

THE MARTHA'S VINEYARD COMMISSION

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

Martha's Vineyard Commission Minutes for the Special Meeting of December 12, 2002

The Martha's Vineyard Commission (the MVC or the Commission) held a Special Meeting on Thursday, December 12, 2002 at 7:30 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., a quorum being present, the Special Meeting opened. Presiding was Richard J. Toole, a Commissioner at large from Oak Bluffs, Chairman of the Land Use Planning Committee (LUPC) and the Hearing Officer that evening. *[Commissioners seated at the gavel were: J. Athearn; J. Best; C. Brown; M. Cini; M. Donaroma; J. Greene; T. Israel; M. Ottens-Sargent; A. Schweikert; L. Sibley; R. Toole; J. Vercruyse; K. Warner; R. Wey; A. Woodruff; and R. Zeltzer.]*

Continued Public Hearing: Anderson Irrevocable Trust (DRI No. 504-1).

The Commission members seated for the Reopened Public Hearing were: J. Athearn; J. Best; C. Brown; M. Cini; M. Donaroma; J. Greene; T. Israel; M. Ottens-Sargent; A. Schweikert; L. Sibley; R. Toole; J. Vercruyse; K. Warner; R. Wey; A. Woodruff; and R. Zeltzer. All had been present at the first Public Hearing session, on November 21, 2002, and thus all remained eligible to vote on this Application.]

Mr. Toole read into the record the Notice of Public Hearing for the Continued Public Hearing for the Anderson Irrevocable Trust Development of Regional Impact in Tisbury (DRI No. 504-1). *[See the Full Commission Meeting File of December 12, 2002 (the meeting file) for a copy of the notice. Take note that the building in question is alternatively referred to as The Wintertide Building.]*

Mr. Toole then outlined the procedure for the Hearing session.

Applicant's Presentation.

Eric Anderson, the Applicant, described how in anticipation of the site visit the week before, he had constructed some curved pieces for the roof to provide an idea of what the dormers would look like. (Mr. Anderson used site plans and illustrations to illuminate his points.) In addition, he and **architect James Weisman** had worked more on the project, coming up with some other scenarios for the design of the dormer. One improvement they had made was to put an exterior stairwell, he said, which would align itself with an extended dormer. They had also redesigned the plan by placing the stairwell in the interior lobby. Another scenario was to have an uninterrupted dormer on the third level.

Mr. Weisman remarked that he was aware that year's end was approaching. Thus, he said, he had hoped to move along the Application process by simply offering the four distinctive design alternatives. It was the Applicant's preference, he noted, to remove the bump-out where the stairway was encased over the present entry to the building. This option was shown as Alternative One, which kept the curved dormer and the hexagonal shed space on the second floor, but eliminated the bump-out.

Alternative Two, Mr. Weisman continued, had a straight dormer and an octagon, while Alternative Three had a curved dormer but no octagon. Lastly, he concluded, Alternative Four had a straight dormer and a smaller addition on the second floor.

To make the issues at hand clearer, MVC Executive Director Mark London summarized the Town of Tisbury Site Plan Standards for Review, emphasizing that under those standards the hexagon would be more problematic than the curved dormer element.

County Commission representative Roger Wey asked about the materials that would be used on the shed roof, and Mr. Anderson agreed to put asphalt shingles on the membrane to match existing materials.

Oak Bluffs Selectmen's Appointee Alan Schweikert wanted to know how the exterior changes would affect the usage of the building. Mr. Weisman replied that he thought that in psychological terms, the artist's space in Alternative One was best, and he remarked that his second choice would be Alternative Three.

Tisbury Selectmen's Appointee Tristan Israel inquired whether a person on the street could go directly up to the top floor to experience the view. Mr. Weisman explained that one would have to go through the artist's space to do that.

Edgartown member at large James Athearn asked if the Applicant would be losing valuable space if the octagon were to be eliminated. Mr. Anderson replied that it would result in a net loss of public lobby space. And the octagon, he added, provided a less traditional kind of space within which the artists could arrange their furnishings, for instance.

Aquinnah Selectmen's Appointee Megan Ottens-Sargent wanted to know the exact amount of area lost from the artist's space if the octagon were eliminated. "I think it's marginally different," answered Mr. Weisman.

