

THE MARTHA'S VINEYARD COMMISSION

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Martha's Vineyard Commission Minutes for the Special Meeting of October 24, 2002

The Martha's Vineyard Commission (the MVC or the Commission) held a Special Meeting on Thursday, October 24, 2002, at 7:30 p.m. in the first floor conference room at the Commission Offices in the Olde Stone Building, 33 New York Avenue, Oak Bluffs, Massachusetts.

At 7:37 p.m. the Special Meeting opened. Presiding was Christina Brown, Commissioner at large from Edgartown, who was the Hearing Officer that evening. *[Commissioners seated at the gavel were: J. Athearn; J. Best; C. Brown; J. Greene; T. Israel; M. Ottens-Sargent; A. Schweikert; L. Sibley; J. Vercruysse; K. Warner; R. Wey; A. Woodruff; and R. Zeltzer.]*

Public Hearing: The Kidder Building (DRI No. 557).

Ms. Brown outlined the Hearing procedure and read into the record the Notice of Public Hearing for the Kidder Building proposal in the Town of Tisbury (DRI No. 557). *[See the Full Commission Meeting File of October 24, 2002 (the meeting file) for a copy of the notice.]*

Applicant's Presentation.

Peter Breese of Breese Architects introduced himself and related that his firm had designed the project. Other members of the Applicant's team in attendance, he said, were Richard Barbini of Schofield, Barbini & Hoehn, who had handled the surveying and the septic engineering; George Sourati of Sourati Engineering Group, who had done the structural engineering; Andrew Grant, also of Sourati Engineering Group, a traffic consultant; Jeff Kontje of Edgartown, the contractor; and Kimberly Mercurio of Woods Hole, the landscape architect.

Mr. Breese identified the location of the site and explained that the proposal was to tear down the existing house and small garage and replace those with an all-new structure,

which at just under 3,000 square feet would be larger than what was there, which was just under 2,000 square feet.

The proposed building would be in compliance with all of the Town of Tisbury's zoning regulations relative to property-line setbacks and height requirements, Mr. Breese continued, and the Applicant had applied to the Conservation Commission for approval of the parking area, which was within their jurisdiction, although the building itself was not. In addition, he said, the Zoning Board of Appeals had met and had looked at the project, but had chosen to defer any ruling until after the MVC review.

Tristan Israel, the Tisbury Selectmen's Appointee, wanted to know why the Applicant was before the Board of Appeals. "We are converting a building that is strictly in residential use right now to a building that's a mixed use," replied Mr. Breese. There would be 1,300 square feet of retail space on the first floor, he related, as well as a one-bedroom apartment and a two-bedroom apartment on the second floor. "By Special Permit," he said, "that is permitted in the Business District."

James Verduytsse – an Aquinnah Commissioner at large and the Commission's Chairman – verified with Mr. Breese that the map in his meeting packet depicted existing conditions.

Mr. Breese then introduced **Michael Kidder, the owner of the property**. Mr. Kidder spoke of the origins of the project and explained that between Travis Tuck's property and his own was a deeded driveway shared by both. The driveway would open into a parking area that had been approved by the Conservation Commission, he continued, and this would increase from four to 10 the number of cars that Mr. Tuck would be allowed. In addition, he noted, this would improve the ability of drivers to turn around in the lot.

Mr. Kidder went on that the private lot would be for the tenants and the private help, not for the retail customers. The retail space would house two businesses, one a branch of his daughter and her husband's gallery for contemporary art and the other a branch of their business called East End Brass. There would be few deliveries, he said, almost all by private car and only once every couple of weeks.

Mr. Kidder pointed out that he had received six letters of support, including one from the Martha's Vineyard Cooperative Bank.

Turning to the subject of making the current structure available for affordable housing, Mr. Kidder said he had consulted with builder John Abrams, who had informed him that it would cost about \$100,000 to renovate the structure. Thus, Mr. Kidder had decided to tear it down at a cost of \$10,000 to \$15,000 and to make a donation of \$1,000 to some affordable housing entity. In addition, he stressed, the project would be increasing housing and not decreasing it.

