

# THE MARTHA'S VINEYARD COMMISSION

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*Martha's Vineyard Commission  
Minutes for the Special Meeting of  
October 10, 2002*

The Martha's Vineyard Commission (the MVC or the Commission) held a Special Meeting on Thursday, October 10, 2002, at 6:30 p.m. in the cafeteria of the Martha's Vineyard Regional High School, Edgartown-Vineyard Haven Road, Oak Bluffs, Massachusetts.

At 6:42 p.m., a quorum being present, the Special Meeting was opened by Richard J. Toole, a Commissioner at large from Oak Bluffs, Chairman of the Land Use Planning Committee (LUPC) and the Hearing Officer that evening. *[The Commission members present at the gavel were: J. Athearn; J. Best; C. Brown; M. Cini; M. Donaroma; J. Greene; T. Israel; C.M. Oglesby; M. Ottens-Sargent; A. Schweikert; L. Sibley; R. Toole; J. Vercruysse; K. Warner; R. Wey; A. Woodruff; and R. Zeltzer.]*

**Cont'd Public Hearing, Session Three: Down Island Golf Club III (DRI No. 556).**

Mr. Toole outlined the procedure to be followed for the Public Hearing that evening. He then allowed Alan Schweikert, the Oak Bluffs Selectmen's Appointee, to make a statement.

Mr. Schweikert expressed his regret that the Commission had been unable to accept the Applicant's offer of public play in the Hearing session of September 5. He then proposed a Motion that provided the Applicant was willing to resubmit his offer for public play, the Commission would close the Public Hearing that evening, preferably by nine o'clock, and would vote on the proposal either then or, at the latest, the following week.

Chilmark Selectmen's Appointee Jane A. Greene pointed out that the Commission could not consider a Motion in the midst of a Public Hearing. James R. Vercruysse – a member at large from Aquinnah and the Commission's Chairman – agreed and explained that the Motion could only be considered if they were to suspend the Public Hearing. Edgartown Selectmen's Appointee Michael Donaroma remarked that the Motion was a good one but that he would prefer to stick with the Commission's usual procedure.

Mr. Toole then read into the record the Notice of Continued Public Hearing for the Down Island Golf Club Three Development of Regional Impact Application (DRI No. 556). [See the Full Commission Meeting File of October 10, 2002 (the meeting file) for a copy of the notice.]

**The Applicant Responds To Questions Submitted By The Commissioners.**

**Brian Lafferty, the Applicant's agent**, introduced the other members of the Applicant's team who were present that evening. He joked about an article in the latest edition of the *Vineyard Gazette* in which a claim had been made that a \$70 million profit could be realized from the Applicant's project. He also commented on the difficulty of the Commission process.

The first question Mr. Lafferty addressed was the nature of the Conservation Restriction (CR) being proposed. He referred the members to the memorandum about CR options written earlier in the day by the Applicant's counsel, James G. Ward of Nutter, McClennen & Fish. [See the meeting file for a copy.]

The Applicant was suggesting, said Mr. Lafferty, that they use the "Common Scheme" form of restriction, with the beneficiaries being the State Department of Environmental Management (DEM), the Martha's Vineyard Land Bank Commission (the Land Bank), and the Vineyard Open Land Foundation (VOLF). Mr. Ward was present that evening to answer any questions about this, Mr. Lafferty added.

Regarding a question about pitch-pine habitat, Mr. Lafferty stated, "The answer was the majority of the golf holes have been moved away from the majority of pitch pine..." Using the site plan, he pointed to the area where the most significant pitch-pine stands were located, and he referred to the work of Lawrence DuCharme, a member of the Applicant's team, in this regard.

Turning to a question about core habitat, Mr. Lafferty related that virtually all of the undeveloped land on Martha's Vineyard had been included on the State's BioMap. "Just because it's on the BioMap doesn't mean that it's habitat for anything specific or significant," he said. In fact, the Applicant's team had concluded that the proposal would actually *improve* the wildlife habitat, he declared.

Next, Mr. Lafferty addressed the question of why the Windfarm Golf Practice Facility was part of the proposal. The negotiations for the purchase had been requested by the Martha's Vineyard Land Bank, the Department of Environmental Management (DEM) and the Oak Bluffs Selectmen, he related. The reason the Land Bank had given for its interest, he said, was that the Windfarm property connected with other parcels that they owned and so would provide some sort of corridor.

As for the query about why DEM would pay such a high price for the land it was looking at purchasing, Mr. Lafferty explained, "The reason for the high price is it's the most

desirable land on the property. It has the most outstanding views." He added that the Land Bank had come up with the number for the Windfarm, which was subject to an appraisal before the purchase.

Regarding the status of the funds for the Land Bank and DEM purchases, Mr. Lafferty related that in the Open Space Bond Bill in the State Legislature, DEM had set aside monies for the purchase. And the Land Bank, he said, had repeatedly voiced its support for their purchase of the Windfarm property.

Another question raised had been what would happen to the access off Barnes Road proposed in the original plan if a new access were put in to the east of the Martha's Vineyard Ice Arena. Mr. Lafferty explained that the Applicant would hand over those rights, retaining an easement for utilities only. Responding to a question from Ms. Greene, Mr. Lafferty said that the rights would be handed over to the Land Bank.

As for the question of whether the project would result in Oak Bluffs meeting its statutory limit for affordable housing, Mr. Lafferty reported that the Applicant did not have an opinion yet from the Department of Housing and Community Development (DHCD). Chapter 40B regulations were changing, he remarked. "Who knows? They're changing as we speak, every day," he went on. What he *could* say was that the project would provide 16 units of affordable housing, Mr. Lafferty concluded.

As far as the time that the Conservation Restriction would be placed on the property was concerned, Mr. Lafferty related that this was linked to the Common Scheme. A Conservation Restriction had to meet the requirements of metes and bounds before it could be enacted, he said. So the procedure to change those metes and bounds was complicated and time-consuming. A Common Scheme, on the other hand, would allow the Applicant some flexibility.

Mr. Lafferty elaborated: If the Applicant were to have a Conservation Restriction on all the land except for the building envelopes and it turned out, say, that a stand of beech trees was located where an owner wished to put his house, the CR would have to go back to the Legislature to be changed. That was why the Applicant was proposing the Common Scheme, he said.

Mr. Lafferty stated that the Applicant was in fact willing to activate the Conservation Restriction before the start of construction. However, he would then have to exempt a much larger portion of the land from the CR. "We could do it, and then after the houses were completed," he said, "we could go back and place the Conservation Restriction with metes and bounds on those houses."

"What our attorneys have proposed," Mr. Lafferty went on, "is the implementation of a Common Scheme which covers the *entire* parcel of land, which is basically a Conservation Restriction that you don't have to go to the Legislature with if you have to make some sort of change..."

Mr. Lafferty finished up: "And because DEM and the Martha's Vineyard Land Bank will be abutters, they will be subject to the Common Scheme and therefore beneficiaries of the Common Scheme. So they have the ability to enforce it..., once the Conservation Restriction's put in, as I said a little bit earlier. And we're going to propose that DEM be one of the holders of the Conservation Restriction."

Mr. Lafferty turned to the subject of what would happen if the Down Island Golf Club were to fail. "This is really a financial question," he observed. In case people did not know, he went on, Applicant Corey Kupersmith owned in all 277 acres of the site, or approximately 8 percent of the entire Town of Oak Bluffs. "And there are no mortgages," he stressed.

Mr. Lafferty continued, "He made his money the old-fashioned way – he earned it – and he earned enough of it that financial consideration is not really an issue for him." However, from the perspective of what would happen with the land "if the world caved in," he explained, "with the Conservation Restriction, the land could never be anything else."

In addition, Mr. Lafferty related, the Applicant had submitted this week a memorandum on bonding, proposing two different types of bond. The critical one, he said, would be the bond that ensured that the golf course got completed. "So once we cut the first tree [and] construct the golf course, you are guaranteed there'll be a golf course there," he emphasized. "The golf course *will* exist. It will exist with the Conservation Restriction in place. It will exist with any Conditions which the Commission may attach for an Approval."

Another Commissioner had wanted to know what effect the Down Island Golf Club, if built, would have on the Vineyard Golf Club in Edgartown, said Mr. Lafferty. "I don't really think that protection, prevention of competition between golf courses is something that, you know, we should have in our discussions," he commented.

Mr. Lafferty then spoke of a conversation he had had with DRI Coordinator Jennifer Rand about a recent gas station Application that had been turned down by the Commission. He concluded his discourse on this topic by remarking that golfers should have a choice about where they would like to play and that there was more than enough business on the Island for both golf courses to succeed.

The next question addressed by Mr. Lafferty was about the effect of hooking up the Island Elderly Housing (IEH) complex nearby to the golf club's sewage treatment plant. "Island Elderly Housing has significantly more expansion possibility, once they're connected to the sewage treatment plant, and we've already donated an acre of land to them," Mr. Lafferty related. He thought that IEH had created 18 additional units and that once they hooked up with the plant, they would be able to add a few more. With the plan

in place, said Mr. Lafferty, the Applicant expected to reduce IEH's nitrogen output from the complex by 50 to 60 percent.

Mr. Lafferty then responded to a query about why not all the greens and tees would be lined. The answer, he replied, was that there was no environmental or scientific justification for lining *any* of the tees and greens. "We *did* propose to line the tees and greens that were closest to Lagoon Pond," he said. "That came up in discussions with the Selectmen." He added that the first thing the Selectmen had requested was for the Applicant to move the holes away from the Lagoon and that the lining was just for extra environmental safety. "As a matter of fact, our consultant said that it wasn't necessary," he noted.

"How does the housing component contribute to the project?" was the next question Mr. Lafferty turned to. The market-rate houses allowed the construction of the affordable units to be financially feasible, he explained, pointing out that the financial picture had changed considerably since the preceding Application. In addition, he said, as taxable property, the market-rate housing would provide a significant source of income for the Town.

