, the Search Committee just does initial interviews. All the decision are made by the full body,” answered the Chairman. “I mean, how many people does the full body look at?” asked Mr. Schweikert. “Well, whoever are considered finalists,” replied Chairman Vercruysse, adding, “It could be one, it could be two, it could be three …” “Hope it’s not too many,” said Ms. Greene. “Well, I was wondering,” said Mr. Schweikert, “because if it’s one, the Search Committee’s made the decision.”

A discussion of the search process continued for some minutes. Then Mr. Athearn remarked, “It seems to me – and I am on the Search Committee – that the committee is charged with an awful lot of responsibility to sort out from those 10 who [would be] the finalists. So at the very least, I think that it would be great if we could get some notes from the other Commissioners about … what they would be looking for…” He added that he hoped that the Search Committee was also in concert with the whole community as it went through this process.
There was more talk about the process, and Mr. Zeltzer, another Search Committee member, emphasized that the members of the committee represented a good cross-section of the entire body. Moreover, he said, the committee had had considerable input from Counsel to guide them.

The time was 7:34 p.m. The Chairman called for a short recess.

Continued Public Hearing, Session Three: Fairwinds Subdivision (DRI #548).

[Commission members present at the start of the Continued Public Hearing were: J. Athearn; J. Best; C. Brown; M. Donaroma; J. Greene; T. Israel; M. Ottens-Sargent; A. Schweikert; L. Sibley; R. Toole; J. Vercruysse; K. Warner; R. Wey; A. Woodruff; and R. Zeltzer. Ms. Greene left shortly after the session began, and Mr. Warner left at 9:45 p.m.]

Chairman Vercruysse reopened the Special Meeting at 7:46 p.m. and handed the gavel to Richard J. Toole, a Commission member at large from Oak Bluffs, Chairman of the Land Use Planning Committee and the Hearing Officer that evening. Mr. Toole read into the record the Notice of Continued Public Hearing for the third session of the Hearing for the Fairwinds Chapter 40B Subdivision by JE&T Construction, LLC, in Tisbury (DRI #548). [See the meeting file for a copy of said notice.]

Ms. Greene stated that she was going to abstain because she had missed the earlier sessions of the Public Hearing. Ms. Warner announced that she, too, was abstaining, since she had not attended the second session of the Public Hearing. The Hearing Officer then outlined that procedure that would be followed. [Shortly thereafter, Ms. Greene left the meeting room.]

Mr. Toole related that the Land Use Planning Committee had met with the Applicant on Monday, July 8. With some changes having been proposed at said meeting, he noted, the Applicant was ready to present an amended plan.

Applicant Presentation.

Thomas Richardson, one of the three partners of JE&T Construction, stated, “I think it is significant to note that we are reducing the amount of density on the project from 24 units to 20 units, which is in effect a 17 percent reduction. It brings it much closer to what ... could be or what might have been a typical subdivision on that size of a lot.”

Said amendment did a couple of things, Mr. Richardson continued. Besides reducing the density, it would have a significant impact on the traffic that would be generated from the project, he said.

Edward Marshall, a landscape architect with Stimson Associates of Falmouth, walked the Commissioners through the revised plan, pointing on a site map to where one
unit had been taken out of an end cluster and three out of a side cluster. He had taken more units off the left-side cluster, he explained, because of grading issues and the elevations of the structures as relating to some of the existing houses abutting that side.

Mr. Marshall pointed to a unit that would have a finished floor elevation of 63, with a backyard of 53. "And essentially that meets grade here, at the property line," he said, adding, "So it makes it easier to do the grading and hold that grading in."

Another concern addressed by the reduction in units, continued Mr. Marshall, was the site runoff. "What we intend to do is hold all the runoff on-site using dry wells. So there shouldn't be any issue with ... [an] increase in runoff or any amount of runoff coming off the site."

There were other benefits in the revised plan, Mr. Marshall remarked: 1) it allowed the Applicant to increase the spacing between the homes, going from 25 feet to 30 feet; 2) it allowed an increase in the spacing between two of the clusters from 50 feet to 60 feet; and 3) it allowed the Applicant to increase some of the open space, thus giving them the opportunity to save more of the trees on the site. "But, clearly, when we go to do our grading, any area that we don't have to impact in terms of grading, we will be able to keep the trees in that area," he explained.

Mr. Marshall finished up by noting that the road location would remain the same and that the plan revisions had allowed the designers to ease some of the grading to about 5 percent as one approached the end units.

Mr. Richardson pointed out that in redesigning the plan, they had been able to shift the last three units down toward the far end of the property, so that they could then maintain the buffer that had been of concern relative to the 10-foot easement in the back lot. "So we will have enough, if and when a need for that road does develop," he said. "We would be able to maintain the buffer for the property on the other side."

Mr. Richardson asked Mr. Toole if he would have an opportunity to sum up at the end of the evening. "Yes," answered Mr. Toole.

Turning to the subject of a worksheet requested by the LUPC, Mr. Richardson explained how the reduction in overall units had required the Applicant to reduce the number of affordable homes in the project to five, which was the minimum level they could be at. [See the meeting file for a copy of the worksheet.] In a muffled voice, an unidentifiable person asked where those units would be. Ed Herczeg, another of the JE&T Construction partners, replied that the affordable units would be spread out over the entire project.

Mr. Richardson went on that he had discussed with the LUPC the possibility of having a sixth affordable unit by raising the price of some of the high-end moderate units that would not be reserved for Islanders. "So we've worked up those numbers, and as you
can see here, they’re, you know, it’s kind of playing with numbers, and I think that the best conclusion that I can draw for you is that the total revenue that was anticipated to be generated from the project as a 20-unit project in our original Pro Forma was about five point five six five.”

Mr. Richardson continued: “The highest end here that we have here is five million six hundred thirty-five thousand, and it goes as low as four million nine hundred twelve. That’s a pretty significant decrease in revenue, so to speak, if we were to sell six affordable units and at the price structure that is listed here under the potential price.”

“So our recommendation, after looking at this chart – which, I would add, has been helpful – is to proceed as if it is a five-unit affordable project,” Mr. Richardson said, “but hold one until the end so as to determine if it can be sold as an affordable home based on the revenues received, expenses incurred or if any subsidies would be available to assist not only the homeowners but the developers.”

“I think the simplest answer is at this point economically we’re not comfortable making the decision to reduce it … or to keep it at six right now,” Mr. Richardson concluded.

The LUPC had also requested that the Applicant put together some examples of how one would find out what the affordable home price would be, Mr. Richardson related, and he pointed to the figures that the partners had worked up. [See the meeting file for a copy.]

“Effectively, by doing this example, you back into a sales price,” he said. Mr. Richardson pointed to where the condominium association fee was noted as $25, the monthly insurance as $55, the real estate tax at $127 monthly and a PMI of the mortgage at $75.

Mr. Richardson described the condominium association budget plan contained on the same sheet, wherein were listed how much the individual owners would pay to the association and how revenue would be generated and spent. The expenses, he said, would be primarily for road, septic maintenance and septic reserve, and a miscellaneous-in-reserve category.

The last piece of the financial plan was the deed restriction proposal, Mr. Richardson went on. Upon the sale of the property, the owner would be limited to a 10 percent profit over the original or then-current purchase price, plus quantifiable improvements, for the first five years. Any excess would be turned over to the affordable housing agency monitor, and for each additional year of ownership, the profit percentage would grow by 5 percent per year. He provided an example of this.

Showing how long it would take for a homeowner to profit significantly from a sale, Mr. Richardson said it would take 23 years for a homeowner to double his money on the house if he bought it at $275,000 and sold it for $550,000 23 years later. He offered another example, this of a house whose ownership turned over three times during a relatively short period.
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Questions from the Commission Members.

Mr. Woodruff asked about the criteria for the purchase of a moderately priced unit by an Island resident. “We’re going to create a criterion, but effectively it’s going to be a 30-day window, not necessarily to obtain a mortgage, but to come to us,” replied Mr. Richardson, who added that the deed restriction would still adhere.

Responding to a question from Mr. Israel, Mr. Richardson explained that after the 30-day period, if they did not see up to seven buyers, then anyone could buy the unit. “Would the price remain the same at that point?” inquired Mr. Israel. “I think I’d have to talk to my partners,” answered Mr. Richardson, “but I don’t see why we couldn’t maintain on those seven units the same kind of deed restriction. It may not be necessarily at the two-seventy-five price.”

