

THE MARTHA'S VINEYARD COMMISSION

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

Martha's Vineyard Commission Minutes for the Special Meeting of September 4, 2002

The Martha's Vineyard Commission (the MVC or the Commission) held a Special Meeting on Wednesday, September 4, 2002, at 6:30 p.m. in the cafeteria of the Martha's Vineyard Regional High School, on the Edgartown-Vineyard Haven Road, Oak Bluffs, Massachusetts.

At 6:38 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; M. Cini; M. Donaroma; J. Greene; T. Israel; C.M. Oglesby; M. Ottens-Sargent; A. Schweikert; L. Sibley; R. Toole; J. Verduyck; K. Warner; R. Wey; A. Woodruff; and R. Zeltzer.]

Public Hearing, Session One: Down Island Golf Club Three (DRI No. 556).

Mr. Toole read into the record the Notice of Public Hearing for the Down Island Golf Club Three Development of Regional Impact (DRI No. 556). *[See the Full Commission Meeting File of September 4, 2002 (the meeting file) for a copy of the notice.]* He outlined the Hearing procedure and announced that a second session would take place the following evening and a third one on October 10, assuring those present that everyone would have a chance to be heard.

"I would appreciate it if, when you *do* speak," continued Mr. Toole, "first of all, that you always have to state your name for the record, and if you could limit your testimony to just the pertinent facts. We don't need people to go on and on. You just take time away from other people. If you could limit it to two minutes at the maximum, that would be great." He also noted that the third session would allow time for longer testimony of a technical nature.

*Martha's Vineyard Commission
Special Meeting of September 4, 2002: Page 3*

That the Applicant would purchase the Windfarm Golf Practice Facility – a “sore point,” Mr. Dutton remarked, with a number of Oak Bluffs residents – through a mechanism that would bring in funds from the State and perhaps from the Land Bank; and that the driving range would be turned into conservation property open to the public, with much of the landscape returned to its natural state; this resulting in the Town’s having either Conservation Restrictions or outright ownership of land stretching from Norton Farm to some possible conservation land on County Road.

Mr. Dutton also spoke of negotiations with the Secretary of the Department of Environmental Management (DEM), who was firmly committed to purchasing a portion of the Applicant’s property, specifically, the area closest to the Lagoon, which they intended, for the short term, to turn into a campsite.

After summarizing the points he had just made, Mr. Dutton urged the Commission “to continue discussions with the Applicant and come to a resolution – certainly, to entertain an open dialogue – and I would hope the Applicant would be willing to do that. I certainly know the Commission would be willing to do that ...”

Mr. Bobrowski began by pointing out that paragraph 3 of the Settlement Agreement made it clear that the Town of Oak Bluffs had made no promises in advance of the Commission’s Decision and that the parties to the agreement had in no way abrogated the statutorily imposed regulatory obligations of the Commission.

“So nothing here has been given to the Applicant except the right to apply,” he said. “The spirit of the agreement is that if the Application is consistent with this, it will at least start off with that in mind. But there’s no promises being made here.” The other caveat Mr. Bobrowski wished to emphasize was that the Martha’s Vineyard Commission had in no way been spoken for through the Town.

In addition, said Mr. Bobrowski, the Town had provided for an independent escrow account, to be maintained with funds from the Applicant, for the purpose of hiring someone to verify that the various monitoring plans regarding wastewater and turf management were being complied with.

Mr. Bobrowski added that this would be his only appearance before the Commission and that he hoped the members would take advantage of his presence to pose any questions they had.

Christina Brown, a Commission member at large from Edgartown, inquired about Mr. Dutton’s statement that the Settlement Agreement had been entered into by the Town as part of the settlement of outstanding lawsuits to which the Town had been a party. Mr. Bobrowski explained that there were two lawsuits being settled that had been consolidated in the Land Court. The suits concerned the issue of constructive approval as

*Martha's Vineyard Commission
Special Meeting of September 4, 2002: Page 4*

it related to the Application of CK Associates to build a subdivision in the Southern Woodlands (DRI No. 555).

John Best, a Commission member at large from Tisbury, asked Mr. Bobrowski to speak about the so-called 40B cure, that is, the claim that the 16 units of affordable housing would meet the Town's threshold to prevent unfriendly Chapter 40B applications in the future. "Oh, I haven't looked at that plan," responded Mr. Bobrowski. "I have no idea what the answer is. Whether those 16 units constitute acreage sufficient to take Oak Bluffs over the 1.5 percent has not been a consideration in the preparation of this agreement."

Marcia Mulford Cini, also a Commissioner at large from Tisbury, observed, "I think the suggestion was that these were going to be rental units and then that way the entire acreage could be counted and that would somehow, you know – I don't know what the math is – but I see clearly from the settlement that there's a [inaudible] aspect to it." "It's *ownership*," stated Mr. Bobrowski, referring to paragraph 9 of the Settlement Agreement. "We did not investigate what the acreage of those units would be relative to the 1.5 percent computation. So I don't want to make representation on that."

West Tisbury Selectmen's Appointee Kate Warner wondered, since the Settlement Agreement was not an agreement with the Commission at all, if the Commission were to deny the Application, would the settlement proceed? "I can't answer for the all parties, but I think that all parties would have to reassess their position at that point and move forward," answered Mr. Bobrowski.

Responding to another question from Ms. Warner, Mr. Bobrowski explained, "There are contingencies in the Settlement Agreement, and one of them ..." Mr. Bobrowski searched the document, then read aloud, "The effectiveness of this agreement shall be contingent upon ... Kupersmith obtaining all permits and approvals to build the project described herein as follows: one, removal of the MVC impediment to the project either through the MVC approving the project or through the Town of Oak Bluffs withdrawing from the MVC ..."

Linda Sibley, a Commissioner at large from West Tisbury, remarked, "I believe the LUPC was told that these were going to be rental units, and that's not a big deal. We can raise that with the Applicant when the Applicant comes forward. But since the agreement is a voluntary agreement between the parties, parts of it could be altered if both parties agree to it. Is that correct?" "Yes," replied Mr. Bobrowski.

Ms. Sibley continued, "So it isn't, like, etched in stone if something occurred that the Town and the developer agreed to it to be changed." "Certainly not in my opinion," responded Mr. Bobrowski. Whether the affordable housing was subject to a rental or a homeownership arrangement, he said, "I don't think, based upon my conversations with Attorney [James G.] Ward, that there's any impediment to revisiting that issue."

*Martha's Vineyard Commission
Special Meeting of September 4, 2002: Page 5*

Mr. Bobrowski stressed that the affordable housing threshold to meet Chapter 40B requirements was 25 percent of the units being built. "Here we're talking about an initial settlement number of 30, 16 of which are affordable. So it's a ratio of greater than 50 percent ..."

Tristan Israel, the Tisbury Selectmen's Appointee, asked if the negotiations between the owner of the driving range and the Land Bank were ongoing. Mr. Dutton replied, "I certainly don't want to represent what the Land Bank's doing. The language in the agreement does make reference to the Land Bank, it does make reference to some offer of help to put it under some sort of conservation easement that piece of property."

Mr. Dutton continued, "Under the financing agreement, the Town would actually hold ownership of that piece of property to the extent that we negotiate something with the Land Bank as a part-owner of that or some sort of financing with the Land Bank. That would be an ongoing discussion."

Mr. Israel proceeded: "My second question – and I don't mean this impertinently, it's important for me from the point of view of process – we were here tonight to hear Down Island Golf, and we're starting out with the Oak Bluffs Selectmen... Are you here at the behest of the Applicant to explain that?" Mr. Dutton answered, "I think my role in front of you is to present the Settlement Agreement as we have worked it out and ... have negotiated it. The Applicant, I'm sure, will spend a significant amount of time explaining the details of his proposal."

Chilmark Selectmen's Appointee Jane A. Greene pointed to the conflict between information in the Applicant's "Summary of Major Project Changes" – which referred to affordably priced rental units – and Mr. Bobrowski's statement that the affordable units would involve homeownership. "Which is it?" she inquired. "I mean, there should be a payment in lieu of taxes if it's a rental."

Mr. Bobrowski replied that the agreement had been drafted to provide for 16 ownership units. Having said that, he went on, the issue was not necessarily off the table. The obvious advantage of a rental project, he explained, would be that all 30 units, and not just the 16 affordable ones, would count toward to the Town's 10 percent threshold for affordable housing.