West Tisbury Selectmen's Appointee Kate Warner confirmed with Mr. Kidder that the second-floor apartments would be year-round housing. Mr. Kidder related that he had an agreement with Mr. Tuck to lease the two-bedroom apartment to Mr. Tuck's apprentice, Anthony Holand.

Mr. Israel expressed concern about the site's being in a very congested area, and he requested that the Applicant encourage customers and employees to use the Tisbury Park-and-Ride facility. Mr. Kidder pointed out that only one person would be working in the retail store, so between Mr. Tuck's apprentice and that employee, two parking spaces out of five would be taken.

Mr. Israel raised the possibility that in the future a high-traffic-generating tenant could take over the retail space, and he wondered if the Applicant would accept a Condition that the property would have to return to the Commission if that occurred. Mr. Kidder replied that such a Referral due to an increased intensity of use would be the proper thing to do.

Lastly, Mr. Israel asked about the construction schedule, in view of the new Mansion House building going up right across the street and the disruption to Main Street that had occurred as a result. Mr. Kidder answered, "Everything we're doing is very low-impact." He related that he would like to begin construction in late December or early January. The driveway and parking lot would hold the cement trucks and delivery vehicles, he said, so there would be no road obstructions.

Linda Sibley, a Commissioner at large from West Tisbury, noted that when the Applicant had been before the Land Use Planning Committee (LUPC), there at been some discussion about the fact that unlike other Tisbury businesses, the parking lot behind the building would not be public at all.

Chilmark Selectman's Appointee Jane A. Greene asked Mr. Kidder if he had considered donating the house to an affordable housing agency, which could remove it at their own expense by a date certain. Mr. Kidder responded that he was totally amenable to offering that option.

Aquinnah Selectmen's Appointee Megan Ottens-Sargent, who had attended the LUPC meeting, pointed out to Ms. Greene that one of the difficulties related to moving the house was the presence of a wonderful old tree that would be in the way. Mr. Kidder said that in fact he was going to talk to his landscape designer about the tree. "It is not a constraint," he stated.

Chairman Vercruysse disclosed that John Abrams, to whom Mr. Kidder had referred earlier, was his employer. *[See page 2 of these Minutes.]* "I had no previous knowledge of this proposal," he said. Ms. Brown inquired, "For the record, does South Mountain [Mr. Abrams' company] have any involvement in this project?" "Financially," interjected Ms. Greene. Mr. Kidder related that the only thing he had done was write a

\$500 check to the appraising company that was asked to appraise the building for affordable housing.

Tisbury Commissioner at large John Best wanted to know why there would be a bathroom in the basement. Mr. Kidder replied that he thought this would be "a nice thing to have, with a washer and dryer most likely down there..."

Replying to another question from Mr. Best, Mr. Kidder said that he could not say exactly how the \$100,000 estimated cost to retain the building as affordable housing broke down. Mr. Breese related that the \$100,000 included all the economic issues that would have to be tied up to accomplish a renovation. "I'd be happy to advertise it," offered Mr. Kidder. "But the building is in tough condition," said Mr. Breese, "and it's going to need major, major ..." His voice trailed off. Mr. Kidder then offered to contribute \$25,000 to \$30,000 to have the house taken away.

Kimberly Mercurio, the landscape architect, reported that "considerable pruning" would be needed to get vehicles in and around the building. In addition, the construction itself would be detrimental to the tree, she said, since the root system was "awfully close to the building." Lastly, the tree was "not in that great a shape as it is," she remarked. The record contained letters from tree experts who agreed with that assessment, she noted.

The Applicant would be removing three trees from the property, Ms. Mercurio continued, and would be adding 11 trees, consisting of maples, Eastern red buds and elms. Additionally, she said, there would be some hedging material and ground covers.