Referring to the mortgage table, Ms. Brown wanted to know what the Total Reductions line item meant. “Total Reductions is the sum of the 25, the 55, the 127 and the 75 dollars,” replied Mr. Richardson, “it’s those four numbers up above.”

Ms. Brown confirmed with Mr. Richardson that the deed restriction proposal he had just spoken of referred to the moderately priced units for Islanders and that the deed restrictions on the affordable units would be in perpetuity. Ms. Brown wondered who would be responsible for ensuring that the deed restrictions were complied with. The affordable housing agency monitor, which would be chosen in the future, answered Mr. Richardson, who mentioned an escalator, which accounted for inflation, that was allowed for the affordable unit price. “We don’t have control over that,” remarked Mr. Herczeg.

Ms. Brown clarified with Messrs. Richardson and Herczeg that under Chapter 40B the State would determine which housing agency would monitor the values.

Turning to the moderately priced units, Mr. Brown wondered if the Applicant had considered a short-term right of first refusal in the condominium association covenants when such a unit was sold; so that the Town, for instance, would have a chance to buy it for its Resident Homesite program. “We could look into that,” said Mr. Richardson.

Ms. Brown also wanted to know what would happen in the following scenario: The first owner of a unit went to sell it, and for some reason the buyer wanted to pay, say, 20 percent more than the price the owner was asking. So the original owner profited by 10 percent, and the other 10 percent went to the housing agency monitor. If the second owner were to turn around and sell it, then would the base price upon which the 10 percent maximum-profit figure was calculated be the original price paid by the first owner or the price paid by the second owner?

It would be the new price that the second owner had paid, replied Mr. Richardson. That could be a problem, observed Ms. Brown, because then the price could quickly escalate
beyond the means of a moderate-income person. Mr. Herczeg remarked, “There wouldn’t be an incentive, though, for a second buyer to pay more ...” “Perhaps the solution is to go with the new base price of 10 percent above the last price,” suggested Mr. Richardson. “We’ll work on it, okay?” responded Ms. Brown.

Ms. Sibley noted that sometimes there were, in fact, bidding wars on properties. “But I think it’s improbable it could happen,” she said.

Ms. Brown had another question regarding the pricing worksheet figures on six affordable units compared to five affordable units: What did the Applicant mean by aggressive price and potential price? “Well, first off, on the affordables, the one sixty-eight is at the 80 percent level, and it happens to be at the $57,000 income level. The 107,000 happens to be at the $40,000 level,” answered Mr. Richardson.

“Fifty-seven is 80 percent of Dukes County median income?” inquired Ms. Brown. “No,” answered Mr. Richardson, “at the median income level ... actually, I think it just went up to 59, so what I tried to do there is just show what a lower income level would mean in terms of what someone could afford.”

“So a family of four who has a median income of 80 percent of Dukes County [median income] can afford a $168,000 house?” asked Ms. Brown. “That’s correct,” said Mr. Richardson. And why did he list potential price? wondered Ms. Brown. “Because it would go, you know, we’re not sure where it’s going to come in at,” Mr. Richardson explained. “We’re not sure who that affordable homeowner, perspective homeowner is, and they could be making only 40,000 every year. So, if they’re making 40, now all of a sudden you’re in the $107,000 [price] range.”

“So if you look at that table,” continued Mr. Richardson, “more than likely the range is going to be somewhere between 107[000] and 168,000 on the homes, and we’re not sure where it’s going to fall.” Ms. Brown said that she was glad he had made the point about the $5,478,000 and $4,912,000 being a range. “Right,” confirmed Mr. Richardson, “and as I said earlier, our revised Pro Forma when we made the decision to go to 20 called for a revenue stream that was slightly in excess of 5.5 million. You can see here that if this pricing chart works or is to come to fruition for six affordables, we could not hit the 5.5. We’d even be lower.”

Responding to a question from Mr. Israel about how people would apply to buy the affordable units, Mr. Herczeg explained that the housing agency monitor would be handling that.

Mr. Woodruff wanted to know where the extra funds would go if the price went over 20 percent profit. “It goes into the housing agency monitor,” replied Mr. Richardson. “Here on Island, not in Boston,” emphasized Mr. Herczeg, who added, “It stays in Tisbury.”
“There’s nothing precluding you guys from being the broker, correct?” asked Mr. Israel.
“That’s correct,” answered Mr. Richardson.

Mr. Best wanted to know if William Scully of MS Transportation Systems had run the traffic numbers for the revised plan. Mr. Scully responded that the option that had been developed was to disperse the impact of new traffic generated by the project by doing a “right-in-right-out” flow, whereby traffic entering into the site would use Franklin Terrace and exiting vehicles would take Greenwood Avenue Extension.

“We haven’t identified any specific treatment necessary,” Mr. Scully said. “We’re talking about traffic in the range of about 10 vehicle trips in the peak hour associated with the project... That’s just a rough, rounded number, but either entering or leaving. So it’s a relatively low number that certainly can be accommodated by both of the two streets.”

Mr. Scully related that one of the issues that had come up was the travel speed on Greenwood Avenue Extension. He had already recommended, he said, a number of ways to address that, with the Applicant offering additional signage, a contribution towards a sidewalk, and speed bumps (if allowed by the Town). “Certainly, the entering traffic, you’re going to be able to turn into Franklin [Terrace] without a problem,” he remarked. “Exiting traffic from Greenwood Avenue,” continued Mr. Scully, “will be able to exit that street without much delay or problem.”

The Staff Secretary clarified with Mr. Scully whether the 10 vehicle trips during peak hour would be expected with the revised plan of 20 units or with the earlier plan of 24 units. “That’s just a rounded estimate for illustration,” replied Mr. Scully, “but ... the peak season with 24 units was between 27 and 30 total vehicle trips, and typically with more entering in the afternoon and more exiting in the morning, you’re in that ballpark of 10 to 15 in the peak direction. With the 20 units, you’re going to reduce all those numbers by approximately 15 percent.”

Mr. Israel confirmed with Mr. Scully that there were, in fact, two potential entrances into the property. Mr. Israel then asked Mr. Scully to comment on the sight distances. “The exiting lane is somewhat wider than the entering lane, in terms [of] it’s more wide open [with] a clear view to Greenwood Avenue Extension” answered Mr. Scully. The tree canopy on the entrance corner, he said, would either be about 5 feet high or there would be low-lying vegetation, so as not to obstruct sight lines.

Was Elisha’s Path being considered as an alternative? wondered Mr. Israel. “That’s not really on the table right now,” responded Mr. Richardson. However, he added, it might be appropriate at this point to distribute to the Commissioners a memorandum with attachments relating to the use of Herring Creek Road. [See the meeting file for a copy of the package.] Although he recognized that the Commission had been advised by Counsel not to consider the access issue in coming to its Decision but to make its being resolved a Condition of Approval, Mr. Richardson pointed out that there had been a lot of talk about the Applicant’s rights with regard to Herring Creek Road.
Mr. Richardson continued that the package contained specific proof of the public’s right to use Herring Creek Road and that the Applicant would be allowed to improve the short stretch of that road being used for access to the development. “The prescriptive easement would not thus be overburdened,” he said.

Mr. Richardson pointed out that Herring Creek Road was an Ancient Way and that it had been publicly used by prescriptive right as a route from the Town to Tashmoo Pond since early times. In numerous assessors’ maps, it was listed as a traveled way or a public way, he related, and most importantly, the Tisbury Planning Board had repeatedly approved it as an access to subdivisions and to adequately sized lots where subdivision approval was not required.

Reading from the memorandum, Mr. Richardson stressed that “[a]s Planning Board endorsement is ‘conclusive on all persons’ – and that’s per Chapter 41, Section 81P – ‘including the Planning Board itself, a challenge may not now be mounted against a determination that the same roadway is not available for the identical use by persons similarly situated.’” He referred to the E. Warren and Julie E. Stone decision attached as an example of the acceptance of Herring Creek Road as an adequate public way for access to a subdivision.

Mr. Richardson also made mention of the Tisbury Planning Board’s 1999 decision, wherein a preliminary subdivision plan had been denied on two grounds, one of which was that it did not connect directly to a public street. “But that is a Tisbury Planning Board regulation,” he said, “which waiver we have requested by virtue of the Comprehensive Permit.”