Edgartown Selectmen's Appointee Michael Donaroma wondered if the trim of the entire building would be the same, that is, whether the octagon would have distinguishing trim. "Everything matches what's there," replied Mr. Weisman. "Basically, gray," said Mr. Donaroma, who added, "And the railing on the top, the same thing?" "Gray," responded Mr. Weisman.

Mr. Weisman summed up by remarking that he thought the building improvements would provide a real benefit to the community, "and we'd like to do it in a way that works for you."

Edgartown member at large Christina Brown wanted to be reminded what the octagonal space was going to be used for in relation to the artist's studios. "It's a place to have a cup of coffee," answered Mr. Weisman. "It's a place for me to take you, because you've come into my office and my office is a mess... It's not a gallery. It's not big enough to be a gallery." Mr. Anderson observed that artists did not necessarily want visitors to be in their space.

West Tisbury Commission member at large Linda Sibley noted that she thought they could all agree that this was a good project, and she encouraged them to move the project along.

Mr. London pointed out that the Site Review Standards expressed a preference for simple, rectangular, traditional shapes. He also noted that the planned structure was well within the setbacks required by the Regulations for the Vineyard Haven Waterfront District.

Tisbury member at large John Best confirmed with Mr. Weisman that Alternatives One and Two both contained the hexagon. Mr. London suggested that if there were going to be two nontraditional elements, a polygon would be more objectionable than a curve.

Mr. Toole asked for testimony from members from public officials and members of the public. No one wished to speak.

Questions and Comments from Commission Members.

Mr. Donaroma pointed out that it sounded as if the Applicant was offering the Commission some options to try to move the process along. He then asked Mr. Weisman to offer his reasons for the preferring the alternatives that he did.

Mr. Weismas explained that the Applicant's first choice would be Alternative One, where they had eliminated the bump-out for the stair on the north side facing the Black Dog Tavern. There would still be a curved dormer upstairs, and the octagon on the second floor would stay.

The Applicant's second choice was Alternative Three, Mr. Weisman continued, which kept the curve on the top and pushed the octagon back, making it into a rectangle and shortening it up.

West Tisbury member at large Andrew Woodruff wanted to know if the architect could use a curve in Alternative Two. "He could build a curve on the inside in any of them," noted Jane A. Greene, the Chilmark Selectmen's Appointee. "Are you considering that?" wondered Mr. Woodruff. "No," replied Mr. Weisman.

Was the only difference between Alternatives Three and Four the curved versus the flat dormer? inquired Mr. Israel. "Yes," answered Mr. Weisman. Ms. Brown confirmed with Mr. Weisman that the Applicant's order of preference was Alternatives One, Three, Two and Four.

Applicant's Summary.

Mr. Weisman stated that if the renovations were approved, the Applicant hoped to go into construction the following fall, to coincide with the new Town sewer system being installed. His own work space was in the building, he added, and at least once a week an artist would come in and ask if there was space available. "Along with low-cost housing, you need low-cost artist's space," he concluded.

Responding to a question from Mr. Israel, Mr. Anderson said he expected construction to begin after the high season, in mid-September. "And I see it as being substantially completed in six weeks," he added.

There being no more questions or testimony, the Hearing Officer closed the Public Hearing at 8:07 p.m.

Discussion/Vote: Anderson Irrevocable Trust (DRI No. 504-1).

Chairman James Vercruysse, a Commissioner at large from Aquinnah, took the gavel. Responding to a query from the Chairman, Mr. Toole related that at the time of the project's review, there had been too few members present at the Land Use Planning Committee meeting to make a recommendation.

Ms. Brown made a **Motion To Approve The Alternative Three Design Of The Project, Noting That It Would Encourage Artists, Who Were A Real Asset To The Diversity Of The Community**, duly seconded by Mr. Donaroma.

Mr. Woodruff and Ms. Sibley both expressed a preference for Alternative Four because it looked to them like more of a traditional building. "None of the others ... quite look like they belong," Ms. Sibley remarked.

Mr. Donaroma observed that he really like the curved roof. "I think it has some character. It's funky. That leads me to another point. I'm neither here nor there on the octagon, but I'd fight for the curve. I think that has some individuality to it." He explained that he was "traditional through and through, but this isn't Vineyard Haven-ville, this isn't Disney World. This is an artist's area, and it always has been. The Black Dog has character, and all the little shops down there should have some character."