Ms. Ottens-Sargent explained that she had referred to the old tree as "wonderful" because it did such a nice job of screening the building from the road. "We're going to put another tree in that location," responded Ms. Mercurio. How big a caliper? inquired Ms. Ottens-Sargent. Ms. Mercurio replied that it would be a maple with, in time, an overall height of 30 to 40 feet. At the time of planting, she said, it would be a 10-inch-caliper tree.

Remarking that the parking lot would back up to the soccer field in back, Chairman Vereruyse wanted to know what kind of grading would have to be done in that area. "There's an existing retaining wall," answered Ms. Mercurio, "and we'll be putting in another retaining wall inside that, towards our property." She added that they would be planting trees back there to lower the visual impact of the retaining wall as seen from the soccer-field side.

Ms. Greene asked what type of hedge would be planted along the post-office-side of the proposed building. "It's supposed to be Japanese holly," replied Ms. Mercurio.

Mr. Israel clarified with Ms. Mercurio how the existing retaining wall and the back area were currently laid out.

James Athearn, a Commissioner at large from Edgartown, confirmed with Mr. Breese that the grading of the site would be slightly different from the way it was now. Mr. Breese explained that they would be bringing the store level down about 6 inches to accommodate the handicapped-access ramp.

Responding to another question from Mr. Athearn, Ms. Mercurio explained that the existing retaining wall was "not in good shape" and would need to be refurbished. Mr. Kidder noted that during construction they would be rounding out the curb for a nicer visual transition.

Addressing a third question from Mr. Athearn, Ms. Mercurio said that the new wall would be of the same stone as what was there already.

Mr. Israel wanted to know what would prevent someone who should not park there from using the lot. Mr. Kidder said that he was proposing a "Private Driveway" sign. If someone were to make a purchase from one of the businesses in his or Mr. Tuck's building, he explained, then that customer would be invited to bring his car around to the back.

Engineer Richard Barbini described how the Applicant would be expanding the curb cuts on both sides to 15-foot radii, which would require the stone walls along the sidewalk to be a little curved. So the entrance would be much easier to get in and out of, he added. Answering a query from Ms. Brown, Mr. Barbini said that they would not be doing anything with the sidewalk itself.

Chairman Verduyse asked about the proposed lighting plan. Ms. Mercurio pointed to the triangles on the landscape plan, which indicated post lighting, as well as to the bollard-lights in the back. The latter would be about two and a half feet high, she reported. Mr. Kidder pointed out that they would have a low-intensity light in the front illuminating the front window, similar to the one on Mr. Tuck's building next door.

Mr. Kontje, the contractor, explained the schedule of construction and how once the retaining wall was in, that area would be used to stage the equipment and materials.

Chilmark Commissioner at large Robert Zeltzer asked about the grading of the sidewalk and curb cuts from property to property proceeding down Beach Road. Mr. Barbini explained how it would be smoothly sloped down and in.

Mr. Zeltzer also expressed concern that during the renovation of Mr. Tuck's building, there had been numerous interruptions of sidewalk traffic. "The way we'll avoid it is we'll use the parking lot in the back," responded Mr. Kontje.

Mr. Barbini then discussed drainage issues and assured Mr. Israel that all runoff would be retained on site.

[For the next seven or eight minutes, the tape recording was too scratchy to understand.]

Staff Report.

DRI Coordinator Jennifer Rand indicated that she had tried to "get some context" for a piece of correspondence in opposition to the project mentioned in her Staff Notes. What she had found out, she said, was that the letter was irrelevant, since it concerned an alternate access plan that the Applicant had chosen not to use. Since she had completed the Staff Notes, Ms. Rand added, she had received five additional letters of support.

Regarding the affordable-housing component of the Application, continued Ms. Rand, under the Commission's Affordable Housing Policy the suggested donation was around \$1,400. Ms. Ottens-Sargent mentioned Mr. Kidder's offer to help pay for the moving of the house. Mr. Kidder then confirmed the offer, setting the ceiling at \$30,000.

Ms. Rand pointed out that, based on what the Applicant had learned, it did not seem likely that anyone would take him up on his offer. So if the move did not occur, she said, the Applicant was offering a donation of \$1,000 to an affordable housing entity, this in addition to the \$500 he had already spent on getting the appraisal he had mentioned earlier.