The other reason for denial in 1999 had been the potential for overburdening the easement upon the future subdivision of the adjacent property owned by the Neel family. Mr. Richardson referred the members to an agreement signed by the Neels containing the following statement: “Use of the Access Easements as a primary access road to the proposed twenty-four housing units on Lot 16 does not overburden the right we granted in the Access Easements.”

Returning to the cover memorandum, Mr. Richardson quoted more case law, which indicated in part: “Improvements to [a road] do not in and of themselves constitute an overburdening of the [prescriptive] easement... It is permissible for the owner of the dominant estate to make necessary repairs to the easement.”

The final paragraph of the memorandum concerned what constituted overburdening, which was generally considered to be a change in the nature of the use, noted Mr. Richardson, and not the intensity of it.

Mr. Richardson finished up: “So, in conclusion, the Town of Tisbury cannot now deny what it has affirmed so many times in so many ways – that the public has a prescriptive
right to use Herring Creek Road, only a small section of which is being proposed as access to Fairwinds. The public, including project proponents, may improve this short stretch as necessary to safely enjoy the easement and, so long as the use remains residential, the easement will not be overburdened.”

Ms. Ottens-Sargent wanted to know if the easement mentioned a specific number of houses. “I believe the answer to that is, no, it does not,” replied Mr. Richardson, “but again, going back to the fact that it’s a prescriptive easement, and speaking specifically to what is the overburdening, it’s not the intensity of the ... use of that road but rather the nature that would significantly ...” Ms. Ottens-Sargent interrupted and confirmed with Mr. Richardson that the easement was not actually written down.

Mr. Richardson wished to make clear for the record that, contrary to testimony or a newspaper article (he could not remember which), he and his partners had not instituted litigation for use of Elisha’s Path. It had been started by the Register of Deeds, he said, and the Condlins, in fact, had at this point gone through the process as an objection to that move by the Registry.

Mr. Richardson explained that what had happened was that years ago on the deed for the lot in question, Elisha’s Path had been inadvertently left out in a transfer of ownership over time. “The Registry of Deeds noticed that and has now petitioned the court to put it back onto our deed, so that Elisha’s Path is now listed on our deed,” Mr. Richardson concluded.

“You mean to say the court responded, or is this process ongoing?” asked Ms. Ottens-Sargent. “The court did respond, and it’s an ongoing process at this point,” said Mr. Richardson. “So it’s not formally yet on the deed?” inquired Ms. Ottens-Sargent. “No,” replied Mr. Richardson, “and that’s why, Tristan [Israel], it’s not on the table right now ...

But the Applicant had alluded to the use of Elisha’s Path, argued Mr. Israel. [See pages 24 to 25 of the Full Commission Meeting Minutes of June 20, 2002.] Mr. Herczeg noted that perhaps the Applicant had mentioned installing a breakaway gate so that emergency vehicles could have access at that point.

Mr. Israel then referred to a letter from the Town of Tisbury Planning Board about the Applicant’s right to use Herring Creek Road that had been included in Ms. Rand’s Staff Report Addendum dated June 20, 2002. [See the meeting file for a copy.] “We’ve seen the Town’s notes or letter, yes,” answered Mr. Richardson.

Chairman Vercriusse referred to the Applicant’s proposal to improve the conditions for foot traffic by contributing toward a sidewalk on Greenwood Avenue Extension. An employee of the DPW, he said, had indicated that this had not been approved by that department. Had the Applicant followed up on that? asked the Chairman.
"All the facts that we've dug up and we've gone back and looked is that Greenwood Avenue Extension is a public road to where it turns into Greenwood Hills Drive," responded Mr. Richardson. "Which is past Herring Creek Road," said Mr. Herczeg. Mr. Richardson added that it was not up to the Applicant where the sidewalk should go; it was up to the Town to decide whether or not to install the sidewalk.

Mr. Athearn asked how wide Greenwood Avenue Extension was. "I believe it's 40 feet wide," said Mr. Herczeg. "Thirty feet," said Douglas Hoehn, a civil engineer with the firm of Schofield, Barbini & Hoehn and a member of the Applicant's team. "And the traveled way as it now exists?" asked Mr. Athearn. "Eighteen, twenty maybe," replied Mr. Hoehn.

Mr. Wey brought up the issue raised in an earlier Hearing session about the ability of two wheelchair-bound Camp Jabberwocky clients to pass one another on the proposed sidewalk. [See the comment by abutter Jean Duggan on page 32 of the Full Commission Meeting Minutes of June 20, 2002.] "Well, I think that ADA says that the width of a sidewalk for a wheelchair is somewhere in the area of three feet, three and a half feet, and we've proposed a five-foot sidewalk," explained Mr. Herczeg.

Responding to another question from Mr. Wey, Mr. Herczeg said that the occupants of two wheelchairs passing each other from opposite directions "would have to be courteous, and one will have to wait. Right now, they're on the road. So I don't know what the answer is." Mr. Richardson remarked that those instances he had seen on that strip of road had led him to conclude that even if a sidewalk could handle only one wheelchair at a time, it would be an improvement.

The exchange continued for a few minutes. Mr. Wey suggested that a 6-foot-wide sidewalk could work better than a 5-foot one.

Regarding the series of drywells the Applicant can proposed for handling the roof runoff, Mr. Wey wanted to know who would maintain those. Mr. Hoehn answered, "These would be very simple ... and I would assume that, I'm not sure how you guys [the Applicant] would want to handle that, whether it's individual lot owners maintaining them. There's really not much maintenance to take place with those."

Mr. Wey said that he thought that there was some runoff which would flow from one of the new lots to that of an existing neighbor. "No," answered Messrs. Herczeg and Hoehn at the same time. Mr. Hoehn again assured Mr. Wey that the drywells would handle the roof runoff. Ms. Ottens-Sargent expressed the hope that Staff would comment on the runoff issue during the Staff Reports segment.

Regarding the pricing worksheet that had been discussed earlier, Ms. Sibley wanted to know who would determine if a sixth unit could be sold as an affordable home. "We would," replied Mr. Richardson, "and it would be based on, as I said, where the revenues are at that point, where our expenses are." He added that going through the MVC process
had cost the Applicant “a lot more on the expense side than originally proposed.” Other unexpected expenses had been the cost of the three BioClear septic systems, he said.

“I want to know what the mechanism is,” declared Ms. Sibley. She wondered if the Applicant could come up with a formula to address this, “something quantifiable.” “Who do you answer to?” asked Mr. Donaroma. “Our conscience,” replied Mr. Richardson. “Just you,” said Mr. Donaroma, who then inquired about whom the Applicant answered to in terms of not exceeding the 20 percent profit allowed. “The State,” said Messrs. Herczeg and Richardson at the same time. “Who in the State?” asked Mr. Donaroma.

Before the Applicant could answer, Ms. Sibley proposed that the Commission would have to ignore completely the possibility of a sixth unit, since “it’s not a benefit to put in our balance when we’re weighing benefits versus detriments if you can’t give us some sort of objective mechanism that would tell us whether it’s going to happen.”

In response, Mr. Richardson emphasized that the Applicant had a Pro Forma which at that point called for a 16.9 percent profit. “And upon getting to a point ... where we’re at that point,” he explained, “we can look at this number and say if we sold it at 168,000, we would be at x amount of profit, if we sold it at 300,000, it would be at y, and it’d be pretty easy to figure out.”

Mr. Israel asked if there would be condominium association regulations. “Typical condominium bylaws,” replied Mr. Richardson, “but the inclusion would be relative to the one-way-in-and-one-way-out [being] a significant piece of the bylaws. But they would be typical condominium bylaws with, you know, covenants as to, you know, storage of, you know, vehicles and, you know, improvements that need to be made would be run through the association and so forth.”

Mr. Israel wanted to be shown the fire vehicle access on the site plan. Mr. Richardson explained that there were a number of ways to go in and out of the development parcel. The easiest route, he said, would be Greenwood Avenue Extension; in addition, a fire truck could come down Franklin Terrace, if necessary. “I did also pass on tonight a letter from the Fire Chief to Jennifer [Rand],” he added.

Mr. Richardson continued that pending the resolution of the Elisha’s Path issue, there could be two crash gates installed there to allow the fire vehicles in. He mentioned also that “the utilities” might be putting in a road back there if Mrs. Neel ever wanted access.