Mr. Donaroma added that he had not heard enough that was detrimental about the octagon to dismiss it yet. "I don't see the big detriment in the octagon," he said. "If it was white railings and, you know, it had a weird thing on the roof with ladders hanging off of it, I would ... feel strongly against it. But I don't see a problem with letting the Applicant pick and choose. And I would definitely go along with Number Three. That takes the octagon out."

West Tisbury Selectmen's Appointee Kate Warner suggested that a straw vote be taken on the four designs, with the members able to vote on more than one design. Chilmark member at large Robert Zeltzer pointed out that there was a Motion on the floor to approve Alternative Three.

Ms. Greene expressed concern with the way the Motion was worded, that the Commission would in effect be voting down the project if it did not wish to approve Alternative Three. "I'm not sure that procedurally then we can have another Vote to Approve with a different Condition," she explained. "I, personally, I will say that I would not vote for Number Three."

Ms. Sibley said that although she understood Mr. Zeltzer's point, she agreed with Ms. Warner that the board should be polled. The Chairman then conducted a Hand Vote on Alternative One, which received three votes. One member voted for Alternative Two, 10 voted for Alternative Three, and seven for Alternative Four. Thus, the Commissioners returned to Ms. Brown's Motion.

Ms. Brown added to her Motion That The Commission Accept: One, The Applicant's Offer To Use Asphalt Shingles On The Roof; Two, The Applicant's Offer To Encourage The Use Of The Tisbury Park-And-Ride; Three, The Applicant's Offer To Begin Construction In The Fall Of Two Thousand Three; Four, The Applicant's Affordable Housing Offer; And Five, The Applicant's Landscape Plan As Submitted. Mr. Donaroma amended his Second.

The Executive Director conducted a Roll Call Vote on the Amended Motion, with the results as follows:

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

NAYS: None.

ABSTAINING: None.

Concurrency Vote: Island Cove Mini Golf Modification (DRI No. 345M-2).

DRI Coordinator Jennifer Rand reported on the Land Use Planning Committee meeting of November 25, 2002, when the committee had concluded that they did not wish to concur with the referral of the Island Cove Mini Golf Modification. However, she continued, the committee members had asked her to speak to the Zoning Board of Appeals, which had indicated in a letter included with the referral that the board wanted the Commission to hear the Application. Having spoken with the ZBA Chairman, though, Ms. Rand agreed that the letter had been more strongly worded and had not reflected entirely accurately how the board had felt.

"...[T]hey wanted to make sure that we knew what was going on, but they are totally happy if we don't concur and they handle it on their own," stated Ms. Rand. "So my Staff recommendation, for whatever it's worth, is do not concur and send it back to the Town."

Ms. Rand then outlined the details of the requested Modification, which, in brief, involved the Applicant's desire to sell hotdogs in addition to the food items approved in an earlier MVC Written Decision. She explained that the Applicant had already made the change. "It's a forgiveness-versus-permission issue at this point," she remarked, "but the Town doesn't really care if we concur or not."

Ms. Greene pointed out that the Applicant had begun his development with no food being sold at the site and then he had added the sale of ice cream, later adding something else. "And I'm concerned that the message has to go that this can't just become a full-scale restaurant in there," she said.

Ms. Rand suggested that the fact that the Application had been referred to the Commission indicated that the Zoning Board of Appeals would "stay on top of it... The ZBA doesn't seem apt to just throw things at them with a simple 'okay,' but there's no way to write that into a Non-Concurrence."

Mr. Zeltzer remarked that the Town's Board of Health had clearly ensured that the Applicant had taken all necessary measures with regard to food-safety issues. "And it

seems to me that that's a Town issue." He then made a **Motion That The Commission Not Concur With The Referral Of The Island Cove Mini Golf Modification**, duly seconded by Ms. Ottens-Sargent.

Ms. Greene recommended that language be added to the effect that **No Further Food Will Be Served Out Of The Business Without Proper Permission**. Okay, said Ms. Rand. Mr. Zeltzer and Ms. Ottens-Sargent accepted the Amendment. By Voice Vote, the Amended Motion carried, with 15 Ayes, no Nays and one Abstaining (Mr. Best).

