

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 12, 2002

The Martha's Vineyard Commission (the MVC or the Commission) held a Special Meeting on Thursday, September 12, 2002, at 7:30 p.m. in the conference room at the Commission Offices in the Olde Stone Building, 33 New York Avenue, Oak Bluffs, Massachusetts.

At 7:36 p.m., a quorum being present, James R. Vercruysse – a Commissioner at large from Aquinnah and the MVC Chairman – called the Special Meeting to order. *[Commission members present at the gavel were: J. Athearn; J. Best; C. Brown; M. Cini; M. Donaroma; J. Greene; T. Israel; A. Schweikert; R. Toole; J. Vercruysse; K. Warner; R. Wey; A. Woodruff; and R. Zeltzer.]*

Immediately the question arose of whether or not the Commission would vote that evening on the **Fairwinds Chapter 40B Subdivision in Tisbury (DRI No. 548)**. Acting Principal Planner William G. Veno explained that two Commission members who were eligible to vote on the project were unable to attend the Special Meeting that evening and had requested that the Oral Vote be taken up in the next Full Commission Meeting.

Report/Discussion/Vote: Transportation Improvement Program.

Chairman Vercruysse related that since the Commission Chairman was a signatory to the Transportation Improvement Program (TIP) papers, the Commission were required to vote on the document. *[See the Full Commission Meeting File of September 12, 2002 (the meeting file) for a copy of the TIP as well as a summary of the figures for the program.]*

Jane A. Greene, the Chilmark Selectmen's Appointee, disclosed that she had not been aware prior to this that the Maysie's Way Extension would be listed on the program. *[See page 6 of the TIP, "Section I, Federally Funded Projects: Fiscal Year 2003.]* "And I have to [inaudible] over those lands. I do not know who is on this list. If people want me to step down, I will," stated Ms. Greene.

Ms. Greene elaborated that the road would be on land owned by the Housing Authority for the Wampanoag Tribe of Gay Head (Aquinnah), where she was employed.

The Chairman inquired if Ms. Greene had a financial interest in the land. "Well, I would be, only for more housing development," she replied, adding, "I don't know what I should do." Transportation Planner David Wessling related that he did not believe this would be a problem and that he would make it clear why that was so in his report.

Mr. Wessling reported that the Joint Transportation Committee (JTC) had met the week before and had voted to endorse the TIP as well as the Work Program. He explained what the TIP was, then referred to page 6 of the TIP and went over its highlights. He pointed out that the Maylies Way Extension project was not one of the projects using target authority and that the money came directly from the Federal Government to the State. "So, Jennie [Greene], I think you're all set," he said.

If the Commission chose to endorse the TIP, Mr. Wessling continued, then the projects would go on a State-wide list, and the State would determine which projects received the available funding. He reminded the Commissioners that to make the TIP funding work, the Towns had to work with the Massachusetts Highway Department (MassHighway) to get through "all the bureaucratic red tape." "And the Towns are in the process of doing that now," he noted.

Chairman Vercruyse wanted to know when it would be known which projects were being funded. "I think by the end of the month," answered Mr. Wessling.

Ms. Greene made a **Motion That The Commission Endorse The Final Draft Of The Transportation Improvement Program And The Final Draft Of The Unified Planning Work Program**. Michael Donaroma, the Edgartown Selectmen's Appointee, provided a Second.

Mr. Wessling spoke briefly about the nature of the Work Program. Tristan Israel, the Tisbury Selectmen's Appointee, asked if the Commission was only considering the items on page 6 of the TIP. Mr. Wessling explained how the projects were lined up, with the ones on page 6 being the ones that were ready to go. So was the Commission being asked that evening to endorse just the 2003 projects? wondered Mr. Israel. "No, the entire list for the years 2003 to 2007," answered Mr. Wessling.

Mr. Israel, who is a Tisbury Selectman, noted that the Department of Public Works in his Town was a separate entity from Town Hall. He wanted to know about the project listed on page 8 of the TIP, "Part IA: Projects Using Target Authority," "Tourist District Enhancement, Tisbury." "Well, you can be reassured that Fred LaPiana recommended that project," responded Mr. Wessling, referring to the DPW Superintendent. Mr.

Wessling added that the project dealt with the area around the Steamship Authority terminal.

Kate Warner, the West Tisbury Selectmen's Appointee, requested that Mr. Wessling change the word "Colony" to "County" on page 11 of the TIP in the paragraph "... State Road (Vineyard Haven Road) and Old Colony Road ..."

Christina Brown, a Commissioner at large from Edgartown, wanted to know whether some adjustment could be made to the lists once the Commission had voted to endorse the Final Draft of the TIP. Mr. Wessling indicated that this was covered in the appendix to the document, and he explained how a project that was in the third tier, for instance, could be moved up to the first tier.

Andrew Woodruff, a Commissioner at large from West Tisbury, asked if the figure of \$308,891 on page 6 was the total amount that would be spent on Island roads in 2003. Mr. Wessling explained the difference between the target figure (\$204,891) and the final figure (\$308,891).

Mr. Israel inquired if the Town of Edgartown, which had no projects listed for 2005, could get a project listed for that period. Mr. Wessling replied that the document was redone every year.

Ms. Brown asked about the status of the Eastville bike path, which have been discussed in 2001, the last time the Commission had voted to endorse a TIP. Mr. Wessling replied that the Eastville bike path had been put off until 2004. More discussion ensued about the TIP process.

By Voice Vote, Ms. Greene's Motion carried unanimously, with 14 Ayes, no Nays and none Abstaining.

Approval of Meeting Minutes.

Mr. Israel made a **Motion To Approve The Full Commission Meeting Minutes Of August Twenty-Second Two Thousand Two**, duly seconded by Ms. Brown. Mr. Veno summarized the Agenda items addressed by the Commission during that Meeting. Said Motion carried by Voice Vote, with 11 Ayes, no Nays and Chairman Vercruyssen, Ms. Cini and Ms. Greene Abstaining.

Discussion/Vote: Reconsideration of the Application Fee for the Down Island Golf Club Three Applicant (DRI No. 556).

