

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 26, 2002*

The Martha's Vineyard Commission (the MVC or the Commission) held a Special Meeting on Thursday, September 26, 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 7:37 p.m., a quorum being present, the Special Meeting was called to order by James R. Vercruyse, a Commission member at large from Aquinnah and the Commission's Chairman. *[The Commission members present at the gavel were: J. Athearn; J. Best; C. Brown; M. Cini; M. Donaroma; J. Greene; T. Israel; M. Ottens-Sargent; A. Schweikert; L. Sibley; R. Toole; J. Vercruyse; and R. Wey.]*

The Chairman announced that the Public Hearing scheduled for seven-thirty regarding the proposed Amendments to the Regulations for the Katama Airport District of Critical Planning Concern had been cancelled. "The Town withdrew," explained William G. Veno, the Acting Principal Planner.

Approval of Meeting Minutes.

Christina Brown, a Commissioner at large from Edgartown, made a **Motion To Approve The Full Commission Meeting Minutes Of August Twenty-Ninth Two Thousand Two, As Written**, duly seconded by Tristan Israel, the Tisbury Selectmen's Appointee. The Motion carried by Voice Vote, with nine Ayes, no Nays and four Abstaining (M. Cini; M. Donaroma; J. Greene; and M. Ottens-Sargent).

Chilmark Selectmen's Appointee Jane A. Greene made a **Motion To Approve The Full Commission Meeting Minutes Of September Fourth Two Thousand Two, With A Correction**, duly seconded by Ms. Brown. Ms. Greene pointed out that on page 20, the eighth item of the list of Applicant donations that began at the top should include the phrase "if the beds are available."

Ms. Greene's Motion carried by Voice Vote, with 12 Ayes, no Nays and one Abstaining (M. Ottens-Sargent).

Discussion/Vote: Letter of Appreciation to Commission Counsel.

The next item of business was the consideration and approval of a letter of appreciation to Commission Counsel Eric W. Wodlinger for his efforts in persuading the *pro bono* committee at Choate, Hall & Stewart to take on the task of establishing a blind charitable trust for the Commission. Chairman Vercruyse read aloud the text that had been proposed by Staff. [*See the Full Commission Meeting File of September 26, 2002 (the meeting file) for a copy of the letter.*]

Ms. Brown and Ms. Greene praised the letter, and the members agreed to send it forthwith.

Possible Discussion/Possible Vote: Tisbury Fuel Services (DRI No. 552).

Chairman Vercruyse announced that the next item of business was the possible deliberations on the Tisbury Fuel Service Development of Regional Impact (DRI No. 552). [*The Commission members present who were eligible to vote on the Tisbury Fuel Services Application were: J. Athearn; J. Best; C. Brown; M. Cini; M. Donaroma; T. Israel; M. Ottens-Sargent; A. Schweikert; L. Sibley; R. Toole; and R. Wey.*]

Sean Conley, one of the partners proposing the development, had asked for permission to address the Commission, and his request had been granted. "I'm here tonight to ask the Commission to reopen the record and have another Public Hearing," Mr. Conley began, "to help us have the opportunity to address a Commission concern that we were told about on Monday, September twenty-third, two weeks after the Hearing and Public Record was closed." He related that at the Land Use Planning Committee (LUPC) meeting that day, he and his partners had been informed that one of the reasons the committee was not recommending Approval was the absence of a study demonstrating the impact of the proposed facility on existing stations. "We were never aware that such a study was required of us," he said.

Mr. Conley described beginning the Application process back in May and receiving a list of the items that would be needed before review, where nothing had been mentioned about having a financial analysis of one's competitors' businesses. "So we'd like to have a chance to ... talk about that in an open forum in a Public Hearing," he explained, then reiterating his argument that prior to September 23 no reference had been made to providing the study he had spoken of and repeating his account of the partners having been surprised by the request.

"So we really would appreciate having a chance to reopen the record one more time to give everybody a chance to hear the facts and not make decisions upon innuendo and hearsay and guess," Mr. Conley concluded, "and I think we can get some more facts and help the Commission do it on that basis."

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Michael Donaroma, the Edgartown Selectmen's Appointee, confirmed that Mr. Conley understood that the Applicant was not limited to discussing the impact-on-competition element of the proposal. "If you're only going to address that one study, we might feel differently about that," he said. "It's an opportunity for you to look at your whole project."

"Well, the main concern in the LUPC was having another gas station shut down," related Mr. Conley, "and we need to look into that. That would not be good for that area, although it would mean that there are customers who prefer lower gas [prices] rather than [to] travel somewhere else and to have the convenience of a near location. But we need to look into that and see if that is a factor and not do it on hearsay and [an] emotional basis."

Linda Sibley, a Commissioner at large from West Tisbury, observed that as a matter of courtesy the Commission had always allowed Applicants to make such a request. "So I don't see how we could deny it," she said. "I would have to say, though, as I said in a slightly different context – given what the issue is, I'm not sure I would be comfortable with an answer that comes from anyone other than an independent ... economic analyst."

Ms. Sibley went on: "One of the problems we have in general with our process is it's kind of like, it's kind of like a trial, where you've got the advocate for one side and sometimes you've got an advocate for the other side, and often the information that you're given when you're all through, really it passes by. You don't have what appears to be an objective analysis, and my concern here is that we really need to have good, effective information."

Ms. Sibley finished up: "So, if we reopen this, I think we need to have some sort of dialogue with the Applicant about possibly – it's sometimes done with environmental impact studies – finding someone to do an analysis of this issue who is not chosen solely by the Applicant."

Mr. Israel remarked, "If they want to reopen the Hearing to this narrow issue, I guess I can't object. But I do [have] two points I want to raise, because I think we started a can of worms a week ago, number one. Number two, uh, *opened* a can of worms." He corrected himself. *[Note: Mr. Israel – and, later, Mr. Schweikert – was referring to the Commission's voting to reopen the Public Hearing for the Fairwinds Chapter 40B Subdivision Application (DRI No. 548). See pages 16 through 22 of the Full Commission Meeting Minutes of September 19, 2002.]*

Mr. Israel went on: "The second thing is that I knew this issue ... for myself, just for me, this is not a major issue for me. But having said that, there have been, this issue *has* been on the table in letters that correspondents all along from some of the, some of the people who've been writing letters about this have certainly dealt with this issue. Again, for me it's a minor issue, for me, so I put that on the table, too..."

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Mr. Israel concluded: "So, you know, I guess in the spirit of being kinder, ... gentler and everyone-loves-us, I'll go along with this ... if we can keep it to this subject." He reiterated that the issue of competition with existing gas stations was not in fact new.

Oak Bluffs Selectmen's Appointee Alan Schweikert noted that unfortunately he had missed the Full Commission Meeting the week before, "but I did get the gist of it." He continued, "And I certainly believe they should have an opportunity to address that ... because also I did notice that there was a lot of public opinion addressing that. And that seemed to be the crux of the issue from the public's point of view."