Discussion/Vote: Fairwinds Ch. 40B Subdivision Written Decision (DRI No. 548).

[The Commission members eligible to vote on the Fairwinds Chapter 40B Subdivision Written Decision were: J. Athearn; J. Best; C. Brown; T. Israel; M. Ottens-Sargent; L. Sibley; R. Toole; J. Vercruysse; R. Wey; A. Woodruff; and R. Zeltzer.]

Chairman Vercruysse referred to members to their drafts of the Written Decision for the Fairwinds Chapter 40B Subdivision Development of Regional Impact. *[See the meeting file for a copy of the Decision.]*

Mr. Woodruff wanted to know if the Written Decision referred to the new plot plan presented by the Applicant in the final Public Hearing session on November 14, 2002. Ms. Rand explained that page 1 of the Decision referenced the old plan with the new changes made to it.

Mr. Best asked if the Applicant had explicitly conditioned the wastewater issues, for instance, the installation of a BioClear system for the three multiple units and the sharing of the cost for that. Yes, replied Ms. Rand.

Responding to a question from Mr. Israel, Ms. Rand referred to a passage inserted by Commission Counsel in the first paragraph on page 7. It read:

"The Commission has made no determination as to whether the proponent has legal access over a private way or easement by prescription to the lot. In accordance with the Town's zoning, the Town, through its building inspector and/or its ZBA under comprehensive permit provisions of Chapter 40B, will have to determine whether the proponent has legal access to the lot, or alternatively, that the Town will waive the relevant provisions of zoning requiring, for example, frontage on a public way, as part of the comprehensive permit approval. This DRI decision does not purport to affect or determine the property rights of the proponent or of any abutter or other party with title interest in the way or easement."

Mr. Israel inquired why this had not been written up as a Condition. "Because this is how I was told to do it [by Commission Counsel]," answered Ms. Rand. She then referred him to Clause C at the bottom of page 6 of the Decision, which read:

"THE COMMISSION FINDS THAT THE PROPOSED DEVELOPMENT IS NOT CONSISTENT WITH MUNICIPAL DEVELOPMENT ORDINANCES AND BY-LAWS, TO THE BEST OF THE COMMISSION'S KNOWLEDGE."

Mr. Israel continued to discuss this issue with Ms. Rand. So if a legal matter attached to the project was not satisfied, what would happen? asked Mr. Israel. "The way we had it [written] before, if things were not satisfied, legally or otherwise, by the Town, then our Condition would also not be satisfied," he said. The Chairman pointed out that the way the passages were worded, if the Town was not satisfied with the access issues, they could turn down the Applicant.

Ms. Ottens-Sargent remarked that it was her impression that the access issue involved a Planning Board regulation. But since the ZBA had purview due to the Chapter 40B status of the project, that board could only get a recommendation from the Planning Board.

Ms. Sibley observed that it was the intent of the Commission, she believed, to try to strengthen the Town's ability to support its own regulations if it so chose, even in the face of the Chapter 40B Application.

"We posed the questions to [Commission Counsel] Eric [Wodlinger], and this was his answered," stressed Chairman Vercruyse. "Did he understand that that was the goal?" inquired Ms. Sibley. "I assume he understood," responded the Chairman, who then deferred to Ms. Rand. "Eric certainly understood the issue," declared Ms. Rand, "and he had copies of letters from the Applicant, the abutters and from the Town Attorney as informational backup to get us where we are right now. So he certainly understood the issue and understood the concern, and this was the recommendation I got from him."

Ms. Brown said that she thought there had been two issues related to access: one, whether the Applicant had the right to use Herring Creek Road to drive into their property; and two, if they had the right to use it, whether according to the Tisbury subdivision regulations the Applicant would be required to provide a 40-foot-wide way. Ms. Brown was sure that the Commission had pondered considerably the first issue, but much less so the second one. "So I think that the way this is written reflects what I remember our discussion was," she concluded.

Mr. Athearn wondered if the clause could be worded so that if the Town said no with regard to the access issue, then the Commission would be submitting a Denial. "That was exactly the point," said Mr. Israel.