Chairman Vercruyssen referred to the discussion the previous week on the partial fee waiver for the Down Island Golf Club Three Applicant. *[See pages 28-29 of the Full Commission Meeting Minutes of September 4, 2002.]* Following the September 4

Hearing session, he continued, he had had a conversation with the Applicant and his counsel, wherein the Applicant had demanded that the Chairman justify the \$15,000 figure that had been voted.

The following day, Chairman Vercruysse continued, he had spoken with Commission Counsel Eric W. Wodlinger about legal fees. (An additional \$3,750 for the figure proposed by Staff had been approved by the full Commission on September 4. [*Ibid.*, page 29.] Mr. Wodlinger had indicated that typically Staff needed to consult with counsel for about two hours during the course of a DRI review. The Chairman noted that two hours of Counsel's time would certainly not cost \$3,750. "And I'd like to revisit that," he added.

Ms. Greene made a **Motion To Reconsider The Vote Of September Fourth And To Address The Issue Of The Partial Waiver Of The Fee For The Down Island Golf Club Three Applicant.** Mr. Donaroma provided a Second.

Mr. Donaroma recalled that Counsel had advised the Commission in the past that the Application fee should realistically reflect the agency's actual costs. So the figure, he said, should be \$11,750, which was what Staff had recommended. [*Ibid.*, page 28. *The figure recommended by Staff had been \$11,250.*]

By Hand Vote, Ms. Greene's Motion carried, with 11 Ayes (J. Athearn; J. Best; C. Brown; M. Cini; M. Donaroma; J. Greene; A. Schweikert; J. Vercruysse; K. Warner; A. Woodruff; and R. Zeltzer), three Nays (T. Israel; R. Toole; and R. Wey) and none Abstaining.

Robert Zeltzer, a Commissioner at large from Chilmark, made a **Motion That The Commission Charge The Down Island Golf Club Three Applicant The Figure Recommended By Commission Staff, Which Was Eleven Thousand Two Hundred Fifty Dollars And Which Would Cover Staff Time, Plus An Additional Five Hundred Dollars For The Anticipated Expense Of Getting Legal Guidance, Coming To A Total Of Eleven Thousand Seven Hundred Fifty Dollars.** Marcia Mulford Cini, a Commissioner at large from Tisbury, provided a Second.

Mr. Israel argued against the Motion, pointing to the degree to which the Commission had accommodated this Applicant and the fact that the \$15,000 fee voted previously would not be burdensome to this Applicant. He also cautioned the members that if they approved the Motion, they would have to be careful to apply the same standards to all other DRI Applicants.

"We're not entitled to charge any more than it costs," stressed Ms. Cini. Richard Toole, a Commissioner at large from Oak Bluffs, remarked that it was his impression that the Application fee was supposed to be paid before the Public Hearing commenced. "I don't care what we charge, but I want to **add to the Motion That We Will Not Hold The**

October Tenth Hearing Unless Whatever We Decide On Is Paid.” Mr. Zeltzer accepted Mr. Toole’s Amendment, as did Ms. Cini.

John Best, a Commissioner at large from Tisbury, argued that the phrase “subject to legal opinion” should be added to the Motion, since he thought that Mr. Toole’s suggestion was not something that was applied to all Applicants. A discussion followed about whether other Applicants had been allowed to have their Public Hearing begin before the full Application fee had been paid.

Mr. Donaroma suggested that the decision about when the Applicant fee had to be paid be left up to the Land Use Planning Committee Chairman, Mr. Toole. Chairman Vercruysse mentioned that the Applicant was not averse to paying a fee *per se*. Ms. Brown expressed disagreement with Mr. Israel’s concerns about setting a precedent, pointing to the unusual nature of the Application in question. The Chairman reminded the members that the Commission’s own *Regulations* addressed the issue of when the fee had to be paid.

Ms. Greene related that in the past a few Applicants had requested either waivers or reductions in the fee and had been granted them.

Mr. Israel argued that going from around \$30,000 (the amount for the fee if the usual formula was applied) down to \$15,000 was being more than accommodating. He spoke as well of three or four other Applicants who had repeatedly returned to the Commission with modified proposals, tying up the time of Commissioners and Staff. Lastly, he recommended that the Commission look at the whole issue of “repetitive Applications.”

“I think you’re wandering all over the issues here,” observed Alan Schweikert, the Oak Bluffs Selectmen’s Appointee. “It’s already agreed that we take these on a case-by-case basis... I mean, if something comes up, you deal with it. And if it’s taking a lot of time – whatever the time the Staff says it is and what Eric [Wodlinger] says the legal cost is – it is what it is. And that’s what we’re supposed to charge.” Mr. Schweikert then encouraged the Commissioners to listen to Staff’s recommendation on this matter.

By Voice Vote, Mr. Zeltzer’s Motion carried, with 13 Ayes (J. Athearn; J. Best; C. Brown; M. Cini; M. Donaroma; J. Greene; A. Schweikert; R. Toole; J. Vercruysse; K. Warner; R. Wey; A. Woodruff; and R. Zeltzer), one Nay (T. Israel) and none Abstaining.

Reports.

Providing the **Chairman’s Report**, Mr. Vercruysse described the Public Hearing that day by a joint committee of the State Legislature regarding the possible withdrawal of Oak Bluffs from the Commission. “There were a lot of people there, and there was a lot of emotion, as you can imagine,” he remarked, also mentioning that there appeared to be “a lot of support for the Commission there and the job that we do.”

Ms. Warner clarified with the Chairman that the next step in the withdrawal process was a recommendation by the subcommittee on whether or not the Home Rule Petition should proceed, and if they voted to proceed, the step after that would be a Ballot Vote in the Town.

Chairman Vercruysse reported that the **Executive Committee** had met on September 10, when they had discussed the partial fee waiver just addressed and **some conditions of employment requested by recently hired Executive Director Mark London**. Regarding the latter, the Chairman said that the committee had turned down Mr. London's request for moving expenses due to lack of funds. Mr. London's second condition related to any possible job termination in the future, and local Commission Counsel Ron Rappaport would work on the language for that, said the Chairman.