"But also, do we have, can our Staff somehow corroborate or look at that information, or do we have to hire somebody?" inquired Mr. Schweikert, adding, "I missed that." "You can hire somebody at their expense," answered Mr. Donaroma. The Chairman noted that Staff might choose to do it in-house. Mr. Conley said that he would be happy if Staff would come up with a plan. "I'd like to think we could utilize our Staff is what I'm saying," explained Mr. Schweikert.

"I think the Commission would be well served by opening up this particular issue again," stated Tisbury Commissioner at large Marcia Mulford Cini, "because I think that we'[re] ... sort of treading, very close to treading down a legally risky path when we talk about shoring up private business. We're a public agency, and I think this would be a great time to get some clarity [on] how we're going to deal with that issue generally. And we should probably consider ourselves fortunate that the Applicant has asked us to open it back up. And let's go find a really good professional model."

James Athearn, a Commissioner at large from Edgartown, remarked that he could echo all the previous comments. He wanted to add that part of the economic study could include an examination of the wholesale price that the existing gas stations obtained to see what some of the answers to the whole pricing structure on the Vineyard might be.

John Best, a Commissioner at large from Tisbury, expressed reservations about the difference between Mr. Donaroma's earlier comment that, were the Public Hearing reopened, the Applicant and Commission would be unrestricted in what they could explore and Mr. Israel's statement that he would be willing to reopen the Hearing if its scope were narrowed to the single issue of impact on competition. "I would concur with Michael [Donaroma], I think, that I don't believe that we can reopen the Hearing, or I don't think it's fair if we reopen the Hearing and restrict it to just this," Mr. Best remarked.

Mr. Best added that he did not think that the Commission should allow a rehash of all the testimony they had already heard. But as far as other issues coming up, such as Mr. Athearn's comment about the wholesale price structure, "I think those issues are open for discussion if we reopen the Hearing, and there shouldn't be a restriction..." he said.

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Ms. Greene, who was abstaining on this particular Hearing, wished to speak to procedure. "The Applicant has asked that the Hearing be reopened for the purpose of doing an analysis of the economic impact on the up-Island gas stations, essentially," she said. If the Commission chose to allow the Applicant to reopen the Hearing for that purpose, she went on, the Commission had the option of saying that the Hearing was being reopened for that purpose exclusively. "Now you could say for that purpose you could bring in Jim Athearn's request or we could keep it straight and narrow," she added. "We do have that option now. But once we make the decision, we can't change it."

Mr. Israel emphasized that the Applicant had requested that the Commission reopen the Hearing for a specific purpose. The Chairperson could do what he wished, Mr. Israel, said, "but if we just open this wide-open, then we are further opening a can of worms that I believe we opened last week. I, for one, respectfully disagree with John [Best]. I'd like to keep it to the issue that the Applicant is asking us to look at."

Mr. Schweikert stated that he tended to agree with that. "However, if there is any *new* information that has *never* come up before or something that we should be made aware of that we totally overlooked, that should come into play," he stressed.

Ms. Cini observed: "A practical problem is that when you learn what you learn from the study, then what do you do about it? And so we at least should be open wide enough to accommodate maybe a revision of the proposal that is the result of or in response to the study itself. I just want to make sure that you don't have a study that you can't act on."

Richard Toole, a Commissioner at large from Oak Bluffs, stated that he was in favor of granting the Applicant's request to reopen the Hearing. "And I don't think we should limit ourselves," he said. "I don't think that they're going to want to, you know, get into a lot of other stuff, but I don't think we should put a limit on what we want to hear."

Ms. Brown agreed that the Hearing should be reopened. "The Applicant asks, we reopen," she said. "But could we reopen it for the purpose of receiving new information?" Ms. Brown asked.

Ms. Sibley said, "I do feel pretty strongly that there needs to be some sort of at least look at this by an independent consultant. And I also feel I agree totally with Jim Athearn that we need to have a slightly better understanding of the way the wholesale pricing works... What we're basically saying is we want to [review it], 'this broadly but this narrowly.'" It was her hope, she added, that by so doing the Commission would have better information about the economic aspects of the proposal. "We don't need to go over the traffic again and that kind of thing," she said.

Ms. Sibley proposed that the Commission might need to ask the Applicant to supply a sum of money that would allow the Commission to hire someone to look at these issues. "Because I really don't think we have, unless there's something hiding in someone's résumé that I'm not aware of, someone on Staff ... who is an expert on this kind of

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economics," she said. "And if we can just hire somebody to read it, not to do it, but to read it, I think that that would be critical to our ability to feel confident that we have objective information."

The Chairman asked DRI Coordinator Jennifer Rand what the timeline for this Application looked like. Ms. Rand replied that it would be mid to late November at the earliest. "But it will take, I suspect, a while to get it done," she noted, adding, "I think out of fairness to the other projects that I have to be done, I need to keep them moving apace as well, so easily mid to late November."

The Chairman inquired if an extension of the Applicant's timeline would be necessary. "Yes, absolutely," answered Ms. Rand, "a waiver of time elements is what it's called." Mr. Donaroma said that he thought that merely reopening the Hearing would set the clock back to zero until the Hearing was finally closed once more. It was agreed that to be on the safe side, the Commission should request a waiver.

Responding to another query from the Chairman, Ms. Rand stated that she preferred that the granting of the waiver by the Applicant be in written form.

Mr. Israel related his impression that the Commission would be paying for the economic study. "No, at his expense," said Mr. Donaroma. Mr. Israel said, "It was a simple request, and I'm just saying that I think that this is, you know, I think we're going way overboard and we're procrastinating on something and I just, you know, I just want to go on the record as feeling that this is over the top..."

Mr. Israel also expressed concern that the issue of whether the scope of the reopened Hearing would be narrow or broad had been dropped. The Chairman replied that he thought it should be limited to new information, as Ms. Brown had suggested. "So we have a new traffic study is new information, for example," said Mr. Israel, adding, "I'm just asking a question."

Next, Ms. Greene spoke: "Again, trying to be totally objective, anybody that you hire to do this has got to be an independent consultant because you're going to be dealing with confidential issues having to do with financial well-being of the other gas stations on the Island. You should get somebody from off-Island that has no financial connection whatsoever with any of these people, if you're going to do this."

The Chairman remarked that the Commission had the ability to hire any kind of consultant that they wanted to. Ms. Brown suggested that the Applicant get together with Staff and work out a methodology and agree on who should do the study. She emphasized that this should be done jointly and that the study would be paid by the Applicant. "With that understanding, I think, you know, we'll all get what we want," she concluded.