Ms. Rand told Mr. Israel that she did in fact have the letter from the Tisbury Fire Chief. “The Fire Chief has indicated no concerns and just indicated the number of hydrants he’d want to see on Irene’s Way,” she said.

Regarding Ms. Sibley’s earlier comments about disregarding the sixth unit as a benefit, Mr. Richardson spoke for some minutes about the fact that the Applicant could have simply said that having a sixth affordable unit would be economically unfeasible. “We
decided to take the high road,” he said, “and put in an opportunity to at least try and get back up to six units.” Ms. Sibley said she understood this but was still desirous of having some sort of quantifiable mechanism by which to gauge the feasibility of the extra unit.

Mr. Zeltzer remarked, “I’m having even more trouble with this.” The limits on profitability were all well and good, he said, “but when you toss in a realty commission and other expenses that can be attributed to the work provided by somebody who’s going to share in that 16-plus percent, it could easily come to 21, 32 or more percent. And that’s very troublesome to me, because the purpose of this, before it started to be manipulated by the development community ... was to create affordable housing.... But what it has evolved into is a profit opportunity for developers.” [Applause]

Mr. Zeltzer stressed that he thought there should be disclosure of any potential interlocking between the partners and the fees as well as what the total opportunity for profit was. Although he appreciated the data that the Applicant had submitted at Ms. Brown’s request, Mr. Zeltzer said he wanted to know for certain whether it would be possible if all or if more of the units might be offered at an affordable cost.

Mr. Richardson responded: “Let’s back up a little bit, because I have to take exception to some of your comments. I think they’re inaccurate, all right? First off, in my summary I was going to speak to the fact that the Legislature has put in place the [Chapter] 40B Comprehensive Permit legislation ... so that developers, private developers, would come up out of the woodwork and take the opportunity that is desperately needed, especially on Martha’s Vineyard, to develop affordable housing. If it wasn’t being done by developers, then it would not be done, as evidenced by the fact that on this Island we are so lacking in affordable housing.”

Mr. Richardson went on that he and his partners had already taken about $450,000 of profit out of the project. “And we are entitled to a profit, okay?” he declared. “I mean, that’s what ... this country’s all about, is profitability, although it’s secondary in nature to the purpose and the mission of our particular project, which is to develop affordable housing. Let me remind you that we not only have developed affordable housing, but we’ve also developed another seven units of moderate housing that are geared towards Islanders, right?”

Mr. Richardson stated that he would be happy to submit the Pro Forma to DRI Coordinator Rand. “There’s nothing hidden about it,” he noted, “and it speaks to all the interlocking fees that you speak to, and if you want to, in fact, it’s very simple when you look at the profitability to determine the formula that could be used to develop it from either five units to six units. I mean, if we can hit that number, we’re going to hit it. Okay? And we’ll put the sixth unit back in. But, you know, Bob [Zeltzer], I don’t know what to tell you other than, you know, we’re not trying to screw anybody here.”

Grumbling was heard from some members of the audience, and the Hearing Officer asked for order. “This is very discouraging, I might add, very discouraging,” remarked
Mr. Richardson. "We played this game upfront and honest with you people from day one."

Mr. Richardson then submitted for the record the Pro Forma. In his experience, he added, he had never seen a project that had made the original Pro Forma percentage. "It's never happened, okay? And it's certainly going to be more difficult on this Island, with the way expenses are run," he stated. "And I can assure you, Bob [Zeltzer], that if we have the problem of being over 20 percent, God bless the agency that's going to get the extra money, because it isn't going to happen."

Mr. Zeltzer repeated his argument that the project would be generating income for the development's partners. "And it's legal," stressed Mr. Richardson, "and it's a cost that is going to be part of the project whether it's Ed [Herczeg] and his company or Joe, it really doesn't matter."

"Fine, I recognize that," said Mr. Zeltzer. "Nevertheless, it's a profit within the group, and I look upon that. Because contrary to what you just said, there are a lot of agencies on the Island who are working very hard ... and they would be [providing] absolute nonprofit affordable housing..." Mr. Zeltzer named some of those groups and expressed the hope that conservation groups on the Island would also be helping in the future.

Messrs. Zeltzer and Richardson continued their exchange for some minutes. Mr. Zeltzer inquired why there were two different price ranges in the moderate category. "Because [they're] different style homes, different size houses," answered Mr. Herczeg, who added, "They're not all the same." Mr. Zeltzer said he thought the prices should be the same. "Then they would all be a cookie-cutter-type house that wouldn't be any different from the house next store," observed Mr. Herczeg.

Mr. Richardson addressed one other point: "If we could put a price on every home today and feel comfortable that we could get that price, we would do it. But the market is going to change. We're talking about a project that's going to be anywhere from at least one year to three years out. We are in a competitive market. There are over 30 units that are in the $250,000 to $350,000 [cost range] on the market today. So we don't know what the price is going to be, and that's why the Pro Forma has a range."

Mr. Woodruff wanted to know if the Pro Forma had changed drastically when the Applicant had reduced the number of units from 24 to 20. "Absolutely," answered Mr. Richardson. Responding to another question from Mr. Woodruff, Mr. Richardson explained, "The percentage, because it's a percentage of the expense — the actual pure number — dropped significantly. Not the percentage. The pure number dropped."

Mr. Israel wondered if the Applicant felt that putting 20 homes in that neighborhood on that parcel was in keeping with the character of that neighborhood. "Absolutely," replied Mr. Richardson. "I went back to the neighborhood today on my bike, very slowly went through every street ... to see if I was missing anything. And I can assure you that the
homes that we’re going to build and the control that we will have through the condominium association – all right? – and the quality of the homes and the feel, and certainly just by virtue of the changes that we’ve made, I think, are going to put us in a project that, when it’s all said and done, I hope that all of you would have an opportunity to drive through and say, ‘Yes, this is what we envisioned.’”

Mr. Toole asked Mr. Hoehn to reiterate what he had said about the septic system for the revised plan. Mr. Hoehn explained that he and the Applicant were not exactly sure yet which units would be dropped. “It will go down a little bit, obviously,” he said. “It’s not going to get any bigger. It’s like the same proposal last time, with a slightly smaller flow.”

Mr. Best pointed out that year-round flow was critical to the proper functioning of the septic systems and that in the earlier plan two affordable units – which one would assume would be year-round – had been allotted to each of the three systems. With the reduction in the number of affordable units, one of the BioClear units was going to have only a single assuredly year-round home using it. “Is that going to be adequate, given that the others may all be seasonal?” he asked.

Mr. Hoehn responded that it was difficult to speculate on the portion of the homes that would be seasonal. He pointed out, though, that there was 20 lots surrounding the parcel and 17 of them had houses on them. He would guess, he said, that maybe half of the houses were occupied year-round. He noted that these were moderately priced houses. “And so, therefore, of the remaining 15 units, you can expect maybe seven will be year-round,” he concluded.

Mr. Best argued that that may well be the case, but that there was no way of knowing how those year-round units would be distributed about the parcel and to which of the three septic units they would be attached.

Ms. Brown wondered if it would be the responsibility of the condominium association to maintain the flow lines of the septic systems. “Yes,” replied Mr. Richardson. Mr. Israel asked if he could see a copy of the condominium association regulations. “It hasn’t been drafted yet,” said Mr. Richardson, who added, “It can be a Condition.”

Ms. Ottens-Sargent referred to the single advanced septic system that Water Resources Planner Wilcox had said would remove the most nitrogen from the wastewater flow. That was not being considered because there was not enough room on the site? she inquired. It was that, replied Mr. Herczeg, but more than that, it was the cost. “What would be the cost issue?” Ms. Ottens-Sargent asked.

Mr. Hoehn explained that based on numbers Mr. Wilcox was using, the Applicant was reducing the amount of nitrogen generated by the development by about half. He added that there were year-round-versus-seasonal issues that might affect those numbers, “but about half is the number we would use. But based on the topography, the dispersion
of the houses, stuff like that, it would mean so much pumping and collecting – it is just a very difficult thing to do.”

Ms. Ottens-Sargent wanted to know whether the topography would still be an issue, given the reduction in the density of the development. Mr. Hoehn pointed out that the units would still be located “all over the place” with difference elevations, and the pumping and collecting would have to come to a single spot. Responding to another query from Ms. Ottens-Sargent, Mr. Hoehn reiterated what he had said earlier about the number of year-round units one could expect. “Keep in mind that these systems are maintained yearly, too,” noted Mr. Herczeg, adding, “There’s a cost to do that. So that is something that’s looked at.”