Mr. Donaroma reported that the Executive Committee had also discussed some kind of signed agreement that would prevent Mr. London from simply quitting without adequate notice. Responding to a question from Ms. Warner, the Chairman said that he believed Mr. London would start on October 7.

In addition, Chairman Vercruysse continued, the Executive Committee had discussed the **charitable trust being set up for the Commission**. Commission Counsel Eric Wodlinger had asked the committee to answer some questions, for instance, how much they expected to be donated in the course of a year. Ms. Cini, who is an attorney, explained that there were fund-raising thresholds which, when met, triggered certain Internal Revenue Service filings. She mentioned that the Pro Bono Committee at Mr. Wodlinger's firm, Choate, Hall & Stewart, had agreed to take on the legal work required to establish the trust.

Mr. Zeltzer praised the efforts and capabilities of Mr. Wodlinger on behalf of the Commission, and he wondered if they could entertain a **Motion To Send Mr. Wodlinger A Letter Of Thanks From The Entire Commission For His Tremendous Contribution To The MVC**. Ms. Greene seconded the Motion and requested that it be amended to include **That The Letter Was To Be Copied To The Firm's Partners**. Mr. Zeltzer accepted said Amendment.

By Voice Vote, Mr. Zeltzer's Motion carried unanimously. Mr. Zeltzer added that the word "advocacy" should be key in the letter. Ms. Brown remarked that Mr. Wodlinger went beyond the usual level of advocacy practiced by an attorney for his client.

Ms. Cini, Chair of the **Finance Committee**, reported that basically they were trying "to live within our budget, and that has implications for our new Director, our Staff, for all the other choices that we make." Chairman Vercruysse mentioned that the **front porch** needed major repairs and was off-limits and that he and Mr. Toole were working on how to put in an alternate wheelchair ramp to enter the offices by the back door.

Ms. Cini also reported that today was the expiration date for the MVC's lease on their **parking lot** and that she was negotiating with the owner for an extension of three months while the Finance Committee looked at whether it made more economic sense to purchase it. She had requested the extension, she explained, so that the new Executive Director could decide what course they would take.

Mr. Schweikert asked if the parking lot was buildable. "Yes, it is," replied Ms. Cini. "So it'll have some pretty high value?" wondered Mr. Schweikert. "Well, yes, they've commissioned an appraisal and they also have operating expenses," said Ms. Cini.

Responding to a question from County Commission representative Roger Wey, Ms. Cini related that the parking lot was owned by Olde Stone Realty Trust, the same trust that had sold the Commission its office building five years earlier. Mr. Israel wanted to know if there could be some parking in front of the Olde Stone Building. "We put the septic system there," answered Chairman Vercruysse.

Ms. Brown reported on the meeting of the **Land Use Planning Committee** on September 9, which had been attended by three Commission members. Because of the small size of the group, the committee had decided to forego issuing any recommendations for the **Fairwinds Chapter 40B Application (DRI No. 548)** or the **Gervais-Goldsborough Fueling Center (DRI No. 489-2)**. The time was 8:17 p.m.

Special LUPC Report/Session: Fairwinds Chapter 40B Application (DRI No. 548).

[Ms. Cini and Ms. Warner, neither of them eligible to vote on the Fairwinds Application, left the Meeting at 8:18 p.m. and 8:23 p.m., respectively.]

Ms. Brown, who had chaired the September 9 LUPC meeting, referred the members to a list in their packets of proposed Conditions for the Fairwinds Chapter 40B Subdivision Application (DRI No. 548) that had been prepared by DRI Coordinator Jennifer Rand. There was also a final memorandum from the partners of JE&T Construction, the Applicant, responding to Commissioner and public queries, she said.

Ms. Brown related that the LUPC had tried to evaluate the Fairwinds project in terms of regional issues, in particular, the availability of affordable housing, traffic and the protection of water resources. She referred the members to the Staff Report by Water Resources Planner William Wilcox, summarizing Mr. Wilcox's conclusion that with 16 units and the advanced wastewater treatment systems, the project would come in under the nitrogen-loading limit for Tashmoo Pond.

Mr. Toole took over as LUPC Chairman and asked if the committee wished to make a recommendation. Mr. Zeltzer remarked that part of the consideration in making the Decision should be Vineyard values and intact neighborhoods. "I think the Applicant has

shown great sensitivity," he said, "to the concern of the neighbors and our concerns about preserving neighborhoods and the values of neighborhoods."

At this point Chairman Vercruyssen suggested that the full Commission go into a Special Session of the LUPC. Mr. Best made such a Motion, duly seconded, and by Voice Vote the Motion carried. *[At this point (8:26 p.m.), Messrs. Donaroma and Schweikert and Ms. Greene, none of whom were eligible to vote on the Fairwinds DRI, left the meeting room.]*

Mr. Israel clarified with Mr. Toole that the LUPC would simply be working on a recommendation and that the Commission would not take an Oral Vote on the Fairwinds project that evening.

Mr. Best suggested that one Condition should be that the Applicant had to obtain the right of way on the Neel property at the strip running up between that property and Greenwood Avenue Extension. Mr. Israel requested that the regional issues mentioned by Ms. Brown and Mr. Zeltzer be included in their shaping of the recommendation.

Responding to a query from Ms. Brown, Mr. Wilcox explained that the projected nitrogen-loading numbers for the subdivision had come out to be "a little bit above the highest-rating loading limit and considerably below the next water-quality rating down from the highest rating." The loading, he said, would be somewhere around 9.8 kilograms per acre, the highest water-quality rating limit was 5.7 kilogram per acre, and the next rating down was 17.2.

Ms. Brown wondered if the latest proposal had addressed the issue of stormwater runoff in light of the new contouring of the site. Mr. Best related that he and two other Commissioners had discussed this with Mr. Wilcox, and all had agreed that it would be wise to impose a Condition requiring the paving of the main road since the terrain was so irregular.

Mr. Best explained that paving would also allow the capture of road runoff in catch basins. Another option that had been discussed was the channeling of road runoff into the ground. A final consideration, said Mr. Best, was that a dirt road would present an unknown as far as maintenance issues were concerned.

