Martha’s Vineyard Commission
Minutes for the Special Meeting of
August 29, 2002

The Martha’s Vineyard Commission (the MVC or the Commission) held a Special Meeting on Thursday, August 29, 2002, at 7:30 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 7:37 p.m., a quorum being present, Richard J. Toole — a Commission member at large from Oak Bluffs, the Chairman of the Land Use Planning Committee and the Hearing Officer that evening — called the Special Meeting to order to begin that evening’s Public Hearing.

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

James Vercruysse, a Commissioner at large from Aquinnah and the Commission’s Chairman, suspended the Hearing and took the gavel to take two Votes while all eligible members were still present.

Vote: Island Elderly Housing Woodside Village IV (DRI No. 553) and Woodside Village V (DRI No. 554) Written Decisions.

Linda Sibley, a Commission member at large from West Tisbury, made a Motion To Approve The Woodside Village IV Written Decision, duly seconded by Mr. Toole. [See the Full Commission Meeting File of August 29, 2002 (the meeting file) for a copies of both Woodside Village Decisions.]

Christina Brown, a Commission member at large from Edgartown, pointed to a typographical error in Clause D of both Written Decisions. (“Woodsland” had to be changed to “Woodlands.”)
Acting Principal Planner William G. Veno conducted a Roll Call Vote on Ms. Sibley's Motion. After said Vote, it was discovered that only eight eligible Commission members were present. [The eligible members there that evening were: J. Best; C. Brown; M. Ottens-Sargent; L. Sibley; R. Toole; J. Vercruysse; K. Warner; and A. Woodruff.] The Votes on the Written Decisions were deferred until the next Full Commission Meeting.

Robert Zeltzer, a Commission member at large from Chilmark, let the others know that member Jane A. Greene's mother had passed away, which was why the Chilmark Selectmen's Appointee was not in attendance. The time was 7:41 p.m.

Reopened/Continued Public Hearing: Fairwinds Subdivision (DRI #548).

Mr. Toole retook the gavel and read into the record the Notice of Reopened and Continued Public Hearing for the Fairwinds Chapter 40B Subdivision (also known as JE&T Construction, LLC) in the Town of Tisbury (DRI #548). [See the meeting file for a copy of the notice. The seated members eligible for the Hearing were: J. Athearn; J. Best; C. Brown; T. Israel; M. Ottens-Sargent; L. Sibley; R. Toole; L. Sibley; R. Wey; A. Woodruff; and R. Zeltzer. Ms. Warner, who was ineligible, left the meeting room sometime during the course of the Hearing and did not return.]

Mr. Toole explained that at the Applicant's request, the Commission had agreed to reopen the Public Hearing to review a modified proposal. He then outlined the Hearing procedure.

Applicant's Presentation.

Tom Richardson of Vineyard Haven, one of the JE&T partners, introduced himself and expressed appreciation for the feedback that the Land Use Planning Committee had provided in their meeting of August 19. He related that in response the Applicant was dropping the number of units in the proposal from 20 to 16. In addition, following a request from the LUPC, he had looked at the pro forma and worked out that the approval of 18 units would allow the Applicant to build an additional affordable unit. Thus, if the Commission were to approve 18 units, they could condition the Approval that one of the additional two units would be affordable.

At the August 19 meeting, Mr. Richardson continued, he had presented a standard subdivision plan for the parcel. "That plan basically demonstrates that a normal subdivision on that acreage, as prepared by our engineer, could handle up to 14 homes, with four of those homes having the ability to put a guesthouse on that lot," he said. "So, therefore, there could be up to 18 structures on the property."

Mr. Richardson went on: "Conservatively, using three and a half bedrooms in each one of the 14 homes and one bedroom per guest home, we determined that up to 53 bedrooms could be built on that property. Therefore, it would lead us to the conclusion, one, that if we built only the 16 units at three [bedroom] units, that would put us at 48 ... bedroom
units, which would be below what could possibly be built on that site under a normal subdivision. Second, if it was approved at 18 units, that would work out to 53 units, 54 units, virtually the same amount of bedroom units.

Although he had heard in testimony that the project was not about affordable housing, stressed Mr. Richardson, “we stand before you tonight with the revised plan, ... but we have met, we have maintained a number of affordable homes at four and moderate homes to the Islanders at four. Therefore, up to eight units of the 16 units would be priced at below two hundred and ninety-nine thousand dollars. And if it was approved at 18 units, that would put us at nine units, five affordable, four moderate to Islanders and the other nine would be homes that would be below four hundred thousand dollars.”

Mr. Richardson referred to a worksheet that had been distributed, which demonstrated roughly what a 16-unit project would be priced at. [See the meeting file for a copy.] He explained that the Applicant had assumed an affordable price at $137,000, which was the average between the low of $108,000 and the high of $168,000. “It leads us to believe, as the proponents of the project, that this project is about affordable housing, and if we wanted to go a different direction and build regular homes -- 14 homes, four guest homes -- we could probably pursue that plan,” he emphasized.

Another amendment to the proposal, Mr. Richardson reported, was that the road in the subdivision would not be paved due to the drop in the number of units and “the economics of that change.” He believed, he said, that this would fit with the character of other Vineyard subdivisions, especially those along Herring Creek Road.

Mr. Richardson addressed other suggestions and observations that had arisen in the LUPC meeting. Regarding the request for deed restrictions on the moderately priced units, he explained that those units would be offered first to Islanders for a period of 30 days. A resident interested in the purchase of a unit need not actually buy one within that period but did have to start negotiations. In addition, a deed restriction on moderate-home resale price, effective for 20 years, would be placed on these homes. He provided some details on how this would work.

Mr. Richardson added that all capital improvements by the owner would be added to the then-current sales price maximum that could be recaptured using the same schedule.

“Of significance is that ... each time the ownership changes hands,” he said, “the house value would change, with the new owner starting at the then-current sales price under the same deed-restricted covenant.” The exception to that would be if the Town of Tisbury or the Dukes County Regional Housing Authority exercised their right of first refusal within the first 30 days the house was on the market. If this happened, he explained, either of those parties would have to right to put the unit permanently into an affordable housing program, thereby ending the deed restriction but imposing another set of deed restrictions on it as an affordable house.
Mr. Richardson described how the Applicant would hire an independent third-party property manager, who would be responsible for sewage system maintenance, road maintenance and other miscellaneous duties within the project. Moreover, the association bylaws and its elected board of directors would be responsible for: a) enforcement of the rules, including maintenance of the property and landscaping, enforcement of traffic flow, storage of vehicles, boats and so forth; b) the enforcement of deed restrictions; and c) the enforcement of "quiet hours."