The discussion continued for some minutes longer. Ms. Sibley recalled that at one point Commission Counsel had advised them that the Commission's Approval could be made contingent upon a satisfactory conclusion of the access-issue question by the Town. Ms. Rand concurred with Ms. Brown's recollection that the specific issue being addressed by Counsel was strictly whether or not the Applicant had rights to Herring Creek Road.

Mr. Donaroma expressed the opinion that if the Commission intended to deny the Application because of the access issue, then they should simply deny it and not have the Town deny it.

The discussion continued for some minutes longer. Ms. Greene commented that the Written Decision clause was, in fact, correct, that this was not a proper subject for the Condition. Instead, the Commission was recognizing the legal status of the matter, she said. Ms. Brown and Ms. Rand agreed.

Ms. Brown made a **Motion To Approve The Fairwinds Chapter Forty-B Written Decision As Written As Being Consistent With The Commission's Oral Decision**, duly seconded by Mr. Best. There being no further discussion, the Executive Director conducted a Roll Call Vote on the Motion, with the results as follows:

AYES: J. Athearn; J. Best; C. Brown; T. Israel; L. Sibley; R. Toole;
J. Vercruysse; A. Woodruff; and R. Zeltzer.

NAYS: M. Ottens-Sargent; and R. Wey.

ABSTAINING: None.

Discussion/Vote: Trustees and Conflict of Interest Law Waiver.

[The Commissioners seated for this segment of the Meeting were: J. Athearn; J. Best; C. Brown; M. Cini; M. Donaroma; J. Greene; T. Israel; M. Ottens-Sargent; A. Schweikert; L. Sibley; R. Toole; J. Vercruysse; K. Warner; R. Wey; A. Woodruff; and R. Zeltzer.]

The Chairman referred the Commissioners to a packet of materials containing: a letter from Commission Counsel Eric W. Wodlinger regarding Conflict of Interest Law Chapter 268A, Section 19 Waiver and the MVC Charitable Trust; a copy of Massachusetts General Laws Chapter 268A, Section 19, Part IV, Title I; and a Resolution recommended by Counsel. *[See the meeting file for a copy of the packet.]*

Ms. Greene made a **Motion To Approve The Resolution**, duly seconded by Ms. Ottens-Sargent. The Resolution read as follows:

“RESOLVED: Having been advised by Eric Wodlinger and Choate, Hall & Stewart that they may have a contingent financial interest with the meaning of c. 268A, the Conflict of Interest Law, in the formation of the proposed MVC Charitable Trust insofar as the MVC may choose to use income derived from said trust to pay for, among other things, legal fees, the Commission now determines that any such interest is not so substantial as to be likely to affect the integrity of the services which the Martha's Vineyard Commission may expect from Eric Wodlinger and Choate, Hall & Stewart.”

The Chairman conducted a Voice Vote on the Motion, which carried unanimously, with 16 Ayes, no Nays and none Abstaining.

Oral Vote: Pearlson-Sturges Subdivision (DRI No. 383-1).

[Eligible and present were: J. Athearn; J. Best; C. Brown; M. Donaroma; J. Greene; T. Israel; M. Ottens-Sargent; A. Schweikert; L. Sibley; R. Toole; J. Vercruyse; K. Warner; R. Wey; A. Woodruff; and R. Zeltzer. Ms. Cini was ineligible and left the room for the duration of the discussion and Oral Vote.]

Ms. Greene made a **Motion To Move To Item Six**, duly seconded. The Motion carried. Next, Ms. Greene made a **Motion To Approve The Pearlson-Sturges Subdivision Application As Presented**, seconded by Mr. Wey.

Mr. Athearn asked if any changes had been made to the lot lines because of the Land Bank path and whether the buffer was still 50 feet. Ms. Rand answered by describing a letter from the Land Bank which indicated that the 50-foot buffer had been the result of some lengthy negotiations that could not have been addressed unless the easement had been moved.

Mr. Best remarked that for him the two key issues were: one, the setback and no-cut zone; and two, the in-perpetuity or not-in-perpetuity nature of the Youth Lot. According to the plan, the Land Bank property came closest to the Pearlson-Sturges property in the area of the Youth Lot. The Land Bank, he said, had actually wanted a 50-foot buffer, not a no-cut one but one within which they could plant; ultimately, the agency had not made that request. So, said Mr. Best, the Land Bank had offered to screen and to move the path away from the Youth Lot.