Mr. Woodruff remarked on the many unpaved roads in Chilmark and said that he was not a "proponent of excess pavement" and that the soils on the site drained well. Chairman Vercruyssen agreed with Mr. Woodruff. Mr. Zeltzer related how the maintenance of a dirt road could be considerable, citing the example of the recent washout of his own road. It would not be fair, he pointed out, to burden the moderate-income residents with this kind of financial exposure.

James Athearn, a Commissioner at large from Edgartown, argued that he was a "strong proponent of country values," but that over the years he had "come to the very firm conclusion that you can't have a country road in the suburbs, even. [With cars bumping up and down that road, I'm sure it would be a mess all the time." Mr. Best said that he would generally agree with Mr. Woodruff about Up-Island roads but that those Towns had two-to-three-acre zoning. He explained his thinking about this issue, emphasizing that Mr. Wilcox had more expertise on this matter than the Town did.

Mr. Israel said that what he was hearing was that it might not be a good idea to have a dirt road because of the density of the project. Mr. Toole asked Mr. Wilcox to comment on this issue. Mr. Wilcox related that the original proposal had been for a rap- or gravel-type surface. "They perform pretty well up to a point," he said. At a 10 percent slope, he continued, that surface began to have a problem with erosion. "They can become problematic with wash-boarding, if people drive too fast on them, which is the tendency, I think," noted Mr. Wilcox, "so there would be a maintenance issue associated with them."

Whether the road surface was paved or gravel, Mr. Wilcox added, shoots could be constructed that would run the water off to the sides and down into vegetation at the side of the road. "I think that's the best alternative because it takes the nitrogen out of the rainwater," he explained, "which is a moderate source." He pointed out that there were perhaps locations where this could not be done, for instance, at a driveway, and in a case like that a catch basin would be needed.

Ms. Brown made a **Motion To Recommend Approval Of The Fairwinds Chapter 40B Subdivision with Conditions**, duly seconded by Chairman Vercruysse. Mr. Athearn made a **Motion That The Commission Include A Condition Requiring That The Main Road Through The Subdivision Be Paved And That All Runoff Be Kept On Site In The Manner Described By Mr. Wilcox Where Possible**, duly seconded. By Voice Vote, said Motion carried, with seven Ayes (J. Athearn; J. Best; C. Brown; R. Toole; J. Vercruysse; R. Wey; and R. Zeltzer), one Nay (A. Woodruff) and one Abstaining (T. Israel).

Mr. Best wondered if the LUPC should continued with a discussion of Conditions or address instead the regional issues that bore on this development. Mr. Toole suggested taking a Straw Vote on that question.

Mr. Israel commended the Applicant for reducing the number of units from 24 to 16. However, he said, he had to look at the project as if the number had always been 16 and judge it on that basis. "I feel the project is too dense," he remarked. His own opinion was that an acceptable level of density on the site could be achieved with 12 units.

Mr. Woodruff said that he agreed with Mr. Israel "for the most part." Having revisited the site earlier in the day, he had come away thinking that the density issue militated

against Approval. In spite of the plantings proposed by the Applicant, he argued, the development would nonetheless clear-cut the property and produce a "very, very suburban" subdivision.

Ms. Brown observed that in all her years on the Commission, she had never had to weigh the benefits and detriments of a project so carefully. In view of the significance of the benefit of affordable housing, she said, she was willing to work further on some of the details to mitigate the density issue. She pointed out further that this was an in-town site and that the area was in fact occupied already with small lots and small houses.

Mr. Zeltzer described how he had done some research and had concluded that "importing houses" prefabricated was not a negative.

Mr. Best pointed out that as one reduced density, one also reduced the number of affordable units. He viewed Chapter 40B as the State's allowing greater density in order to provide the benefit of affordable housing. "And I keep thinking we're not getting the most creative solutions that we could," he remarked. For one thing, he recommended that multiple-unit housing and clustering be considered, so that the challenging terrain could be dealt with more effectively. Offering badly needed rental units would also be a positive, he added.

Mr. Athearn argued against the density of the development and commented that whatever affordable housing was provided "would be at too great a cost to the community." In addition, various Island groups working on affordable housing were concentrating on converting existing housing to affordable units whenever possible rather than clear-cutting a section of woods to create new houses. The building of additional houses had to stop at some point, Mr. Athearn said.

Mr. Zeltzer expressed agreement with Mr. Best's views on clustering and rental units. Regarding Mr. Athearn's comments on not building more houses, Mr. Zeltzer observed that one could not simply decide not to build more houses, since the population was moving in a particular direction. Ms. Brown noted that although having multi-units and rentals would be a benefit, this was not a rental neighborhood, nor was it a multi-unit neighborhood.

Mr. Israel stressed the degree of opposition to the project voiced by the neighbors. Mr. Woodruff spoke of the South Mountain Co-Housing Project in West Tisbury, where the issues of density and the preservation of existing trees had been addressed effectively. He said that he would have liked to have seen the Applicant offer, for instance, to flag the trees and vegetation zones that would be preserved since the original plan had been presented.

Mr. Toole inquired of the members where they thought the discussion was headed. In addition, the members talked briefly about whether or not they would go into special

LUPC session that evening to discuss the Down Island Golf Club Three Application (DRI No. 556), since some members of the Applicant's team were present. Mr. Veno related that the Thursday before, at the end of the second session of the Down Island Three Public Hearing, the Commission had decided to begin special LUPC sessions within Full Commission Meetings to begin work on formulating Conditions for the final Decision.

Mr. Wey wondered how the Commission could consider the Down Island Golf Application in LUPC session before the Public Hearing was closed. Mr. Zeltzer provided some of the reasoning behind beginning the review at this point. Mr. Toole explained that they were reviewing the Fairwinds Subdivision Application in special LUPC session because attendance at the LUPC meeting the preceding Monday had been sparse.

Tom Richardson, one of the Fairwinds Subdivision partners, asked for permission to speak. Having been granted that, he pointed out that the landscaping plan for the subdivision was, in fact, complete and had been submitted. He stressed that the Applicant had tried to retain as much of the native vegetation on the site as possible.