Mr. Richardson said that the Applicant would consider having one outside neighbor serve on the association board – if that was legal – so the board could receive any input on neighbors’ concerns about the operation of the project.

Another area of particular concern to Commissioners and neighbors, noted Mr. Richardson, was density. By reducing the number of units, the buffers and green space had been expanded. “I think we can all agree it’s a significant, major improvement to the project,” he remarked. Another result from the change in density would be a decrease in traffic flow and wastewater production, he concluded.

Edward Marshall, a landscape architect with Stimson Associates of Falmouth, used a site plan to show the changes brought about by the reduction in the number of units. Originally, a cluster of four units on Elisha’s Path had been proposed; now that had been cut down to three, adding more buffer area for two of the homes. The main road of the subdivision would stay in the same position, he reported.

Mr. Marshall pointed to the area where they had taken out some units, thereby saving some trees, reducing the need for re-grading and increasing the distance to the nearest outside neighbor. He displayed grading elevations showing the difference between the earlier grading and the grading now being proposed, and he went over how one of the units with a walk-in basement would thus no longer be perceived by the neighbors as being three stories high. Responding to a question from John Best, a Commissioner at large from Tisbury, Mr. Marshall pointed out details of the new grading elevation.

Tristan Israel, the Tisbury Selectmen’s Appointee, asked Mr. Richardson to elaborate on what he had said earlier on the potential for guesthouses. “The purpose of that plan was to demonstrate what normal zoning provisions would allow on that site,” explained Mr. Richardson. “We came up with 14 homes, which would include four of those to have guest homes.”

Mr. Richardson added that after the August 19 LUPC meeting, a couple of neighbors had approached him, and they had discussed taking out one of the proposed homes that would most impact them. “And we were able to do that,” he said, “and I think, assuming there is an Approval at some point, that certainly we would be willing to consider any other ideas that any of the other abutting neighbors might have that, you know, that might be individual to them...” He noted, however, that if such a modification required a return to the Commission, “we’d have to seriously think about that.”
Roger Wey, the County Commission representative, wanted to know how the main road would be maintained if it was not being paved. “I mean, there’s going to be a lot of traffic up and down that road,” he observed. Mr. Richardson answered, “Part of the condominium association property manager’s responsibility would be to maintain the road, to keep it graded, keep it upkept.”

Responding to a further comment from Mr. Wey, Mr. Richardson explained that due to the reduction from 20 to 16 units “and the economics of that, something’s got to give. We can’t just keep reducing and not in some way or shape to try to maintain a level of profitability that makes sense, especially maintaining an affordable housing project.”

Douglas R. Hoehn, an engineer with the firm of Schofield, Barbini & Hoehn, remarked that there were different types of gravel or rap that required more or less maintenance.

Mr. Richardson then added that if the Commission were to approve 18 units instead of 16, perhaps the Applicant could take the additional profit resulting from that to pave the road.

Mr. Zeltzer inquired about the possibility of moving some of the units to allow for even more buffer area between them and the existing neighbors. “We could,” said Mr. Marshall, “and in doing that, we would actually be taking down more trees because we’d have to do more grading on this side.” A brief discussion of Mr. Zeltzer’s suggestion ensued.

Ms. Brown wanted to know if the septic systems would be in the same location as in the earlier plans. Yes, replied Mr. Marshall. Ms. Brown also inquired about the common lands and the play area, specifically, where they were and if they had changed in any respect. Mr. Marshall showed her where they would be. With the new plan, which would require less grading, he explained, the Applicant had opted for saving more trees instead of having the community garden. A discussion between Messrs. Marshall and Richardson and Ms. Brown about other possible garden locations followed.

Ms. Brown asked if the Applicant had submitted a topographical plan for the new grading of the site. “What we have done is a schematic topo plan, like we have done in the past,” said Mr. Marshall, “and what we looked at was the degree of slope on the roadway, and it allows us to look at the degree of disturbance on site.” He pointed to where the slope would be 6 percent, then 7 percent, then back to 6 percent.

How about the slope of the house sites? wondered Ms. Brown. Mr. Marshall related that they would also be changing the slope of the house sites, and he showed her on the site plan where that would happen. He also pointed out that those contours were shown on the individual plans that had been distributed to the Commission members. [See the meeting file for a copy of the site plan.]
"These are all still condominiums?" inquired Mr. Best. Yes, answered Mr. Richardson. And a person who owned a condominium would own and control his own home, right? asked Mr. Best. "They will own and maintain it, but there will be bylaws as to how they have to be maintained," said Mr. Richardson. "So they have to adhere to certain appearance guidelines?" wondered Mr. Best. Yes, said Mr. Richardson. And would the owners be allowed to do additions and make changes to the exteriors of the homes? asked Mr. Best. "Probably not," replied Mr. Marshall, adding, "unless they went before Zoning and Planning."

When Mr. Best persisted in his questioning about exterior changes, Mr. Richardson suggested that he make it a Condition of the Commission’s Decision that there could be no additions and so forth. "We would accept that," he added. On the other hand, he said, he thought that something like a garage – as opposed to a traditional living space – might be considered allowable.

Mr. Best pointed out that guesthouses in Tisbury were allowed by Special Permit only, something, he said, that Mr. Richardson should have mentioned. Also, he wondered, hadn’t this Applicant submitted a subdivision plan for this parcel some time before this one? Mr. Hoehn explained that a six-lot Preliminary Plan had been submitted to the Tisbury Planning Board by a different Applicant. "It had nothing to do with this," he said.

Mr. Israel requested more details on where the additional two units would go if the Commission approved 18 units instead of 16. Mr. Marshall pointed to the central section of the site plan, noting that the Applicant would “not touch the ends” of the plan. Mr. Israel confirmed with Mr. Marshall that the Commission was at that moment considering a 16-unit proposal.

"And just for clarity," interjected Mr. Richardson, “the LUPC committee [sic] asked us to go back and look at if this could go back to 18, with one of those being affordable, you know, to increase that number – all right? – and the answer to that was it could and that if that was a Condition that, you know, the board felt they wanted to impose on us, we would be acceptable to that, and then I subsequently added that at that level we would add back the pavement."

Mr. Hoehn passed out a plan showing the new layout of the units based on Mr. Marshall’s plan and the redesign of the three septic systems. He explained that the systems were in the same location as in the earlier plan but with just fewer bedrooms being served by each one. In addition, they would still be BioClear units. Mr. Hoehn also pointed out that this plan showed the existing contours and the re-graded contours for the latest proposal.

Next, Mr. Hoehn provided further details on the septic systems, pointing to the one that would be located under Elisha’s Path, which would serve three of the houses; the one that
would be tied to five units toward the center of the site; and the one serving the remaining units. “It’s the same layout,” he stressed, “with just less going into it.”