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The Chairman asked for a Motion to reopen the Hearing. Ms. Sibley then offered a **Motion That The Commission Reopen The Hearing At The Applicant's Request For The Purpose Of Receiving New Information About Economic Issues, Contingent Upon The Applicant's Waiver Of The Time Elements.** The Motion was seconded by Mr. Schweikert.

County Commission representative Roger Wey suggested that the Motion include **That The Hearing Would Be Open To Any New Information Rather Than Just Economic Issues.** "That's what we agreed to," said Chairman Vercruyse. Ms. Sibley accepted the amendment. Ms. Brown suggested the wording **Particularly But Not Limited To Economic Issues.** "Fine," said Ms. Sibley. Mr. Schweikert accepted the amendment.

The Chairman then conducted a Voice Vote on the Motion, with the following results:

AYES: J. Athearn; J. Best; C. Brown; M. Cini; T. Israel; A. Schweikert; L. Sibley; R. Toole; and R. Wey.

NAYS: None.

ABSTAINING: M. Donaroma; J. Greene; M. Ottens-Sargent; and J. Vercruyse.

For the sake of clarity, Ms. Brown wished to add that the Applicant would be meeting with Staff privately to work out the methodology and details and later would proceed to LUPC review before the Reopened Public Hearing. The brief discussion ensued regarding the fact that only those members who had been eligible to vote at the initial closing of the Public Hearing would be able to sit on the Reopened Public Hearing. Mr. Veno read the names of those who were eligible.

Mr. Donaroma wanted to know if there was a way for the Applicant to open the Hearing with more members eligible to vote. Ms. Sibley informed him that the Commission would have to issue a Procedural Denial Without Prejudice in order for the Applicant to start afresh. Mr. Veno pointed out that in that case, all the areas of testimony previously covered would have to be repeated. Ms. Sibley and Ms. Greene emphasized that this DRI had to be heard and a Decision made before the end of the year, since the Commission would be gaining new members and losing some veterans come January 1.

Discussion: Down Island Golf Club Application Procedure (DRI No. 556).

Ms. Greene began to leave the conference room, and the Chairman asked her why she was going. Ms. Greene replied that she did not feel comfortable engaging in LUPC sessions with an Applicant before the Public Hearing had been closed. "I have trouble with that," she remarked. When queried further by Aquinnah Selectmen's Appointee Megan Ottens-Sargent, Ms. Greene elaborated on her reasoning, emphasizing that she did not believe the Commission should be working on possible Conditions for a Written Decision while the Hearing process was ongoing.

"Jennie [Greene] has a good point here," said Mr. Wey. Ms. Cini and Ms. Brown wanted to hear more from Ms. Greene.

"We usually do have the Hearing closed and go to Land Use," Mr. Donaroma pointed out, "and we usually do lean on the Staff to come up with, after they go through all of the testimony and all the scientific studies and all that stuff, and the Staff *did* put something together here. I mean, we could comment on this." He added that he thought just going through the Staff recommendations and considering them would be worthwhile. On the other hand, he said, "I don't have a problem with going home either."

Chairman Vercruyse stressed that Staff had concentrated on reviewing the aspects of the proposal that were new to this Application, particularly with regard to water issues. "That's what this is about," he said.

"Well, I just want to say, I agree with Jennie [Greene] on this," remarked Mr. Wey, "and I was going to leave also, you know, because I don't think that this should be discussed until we close ... the final Hearing, and then the Conditions should be discussed..." "Technically, we can do whatever the Chair says we can do," observed Mr. Donaroma.

"Well, I think that this was my bright idea," offered Ms. Sibley, "and I'm having trouble defending it. But I don't want ... to make a political statement. I just want you to know, I'm going to go home because I'm sick." She added that it had turned out that the mid-Public Hearing review was "a little awkward."

Ms. Sibley then explained that she had suggested this review to work specifically on the nitrogen-loading issues because the changes in this regard contained in the latest Application were already on the table. She recalled how during the review of the second Application (DRI No. 543), the Commission had gone over and over the water-related Conditions, repeatedly refining them but never coming to a definite conclusion. So she had hoped, she said, that the Commission could productively use the time between Hearing sessions to tighten up that piece of the Application process.

"However, having said that," concluded Ms. Sibley, "I don't think it's going to work if a significant number of us aren't here to be part of it, because then we'll just have to do it over again."

Mr. Best related that he had not realized that the LUPC sessions before what was expected to be the final Hearing session on October 10 would be devoted to working on Conditions. Rather, he had viewed these meetings as an opportunity for the Commissioners to convey their questions and concerns to Staff, who could then clarify these issues with the Applicant.

As far as he was concerned, Mr. Best said, the Commissioners had not had the chance to clarify some proposals that had been put forth by the Applicant late in the September 5

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Hearing session. Were the Commissioners to wait until October 10 to pose those questions, I don't think we can expect a real meaningful response," he concluded. Chairman Vercruyse agreed with Mr. Best's observations.

Ms. Brown noted how little time had been spent in the first two Hearing sessions on Commissioner questions and remarked that Mr. Best's suggestion was a good one. Mr. Donaroma said, "I don't think anybody should wait until the tenth. If we've got some questions, we should give it to Staff tonight, tomorrow ... The Staff's been asking for this all along."

Ms. Greene offered her views: "I'm just going to lay something out on the table that I think people need to very seriously think about. If all the Commissioners that can vote on this particular DRI are not going to change the Vote from the way they voted before, I think you're doing a great injustice to the Applicant. I think you're doing an injustice to the public. And if all the people sitting at this table are sitting here saying, 'This is the way I'm going to vote, which is the way I voted last time,' we're putting ourselves through a charade that's unfair, and I don't want any part of it."

"What do you suggest is a remedy to that?" asked Mr. Best. "I'm not sure what the remedy is," answered Ms. Greene, "but I think that people need to think seriously about it."

Mr. Israel remarked that the Applicant had requested that the Commission hear the third plan and that the Commissioners had listened, which was all they could do. "I may or may not have an epiphany, you know," he went on. "We said we would listen and we would try to do it as expeditiously as possible. I think we're trying to be cooperative."

"Is there any way we can get a productive night out of this?" wondered the Chairman. After more discussion, the Commissioners agreed to go into LUPC session, during which they would ask questions about the Application.

Mr. Donaroma made a **Motion To Adjourn The Special Meeting And To Go Into A Special Land Use Planning Committee Session**, duly seconded. Mr. Veno pointed out that since Brian Lafferty, an agent for the Applicant, was present, there was no need for Staff to convey the queries, as Mr. Lafferty was capable of taking notes.

Mr. Veno continued: "[Commission Counsel] Eric [Wodlinger] has ruled that it's perfectly fine for us to talk with the Applicant," he said. "The Hearing's not closed. Any new information will be [presented] at the Hearing. The Commissioners on so many occasions have made a commitment to expedite this process. Part of that was to consider possible Conditions before the Public Hearing because we know how long it takes to do the Conditions. In some regards things have not changed. Some things have changed. If we focus on the issues, the 'go or no-go' issues, if we can handle those, then we'll deal with all the minutiae. Let's not deal with the minutiae first."