The discussion returned to the density issue, then moved on to traffic. A Straw Vote by Voice was conducted on Ms. Brown's Motion, which did not carry. The tally was three Ayes (C. Brown; R. Toole; and J. Verduyze), four Nays (J. Athearn; J. Best; T. Israel; A. Woodruff; and R. Zeltzer) and two Abstaining (R. Wey; and R. Zeltzer).

The members then discussed the Commission's extended schedule, with Mr. Veno filling them in on the deadlines for the deliberations on the open DRIs. Mr. Israel had two suggestions: a) to report at the next Full Commission Meeting that a Motion to recommend Approval of the Fairwinds Subdivision with Conditions had failed; and b) to ask Staff to ensure that DRIs other than the Down Island Golf Club project were being handled in a timely manner.

After verifying the tally for the last Vote, Mr. Best remarked that he did not believe the result was conclusive enough to merit a recommendation from the LUPC to the full Commission.

Mr. Toole called for a short recess. The time was 9:19 p.m.

Special LUPC Session: Down Island Golf Club Three (DRI No. 556).

At 9:29 p.m., Mr. Toole reopened the Special Meeting. *[Ms. Greene had returned to the meeting room. Mr. Wey left at this point. Those remaining at the table were: J. Athearn; J. Best; C. Brown; J. Greene; T. Israel; R. Toole; J. Verduyze; A. Woodruff; and R. Zeltzer.]*

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Mr. Zeltzer apologized to the members for having to leave the Special Meeting early, and he requested that he be permitted to make a statement before his departure. *[He left at 9:36 p.m.]*

Mr. Zeltzer related that after the Special Meeting on Thursday, September 5, he had felt like writing a letter of resignation, "and I'm not yet sure why I didn't." During the first two Hearings sessions, he said, he had heard one of two things, either people getting up and attacking the Applicant and the Oak Bluffs Board of Selectmen or a member of the public testifying as to why he wanted to join the golf club. "We haven't heard anything new about the impact on the environment, about the impact on the character of the Island," he declared.

Furthermore, Mr. Zeltzer continued, he had heard other Commissioners using the process to defeat something by drawing it out. Mr. Woodruff interjected that a third Hearing session had already been scheduled for October 10 some time before. "I know," responded Mr. Zeltzer, "but the point of the matter is, we attempted to bring this to some kind of conclusion, so that we could spend the time in deliberation."

Mr. Zeltzer requested that Staff draw up Conditions for the development before the deliberations began. Commissioners with questions or concerns should speak to Staff promptly so as not to waste time while deliberating. He added, "I think that the need for another Public Hearing on the 10th is an embarrassment."

Ms. Greene asked that one of the Conditions to be considered should be to accept the offer of the Applicant to allow quasi-public play at the golf course. She pointed out that the Farm Neck Golf Club had been approved by the MVC. "One of the Conditions was that it become public," she stated, adding, "I think we should go back and look at those Conditions and then build from there on that aspect of this."

Mr. Best said that he did not believe that the Commission had heard the Farm Neck proposal. "Yes, we did," replied Ms. Greene.

[Mr. Zeltzer left the Meeting at this point, as did Ms. Greene. Thus, the Commissioners left at the table were: J. Athearn; J. Best; C. Brown; T. Israel; R. Toole; J. Vercruyse; and A. Woodruff.]

Regarding Mr. Zeltzer's comments, Mr. Israel argued that no one wanted to drag out the DRI review process. "But I had a real problem at the last Meeting with a proposal, you know, by the Applicant which was kind of ... 'You do this by then, and we'll do this,' you know, and that threw the whole Meeting from where I'm sitting into some kind of chaos, and ... I don't work with a gun to my head very well."

Mr. Israel pointed out that the opponents and proponents both needed time to testify, and he reiterated his view that no one was attempting to draw out the process.

Turning to the subject of the Applicant's offer for quasi-public play, Mr. Israel stated that Brian Lafferty, a member of the Applicant's team, had offered "a public component," which Mr. Israel did not take to mean that Down Island Golf Club would be a public golf course. Nor was Farm Neck a public golf course, he said. The Down Island Golf Club would be "a private golf course with an offer on the table of [a] possible public component," he emphasized. *[See page 32 of the Full Commission Meeting Minutes of September 5, 2002 for an account of the Applicant's offer.]*

Mr. Athearn also wished to respond to Mr. Zeltzer's comments. "I feel he's entitled to his opinion about what the timing of the Public Hearing process should be," he remarked, "but I don't think he has any right to accuse the others who hold a different opinion about that process of unethical motives. I think he's wrong."

Mr. Best observed, "I certainly felt that the request to close the Hearing [on] the fifth – only moments after coming in with totally new terms – was completely inappropriate for this body, because the public had never ever heard some of those terms. I, for one, have questions about those things. I have a lot of questions that I haven't had answered and felt that up to this point we had deferred to both the proponents and the opponents, [and the] summarizing of the plan, all that in two Hearings without virtually any comment by us."

Mr. Best remarked further that it would not be fair to the proponents for him to come in on October 10 with his questions about the proposal. A more useful approach, he said, would be to spend time in LUPC discussions and for the Commission and the public to pose questions to Staff and the Applicant so that those parties would be prepared to answer them on October 10.

Mr. Lafferty, who was seated in the audience section, stated that the Applicant would be happy to answer any questions about the proposal. Mr. Best replied that foremost on his mind was the offer by the Applicant on September 5 to include some sort of public aspect to the club. He said he also wanted to confirm that what Ms. Greene had said about the Farm Neck Golf Club was true. Ms. Brown agreed that she too wanted to know specifically what the Applicant's offer was with regard to public play. Mr. Best also wondered how that public aspect of the Application would be enforced.

Mr. Israel reiterated his concerns about the vagueness of the Applicant's offer of public play. Moreover, if the Applicant were to make a specific offer in that regard, Mr. Israel stressed, then he should put that on the table without any strings attached, for instance, without offering it so long as the Commission voted on the proposal by a particular date.

Mr. Athearn suggested ways that documentary evidence of public play could be produced. Mr. Best pointed out that one could prove the club was allowing public play

very simply; what one could not prove easily was if the Applicant was not doing what he had agreed to do.