Responding to a question from Aquinnah Selectmen's Appointee Megan Ottens-Sargent, Mr. Bobrowski explained that there were two thresholds in the Chapter 40B statute. One involved 10 percent of the total housing stock in a community being affordable or subsidized by the community. "I can guarantee you, without conducting any analysis, either 16 or 30 will not get us there," he said. The other threshold was 1.5 percent of the land area in a community available for residential use, and figuring that out would require GIS information and resources he did not have, he noted.

*Martha's Vineyard Commission
Special Meeting of September 4, 2002: Page 6*

Ms. Ottens-Sargent asked Mr. Dutton if he had a visual aid to illustrate his point about the driving range property's being contiguous with other conservation parcels. In addition, she wanted to know what the acreage of that natural corridor was. "We can certainly provide that," answered Mr. Dutton.

Noting that he was a member of the Land Bank's Tisbury Advisory Committee, Mr. Best pointed out that Norton Farm was not a conservation land but a farm, nor was Elisha Smith's land dedicated to conservation but to farming. "They are open space, but they are not conservation," he said.

Mr. Best had a question regarding Mr. Bobrowski's contention that if the 16 affordable units were rentals, possibly all 30 units could be counted to meet the affordable threshold. He wondered if there were not some kind of requirement in Chapter 40B that the affordable units be comparable to the market-price ones. "Well, they have to be comparable from the exterior," replied Mr. Bobrowski, adding, "They don't have to be comparable in the interior."

"Well, the other units were all detached," observed Mr. Best, but there were four quad units being shown for the affordable homes. Mr. Bobrowski described a development in the Town of Westwood in which the single-family market-priced homes were quite large and the affordable units were half of a duplex, with a side door for one of them, that mimicked the single-family homes. "That meets the Mass[achusetts] housing standard for comparable exterior appearance," he said.

Mr. Mone approached the microphone and stated: "At this time we would like to introduce and place on the record all previous documents and submittals amended for this ultimate DRI." Then he turned over the presentation to the next speaker.

B. Lawrence J. DuCharme on Changes in the Golf Course Site Plan.

Lawrence J. DuCharme, a principal with the firm of DuCharme & Wheeler, civil environmental land surveyors, presented Exhibit A-1, the changes in the golf course site plan since the second Down Island Application (DRI No. 543), along with some other changes on the plan presented in the August 26 Land Use Planning Committee Meeting. DRI Coordinator Jennifer Rand distributed reduced copies of the plan. *[See the meeting file for a copy.]* Mr. DuCharme noted that the Windfarm Golf Practice Facility property was not shown on the plan, and he pointed to the area where it was located.

Mr. DuCharme continued that the current plan differed from the previous ones in a numbers of ways. He started with the light gray areas of the plan. In the northwest corner of the site, he pointed to Parcel A, the site of the old Webb's Campground, which measured 12.5 acres and which, it was hoped, would be transferred to the Department of Environment Management, which could operate it as a campground.

*Martha's Vineyard Commission
Special Meeting of September 4, 2002: Page 7*

Abutting Parcel A was Parcel B, Mr. DuCharme went on, which Down Island Golf would retain but which would be in full use for campground purposes. Below that was Parcel C, measuring about 32.5 acres, which had previously been the site of the clubhouse. The clubhouse had been moved, he noted, and the parcel, which sat next to land already owned by the Land Bank, would be conveyed to that agency.

Mr. DuCharme moved on to the dark green areas of the site plan, which contained the existing wooded forest areas, and the lighter green areas, which showed the managed turf, the fairways and the practice area. He pointed to the clubhouse and the maintenance facility and to the four blue areas, which would be lined ponds. He pointed out the greens and tees in sensitive areas that would be lined. He also showed where a considerable managed-turf area had been moved back from the Lagoon Pond District of Critical Planning Concern (DCPC).

The blue dotted line running through the middle of the plan, Mr. DuCharme explained, indicated the groundwater divide between the Sengekontacket Pond and the Lagoon watersheds. He pointed to the white areas, which were the existing trails and paths, and noted that they had tried to maintain a 50-foot buffer zone around each of those paths. The center rectangle, he said, was land currently owned by the Town of Oak Bluffs. As part of the agreement, the Applicant would be providing public access to that area, which potentially could be transferred to the Applicant in the future.

Mr. DuCharme pointed to the small light green circles, which indicated market-rate houses. Asked in the LUPC meeting about the driveway locations for those units, he said he had been reluctant to commit them to the site plan since he felt that they could change once the final architecture plans were done. They had calculated, he noted, for a 12-foot-wide non-pervious surface and a 2-foot utility trench, resulting in a 14-foot-wide trail going into each of the market-rate house locations.

In addition, DuCharme said, several units showed a turnout area, which would be 40 feet long and 18 feet wide and would allow vehicles coming from opposite directions to pull off and allow passage. The 20,000-square-foot alteration for the market-rate houses now included the driveways, which it had not earlier, he pointed out. So the average square-foot alteration for the market-rate housing, including the driveways and the footprint, was calculated to be around 15,000 square feet.

Mr. DuCharme indicated in the lower part of the plan the four yellow-orange rectangles that represented the 16 affordable units, 12 of which would have two bedrooms and four, three bedrooms. Adjacent to those would be four more buildings, which would contain the proposed 50-bed dormitory for non-resident employees. In addition, the Applicant had offered to supply to local businesses on a lottery basis any beds not used by Down Island Golf employees. Next to the dormitory was a yellow trapazoid, continued Mr. DuCharme, which was a 1-acre parcel of land that had been donated to Island Elderly Housing.

Another request from the LUPC, said Mr. DuCharme, had been to show the locations of the American beech trees, which were now depicted in purple on the plan. Those trees would suffer minimal impact from the land alteration, he noted.

Mr. DuCharme turned to the subject of wastewater handling and the changes in the plan in that regard. Under a conventional Title V system, the expected milligrams of nitrogen per liter would be somewhere around 35 to 50, he reported. Using an alternative technology could usually reduce that down to a Massachusetts Department of Environmental Protection standard of 19 milligrams per liter, he said.

What the Applicant was looking to do, said Mr. DuCharme, was to bring down the total milligrams to three. The Southern Woodland DCPC requirement was for 3 milligrams per liter, he reported, and the wastewater discharge permit would require a maximum of 10 milligrams per liter.

Mr. DuCharme related that the wastewater-handling unit they were planning to use to achieve those levels was the Amphidrome Plus, which had been shown to maintain nitrogen levels of less than 10 milligrams per liter. With denitrification components and a carbon source added to that, he said, the system was achieving milligram levels of three or less. He pointed on the plan to the course the wastewater would take to the leaching trenches under the 17th green and provided the reasons for choosing that system.

Another revision to the plan in the area of wastewater handling, Mr. DuCharme explained, was to tie in the Martha's Vineyard Arena to the course's system. Currently, the ice arena had a Title V system, thus reducing the nitrogen discharge rate from 35 to 50 milligrams per liter down to 3 milligrams or less per liter.

In addition, the Island Elderly Housing campus nearby would contain, when completed, 103 bedroom units, Mr. DuCharme continued. Calculated at 150 gallons of sewage discharge per unit, that complex would produce 15,150 gallons of discharge per day. The arena produced somewhere in the area of 3,000 gallons per day of discharge. Bringing both those systems to 3 milligrams per liter, he pointed out, would result in a reduction comparable to reducing the discharge from 55 three-bedroom homes.

As requested by the Commission, said Mr. DuCharme, the Applicant would be submitting a storm-erosion sediment plan and a stormwater-management plan 45 days prior to vegetation removal in preparation for construction.

Ms. Greene asked about the asterisked location on the plan that had previously been the site of a 15th market-rate house. Mr. DuCharme explained that the asterisk was there to leave open that possibility as an option.

Ms. Greene also wanted to know what size system of wastewater treatment plant the Applicant intended to apply to DEP for. "It would be about a 40,000-gallons-per-day system," replied Mr. DuCharme, "[for] which about half of it is from off-site, that flow

*Martha's Vineyard Commission
Special Meeting of September 4, 2002: Page 9*

taken in from Island Elderly Housing and the Martha's Vineyard Arena." "And what do you anticipate the flow will be from golf?" inquired Ms. Greene. "The golf course as a whole is twenty-two thousand one fifty, so about half," answered Mr. DuCharme.

Ms. Ottens-Sargent requested that Mr. DuCharme state specifically which holes would be lined. Mr. DuCharme pointed to Holes 12, 13, 14 and 15, where the greens and the tees would be lined.