With regard to the so-called Town Parcel in the center of the site, Mr. Lafferty described how in order for the parcel to become an issue, the Town of Oak Bluffs had to "excess" it with a Town Meeting vote of two-thirds. Assuming that happened, he said, the Town intended to issue a Request For Proposals (RFP) for bids on the parcel, and under the Settlement Agreement, the Applicant was obliged to respond to the RFP.

As to what the Applicant would then do with the parcel, Mr. Lafferty remarked that he was convinced that half of the Commissioners would say to leave it as it was and the other half would want the Applicant to spread out the holes into it. "What we would propose to do," he continued, "if we were to end up owning that parcel, what we would do is ... we would leave half of it just the way it is and only use the outside to spread the golf course out."

This solution, Mr. Lafferty emphasized, would provide for the maintaining of the wildlife corridor and at the same time would allow the Applicant to create more space between the holes. "So it improves some other habitat," he said.

Mr. Lafferty moved on to the question of whether the Applicant would require that club members be Island property owners. "We have provided the Commission with a letter from counsel, who has suggested that we would be open to significant lawsuits if we were to do that," Mr. Lafferty explained. He added that he believed that all 138 members who had signed up originally had "significant Island ties" and that it was unlikely that a substantial percentage of the members would not have such ties.

The next question addressed was whether the Applicant had any plans for the abutting properties. "To my knowledge, we have no ownership interest in any adjoining

properties that are not shown on the plan," said Mr. Lafferty, adding, "I know we are not actively negotiating with any other parcels that are not shown on the plan."

Mr. Lafferty turned to the question about why the affordable units were so close to the trail, saying: "That was more of a, at least in my opinion, an optical illusion based on the fact that the scale of the plan — there's so much land shown on a small plan. All of the trails have a 50-foot buffer, and the affordable housing units are set back from that." He added that the fact was, many of the housing units that already existed along the trails were much closer to them than the affordable-housing units would be.

Regarding whether any structures could be seen from the road, Mr. Lafferty answered no.

"What about the introduction of nitrogen to the surrounding watersheds?" was the next question. "Upon the completion of the golf course, the Lagoon Pond watershed will have less nitrogen being contributed to it than it does the day before the golf course," Mr. Lafferty said. "So we have an absolute net reduction of nitrogen going into the Lagoon watershed."

"[As to t]he discharge into the Sengekontacket Pond watershed," Mr. Lafferty went on, "our discharge far exceeds the current drinking-water standards. It meets all the requirements of the Town of Oak Bluffs and the Martha's Vineyard Commission DCPC Regulations. In fact, the assumptions we used to calculate the contribution to Sengekontacket are somewhat, actually, they're *very* conservative."

Mr. Lafferty explained why he could say the calculations were conservative: "We made an assumption for our calculation that every single drop of water goes to one of those two watersheds. The truth is, every single drop of water doesn't go into Lagoon Pond or Sengekontacket. Some percentage flows up in this direction [pointing]... How much that number is we really can't ascertain."

Mr. Lafferty added that some on the Applicant's team had estimated that portion to be 20 percent. "Mr. Wilcox said, you know, that he wouldn't argue with us if we used 10 percent as a number," he said, referring to the Commission's Water Resources Planner.

Mr. Lafferty then quoted from the Minutes of the Full Commission Meeting of January 17, 2002: "Mr. Israel confirmed with Mr. Wilcox that there would be no testing for the Sengekontacket watershed because that pond flushed well." [See page 5 of those Minutes.] From the same paragraph Mr. Lafferty quoted: "'No, I don't think so,' answered Mr. Wilcox, 'and the reason is simply because it does flush so much better than the Lagoon.'"

The next question concerned the issue of public play. Mr. Lafferty related that the offer of public play on September 5 had been contingent upon the Commission's closing the Public Hearing that evening. "But maybe we can talk about that a little bit," he said.

"What happens if the DEM appraisal isn't high enough?" was the next question. Mr. Lafferty remarked that if the DEM appraisal came in at \$1.9 million, that would not be a problem. However, if it came in at \$1.8 million, "that's an issue for discussion, and that depends on the overall financial viability of the project," he explained. He compared the finances of a project like this one to "a moving target."

Mr. Lafferty went on: "But depending on how an Approval may be conditioned, [that] affects the financial advantages of the project." He discoursed for some minutes on the various scenarios that were possible. "So what happens if their appraisal isn't high enough," he said, "then Mr. Kupersmith is going to have to make a business decision on whether or not the amount of money they *are* going to come up with is sufficient to make the project work."

Mr. Lafferty pointed out that from the Town's and the Commission's perspectives, this was not all that important, since under the Settlement Agreement, the Town required that that land be under a Conservation Restriction in any event.

Responding to the next question, Mr. Lafferty related that with regard to the game of golf the Island was "way underserved ... The interest in membership in this golf course has just been unbelievable. And from all indications, VA-II is doing pretty well," he added, referring to the recently opened Vineyard Golf Club in Edgartown. And he would be "shocked," Mr. Lafferty said, if 40 percent of those using the newest golf course on Nantucket had no connections to that island.

Mr. Lafferty turned to the question of whether the Island would not get many of the benefits offered by the Applicant if the project turned out not to be economically viable. "Most of the benefits are frontloaded in the budget," he stated. "Conditions that are attached to this Approval of the golf course stay, no matter what happens. The golf course will be built because of the bonding. It's guaranteed to get built."

To answer the next question, Mr. Lafferty referred the members to the letter from the Applicant's attorney indicating that to require the full members of the club to be Island residents would be too discriminatory. [*See the meeting file for a copy of the letter.*]

"If public golf were offered," Mr. Lafferty explained, "it would be in the Applicant's best interest to make sure that all the available tee times were used and sold, the reason being, by introducing a public-golf component in the proposal, it adversely affects the financial model of the project membership." People who were paying substantial amounts of money for membership would want it to be a private club, he said; offering a public component in addition to the Island membership made the club even less private.

Another question was whether the Applicant would use pesticides or herbicides heavily during the grow-in period. Mr. Lafferty related that years ago when a course was planted, the developers did a general fumigation of the soil to prevent weeds and so forth but that this was no longer the case. "So the answer is no," he said.

Mr. Lafferty turned to mosquito control, noting that the developer had no intention of placing cans of insect repellent around the course. The way the on-site ponds were designed, it was unlikely that they would become breeding grounds for mosquitoes, he pointed out.

The next question concerned the Applicant's shift to the use of non-organic products for its turf management program. "Without a public component, the only non-organic proposed is Heritage," said Mr. Lafferty, "and that is a synthetic version of a naturally occurring substance... [I]t's pretty innocuous stuff."

A related question was whether the Applicant would line more greens if he intended to use synthetics. The answer was no, said Mr. Lafferty, since organic or not, the substances broke down to the same thing.

"Did the Applicant need Variances for the structures proposed?" was the question addressed next. "The houses are going to be built under a Comprehensive Permit process, and the golf course itself will need a Special Permit from the Oak Bluffs Planning Board," replied Mr. Lafferty.

Asked for more detail on the design of the houses, Mr. Lafferty related that there were no specific designs yet. The affordable housing had to be approved by the Oak Bluffs Board of Appeals, so that board would be able to control the architectural details, he said.

Mr. Lafferty moved on to a query about the size of the market-rate houses. The Applicant had proposed a footprint of 3,000 square feet for each house, he reported, so that would presuppose a house of about 5,000 or 5,500 square feet in all. "We do intend to build most of the houses ourselves," he testified, "and the market-rate houses would be for members only. He could not imagine, he said, any circumstance under which a nonmember would buy any of the market-rate units. "We will maintain architectural control over all those houses," he added.

Mr. Lafferty addressed the question of whether the market-rate units could be rented. "Yes, they can be rented," he said. "The way the deed stipulation is, they cannot be used long enough to be considered a primary residence." This meant that they could not be occupied for 181 straight days, he explained.

Turning to a question about the land area required to meet the minimum threshold for affordable housing, Mr. Lafferty observed that it was currently 1.5 percent but that the rules changed daily. "So there's no sense getting into it," he remarked.

As for the question about whether the presence of the golf club would increase the value of the homes in the area, Mr. Lafferty began by stating that obviously the market-rate houses on the course would be "reasonably expensive." He did not see, he said, that the golf course in and of itself would raise the prices of the homes nearby. Mr. Lafferty then

pointed out that the vast majority of people who had applied for membership during the initial offering already had houses on the Island, so he did not expect the demand to increase significantly.

Responding to the next question, Mr. Lafferty said that if Phase II of the Settlement Agreement came to pass, the Applicant would have to return to the Commission for a Modification of its Decision.

"If the Applicant bought the Town Parcel, would the holes move even farther away from the Lagoon?" was the next question. No, answered Mr. Lafferty, the holes near the Lagoon had already been moved back, although the holes more toward the center would be moved some ways onto the Town Parcel. Mr. Lafferty then explained that it had been the Town's decision that the access to the center parcel would be for passive recreational purposes only.

Answering the next question, Mr. Lafferty said that if the Town Parcel were bought by the Applicant, he would consider expanding the affordable-housing component of the plan. In any event, he added, the Applicant would have to return to the Commission for a Modification.

"Regarding the habitat impacts, what will change?" was the next question. Mr. Lafferty indicating that the teams studies had concluded that there would be no significant change.

Commenting on a question on whether the presence of the golf course would result in an increase in air traffic, Mr. Lafferty indicated that this query was "unanswerable."

The next question requested that Mr. Lafferty comment on the correspondence from Paul Goldstein, Ph.D., in which the professor had argued that the methodology used in the Applicant's habitat study was inadequate. "We believe that we used appropriate procedures and protocol in the first place," declared Mr. Lafferty, "and in any event that protocol in our study has been used by Natural Heritage..."

"How can the wildlife corridor include the Town Parcel when that may go away?" was the next question. The land sale was dependent on a two-thirds Town Meeting vote, answered Mr. Lafferty, so the parcel might remain as it was. In addition, if the land were purchased, the holes would spread out, allowing more space between the holes to act as a corridor.

Asked for clarification on the water use and the rate of evaporation, Mr. Lafferty stated that 30 million gallons of water would be used per year to irrigate the 71 acres of managed turf. The transpiration rate the Applicant's consultant had used in his calculations was one that was standard for courses in the Northeast, he said. Mr. Lafferty also described how water would be stored in the manmade ponds for use later during periods of heavy demand.