Mr. Wey asked about the nature of a plan dated August 15, 2002 that had been passed around. Mr. Hoehn related that the Applicant had brought that plan to the LUPC on August 19 because during the entire discussion the Applicant had been asked repeatedly about the number of units could be put on the parcel under standard zoning.

Regarding the moderately priced units, Ms. Sibley wanted to know if the Applicant felt that his restrictions would adequately protect against false turnover, for instance, if an owner sold it to his cousin, who then sold it back to him. And if the rules did not protect against that, was there a way to add to the language to achieve that protection? she asked. Mr. Richardson replied that the only provision was that a unit could not be sold to a member of the owner’s immediate family, although he was not sure how that could be maintained and controlled.

Ed Herczeg, another Fairwinds Partners, pointed out that there would be considerable closing costs and so forth associated with such a sale, which would reduce the profitability of false turnovers. Mr. Zeltzer noted that the Town and the Regional Housing Authority had right of first refusal. “That could theoretically supercede, if there’s monies available to buy it out,” agreed Mr. Richardson.

Ms. Sibley again expressed concern about false turnovers and the loopholes that people were bound to find. “I just think some thought should be given to how you can do that,” she said.

Regarding the issue of the right of first refusal, Ms. Sibley wanted to know if the Applicant thought he could broaden the category of organization that would be eligible for that right. Or what if, for example, a private individual wanted to buy a unit and then rent it out, in perpetuity, at an affordable rate? she inquired. She then suggested adding language like “or another entity approved by the Dukes County [Regional] Housing Authority and the Town of Tisbury.” Mr. Richardson agreed with this recommendation.

Mr. Richardson then read a statement requesting that the Hearing Officer restrict the public testimony to items that were relevant to the changes in the plan presented that evening or to new points only. Over the three previous Hearing sessions, he went on, the Applicant had heard the neighbors voice their concerns and had tried to address them adequately.

Mr. Richardson continued that he had recently noticed that someone had conducted a survey of the parcel in question, this without the permission of the Applicant, for the likely purpose of challenging the rights of access to the property. He reminded his listeners that this issue had already been raised repeatedly. In fact, the Commission had sought legal advice on how to handle the issue and had been told that it could grant
Approval with the Condition that the access issue be resolved prior to construction. "We can and would accept that Condition," he declared.

His final request, Mr. Richardson, was to be granted time to answer the public’s comments at the end of the session and to summarize.

**Staff Reports.**

DRI Coordinator Jennifer Rand stated for the record that Water Resources Planner William M. Wilcox had been unable to attend the Hearing that evening. "But he knows about the changes in the septic and felt comfortable with the general concept that less input means less loading," reported Ms. Rand, who continued, "and he also said relative to the drainage of the dirt road, while he hadn’t seen a drainage plan, he didn’t think that that would be anything that would pop into his mind as a concern immediately, simply because it’s well-drained soil and could be managed."

Ms. Rand then stated that she had nothing to add to her earlier Staff Reports.

The Hearing Officer asked Transportation Planner David Wessling if he had anything to say. [Mr. Wessling’s answer to difficult to understand on the tape.]

Mr. Toole asked for testimony from Public Officials; there was none.

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

**Teri Cook of Vineyard Haven** stated that she was in favor of the project. "I think this group has tried to make some efforts to work with the community, make some changes they’ve been asked,” she said, “and I’m in favor."

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

When Doug Dowling (who had testified numerous times during the previous Hearing sessions) stood up to speak, the Hearing Officer interrupted and made it clear that he wanted to hear only new testimony related to the amendments in the plan.

**Doug Dowling of Smith & Dowling** asked that he be allowed to pose some questions about the revised plan to the Applicant and his team through the Hearing Officer. Mr. Toole told him to ask his questions. Mr. Dowling remarked that the Commission was mandated to look at benefits and detriments, including a comparison of the proposal to possible alternative uses. What the Applicant had presented that evening, he continued, was to present an alternative use, which was a standard subdivision of 14 lots. "I think the board needs to know whether or not that is an approvable plan," he declared.

Mr. Dowling went on, "Personally, I know the property, and I know you cannot get a Form C Approval on that piece of land for that magnitude of lots, and I would like to
know if, in fact, this is just conceptual for the mass of land or is that for that site specific.”

Mr. Richardson responded that he had presented that depiction “strictly to demonstrate what a normal subdivision could handle for the purpose primarily to come up with a number of bedroom units, all right, so that we had an apples-to-apples comparison, so that as this board looked at this as a 40B project, that they can make a reasonable determination that this is the equivalent number if it could be approved as a normal subdivision. But we’re not trying to make it a normal subdivision, and we are trying to maintain it as a Chapter 40B project.”

Mr. Hoehn re-enforced what Mr. Richardson had just said, emphasizing that the normal subdivision plan had not been presented as an alternative development.

Mr. Israel requested some clarification on what the Hearing Officer had meant about public testimony not being repetitive. Mr. Toole reiterated what he had said about members of the public being allowed to offer only new testimony.

“A follow-up on that. That’s not true,” declared Mr. Dowling, apparently referring to the statements moments before by Messrs. Richardson and Hoehn. After an exchange with the Hearing Officer, Mr. Dowling stated, “What I heard tonight was when he was saying, when there was a discussion about this as an affordable housing project, and he went on to say that this is all about affordable housing, but then ‘If I can’t have the affordable housing,’ he actually said that, ‘This is the plan that I could do.’ And I heard it, and I thought the board heard it.” “As a member of this board, I didn’t hear that,” responded Mr. Toole. When Mr. Dowling persisted, Mr. Toole repeated, “That’s not what I heard.”

Peter E. “Ed” Vincent, an attorney representing some of the neighbors of the site, stated that the neighbors were still opposed, “although they think the reduction is good. They’re still opposed to the plan overall for the same reasons brought forth previously in my report, which you have in written communication.”

Jean Duggan of Vineyard Haven related that a 12-unit subdivision on the opposite side of Franklin Terrace had been presented to the Tisbury Planning Board the night before. “It’s not going to need variances. It’s not going to be a Chapter 40B,” she said. “We’re talking about an impact of possibly 30 units in this one two-city-block area.”

Ms. Duggan also spoke of waiting in traffic a few days before while trying to take a left onto Franklin Street. “I don’t know much about traffic studies,” she remarked, “I’m not an engineer either. But I know that when you’re 12 deep already in front of St. Augie’s the third week of August, it is a problem.”