Ms. Rand also noted that the project would not result in a decrease in the availability of housing, since the existing house had three bedrooms and the new building would have a one-bedroom and a two-bedroom apartment.

Transportation Planner David Wessling described the Draft Traffic Impact Study submitted by traffic engineer Andrew Grant. In addition, he said, he had spoken to the Chief of Police, who had expressed no safety concerns with regard to the project.

At the Hearing Officer's request, Mr. Grant provided a summary of his study. The main conclusion, he related, was that the impacts of the project would be very small. He had found that in peak hour during the high season more than 1,400 vehicles per hour used that stretch of Beach Road, and this time of year that figure was about 800 vehicles.

The project, Mr. Grant said, would add about 54 one-way trips up to the Business District daily, and only a small portion of those would be to the site itself. During the peak hour, it would amount to 14 vehicle trips, seven in and seven out.

Mr. Grant then read a list of the benefits of the project, which, he believed, would outweigh the detriment of the small traffic increase: use of an existing curb cut; a shared driveway; on-site housing directly related to the business; and a restricted parking lot.

Next, Mr. Grant offered two recommendations regarding ways the Applicant could cooperate with the Town of Tisbury: participation in any sidewalk improvements; and

preservation the crosswalks in the Business District and their improvement with better signage. The latter recommendation would be especially important, Mr. Grant stressed, as that end of the Business District became revitalized by the reconstruction of the Mansion House. Mr. Grant's final recommendation was that the Applicant encourage the use of public transportation.

Mr. Israel related that the State Road Corridor Task Force had suggested elimination of the crosswalk going from the AdVest office across to Educomp because it was a particularly dangerous intersection. (Ultimately, he said, the Selectmen had not accepted that recommendation.) Mr. Israel asked Mr. Grant for his assessment of the three crosswalks at that intersection.

"You're right, it's a very tough intersection," responded Mr. Grant, "but the crosswalk [from AdVest to Educomp] does still need to be there." He added that the crosswalks in that location seemed actually to help slow down the vehicles because of the way they marked the beginning of the downtown Business District.

Mr. Best related how he used the crosswalk by Educomp several times a day and that the intersection was indeed a dangerous one. He remarked that the State should repaint the stripes more often and that perhaps the Town could make that request.

The Town for its part, Mr. Best continued, should be putting out cones in the middle of street to alert drivers. Lastly, he stressed, there appeared to be no enforcement of the law against not stopping for pedestrians in the crosswalks, and that was a deficiency the Selectmen could do something about.

Ms. Brown asked for testimony from members of Town Boards; none was forthcoming.

Testimony from Members of the Public.

Attorney Candace Nichols stated that she was **representing the trustees of the Martha's Vineyard Harbor Landing Trust, a direct abutter.** The trustees, she related, were "very much in favor of Mr. Kidder's project," and on his own initiative, Mr. Kidder had been working very closely with them. For instance, at his own expense Mr. Kidder had hired an engineer to do an assessment for Harbor Landing.

Referring to the retaining walls that went along the side shared by both properties, Ms. Nichols testified that the engineer had informed them that those walls tied into the foundation of the Harbor Landing structure. Thus, the excavation of the foundation of the new building would be important to monitor, as well as any rebuilding or demolition of the retaining walls. Mr. Kidder had also offered to post a bond for Harbor Landing, said Ms. Nichols, who ended by again emphasizing the support of the trustees for the project.

Questions from Commission Members.

Andrew Woodruff, a Commissioner at large from West Tisbury, wanted to know how one could discourage customers of the new businesses from parking at the Harbor Landing site. "They'd like to put a "Private" sign there also," said Mr. Kidder. Ms. Nichols noted that the trustees were confident that they could deal with that problem. **Edward D. Gurski, Chairman of Harbor Landing Trust**, stated that the trustees had been dealing with the parking problem for years. "We try to discourage it, but it's almost impossible," he said.