County Commission representative Roger Wey asked about the total size of each house lot. "There's actually, there's no house lot per se," responded Mr. DuCharme. "These are basically held in condominium ownership." What the Applicant had come up with was an altered area within those condominium sites, he said, and at this point they were showing a 15,000-square-foot area of alteration per site, which would include the footprint of the house, about 5,000 square feet of grass area, landscaping and plantings, plus the driveway.

"So the owner would have control over 15,000 square feet?" wondered Mr. Wey. Mr. DuCharme responded that because this would involve condominium ownership, numerous restrictions could be imposed on the sites. There would be private areas, exclusive-use areas and common areas, he said; but in addition, there could be covenants incorporated as to the use of fertilizer, the amount of grass they could have and the amount of disturbed area allowed.

Mr. Wey also wanted to know how large the wastewater leaching fields would be. "The area, right now it looks to be, I believe it's thirty-eight 100-foot long trenches, 2 foot wide, 2 feet deep," replied Mr. DuCharme. He pointed to where they would be located, beneath the 17th fairway. Would the reserve area also be there? asked Mr. Wey. Yes, said Mr. DuCharme, it would fall between the trenches of the primary area.

Mr. Best inquired if the wastewater system would be able to handle the flow from the proposed campground area, which, he stressed, was in a more fragile area of the site. "To date, we have not included it ... in our design," responded Mr. DuCharme. There had been discussion, he added, of possibly installing composting toilets in the campground or incorporating it into the course's wastewater treatment plant.

"That's something we would entertain," Mr. DuCharme continued, "but that's not something we have included at this point, because, first of all, we haven't identified who the owner will be – whether it will be DEM, the Town, whatever – and what they may propose, how they would actually, whether they would propose a composting-type system ..." He noted that if it was decided to tie the campground into the course's wastewater system, that was something the plan could accommodate.

But could the course's system handle the flow from the campground? asked Mr. Best. Mr. DuCharme explained that the estimated wastewater flow from a campsite was about 90 gallons per day. "We don't see a problem with doing that," he said.

Mr. Best also inquired if the State had actually seen the property proposed as the site of a campground. Elaborating, he explained that from his visit to the site and his study of its contours, "I would suggest that a significant portion of the property abutting Barnes Road is very steep." Mr. DuCharme responded that the site plan showed this, although the cross-hatching used to depict the possible campground site obscured that somewhat.

Mr. Best remarked that he was trying to get a handle on the size of the campground site as compared to the old Webb's Campground, which comprised, if his memory served him, around 164 campsites on about 84 acres. Mr. DuCharme said that he did not think the entire 84 acres had been used for campsites in the past. In his opinion, he added, probably the best view from the property was from the area of the proposed campground.

Mr. Israel wondered if the Applicant was addressing that evening the actual specifics of the future campground. No, indicated Mr. DuCharme. Mr. Israel also wanted to know what the white areas on the site plan were. Mr. DuCharme answered that these were the various trails and paths, along with the buffer zone around them. So, what was the white area between Holes 14 and 12? inquired Mr. Israel. "That's the trail," replied Mr. DuCharme, who added, "In fact, the trail does cross those fairways in that area."

Responding to another question from Mr. Israel, Mr. DuCharme explained that that particular white area was wider than others because the map had been generated from an aerial photograph showing the tree lines.

Mr. Israel asked how a player would get from Hole 3 to Hole 4 and from Hole 9 to Hole 10. "I don't think we're providing to have any sort of a road established there to be able to go from ... the third green to the fourth tee," said Mr. DuCharme. The golfer would be walking through an area that was naturally vegetated, he noted, and he imagined that some of the brush of the under-story would be cleared so a person could walk through. Mr. Israel requested that the Applicant present in the future data on where and how wide the pass-through areas would be.

"Sorry to repeat this question, but, has the State seen this [proposed campsite] land?" inquired Andrew Woodruff, a Commissioner at large from West Tisbury. Mr. DuCharme said that he did not know. And did anyone know how many campsites were planned? asked Mr. Woodruff. Someone who sounded like Mr. Mone replied that they had not looked at that yet.

Kelly Cardoza, another member of the Applicant's team, introduced herself and remarked that it might be helpful if **Brian Lafferty, a partner of the Applicant,** clarified a couple of points.

Mr. Lafferty first addressed the issue of rental versus ownership with regard to the affordable housing element of the plan. As Mr. Bobrowski had indicated, the Settlement Agreement called for the affordable units to be owned by their occupants, he began. "For

Martha's Vineyard Commission
Special Meeting of September 4, 2002: Page 11

a couple of reasons, the DRI proposed them as rental units," he said, and in general discussion with the Oak Bluffs Selectmen, they had agreed that having them be rental units was acceptable to them.

The reason for changing them to rentals was twofold, continued Mr. Lafferty. One, then all the units, market-rate and affordable, would be counted toward the Chapter 40B statutory minimum; and, two, Water Resources Planner William M. Wilcox had wanted a higher occupancy rate, assuming there would be more children in the affordable housing, and it was simply easier to do those calculations for the more intense use now rather than later.

Answering more fully a question posed earlier by Mr. Wey, Mr. Lafferty reported that the market-rate homes would have condominium ownership and the owners would have, basically, exclusive use of the 15,000 square feet of area. "That 15,000 square [feet] of area," he said, "will be under control of the condominium association, and any lawns, gardening, landscaping, et cetera – sorry, Mr. Donroma, landscaping's going to be minimal – but they're subject to the exact same conditions for turf management that would be proposed for the golf course."

Lastly, Mr. Lafferty noted that the family of the Secretary of Environmental Affairs had a place on the Lagoon, "and he's very familiar with the land ... No, they have not done an appraisal of the land, and there's been no discussion to my knowledge of any specific number of units of campsites that they would propose. But we do have the capability and have offered, based on our conversations at LUPC last week, that we would provide septic capacity for whatever units DEM proposed. And that process of them proposing campsites is entirely separate and distinct from this DRI."

C. Kelly Cardoza on Water Quality and Water Quantity Issues.

Ms. Cardoza addressed the subjects of water quantity and water quality. Essentially, she said, nothing had changed with regard to water quantity since the Remand Plan (DRI No. 543). About 27,000 gallons of potable water would come from the Town each day, with the demand being based on Title V standards.

The plans for irrigation water would be the same as in the original DRI Application (DRI No. 515), Ms. Cardoza continued, except for one change made at the time of the Remand Plan. "We've been able to reduce the amount of manicured turf for the project," she explained, "and so, therefore, the amount of water need has gone down as well. The water demand was originally 180,000 gallons per day average. That has now been reduced to 120,000 gallons per day on an annual average. And now the average annual demand now has been reduced from 37 million gallons overall to 30 million gallons."

With regard to water quality, Ms. Cardoza referred to the nitrogen-loading analysis that the Applicant had presented at the August 26 LUPC meeting as well as to Water Resources Planner William Wilcox. There had been concern during the Remand Plan

*Martha's Vineyard Commission
Special Meeting of September 4, 2002: Page 12*

process, she explained, about the nitrogen-loading credits that the Applicant was claiming. "The numbers were done based on Title V," she said, "and as Larry [DuCharme] explained, Title V numbers are based on the State's evaluation of a certain use for a home or for an ice arena."

At Mr. Wilcox's request, Ms. Cardoza went on, they have done the nitrogen-loading calculations using numbers that reflected actual water use numbers, where they were able to get them, or they reflected occupancy rates known to occur in Oak Bluffs. She then went through the recalculated numbers.

There would be 30 residences, said Ms. Cardoza. They were assuming five year-round market-rate units, with 2.3 persons in each of those units and each of those people using 48 gallons per day rather than the 110 gallons per day per bedroom that would be assumed under Title V. So, there would be five pounds of nitrogen added in a year from those year-round market-rate units.

The seasonal market-rate units had been divided into summer occupancy and winter occupancy, related Ms. Cardoza. There was an assumption that there would be 4.77 persons per house during the summer and 2.3 persons per house during the winter, and each of those persons would use 48 gallons of water daily.

The year-round affordable units would have 3.5 persons per residence, Ms. Cardoza indicated, with the assumption being that there would be more children in these than were in the market-rate units. The lawns for the 14 market-rate units would be 5,000 square feet, and each of the four four-unit structures for affordable housing would have 5,000 square feet of lawn. Using these assumptions, the annual nitrogen loading had been calculated for each of these uses.