Mr. Hoehn stressed that the Applicant had chosen that type of septic system setup, as requested by the Commission, so as to have that factored in as a benefit of the project. The parcel was not in any special area, he said, where such a system would be required. “I would venture to say that there’s not a single enhanced septic system on any of the lots surrounding this property or near it,” Mr. Hoehn added.

“But the point, Doug [Hoehn], is if it’s not going to work, it won’t be a benefit,” said Ms. Ottens-Sargent. Mr. Hoehn explained that the first grouping would be four units. “That would be the one, I guess, that you would be most concerned about,” he said. “It simply wouldn’t function as well as it would if it were year-round. The others are … something like eight … and nine or something like that. There are many more buildings on the other two systems. So there’s a much higher likelihood that there’ll be numerous year-round residences in those groups.”

Staff Reports.

DRI Coordinator Jennifer Rand summarized the correspondence the Commission had received since the June 20 Hearing session:

A letter from the Tisbury Fire Chief indicating “no real concerns”;

A letter from a group of citizens containing a variety of concerns and questions regarding traffic, occupancy, Elisha’s Path and affordability in terms of assessments;

A letter from an attorney for a group of abutters enumerating their concerns about access issues, density, the septic systems, traffic, runoff off-site and the condominium association bylaws;

A letter from a nearby resident voicing concern about the project’s impact on Camp Jabberwocky; and

Two letters of support, pointing to the real need for affordable housing.
Regarding one of the letters in support, Ms. Rand related that it was from an Island teacher who had to move off the Island each summer and who would probably not renew her teaching contract after next year because of the lack of affordable housing.

Ms. Ottens-Sargent had two questions for Water Resources Planner William Wilcox: 1) How realistic was it to have the three septic systems?; and 2) Was the runoff off-site being adequately addressed?

Addressing the first question, Mr. Wilcox explained that the Town of Tisbury had an average of 63 percent year-round dwelling units. “So I suppose that might be a reasonable number to apply to the 20 units that are proposed,” he said. “Somewhere around 12 could be expected to be year-round units.” Mr. Wilcox stated that he agreed with Mr. Hoehn that, except for the low-income units, there was really no way to guarantee which of them would be year-round.

“Undoubtedly, these advanced treatment systems work better with year-round flow,” Mr. Wilcox continued. “I don’t think there’s any question about that whatsoever. On the other hand, they don’t work any worse than Title V treatment if they don’t have year-round flow.” He expected, he said, that the nitrogen-loading numbers would decrease by about one-sixth with the reduction in the number of units. So the loading would be “somewhere just under 10 kilograms per acre [annually], which is well below the recommended limit for the SA-type water quality [classification] for Lake Tashmoo, and it’s …”

Ms. Ottens-Sargent stopped Mr. Wilcox to ask what that limit was. “That limit is 17.2 kilograms per acre,” responded Mr. Wilcox, “and that number would be applied to the entire watershed.” He finished his earlier thought: “And it’s above the Outstanding Resource classification, which is about 5.7 kilograms per acre.” [Note: These figures account for loading from wastewater only and do not include nitrogen from lawn care measures. See below.] Mr. Wilcox added that he could see how, with the topographic variation of the site being what it was, it would be difficult to collect the wastewater for a single central system.

Turning to the subject of runoff, Mr. Wilcox stated that the soils on site were Carver loamy coarse sands. “They have high capacity for water infiltration,” he said. “The low spot, you might have some slightly different texture, where it might not percolate quite as well. But I would expect that it would infiltrate drywell-type roof water at a very high rate. And I think as long as the drywells for infiltrating the runoff from the roofs are properly sized, I don’t believe that roof water will be an issue.”

As for road runoff, Mr. Wilcox stated: “I honestly have not looked at that issue as a possible source of concern at this point. I could take a look at that if you’d like …”
Ms. Ottens-Sargent began to ask, “Have the drywells been designed in such a way [that] those concerns ...” Her voice trailed off, and Mr. Hoehn answered that he was talking about very simple, basic, gravel-packed drywells, nothing more elaborate than that. He added that there was, in fact, a proposal by the Applicant to contain all the road runoff in the road with a leaching basin that would be installed in a berm by the road.

Mr. Wilcox pointed out that with the kind of soil the site had, runoff from the road into the buffer zones was “really not likely.”

Ms. Brown clarified with Mr. Wilcox that with the 20 houses on the three denitrification systems, he was calculating a 10-kilograms-per-acre annual nitrogen flow into Tashmoo Pond. “If this property were developed under conventional zoning ... with conventional Title V systems, what would be the nitrogen load from the property into Tashmoo?” Ms. Brown inquired. Mr. Wilcox responded that zoning allowed 14 units and with conventional septic systems, the nitrogen loading would be 12.6 kilograms per acre annually.

Mr. Wilcox emphasized that these numbers were for wastewater only. “If there are significant areas of lawn fertilized, that will add to the picture,” he related. “I think we ought to come to some means of minimizing the size of the lawn area associated with these units in some manner, or if there’s got to be a grassland area, it should be low-maintenance grasses that don’t require fertilization after they are established.”

Mr. Israel asked Ms. Rand to reiterate what Commission Counsel had advised regarding the access issue. Ms. Rand explained: “Our counsel stated to me, based on all the information he had, which was the Applicant’s proposal that they do have access and the abutters’ proposal that they [the developers] do not have access, and the Town’s indication that they [the Town Officials] do not have adequate proof that there is access ..., our Counsel advised me to advise you to review this project and make a Decision. If your Decision is a positive Decision, condition it such that this access issue must be resolved prior to beginning construction.”

Ms. Rand concluded: “So this access issue should not be part of your benefits-and-detriments weighing, because that is something that will absolutely have to be resolved at a later date.”

Testimony from Town Boards and Officials.

John Thayer of the Tisbury Department of Public Works related that his department had had a meeting with the Applicant’s team two weeks earlier regarding the question of the sidewalk on Greenwood Avenue Extension. He explained that basically the policy of the department was to follow its ongoing sidewalk program based on renewing old sidewalks and adding sidewalks as they were able to with money voted every year by the Town. “And basically,” he said, “the idea that they want to add a sidewalk to Greenwood Avenue doesn’t matter much to the ongoing plan that we’re on right now.”
Mr. Thayer added that it was not as if the Town could not be persuaded to put a sidewalk in. “But the Town’s got a sidewalk program in place that we’re working on, all right?” he said.

In addition, Mr. Thayer said, his board had heard the Applicant’s plan to use two Town roads that were currently two-way roads as an entry and an exit point to the development. “…[A]nd after the group presented this, for the life of us, we can’t figure out how you take two-way roads and tell certain people they’re one-way for them and one-way for somebody else,” he stated.

**Testimony from Members of the Public.**

**Douglas Dowling of Tisbury** had a procedure question: At what point during the process did the public have an opportunity to question the Applicant? Mr. Toole explained that the public could address their questions for the Applicant to the Hearing Officer and that the Applicant could answer them, if he chose, during his summation.

Mr. Dowling also had some comments. He related that attorney Peter Vincent, who represented some concerned neighbors, was on vacation and had asked Mr. Dowling to relay some thoughts to the Commission. Mr. Dowling noted that it appeared that the Commission no longer read correspondence into the Minutes. “We’d be here all week,” responded Mr. Toole.

Speaking for Mr. Vincent and referring to a letter from the attorney, Mr. Dowling said the following:

(a) That there was no legal, viable access to the project;

(b) That the project, which was on “allegedly” 4.9 acres, had not been presented as a definitive plan but only as “a graphical representation” with no dimensions or technical data, and that he wondered if there was a definitive plan that the Commission was considering;

(c) That the intensity of the project was not in keeping with the character of the surrounding neighborhood;

(d) That he did not think the Commission had yet dealt with the Chapter 40B subdivision condominium association arrangement, and he wanted to know when the actual design materials and bylaws would be reviewed;

(e) That there were obviously concerns about increased traffic, “the Camp Jabberwocky problem” and access on the 30-foot public way known as Greenwood Avenue Extension; and
(f) That there were concerns about the topography of the site, with fill-in, runoff and so forth.