Next, Mr. Lafferty addressed a series of questions about the proposed campground on the land that would possibly be purchased by the Department of Environmental Management. He explained that the proposal before the Commission eliminated entirely the former Webb's Campground and that the DEM would own the land where a possible new campground could be situated.

The Applicant *did* believe he was entitled to nitrogen credits from the elimination of Webb's Campground, continued Mr. Lafferty, since there had been an operating septic system for the facility for a number of years. By right the campground could reopen tomorrow, he said. Notwithstanding that, the Applicant had not taken any credit for nitrogen removal as a result of the abandonment of Webb's Campground, Mr. Lafferty emphasized, and the Application, as submitted, met all Town of Oak Bluffs and Commission requirements for nitrogen loading.

Mr. Lafferty then responded to a question regarding the proposed driveways crossing two trails on the property. The driveways for the homes would cross two trails, he acknowledged, and both of those crossings were shown in Exhibit 1A of the Applicant's submission. *[He pointed to the trails on the site plan.]* He noted that the public currently had no access to these trails, which would become public if the plan were approved.

Turning to questions about the wastewater treatment plant, Mr. Lafferty related that it had not yet been designed and that the Applicant would have to get a discharge permit from the Department of Environmental Protection. "So far Amphidrome seems like the best approach to use," he said. The supplier, he added, had offered a guarantee that the effluent discharged from the system would exceed the standard offered in the current Application.

The wastewater treatment plant, Mr. Lafferty continued, would be operated by the golf course owners under a contract with a licensed operator for oversight, as required by the DEP regulations. It was impossible, he said, to estimate costs at this point since the Applicant would need to know first what the Conditions of Approval would be. Lastly, the Applicant did not plan to charge the Martha's Vineyard Arena or Island Elderly Housing for the transport and treatment of their effluent, Mr. Lafferty concluded.

John Best, a Commissioner at large from Tisbury, confirmed with Mr. Lafferty that the golf course would be bonded to guarantee completion. Mr. Best then inquired: "What would happen if the golf course failed, even if there was a transition between one owner and another of, say, a year. If there was a bankruptcy or a foreclosure, what happens, who operates the wastewater system? Can it operate for just those two facilities with that limited loading ... or are they going to have to revert to some other [treatment facility] on site?"

Mr. Lafferty replied that the Department of Environmental Protection controlled such facilities pretty tightly and would require beforehand all the financial mechanisms needed

to ensure the continued operation of the plant. Mr. Best confirmed with Mr. Lafferty that the houses on the site would be hooked up to the facility as well.

With regard to a question about the Applicant's having used a 10-percent leaching rate, Mr. Lafferty declared that there had never been any credible testimony on alternative nitrogen leaching rates. "Based on all available information and analysis of the soil types found in the Southern Woodlands," he said, "10 percent is the property and conservation leaching rate." Furthermore, Mr. Lafferty stressed, the Commission's Water Resources Planner, Mr. Wilcox, as well as the Commission's consultant, Brian Howes, had agreed that this was the proper rate to use.

As for the question of who would be responsible for applying chemicals to the lawns of the market-rate houses (which would be condominiums), Mr. Lafferty said that although he thought that private homeowners were the best stewards of the land, he was not so sure of that with regard to pesticides and fertilizers. "In this case, all the homes will be of a condominium-type ownership, so the homeowner ... effectively has no right to fertilize [his] lawn," explained Mr. Lafferty. The homeowners association would be responsible landscape maintenance and would be held to the same standards proposed and approved by the Commission for the golf course, he added.

Next, Mr. Lafferty responded to a question about the use of the product Heritage. Apparently, he said, Heritage could be toxic to fish in extreme circumstances. But, he explained, it would have to be applied directly to a body of water at concentrations far above those of the diluted spray solution that would be used on the turf.

Mr. Lafferty then read from prepared material about how azoxystrobin interacted with the soil and about the results of field dissipation studies. Finally, he quoted from the Full Commission Meeting Minutes of January 31, 2002:

"Are you thinking of gypsy moth bacteria or something?" inquired Ms. Greene. "The one I'm thinking of," replied Mr. Wilcox, "is a Heritage product which is a fungicide that's a laboratory-brewed mimic of a naturally occurring secretion from mushrooms.... An organic gardener would say that's not an organic product. But I think it functions like an organic pest-control product, and I think with limited use it's probably completely safe."

"And I think Mr. Israel found that it was fairly innocuous stuff," Mr. Lafferty added, referring to Tisbury Selectmen's Appointee Tristan Israel.

The next question concerned how the Applicant could justify adding nitrogen to Sengekontacket Pond. "No building is proposed anywhere near Sengekontacket Pond," responded Mr. Lafferty, "nor is there any proposal to 'add nitrogen' to the pond."

The current problems in Sengekontacket Pond, Mr. Lafferty said, could be attributed to local residents who were using outdated cesspools or traditional septic systems. The Down Island Golf Club would actually be treating its sewage on-site, producing an effluent that not only met the Federal drinking water standards for nitrogen loading, but exceeded those requirements by a factor of 10.

Addressing a question about the proposed Archaeological Restriction, Mr. Lafferty related that the restriction was in fact part of the Settlement Agreement. He also related that within the past week the Applicant had provided the Commission with a memorandum from Nutter, McClennen & Fish on the subject of bonding as well as another memorandum on the Conservation Restriction and Common Scheme being proposed.

Mr. Lafferty then turned to the statement made by Mr. Schweikert at the start of the Hearing Session about the public-play component. *[See page 1 of these Minutes.]* Mr. Lafferty said that two conditional offers had been made by the Applicant toward the end of the preceding Hearing session on September 5.

Mr. Lafferty continued: One offer had been a public-play component. The other had been a moratorium on the sale of the land that the Applicant was hoping would be sold to the Land Bank and DEM if the necessary public funds were not forthcoming. These were issues that could be discussed further later in the Hearing, he suggested, if the Commission felt strongly about them.

A third area of discussion, continued Mr. Lafferty, was something that had been brought up by a couple people, and this was the Martha's Vineyard Regional High School and DEP's requirement (which it had temporarily waived) that the high school have its own wastewater treatment system. Such a system would cost the high school around \$1.5 million, he said.

Earlier that day, Mr. Lafferty went on, he had had a discussion with Mr. Wilcox, the MVC Water Resources Planner, about the possibility of the high school hooking up to the golf course's wastewater treatment facility. "We'd be more than happy to base our design of the permitted treatment plant for sufficient capacity to also handle the regional high school," he said. "When we do our design, do our permitting process, it's no big deal to design in an extra twelve to fifteen thousand gallons in the design phase."

Mr. Lafferty reminded his listeners about the \$75,000 a year over three years that the Applicant had proposed to donate for upgrades of 18 local residential septic systems. This would result in a net decrease in nitrogen loading of approximately 90 pounds. But taking the high school off its septic system and hooking it up to the golf course treatment plant would result in a nitrogen-loading reduction of over 300 pounds. "You'd get a lot of bang for your buck," he remarked.

Mr. Lafferty began to sum up. He made some comments on how trying the process had been, and he thanked the Commissioners for the effort they had put in. "But I'm going to end with a little bit of a pitch," he said, then quoting from the Minutes of the Full Commission Meeting of February 7, 2002:

"Mr. Zeltzer then described how he had kept trying to fit the development into the big picture, and in looking through his notes, he said, he had fallen in a direction once recommended to him by Tisbury Commission member at large John Best, which was, What are the Town Boards saying? He then listed the boards that had expressed support for the project ..."

"And I just want to remind the Commission, Mr. Lafferty continued, "that every board in the Town of Oak Bluffs has unanimously voted to support this project."

The Hearing Officer asked if any of the Commissioners needed clarification on Mr. Lafferty's testimony. Kate Warner, the West Tisbury Selectmen's Appointee, wanted to know if the number of club memberships would be 300 or 350. "Three hundred twenty-five," replied Mr. Lafferty.

Robert Zeltzer, a Commission member at large from Chilmark, inquired if any individual member of the group surrounding Applicant Corey Kupersmith or any group within the group had an interest in the adjoining property. "Not that I'm aware of," answered Mr. Lafferty. "Not that I'm aware of," echoed Mr. Kupersmith.

Regarding the 16 affordable rental units, Marcia Mulford Cini, a Tisbury Commissioner at large, asked if the project was eligible for any subsidies. Mr. Lafferty replied that the project qualified as a "LIFT" project. The time was 7:48 p.m.

**Technical Testimony and Formal Presentations from Members of the Public.**

The Hearing Officer asked first for technical or formal testimony from members of the public in favor of the project; there was none. He then asked for such testimony from members of the public in opposition to the proposal.

**Brendan O'Neill, Executive Director of the Vineyard Conservation Society (VCS)**, related that one of the society's roles was "to 'watchdog' land use issues in this kind of regulatory review process." The society, he said, looked at the Developments of Regional Impact and Districts of Critical Planning Concern as part of their mission of environmental protection and public service.

A detailed review had been prepared by Mark Nelson of Horsley & Whitten and attorney Richard Bernstein, Mr. O'Neill continued. He went through the documents contained in the packet that had been presented to each member of the Commission. *[See the meeting file for a copy of the packet.]* Referring to Mr. Nelson's work, Mr. O'Neill remarked, "I

hope this information will help reinforce or supplement the excellent work done by Commission Staff.”

Mr. O'Neill then went through the Executive Summary attached to the front of aforementioned packet. “The general overarching criticism that I would make is that the submission suffers from a sort of information-availability problem,” he said, “to the point where it becomes impossible to conduct a fair assessment of the strengths and weaknesses of the whole plan.” He commented on the conditional nature of many of the benefits offered by the Applicant, which made the DRI “a moving target when it comes to accurately assessing the benefits and detriments.”

Mr. O'Neill gave as an example the “illusory” nature of the open-space protection proposed by the Applicant, since it was dependent on a number of events outside the Applicant's and the Commission's control. Also worrisome, he said, was the fact that the number of affordable housing units depended on a number of contingencies. As a result, future outcomes remained uncertain, and it was impossible to factor them into the balance either positively or negatively.