Applicant Summary.

On behalf of his team, Mr. Kidder thanked the Commissioners for their attention and suggestions. "Whatever Conditions you may put on it, we'd be happy to go along with," he concluded.

Ms. Brown then closed the Hearing and the Written Record. The time was 8:38 p.m. The Chairman called for a brief recess. The Special Meeting reopened at 8:50 p.m., with Ms. Brown retaining the gavel.

Special Land Use Planning Committee Session: The Kidder Building (DRI No. 557).

Ms. Greene made a **Motion That The LUPC Recommend To The Full Commission Approval with Conditions for the Kidder Building Application**, seconded by Ms. Sibley.

Mr. Israel pointed out that the current uses at the site in question were low-intensity ones. He was wondering, he said, whether they could formulate a Condition under which a higher-intensity use, like a hardware store, would trigger a return by the Applicant to the Commission for review.

"The Checklist allows for a change in the intensity of use," stated Ms. Rand, "and, frankly, I think that it would be almost impossible. I hear what you're saying, and I understand the concern. My fear is that if you try to write that Condition, it's a Condition that would be virtually impossible for us to enforce when the Town of Tisbury has done a remarkably good job at identifying what projects meet a change-in-intensity-of-use [trigger] and sending them over. So I would just allow them to identify those and trust that that would continue to be done."

Ms. Greene remarked that she thought the *Standards and Criteria* provided adequate means for a Referral back to the Commission, should a higher-intensity business move into the building. She added that she did have two Conditions to propose.

Ms. Sibley related that the Applicant had "virtually offered" to have the project returned for further review. She suggested language in the Written Decision that the Commission

accepted the Applicant's offer to return if the building was to house a higher-intensity business. She recommended wording along the lines of "We acknowledge that given the vehicle- and pedestrian-traffic situation at the site, a higher-intensity use would have to be reviewed..."

Mr. Israel wanted to know what marked the threshold from lower intensity to higher intensity. Secondly, he continued, at another location he would not be concerned. He related how many of the cars exiting from that side of Beach Road were headed left and had to cross oncoming traffic. Thirdly, he said, he recalled a project where the Commission had actually listed permitted uses for a proposed building. *[Mr. Israel was referring to the Ben Franklin Realty Trust Application (DRI No. 513). See Condition 1(a)(1) of the Written Decision.]*

Oak Bluffs Selectmen's Appointee Alan Schweikert pointed out that the building would have a private parking lot off a private drive. Mr. Israel stressed that traffic concerns were different from parking concerns. Chairman Vercruysse asked Mr. Israel what he would propose.

Before Mr. Israel could answer, Ms. Sibley reiterated her earlier proposal, a clause in the Written Decision stating, "**The Commission recognizes that this location is not suitable for high-traffic use and therefore accepts the Applicant's offer that a change to a higher level of intensity would come back to the Commission.**" She then stated that as a Motion, and Mr. Woodruff offered a Second. *[The tape was inaudible for the next few minutes.]* The discussion of the traffic issues continued.

Chairman Vercruysse conducted a Voice Vote on the Motion, which failed to carry.

Ms. Greene suggested a **Condition That A Bond Be Posted In An Appropriate Amount To Ensure Coverage For Any Potential Impacts To The Abutting Properties From Construction Of The Building.**

Ms. Greene also recommended that the **Commission Accept The Applicant's Offers Of Signage For The Private Driveway, Of Motion-Sensored Outside Lighting And Of Outside Lighting That Was One-Hundred-Watt Incandescent Or Florescent.**

Further, Ms. Greene recommended that the **Commission Accept The Applicant's Offer To Advertise The Availability Of The House Currently On The Site To Be Removed To Another Site.**

Finally, Ms. Greene suggested that the **Commission Accept The Applicant's Offer To Donate Up To Thirty Thousand Dollars To Assist In The Moving Of The House Or That The Applicant Would Give A Donation Of One Thousand Dollars To An Affordable Housing Entity To Be Approved By The Commission, With The Understanding That The Applicant Had Already Spent Five Hundred Dollars To Have The Building Appraised.**

[The tape was too scratchy to understand for the next three minutes.]