Dennis Lopez of Vineyard Haven read from a prepared statement, beginning by noting that several State-wide initiatives were underway which would modify “the dangerously antiquated 40B law.” He referred to the Norton, Massachusetts Initiative, a document
that proposed 40 substantial changes to the law. The Tisbury Planning Board, along with
dozens of other Towns in the Commonwealth, he said, had already endorsed the
Initiative.

The Town of Norton, Mr. Lopez continued, had adopted a moratorium on hostile Chapter
40B applications because of the likelihood of reforms of the law. "We know that the
misuse now of 40B will be irreversible," he declared. Therefore, he said, he urged the
Commission to shelf or deny any Chapter 40B project before them "until everything is
ironed out at the State level."

Mr. Lopez concluded by stating that the project before them offered "the smallest piece
possible of the Vineyard dream" and offered nothing to the neighbors but degradation.
Besides, he said, what was being offered, paled in comparison to projects like the Bridge
Housing proposal, a friendly 40B application that would offer 32 units – 100 percent of
the project – at an affordable price.

[Side B of Tape One was blank. According to notes taken by Acting Principal Planner
William Veno, public testimony continued, after which the Applicant presented his
summary. Mr. Toole closed the Hearing, leaving the Written Record open until noon on
Monday, September 9. At 9:14 p.m. he handed the gavel to Commission Chairman James
Vercruysse, who then called for brief recess.]

Vote: Lucia E. Moffett Subdivision Written Decision (DRI No. 289-1).

Chairman Vercruysse reopened the Special Meeting at 9:20 p.m. Mr. Israel made a
Motion To Approve The Lucia E. Moffett Subdivision Written Decision As Written,
duly seconded by Ms. Sibley. [See the meeting file for a copy.] James Athearn, a
Commissioner at large from Edgartown, pointed to a typographical error in paragraph 10
on page 3, where "Edgartown" was spelled incorrectly. Mr. Israel amended his Motion:
To Approve The Lucia E. Moffett Subdivision Written Decision As Corrected, and
Ms. Sibley amended her Second.

DRI Coordinator Jennifer Rand provided an explanation of Condition 1(b). Then Acting
Principal Planner William G. Veno conducted a Roll Call Vote on Mr. Israel’s Motion,
with the results as follows:

AYES: J. Athearn; C. Brown; T. Israel; M. Ottens-Sargent; L. Sibley;
R. Toole; J. Vercruysse; R. Wey; and A. Woodruff.

NAYS: None.

ABSTAINING: None.
Approval of Meeting Minutes.

Ms. Sibley made a Motion To Approve The Full Commission Meeting Minutes Of July Eleventh Two Thousand Two As Written, duly seconded. Said Motion carried by Voice Vote, with nine Ayes, no Nays and two Abstaining.

Ms. Brown made a Motion To Approve The Full Commission Meeting Minutes Of July Eighteenth Two Thousand Two As Written, duly seconded. Said Motion carried by Voice Vote, with 11 Ayes, no Nays and none Abstaining.

Ms. Brown made a Motion To Approve The Full Commission Meeting Minutes Of July Twenty-Fifth Two Thousand Two As Written, duly seconded. Said Motion carried by Voice Vote, with 10 Ayes, no Nays and one Abstaining.

Mr. Israel made a Motion To Approve The Full Commission Meeting Minutes Of August First Two Thousand Two As Written, duly seconded. Said Motion carried by Voice Vote, with 10 Ayes, no Nays and one Abstaining.

Mr. Israel made a Motion To Approve The Full Commission Meeting Minutes Of August Eighth Two Thousand Two As Written, duly seconded. Said Motion carried by Voice Vote, with 10 Ayes, no Nays and one Abstaining.

Reports.

Providing the Chairman's Report, Mr. Vercruysse related that he had been e-mailing and telephoning the newly hired Executive Director, Mark London, regarding some terms of employment that the latter had requested. Once these issues were more settled, the Chairman said, the full Commission would vote on whether to accept the terms.

Ms. Brown wanted to know when the details of Mr. London’s employment would be worked out and when the new Executive Director would start. Ms. Sibley pointed out that Mr. London had indicated during his August 18 interview that he could start in four to six weeks. “It’s going to be around the first of October,” said Chairman Vercruysse, adding “He has things to wrap up.”

Ms. Sibley wondered if the Commission might have a party upon Mr. London’s arrival. “Yeah, I was thinking about that,” replied the Chairman, “kind of a reception party.” A number of Commissioners murmured in agreement.

Chairman Vercruysse also reported that the Executive Committee had not met, although he would be scheduling a meeting in the next week or two. Ms. Sibley requested that the meeting take place after the close of business, since she was short-handed at work.

As for the Finance Committee Report, Administrator and Acting Executive Director Irene Fyler reported that it would be a while before she would know the results of the
annual audit. "He [the auditor] was happy that we ended in the black," she noted, "and he said it went very well."

Mr. Zeltzer asked if Ms. Fyler had heard back yet from Commission Counsel about the establishment of a charitable trust for the Commission. "I spoke to Eric [Wodlinger]," responded Ms. Fyler, "and he's going forward with that." "Is there any idea when it will be complete?" inquired Mr. Wey. "No, but he's real fast," answered Ms. Fyler. "Within a month?" wondered Mr. Wey. "I would think," said Ms. Fyler.

Mr. Zeltzer pointed out that with the passing of summer, the Commission would be losing access to some of the best potential contributors to the trust. "Face to face is much better than over the phone," he remarked. Aquinnah Selectmen's Appointee Megan Ottens-Sargent commented that the fund raising could begin now, since it would take time before any actual checks were signed.

Ms. Sibley observed, "I would only say that psychologically if we had a date, if Eric [Wodlinger] could say to us, 'The trust will be in place by October first,' whatever the date is, then when you're talking to someone and you're fund-raising, you can say that. And it's not like, 'Well, we're going to get there, maybe we'll get there, then we'll have to call you again.'" "He's aware that you wanted it quickly," noted Ms. Fyler, who said that she would ask Mr. Wodlinger for a date.

Responding to a question from Ms. Ottens-Sargent, Ms. Fyler related that Mr. Wodlinger was considering doing this work pro bono, "but he told me to keep that under wraps because he's not the one who makes the decision on that."

Discussion: LUPC Recommendations for the Scheduling of the Down Island Golf Club Three Hearing (DRI No. 556).

The Land Use Planning Committee Report consisted of a series of extended discussions about matters related to the Down Island Golf Club Three Application (DRI No. 556). Committee Chairman Toole started by reporting on the August 26 Land Use Planning Committee Session with the Applicant.

The first issue addressed, related Mr. Toole, had been the scheduling of the Public Hearing sessions, and the committee and Applicant had come up with the dates of Wednesday, September 4, Thursday, September 5 and Thursday, September 12. They had also discussed meeting on Thursday, October 10, either to continue the Public Hearing or to work on Conditions in a Special Session of the LUPC. Ms. Sibley explained that this gap was due to the fact that a number of Commission members expected to be off-Island during that period.