Chairman Vercruysse suggested that the Commission move on to the materials that had been prepared by **Water Resources Planner William M. Wilcox**. Mr. Wilcox referred the members to two documents he had compiled: "Summary of Facts and Figures: DIGC DRI 556 (Remand Plan as modified by recent submissions), Staff Notes: W. Wilcox 9/4/02" and "DRI 556: Possible Conditions for Discussion: Based on Redraft #5: W. Wilcox – September 2002." [See the meeting file for copies. The former document will hereinafter be referred to as the "Facts and Figures," and the latter one as "Conditions Set 1."]

The Commissioners took up Condition 1 of Conditions Set 1, which read, "The leaching loss rate of nitrogen applied as fertilizer shall be no more than 9.89 percent on average across the fertilized turf." Mr. Wilcox remarked, "I think it's in the ballpark of what would be expected for turf applications where it's carefully applied in small amount. It is possible."

Were Mr. Wilcox's other calculations based on this leaching rate? asked Mr. Israel. Mr. Wilcox answered yes. He explained that the Applicant had come up with an annual fertilization program of about 10,000 pounds for the 71 acres of managed turf. By applying the leaching rate, one arrived at an annual nitrogen load to the groundwater of around 1,000 pounds.

Would that leaching rate be verified by the lysimeters? Chairman Vercruysse wanted to know. "Yes, I think that's the only safe way to determine that," replied Mr. Wilcox.

Mr. Wilcox turned to Condition 2: "Nitrogen application rates shall be as outlined in 9/4/02 Spreadsheet 9 titled Nitrogen Application Rate to Turf." Mr. Wilcox noted that the application rates were the same as those in the Remand Plan tables, and when multiplied by the acreage of managed turf types and adding them all up, it came out to about 3.24 pounds of nitrogen per 1,000 square feet per year.

Was Mr. Wilcox referring to only the managed turf or to the entire site? wondered Mr. Athearn. "The whole 71 acres of managed turf," responded Mr. Wilcox, adding, "That would be the tees, greens, fairways and primary rough."

Ms. Brown requested that Mr. Wilcox show the specific areas that would be fertilized and what kinds of chemicals would be applied to the different turf types. Mr. Wilcox answered that the tees and greens would be primarily bentgrass, and their combined acreage would come to around 7.7 acres. The fairways, which measured about 25 acres, would also have bentgrass, and the primary rough would be a mix of Kentucky blue grass and fescue. The latter area, including the practice range, would measure about 38.3 acres, he said.

Mr. Wilcox described the additional acreage, called the secondary rough, of edges and margins of the primary rough that would be covered with native grasses, specifically, hard fescue and little bluestem. What was outside the secondary rough? Ms. Brown wanted to know. The secondary rough would measure about 17 acres, said Mr. Wilcox, and then that would transition into the natural vegetative setting of plants like huckleberry and oak, primarily.

Mr. Athearn said that he had thought that the final design of the fairways had not been set. How, then, did Mr. Wilcox know what many acres of fairways there would be? he asked. "I'm taking their numbers," replied Mr. Wilcox, "and assuming that that's going to be the way it will end up being." He mentioned that in the case of the Vineyard Golf Club (DRI No. 484), the Commission had conditioned a requirement for aerial photography that would confirm the different disturbed and undisturbed areas.

Mr. Wilcox added that the Commission had not received those photographs yet because the secondary rough had not grown in enough to be differentiated easily in an aerial photograph. He then suggested that the Commission impose a similar Condition on the Application before them.

Responding to the second part of Ms. Brown's question, Mr. Wilcox explained that the fertilization rate would be different for each of the types of managed turf. He referred to the bottom of page 1 of the Facts and Figures document, where those rates were listed, and noted that the 10,000-pounds-per-year figure would be from the third year of growth onward.

Ms. Brown wondered if all this information had been submitted by the Applicant and whether it was easily available for anyone to look at. "Well, certainly to a certain extent it would be in the Remand document," responded Mr. Wilcox. "I've received ... digital e-mail spreadsheets [for] the information that I'm quoting now." The acreage for the third Application, he noted, was just about the same – perhaps exactly the same – as the acreage in the Remand Plan. What had changed had been the watershed divide numbers, revised when some of the holes had been moved over to the Sengekontacket Pond watershed.

Returning to the Condition Set 1 document, Mr. Wilcox pointed out that the lines that were crossed out represented material from the Remand Plan Conditions that was not being included in the latest Application.

Mr. Wilcox moved on to Condition 3, which read: "The nitrogen loads calculated shall not exceed the values for each pond and the site as a whole as indicated in 9/4/02 Spreadsheets 10, 11 and 12. In calculating the loads, the recharge rate of 27.85 inches per year shall be used as outlined in Spreadsheets 4 and 5 in 9/4/02 spreadsheet."

For instance, Mr. Wilcox said, for the Lagoon-side watershed, the post-project load would be 467.3 pounds on an annual basis, and this would be offset by the Island Elderly Housing septage being handled by the Applicant's treatment facility and being pumped into the Sengekontacket Pond watershed. He added that the nitrogen loading associated with the turf program would be 991 pounds.

Ms. Brown wondered why the area of secondary rough was listed as 26.2 acres in Condition 8 when Mr. Wilcox had just said that area would amount to around 17 acres. Mr. Wilcox explained that this was why he had underlined that datum, which had come, he thought, from the Remand Plan. "We're going to need to clarify that," he said.

Mr. Israel wanted to know the degree to which the Applicant would be changing the natural contours of the site. Mr. Wilcox replied that, for instance, the Applicant would be excavating four ponds and they would probably use some of that excavation material for raising the tees in place or for some augmentation of the change in elevation.

Responding to another question from Mr. Israel, Mr. Wilcox pointed out that the natural areas surrounding the disturbed areas would retain their natural contours and that the soils were "really highly porous," raising no concerns about drainage issues, for instance, runoff going off-site.