“We also have grave doubts about the appropriateness or even the legality of the Settlement Agreement with the Town,” Mr. O'Neill went on. For example, the Applicant was proposing the use of the Town Parcel as part of the plan, when such a purchase was contingent upon a two-thirds vote at Town Meeting.

Mr. O'Neill questioned some of the conditions that the Applicant had proposed for the Town to put in the Request For Proposals associated with the parcel. “On its face, that constitutes a contract between the Town and Down Island as potential bidder,” he said, “and unless we're missing something, that probably runs up against the prohibition on collusion in public bidding, since Down Island will have what appears to be an unfair advantage over other bidders.”

Referring to the Commission's Written Decision for the second Down Island Golf Club Application (DRI No. 543), Mr. O'Neill argued that nothing offered by the Applicant in this third Application provided a basis upon which the Commission could revise its Decision. The same clearing of the land would be carried out for the course, and the addition of housing would require even more clearing. The only benefit from the market-rate residential units, he said, seemed to be the financial gain to the Applicant, “and we know that residential housing units do not carry their weight in the tax base.”

As the society understood the proposal, Mr. O'Neill went on, a number of important specifics remained unclear. The plan, for instance, claimed 100-plus acres of preserved woodlands. But, he noted, the 24-acre Town Parcel and the Windfarm driving range were included, despite the fact that neither was under the control of the Applicant. “The actual number of acres of woodlands to be eliminated is unclear to us,” he said. “We're having trouble getting a handle on that.”

In addition, Mr. O'Neill pointed out, the habitat assessment of the 55 acres acquired by the Applicant shortly before the second Application was considered by the MVC had not been submitted yet. Moreover, the woodlands had been included in the State's BioMap, and the VCS's current submission contained information from the BioMap technical report on why the site had been included as core habitat.

Mr. O'Neill stated that the location of the parking for the affordable-housing units would require additional loss of woodland habitat. It was unclear whether driveways and parking for the market-rate housing had been included in the calculation of acres of impervious surface. Further, it was unclear where the golf-cart paths would be constructed and how much additional clearing that might entail.

On the subject of nitrogen loading from the use of fertilizer, Mr. O'Neill continued, the Applicant was still proposing to use a 10-percent leaching rate in their calculations. "Fifteen percent leaching rate is consistent with that used by Mass. DEP on golf courses on the Cape and elsewhere in the State," Mr. O'Neill declared.

As for the built environment and issues surrounding nitrogen loading from residential lawns, Mr. O'Neill testified, the Applicant was still using the 10-percent leaching rate in their calculations, while DEP requirements assumed a 25-percent leaching rate in such areas.

Regarding wastewater loading, Mr. O'Neill went on, the Applicant continued to suggest that the treatment system would consistently achieve 3-milligrams-per-liter nitrogen concentration in the discharge effluent. However, he remarked, the application for the discharge permit that would be submitted by the Applicant to the Department of Environmental Protection would be subject to only a 10-milligram-per-liter standard.

"Loading from the treatment plant should be based upon the 10-milligram-per-limit standard," Mr. O'Neill said. "That's what DEP will require when DEP issues the permit, near as we can figure."

Turning to the subject of recharge to the aquifer, Mr. O'Neill related that the Applicant had claimed that the entire annual precipitation rate – 46-plus inches per year – would be recharged from impervious surfaces. "This does not account for loss through evaporation and so is overly optimistic," he pointed out.

Regarding Webb's Campground, Mr. O'Neill noted that the Applicant continued to take credit for a reduction in nitrogen loading from the former campground, even though the facility was not a current source of nitrogen. He referred the Commissioners to Exhibit C in the packet, which summarized the nitrogen-loading numbers.

In summary, concluded Mr. O'Neill, the current Application contained even more detrimental environmental impacts than the previous plan had. It proposed to fragment even more interior woodland habitat, he stressed, and to create more impervious surfaces

with the residential-housing component. In addition, it provided fewer clear opportunities for land conservation. "VCS urges you to disapprove this Application," Mr. O'Neill declared.

**Paul Bagnall, the Shellfish Constable and Marine Biologist for the Town of Edgartown**, read into the record a statement he had written with Edgartown Health Agent Matthew Poole. He and Mr. Poole did not wish the Commission to construe the correspondence as either for or against the proposal, he noted.

"Throughout the proposal," Mr. Bagnall began, "Sengekontacket Pond has been described as a better-flushed, more pristine pond than Lagoon Pond. It is important to note that Sengekontacket is not without its own problems. Eelgrass beds have all but disappeared from the pond, and with the loss of these eelgrass beds, the bay scallop harvest declined significantly."

Mr. Bagnall continued that although Sengekontacket had nearly the same tidal range as Nantucket Sound, the Towns of Edgartown and Oak Bluffs continued to work to establish channels within the pond to improve and maintain navigation and circulation. In addition, as part of an ongoing effort to maintain water quality with the pond, a denitrification plan for Sengekontacket would greatly complement that program.

"The present Down Island proposal would only denitrify septic systems that are very close to the dividing line of the watersheds of Sengekontacket and Lagoon Pond," Mr. Bagnall continued. "This dividing line is only hypothetical. It is our opinion that denitrification should occur on properties closer to the Sengekontacket Pond watershed, thus assuring that denitrification occurs within the Sengekontacket Pond watershed."

Mr. Bagnall also pointed out that the most recently permitted golf course in Edgartown had been required to line all of its greens. "We feel that it would be appropriate to require that all greens on the Down Island golf course be lined as well, regardless of which watershed the green is located in," he said. "This allows for recycling the nutrients and [for] water-quality testing."

There being no other technical testimony, the Hearing Officer turned to Town boards and public officials who had not already spoken during the Hearing for the current Application.

**Testimony from Town Boards and Public Officials.**

**Richard Combra, an Oak Bluffs Selectman**, remarked that the entire process had been trying for the Selectmen and the Commission. It had been suggested, he said, that ballots be given to the voters of Oak Bluffs through which they could register their approval or disapproval of the project before them. He would suggest, he declared, that the voters had actually had that opportunity already.

Mr. Combra continued that he hoped that the positions taken by the Town's boards on the Application would weigh heavily. Four members of the Oak Bluffs Board of Selectmen supported the project, he stressed, and they had been either elected or re-elected during the Application process. The issue of golf had been prominent, he pointed out, in all of those campaigns.

This Application, Mr. Combra argued, was "of greatest concern to the citizens of Oak Bluffs." He understood, he said, that the Towns of Edgartown and Tisbury shared bodies of water with his Town, but the development would affect Oak Bluffs the most.

Thirdly, Mr. Combra went on, the Settlement Agreement was, he believed, the foundation for the Application before them. "I believe that we identified many issues in agreement between the Applicant and the Town of Oak Bluffs that would satisfy the citizens of Oak Bluffs for this property to be approved," he said. "You have built, I hope and believe, on that foundation, and you've identified additional issues. Our agreement certainly is amendable..."

Mr. Combra concluded by stating that he looked forward to the continuing relationship between the Commission and the Town of Oak Bluffs in seeing the Application before them to fruition. (Applause)

**Kenneth Rusczyk, another Oak Bluffs Selectmen**, related that he had found it curious during the preceding Hearing session when Maura McGroarty had commented on the body language of some of the Commissioners. "I would have predicted at that last meeting that the Application would have come back with a big stamp of disapproval on it by your body language, by whom you walk out with, whom you talk to..." he observed.

Mr. Rusczyk continued that a statement made by the Commission Chairman before the September 12<sup>th</sup> Public Hearing by the Joint Committee on Agriculture and Natural Resource had been particularly troubling to him. He quoted from the statement read by MVC Chairman James Vercruyse: "Nevertheless, after accepting broad input, evaluating the facts of the project and considering the benefits and detriments of the regional impact, the Commission denied ... the [Down Island Golf Club] project twice."

"I maintain," declared Mr. Rusczyk, "that there are three thousand seventy voters in this Town. You keep seeing the same 60 people come to this meeting, say the same things, and you get 25 people writing the letters over and over and over again. You get the same names at the bottom of all the letters. You're not getting a clear snapshot of what the people want."

"A better barometer," Mr. Rusczyk went on, "would have been to show up at the ... March 26<sup>th</sup> meeting, where we had 28 percent of the voters show up at the largest public gathering in the history of Martha's Vineyard by hundreds and hundreds and hundreds and hundreds of people. And our own Town Moderator ... on Article 2 said, 'I clearly call, it was an overwhelming vote in favor of the Motion.'"

Mr. Rusczyk said that he believed that one of the most cogent questions at the last Hearing session had been posed by Alan Schweikert, when Mr. Schweikert had asked Water Resources Planner William Wilcox the following: If this course were built, would there be less nitrogen going into the Lagoon? "And the answer was yes," stressed Mr. Rusczyk, "there will be *less* nitrogen with the wastewater treatment plant collecting for the Island Elderly Housing, collecting for all the houses, collecting for the ice arena – there will be *less* nitrogen. That is a reason that you can hang your hat on."

Furthermore, Mr. Rusczyk said, he felt that even if a Commissioner thought he or she wanted to vote against the proposal, there was still time to change. "There is no disgrace and there's not dishonor in changing your mind," he declared. "You can truly drink from the cup of courage and vote what is in the best interests of this Town. And you've heard it from the people, and I believe that we want it to pass." (Applause)

**Linda Marinelli, Vice Chairman of the Oak Bluffs Finance Committee as well as of the Oak Bluffs Council on Aging**, began to speak when Ms. Greene inquired, "Who's she representing?" Ms. Marinelli mentioned her Vice-Chairmanships. "Is she speaking for them or as a board member?" asked Ms. Greene. Ms. Marinelli replied, "I'm speaking for myself and for a statement that was just made that I want to correct in the record, if you would, Mr. Chairman."

The Hearing Officer allowed Ms. Marinelli to continue. Mr. Lafferty, she said, had made a statement a few minutes before that the boards in the Town of Oak Bluffs had unanimously supported the golf course. [See page 13 of these Minutes.] "That could not be further from the truth," she declared.