As for the question of the term of the Youth Lot, Mr. Best related that the Commission was due an affordable lot from this subdivision, regardless of any Town requirements. The lot from this particular project would go into Chilmark's Youth Lot Program, which was different, he noted, from the Town's affordable housing program. Under the former program, a lot worth about \$400,000 sold for \$10,000 to \$20,000, he reported. Thus, said Mr. Best, it would be disturbing if the deed to the lot were restricted for only 10 years.

Mr. Best then recommended that the Commission approve what had been applied for, "and I have volunteered ... to go and talk to the Applicant if it's approved and speak to her and her counsel about doing something to preserve some of this windfall as an in-perpetuity benefit to the Town."

Ms. Ottens-Sargent stated that she had intended to request that a Condition be included in the Decision that would require the Applicant to do a Natural Heritage Survey on the property, based on some of the limited knowledge she had about some of the rare flora on the Land Bank property. However, the strongly worded letter from the Planning Board and the knowledge that this was not wetland-habitatfriendly to the orchid in question had led her to be supportive of the Application as presented.

Mr. Wey remarked that the Chilmark Planning Board had "done a great job on this, and I think we should approve this as presented."

Ms. Brown said that although she agreed with Mr. Best's concerns about the in-perpetuity issue, "I think that we should go along with and respect the Chilmark Planning Board and the Chilmark Youth Lot Program, because that's what's been set up in the past. But I do think that in future we as a Commission may need to talk about our policies and make them clearer ..."

Mr. Athearn remarked that he would be supporting the project. However, he added, it was unfortunate that in effect the Commission would be approving something (the limited deed restriction) that it did not believe in. "On policy we should in the future consider what the appropriate setback from conservation land or publicly owned land should be," he concluded.

Ms. Greene urged the Commission to approve the Application, since the Town would lose the Youth Lot if the Commission did not. "That's been quite clear," she emphasized. In addition, she stated, it was not up to the Commission to tell the Town of Chilmark or any other Town how to run their Resident Homesite or Youth Lot Program. "That's up to the Towns," she said. "They do it as they do it."

Lastly, Ms. Greene cautioned the Commission against setting 100-foot setbacks and/or no-cut zones.

Mr. Woodruff expressed concern that he had noticed during a site visit that the subdivision road would be running through what appeared to be a sensitive area. Also, he said that he wished the Application had come before the Commission sooner, without the plans and conclusions of the Town boards involved already having been firmly set.

Mr. Best clarified for the others what would happen if the Application was not approved. He did not believe, he said, that the Youth Lot would be lost. However, he did strongly

urge the Commission to get into place a policy about the perpetuity issue as it related to affordable housing.

Mr. London then conducted a Roll Call Vote on Ms. Greene's Motion, with results as follows:

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

NAYS: J. Athearn.

ABSTAINING: None.

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

[Ms. Cini returned to the meeting room. The Commission members eligible to vote on the Tisbury Fuel Services Application were: J. Athearn; J. Best; C. Brown; M. Cini; T. Israel; A. Schweikert; L. Sibley; R. Toole; K. Warner; R. Wey; and A. Woodruff. The Commission members who were not eligible left the Special Meeting at this point.]

Since neither Chairman Vercruysse nor Vice-Chairman Donaroma was eligible to vote on the Application before them, Clerk-Treasurer Marcia Mulford Cini chaired the final segment of the Special Meeting. (Ms. Cini is a member at large from Tisbury.)

DRI Coordinator Jennifer Rand reported on new information related to the Tisbury Fuel Services Application received after the Public Hearing was closed but before the Written Record had closed on Wednesday, December 11, at five o'clock.

Mr. Toole, Chairman of the Land Use Planning Committee, reported that only three members had been present during the committee's Post-Public Hearing Review of the project. In view of the controversial nature of the Application, he said, they had chosen not to make a recommendation to the full Commission. Mr. Best noted that the LUPC had tallied up the pros and cons of the project.

Mr. Best then inquired if all the members were aware of the change in the discount policy. No one indicated that they were not. Mr. Best also pointed out that the entire lot was going to have to be re-graded and re-contoured; that there would be a 17-foot retaining wall; and that only a small perimeter of vegetation would be retained. Ms. Rand mentioned that the retaining wall would in fact be broken into two steps and would have plantings.