In addition, Ms. Cardoza reported, the Applicant had looked at nitrogen concentrations from the golf club. Again, there had been no changes in the design of the infrastructure relative to the previous Application. The clubhouse would still have 160 total seats, with 10 gallons per day per seat, which was based on the Title V methodology since they had lacked any source for real data. They had also assumed that the clubhouse would be open only six months of the year. The 196 lockers would also be used only six months a year, and the office space – at 200 gallons per day based on Title V methodology – would be used year-round.

Similarly, Ms. Cardoza pointed out, when calculating the loading from the maintenance facility, the Applicant had assumed a higher occupancy in the summer and a half-occupancy the rest of the year. The dormitory would be kept open for seven and a half months of the year, which would provide some lead time into the summer season and then some time at the other end of the shoulder season. In addition, three on-course restrooms had been included in the calculations, as well as a halfway house which would have 20 seats.

*Martha's Vineyard Commission
Special Meeting of September 4, 2002: Page 13*

Ms. Cardoza turned to the final component of the nitrogen analysis, which came from the golf course management areas. "These are based on the data that was provided in the DRI submittal and the integrated golf course management plan," she said. During the Remand Plan process, she noted, there had been some question about exactly how many acres of greens, tees, fairways and roughs there would be, and this had been provided: 3.8 acres of greens; 4.4 acres of tees; 25 acres of fairways; 31 acres of rough, including the turf monitoring area; 6.5 acres of practice fairway; and 0.8 acres of practice tees. "So the total maintained turf is 71 acres," she reported.

The leaching rate to groundwater was a number presented in the DRI document and one with which Mr. Wilcox was comfortable, Ms. Cardoza related. So, given all the uses and that leaching rate, the predicted concentration to groundwater from the Down Island Golf Club project would be 0.5 milligrams per liter. "Well, what does that mean?" asked Ms. Cardoza, who then went over some of the regulatory standards.

The State and Federal standard was 10 milligrams per liter for groundwater, she explained. The MVC required 1 milligram per liter to the Lagoon and Sengekontacket Pond. In addition, there was the Commission's recommendation of less than 9.8 pounds per acre of nitrogen in the Lagoon Pond watershed and of less than 10 pounds per acre in the Sengekontacket Pond watershed. Finally, there was the Oak Bluffs requirement of 3 milligrams per liter in groundwater.

Having exchanged numerous spreadsheets with Mr. Wilcox, Ms. Cardoza said that they had come to an agreement on the input numbers as well as on the groundwater divide location, indicated by the blue line on the site plan. She characterized this as "a very conservative approach, because one of the things that we know is that in the central portion of the site, that the groundwater from that central portion would go out to Nantucket Sound."

Her understanding, Ms. Cardoza continued, was that based on the latest MVC study, the Lagoon Pond loading rate was 10 pounds per acre, "and the goal is to get that down to ... less than nine-point-eight pounds per acre." One of the strategies to reduce nitrogen was to develop the site and to find a way to reduce the number of pounds in that watershed. The golf course's Integrated Turf Management Plan would be presented by Charlie Passios, she said.

Secondly, there was the wastewater produced by the project, and Ms. Cardoza noted that Mr. DuCharme had already spoken a bit about wastewater treatment on the site. The effluent generated at the site would be treated to 3.0 milligrams per liter on an average annual basis, and this could be made a requirement by the Commission, she suggested.

Thirdly, the project design could help with the reduction of the loading, Ms. Cardoza pointed out. Much of the infrastructure would be located in the Lagoon Pond watershed, while most of the turf would be in the Sengekontacket watershed. So the leaching facilities for all of the infrastructure were located on the right side of the plan. Thus, the

Martha's Vineyard Commission
Special Meeting of September 4, 2002: Page 14

Applicant would be transferring the effluent from those uses away from the Lagoon Pond watershed and to the Sengekontacket watershed, "where there is much more available 'nitrogen space,' if you will," Ms. Cardoza explained.

Finally, said Ms. Cardoza, the Applicant had worked on various nitrogen reductions by, first, reducing the nitrogen and effluent from the Island Elderly Housing Woodside Village complex, the effluent from which currently contained 35 to 50 milligrams per liter of nitrogen. She noted that the Applicant had used the most conservative number possible, that is, 35 milligrams, in the calculations.

In addition, Ms. Cardoza went on, the Commission had recently approved the Woodside Village IV and V Applications, conditioning their Decisions with a requirement that the effluent contain no more than 19 milligrams of nitrogen in the effluent. So the Applicant can use that number in the calculations, she said.

Lastly, Ms. Cardoza reported, the Applicant has developed the Island Pond Agreement, which would provide for the upgrading of septic systems for a number of existing year-round residences. Different from the previous proposal, she said, was that the calculations of the credits were not based on Title V numbers but on the Oak Bluffs occupancy numbers.

Ms. Cardoza then presented the nitrogen-loading numbers that the Applicant had arrived at. "Down Island, including housing, will add 467 pounds of nitrogen per year to that watershed," she began. "The campground that was there just prior to this Application conservatively added 120 pounds of nitrogen, so we're not going to have that anymore and that's a reduction, and reductions here are shown in red."

Ms. Cardoza continued: "Island Elderly Housing has 861 pounds of nitrogen that will be added to groundwater. If we upgrade the systems there, we reduce that by 780 pounds by adding it into the Down Island treatment plant. And then moving the flow from the effluent to [the] Sengekontacket Pond watershed removes that from the Lagoon Pond watershed and enables us to get a reduction in the overall nitrogen that will be in that watershed."

Ms. Cardoza went on: "In addition, there are the off-site upgrades. Currently, those homes would add 211 pounds of nitrogen. We will reduce that by upgrading them to alternative systems by 96 pounds. So the Lagoon Pond watershed loading rate after construction of this project and the upgrades is 9.67 pounds per acre. That's better than it is right now based on the MVC report. And the predicted nitrogen concentration in the Lagoon Pond watershed portion of the site is 0.43 milligrams per liter."

Ms. Cardoza concluded, "So we're certainly consistent with all of the regulatory guidelines and standards that I talked about."

Moving on to the nitrogen-loading numbers for the Sengekontacket watershed, Ms. Cardoza stated that the current nitrogen-loading rate was 7.38 pounds per acre and that the goal was to keep that below 10 pounds per acre. The golf club and the housing would add 815 pounds of nitrogen into that watershed. The Martha's Vineyard Arena currently added 50 pounds, and the Applicant would be reducing that by 45 pounds, with the effluent still going into the Sengekontacket watershed.

The residences marked for the off-site upgrades, Ms. Cardoza said, currently added 59 pounds of nitrogen per acre, and the Applicant would reduce that by 27 pounds. In the case of Island Elderly Housing, the Applicant would actually be transferring nitrogen into the Sengekontacket watershed, so these 113 pounds would be added into the calculations. Thus, the loading rate for that watershed, after all these adjustments, would be 7.68 pounds per acre and the predicted nitrogen concentration would be 0.98 milligrams per liter at the site. "So, again, we still meet the local, State and Federal guidelines for that," she stressed.

D. Charlie Passios on Course Operations and the Monitoring Plans.

Ms. Cardoza introduced **Charlie Passios of Moors, Inc., the operations consultant for the golf course.** Mr. Passios started by explaining how the paths from the green of one hole to the tee of the next were formulated by choosing the best route – and, it was hoped, the shortest route – that could result in the least amount of disturbance to the vegetation.

Mr. Passios turned to the subject of the Integrated Golf Course Management Plan (IGCMP), which in general was a plan for the entire property and included things like construction impact, detailed environmental safeguards and the Integrated Turf Management Plan (ITMP). He spoke of plans for long-term monitoring measures and compliance with State and Town regulations, which required annual filings from the Applicant. He read aloud from his memorandum to Mr. Lafferty dated August 30, 2002 regarding the "DIGC IGCMP." *[See the meeting file for a copy of this and a second memorandum referred to just below.]*

The integrated approach to turf management, Mr. Passios continued, would be focused on "a really holistic approach" that was "organically based." The IGCMP presented in the second review of the project had been altered to go to "100 percent quasi-organic."

Mr. Passios then read from another memorandum to Brian Lafferty from Mr. Passios, also dated August 30, dealing with "DIGC Monitoring Plan." The Settlement Agreement, he explained, provided for a review process overseen by the Oak Bluffs Selectmen and/or a review committee named by the Selectmen.