"Question -- You're talking about closing the Hearing on September twelfth?" asked Andrew Woodruff, a Commissioner at large from West Tisbury. "Possibly," said an unidentified Commissioner. Mr. Israel related that he would be in Boston on September
12 and that he would try to get back in time for the Hearing. However, he said, an additional complication was that the Town of Tisbury's Special Town Meeting set for September 10, when seven or eight articles would be considered, could possibly be continued to September 12.

Ms. Brown pointed out that a Special Town Meeting continuation would affect Ms. Cini and Mr. Best as well. (The latter are Commission members from Tisbury.)

A discussion ensued regarding the Meetings proposed for September 10 and 12. Ms. Sibley argued that the Commission "can't do a good job of it in what is essentially an eight-day period of time, even if it's three years [since the first Application]." She suggested that they make a virtue of the absence of some members in the second half of September by working intensely during the Hearing sessions of September 4 and 5 and then using the rest of the month to digest the material presented and allow the public to formulate their positions.

Ms. Sibley went on that the Public Hearing then could be continued to October 10, when technical rebuttal and general public comments could be presented and the Applicant could respond to those. She emphasized that the members should have it as a definite goal to close the Hearing that evening, "barring disaster."

"And is there LUPC in the middle, then?" Ms. Ottens-Sargent wanted to know. "Well, there can be," replied Ms. Sibley. "We could be working on issues so we know what we want clarified, absolutely."

Mr. Zeltzer remarked that in his experience there came a point in the Hearing process when the testimony became redundant and argumentative. He was convinced, he said, that during the second Down Island Golf Hearing cycle (DRI No. 543), 50 percent of what he had heard after the first two hours had already been said. For instance, there were members of the public on both sides who had gotten up three times to speak, saying essentially the same thing each time.

Mr. Woodruff said that he agreed with Ms. Sibley's plan. Mr. Israel opined that working intensely on September 4 and 5 and working to close the Hearing on October 10 seemed to him to be "very tight." Although he agreed with much of what Mr. Zeltzer had said, he continued, "I like to err on the side of letting the public speak as much as they can, I like to air on the side of redundancy."

Mr. Best observed that it was very difficult, if one heard something for the first time, say, on a Thursday, to get together the necessary data and input from other sources, then collect one's thoughts and come up with a coherent position by the following week.

Referring to the proposed schedule before them, Mr. Zeltzer pointed out to DRI Coordinator Jennifer Rand that the LUPC could not meet on September 16, which was
Yom Kippur. “I’m sorry, I will undo that,” said Ms. Rand, adding, “I did not know that.”

Mr. Best related that in a conversation he had had with Acting Principal Planner William Veno and Water Resources Planner William Wilcox after the August 26th LUPC meeting, Mr. Wilcox had told him that the Staff Secretary would have trouble producing timely Minutes if three Hearing sessions were held within a short period. “Well, you’re just not going to get Minutes,” said Ms. Rand. “That’s the difficulty. I mean, [Staff Secretary] Pia [Webster] can’t do Minutes in one day. So you have to take copious notes and rely on them. That would have to be something you understood.”

Mr. Israel made a Motion That The Commission Conduct Hearing Sessions On September Fourth And Fifth And On October Tenth, With The Intent That October Tenth Would Be The Final Hearing Session, duly seconded by Mr. Wey.

Ms. Brown wanted to know if there was any possibility of scheduling Hearing sessions on September 4 and 5 and then another session on some day soon thereafter, rather than waiting until October 10 for the third session. No, answered Ms. Rand. Ms. Brown then spoke in favor of the Motion, emphasizing that it should be made very clear to the public that on the fourth and fifth the Applicant would present everything he had and then on October 10 the Commission would expect all the public’s technical responses.

The Chairman then conducted a Voice Vote on the Motion, which carried unanimously.

Ms. Rand reminded the Commissioners that the Meetings on September 4 and 5 would begin at 6:30 p.m. at the high school cafeteria and that they had to be out of the building by 9:00 p.m. “No, we were out of there at ten,” interjected Mr. Toole, referring to the Remand Plan Hearing sessions. Ms. Rand responded that she had been told that the high school custodian left the premises at nine. “The last time ‘round it was nine-thirty,” said Mr. Israel.

After some discussion, it was agreed that Ms. Rand would try to secure the space until 10:00 p.m.

Discussion: LUPC Recommendation for Partial Fee Waiver for the Down Island Golf Club Three Applicant (DRI No. 556).

Mr. Toole turned to the subject of a partial fee waiver for the Down Island Golf Club Three Applicant. Ms. Rand, he said, had calculated that the standard fee for the project would be over $35,000. He explained that Ms. Rand had then considered the amount of time Staff would be working on the Application and had come up with a figure of $11,250 as being more appropriate. He reminded the members that the Applicant had paid no Application fee when the Remand Plan had been reviewed (DRI No. 543). Ms. Rand mentioned that the Applicant had paid more than $20,000 for the first review of the plan (DRI No. 515).
Ms. Brown wanted to know if Staff agreed with the amount that Ms. Rand was suggesting. Ms. Rand answered, “I sat down with Bill Veno, and I spoke to Irene [Fyler] and Bill Wilcox. I did not figure in David [Wessling]’s time because David cannot bill for this. So we worked out, based on Staff time ...” [Ms. Brown made a comment that could not be heard on the tape.]

Ms. Rand continued, “So we included Staff time for myself, Christine [Flynn], Pia [Webster], Bill Wilcox, Bill Veno, and how that would all work out. So we accounted for that. I did not speak to every Staff member.” “Did you include an overhead factor?” asked Mr. Zeltzer. “Yes,” replied Ms. Rand. “Did you include not only the salary of Staff, but the fringe benefits?” wondered Mr. Zeltzer. “Yes,” answered Ms. Rand.

Mr. Israel recommended that they “split the difference” between the $35,000-plus standard fee and the $11,250 proposed fee. “We are not allowed to make a profit,” stressed Ms. Rand. Responding to another query from Mr. Israel, Ms. Rand explained, “If this project came through for the first time, under our filing fee schedule, that’s what would be charged,” referring to the $35,000-plus figure.

Mr. Israel pointed out that the new plan had a housing component not included in the first two proposals, and he assumed, he said, that Mr. Wilcox would have to spend a significant amount of time reviewing the wastewater issues. “What I’m saying is, it’s a different proposal. That’s why we’re hearing it again,” he declared.