"I make that statement because I am Vice-Chairman of the Finance Committee, I am the Vice-Chairman of the Council on Aging," Ms. Marinelli continued. "There w[ere] votes taken on the Finance Committee. I never supported this golf course, and I never would. So that statement needs to be corrected in the record. And to the best of my knowledge, I do not recall any votes being taken at the Council on Aging. So, for the record – I hope it stands corrected." (Applause) The time was 8:10 p.m.

#### **Testimony from Members of the Public.**

**Maitland Edey of West Tisbury** stated that he was speaking for himself. He then thanked the Commission members for the endurance and patience they had displayed throughout the process. "I'm grateful for it and I admire it," he said.

Mr. Edey related that he wanted to address a single point – precedent. "I'm concerned about the implications of the Decisions you make on this golf course for the future effectiveness and reputation of the Commission," he said. "You can either approve with or without Conditions or you could deny this Application..."

Mr. Edey went on, "If you approve, the first thing I would wonder about [would be] how the public perceives, do people think that you approved on the merits or do they think that you approved because you had caved under pressure... I do have the impression that you would be likely perceived as having caved under pressure, whether that's true or not."

Among the people who might draw that conclusion, Mr. Edey continued, would be both golf opponents and golf proponents, supporters of the Commission and potential adversaries of the Commission. The supporters would lose confidence in the Commission's ability to settle cases on the merits, he said, "and I don't need to tell you that public confidence is important to your effectiveness."

Also among the people who would draw that conclusion would be future likely large developers, Mr. Edey remarked, "and the message you send to them would be, 'Well, we can do this. We can come in there with a lot of money, and the Commission can't be counted on to settle cases on the merits.'"

If the Commission were to deny the Application, it would have to do it in the face of threats, the two biggest of those being the threat of lawsuits, which could be expensive, and the threat of Oak Bluffs withdrawing from the Commission, Mr. Edey testified. He himself believed that Oak Bluffs would not withdraw, for if it did, it would be a blow most of all to Oak Bluffs.

"If you are tempted to vote in favor of the golf course because of those threats, then you are not voting on the merits of the case, and that could undermine confidence in the Commission," Mr. Edey concluded. (Applause)

**Al Mahoney of Oak Bluffs** related that he had "strong emotional attachments" to the piece of land in question. "I spent my first night on the ground there 25 or more years ago, sleeping on the ground," he said. "Not many people have slept on the ground in the Southern Woodlands for six months at a time in a tent. That's pretty close to the ground ... It's a beautiful place, I still think it is."

Mr. Mahoney testified that he was also a shellfisherman and regular fisherman who fished in the Lagoon and Sengekontacket Pond. "I consider the little bridge, the big bridge and the drawbridge my fishing holes," he went on. In addition, he was a windsurfer who spent a lot of time on those two ponds. "And I'm very concerned about both the land and the ponds," he declared.

"But I also have to tell you," Mr. Mahoney continued, "that I represent, or I submit that I represent, something in Oak Bluffs you may not see in these meetings, and that is a silent majority, which is the working-class stiffs such as myself who have children, who have businesses, who have things they are doing and don't have time to write to the newspapers, read the editorials or sign the petitions against public political actions."

Mr. Mahoney stated that in his opinion the two votes at the Special Town Meeting in March had been overwhelmingly in opposition to the Town's taking the land by Eminent Domain and overwhelmingly in favor of withdrawing from the Commission. "The reason why I bring this up – this is not a threat – I heartily believe that the Town of Oak Bluffs, the regular voters who have not come to these meetings, who live in Oak Bluffs – the barbers, the workers, the shopkeepers – they are prepared to vote out of the MVC, and that worries me a great deal," he said.

Approval of the proposal would be the best Decision for the Town of Oak Bluffs, stressed Mr. Mahoney. It would be the best thing for the ponds and the woodlands. "It's open space. Sure it's a golf course, but it *is* open space. It'll have trails," he pointed out, "and most importantly, it will be monitored."

Mr. Mahoney appealed to the Commissioners: "If somehow you can put aside your business, your personal emotions, to see through, to look at this plan on its merits, for us as a Town and the Island, I believe that we can all work together to oversee and control what is going to ... go forward on this project. And I just really feel that at this point you should seriously consider the fact that we have environmental control over this project and not a housing project. If there's a housing project in there, it'll be just another gated community..."

Lastly, Mr. Mahoney thanked all five of his Selectmen for their efforts with regard to the Application process. (Applause)

**Barbara Day of West Tisbury** related how the month before she had been reading about the death of the great quarterback Johnny Unitas of the Baltimore Colts. "He was particularly skilled at avoiding interception," she said, and this had led her to formulate an analogy.

"As you work toward a Decision, you too are faced with a number of possible interceptions," Ms. Day continued. "One is the money that is being thrown up to entice you to take your eyes off the ball, off the golf. The money, unfortunately, is irrelevant. And there is no guarantee it will be available if the golf course goes into bankruptcy."

Ms. Day described an article in the October 4<sup>th</sup> edition of *The New York Times*, where it was related how research by DataTech showed that throughout the country the number of rounds of golf played had declined in 2000 and 2001 and had continued to decline in 2002 by almost 3 percent as of July. The article also named a number of courses that were having enormous financial problems. "With the stock market down seven trillion dollars, the possibility of bankruptcy is very real," she said.

Another possible interception for the Commission, Ms. Day went on, was the "here-it-is, now-it's-not public-play offer." In prime season, she said, greens fees at Farm Neck for nonmembers were \$125 per round, "certainly not cheap enough for the ordinary person." Ms. Day then added, "But whether or not this course is more or less open has nothing to

do with the advisability of leveling acres of forest and allowing pollution of a pond for a golf course which is an elite treat.”

Still another potential interception was the action of four of the Oak Bluffs Selectmen which had combined threats, no Town-wide vote and no Hearing with seasonal residents who surely were part of the Town's economic base, noted Ms. Day. “In no way can it be said that they represent the majority of the Town today.”

Finally, there was the potential interception by the same four Selectmen, who had threatened to lead the Town out of the Commission. “This certainly is interference,” Ms. Day declared. “Is it right that elected officials should so easily threaten other elected officials as those officials attempt to make a Decision on the merits of a project? Where has respect for the democratic process gone? To be swayed by this kind of tactic means an endorsement of this kind of government – government by intimidation.”

Ms. Day then outlined a gloomy scenario of pond pollution and bankruptcy that could result from the construction of the golf course. The Commission was created as the only regional organization that could speak for the silent trees, earth and water, she said. “I hope you will avoid the interceptions and will see the project for the destructiveness it causes and will reject it,” she concluded. (Applause)

**Brion McGroarty of Meadowview Road in Oak Bluffs** related how there had been a kind of vindication that week for those who eight years before had thought that the Town should develop the wooded lots behind Webb's Campground. For in the headlines, he pointed out, was the contention that the Applicant stood to make \$70 million from the project before them. “I don't want to say, ‘I told you so,’ but I told you so,” he said. “It would have been a good thing for Oak Bluffs.”

Until recently, continued Mr. McGroarty, he had been in favor of this DRI, and now he was not so sure. “I'm not sure that you're the entity that should decide this,” he said. “The Martha's Vineyard Commission has been overwhelmed by too many politically charged Decisions, and I've watched what it's done to you as a deliberative body. Political and media pressure has made it difficult for you to treat similar projects in similar fashions.”

In addition, Mr. McGroarty went on, he had personally experienced what this process had done to the community. “This issue has become so emotionally charged that basic courtesy at Public Hearings is the exception rather than the rule,” he said. He described how the year before an opponent had walked around the back of the room with a sandwich board telling the Applicant to “Go to Hell.” “And you let him stay here, First Amendment aside, I guess,” he declared.

Mr. McGroarty spoke as well of the spin put on the story by the local media. “This entire issue has pinwheeled out of the control,” he observed. “Personalities have become the larger issue at your meetings.” This was why, he said, he believed the fate of Applicant

Corey Kupersmith and the Down Island Golf Club needed "to be resolved in the privacy and silence of the voting booth, where quiet reason has a better chance to manifest itself."

Mr. McGroarty added, "It seems amazing to me that this thing actually started in the twentieth century." Having conducted "a very unscientific survey," he said he had concluded that the people who were against the golf course at the end of the twentieth century were still against it, and the people who were in favor of golf in "the roaring nineties" were still in favor of it, "in spite of all we've heard here."

Mr. McGroarty finished up: "I'm asking you, if you have a question that's so critical that it will make you change your vote, ask it now. Get an answer. If you don't like the answer, then don't vote that way. But please put an end to people like me coming to the microphone with testimony based only on emotion." He urged the Commissioner arrive at the Decision that evening. (Applause)

**Tad Crawford of West Tisbury** observed that one of the reasons the proposal to build a golf course in the Southern Woodlands had become so contentious was because it carried with it financial benefits that were difficult for many citizens in Oak Bluffs to resist. Indeed, he acknowledged, the Town did carry an unfair burden because so many nonprofit organizations and public entities that served the entire Island and did not pay property taxes were based in Oak Bluffs. But approving the golf course proposal was not the solution, he said.

"I urge you to oppose this proposal," Mr. Crawford declared, "and then work with others to develop a taxing mechanism, one which will support regional institutions ... and help remove this unfair burden for Oak Bluffs." (Applause)

**Michael Santoro** stated that he was before the Commission as **a member of the Oak Bluffs Business Association**. He related that he had been appointed by the association board to urge the Commission to approve the proposal after they had voted 9-4 (with one absentee) to support the Application. Mr. Santoro then described how Mr. Kupersmith had responded to public concerns with changes to his plan.