Ms. Rand suggested that the last offer acceptance by the Commission be worded so that the Applicant would not have to return to the Commission to have them approve his choice of affordable housing entity. Ms. Greene agreed that Staff could clear with the Applicant which affordable housing entities would qualify.

Ms. Ottens-Sargent recommended that the Commission accept the Applicant's offer to ensure that construction would not interfere with pedestrian traffic. Ms. Greene pointed out that this offer was part of the testimony.

Mr. Israel suggested that the Written Decision include wording to the effect that the **Commission encouraged the Applicant to encourage people who worked in the building to use the Tisbury Park-and-Ride facility.**

Chairman Vercruysse then conducted a Hand Voice Vote on Ms. Greene's Motion To Recommend Approval. The Motion carried.

The Commission returned to the Special Meeting, with Chairman Vercruysse taking the gavel.

Oral Vote: The Kidder Building (DRI No. 557).

Mr. Best made a **Motion To Approve The Kidder Building With The Conditions Recommended By The Land Use Planning Committee**, duly seconded. Acting Principal Planner William G. Venno conducted a Roll Call Vote on the Motion.

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

NAYS: None.

ABSTAINING: None.

Ms. Greene commended the Applicant for the thorough job he had done, which had resulted in the Hearing process going smoothly. "I agree," said the Chairman. Ms. Greene added, "And I'd like to see more Applicants be able to do it in that manner." Ms. Sibley remarked that this was a good example of an Applicant presenting a responsibly designed, appropriate project for a particularly congested area.

Announcement: Extended Schedule.

DRI Coordinator Jennifer Rand stated for the record that starting that day, any Application referred to the Commission would not be put on the calendar – even for Land Use Planning Committee Review – until January. She explained that her office had 11 active DRIs, plus two that had arrived earlier in the day. With the expected rollover of Commissioners resulting from the upcoming election and the year-end Selectmen's appointments, quorum difficulties could arise, Ms. Rand stressed.

Ms. Rand went on that the extended schedule she had come up with was "extremely intense" and that she wanted the Commissioners to be aware that an Applicant whose referral had just come in was not happy with the delay, so they might be hearing from him.

Concurrency Vote: Colonial Drive Real Estate "Islander" Building (DRI No. 444-1).

[Messrs. Athearn and Woodruff as well as Ms. Warner recused themselves from this discussion and Vote. Thus, the Commissioners participating were: J. Best; C. Brown; J. Greene; T. Israel; M. Ottens-Sargent; A. Schweikert; L. Sibley; J. Verduyck; R. Wey; and R. Zeltzer.]

Ms. Brown provided the **LUPC Report** on the Colonial Drive Real Estate Corporation Building Application, relating that the Commission had a few years before approved the building for use as office space. The current proposal was for a change over to an all-retail use, carrying an expanded line of health-food products and nutritional supplements currently sold at Cronig's Market, located on the same lot.

Ms. Brown explained that the project was at the Commission because it involved an increase in intensity of use as well as a change of use. The LUPC had agreed to recommend Concurrence with the Referral, she concluded.

Steve Bernier, the Colonial Drive Real Estate Applicant, described the proposal and spoke of his good-faith efforts to help the owner of the Super-Natural Health Foods down the road to refocus her business. The Chairman requested that Mr. Bernier concentrate on his argument for the Commission's not concurring with the Referral.

Mr. Bernier explained how there was already adequate parking for the new business and that the entry and exit from Colonial Drive could handle any increase in traffic generated by it. He related that the only issue that Tisbury Building Inspector Kenneth Barwick had had with the Modification was the requirement for handicapped access to the second floor, and Mr. Bernier had discussed with him the option of installing a chairlift.

In addition, the adequacy of the present septic system had been confirmed with the Tisbury Board of Health, said Mr. Bernier, and the issue of the plant and equipment was "a simple no-brainer – everything's there and everything's fine."