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Mr. Donaroma related that he was in agreement with everything that Mr. Veno had just said. What he did not want to get into without the public present was a question-and-answer session with the Applicant. He was not referring, he said, to questions that could be answered with a "yes" or a "no." On the queries that called for extended replies, the Applicant could take notes and bring the answers with him to present to the public at the Public Hearing session on October 10.

Mr. Veno draw a parallel between the Down Island Golf Club Application and the one for the Fairwinds Chapter 40B Subdivision, the latter a case where Commission Counsel had advised that the Commissioners could enter a dialogue with the Applicant during the Hearing process.

Chairman Vercruyse stated that before going into LUPC session, he wanted it to be clear whether or not communicating with the Applicant and his team was going to be part of the process. "We should keep it down – yes, no, maybe..." remarked Mr. Donaroma.

Ms. Cini said, "Yes, I'm very supportive of that because first of all this is just the beginning of formulating our questions ... and we may have other questions..." She stressed that she wanted to make sure – because this Application was so important and because the stakes were so high – that the Applicant had every opportunity to think his answers through and not answer quickly.

"I generally agree with that," said Mr. Schweikert, who added that he thought that Chairman Vercruyse should moderate the discussion and decide what was relevant and what was not. "But also, I think whatever is brought up and whatever is asked of them should be reiterated, the question as well as the answers or new answers should be reiterated at the open Hearing. But certainly there may be some dialogue that you may want to have here, because one question could lead to an answer that could lead to something else, and we don't want to restrict ourselves. But I think that's up to you."

Chairman Vercruyse pointed out that he would not be running the LUPC session but rather the committee's Chairman, Mr. Toole, would.

Mr. Best thought it would be appropriate for the Applicant to clarify with the Commissioners what the latter's questions meant. In addition, as Mr. Schweikert had suggested, the LUPC should give a full report during the Public Hearing on October 10, he said.

Brian Lafferty, the Applicant's agent, was given permission to address the Commission. He began by stating that Mr. Israel's account of the Applicant's having come to the Commission and asked the board to review a third Application was not the case. "We did not ask the Commission to rehear this Application. The Commission asked *us* to bring the Application," Mr. Lafferty said. A number of Commission members grumbled. "You came to us," said Ms. Greene.

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Mr. Lafferty remarked that he thought that Mr. Veno was right. "If there's not going to be two-way dialogue and you folks are just going to ask, you know, questions of your Staff and you're going to go back and think about these questions, I mean, there's no value for us to be here."

"Move my Motion, please," said Mr. Donaroma. Chairman Vercruyse conducted a Voice Vote on Mr. Donaroma's Motion, which carried. The Special Meeting was officially adjourned. The time was 8:24 p.m. *[Ms. Greene, Ms. Sibley and Mr. Wey left the Meeting at this point.]*

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

Mr. Toole took the gavel and suggested that the Commissioners go around the table to offer their questions and comments.

Responding to a question from Mr. Best, DRI Coordinator Jennifer Rand related that the following Monday the LUPC would be reviewing a new DRI and that she expected the committee would have time to continue with the Down Island Golf Club review.

Ms. Brown wanted to know what land the Conservation Restriction would cover and whether it include the Windfarm Golf Practice Facility. A map showing the restricted area would be useful, she said. Also, who would hold the CR? Ms. Brown asked. In addition, she noted that in the second Down Island Golf Club Application, references had been made to natural vegetation, and she inquired if the vegetation on the restricted land in this Application would be left as is or planted with native vegetation.

Ms. Brown had questions as well about the specific golf-related activities that would be permitted on the land under the Conservation Restriction. Mr. Toole said that he wanted to know exactly when the CR would go into effect. Ms. Brown refined that. She said she wanted to know both *when* the CR would go into effect and *why* the Applicant was choosing that point to have it activated.

Mr. Toole asked Mr. Lafferty if this series of questions about the CR were clear to him. "That's a big question you're asking," said Mr. Lafferty. "I'll repeat what I said earlier," he continued. "If this isn't going to be a two-way dialogue, I mean, this is a public meeting. All the public is perfectly welcome to attend. It's advertised. It's an agenda. You know, people can come. If they don't want to come, then shame on them, not shame on us." He added that if Staff was just going to collect questions from the Commission, "just send them to me."

Mr. Toole tried to explain that what he meant was whether Mr. Lafferty had any questions about the questions. "What all due respect, Richard," remarked Mr. Lafferty, "I've got better things to do than spend ten thousand dollars to have people down here listening to questions we're going to get in an e-mail, you know, tomorrow or the next day. I mean, that's just not fair."

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"Mister Chairman, if he's got something to say, let him say it," interjected Mr. Donaroma. "Sure," said Ms. Brown.

"I'll briefly try to address the Conservation Restriction, if I can," began Mr. Lafferty. "What we would propose to do, we cannot, we've had discussions with Joel Lerner and there's been discussions with this Conservation Restriction for three years. Christina has asked you all about it more than 147 times. And I've gotten a satisfactory answer. But part of the answer now is ... a little bit different because of the housing component."

Mr. Lafferty continued, "And basically, at least as Jim Ward, the attorney, has explained it to me, the Conservation Restriction can't go on until the entire project is completed, okay? So what we propose to do – and I was on the phone all day because I knew if it wasn't asked in this meeting, it would be asked as I walked out the door – what we would propose to do ... we're going to propose a Common Scheme for the entire property effective prior to construction.

"I'm sure you [Ms. Brown] can explain it to your Commission members better than I would," Mr. Lafferty proceeded, "a Common Scheme is equitable servitude – is that the word? – yeah. So what, what in effect that does, it's sort of like an interim Conservation Restriction which will encompass the whole land, which will make the land basically subject to the plan that's approved by the Commission. Then when final construction is completed and an as-built done ... then the Conservation Restriction will be put in place.

Mr. Lafferty elaborated: "The Conservation Restriction will ... effectively cover everything that's not housing or the accesses to the housing. And with respect to the question Christina [Brown] asked about what's allowed, I don't have it exactly here in front of me, but the basic premise would be the golf course-related activities would be, for example, ... if a golf hole had to be modified that, you know, a bunker had to be moved a hundred and ten yards instead of a hundred and five yards from a green or a water hazard was changed in shape or we found that after playing the golf course for two months that every single person that teed off hit a hole-in-one."

Mr. Lafferty finished his point: "Yeah, well, that's probably not the likely problem, but that sort of thing, that the golf course had to be modified. So there'd be flexibility [in the] Conservation Restriction to allow changes and modifications to the golf course to make it, you know, more playable." The CR, he added, would also set the parameters for the public access to the trails.