The review committee, Mr. Passios said, would include: a representative from the Board of Selectmen; a member from the Oak Bluffs Board of Health; a person from the Oak Bluffs Water Department; a representative from the Martha's Vineyard Commission; and an independent designee chosen by the Board of Selectmen who would do independent

*Martha's Vineyard Commission
Special Meeting of September 4, 2002: Page 16*

review of local plans and of any activity thereafter dealing with the management of the monitoring plans and the Integrated Golf Course Management Plan.

Mr. Passios also spoke of having a golf course superintendent, "who is active on the site, who will be part of this entire program and who is monitoring activities." In addition, the superintendent or his designee would be a member of the board of directors.

As Mr. DuCharme had mentioned earlier, continued Mr. Passios, Holes 12, 13, 14 and 15 were closest to the Lagoon. Each of the holes would have four tee boxes, except for Hole 15, which would have five, for a total of 17 tee boxes. All the tee greens would be lined and the leachate would be taken to the irrigation pond (gravity-fed, if the elevations worked, or collected in pump chambers), instead of being filtered through swales, as had been proposed in the Remand Plan.

The collection from lined features of the course would not have to be monitored, Mr. Passios pointed out, because the irrigation pond itself was lined and the leachate would be diluted there with well water and redistributed on the golf course as irrigation.

The groundwater and soil water monitoring plan, read Mr. Passios from the second memorandum, would assure that the program was conducted in a manner acceptable to the reviews, following quality control procedures with FIFRA Good Laboratory Practices as well as Massachusetts WSC-310-91, Section 6.1, which were the States guidelines for quality assurance on monitoring.

Mr. Passios then described how the water would move through the soil to the groundwater and how the Applicant would install 27 pan lysimeters in three locations under three different management areas on the golf course, that is, green, tee and fairway, thus creating a triple replication of the data collection process.

Mr. Passios then explained how the pan lysimeters worked differently than – and were superior to – the type being used at the new golf club in Edgartown, which had been having trouble with monitoring that year because of the extreme dryness. The lysimeters, he said, would be monitored on a monthly basis with a set schedule that would start in March, followed by testing in May, July, August, September and then November.

Mr. Passios continued: The water would be tested for inorganic compounds like nitrate, phosphorus, total Kjeldahl nitrogen, dissolved oxygen as well as for the allowed organic pesticides. The data from the lysimeters would be collected over a one-year period, extrapolated over the areas that it was applied to and then extrapolated on an annual basis. "You *will* get different types of spikes within lysimeters, so you have to average it over a year," he explained. "What this does is it gives you a snapshot of the potential that could breach groundwater."

Mr. Passios then described the six monitoring well sites, with each well having a couplet that would consist of a shallow well and a deep well. The shallow well would be

screened 1 foot above and 4 feet into the surface of the groundwater table at each site. The deep couplet would be screened at 10 feet into the groundwater table, ending at 15 feet.

Describing the distribution of the wells, Mr. Passios stated that MW-1 would be up-gradient of the property, and MW-2 would be down-gradient at a point where groundwater exited the property. MW-3 and MW-4 would be spaced down-gradient of features on the golf course in the Lagoon Pond watershed section of the property, and MW-5 and MW-6 would be located down-gradient of features within the Sengekontacket Pond watershed portion of the property.

Mr. Passios then discussed the response triggers contained in the plan. In the event that testing data indicated that pesticides or nutrients were detected at unacceptable levels as defined by the final approved Nitrate Agreement, retesting would be required to verify the readings. If the detections persisted and the presence of these substances was identified as a result of golf course management, immediate remedial adjustments would be made to the management activities until such time that the follow-up test results were within acceptable limits.

Mr. Passios then went through some of the changes in the plan with regard to natural resources. First, Staff had relayed to him, he said, questions from Commission members about Lepidoptera, specifically, the imperial moth in the pine woodlands. He reported, "The fact that we've moved golf development out of the pine woodlands away from the Lagoon watershed – this was the area that was discussed as far as the issue of the butterfly, the moth issue and the habitat – because we've moved out of here now, there's no need for the mitigation further of that situation, i.e., having to plant pitch pines. It makes no sense at all because it's kind of a weak tree to begin with ..."

Mr. Passios went on: "That habitat's intact. It exists along with the old campground, so even if a new campground was put in there, it's not going to get altered because it's already a pre-existing use, so that stays pretty much as is."

Mr. Passios mentioned the vegetative wetland edges that would be cultivated around the ponds, something that had not translated well into the smaller site plans distributed to the Commissioners. In the case of storm events, he explained, these edges would provide filtration for the ponds themselves. He then provided details on how the edges would be constructed. With the edges in place, he stressed, the water in the ponds would never get to the nitrogen-concentration limit of 3 milligrams per liter.

Speaking of the increased wildlife corridor that would be created with the new plan, Mr. Passios pointed out on the site plan the abutting Land Bank land and Town parcels. In addition, the trails would be maintained as they existed now, and some of them would, in fact, be improved. The natural wooded areas within the golf holes would be maintained as is as much as possible. "If a tree falls, we'll allow the tree to stay as is," he said.

E. Brian Lafferty Addresses Commissioner Queries Not Yet Covered.

Mr. Lafferty approached the microphone and related how when he and others had met with the Commission in Executive Session a month or so before, a decision had been made that the Applicant would not have to bring in numerous consultants just to rehash elements from the older Applications. "But Staff did send me yesterday a list of items that they did want to see addressed," he said, "so I'll try to cover briefly things that I didn't see come up yet."

Regarding the issue of traffic, Mr. Lafferty reminded the Commissioners that on August 26 the LUPC had voted unanimously to waive the requirement for a traffic study. There had been an in-house analysis done by Staff which had indicated that the houses would not increase traffic any more than the elimination of the driving range would decrease traffic, he pointed out. "So there was a net no-impact to traffic," he said, "and as consideration for waiving the traffic study, as we discussed at LUPC, the developers opted to provide \$25,000 to the Town of Oak Bluffs to implement their traffic improvement plan at the blinking light."

As for questions about financial issues, Mr. Lafferty stated that a financial report had been submitted for the two earlier plans and that a brief update had been provided for the present Application, indicating the impacts of the housing. "And that shows a net increase of about \$340,000 to the Town of Oak Bluffs, that's after taking out educational costs," he reported.

Another issue that had not been addressed was public access to the trails on the site, Mr. Lafferty continued, something that had been addressed in the earlier Applications. He spoke about how in the latest plan the access via County Road had been eliminated, although the Applicant was retaining rights to bring in utilities that way.

Lastly, Mr. Lafferty provided an update on where the Land Bank and the Department of Environmental Management were in the process. "DEM has set aside in the Open Space Bond Bill specifically earmarked for this project. I believe it's \$3 million, although the purchase price, I think, it's a million seven for the piece of land." He explained that one of the reasons DEM had wanted that land in spite of some of the steep slopes in front was that "they felt it was the most significant piece of land from the perspective of trying to conserve it, and they felt that they would be the best stewards for that piece of land."

With respect to the Land Bank, Mr. Lafferty went on, two weeks ago discussion had arisen over the fact that Applicant Corey Kupersmith had paid a million dollars more for the driving range property, which was under agreement, than had been anticipated in the Settlement Agreement. They had subsequently sent a letter to the Land Bank stating that Mr. Kupersmith was going to forego any additional home sites "and just take that extra million dollars as the cost of doing business," said Mr. Lafferty. Thus, an amendment to the Settlement Agreement reflecting this development had been agreed to by counsel and was awaiting signatures, he concluded.