"The economics that would come to Oak Bluffs with this would be great," Mr. Santoro continued, "and the recreational use alone ..." He related how he had not even known about the Southern Woodlands before and that now the trails would be open to the public. The association members could not understand how the Commission could turn down the proposal, Mr. Santoro concluded. (Applause)

**Laurel Welch, a business owner in Oak Bluffs**, testified that the Oak Bluffs Business Association had 140 members and that she for one had never been polled regarding her position on the golf course proposal. (Applause)

**Tom Walsh**, who described himself as **someone who had lived on the Lagoon for 33 years**, commended the Applicant on the slick, polished presentation. "The only thing

they left out was the door prize," he remarked. "Let's face it – There are no guarantees that these give-aways are ever going to happen."

Mr. Walsh related that as a developer himself, he knew it was no secret that if one paid his consultants handsomely, they would deliver reports stating exactly what one wanted to hear. "Simply put, that's how the game's played," he commented. The Applicant's consultants, he continued, had made statements of fact based on incorrect assumptions. In addition, he said, over the course of the three Hearing sessions, he had heard "many half-truths and many blatant lies."

First of all, Mr. Walsh testified, there was no deal or agreement with the Department of Environmental Management to purchase 12.5 acres for a campground. "The DEM cannot ethically or legally make such a deal with a private enterprise," he said. Nor was there any deal with the Land Bank. Another contingency was the two-thirds Town vote for the center parcel. Furthermore, he pointed out, a 12-acre campground would not be a money-maker.

Mr. Walsh also questioned who would monitor the seasonal market-rate homes to ensure that they were not lived in year-round. "There's not a Land Court Justice in the Commonwealth who would approve this concept," he declared. Moreover, it made no financial sense for the Applicant to offer public play, since who in his right mind would pay a few hundred thousand dollars for a membership and then have his landscaper take his 10 a.m. tee time? The Vineyard Golf Club had only sold 65 percent of its memberships so far, he noted. "Where is the great demand coming from?" he asked.

Referring to the bonding proposal made earlier by Mr. Lafferty, Mr. Walsh observed, "If, in fact, there is a bond, I am confident it will have more exceptions than Carter has pills." He also suggested that the Commissioners consider the report by MVC Coastal Planner Jo-Ann Taylor, where Ms. Taylor related that Lagoon Pond was already at its nitrogen-loading limit. The golf course would be a threat to the shellfish hatchery and the lobster hatchery, "which are the *real* economic engines for Islanders and Oak Bluffs," he said.

Mr. Walsh stated further that global warming was no longer a theory but a reality. If the course had been operating this past summer, he said, it would have taken more than 60 million gallons of water out of the aquifer. He spoke of the threat of saltwater intrusion into the aquifer in Katama in the 1980s and how this could very well happen again.

The Vineyard was unique because of the diversity of its people and the diversity of its topography, said Mr. Walsh. And to lose Webb's Campground would be to lose the young couples and families who could not afford to visit the Island otherwise, he noted.

Mr. Walsh described the Public Hearing conducted a few weeks before by the Joint Committee on Natural Resources and Agriculture. There, it had appeared to him that a majority of Oak Bluffs voters did not want to leave the Commission.

Lastly, Mr. Walsh suggested that DEM could purchase the campground land and transfer it to the Town, that the Land Bank and other organizations could purchase most of it for conservation purposes and that some affordable housing could be built there as well. (Applause)

**Fred Mascolo of Edgartown** testified that not too long ago he had attended a meeting of the Edgartown Selectmen and he had heard the Town's Shellfish Warden report that the only place where he had seen a lot of eelgrass was over by the golf course. "I wanted to report that to you," he said. "It's interesting that there would be eelgrass near a golf course."

"I just think this is a great thing for the Island," Mr. Mascolo continued. It seemed to him that with each Application and with each Hearing session, even more was being offered to the Town by the Applicant. "I don't think he's trying to buy his way in," he said. "I think he's been here for three years and has added more and more and more. And now the fact that the high school [could be] hooking up to the wastewater treatment plant, I think that's a very big thing."

It was okay to be green, Mr. Mascolo concluded, but he was asking the Commission "to serve the whole Island, everybody who lives here, business owners, conservationists, everyone. I ask you to vote in favor of this." (Applause) The time was 8:39 p.m.

**Mimi Davisson of Oak Bluffs** related that she had **recently retired after 35 years from the information systems and technology field**. "I was the chief information officer – commonly called a CIO – for a billion-dollar division of Union Carbide Corporation, which is now a subsidiary of the Dow Chemical Company," she said. And during her career she had evaluated the feasibility of hundreds of projects, some with impacts of hundreds of millions of dollars.

Recently, Ms. Davisson continued, she had taken part in a discussion about the so-called economic engine that some were claiming the golf course would be for the Town. So she had agreed to analyze the economic impact of the project, using the same techniques she had used in her career and working with information available to the public. The estimates and report had been distributed to each of the Commission members, she said. *[See the meeting file for a copy.]*

Among the conclusions Ms. Davisson had reached were: that the developer had the potential to realize a one-time net profit of \$70 million; and that the Island, on the other hand, would realize a one-time net of \$3.6 million. The latter figure included net profits to businesses, gifts to community groups and costs to the Town of Oak Bluffs and the Land Bank, she noted.

"The Island's one-time net is 5 percent of the developer's one-time net," Ms. Davisson stated. Once the project was completed, she stressed, the Island would have recurring net benefits of less than half a million dollar per year, or less than 3 percent of Oak Bluffs'

annual Town budget. "Clearly, this proposal is a vigorous economic engine – for the developer – but it looks like a little toy train for the Island," she remarked.

Ms. Davisson questioned whether the loss of the largest undeveloped piece of land in the most densely populated Town on the Vineyard was worth it. She concluded by urging the Commission to deny the proposal. (Applause)

**David Woodhouse of Edgartown**, who said he had worked **37 years as a hydrogeologist**, related that he had reviewed the Applicant's report on groundwater issues. "When I reviewed that report, I found it to be deficient," he declared. He had also asked fellow hydrogeologists and hydrologists to assess the report, and they had reached the same conclusion – that the Applicant did not include sufficient information to prove that there would not be an impact on the aquifer.

Referring to a set of slides he had prepared for the Hearing on the second Down Island Golf Application, Mr. Woodhouse described how one of the experts he had consulted had written "Bogus" on some of the pump-test data.

Mr. Woodhouse invited the Commissioners to visit Goodale's pit to look at the soil there. "You don't have to have any background in geology to see that there are cemented sand and gravel layers in there," he said. In addition, he pointed out, Oak Bluffs had had water restrictions during the summer. "Now, if this unlimited aquifer exists, how come we have restrictions?" he asked.

**Meverell Good of Tisbury** approached the microphone with two antique golf clubs in his right hand. "My relationship with golf goes back to where they put names on the clubs," he related. In addition, he had lived on a golf course in Pine Valley, New Jersey, that was "a beautiful course. I love golf courses." Mr. Good shared some personal anecdotes about the game of golf.

Having said that, though, Mr. Good declared that the Commission should turn down the Application before them for four reasons. First, there appeared to him to be many unverified statements being bandied about in the press and in the Hearing sessions. Secondly, he lived on the west side of the Lagoon and had deep concerns about its water becoming tainted.

Mr. Good continued that, thirdly, he wondered who would be enforcing all the regulations and Conditions being imposed by the Commission. "What is inspected is respected," he stated. Last and most important was the issue of trust. "Without trust, you don't have anything," he remarked. "I assume the proponents of this are honorable people, but so far from what I've heard, I can't say they have my complete trust," he concluded. (Applause)

**Hydrogeologist Charles Ratté** said that he would repeat what he had said during the Hearing on the first Down Island Golf Club Application, when the Water Superintendent

of the Town of Oak Bluffs had called him a liar. "I was quoting from his annual report," he noted. The report had indicated that the Oak Bluffs municipal wells had been showing contamination, although the level of contamination had not exceeded the standards of the Environmental Protection Agency, he said.

Mr. Ratté related that he had read recently in a local newspaper that Edgartown had found some coliform bacteria in its water supply. If the population of the Island continued to increase without a central sewer system, the groundwater was going to be contaminated, he stressed, and at some point the level of contaminants would reach the standard imposed by the EPA.

Mr. Ratté pointed out that the Applicant had not talked about the "residence time" of possible contaminants, which could take 15 or 20 years to reach the ponds. "My concern is for the quality of the water," he declared. "The quality of water in our aquifers is extremely important to the livelihood of all the people who live on the surface of this Island." He urged the Commission not to approve what he called "another source of contamination."

**Suzanna Nickerson of Edgartown** began by addressing the issues of water and recharge to the aquifer. She observed that when woodlands were cleared and replaced with grass, the root systems in the ground had less space between them and so could not allow as much rainwater to sink in. In addition, she pointed out, since the water stayed close to the surface under those conditions, much of it was lost to evaporation. The evaporation rate was exacerbated by spray irrigation and heat, she added.

Another factor, continued Ms. Nickerson, was that when woodlands were cleared and replaced with grass, the ground tended to freeze hard, often preventing rain and snow from entering the ground. All of these elements led to less recharge making its way to the groundwater, she said.

Ms. Nickerson turned to some articles on golf that had appeared in *The Boston Globe*, *The New York Times* and *The Wall Street Journal*. One of the points made in the articles was that although the popularity of golf as a spectator sport was rising, as a player sport it was not. Another point offered by the article was that many golf courses were built only to sell houses, concluded Ms. Nickerson. (Applause)

**Maura McGroarty of Oak Bluffs** stated that although she had wished the second Application had been approved, she was opposed to this Application because of the housing component.

Regarding the subject of water, Ms. McGroarty pointed to the amount of home construction and upgrading that had gone on along Beach Road and Barnes Road over the last five to 10 years. "In all honesty, I think one of the things that we need to worry about more than this golf course, which is going to treat the water going into those [ponds], is

the continued building close to those bodies of water and other bodies of water and the proliferation of swimming pools," she said. (Applause)

**Catherine Deese** began by stating that she had been **born and raised in Oak Bluffs**. "I just have one little thing to share," she said. "For the first time in my life, when I went to work today, I had to buy bottled water, and that *bugged* me. I wish you would not pass this thing. We need to save our water." (Applause)

**William Peterson, a summer resident on the Lagoon since 1964**, provided a history of the various organizations that had sought to protect the Lagoon, beginning with the Eastville Association in 1970, which had prevented a beach near the drawbridge from being developed. More recently, he continued, the Lagoon Pond Association had encouraged the acquisition of the Sailing Camp for passive-recreation opportunities. Both these examples, Mr. Peterson said, provided good models for the future disposition of the Southern Woodlands. (Applause)

**Debbie Dean of Oak Bluffs** related that she had lived on the Island for 32 years. She encouraged the Commission to assess the benefits of the proposal to the whole Island. Years ago, she said, the development of commercial space on open space required approval by the people of the Town. "Seldom was it granted," she noted, then recalling the Redstone complex at the blinker that had been turned down some years before.