Ms. Sibley said that it was her understanding that the second Down Island Golf Club Application had not been subject to a fee because the plan had been remanded to the Commission by a judge. Commission Counsel, though, had made it clear that although it was referred to as a Remand Plan, the Commission was to consider it like any other Application coming before them. “And that we waived the fee voluntarily because we had basically said to the Applicant that he could come back,” related Ms. Sibley.

Ms. Sibley went on that she thought the Commission had, overall, lost money on the Down Island Golf Club reviews, “so that concerns me, because we can’t afford to lose money. Now if this is about [that] we’re not allowed to make money – another procedural issue I’d like some clarification on – if they were a brand-new Application and they came in before us and the guidelines said thirty-five thousand dollars and it turned out that we did not spend thirty-five thousand dollars’ worth of Staff time, do we refund that?” “They could ask for it,” remarked Ms. Brown.

Ms. Sibley went on, “Okay, all I’m saying is, I don’t get this ‘We don’t make a profit.’ We have a fee schedule. And I voted for the reduced fee schedule. I just want to be sure that if we do it, we know what we’re doing, we’re not in some huge confusion about why we’re doing it.”
"I agree with Linda [Sibley]," commented Chairman Vercruysse. "I mean, we're not allowed to make money, but we're allowed to lose money. I don't understand that part." Some discussion followed regarding the review status and circumstances surrounding the fee waiver for the Remand Plan.

As Ms. Rand recalled it, the decision had been made by then-Executive Director Charles Clifford and had not been subject to a vote by the full Commission. "Well, I don't think we would have agreed to losing 20 grand or whatever we lost," said the Chairman, adding, "We certainly cannot afford that, and if we're not allowed to make money, then we get the normal fee and we can agree to return money [if necessary]."

Mr. Zeltzer pointed out that Ms. Rand had "done the homework on it and created a budget figure based on our best estimate at the time, including overhead and fringes and all of the other things." He suggested that the Commission go with the recommended figure.

Responding to a question from Ms. Brown, Ms. Rand explained, "The Applicant has not asked for anything. I was under the impression that there was a conversation held to determine what the fee schedule would be, which is how this started to begin with.

Ms. Rand continued: "The Applicant has not formally asked for a fee waiver, and the Applicant has a letter in their hand right now saying, 'You were here at Land Use Planning. You're going to pay at least eleven two fifty. If the full body does not agree to a... partial fee waiver, you're going to end up paying another twenty-four thousand, whatever. I've not heard peep from them, and I mean, I'm not married to any of this. I was asked to look into something, so I did it, and that was my best Staff estimate time."

"My question is, why did you propose this figure without being asked?" Mr. Wey wondered. "I was asked..." Ms. Rand began to answer. "You were asked by who?" demanded Mr. Wey. Ms. Rand replied, "You want the truth? At this point I don't remember who asked me to do it." Mr. Wey declared, "So you took it upon yourself to propose this fee schedule, which is, you know, a very low fee schedule, about one third of what the fee schedule should be, and then you give the Applicant a letter stating this is what you think it's going to cost?"

"No, I did not, Roger," said Ms. Rand. "I was asked to establish what it would cost for us to review this project. Who asked me to do that? To be perfectly frank to you, I don't remember anymore. The reason I sent the Applicant the letter is because I have a policy of not going forward with a Public Hearing until I have a check in my hand. If I waited until tonight to tell them they were going to give me any money at all or what, I was concerned that we wouldn't have a check and I'd have an advertised Public Hearing I couldn't hold."

Ms. Rand went on: "I wanted to get some money right away, and at Land Use Planning this conversation came up. At Land Use Planning on Monday, the group could have said,
'Not a chance. We're going for the full fee,' and the letter would have gone out saying, 'We're going for the full fee.' I had to get them something.” “And Land Use Planning, did they take a vote on it or some type of ...” Mr. Wey started to ask. “Yes,” answered Ms. Rand. “They voted to *recommend*,” said Ms. Brown. “To recommend the eleven thousand?” inquired Mr. Wey, who added, “I'm getting confused in this whole thing. You know, I think they should pay the whole fee.”

Ms. Ottens-Sargent made a **Motion That There Not Be A Waiver Of The Down Island Golf Club Applicant's Filing Fee.** “I'll second that,” said Mr. Wey.

“I'd like some clarification,” said Ms. Brown. ‘First of all, when the Staff does something, I think we should take it seriously, like if they say they worked on some numbers and it's going to be about eleven thousand. But I would like to back up one step. Has the Applicant asked for a waiver?” “No,” replied Ms. Rand. “Then why are we talking about a waiver?” Ms. Brown wanted to know. “That's right,” commented Mr. Wey.

Ms. Rand responded, “My understanding, and again I frankly I don’t remember how this came about, and whether it was a conversation with [Acting Executive Director] Irene [Fyler] or whether it was a conversation held behind closed doors to begin with that I clearly wasn’t privy to, [it] was to determine, if the Applicant were to ask for a waiver, what would it be.” “Has the Applicant asked for a waiver?” inquired Ms. Brown. “No,” replied Ms. Rand. “Then we don't have anything to do,” remarked Ms. Brown.

The discussion continued. Ms. Rand stressed, “It was not my recommendation — and it was never my recommendation — that you grant this Applicant a waiver. I was asked to develop this, and I did.” Ms. Brown observed that they must have gotten “a little carried away” at the LUPC meeting, because she had assumed that the Applicant had requested the waiver.

Mr. Israel remarked, “I think splitting the difference is kinder and gentler.” Mr. Toole interjected that there was nothing to vote on, since a fee waiver had not been requested. Ms. Brown suggested that Ms. Rand write to the Applicant to say that “the fee is the fee schedule.” “That's right,” said Mr. Wey. Ms. Brown continued, “Now, Jen [Rand] can say to him if he calls and says, ‘What happened?’ say, ‘Look, if you want a waiver, you've got to ask for it.’” Mr. Wey expressed agreement once more.

“I would suggest that we get Jen [Rand] off the hook slightly here,” said Ms. Sibley, “and perhaps we want to instruct Jen to write to the Applicant and state that ... whereas he has not asked for a waiver, the Commission has not granted one.” “Well, you can be certain that I'll have a waiver request the next day,” noted Ms. Rand.

“In this figure that Jen figured out, are legal fees included in that, for our Counsel?” wondered Mr. Wey. “I mean, conversations with our Counsel, you know, during this new process? ... I think we should have money put in for that.”
Mr. Israel remarked that of course the Applicant was going to ask for a waiver, as Ms. Rand had just said. “Or we just send him the bill for thirty-five [thousand dollars],” he added. “We’re done for now,” said Mr. Toole, who moved to the next matter addressed by the LUPC.