Ms. Rand related that after the LUPC meeting she had spoken with Building Inspector Barwick, who had indicated to her that from the viewpoint of the Town, there was no pressing reason to submit this project to the full Public Hearing process at the Commission.

Ms. Sibley argued that the proposal would create "significant new traffic" and that the building was in fact larger than she had at first thought. (The building would be 4,800 square feet). In view of the fact that the Commission had required projects with smaller structures and lower-intensity activities to come before them and be heard fully, Ms. Sibley remarked that it was only right that Mr. Bernier's project come before them as well. She fully expected, she said, that the new business would be quite successful, and she believed that the public should have input on the proposal.

Mr. Best pointed out that one could argue that the proposal was in fact an expansion of Cronig's Market. The bottom line was, he said, if the A&P in Edgartown wanted any kind of expansion, the owner would, without question, have to come back before the Commission.

Mr. Israel expressed his concern that this stretch of the State Road Corridor was already an area of very high intensity and that any expansion of Cronig's Market would exacerbate that. He had no doubt, he added, that the new business would be a success.

Ms. Brown commented that she did not think the project required the full Public Hearing process. The change in use would have to go before the Tisbury Planning Board, which could address the ramifications of that issue, she said.

In addition, although the business would almost certainly add traffic, Ms. Brown observed, the Commission did not have a proper context within which to deal with the traffic issues of this corridor. This was not to say, she added, that the Commission could not in the future work on developing that context.

The Chairman cautioned the Commissioners not to argue the merits of the project but to stick to the question before them, which was to concur or not with the Referral.

Mr. Zeltzer urged the Commission to bring the proposal to Public Hearing because the project was without question a change in use that would generate additional traffic in the area. Ms. Sibley spoke of the "huge change of use" that the proposal entailed, a change about which the public should have an opportunity to testify.

Ms. Greene suggested that the Commissioners look at the earlier Written Decision on this property (DRI No. 444) so they could review the Conditions that were currently in effect, particularly any regarding the uses of the building. She thought, she said, that perhaps the Commission had already approved retail space in the building.

Ms. Sibley pointed out that the Commission had just gone through the argument that they did not have to write a Condition that would provide for a return of the Kidder Building because of a change in intensity of use since the DRI Checklist automatically kicked such a change up to the MVC. [See pages 8-9 of these Minutes.] "I mean, we can't argue both sides of the same argument on the same night," Ms. Sibley remarked.

Reading from Written Decision No. 444, Ms. Greene pointed out that the Commission had earlier approved the operation of a catalogue store out of the building. "There's nothing about office space," she said. Ms. Sibley argued that a catalogue store was, by its nature, office space and not a high generator of traffic.

Mr. Best made a **Motion To Concur With The Referral Of The Colonial Drive Real Estate Corporation Proposal**, duly seconded by Mr. Zeltzer. After still more discussion, the Chairman conducted a Hand Vote on the Motion. The Motion carried, with nine Ayes (J. Best; C. Brown; T. Israel; M. Ottens-Sargent; A. Schweikert; L. Sibley; J. Vercruyse; R. Wey; and R. Zeltzer.), one Nay (J. Greene) and three Abstaining (J. Athearn; K. Warner; and A. Woodruff). The time was 9:43 p.m.

New Business: Appointment of Nominating Committee.

After a brief discussion, it was agreed that Chairman Vercruyse would appoint the Nominating Committee sometime within the next week and that said committee would meet before the Regular Meeting in November.

New Business: William Wilcox's Retirement System Buyback.

The Commissioners referred to a memorandum from MVC Administrator Irene M. Fyler regarding money owed to Staff member William Wilcox from the Dukes County Retirement System for time worked from June 15, 1975 through October 20, 1978. [See the meeting file for a copy of the memorandum.]