Today, Ms. Dean said, she felt that Mr. Kupersmith's proposal was as much of a commercial venture as Mr. Redstone's shopping complex had been. "So why should we cave in to the desires of this off-Island developer with a clouded vision of commercial space?" she asked. "Golf is not the issue. Change for the better is. Does this plan change our Town for the better? The so-called gifts may, but the actual plan [does] not, in my opinion ... Please vote this commercial venture down once and for all." (Applause)

The Hearing Officer called for a short break. The time was 9:07 p.m.

#### **Questions from the Commissioners.**

Mr. Toole reopened the Hearing session at 9:18 p.m. County Commission representative Roger Wey asked the Applicant's counsel, James G. Ward of Nutter, McClennen & Fish, about the bonding issues that had been referred to earlier by Mr. Lafferty. [See page 4 of these Minutes.] Mr. Ward explained that one of the bonds would provide assurance that once the golf course construction was begun, it would be completed, even if, for instance, Mr. Kupersmith or the contractor were to go into bankruptcy. He had spoken, Mr. Ward related, to three different bonding companies, all of which had indicated that such an arrangement was possible.

"What is the amount?" wondered Mr. Wey. Mr. Ward replied that one would take the estimate for the construction of the elements of the project, for example, the golf course itself, which had been estimated to cost around \$6 million. So at any given point, he

stressed, that money would be available to complete the course construction. Responding to another query from Mr. Wey, Mr. Ward explained that the environmental insurance policy was a whole separate issue from the bonding just discussed. "Would the bond be in place after the golf course was completed?" inquired Mr. Wey. The bond to finish would go away, answered Mr. Ward, adding that there would be no reason to have it at that point.

Mr. Wey also requested that Mr. Ward expand on the explanation of the Common Scheme referred to earlier by Mr. Lafferty. *[See page 3 of these Minutes.]* "A Common Scheme is really nothing more than a covenant," replied Mr. Ward. "In legal terms it's called an Equitable Servitude, where one property imposes ... on itself a certain bunch of considerations." Those considerations could be things like restrictions on architecture or conservation-related restrictions.

Mr. Ward added that the Common Scheme would be enforceable by the beneficiaries, which in this case could be the Land Bank or the M.V. Commission.

Christina Brown, a Commissioner at large from Edgartown, wanted to know why the Applicant had chosen a Common Scheme arrangement for the land instead of a Conservation Restriction. Mr. Ward explained that in order to do a Conservation Restriction, the Applicant would have to submit the metes and bounds of the land to be restricted. Any change in those would have to be approved by the State Legislature, which was a long and laborious process, he said. The Common Scheme, he stressed, included the buildings, while the CR had to exclude them. So the former allowed for additional flexibility, he concluded.

James Athearn, another Commission member at large from Edgartown, asked what would happen if, say, 20 acres had been cleared and then some financial catastrophe occurred. "Could the project also be brought to a close and sealed over?" he wondered. "Yes, the bond can be what you want it to be," responded Mr. Ward.

Mr. Athearn asked if the wording for the bond had been chosen yet. Mr. Ward replied that one could write into the bond various options in the case of a financial disaster. "It's just purely a contractual mechanism between the owner, in this instance, and the bondsman," he concluded.

Ms. Greene wanted to know if the residents of the affordable housing units would have any of the rights held by the owners of the market-rate houses with regard to the use of the golf course or the clubhouse. "No, that would be entirely separate," answered Mr. Lafferty. So, could she assume that the owners of the market-rate houses would not automatically have those rights? asked Ms. Greene. Yes, replied Mr. Lafferty, they were two separate items.

Mr. Zeltzer observed that when the Commission received a proposal, the members tried to put it within the framework of benefits and detriments and not view it as "carrots and

clubs." He wondered, he said, about the following: if in fact the component of public play was a benefit to community, why was such an offer not part of the proposal? "It's strictly a matter of financial implications," replied Mr. Lafferty, who explained that at the time he had offered the public-play component, that offer had been related to the financial implications of the amount of time it would take to get the Application approved.

Mr. Lafferty then spent some minutes relating how he would convey requests from the Commissioners to Mr. Kupersmith and how Mr. Kupersmith would weigh the financial implications before making an offer.

Andrew Woodruff, a Commissioner at large from West Tisbury, asked Mr. Lafferty if it was true that the club would need 100 members to break even. "Who said that?" responded Mr. Lafferty. "It's written in the Settlement Agreement that that's the break-even point," noted Mr. Woodruff, who continued, "My question would be, if that's the case, then it seems there would be an awful lot of latitude for a potential profit if you're going to eventually have 325 members." Mr. Kupersmith, who was seated in the audience, explained that the figure of 100 members would be the trigger point for payments in lieu of taxes by the Applicant to the Town.

Mr. Donaroma wanted to know what kind of public-play component the Applicant would consider if the project were to be approved, say, within the next week. Mr. Lafferty replied that in fact he had drawn up a public-play policy that included revisions to the Integrated Golf Course Management Plan (IGCMP), should public play be allowed. If the Commission wanted public play that was not severely restricted to only certain times of day during certain seasons, he pointed out, then the number of rounds of golf that would be played would increase significantly.

Mr. Lafferty then went through the public-play policy. First of all, any member of the public would be invited to play the course. Anyone who showed up and paid the greens fee got to play, he said. Public play would be allowed beginning at two in the afternoon from Memorial Day through Labor Day on any day the golf course was open. Public play would be allowed after one in the afternoon prior to May 20 and after Labor Day on any day the golf course was open.

To ensure open access during prime season (July 1 through Labor Day), Mr. Lafferty went on, at least four guaranteed tee times would be available for public play on a first-come, first-served basis. Also during the prime season, individual members of the public would be limited to no more than two tee times during any seven-day period. Greens fees for public play would be the same amount charged for members' guests, he said, and discounted twilight tee times would be available after four in the afternoon during the off-prime season.

The public could reserve tee time up to 24 hours in advance, Mr. Lafferty testified, and the members of the public would be subject to the same rules for dress and play as the

members. As would be the case with full-privilege members, the golf course superintendent would have the discretion to limit play when conditions warranted. Lastly, the public would be shown the same courtesies and would be subject to the same standards as the full members, Mr. Lafferty concluded.

"Why would I want to be a prime member?" asked Mr. Donaroma. *[Mr. Lafferty's reply was muffled on the tape.]*

Linda Sibley, a Commissioner at large from West Tisbury, clarified with Mr. Lafferty that a minimum of four tee times would be available to members of the public between two and four during the prime season. Each tee time would accommodate one foursome, she confirmed, and so about 16 members of the public could play each day.

Would the Applicant be adding tee times to allow for this public play? inquired Ms. Sibley. "The course will get more play," said Mr. Lafferty, "[but] not by adding tee times." He explained that adding the public-play component would result in otherwise-unused tee times being utilized.

"So how does that interact with turf management?" wondered Ms. Sibley. Mr. Lafferty answered that there would be modifications to the IGCMP that would go with a public-play component. "There are three or four additional products that we would need to use," he said, adding that those products were not considered organic.

Mr. Schweikert asked if the public-play policy assumed 325 full-privilege memberships. Mr. Lafferty replied that the tee times for the public would be guaranteed during the prime season regardless of the number of full members. Mr. Schweikert also wanted to know why the Applicant would not fill in all unused tee times with public play if the club had fewer than 325 full members. "We would, we'd *have* to," said Mr. Lafferty, adding, "We'd reserve the right to offer further public access."

Mr. Schweikert pointed out that at the Farm Neck Golf Club whatever tee times were left over from the full members were available to the public. "Well, that's basically how it is," remarked Mr. Lafferty. So why put a number on it? asked Mr. Schweikert. "That's the *minimum*," Ms. Greene pointed out. Right, said Mr. Lafferty, the Applicant would be guaranteeing the four tee times for the public between two and four during the prime season.

Ms. Brown noted that there were two parts to the Applicant's offer now on the table: the public-play component and the three-year moratorium on selling the Windfarm. "What's with that?" she asked, referring to the latter. "Because everybody kept asking us what happens if they don't come up with the money," replied Mr. Lafferty. "And I saw that as a legitimate concern, and that if I can figure out a way to somehow, you know, ameliorate that issue, I'll do it. And I thought that by offering some moratorium of three years that ..." Mr. Lafferty's voice trailed off.

"I'm not clear," said Ms. Brown. "Is that an offer that you're now making us?" "I think it's something we're discussing," responded Mr. Lafferty, who then backtracked a bit. "Actually," he said, "that's fine, that's acceptable. Win, lose or draw, that's acceptable." "Easy," remarked Mr. Donaroma.

"Brian [Lafferty], officially offer the public play," said Mr. Kupersmith from his seat in the audience. "All right, good," commented Mr. Donaroma, "it's on the table." "It's on the table," echoed Mr. Lafferty.

"We want to hear about the chemicals," said Ms. Greene. "Well, Staff's going to have to look at that," said Mr. Donaroma. Ms. Greene asked again to hear about the Integrated Golf Course Management Plan and the adjustments that would be made if the Applicant allowed public play.

"Briefly," answered Mr. Lafferty, "there are three or four products that Charles [Passios] would be more than happy to sit down with Bill Wilcox and go through the products and come to some reasonable accommodation. It seems to me that's a pretty good trade-off."

"The Windfarm, where are we on that, just to clarify? inquired Mr. Donaroma. "Is that still part of the offer?" Mr. Lafferty made some off-mike comments about an article in a local newspaper. "It *was* on the table," said Ms. Greene, referring to the Windfarm property.