Chairman Vercruyse asked if the 3-milligrams-per-liter-on-an-annual-basis figure for the effluent from the Applicant's treatment facility was a realistic number over a long period of time. "That's a really good question," said Mr. Wilcox. "We need to find some mechanism to hold them to that number. I think three is reachable, certainly with the technology today."

Mr. Wilcox elaborated: "What they'll do is they'll produce effluent that will be down toward 10 with a conventional Amphidrome treatment system, and then there'll be an add-on denitrification unit that would probably involve adding carbon in the form of, maybe, methanol, and that would take it down even lower. And it's entirely possible that it will hit 3 milligrams per liter. But how we hold them to that number is a question that I'm not quite sure on."

Mr. Wilcox added that he believed the permit for the treatment facility from the DEP, which would be required because the plant would produce in excess of 10,000 gallons of effluent per day, would state 10 milligrams per liter. "And how do we assure that it hits three on average, because that's critical to the whole nitrogen performance?" he said.

Mr. Best asked if the samples that the DEP took to ensure that the facility met DEP's standard would be available for others to look at. "Yes, definitely," answered Mr. Wilcox. "But the question is, what's the mechanism to say okay, you've hit 10, that's DEP's requirement, but you've got to hit three. Who does that?" "Enforcement, you're saying," remarked Mr. Best. "Enforcement, yes," agreed Mr. Wilcox.

Mr. Wilcox pointed out that the Southern Woodlands DCPC Regulations required that the groundwater not exceed a level of 3 milligrams per liter, "but it doesn't talk about what the effluent concentration would be."

Wasn't there going to be a review board? inquired Chairman Vercruysse. Right, said Mr. Wilcox, there had been a watershed protection committee proposed. "Is that still on the table?" asked the Chairman. "Yes, I believe so," replied Mr. Wilcox, who added that there was a slightly different committee makeup in the latest proposal.

Mr. Lafferty, Mr. Wilcox continued, had proposed to call it the Selectmen Review Committee, which would consist of one member of the Oak Bluffs Board of Selectmen, one member of the Board of Health, one representative of the Water Department, one M.V. Commission member or appointee, one independent designee, and two Down Island Golf Club members, specifically, the golf course superintendent and a designee.

Mr. Israel recommended that a member of the Lagoon Pond Association or the Friends of Sengekontacket be included on the committee. Ms. Brown requested that Mr. Wilcox draw up a chart comparing the review committee composition for the latest proposal to that offered in the Remand Plan.

Ms. Brown turned to the subject of the Conservation Restriction, asking for a map that would show what specific areas were subject to which parts of the CR. She also wanted a clarification of the terms of the Conservation Restriction, for instance, when exactly the CR would "kick in."

Referring to Condition 9, Mr. Athearn wanted to know how they could ensure that the less well-drained areas – for example, where there was some clay mixed in the soil – would be monitored by lysimeters. "The Soil Conservation Servicew goes through a whole thing about how their classifications always include inclusion of other soil types," explained Mr. Wilcox, who added, "That's certainly the case. You can get a low spot in a Carver loamy coarse sand where the silt's been running off for a long time, and you can definitely get that situation."

Responding to a query from Ms. Brown, Mr. Wilcox explained that the Applicant was referring to the same tables that he was referring to in the Conditions. As for the definition of "strictly organic," he commented that the chemists were no help at all in this regard. So one way to address it was the Applicant's request to reserve the right to use any product allowed by the Organic Farmers Association of Massachusetts. "And I think that's certainly one way to go," said Mr. Wilcox, "but most of those products are vegetable and non-turf products, and so it gets kind of difficult. There's no good organic turf product listed."

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Mr. Israel commented that his own research on the product called Heritage had led him to conclude that it was "pretty benign." "That would be my take on it, too, I think, ... for a fungus control," said Mr. Wilcox, "and it's going to be a fairly focused use, on the greens primarily, and I think there'll be minimal off-site impact from it. My suggestion is we reference the table in the Remand document, which is clearly all-organic."

Mr. Wilcox continued: "They've also requested the use of M-Pede, which is a potassium salt of a fatty acid – it's sort of like **Sapers soap – and copper hydroxide for moss control. And I would say that copper hydroxide would probably [not be] considered an organic material, but I don't see too much harm in its use. And M-Pede, I can't say definitely that it is an organic, but I believe it would qualify."

"So they want something a little bit beyond what was in the table last time around, which we'll have to sort out," concluded Mr. Wilcox.

With regard to Condition 5, Chairman Vercruyssen offered the assumption that if the Applicant accepted any wastewater from the Town, the Written Decision would have to be modified. "Yes," answered Mr. Wilcox, "the Town wastewater would potentially be a much, much bigger flow. The table I was referencing is a Title V flow, so it's really a hydraulic-design kind of number rather than a true flow. But it's just over 40,000 gallons a day. In reality we're figuring more like 27,000, maybe 30,000 actual gallons."

Would the Applicant have room to accept Town wastewater? inquired Chairman Vercruyssen. Mr. Wilcox replied that if the Town were ever to hook into the club's system, the Town would continue to treat their wastewater to the current treatment level and then pipe the effluent to the golf club, where it might have to be filtered or treated in some manner to avoid having problems with the irrigation system.

"There's no provision for spray irrigation in this proposal, though," Chairman Vercruyssen pointed out. Mr. Wilcox said that that was correct. "So they'd come back," noted Ms. Brown.

Responding to a question from Ms. Brown, Mr. Wilcox explained that Condition Set 2, dated February 4, 2002 and referred to in Condition Set 1, was the set of Conditions developed over time during the Remand Plan process that had taken what the Applicant had offered and expanded it somewhat exponentially. *[See the Full Commission Meeting File of February 7, 2002 for a copy of Condition Set 2. Mr. Israel left the Meeting at this point, pleading exhaustion. The time was 10:23 p.m.]*

Ms. Brown also wanted to know if Mr. Wilcox had any outstanding questions to the Applicant. "Probably not at this point," said Mr. Wilcox, adding, "I'm still digesting all the spreadsheets."