Discussion: LUPC Recommendation to Waive the Traffic Study Requirement
For the Down Island Golf Club Three Application (DRI No. 556).

Mr. Toole related that in their August 19th meeting, the Land Use Planning Committee had also agreed to recommend that the full Commission waive the traffic study requirement for the Down Island Golf Club Three Application. The Applicant, he explained, would nevertheless work with Commission Transportation Planner David Wessling. “What they would like to do is, rather than spend that money, they would like to donate that money to the Town of Oak Bluffs to help them build the roundabout,” he concluded.

Mr. Athearn wondered if the money would go to the Town whether or not the project were approved. “No, it wasn’t clarified,” replied Mr. Toole. Mr. Israel emphasized that the new Application was introducing 30 homes to the site. “I mean, we’ve just gone through the thing with Fairwinds, with the impact ...,” said Mr. Israel, referring to the Fairwinds Chapter 40B Subdivision proposal (DRI No. 548). If the Applicant already had his base traffic figures, he went on, he could not see why it would be too great a burden to build upon those numbers.

“What I don’t want to have happen is that David [Wessling] develops the traffic studies with them,” Mr. Israel stressed. “You know, they have their expert. Let them come in and say what the impacts will be [because of] the housing, and then David can evaluate it.” “Those are the directions I got from Land Use Planning,” responded Mr. Wessling. Mr. Israel said that he had heard something different, that Mr. Wessling was going to help the Applicant develop the traffic study. “That to me is not what should happen,” he declared.

Mr. Wessling explained what his own study had addressed, and an exchange between him and Mr. Israel ensued. The Transportation Planner pointed out, for instance, that there would be a lowering in the traffic numbers due to the closing of the Windfarm Golf Practice Facility if the Down Island Golf Club proposal were approved. He had considered all factors, he said, and had submitted his conclusions. Mr. Wessling then suggested that the Commissioners read the report and convey to him their comments and questions.

When Mr. Israel persisted in his argument that this approach did not satisfy him, Ms. Brown explained a bit about what had been discussed in the LUPC meeting and then recommended that Mr. Israel look at Mr. Wessling’s report. “I hear you, and that’s fine,” countered Mr. Israel. “What I don’t like is that we should not be presenting. This is a
new proposal with new houses, and we're the ones working up the traffic figures. There's something wrong. It's not David [Wessling]'s fault. I'm not saying it's Land Use Planning's fault. There's something, in my head, wrong with the process.”

Mr. Atiearn observed that in earlier Applications he had found the method Mr. Israel was suggesting useless, “because the traffic planner gets up and says there's going to be no harm, and they always say the same thing, and they're paid by the Applicant. So I have no use for them myself.”

Mr. Atiearn continued: “I'd much rather hear David [Wessling]'s objective opinion or, better yet - or not better yet, necessarily - in another case a third party paid for by the developer, but not in the pocket [of the developer].” “I agree with that statement,” said Mr. Israel, who then reiterated his argument about Commission Staff’s not being obliged to do studies that the Applicant should see to. “Our Staff is there to evaluate what an Applicant presents,” he pointed out.

Ms. Sibley related how at the LUPC meeting, her reaction to the Applicant’s offer of a donation to the Town had been that the Applicant could just as easily have done what Mr. Wessling had. “So I didn’t feel that we should require them to do a formal addendum to the traffic study that would cost a bunch of money,” she said. “Now, do I think that David’s ‘back-of-the-envelope’ report for us takes the place of their making a presentation? No. But I think that they can make a presentation on the cheap and still have it be valid for the same reasons that David could do it quickly.”

Ms. Ottens-Sargent remarked that the donation to the Town was “a positive thing, if we can clarify that ... it’s going to happen irrespective of the outcome of the Hearing.” She wondered if Mr. Wessling could do more research if the filing fee would cover it. “We don’t bill David’s time under any circumstances,” interjected Ms. Rand. Acting Executive Director Irene Fyler explained that the Transportation Planner’s time was billed to the Massachusetts Highway Department.

Ms. Ottens-Sargent went on that if the golf club’s membership was structured like that at the Farm Neck Golf Club, then the proposal would, she thought, have an impact on traffic numbers. She suggested that if the fee were larger, perhaps a third-party consultant could come in to do a traffic analysis. Ms. Brown pointed out that the Commission could, at the Staff’s recommendation, hire an expert reviewer and charge the Applicant for those services, in addition to the filing fee. “And we have done it with Herring Creek,” she added, referring to the Herring Creek Farm Trust Subdivision III proposal (DRI No. 500).

Mr. Best made a Motion That The Commission Waive The Requirement For A Full Traffic Study, With The Condition That The Applicant Would Donate Twenty-Five Thousand Dollars To The Town, Not Expecting The Applicant To Make The Donation If The Project Were Not Approved. He observed that he had a “better intuitive take” on traffic impact “than any of those studies have ever given me.” Ms. Sibley provided a Second.
"I think this is a ... very, very slippery slope," observed Mr. Israel. "Why not waive the septic stuff, because we have figures on that?" Secondly, he continued, the donation to the Town in lieu of the study would put additional pressure on the Commission to approve the project. "And I don't want to go there," he said.

Mr. Best offered to amend his Motion, deleting the provision for the $25,000 donation. After some discussion, the Motion was amended thus: The Commission Waive The Requirement For A Full Traffic Study. Mr. Israel continued his arguments against the Motion.

Not having yet amended her Second, Ms. Sibley emphasized that although she did not think that it was necessary for the Applicant to spend $10,000 on a new traffic study, she did expect a presentation on the traffic, which included information on the changes to the figures since the Remand Plan. Chairman Vercruysse pointed out that the Applicant had made it very clear during the LUPC meeting that this was, in fact, their intention. The discussion continued. Then Mr. Best withdrew his Motion.

Ms. Ottens-Sargent made a Motion That The Applicant Provide The Commission With A Modified Traffic Study. "And what does that mean?" asked Ms. Sibley. "Whatever you just said," responded Ms. Ottens-Sargent. Mr. Athearn elaborated on the Motion, Including Ms. Sibley’s Stipulation About A Presentation By The Applicant On The Traffic, Which Included Information On The Changes To The Figures Since The Remand Plan. Ms. Ottens-Sargent agreed to the Amendment, and Mr. Israel provided a Second. Also added to the Motion was that Mr. Wessling Would Evaluate The Applicant’s Submission On The Traffic Impact.

Acting Principal Planner William Veno explained that he and Mr. Wessling had tried to convince the Applicant that it would not be difficult to update the prior traffic study. "My notes is their study," said Mr. Wessling, adding, "Just read it."