Ms. Warner remarked, "Brian [Lafferty], the last time I asked you about the Windfarm, you told me there would be absolutely no changes to the proposal, period, that's it. I asked you, if the Windfarm were taken off the table, as I believe was asked at a previous Hearing, I remember that there would be less housing. That was what was discussed. Like, when I asked you that last week, you said flat out, "No, there will be no change to this proposal."

"The reason for some softening of that position," replied Mr. Lafferty, "was primarily a discussion I had with MVC Staff this morning. We had a discussion a few weeks ago about the Commission's ability to condition certain things, and Staff and I were on the opposite side of the issue, and it seems that Staff and I are now on the same side of the issue, and we could make, you know, some *[inaudible]*."

Mr. Lafferty went on, "Yeah, it's part of the Settlement Agreement, and it came up in our meetings two or three times, and I had some discussions with the Selectmen, and maybe Todd Rebello or Richard Combra will speak to that. On our own, we have no authority to change the Settlement [Agreement]. But as I mentioned to the Commission in our last two Public Hearing [sessions], the Commission is certainly not bound by the Settlement Agreement. You could certainly issue a Decision that is outside the parameters of the Settlement Agreement."

Mr. Lafferty continued: "And the specifics of the questions [*inaudible*], we discussed the Commission's ability to set Conditions that were inconsistent with the Applicant's proposal. And I suggested three or four weeks ago that the Commission *could* impose Conditions that were completely independent from the proposal, and [DRI Coordinator] Jen [Rand] seemed to think that that was within the purview of the Commission. We had a discussion this morning, and I won't use that word [*inaudible*], Jen, but Jen says she now agrees with me. You *can*."

Mr. Lafferty explained: "So, and then based on discussions with the Selectmen, they're not, you know, particularly, I think they wanted to have the possibility of the Windfarm. So if they do [*inaudible*] ... I've spoken to the Land Bank, and I made the commitment here in public to the Commission that we made a deal, we made a deal. But if – *if* – the Land Bank, if the Windfarm is the obstacle for an Approval of this project, then everybody would be foolish not to consider changing the parameters because of something I asked you at a previous Hearing, I asked you..."

*[The tape was turned over at this point. According to the Staff Secretary's notes, Mr. Lafferty spoke at this point of the financial model's have to be accommodated and the Land Bank's having to be flexible for the arrangement to work.]* "If the entire financial model were to work, that's, absolutely [*possible*]," said Mr. Lafferty.

"But how would we know that before we vote?" inquired Ms. Warner. "How would we know what the package would be? Because it's really difficult to vote on something that the package is not clear on."

"I appreciate that," said Mr. Lafferty, "and believe me, if there's a way I could make it easier for the Commission, I would. If we have some parameters on when we could expect a Decision, and that Decision, I mean, if you said right now you're going to have a Decision before you leave here at 11 o'clock, Mr. Kupersmith and I and [*inaudible*] and the rest of the team would go out there in the hallway, we'd work through the numbers and say, 'Listen, if you set this up, we'll deal with [*inaudible*]..."

But if you don't have the Windfarm Golf Practice Facility, you don't necessarily need the State, remarked Ms. Warner. "Yeah, the State DEM's going to buy that parcel," said Lafferty. "And you don't necessarily have to hang your hat on that," said Ms. Warner. "Why not?" asked Mr. Lafferty, who added, "That's two million dollars." Ms. Warner replied that she thought this was inconsistent with what she had heard earlier. Mr. Lafferty answered, "Our exposure on the Windfarm is approximately a million three point five, yeah, a million three hundred twenty-five thousand."

Mr. Best referred to the project summary in the Staff Report the Commissioners had been given, noting the item "year-round public access to trails." What he wanted to know, he said, was whether winter use of the golf course itself for cross-country skiing would be allowed, as it was at the Farm Neck Golf Club. "If snow's around long enough," said **Charles Passios, a member of the Applicant's team overseeing turf management.**

Mr. Best pointed out that at Farm Neck, management felt that the course had never been used enough for this purpose to lead them to view it as a detriment.

At The Vineyard Golf Club, on the other hand, continued Mr. Best, course management wished to control tightly any cross-country skiing. "You *do*, you have to put some controls on," said Mr. Passios, "because there's never enough snow cover to create a base to protect, for instance, greens surfaces ..." Mr. Lafferty noted that the trail system itself was so extensive, it ought to keep cross-country skiers fairly busy.

Mr. Schweikert returned to the issue of the Windfarm facility. "Let's assume that we're going to make the Decision next week. When do we see you again?" inquired Mr. Schweikert. "We don't," interjected Mr. Donaroma. "We're not going to have Land Use Planning, so what proposal would you have?" repeated Mr. Schweikert. "I mean, if we, if we, give us an alternative."

"The original plan that we had in mind was October 15<sup>th</sup>," responded Mr. Lafferty, adding, "You know, if it was the 17<sup>th</sup>, that's not the end of the world." A discussion ensued off-mike between Mr. Kupersmith and Oak Bluffs Selectman Todd Rebello. "I'm waiting to hear what the deal would be," said Ms. Warner. Mr. Schweikert said, "I think I'm asking the same thing – what's the alternative plan if you don't buy the Windfarm?"

"If we don't buy the Windfarm," replied Mr. Lafferty, "if the Commission were to say, you know, 'We don't think the Windfarm is an important, integral part of this proposal, and we would rather see a reduction in housing units, for example,' I mean, that's something that we would certainly consider."

Mr. Lafferty continued, "I mean, we have some significant financial exposure on the Windfarm, and I'm going to take some serious heat from the Land Bank, I suppose. But there again, half a loaf is better than no loaf. If we don't get approved, the Land Bank doesn't get to buy anything, so, you know, I've spoken to Mr. Lengyel every day since this first came up just to let him know what was going on, and I thought that was only fair." [*James Lengyel is the Executive Director of the Martha's Vineyard Land Bank Commission.*]

Mr. Lafferty said, "I can't say right now if I would take out two houses or three houses or whatever it may be, because if I say I'll take out three houses, then I don't get approved till November 15<sup>th</sup>, and now all that money is at risk." He again stated that October 15<sup>th</sup> was a date that they had been "knocking about."

Mr. Lafferty then offered to take out three houses if the Windfarm sale did not go through. Mr. Kupersmith joked, "That's very nice of you." Mr. Lafferty retorted that he was "trying to get somewhere." Mr. Kupersmith and Mr. Lafferty then left the room to confer in the hallway.

While Messrs. Kupersmith and Lafferty were conferring, Ms. Warner suggested that the Commissioners discuss when they would be meeting next. They had spent some minutes sorting out personal schedules, but no conclusion had been reached by the time Messrs. Lafferty and Kupersmith had returned to the room.

Ms. Sibley observed, "If the Applicant wants us to expedite, at some point this moving target's got to stop moving and just say what's on the table. Because once the Hearing is closed, then we can't change that." "I agree," said Mr. Donaroma, "so, if you want to get this over with, what are you putting on the table? No Windfarm – what happens?" "We'll take four market-rate houses off," answered Mr. Lafferty. "Okay, thank you," said Mr. Donaroma.

There was some joking. Then Mr. Lafferty remarked that the hooking-up of the high school to the Applicant's wastewater treatment facility could be one of the greatest benefits associated with the proposal. "We're talking about a significant [nitrogen] reduction," he said.

Mr. Woodruff wanted to know if the Land Bank had taken a formal vote on the Windfarm purchase. "Not to my knowledge," answered Mr. Lafferty. So how did the Applicant know if the funds were available? asked Mr. Woodruff. Mr. Lafferty related that all of his dealings with Mr. Lengyel had been "very positive, and I know that he feels that this is an important piece of property."

Mr. Lafferty explained why the Land Bank was holding off on a final decision: one, because Mr. Lengyel was waiting for the Oak Bluffs Selectmen to sign an amendment to the Settlement Agreement; and two, because the Land Bank wished to remain nonpolitical and so would not make finalize anything until the Commission had arrived at its Decision.

#### **Applicant's Summary.**

Mr. Lafferty expressed some of the frustration he had felt during the current process. He resented, he said, people saying that the Applicant was trying to buy off the Town. Every single one of the Applicant's offers, he emphasized, had come as a response to a request from the Commission or the Town. And although he appreciated Ms. Sibley's comments about the project's being a moving target, Mr. Lafferty concluded, this was in fact how the process should work, with the Applicant responding to comments and changing the plan accordingly. The time was 10:11 p.m.

#### **Another Commissioner Question.**

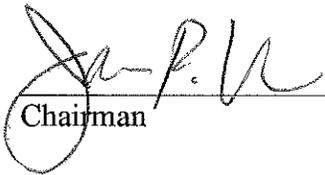
Ms. Greene asked the Hearing Officer if she could pose a question to Commission Water Resources Planner William Wilcox about the chemicals that the Applicant proposed to use on the course if the public play component were included in the plan. The Hearing Officer told her to proceed. "Well, I can tell you that some of the chemicals they want to

use for spot treatment are not organic," stated Mr. Wilcox. "They're synthetics... Without having all my herbicide and pesticide materials on me, I can't tell you whether they're at risk for leaching." He emphasized that the Applicant was proposing those chemicals for spot treatment only and not for broad application.

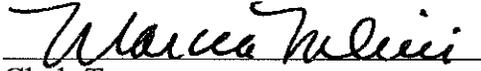
Then Mr. Toole closed the Public Hearing as well as the Written Record. The time was 10:14 p.m.

The Commission members then discussed for some minutes the scheduling of their next Meeting. Eventually, they came to agree on the date of Wednesday, October 16, at 7 p.m. They were informed by the Chairman that Commission Counsel Eric Wodlinger would be at the Commission that day and would attend the Meeting that evening.

Mr. Israel made a Motion To Adjourn, duly seconded. The Special Meeting adjourned at 10:19 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; C.M. Oglesby; M. Ottens-Sargent; A. Schweikert; L. Sibley;  
R. Toole; J. Vercruysse; K. Warner; R. Wey; A. Woodruff; and R. Zeltzer.

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

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