Mr. Dowling then made his own comments, noting that he was also representing a group of concerned citizens from the area. If the project were a Form C Subdivision before the Planning Board, the issue of runoff would be based on the developer's having to post a bond for performance, he said. "If the construction wasn't done accordingly," he explained, "the Town had a hold on that development to do this." Mr. Dowling said he noticed that the Applicant had an "LLC" after their company name, "which limits their liability, and I believe that's the purpose of the corporation."

Thus, stated Mr. Dowling, steps had to be taken to ensure that the developer would be held responsible for any runoff from the project site. If, instead, it were to be the liability of the homeowners, the assignment of that responsibility, too, had to be assured in writing.

Mr. Dowling then provided a history of the use of Herring Creek Road:

The Land Court Petition was started in 1961 by Hollis Smith, which petition removed rights, in particular, the Elisha's Path rights, which were extinguished by the court in 1967.

The rights of another woods road in the back of Irene Pearlstein's property were also removed; the encumbrances of the property that remain were the rights of others to use Herring Creek Road across Ms. Pearlstein's property.

Ms. Pearlstein herself did not use Herring Creek Road but used the path that went up north through the Wests' and the Swifts' properties to enter her camp. She used an old path to enter one portion of the property [to which Mr. Dowling was pointing but which the Staff Secretary was unable to see] that came off of Greenwood directly, which was now part of the Greenwood Hills subdivision.

Mr. Dowling himself had presented that subdivision as a DRI before the Commission, and under that subdivision a section that Mr. Dowling was pointing to [and, again, which the Staff Secretary could not see] was made a buffer strip with no access. Ms. Pearlstein had attended the Public Hearings, reviewed the plan and then sold that strip to the then-Applicant, Mr. Priore, for the subdivision's use.

Mr. Dowling stated, "Herring Creek [Road] has legally prescriptive rights of 8 feet, period. There is no other. There is no 10 feet, 20 feet. There is 8 feet. Whoever has the right to use Herring Creek ... from the old Greenwood Avenue Extension past the
Pearlstein property has the right to travel on 8 feet width only. Now, I don’t know of any project that has a width of only 8 feet.”

Mr. Dowling continued: “Now they’ve proposed 20 units with multiple cars per unit to come out and use an 8-foot width. I don’t see how that can be done. I don’t see how a board could set the standard for a person putting in a development of this many houses and set a standard that you only need 8 [feet] to be an access to another road. God, I wish that was around when we were doing Ben Boldt’s stuff.”

“The reality is,” declared Mr. Dowling, “they don’t have access, physical access, to a public way.” In addition, he said, no one was going to follow the one-way-in-one-way-out plan, unless the developers were going to put in back-up spikes to blow out tires.

Mr. Dowling also related that the Tisbury Planning Board had done two plans, improperly, on this piece of land, plans which also did not have proper rights of access. “But that’s for, I guess, a court date that’s coming up,” he remarked.

Mr. Dowling then reiterated a number of the arguments he had just made regarding rights of access. He recounted how he had tried on behalf of Irene Pearlstein to gain access in 1981 and that he had been unable to do so. Neither had he been able to do it for two other parties who had wished to develop the parcel in question.

“If these gentlemen can gain access, then fine, they have a project. But at this point, I don’t see a presentation of anything but color and a very narrow road down here compared to what they have to have for internal traffic,” Mr. Dowling concluded. [Applause]

Using the mounted site plan, Brian Nunes-Vais, a neighbor, pointed out that there was a structure known as “The Stone House” belonging to a Mr. and Mrs. Power which did not appear on the Applicant’s plans. “It particularly concerns me,” he said. “I see a representation here, and I don’t actually see a site plan that shows actual physical locations of houses as they currently exist.”

The other thing that concerned Mr. Nunes-Vais was that he had seen one other piece of paper, which he had received only that evening, that contained dimensions between the houses and to the lot lines. “In particular here [pointing], it shows that these houses are extremely close to the lot,” he stressed, “and again, considering that the Power house is right here, I think that’s something the board really needs to look at before they approve these particular houses, if nothing else.”

Ms. Brown asked Mr. Nunes-Vais if he could say a little more about his concern about the house locations. “The Town has setbacks, the trees … Tell us about the neighborhood,” she said. Using the site plan, Mr. Nunes-Vais pointed to a house in the northeast corner that would be very close to an existing house. He also pointed to a corner, where his own house was located, where the Applicant intended to put two

Louise Clough, another abutter, said, "I agree. I don’t think the scale, there’s no measurements. I don’t think my house is really this far away. It’s a small house. It’s on a quarter-acre lot. And we always knew that maybe somebody would develop behind it, because you don’t buy property and know that you’ll never have neighbors. This is very crowded [pointing], and we’re not close to affordable housing, either."

Ms. Clough related how back in 1978, when she had moved to the neighborhood and the area had been less developed, everyone had taken Elisha’s Path to go to the library and Main Street. "Now since it’s been cut off we walk by our neighbors ..." Ms. Clough stopped and showed the path that a person would have to take now. "This little 8-foot road here is smaller than most people’s driveways," she said, "and yet it’s legal in the sense that everybody uses it. But I can’t imagine it being a primary one-way that this many homes, families, whatever, would be driving in."

"Taking down the trees would just be amazing," Ms. Clough added. "It could be a lovely neighborhood by itself. But it’s not surrounded by green space. It’s surrounded by a lot of people with a lot of houses."

Abutter Maryann Nunes-Vais wondered what would happen during the summer when the homeowners had guests and there were four or five cars in the driveway. The guests, she pointed out, would not know and would not care about the roads by which they should enter and exit the development. "Even right now with vacationers – they’re all over the road," she said.

In addition, if the Applicant intended to have a sidewalk that was 5 or 6 feet wide on Greenwood Avenue Extension, Ms. Nunes-Vais continued, she could not see where it would go. For instance, one local resident had a garage that was already awfully close to the road. "Our taxes are going to go up because they want a sidewalk, and they’re only going to donate money," she declared. "Where’s the money going to come from?"

Abutter Bob Aldrin related that 20 years earlier he and his wife and some neighbors got together and decided that Franklin Terrace should be paved. They hired a lawyer, who figured out how much land to the centerline each homeowner had to donate, he said, adding, “Our property sits at Franklin Terrace and Herring Creek Road, and I’m going to have to donate land to this development?”

André St. Germain of Franklin Terrace wanted to know what had prompted the Applicant to propose the one-way entrance and exit routes.

Abutter Marston Clough offered a comment about the “suggested” traffic patterns: "Forget it! I’ve watched a pickup truck go through a stop sign today, and those are not
suggested patterns – they’re laws. It was a local person. This was not an off-Islander. It was a local businessman who should have known better.”

**Abutter Dennis Lopez** pointed to his property on the southwesterly portion of the site plan. He wanted, he said, to speak about his neighborhood. “Our Tisbury neighborhood of blue-collar, year-round families is a quiet one,” he began. Their modest homes were on quarter- and half-acre lots, and the rolling topography was covered with 60-foot oaks, pines and maples, with a vast groundcover of lowbush blueberry. He described the turkeys and deer that drifted freely through their yards. “All this defines the peace and quiet we not only enjoy but deserve,” he declared.

Mr. Lopez continued that he and his neighbors had always known that some homes would be built on the Neel property, “but no one imagined a development so dense, so aggressive and so unappealing. Can you imagine three years of bulldozers, heavy trucks and construction noise, as they clear-cut most of the 5 acres, plus 80-some flapdoodle prefab boxes coming down our street month after month? It’ll take 40 years for newly planted saplings to grow to the height of the trees shown on the plans.”

Mr. Lopez went on: “This project and the partners, all virtually new to the Island, bring with them a mainland urgency of avaricious opportunism. The cookie-cutter appearance of their development flatly defies the fundamental character of Martha’s Vineyard.”

“After their brief interaction with this property,” Mr. Lopez remarked, “they’ll be gone. It is we 17 abutters and our neighbors who will have to live for the rest of our lives with the result. Why should we be asked to shoulder the burden? Why should anybody?”

“Finally,” said Mr. Lopez, “the camouflage of altruistic intention for affordable units is an affront to common sense. The five or six units represent less than 2 percent of Tisbury’s actual need. Is it worth devastating an entire neighborhood to achieve this? With Planning Board experience behind me, I can say that I have never seen a 40B with less community merit.” [Applause]

**Abutter Joan Baptiste** noted that she had seen that evening that the septic systems would be in her backyard. “I’m sorry to say, but I don’t approve of that,” she commented, adding that the system would be located only 23 feet from her house.