F. Applicant Summary by Bob Mone.

Mr. Mone finished up by going over the community benefits package, which included:

\$10,000 a year for five years for management of the Island Pond Fund;

\$75,000 a year for three years to the Island Pond Fund for septic upgrades;

A \$5,000 contribution to the Oak Bluffs Trails and Byways Committee;

Four golf tournaments each year to support local charities;

An easement arrangement with the Martha's Vineyard Arena, plus a \$1 million contribution over 20 years to the arena;

A \$25,000 contribution to the Town of Oak Bluffs to work on their improvement plan for the intersection at the blinker;

The hooking-up of the Martha's Vineyard Arena sewage outflow to the golf course's wastewater treatment plant, thus allowing the arena to expand their lockers and showers;

The hooking-up of Island Elderly Housing's Woodside Village complex to the golf course's wastewater treatment plant, thereby improving the environment by reducing the nitrogen loading to the watershed;

Tax revenues of \$494,000 to the Town of Oak Bluffs;

Construction of 16 units of affordable housing;

Satisfaction of the Oak Bluffs requirement under Chapter 40B to build affordable housing;

One acre of land given to Island Elderly Housing, where construction was about to begin;

A \$10 million environmental insurance policy;

Upon the opening of the golf course, a net reduction in the amount of nitrates flowing into Lagoon Pond;

Removal of the nets and structure at the Windfarm Golf Practice Facility and the restoration of the open space that predated the driving range;

A moderately priced campground managed by the Commonwealth;

Conservation land measuring 100 acres in combination with land from the Land Bank and the Department of Environmental Management;

Island golf memberships for 150 year-round residents, with all greens fees collected going to the Town of Oak Bluffs;

A caddie scholarship program;

Local high school golf team access to the course;

Year-round public access to the trails;

A bicycle-path easement on Barnes Road;

Availability to other local businesses of unused beds in the dormitory;

The right of way to the landlocked Town-owned parcel in the center of the site; and

Preservation of the historic lands identified on the property.

Ms. Greene wanted to know if the Applicant would consider putting into the wastewater treatment calculations the units that Island Elderly Housing was hoping to build on their last lot in the Woodside Village complex. This had already been figured in and accomplished, said Mr. Mone and DRI Coordinator Jennifer Rand.

Mr. Israel asked about the seasonal market-rate residential units that had been divided into summer occupancy and winter occupancy and the wastewater numbers associated with them. *[See Ms. Cardoza's testimony on page 12 of these Minutes.]* "People living there in the summer and the winter? I didn't understand that part," he said.

Ms. Cardoza explained that Mr. Wilcox had requested that the Applicant use a higher occupancy rate in the summer for the single-family homes, with the assumption that there would be family and guests visiting then. "And the occupancy rates for the homes are only 2.3 persons per home on an average in Oak Bluffs," she said, "but the data that the MVC has indicates that the occupancy rate in Oak Bluffs, like the rest of the Island, swells in the summer. And what we did was we used a higher occupancy rate for that time period for those six months, and those were rates that Bill [Wilcox] provided based on data that's available for Oak Bluffs."

Mr. Lafferty added to Ms. Cardoza's answer: "From the perspective that Kelly was describing, Bill Wilcox gave us some parameters on how he wanted to calculate nitrogen, that sort of thing, and that's what we used. But the units are nine units [and] are

restricted in that they cannot be primary ... residences for the owners. That was derived to prevent or to minimize the number of children that would impact the Oak Bluffs school system."

Mr. Lafferty concluded: "So those houses, they cannot be a primary residence, but they can obviously be used all year round as many of the seasonal residences are. Mr. Wilcox gave us the appropriate numbers to calculate."

"That's a contradiction of what your agreement says," remarked Ms. Greene. "It is?" said Mr. Lafferty. "Yes," continued Ms. Greene, "it says 24-week periods is the maximum of lease time." "Occupancy time, I believe it says," replied Mr. Lafferty. Ms. Greene then read from the Settlement Agreement. *[See Item 8 on page 9 under the section "Kupersmith's Obligations."]* "So, in fact, they can be renting it for 48 weeks or are we doing a 52-week and got three leases?" inquired Ms. Greene. "Can you rephrase that?" requested Mr. Lafferty.

"Are we talking three leases, or are we talking 48 weeks of occupancy, 52 weeks or 24?" asked Ms. Greene. Mr. Lafferty then explained the premise: "What we are proposing is that nine of the 14 houses cannot be primarily residences for the owners. But we are not, to my knowledge, propos[ing] that we restrict how often they use their home. We would presume that they would typically use the home for 10, 12 weeks during the summer and then occasional weekends, and that's how we based the nitrogen."

Mr. Lafferty continued: "The issue of primary residence and the 24 weeks is strictly related to whether or not the owners of those homes will be sending children to the Oak Bluffs school system. So the basic premise is, nine of those homes will not contribute students to the Oak Bluffs school system. And how the mechanics of the legal aspects work out, I can leave that to Mr. Ward and Mr. Bobrowski. But that's the intent."

Ms. Sibley observed that she had seen at least 20 audience members walk out within the last half hour, "and I'm concerned that we allow some time for the public tonight. *[The time was 8:40 p.m.]* They may not have the same marathon stamina that we have, and some of them may not be able to come back tomorrow night. So I think we should go to the public." (Applause) The Hearing Officer agreed and said that the Staff Reports would be put off until the following evening.

Testimony from Public Officials.

Todd Rebello, Chairman of the Oak Bluffs Board of Selectmen, offered some observations drawn during the review of the first two Applications. After the Denial of the second Application, he said, he had seen three major concerns expressed by the Commission members: environmentalism; elitism; and open space. In addition, the Town had its own concerns about economic development.

Addressing the last issue first, Mr. Rebello related that Oak Bluffs had had an Economic Development Committee for the past year, "and I have to say that we've come across a lot of dead ends. And the Town Boards have looked at this [proposal] as an economic engine for Oak Bluffs. Outside of the Town of Oak Bluffs Harbor, which is one of our liveliest economic resources, we look at things like a potential \$350,000 a year for the Town of Oak Bluffs without services." He then spoke of the support for the project expressed by the Town Boards of Oak Bluffs.

Regarding the issue of environmentalism, Mr. Rebello described how the Selectmen had made the Applicant "jump through hoops" to get that aspect of the project right. For example, they had asked Mr. Kupersmith to move the four holes away from the Lagoon, and the Applicant had been willing to do that. The Selectmen had asked him to line the greens closest to the Lagoon, and he had been willing to do that as well. Also, the Commissioners' concerns about the beech trees and pitch pines had been addressed and would both be protected in the latest plan.

In addition, Mr. Rebello pointed to the Applicant's offer to handle not only his own project's wastewater with an on-site treatment plant, but also that of the Woodside Village complex and the Martha's Vineyard Arena.

As for the issue of open space, Mr. Rebello talked about the Selectmen's hopes of bringing together local and State agencies. "And we reached out again to the State level because we felt this issue was getting beyond our control," he said, "and that there were a lot of important issues and votes that were facing the whole community of Oak Bluffs and the Commission, and it was our attempt to reach out again to the Applicant and again to the Martha's Vineyard Commission. I think we've done that."

Mr. Rebello spoke about contiguous parcels of open space in the latest plan and how Mr. Kupersmith had been willing to offer to the public the prime property overlooking the Lagoon, which had the best views. "And we're asking him to walk away from a third of the profit," said Mr. Rebello.

Another important element of the new plan, Mr. Rebello went on, was the transfer of the Windfarm driving range into the public's hands. "Again, more open space, more public benefit," he said, "more benefit for the Town of Oak Bluffs, more benefit for the people on the Lagoon, more benefit from an Island aesthetics [view]point."

The last issue Mr. Rebello addressed was that of elitism. "And I have to agree, a private club in Oak Bluffs doesn't fit the mold or the identity of Oak Bluffs," he remarked. "I grew up in the sixties as a kid, as a teenager in the seventies. My father ..., I wanted to be a member of this local club - I won't identify it - and he told me, he said, 'We can't be a member there, because if my best friend, who's [inaudible] and my family doctor can't be a member there, we're not going to be a member there.' And I agreed, after listening to the two Hearings, that a private golf course is a stretch for Oak Bluffs."

It was for that reason, Mr. Rebello explained, that he was asking the Commission to impose a Condition on Mr. Kupersmith that would institute "a *real* Island membership, not an Island membership that we see that exists at another particular course on the Island today, but a real Island membership modeled after a successful Island membership at another local course in Oak Bluffs, where you can actually go out at the proper time and finish 18 holes of golf. Because that's what the public needs, a real public benefit, an opportunity to access that property on a consistent basis, not four or five o'clock in the afternoon ..."

Mr. Rebello appealed to the Commissioners to write a Condition that Island members could book their tee times three days in advance and have other privileges consistent with those of the other course in Oak Bluffs, so that "these memberships and these times [are] available to the public during all seasons, not just the shoulder season, but the prime season."

Mr. Rebello continued: "I further ask that this board – I ask this through the Chairman – request of Mr. Kupersmith a Condition that I know will come at great expense and ask him again to jump through an additional hoop, but taking into account the immense public benefit it would bring. And after hearing members of this board who voted for Denial and made mention over and over and over of how they would envision a public component to this golf course, because the word 'semiprivate' has worked very well for Oak Bluffs in another area of town."