Ms. Brown made a **Motion That The Commission Accept The Recommendation Of The Finance Committee And Approve Staff Member William Wilcox's Retirement System Buyback**, duly seconded by Mr. Zeltzer. Ms. Greene remarked that it seemed to her that much of the work time in question had been spent at the County Extension Service and not at the Commission. Ms. Fyler explained why that was not the case, and Ms. Greene was satisfied with her answer. By Voice Vote, the Motion carried unanimously.

Correspondence: Letter from Commission Counsel.

Chairman Vercruyse referred the members to a letter from Commission Counsel Eric W. Wodlinger dated October 23, 2002 reviewing the law with respect to quasi-judicial privilege and its specific application to the Down Island Golf Club Three Decision (DRI

No. 556). [See the meeting file for a copy of the letter.] If they had any questions, the Chairman said, they should direct them to Executive Director Mark London.

New Business: Minor Modification to Vineyard Golf Club Decision (DRI No. 484).

Ms. Brown, who works for the Edgartown Planning Board, explained that the Written Decision for the Vineyard Golf Club provided for four affordable house lots from the Applicant to the Dukes County Regional Housing Authority. However, the way the Condition had been worded did not provide for a smooth transfer of the land, plus with the changes imposed by the Zoning Board of Appeals, two of the lots would be going to the Town.

Thus, said Ms. Brown, the Planning Board was requesting that the Commission reformulate the Condition so that it referred to the new plan worked out with the Zoning Board of Appeals and provided that the parcels would be deeded accordingly.

Ms. Brown then proposed a **Motion: That The Commission Modify Condition Three-B Of The Vineyard Golf Club Written Decision So That It would Refer To And Approve The New Plan And That The Commission Request That Two Of The Lots Be Deeded To The Regional Housing Authority And That Two Of Them Be Deeded To The Town Of Edgartown.** The Motion was seconded by Mr. Israel.

Ms. Brown confirmed that she had spoken to the Zoning Board of Appeals, Town Counsel and the Applicant, and all had agreed to these changes. After some comments and queries from Commission members, Acting Principal Planner William Veno conducted a Roll Call Vote on Ms. Brown's Motion, with the results as follows:

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

NAYS: None.

ABSTAINING: None.

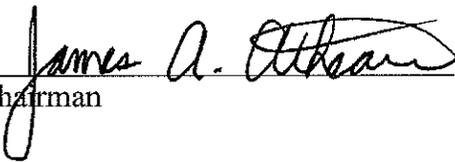
[The final wording of the revised Condition 3(b) reads: "That the Commission accepts the Applicant's offer to provide two (2) affordable housing lots to be deeded to the Dukes County Regional Housing Authority or its designee and two (2) affordable housing lots to be deeded to the Town of Edgartown or its designee, said lots as shown on the plan endorsed by the Edgartown Planning Board on November 27, 2001 entitled "A Plan of Land in Edgartown, Mass. Prepared for Vineyard Golf Club" dated November 8, 2001; scale: 1" = 100', by Smith & Dowling, Inc., 455 State Road, Post Office Box 108, Vineyard Haven, MA 02568."

Approval of Minutes.

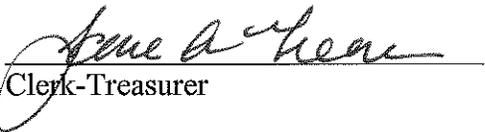
[Ms. Ottens-Sargent left the Meeting at this point, 9:55 p.m.]

Ms. Brown made a **Motion To Approve The Full Commission Meeting Minutes Of September Fifth, Two Thousand Two**, duly seconded. Ms. Greene pointed out a printer anomaly on page 32. Ms. Brown amended her Motion to include the phrase "**As Corrected.**" Ms. Sibley amended her Second. By Voice Vote, the Motion carried unanimously.

Ms. Greene made a Motion To Adjourn, duly seconded. The Special Meeting adjourned at 9:58 p.m.


Chairman

1/16/03 Date


Clerk-Treasurer

1/16/03 Date

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

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

[These Minutes were prepared by Staff Secretary Pia Webster using an outline drawn up by Acting Principal Planner William G. Veno as well as a tape recording of the Special Meeting.]