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Chairman Verduyse asked if the Applicant had agreed to the 0.4-foot drawdown threshold proposed by Mr. Wilcox in the last Hearing session. [See page 12 of the Full Commission Meeting Minutes of September 5, 2002.] "Well, that came out of their model, from the original document in the first go-round," replied Mr. Wilcox, referring to the first Down Island Golf Club Application (DRI No. 515). "It was put out as the most extreme potential result of irrigating the golf course," he added.

With regard to Condition 19, Mr. Athearn inquired if the funding to support the sampling programs and the operation of the review committee would be a fixed sum. "I think, and my memory might be faulty on this one, I think they had offered \$10,000 annually," answered Mr. Wilcox. "But I can't recall how long that was to continue." After listening to some observations from Ms. Brown, Mr. Wilcox agreed that \$10,000 would not come close to covering the cost of the sampling programs. He said he would pull that information together and return with a proposal.

Kelly Cardoza, a consultant for the Applicant, reported that she had sent a new, annotated copy of Condition Set 2 to DRI Coordinator Jennifer Rand. She explained that she had sent a response to the set dated February 4, 2002 referred to earlier. "I have the response here," said Mr. Wilcox, who said that he had not gone through that document thoroughly as yet (it ran to 17 pages) and would mail copies of this to the Commission members. "In most cases they don't really agree with the suggested Conditions or they suggest qualifying them in some way," he noted.

Ms. Brown wondered if an independent third party should be reviewing these Conditions. Mr. Wilcox said that Brian Howes had reviewed the Remand Plan water-related Conditions and that he still had Mr. Howes' evaluation, which Mr. Wilcox thought would apply to this Application "to a certain extent."

Mr. Woodruff inquired if the fee schedule would have to be looked at again if Mr. Howes was rehired. Ms. Brown explained that the Commission's *By-Laws* provided for the means to bill the Applicant for such third-party consulting. The time was 10:36 p.m.

Brian Lafferty Addresses the Commission.

Mr. Toole related that Mr. Lafferty wished to make a statement before the Commission. Mr. Lafferty began by remarking on the nature of the Commission's process and pointed out that many of the questions posed that evening by Commissioners could have been answered by the Applicant "in two seconds."

Regarding the 17-page document mentioned by Ms. Cardoza, Mr. Lafferty reported that he had submitted that document to Ms. Rand the Tuesday before and that it was not as "ominous" as its length might indicate. He said that he would be happy to come down to the Commission offices at any time to discuss substantive issues in a friendlier environment and not in Public Hearing so that some sort of open dialogue could occur.

Mr. Best wondered if anything precluded the Commissioners from having a dialogue with the Applicant's team, in view of the fact that the Public Hearing was still open. "I think that any information that is new, [unless] it's just a clarification..." Mr. Toole began to reply. "Has to be re-presented at the Hearing," interjected Mr. Best. Mr. Toole emphasized that new information had to be presented to the public.

"I, if you don't mind, *I* disagree," commented Mr. Lafferty. "It has to be presented at a public meeting, but most communities that I work with ... for example, down in Tewksbury, they have a Public Hearing on a project and then they say 'The public input portion of this Hearing is over,' but the Public Hearing isn't over. They only just stopped taking comments ... and they may another meeting." He spoke for some minutes about the way he would prefer for the Commission Meetings to be run to facilitate a more productive exchange.

Mr. Toole pointed out that this LUPC session was an open meeting and that since the Written Record and the Public Hearing were still open, the public could respond to what the Applicant was offering in this session. Mr. Best argued that anything presented in LUPC session had to be brought back and reiterated in the context of the Public Hearing, if not with the same degree of detail. Mr. Toole commented that if a major change to the Application was proposed in LUPC session, "that would have to be clearly in detail presented in the Public [Hearing] as advertised."

Mr. Best gave the theoretical example of the Applicant's suddenly offering for the first time a lottery system for membership in an LUPC session. "I don't know if there's anything that would preclude us from asking questions about it," he said, "but I think it would be, I think -- and this is where it gets real confusing -- that we would have to have [that] you say it [in] the next open Public Hearing."

Mr. Lafferty presented his view that if a substantive change to the proposal arose in LUPC session, "I think at the next Public Hearing you would say, 'At LUPC or previous discussion, the following three things in the proposal were changed.'" Mr. Best observed that clearly this was done in LUPC session before the Public Hearing opened; but it was not clear to him whether it was appropriate after the Public Hearing opened. "This is not the time to talk about our process," remarked Mr. Woodruff.

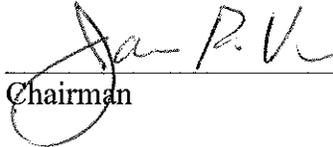
Returning to the water-related Conditions, **Charlie Passios[?]**, a member of the **Applicant's team**, submitted for the record a list of the synthetic substances allowed for use in organic crop production. It was actually from the National Organic Farms Association (NOFA), but had been adopted by the Organic Farmers Association of Massachusetts (OFAM), he added.

Before adjourning, Chairman Vercruyse pointed out that if future LUPC sessions would include a dialogue with the Applicant, then the Applicant's team should be present. "I

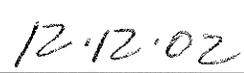
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don't have a problem with the open-dialogue thing," responded Mr. Toole, adding, "This is a public meeting. We're not trying to hide anything from anybody." Ms. Brown observed that traditionally the LUPC sessions were used to clarify points made in the Application or in Public Hearing. The discussion continued for a few minutes more.

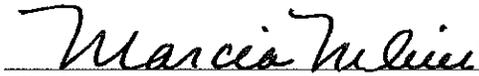
The Special Meeting adjourned at 10:45 p.m.



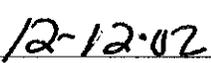
Chairman



Date



Clerk-Treasurer



Date

PRESENT: J. Athearn; J. Best; C. Brown; M. Cini; M. Donaroma; J. Greene;
T. Israel; A. Schweikert; R. Toole; J. Vercruysse; K. Warner; R. Wey;
A. Woodruff; and R. Zeltzer.]

ABSENT: A. Bilzerian; E.P. Horne; J.P. Kelley; C.M. Oglesby; M. Ottens-Sargent;
L. Sibley; and R.L. Taylor.

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