Mr. Rebello reiterated some of the details of his request, for instance, the public's being able to request a tee time two days in advance, and emphasized that the public at large should be allowed to play any time of the day in any season. He also asked that the fees for the public be consistent with those of the other club in town. "I don't want there to be a \$300 greens fee for the public," he said.

Mr. Rebello concluded: "Again, I know that that request brings great public benefit at a huge cost to the developer because selling a private golf course to an equity member has a lot more attractiveness than selling something that's semiprivate. But if Mr. Kupersmith desires that this be in keeping with the identity of Oak Bluffs and how the people of Oak Bluffs feel, then Mr. Kupersmith should step forward and do what I hope he would do. I've pressed him for two month on this, I've been relentless, all right?"

There being no more testimony from Public Officials and Town Boards, Mr. Toole asked for testimony from members of the public who were not able to attend the session the following evening.

Testimony from Members of the Public.

Eric Shenholm of Oak Bluffs had a question about the \$10 million environmental insurance policy. "I have serious questions in my own mind about how a policy like that not only reads," he said, "but how effective it would be in the event that real damage is

done to any of the ponds or what is it protecting. And anybody who lives on this Island knows how far \$10 million goes. It doesn't go very far." When it came to cleaning up the environment, he added, that amount was "a drop in the bucket." (Applause)

Tim Dobel identified himself as a member of the Oak Bluffs School Board as well as of the Town's Economic Development Committee. "And I would just briefly echo Todd [Rebello]'s comments on how we've come up with a lot of dead ends in trying to find ways to generate revenue for our Town which we desperately need," he said. "There's been a lot of support for this project on that board [the EDC]."

However, Mr. Dobel continued, he took the view of a long-time School Committee member. The project, he said, was "a double-edged sword, potentially. In the affirmative, if it is passed, it will generate a lot of revenue dollars for our Town, and if not [inaudible], we can grab a few of those for the education of our children." If the project was denied, he noted, he lived in fear of some type of large housing project ending up on that land. Although it appeared that the Commission could review such project, even if it did review it, "something's going to happen there if it goes that way, and we'll end up with a lot more kids in the now-full Oak Bluffs School," he said.

Mr. Dobel related that he was also the Chair of the All-Island School Committee. "I believe in regional government, I have fought for regional government on this Island for a long time," he declared. He was afraid, he said, that another Denial of the project would "set regional government back many, many years." In a recent Town Meeting, he continued, "that Meeting overwhelmingly – overwhelmingly – voted to disassociate itself from this committee." (A number of audience members jeered.)

"It was just six votes!" shouted an audience member. "That wasn't the same meeting I was [at]," said Mr. Dobel. "It was an overwhelming vote to get out of the Martha's Vineyard Commission." (More jeering) The six-vote margin, he added, had been on the Land Bank vote. "I would suggest that if you didn't perceive that as an overwhelming vote, you weren't there," he declared.

Mr. Dobel then stressed that he had been the person who proposed the amendment to make the withdrawal from the Commission a two-vote process. "Because I believe in regional government," he said.

Mr. Dobel then spoke of the "wonderful proposal" before the Commission. "This is my neighborhood. I know this area," he remarked. He spoke of the numerous developments that had been proposed and built along Barnes and County Roads over the years that had not benefited the Town of Oak Bluffs. He suggested that perhaps some Commissioners were allowing their prejudice against golf color their viewpoint on this project.

Commenting on "the astounding proposal" just offered by Mr. Rebello, Mr. Dobel emphasized that the idea of a semiprivate club would be well received. At that point the Hearing Officer asked Mr. Dobel to "wrap it up. You've taken almost 10 minutes."

"This is important," said Mr. Dobel. "I think this is important. Would you just give me the courtesy of finishing?" He then spoke for a few minutes longer on Mr. Rebello's proposal, noting, "I hope that everybody heard that, because that's a big deal."

Mr. Dobel finished up by discounting the idea that there had been "backroom deals," and he pointed out that four of the five Selectmen in the Town of Oak Bluffs supported the Down Island Golf project. "We live in a representative democracy," he declared. "These are the key representatives of our Town ... I hope there will be a fifth. I hope that you will hear what they have to say. Vote in favor of this project." (Applause)

Janice Rose of Oak Bluffs requested that Mr. Kupersmith devise a lottery system for the 150 Island memberships "instead of just giving to whoever they felt like it." Referring to Mr. Dobel's statement about four of the five Selectmen supporting the project, she said, "The Selectmen have never, ever taken a poll or come to the people in the Town of Oak Bluffs and asked us what we wanted. Nobody has. Nobody that I know has gotten a phone call. There's so many mixed feelings. There's people for it. There's people against it."

The Selectmen, Ms. Rose stressed, were not working for the people because they had not asked the people. She did not care either way about golf, she added, she just wanted to protect the Island. (Applause)

Geri DeBettencourt of Oak Bluffs began by stating, "I was Oak Bluff's first Selectwoman back in 1972." She continued, "I'm really here to pay you people a compliment. I'm very, very happy with my Martha's Vineyard Commission. It takes me back to the days when Shirley Frisch and Herbie Hancock, when it first started, I was very, very proud. I'm proud of you people because I don't know how many people realize you don't get paid, and I see you go by, Richard [Toole], sometimes seven o'clock at night from a job and you're here at a Meeting tonight, and I'm very proud of you."

Ms. DeBettencourt concluded: "I also want to bring to your attention that back in 1948 Oak Bluffs was the first Town on the Island to adopt zoning, and you are doing the right thing, because they, our forefathers there, knew what they were doing. This is a beautiful, beautiful place, Martha's Vineyard, and they knew there would come a time when developers would come here and spoil it all. So, you do the right thing." (Applause)

Linda Marinelli of Oak Bluffs remarked that there had been a question in her mind for some time that she still had no answer to: "How in heaven's name can four Selectmen out of five sit down behind closed doors, make an agreement without coming first to *us*? Who put these people in office?"

Ms. Marinelli related that she had recently sent a letter to the Attorney General requesting his written opinion on this matter. "The very same Selectmen that are so anxious to

support the golf course should have done this a long time ago, Mr. Chairman, prior to *any* sit-down discussions with Mr. Kupersmith," she declared.

The Chairman of the Board of Selectman had spoken of reaching out, continued Ms. Marinelli. "My God, they never reached out to me," she said. "They never reached out to *any* of these people that are sitting here tonight. They reached out for the people who have the bucks and who were ... in their corner, so to speak, and behind closed doors. They did this thing that they did, and I'm very, very upset over it."

Ms. Marinelli went on that Mr. Rebello had also made the statement about what the people of Oak Bluffs "feel." "We certainly do feel," she said. "We feel that they have been traitors to us, they have made major, major decisions, Mr. Chairman." "No character assassination," warned the Hearing Officer.

According to *The New York Times*, related Ms. Marinelli, some lenders were stating that "golf courses are on the brink of freefall." She then read aloud from the newspaper article, where a former PGA Tour pro was quoted as saying that the growth of new courses had outpaced the growth of new golfers, resulting in fewer golfers per course. She quoted further from the article.

In closing, Ms. Marinelli said, the Land Court decision rendered by Judge Kilborn held that the Martha's Vineyard Commission did in fact have the power to review Chapter 40B projects. She concluded: "I believe that you, as a regional planning agency for the Island, could condition or reject 40B projects that came before you. And I commend you for not backing off with any threats. I have never in all of my life backed off on a threat from anyone. In fact, I dig in deeper, and I hope you do the same." (Applause)

Caroline Rheault of Oak Bluffs testified that she had written a letter to the Commission expressing surprise that the Commission could hold a Public Hearing on the Down Island Golf Club Application when it was not complete. In addition, she said, according to a recent article, the Land Bank's representatives was not ready to commit the agency to the land purchase that was so central to the latest proposal.

Nor had the Department of Environmental Management come to a decision, continued Ms. Rheault. "In fact, just yesterday I communicated with Mary Griffin of the DEM," she said. "She reported to me that she had not even received a Settlement Agreement."

"So you're making decisions on things which are really pivotal," Ms. Rheault declared. "You'll notice here on your map, that's the only way this golf course can get to the golf course is to get that land." What she would like to know, she stated, was what the fallback position was if the DEM or the Land Bank did not buy anything. (Applause)

Michael Kemly of Oak Bluffs stated, "I'm going to be a little innocuous here. I'm just here to speak on behalf of water." Water, he continued, was the miracle of chemistry and allowed all of us to live. "Fresh water is by far our most precious resource. Although our

freshwater supply from our sole source aquifer is abundant and renewable, it is not boundless nor infinite. We take out, Mother Nature puts in.”