**JuleAnn VanBelle of West Tisbury** wanted to know what the minimum setbacks between either the new and the existing homes or the road were under normal zoning in that part of Tisbury. DRI Coordinator Rand replied that she did not know right off the top of her head but would find out. Ms. VanBelle then pointed out that some of the existing homes were only 10 feet from the road. “Not enough room,” she remarked, “bottom line – not enough room.”

She also wondered if the condominium association bylaws contained any provisions regarding noise and the recourse neighbors would have in the event of it.
Ms. VanBelle then stated: “I’m really going to urge you to completely turn this Applicant down. I hope that you won’t put Conditions on it and [that] you turn it down. I don’t see how there could be possibly any – any – benefits that outweigh the detriments for this neighborhood, as you begin to look at them.”

Ms. VanBelle continued that her understanding was that a few years earlier the Applicant had tried to get in a seven-unit subdivision on the same parcel and that this proposal had been denied. “And now he’s using 40B to not only get the seven units, but six moderate units and five affordable units,” she said. “It just is on the backs of the neighborhood that doesn’t deserve this.”

Ms. VanBelle added that no one could say it any more eloquently than Mr. Lopez had that evening – “Forty-B should not be used to destroy neighborhoods. It should be used to build up communities. That is not the intention of this proposal.” [Applause]

Jean Duggan, who lives on the corner of Franklin Terrace and Herring Creek Road, noted that she actually owned seven-eighths of the corner that the Applicant was proposing as a voluntary one-way entrance. “There are children on bicycles coming up that way right now,” she related. “There are grandmothers taking the hands of four-year-olds and walking down that road right now.”

Ms. Duggan went on that the width of the road between her property and the one across from her was certainly not wide enough even to consider putting a sidewalk on. She added, “I just can’t conceive of more of a nightmare accident waiting to happen.” She pointed out that the police had been there earlier in the day trying to slow vehicles down.

Abutter Margaret “Margie” Aldrin described an incident wherein Fred Glotis was coming up Greenwood and some construction people had made such a mess of the road that Mr. Glotis was stuck in the road. “We had to get a tow truck to get him out,” she said. “But this was just from homes being moved from Franklin Terrace, down Herring Creek and put on the far side of Greenwood Ave where the first house is.”

Mr. Nunes-Vais, who had spoken earlier, had a question: In view of the recent court ruling recognizing the power that the Commission had over Chapter 40B developments, if the MVC voted to approve the proposal, then would it go to the Planning Board? “No, the ZBA,” answered Ms. Rand.

Mr. Nunes-Vais then asked: “Then the question ultimately becomes, does JE&T have the ability, using 40B, to then override again local zoning ordinances, or is there some way that it can come back to a final vote before the MVC if there becomes some dispute as to what they want to do versus what the Town wants to do?”

Ms. Rand explained that if the project were approved by the Commission, that Approval would give the Town permission to go forward on the project. “So what that means is the
ZBA then takes the project as it leaves here and works with that project,” she said. “If there were a substantial change to the project, it would end up having to come back here, because it would not be the same project as when it left. But it will go through the ZBA process as a normal 40B would go through, provided it gets an Approval here.”

Ms. Rand continued: “If the MVC were to deny this project, then the ZBA cannot act on the project. So we are simply giving the ZBA the opportunity — if we approve this project — we’re giving the ZBA the opportunity to act on the project... But it doesn’t leave here in a different fashion than any other project, just because it’s a 40B. It leaves here in the exact same fashion.”

Ms. Sibley then said, “Briefly, I would want to add to that that we don’t evaluate it under the same statute as the Town does.” “That’s true,” agreed Ms. Rand. Ms. Sibley went on: “We evaluate the project under Chapter 831, which is a completely different piece of legislation and addresses different issues, which you all ought to read.”

Also addressing Mr. Nunes-Vais’ procedural question, Ms. Brown explained that the Commission looked at the regional concerns — be they affordable housing or traffic and congestion — then put Conditions on the project if they approved it. Next, the project went to the local board, which would look at it through Chapter 40B, “and, parenthetically, they have the right under 40B to do very careful scrutiny of the finances...,” she said.

Ms. Brown continued, “The local Zoning Board of Appeals can approve it, but they must carry the same Conditions that we put on it. They can add more Conditions, or they can deny it. So if it leaves here with Conditions, locally then you look at it again, the Town looks at it again, adds Conditions, approves or denies.”

Mr. Nunes-Vais was not satisfied, since he thought, he said, that when the Commission approved a project, it had to meet all the local zoning ordinances. “Not with 40B,” said Mr. Donaroma.

Mr. Thayer, who had spoken earlier, related his experience sitting on the Tisbury Advisory Board to the Land Bank when Bridge Housing had brought before them a proposal, which included putting 24 acres into conservation and having all the 32 units being affordable to those in the 80-to-120 percentile income level. The Advisory Board had approved the plan, he noted.

Mr. Thayer said that, in his personal opinion, the Town did not need to take on projects that “barely complied, when in fact affordable housing is about to be presented in a much more [inaudible] fashion.” He objected, he added, to trying to “squeeze profitability out of marginal Applications.”

Addressing the audience, Mr. Donaroma explained that Chapter 40B had been designed as “a silver bullet to shoot through local zoning.” But as Ms. Sibley had said, he
continued, the Commission was guided by Chapter 831, which allowed the Commission “to do a lot more to curtail development.”

Mr. Donaroma then posed a question to Staff about the appeals process: If the MVC were to deny the Application, would the appeal go to the State HAC [Housing Appeals Court]? “No,” answered Ms. Rand, “it goes to Superior Court.”

Mr. Donaroma continued: “So we have a whole lot of power here, whereas the local zoning has a little bit bigger of a problem. The appeals for the Zoning Board goes to the HAC, the Housing Appeals Court... Then again, the Applicant has to adhere to local health conditions. It has to meet septic regulations and safety regulations.”

Mr. Zeltzer observed that in reading over a couple of HAC cases, he had found that in many cases the court did listen carefully to what the Zoning Board of Appeals had to say. “So the ZBA is not powerless in this matter,” he said.

Mr. Dowling, who had spoken earlier, argued that although that was true, the Townspeople did not have the knowledge or experience of that; also, it was not definitive. “So by saying that, I hope you’re not getting everybody in the mindset to pass the buck,” he said, “because you don’t know, once the buck is passed, what’s going to happen.”

Mr. Dowling then provided some background of the anti-snob-zoning intent of Chapter 40B and how that applied more to other Island Towns, where zoning required 3-acre lots, for instance, and not Tisbury, which had predominately quarter-acre lots.

Ms. VanBelle, who had spoken earlier as well, pointed out that Chapter 40B “put Towns on a treadmill that they can never get off... We all know that 40B is trying to get Towns up to 10 percent of their housing stock be [sic] affordable. All right, so this proposal will add five, maybe six houses to the affordable housing stock to meet that 10 percent. But they’re going to add another 15 houses to your housing stock. So get the five houses, the other 15 houses are going to mean that you need to get another one and a half houses. You will never get to 10 percent. Forty-B guarantees that you will never get there ...” [Applause]

Abutter Roland Jann expressed that, especially in the summertime, the 20 units would create a lot of noise, particularly since that sort of development was geared towards large families “because they have an advantage to get in there.” “It’s such a concentrated area,” he added.

Applicant Summary.

Regarding the one-way-in-and-out proposal, Mr. Richardson explained again that the Applicant’s methodology would be to ensure adherence through the condominium association, which would meet quarterly. [Ms. Warner left the Meeting at this point, 9:45
Because there would be occasions when someone unfamiliar with the bylaws might enter via Greenwood Avenue Extension, the Applicant had provided that that road be almost 20 feet wide so as to be able to handle traffic coming in and out of the project. He also stressed the idea of self-policing by association members.

Regarding some of the dimensions and locations of the homes, Mr. Richardson said that he believed that throughout the entire project (although he would check the house closest to Mr. Power’s house) the design had adhered to a 20-foot setback, “which, in fact, would address JuleAnn [VanBelle]’s comments, entire comments about the minimum setbacks...” He reminded his listeners that, regardless, the Applicant was allowed to waive those setbacks. “We have decided to not waive the setbacks,” he stressed, “and we’ll adhere to them.”