Ms. Ottens-Sargent reminded Mr. Lafferty about the question on the Windfarm. "Yeah, the Windfarm becomes a different situation because somebody else is going to end up owning it," responded Mr. Lafferty, "and it will be, the deeds have been prepared already on three potential pieces of land to be sold, which is the Windfarm, the DEM part and the Martha's Vineyard Land Bank part. And the proposed deeds which you all have in your package of the Settlement Agreement sets forth the parameters under which they can use

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that land. The Windfarm can be used for ... nothing but conservation and open space. The Land Bank parcel in the front, same thing, and the DEM parcel can only be used for open space and passive recreation." He clarified his point: "But they are not part of that Conservation Restriction. They are independent on their own. The Land Bank holds one, or two, and DEM will hold the other one."

"Does the golf course fall under the category of passive recreation?" wondered Ms. Ottens-Sargent. "No," answered Mr. Lafferty.

So the deeds for the Land Bank and the DEM property would say "sold for these purposes"? So that was his offer of how to restrict them? asked Ms. Brown. "Yes, right," replied Mr. Lafferty.

"Who will hold the CR?" inquired Ms. Brown. "Vineyard Open Land Foundation," responded Mr. Lafferty. Ms. Brown related that during the second Application process, VOLF was to have held the CR jointly with the Town of Oak Bluffs Conservation Commission. "We don't have an objection to that if the Town's Conservation Commission has an interest in it," said Mr. Lafferty. "Have you talked to them?" asked Ms. Brown. "I have not," reported Mr. Lafferty, who added, "It's a new idea to me."

Responding to a question from Ms. Ottens-Sargent, Ms. Brown described how such an arrangement with a Town board had been carried out in the case of the Herring Creek Farm Trust subdivision (DRI No. 500).

Ms. Brown then asked, "What land is going to be left completely alone?" Mr. Lafferty introduced Alton Stone, "a new addition to our team for environmental science." Mr. Lafferty then answered, "The project proposes an alteration of no more than a hundred and twenty acres. So everything else becomes unaltered and stays the way it is. That never gets touched, and the Conservation Restriction makes sure that that stays unaltered."

Had the Applicant considered management plans for the unaltered areas? wondered Ms. Brown. **Charlie Passios of Moors, Inc., the operations consultant for the golf course,** explained that in the original plan, under the Natural Resources Management section, "all of the areas that were leave-alone areas will be basically left alone. You know, fallen trees for snags and all that for wildlife habitat as a practice, with the exception of if it's a safety issue and maintaining the trails."

Directing her question to Mr. Stone, Ms. Ottens-Sargent requested some more input from the Applicant on the impact the development would have on core habitat. In other words, she said, she would like him to go over what exactly the 120 acres of untouched areas would consist of. Mr. Lafferty explained that the entire project, in total, was 277 acres. That would include the DEM and Land Bank property, he said.

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Mr. Lafferty elaborated: DEM would buy approximately 13 acres plus 3 acres for the accesses; the Land Bank would purchase about 32 acres. That left approximately 230 acres, of which no more than 120 acres would be altered. So that left 110 acres unaltered.

Mr. Lafferty explained that the Remand Plan (the second Application, DRI No. 543) and the current Application were almost identical in the conceptual plan. Ms. Ottens-Sargent said that she thought the Applicant had bought more land since the review of the Remand Plan. No, said Mr. Lafferty, who then checked with Mr. Passios, who agreed with him. Mr. Lafferty pointed to a line that had been moved back 600 feet from the Island Roads District, indicating that this was basically the only change.

Ms. Ottens-Sargent requested that for the Hearing on October 10 she would like to see a comparison of the two plans so that the Commissioners could look at the routing to determine if they were really very similar. "I mean, it's *identical*," said Mr. Lafferty. The exchange between Ms. Ottens-Sargent and Mr. Lafferty continued. Mr. Lafferty showed her how the new plan had moved some details out of the more sensitive areas, for instance, the pitch pine stands.

"*Everything* you see over here is *identical*," Mr. Lafferty stressed. "The only thing that's changed from the last plan that you had, the Remand, is these four holes have been squeezed together and made short. For this corner, right here is going to change. Nothing else has been changed."

After Ms. Ottens-Sargent had expressed further concerns, Mr. Lafferty responded that if she wanted him to superimpose the third plan over the second one, he could see about having that done. "That would be helpful," said Ms. Ottens-Sargent.

The Selectmen's Appointee from Aquinnah repeated her request for the Applicant's evaluation of the impact of the proposal on the core habitat identified on the Biomap and the issues surrounding the Imperial moth. "You have no Imperial moths on the site," said Mr. Stone, who went on, "As I understand it, the Imperial moth, where the one, I think, potentially one wing was found, was found up in this area, which is actually going to be going to the DEM and to the Land Bank. They're not going to be a part of the active golf course."

Mr. Stone continued: "This land, part of the reason this was all moved back is because of one, the historic campground area there. Two, this is the more denser *[sic]* area of pitch pine is over in here, and the pitch pine tends to tends to grade out as one moves – am I moving east here? ... So you're tending to move from a forest here which has, is, shall we say, where pitch pine is the more predominant species, and as we move eastward to where it becomes less of a dominant species and the white oak and the black oak and probably some red and scarlet there become more and more dominant."

Mr. Stone finished up: "But there is pitch pine in here in places, and there are obviously some groves of beech that show up on your plan that don't show up on this plan. So in

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general this is sort of moving toward what we call a mature beech, excuse me, I mean a mature oak forest in time. And if you're out there, if you've seen it, it's very open and park-like at this time, and there are some trees that are coming along. So I think ... what we're moving toward [is] what we call a mature forest stage, if you will. And there would probably be less and less pitch pine in time and more and more oak and beech."

Mr. Stone pointed to the area where the potential Imperial moth habitat was thought to be. That was why, he said, some of the holes had been moved in a direction away from that area. Responding to another comment from Ms. Ottens-Sargent, Mr. Stone related that he would be providing a clarification on these points during the October 10 Hearing session.

Ms. Brown asked Mr. Stone to comment on the piece of land in question and its inclusion on the State's Biomap at the next Hearing session. "Because it will come up," she added.

Mr. Schweikert offered that his understanding had been that some of the holes had in fact been moved to protect the Imperial moth habitat. In addition, he said, it had been his impression that the stand of beeches that had been discussed would be fully protected under the current plan. "We've redesigned around the beech trees," confirmed Mr. Stone. "Doesn't that answer your questions?" inquired Mr. Schweikert, directing this to Ms. Ottens-Sargent, who replied that she just wanted a better overlay map showing the different types of habitat.

Mr. Donaroma suggested a Condition requiring that these things be mapped out to delineate what was to be protected and what was to be cut. Mr. Lafferty observed that it was in fact "self-serving on our part to save the good stuff because it gives us a good golf course..." He alluded as well to the cost of replacing mature trees. So the Applicant had no objection to the mapping? Mr. Donaroma wanted to know. No, answered Mr. Lafferty.