Rain, Mr. Kemly continued, was the only source of recharge, and the statistics and estimates presented by the Applicant for the Commission’s review were just that – estimates. “Without a recharge of rainwater, our aquifer wells start going down. These statistical numbers that gauge our freshwater use and availability are tentative and speculative at best ... Again, I reiterate – no rain, no recharge.”

Mr. Kemly related that this summer 60 days had passed with no rainfall. “Are we as Islanders tempting fate, taking chances with estimates as to our availability of fresh water?” he asked. The Applicant had presented the estimate of 33 million gallons per year, he said, while in his Staff Notes, Water Resources Planner William Wilcox wrote of the recharge rates for the Lagoon and Sengekontacket watersheds. “Well, if you add these up, combined they add up to 85 million gallons per year in the Lagoon recharge. Subtract the 33 [million] they’re estimating – that leaves 49½ million for the rest of us. Thank you! Appreciate it!”

Mr. Kemly wondered how far people would push the limits of water usage from the Island’s finite sole source aquifer. “If we allow unfettered use of our freshwater sole source supply, we’re in fact tempting fate,” he declared. “We are allowing others the ability to destroy our most precious resource.”

As members of the Commission, Mr. Kemly concluded, they were obligated morally and ethically to protect this unique precious resource of the Island. “If you vote yes for this project, you will disregard your obligation to the principle charter of this Commission,” he said. “If you vote no on this project, you will be acting in accordance with the MV[C] charter and you will be upholding the public trust ...” (Applause)

David Cargill, an Oak Bluffs property owner, said that he had one question: How many acres would the 18 holes cover? “Just the 18 holes,” he emphasized. “Seventy-one,” answered Mr. Toole and others.

Mr. Cargill continued: “Right from the beginning I thought, ‘Gosh, golf is great, family members can play.’ We have three courses on the Vineyard [which measures] about a hundred square miles? My mind says, ‘What about all the non-golfers?’ I love golf. It’s a wonderful sport. I’ve also spent my life trying to find compromises. Maybe there’s a compromise – maybe two years ago is when I should have presented it – and that is to try to cut that space that’s used by the 18 holes. Cut down on nitrogen that’s going to different places. Cut down on the concerns about water.”

Mr. Cargill pointed out that the Baby Boomer population was aging, and he recounted how he had played on nine-hole, par-three golf courses where he had had a wonderful time. “And I think there are a lot of other people who would enjoy that,” he said, referring to the *New York Times* article quoted earlier by Ms. Marinelli.

"I wish that at least somebody could think about that," Mr. Cargill concluded. (Applause)

The Hearing Officer then recessed the Hearing until the following evening at 6:30 at the same location. A short break followed. The time was 9:12 p.m.

Discussion/Vote: Down Island Golf Club Applicant Request for Partial Fee Waiver.

James Vercruysse – a Commissioner at large from Aquinnah and the Commission's Chairman – took the gavel and reopened the Special Meeting at 9:19 p.m. DRI Coordinator Jennifer Rand reported on the Down Island Down Club Applicant's request for a partial fee waiver.

Chairman Vercruysse provided background on his discussions of this subject with Commission Counsel Eric Wodlinger and Acting Executive Director Irene M. Fyler. Mr. Wodlinger had indicated that a partial fee would be appropriate, the Chairman said, in light of the fact that there would be different aspects to the new plan and that it would not be entirely different from the two earlier Applications (DRI Nos. 515 and 543). The figure that Staff had recommended was \$11,250.

"In essence," Chairman Vercruysse concluded, "Counsel was talked to previously, and he recommended that a partial fee be charged. That's where it all came from, which we'd all forgotten about."

Mr. Best wondered, "Didn't we beat this one to death last week? And I make a **Motion That We Approve The Discounted Fee Schedule.**" [See pages 14 through 18 of the Full Commission Meeting Minutes of August 29, 2002.] Robert Zeltzer, a Commissioner at large from Chilmark, provided a Second.

Mr. Wey wanted to know if his concerns about legal fees being included in the schedule had been considered. Mr. Israel offered an **Amendment to Mr. Best's Motion: Approve The Discounted Fee Schedule (\$11,250), Plus Add In Any Expected Legal Fees Related To The Application Incurred During The Course Of The Hearing.** "Have we ever done this before and is this something we're going to continue to do?" asked Michael Donaroma, the Edgartown Selectmen's Appointee. A discussion ensued.

Ms. Sibley pointed out that Mr. Israel's suggested Amendment to the Motion would not have come up except that the Commission was considering waiving the full fee now and had waived entirely the fee for the second Application. "And I don't believe it was by Vote of the Commission," she added, "and so ... I'll vote for this Motion. I do think that a reasonable amount of the work of Counsel, the routine work of Counsel in giving us advice on process, should be included. We may want to cap it."

Ms. Ottens-Sargent expressed concern that former Executive Director Charles Clifford had waived completely the fee for the second Application at a time that the agency was so financially strapped. She also worried, as Mr. Donaroma had, that the Commission might be setting a precedent by accepting Mr. Israel's Amendment to the Motion. "When we start to micro-manage the fee structure to this extent, it could become problematic," she remarked.

Mr. Tristan pointed out that there was little danger of setting a precedent, since these were extraordinary circumstances. In addition, he could not imagine that legal advice of the nature he had in mind would amount to more than two or three thousand dollars. After more discussion and a clarification of Mr. Israel's proposed Amendment, **Mr. Best withdrew his Motion, and Mr. Zeltzer, his Second.**

More discussion ensued, at the end of which Mr. Zeltzer made a **Motion That The Commission Charge The Down Island Golf Club Applicant An Applications Fee Of Fifteen Thousand Dollars**, duly seconded by Mr. Israel. The Chairman conducted a Voice Vote on Mr. Zeltzer's Motion, which carried with 15 Ayes (J. Athearn; J. Best; C. Brown; M. Cini; J. Greene; T. Israel; C.M. Oglesby; A. Schweikert; L. Sibley; R. Toole; J. Vercruysse; K. Warner; R. Wey; A. Woodruff; and R. Zeltzer); two Nays (M. Donaroma and M. Ottens-Sargent); and none Abstaining.

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

Mr. Best made a **Motion To Approve The Written Decision For The Woodside Village IV Development Of Regional Impact Written Decision (No. 553)**, duly seconded by Ms. Greene. Acting Principal Planner William Venno conducted a Roll Call Vote, with the following results:

AYES: J. Best; C. Brown; M. Donaroma; J. Greene; M. Ottens-Sargent;
A. Schweikert; L. Sibley; R. Toole; J. Vercruysse; K. Warner; and
A. Woodruff.

NAYS: None.

ABSTAINING: None.

INELIGIBLE: J. Athearn; M. Cini; T. Israel; C.M. Oglesby; R. Wey; and
R. Zeltzer.

Mr. Best made a **Motion To Approve The Written Decision For The Woodside Village V Development Of Regional Impact Written Decision (No. 554)**, duly seconded by Ms. Greene. Acting Principal Planner William Venno conducted a Roll Call Vote, with the following results:

*Martha's Vineyard Commission
Special Meeting of September 4, 2002: Page 30*

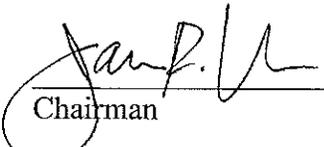
AYES: J. Best; C. Brown; M. Donaroma; J. Greene; M. Ottens-Sargent;
A. Schweikert; L. Sibley; R. Toole; J. Vercruysse; K. Warner; and
A. Woodruff.

NAYS: None.

ABSTAINING: None.

INELIGIBLE: J. Athearn; M. Cini; T. Israel; C.M. Oglesby; R. Wey; and
R. Zeltzer.

The Special Meeting adjourned at 9:35 p.m.



Chairman

10.24.02

Date



Clerk-Treasurer

11/1/02

Date

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

ABSENT: A. Bilzerian; E.P. Horne; J.P. Kelley; and R.L. Taylor.

*[These Minutes were prepared by Staff Secretary Pia Webster, using a tape recording of the
Special Meeting and an outline provided by Acting Principal Planner William Veno.]*