Addressing the reason for choosing Franklin Terrace as the entryway into the development, Mr. Richardson explained its purpose was to minimize the traffic on Greenwood Avenue Extension.

Referring to the complaint that there was no definitive plan for the project, Mr. Richardson declared, “Behind this plan are engineering studies that have been submitted ... not only to the board but that any Commission member can certainly ask for. But behind them are grading plans, there are engineering plans, there are septic plans, there are road plans, there are all kinds of definitive plans with technical data that has been supplied to this Commission. Your comment, I believe, is not quite accurate.”

Regarding the design of the septic systems, Mr. Richardson said that he believed that this was still being worked on. “We have all three of those designs,” interjected Mr. Hoehn, “however, we have not updated them for the lesser intensity of use.”

Mr. Richardson emphasized that the Applicant had changed the plan “such that instead of having eight homes along here [pointing], we now have five homes in here so that these homeowners here ... are less impacted by the project itself.”

As for the posting of a bond to ensure that runoff from the development property would not flow off-site, Mr. Richardson said, “If that’s something that’s necessary, then we will post a bond relative to a runoff Condition.”

Regarding Elisha’s Path and the claim that in 1967 people lost the right to it, Mr. Richardson commented, “[T]hat will be determined by the judge when, you know, the issue of whether that deed, whether Elisha’s Path shows up on the deed or not.” As for the 8-foot prescriptive right to use that road, he pointed out that people traveled on that road every day. “It’s a usable, passable road,” he said.

Referring to the many comments about the Chapter 40B process, Mr. Richardson observed, “You know, it’s not a simple world, and the purpose behind the 40B process
has been to provide an avenue for affordable housing to be developed, okay, not only here on the Island, but in the State of Massachusetts.

Mr. Richardson continued, “And Tisbury right now is about at 1 percent of a 10 percent goal that’s been established. And though I’m sure behind the Chapter 40B ... provisions, it speaks to zoning laws and why you can bypass zoning laws, but for the most part the 40B process has been developed so that people will find affordable housing that are in need, and that’s, in effect, what the mission of our project has been.”

Mr. Richardson corrected the statement by Ms. VanBelle that the Applicant had attempted to develop a project of seven units. “We’ve never been before this board before,” he said. “We’ve never submitted an Application for this project before.”

Mr. Richardson summed up by saying that he and his partners believed that they had addressed most of the concerns and questions that had been raised during the Public Hearing process. Among those responses were:

- the reduction of the project’s density by 17 percent;
- the addressing of the visual impact of the homes located on the higher topography;
- the amendment of the grading plan so that it was very close to being a balanced cut-and-fill plan;
- provisions for all storm runoff on the property to be contained on-site;
- the three advanced BioClear septic systems;
- the offer of a contribution to build a sidewalk on Greenwood Avenue Extension;
- the provision of signage and (if allowed) speed bumps on Greenwood Avenue Extension to slow down the traffic in front of Camp Jabberwocky; and
- the revision of the circulation pattern to lessen the traffic on Greenwood Avenue Extension.

Mr. Richardson reminded his listeners that although the Herring Creek Road issue was very significant, the Applicant was prepared to accept a Condition that this access issue had to be resolved before the project could proceed.
In addition, Mr. Richardson went on, the Applicant had submitted a traffic study which he believed addressed all the concerns of MVC Staff. Furthermore, they had addressed the buffer and visual-impact issues, and they had revised the Pro Forma for the 20-unit project to demonstrate their compliance with Chapter 40B regulations.

Responding to JuleAnn VanBelle’s comments at the Public Hearing session of June 20, Mr. Richardson said, “We take exception to her random comments that are not only accusatory but also not reflective of our project and its mission. She said that the project is not reflecting need. In fact, this project will allow 24 homeowners an opportunity to purchase homes at affordable and moderate prices. And based on the Dukes County Housing Report of last year, there is clearly a significant need on the Island for these homes.”

Mr. Richardson continued, “She says - quote - ‘It’s about development, not affordable housing’ and - quote - ‘If it were, there wouldn’t be a 20 percent profit for the developer.’ Not true. It is about building affordable homes, which requires development of a previously untouched piece of land, and that is the real issue. Who says that developers aren’t entitled to a profit?”

The purpose of Chapter 40B, Mr. Richardson said, was to address the fact that State and Federal agencies were not going to be able to provide enough affordable housing to meet the needs of the public. Ms. VanBelle had also said that the Commission had to be careful about this type of development, Mr. Richardson remarked. “Why should you be careful?” he asked. “We aren’t doing anything illegal, and in fact we’ve demonstrated a willingness to not only hear the concerns of the abutters but to do something about their concerns.”

Responding to the comments by the Dukes County Regional Housing Authority on June 20, Mr. Richardson went on, the Applicant had agreed to the 80 percent deed restrictions that would go on in perpetuity. “However, we cannot agree to the 120, 140 percent program recommendation and to deed-restrict those moderate homes for 30 years. We believe this would place an unnecessary economic hardship on this project.”

With regard to a newspaper report that the Applicant would reserve nine homes for moderate-income families, Mr. Richardson said that the home would simply go to market and be sold to Islanders on a preferential basis for 30 days. They would assist the Islanders in obtaining their mortgages, he added.

Mr. Richardson concluded that the Commission’s challenge was to reconcile the need for affordable housing with the protection of the environment. “We believe that, through the Public Hearing process, we have accomplished just that,” he said. The only requests they had not been able to comply with, he added, had been Ms. Warner’s request for a single advanced wastewater treatment system and the DCRHA’s request for the 120-140 percent program.
"We respect every single one of your comments," Mr. Richardson declared. He then repeated that statement. "And I wish there was something we could do about each and every one," he added, then urging the Commission to approve the project and noting that it was unfortunate that the DRI Coordinator had not been able to read into the record the letter from the school teacher who would have to move off the Island for lack of affordable housing.

Mr. Dowling asked if there would be a period allowed for written comment and would that period fall at a time after the Meeting Minutes were available to review. After consulting with other Commissioners, the Hearing Officer said he would leave the Written Record open for two weeks. Mr. Dowling requested assurance that the public would be able to have the Minutes. "You can come in and listen to the tape," said Ms. Rand.

**Mary Snyder of Tisbury** stood up and said that the street name "Greenwood Avenue Extension" had been abolished in 1993.

Arrangements were made for the Land Use Planning Committee to hold a Post-Public Hearing Review of the Application on Monday, July 29, at 5:30 p.m.

Mr. Toole then closed the Public Hearing, leaving the Written Record open for two weeks. The time was 10:04 p.m. *[Ms. Greene returned to the meeting room.]*

**Announcements.**

The Chairman announced a gathering of local and State officials at the site of the soon-to-be-reconstructed Tisbury Inn on the following Monday at 9:45 a.m.

Ms. Brown announced a memorial service for Pat West on Herring Creek Road in Tisbury on Monday, July 15, at 11:00 a.m.

Chairman Vercruysse mentioned that he, Roger Wey and James Athearn would be meeting sometime soon with the Down Island Golf Club Applicant’s negotiating team (DRI #543).

Ms. Rand announced that the next meeting of the Land Use Planning Committee would be on Monday, July 15, at 5:30 p.m., when the committee would review the CK Associates Comprehensive Permit Application (DRI #555). "I have received nothing as yet from the Applicant," she noted.

Mr. Zeltzer requested that Ms. Rand send to the Commission members copies of the Fairwinds Comprehensive Permit Pro Forma (DRI #548).

Mr. Toole requested that Ms. Rand write out what the charge of the Commission was with regard to Chapter 40B Applications. Ms. Rand explained that Counsel had advised
her that the Commission was not to approach a Chapter 40B project as a Chapter 40B project per se. She added that she would get an explanation for that on paper.

Ms. Ottens-Sargent remarked that it had to be kept in mind that in the case of a Chapter 40B project, the Applicant was able to contravene local zoning for the benefit of affordable housing.

Ms. Brown recommended that instead of burdening Ms. Rand with this exercise, the Commission members should consult the Commonwealth’s Website on the issue.

Ms. Greene made a Motion to Adjourn. The Special Meeting adjourned at 10:14 p.m.

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

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

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