Mr. Toole wondered why the land swap with the Town that had been proposed during the second Application process was apparently no longer on the table. For instance, some people had been thrown off by the Applicant's testimony that the only access to the Town Parcel would be for passive recreational purposes and not residential ones.

Mr. Lafferty explained how the Martha's Vineyard Ice Arena encroached a bit on Resident Homesite Committee property, and the Applicant and the Selectmen had agreed that it would make more sense to move the arena's access road – which would provide secondary access to the golf course for employees and affordable-housing residents – to its east side so that this could be shared by future residents on the Town land.

Mr. Lafferty pointed to an access route that would disappear if the Land Bank purchase went through. The Applicant would sign off his ownership rights to that access, maintaining only an easement for utilities. Mr. Best asked if the Applicant owned outright a piece of land Mr. Lafferty was pointing to. "I don't believe we own 100

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percent interest," Mr. Lafferty responded. "You own a significant interest in it?" asked Mr. Best. Yes, replied Mr. Lafferty, the Applicant would be conveying his interest in it to the Land Bank. He also pointed out that if the Town wished at some point to hook up to the project's sewage treatment plant, the best way in would be through that land.

Mr. Lafferty explained that the Settlement Agreement with the Town contained a second phase, which included a swap of land between the Applicant and the Town. He provided details on the arrangement and emphasized that these plans were contingent on a Town Meeting vote.

"The eventual end result," Mr. Lafferty said, "would be that we would develop a larger affordable-housing project in some sort of cooperation with the Resident Homesite Committee, and the affordable-housing project would be approximately located in this area here *[pointing]*, in other words, the rear of the Homesite Committee land and then part of the developer's land down here *[pointing]*."

Mr. Lafferty pointed on the site plan to where the practice range and the employee housing would be relocated in the event that the second phase went through. "So there'd be some reconfiguration of the golf holes to utilize this space in-between," he concluded.

Mr. Toole asked Mr. Lafferty to outline what the public process related to this transaction would be. The public process would be dual-phased, said Mr. Lafferty, who described how a Town Meeting vote would be needed to "excess" the property, with that vote likely being conditioned with a price for the parcel. He then discussed the Uniform Procurement Act, to which such a sale would be subject, and how the Resident Homesite Committee would have to produce a Request For Proposals (RFP) or conduct a straight-bid process.

Mr. Best remarked that in view of the Settlement Agreement provisions, it looked as if the Applicant was putting "the cart before the horse" in having the Commission review the particular proposal before them. For instance, what if the Town voted no on the land swap and then was left with a parcel that had no residential access? "But it didn't have any to begin with," said Mr. Lafferty.

Mr. Best then inquired whether the Town's signing of the Settlement Agreement would prevent them from taking access to the Town Parcel by Eminent Domain. "If the Town votes this down, the value of that property to anybody but you seems to me like it might plummet," Mr. Best observed. Mr. Lafferty pointed out that one could not get to the land *now*. A discussion of this point ensued.

Asked by Mr. Lafferty what the solution to this quandary would be, Mr. Best suggested that the Town Parcel issues be resolved before the Commission reached its Decision on the proposal.

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Mr. Best also remarked, "Historically, the Commission has been put in a very, very awkward situation when we have approved something and then had something come back for a change." Mr. Lafferty responded that it was his hope that the Town's enthusiasm, as evidenced in a yes vote on the land swap, would make a Modification of the Commission's Decision a little easier. "And it's nothing more than a reconfiguration," he emphasized.

Mr. Best then commented that in his estimation the Applicant had not produced any evidence that this particular configuration was the best one for the environment in terms of fragmentation of core habitat. The concentration of use on the whole site would shift once the land swap went through, he stressed, and so a whole new set of issues would be on the table. What he needed to know at this point, he said, was how the Applicant intended to manage the untouched areas of the site.

With regard to the disposition of the Town Parcel, Mr. Lafferty pointed out that some people would argue that a single large chunk of land would be better than a bunch of small chunks. He himself was opposed to Planned Residential Developments (PRDs), or clusters, because he personally believed it was bad for the environment since personal residential homeowners were the best stewards of the land.

Todd Rebello, the Chairman of the Oak Bluffs Board of Selectmen, wished to state for the record that the public benefit of the land swap was apparent. And any RFP would be available to be bid on by any conservation group, he said. The Settlement Agreement, he emphasized, provided for what he and his board believed to be the best use for the property.

Responding to another comment from Mr. Best, Mr. Lafferty remarked, "The increase in the intensity of the development would be primarily related to the fact that you're going to add affordable housing to the project as a whole. Because the alteration area of a hundred, approximately a hundred and twenty acres, that's not going to change. It's still only going to be a hundred and twenty acres for this project. The only additional alteration in a global sense would be in the affordable-housing component that came about as part of the land swap here. But this you already have to presuppose is going to be for affordable housing."

Mr. Lafferty added that "maybe marginally" the development would intensify if the terms of the Settlement Agreement were agreed to by the Town vote.

Mr. Donaroma wondered why they were discussing something that would have to come back to the Commission. "Let's move on," said Mr. Best.

Responding to queries from Mr. Athearn and Ms. Ottens-Sargent, Mr. Lafferty explained that in this latest plan the Applicant had already done what the Selectmen had proposed during the Remand Plan process with regard to the Town Parcel.

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Chairman Vercruyssse asked about mosquito control. Mr. Passios replied that the ponds planned for the site, because each would have ozone aeration in them, would not become the kind of stagnated system that attracted mosquito breeding, except for the wetland pockets that the Applicant was going to create. "But if it's done right, there's going to be intermittent flushes through there, so you're just not going to get that bog situation," Mr. Passios added.

Chairman Vercruyssse said that what he was referring to was the fact that on many golf courses one saw cans of mosquito spray sitting around available to the players. Mr. Passios reiterated that there would be no mosquito problem at this course because of the nature of the ponds. It was not like being at Farm Neck Golf Club, for instance, which was set right on the saltmarshes. Players might carry it in their bags, he added.

Mr. Lafferty joked that he did not have a problem with a Condition stipulating that the Applicant would not supply the players with bug spray. "The pro shop is going to sell it, and people are going to have it in their bags," he said, "but we're not going to go leave it out there."

Chairman Vercruyssse had a question for Staff: Could the Commission even condition that the Applicant had to include a public-play component? "Will you [Mr. Lafferty] still offer that for us to accept... Is that something you're still thinking about?" asked the Chairman. Mr. Israel objected to the Applicant's having offered (in the September 5 session) public play contingent upon closing the Hearing that evening.