Mr. Zeltzer remarked, "Listening to the traffic engineers come in here and give us a report is something like sitting there and hitting yourself on the hand with a hammer, because when they stop, it feels so good." He related how during the latest appearance of traffic consultant William Scully before the Commission, "I was really biting my lip ... because I wanted to ask him if he had ever given a report that had indicated that the impact of the Applicant that had paid him was going to be negative. I haven’t heard that, and it’s getting close to four years now."

Mr. Zeltzer then recounted how he had listened to Mr. Scully talk about how fast the traffic on State Road was going in the middle of July. "But I know," he said, "that on ... Wednesday at two-forty it took me six minutes and 40 seconds to go from the Edgartown Road to the Black Dog, heading up-Island. Now that flies in the fact of Bill Scully’s computer [simulation]..."
Mr. Zeltzer said that he would prefer that Staff simply tell the Commissioners what was actually out there so that the members could “stop listening to all this gobbledygook. I mean, every time we get a traffic study, it is a total, absolute waste of time.” “Amen,” echoed Mr. Israel. Two or three Commissioners began to speak at once.

Then Mr. Israel stated that nothing required the Applicant to do a traffic study in the first place. [Secretary’s Note: See Section 2.611, Traffic Impact Analysis, in the Commission’s Regulations, which indicates that such a study is required.] Chairman Vercruysse suggested that the members vote on Ms. Ottens-Sargent’s Motion.

“I just have one question,” said Mr. Wey. “Is the Applicant going to make a presentation, whether it’s a short presentation or … what on the traffic?” A number of Commissioners answered yes. “That’s all I ask, as long as they make a presentation,” said Mr. Wey.

The Chairman then conducted a Voice Vote on Ms. Ottens-Sargent’s Motion. All voted Aye, except for one Abstaining.

**Discussion: Staff-Recommended Guidelines for Down Island Golf Club Three Application Public Hearing Testimony.**

Mr. Toole referred the members to the memorandum from Mr. Veno regarding “Potential Guidelines and Schedule for New DIGC Proposal (DRI #556).” [See the meeting file for a copy.] He pointed out that in view of the tight schedule they were facing, it seemed wise to limit the amount of time that those testifying were permitted to speak. “I don’t want to be constantly reminded by the public or you guys that I’m doing something wrong or that I didn’t pay attention to this person and treated that person differently,” he declared. “I want to know what the rules are going to be, and I would really like to have somebody with a clock.”

Ms. Brown suggested that the members take a pledge to be supportive of the Hearing Officer’s efforts to run the Hearing sessions smoothly, “and I think that we have to give you the right to make reasonable decisions, but I don’t think we can have a [inaudible] time limit.” She hoped, she said, that Staff would instruct the Applicant “to make it short and to the point.” As for Staff Reports, Ms. Brown remarked that she thought they “took the time they need.”

Ms. Brown did not think, though, that the Hearing Officer could limit the amount of time allotted for members of the public to speak “because that’s what we’re here for is a Public Hearing.” On the other hand, she said, she could trust Mr. Toole to use common sense, for instance, if a member of the public was testifying for a second time and was repeating himself.

Mr. Best appealed to the Commissioners to back up the Hearing Officer when others complained about the job he was doing. “We’re here to hear the public and listen to them seriously,” stressed Ms. Brown. Mr. Israel expressed the hope that so long as a speaker
was not being redundant, members of the public who wished to could speak more than once. He added that he thought Mr. Toole had done “a great job” during the Remand Plan Hearing process.

Mr. Toole remarked that he did not think that the time limits in Mr. Veno’s memorandum were very realistic. A discussion ensued about possible limits.

Ms. Sibley commented that it was useful to have some guidelines but that the ones before them were not realistic. To members of Town Boards she would say, “Try to make your point in less than five minutes,” and to the public the recommended limit should be two or three minutes, she said. If someone needed to take longer than that, he or she should be told to put the statement in writing and perhaps simply summarize in oral testimony.

Ms. Sibley added that the speakers should be urged not to read their statements. She also pointed out that it was quite unrealistic to allot two or three minutes for technical testimony from experts hired by various groups, and she suggested that during the third session, an hour and a half or two hours should be blocked out to allow time for such testimony. Those speakers could report to the Hearing Officer beforehand, at which point they could work out how much time they would be allowed. Lastly, Ms. Sibley emphasized that if Mr. Toole curtailed repetitiveness, those testifying would soon get the idea.

Mr. Wey commended Mr. Toole for the job he had done during the Remand Plan Hearing process. “And he can run this Hearing in the same way,” he said. “I mean, I’ll leave it in Richard’s hands.”

Mr. Toole asked for guidance regarding another matter: what portion of the Applicant’s presentation would consist of material from the older Applications. After some discussion, it was agreed that the Applicant could summarize material that had been presented previously. Ms. Brown stressed that this was a new Application and the Applicant had to make a definite statement on how he intended to address different issues, like pesticide use. Ms. Sibley pointed to the importance of making it clear to the Applicant that their entire presentation had to be completed within the first two sessions.

**Return to the Fee Waiver Discussion re: the Down Island Golf Club Applicant.**

Acting Executive Director Irene M. Fyler, who had missed some of the discussion on the fee waiver, wanted to know what the Commission had concluded regarding it. Mr. Toole replied that they had decided that there was no reason to consider the waiver, since the Applicant had not requested one. “But, it took half hour to figure that out,” remarked Chairman Vercruysse.

“I would respectfully request,” said Ms. Fyler, “that you go with the eleven thousand, and the reason I’m saying that is because they’re not presenting an entire project beginning to end. I think what we have presented is enough to cover the Staff time that we put into the
project.” “What about the legal fees and if we incur legal fees, discussions with our lawyer about this?” asked Mr. Wey, who added, “I mean, you’ve got to look at this a little harder and come up with a firm figure on this to make sure we’re not taking money out of our own pocket with this Public Hearing.”

Ms. Brown inquired why Ms. Fyler was requesting agreement with this figure, since the Applicant had not requested a waiver. Ms. Fyler replied that she thought the figure was fair. But they did not pay a fee the second time, noted Ms. Sibley. “I just don’t feel it’s fair,” said Ms. Fyler. Ms. Sibley countered, “I don’t think it’s fair to us that we’re losing money.” “I’d rather have that money in the bank,” remarked Chairman Vercruysse. “That’s right,” agreed Mr. Wey.

Ms. Sibley made a Motion to Adjourn, duly seconded by Mr. Israel. The Special Meeting adjourned at 10:47 p.m.

Chairman: [Signature] Date: 10-24-02

Clerk-Treasurer: [Signature] Date: 11-1-02

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

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

[These Minutes were prepared by the Staff Secretary using a tape recording and some notes taken by the Acting Principal Planner.]