Mr. Lafferty remarked that introducing the element of public play could dramatically affect the financial model, which was the reason it had been proffered the way it had been. "Time is what costs us money," he said, explaining that this process was costing the Applicant \$6,000 to \$7,000 a day. So to shorten the process by 30 or 40 days would result in a significant savings.

Mr. Lafferty then stated that if the Commission were to close the Hearing and arrive at the Oral Vote on October 10, some accommodation might be made by the Applicant. The other issue that made the dragging-out of the process significant was the public monies involved, he said. Mr. Israel stated that he believed all the Commissioners were trying in good faith to facilitate the process. "I haven't heard anybody here procrastinating," he said.

Mr. Toole called for a brief recess. The time was 9:30 p.m.

At 9:38 p.m. the LUPC session resumed. The Commissioners continued to discuss the subject of public play. *[The tape was not restarted until seven minutes after the resumption of the meeting.]*

Mr. Best argued that the plan for public play would have to be presented in some detail for him to be able to decide if in fact it was a benefit. "I don't want to do what we did

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before and have it come back to bite us," he remarked, referring to the Island membership plan for the Vineyard Golf Club (DRI No. 484).

"I'll tell you what. If two of you gentlemen sitting next to each other tell me that it's important enough to change your vote, I'll go out to my car and I'll pull in the proposal that I put together in case I needed it," responded Mr. Lafferty, referring to Messrs. Athearn and Best.

Mr. Athearn pointed out that the benefits and detriments of the proposal were neither singular nor simple. "So you never know which straw is going to change ..." he was saying, when Mr. Lafferty interjected, "I'll give you all the straws I have." Mr. Lafferty also noted that all the benefits being offered had been at someone's request and that, contrary to newspaper accounts, the Applicant was not trying to buy an Approval.

"And I appreciate what you say," Mr. Lafferty continued, "that it's not as simple as one thing [which] may or may not change the balance, but very well one thing *may* change the balance for one or two people, and one or two people may change the balance of whether or not this gets approved or not."

Mr. Schweikert spoke of the very specific concerns Board of Selectmen Chairman Todd Rebello had expressed in his appeal for public play during the Hearing session of September 5. "Designed on the lines, I believe he said, of Farm Neck, which — why reinvent the wheel?" he asked, mentioning that he was a member of that golf club.

Regarding whether public play was an important issue, Mr. Schweikert declared, "I think it's *real* important, and I think the Applicant should speak to that. I think I'd like the public to hear the Applicant speak to that and see what kind of public testimony there is on it ..."

Mr. Lafferty explained that the financial dynamic of an exclusive golf course changed dramatically when one introduced the public component. "The memberships that may be worth a hundred thousand may be worth seventy ..." he said. "There is some give and take there once you add a public component, and it does detract from the exclusivity ..." And, he went on, if that happened, it would adversely affect the capitalization from membership, "which means you're now in a position where you have to aggressively make sure that you fill your public tee times."

Ms. Brown asked Mr. Schweikert if he thought that the Farm Neck Golf Club's exclusivity had been affected by the public-play component, since it was her impression that that club was quite exclusive. "That's true," answered Mr. Schweikert. "People would sell their firstborn to get into Farm Neck. I mean, what he's saying is true. However, from the point of view that ..."

"But you're saying it's *not* true of Farm Neck," interjected Ms. Brown. "Well, it *is*," responded Mr. Schweikert, who clarified that Farm Neck was "a little bit different"

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because it contained 50 market-rate homesites whose owners had stockholder membership. So they were allowed to book a tee time, which was "the big thing," he observed. "So a stockholder can book ... a tee time nine days in advance. A full member can book a tee time, like, seven days in advance. Then you've got Island members, who can book it maybe a couple days in advance, and then the public gets what's left over. Usually in July and August there's not a lot left over until it's three or four o'clock in the afternoon."

Responding to another query from Ms. Brown, Mr. Schweikert said that one had to wait 20 years if one were to sign up today to be a full member at Farm Neck.

Ms. Ottens-Sargent remarked that if there were a public-play component, the Applicant could carve a niche in the market with, say, a \$100,000 membership instead of the purported \$200,000 that she had heard about, and could thus have a larger pool of consumers. Mr. Lafferty replied that one could run all the financial models one wanted to, but there was no way of knowing how it would work out until the developer was actually marketing and selling the memberships. The Applicant had looked at a lot of different models, he added.

Mr. Israel commented that he was not entirely "enamored" of the Farm Neck membership model, which charged the public \$120 for a less-than-desirable tee time. Mr. Schweikert remarked that that price was, he imagined, the average around the country.

Turning to the subject of the Windfarm Golf Practice Facility and its possible purchase by the Land Bank, Mr. Schweikert said he had a tough time figuring out who was appeased and who was getting something from that arrangement. People might say that it was the Lagoon Pond Association, he noted, but that group had spoken against the new plan anyway.

Mr. Schweikert declared: "So I guess what I'm driving at is, why in the world are they spending two million dollars to buy the Windfarm to, just to make the guys at the Windfarm rich, when I'd almost rather see them leave the Windfarm alone, because the Land Bank doesn't seem to want it, and put a million dollars in the Oak Bluffs Stabilization Fund, if they want to do something great for the Town." He added that there had not been any public testimony about the nets.

"It surely wasn't our idea," began Mr. Lafferty. "One of the reasons the Land Bank, at least from my perspective, why they wanted it is because they own another adjoining land, and if I'm not mistaken, there's a couple of farms near there." Mr. Schweikert countered that he had not heard any testimony about the Land Bank's wanting the Windfarm. Mr. Donaroma, a Land Bank Advisory Board member, explained that the Land Bank would not offer testimony because the purchase was still under discussion.

Mr. Rebello stated that the Town would have preferred "to go in a different direction," for instance, a donation to the Public Library Fund, which would be a more far-reaching

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benefit. And closing the Windfarm would be a detriment to others for whom it was the only recreational use they could afford, he said.

Mr. Israel remarked that he had seen the purchase of the Windfarm as a benefit. Ms. Brown said she saw its closing as a detriment because it was a place where kids could go to spend some time for very little money.

Moving to the subject of the clubhouse, Chairman Vercruyse related that he had not recently seen any elevations. Was it the same as it had been in the earlier Applications? he wondered. "It would basically be a variation of that, yeah," answered Mr. Lafferty. It had been decided that the clubhouse should be much more modest than originally proposed, he noted.

Mr. Lafferty said that he thought that altogether the clubhouse would measure less than 22,000 square feet. **Kelly Cardoza, who works for the Applicant,** checked and confirmed that the footprint would be 18,905 square feet. "It's not two floors all the way through," added Mr. Passios.

The Chairman also wanted to know if the Applicant would require Variances for the structures. No, just Special Permits, answered several members of the Applicant's team at the same time.

Responding to a question from Mr. Israel, [Mr. Stone or Mr. Passios?] explained that with the pulling back of some of the holes, there was still core habitat on the site. "So you still have the potential of those core species there," he said. "Yes, you are going to get the border species through the fragmented areas... So it still works. If anything, core is better now than it was in our first Application."

Mr. Israel also requested some renderings of the houses for the October 10 Hearing session. Mr. Lafferty replied that these did not exist since each of the market-rate houses would be individually designed. The affordable housing would be "a standard-type townhouse, you see them 'most everywhere,'" he said. He added that the Board of Appeals and the Development of Housing and Community Development (DHCD) would maintain the ultimate control.

Mr. Best expressed concern that with a 20,000-square-foot building envelope for the market-rate houses, some of the structures could be especially large. Secondly, did the golf club intend to develop them or would the club sell development rights to an individual owner and let him design his own home? He also wanted to know if the houses had to be owned by golf club members and what the Applicant's plans were for ensuring that a major portion of the homeowners would be seasonal and not year-round residents.

Mr. Lafferty began by pointing out that the Applicant would maintain strict architectural control over what would be built since it was in the Applicant's best interests – for the

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sake of the exclusivity factor – to make sure that everything worked together. In addition, everything would be subject to the same Common Scheme, which would provide a framework within which everything would get done.

The size of the market-rate houses would be limited, Mr. Lafferty said, although he did not have that exact area number with him at the moment. As he recalled, the approximate house footprint would be 5,000 square feet. Mr. Best noted that with two and a half stories allowed in Oak Bluffs, that would come to a total of about 12,000 to 14,000 square feet. “That would be possible,” said Mr. Lafferty.

With regard to the requirement for membership, Mr. Lafferty then stated, “It would be an extremely unlikely circumstance if a house were not tied to a membership.” As for Mr. Best’s last question, Mr. Lafferty related that the Settlement Agreement had been rewritten with an amendment changing the language with respect to the seasonality factor. *[The tape was turned over at this point.]* Mr. Rebello described a possible provision in the Settlement Agreement that would require residents of the market-rate houses who contributed children to the school system to pay some kind of tuition to the Town.

Mr. Lafferty then revised something he had just said. Ms. Cardoza, he noted, had just shown him that the nitrogen calculations the Applicant had submitted to the Commission had been based upon a 3,000-square-foot footprint for the market-rate houses.

Ms. Ottens-Sargent asked Mr. Stone how he could include the Town Parcel in the wildlife corridor when Mr. Lafferty was saying that some of the homes would be moved into that area if the Applicant succeeded in carrying out the land swap. “But you can’t guarantee it’s going to be a two-thirds vote,” responded Mr. Stone. “There’s no guarantee it’s going to happen. So right now we’re talking about what we have now. But what Brian [Lafferty] did point out, though, is if that did become available, those holes get spread out and your corridors widen within the hole.”

Ms. Ottens-Sargent also raised the possibility of conditioning an Approval on the completion of the political processes involved in the Conservation Restrictions, the funds from the Department of Environmental Management and approval by two-thirds vote of the land swap with the Town. Mr. Rebello remarked that he was “not jumping to see anything happen there [in the Town Parcel] very quickly.” What the Selectmen were saying was that the Resident Homesite Committee would like to see, if possible, some revenue that could be used on another site.

Ms. Brown inquired why the access to the Town Parcel would be for passive recreational purposes only when the second Down Island Golf Club Application had provided access for residence on that parcel. “I don’t really have a good answer,” said Mr. Lafferty. Ms. Brown noted that this was something the public might want to know. “It’s still a road,” added Mr. Lafferty. “It was proposed as not providing residential access, but, I mean, we

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can discuss that, and you know, if it's acceptable to the Selectmen and it makes a difference to the Commission, I mean, we could change it right now."

Mr. Rebello explained that the Resident Homesite Committee had come to the conclusion that the Town Parcel was not an appropriate place for the committee to develop affordable housing. If residential access were granted by the Applicant, "it could create a lot more opportunity for that property, detrimental opportunity, and that could very well become housing," he said.

Ms. Cini said that she was looking for a "definitive, verifiable conclusion about this 40B magic bullet." Mr. Lafferty responded that Mark Bobrowski, counsel for Oak Bluffs in Chapter 40B matters, had had some discussions with the Department of Housing and Community Development and that Mr. Bobrowski would be preparing a plan to be submitted to the DHCD for their opinion.

"You won't have that by the tenth," said Ms. Cini, asking for confirmation. Right, said Mr. Lafferty, who then stated: "Based on their policy ... I'm pretty convinced that we will meet the land area minimum for rental housing. And the Settlement Agreement has also been amended, modified to reflect that change. It's in the Selectmen's office for their signatures."

Mr. Best commented on what he characterized as the vagueness of that proposal. Mr. Lafferty explained that a Town had to meet one of two criteria: either 10 percent of the Town's housing stock or 1.5 percent of the land available for affordable housing to be devoted to affordable housing. "And if you build a rental project, all land in that proposal is considered land used for affordable housing," he said.

Mr. Lafferty related that if one considered the raw acreage of Oak Bluffs, one would need 65 acres devoted to affordable housing to attain the 1.5 percent threshold. Right now in Oak Bluffs, he continued, he believed that the Island Elderly Housing facilities qualified for 12 acres of affordable housing. That left 53 acres. So if other affordable housing projects totaled 53 acres, the Town would meet the statutory minimum.

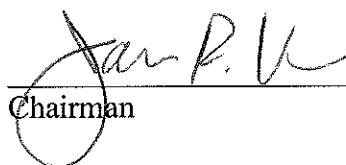
"Now on its face, if this project is two hundred seventy-seven acres, it meets, okay?" declared Mr. Lafferty. "I'll be the first to admit that I would be somewhat embarrassed to go into DHCD and tell them, 'Hey, I got all these two hundred sixty-five acres. That's affordable housing, see?'" He explained that what the Applicant was proposing to the DHCD was that around 50 acres could be included to account for the sewage treatment facility and so forth.

Ms. Cini then remarked, "I've always maintained that whether we've met our statutory limit is not at all what we should be focusing on. We should be doing all the housing we can."

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Mr. Athearn commented that he himself considered the addition of houses to the plan to be a detriment. "So the degree to which that's reduced or eliminated improves the plan," he said. He added that if the purchase of the Windfarm property resulted in more land being left alone, he would consider that a good transaction. Mr. Donaroma pointed out that it sounded as if the conservation of the Town Parcel would be considered a benefit by the Commission members.

The LUPC session adjourned at 10:29 p.m.



Chairman

12-12-02
Date



Clerk-Treasurer

12-12-02
Date

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

ABSENT: A. Bilzerian; E.P. Horne; J.P. Kelley; C.M. Oglesby; R.L. Taylor; K. Warner; A. Woodruff; and R. Zeltzer.

[These Minutes were prepared by the Staff Secretary using a tape recording of the Special Meeting and an outline from Mr. Veno.]