Mr. Athearn wanted to hear from Water Resources Planner William Wilcox if he thought that it was acceptable in ecological terms to clear the lot and to build a gas station. "I think it can be engineered," replied Mr. Wilcox. "I didn't like the single-step, 17-foot drop at all, but I would think that they could design that so it would be stable with two steps down." He added that the soils on the site were "really sandy" and would "percolate really well." So he did not believe that destabilization by the infiltrating of water would be an issue.

Mr. Best inquired if the possibility of pollution was an issue, since the station was being built on filled land. "I think they have a fairly sophisticated leak-detection system," said Mr. Wilcox. In addition, the tanks would have liners as well as monitoring wells both inside and out, he noted.

Were the liners flexible or rigid? asked Mr. Best. Flexible, replied Mr. Wilcox, the same type proposed in the Gervais-Goldsborough Application, the Petrogard IV (DRI No. 489-2). He then referred the members to a list of possible Conditions he had drawn up. *[See the meeting file for a copy.]*

Mr. Best referred to a summary of concerns that Ms. Rand had pulled together for the Gervais-Goldsborough gas station proposal (DRI No. 489-2). He commented that it would be helpful to have that in front of them. Ms. Rand left the meeting room to retrieve that document.

Executive Director Mark London provided some details on the latest traffic report for the Tisbury Fuel Services proposal. One of the primary expected impacts, he said, was the queuing up of cars on High Point Lane, waiting to make left or right turns after leaving the station. In terms of fluidity on State Road, however, the impact would not be great, he added.

Mr. London spoke also of a possible traffic-mitigation measure – the posting, at the Applicant's expense, of a police officer to direct peak-time traffic at the intersection of High Point Lane and State Road. This, however, might worsen the queuing up of traffic on the far end of State Road, he said.

Mr. London then suggested the following Condition: that if there was a traffic problem, the Applicant would provide a police officer at the request of the Tisbury Chief of Police to control the traffic but whose priority should be to ensure movement on upper State Road.

Ms. Brown related anecdotally that the officer directing traffic at the Edgartown A&P appeared to worsen the tie-ups on Upper Main Street itself while he was directing cars exiting from the parking lot.

Mr. Schweikert wanted to know if the traffic analysis had addressed the question of whether traffic at Five Corners would be reduced as a result of the proposed gas station. Mr. Wessling replied that he had come up with a number of around 17 fewer cars during peak hour. Transportation engineer William Scully, a member of the Applicant's team, estimated the reduction at 30, Mr. Wessling added.

Mr. Best pointed out that if this were truly to be a discount gas station, surely it would attract drivers coming from the direction of Oak Bluffs through Five Corners. Mr. Wey disagreed. Mr. Israel commented that if Mr. Best's observation were true, then the benefit of fewer cars at Five Corners as a result of the development would be wiped out.

Ms. Sibley remarked that the Commission was accustomed to weighing benefits and detriments, and that one of the difficulties in this case was that some of those benefits and detriments were the results of a certain invoked probability of occurrence. "The Applicant has, frankly, argued both sides of one of these questions," stressed Ms. Sibley, who related that when looking at the possible detriments of the project, the Applicant had argued that this was a commodity of convenience. On the other hand, there was Mr. Wey's point, she said, that no one would drive all the way from the Oak Bluffs side of Five Corners to buy gas there.

So, continued Ms. Sibley, the Applicant had argued that most of the customers would be pass-by traffic. Yet their economic report had indicated that the new station would not have a negative impact on already-existing stations. "The fact is, if it's really a commodity of convenience, people won't go out of their way," Ms. Sibley declared. "Then there won't be a lot of traffic impact, and there won't be a lot of impact on the other gas stations."

On the other hand, Ms. Sibley emphasized, when the Applicant had been trying to make the point that the project brought with it a big benefit – lower prices at the pumps – suddenly gas became a commodity that was price-driven.

Another contradiction, noted Ms. Sibley, surfaced in the Applicant's argument that the proposal would result in the lowering of prices at other stations. However, if in fact gas was a commodity of convenience, then the other stations would not have to lower their prices to compete with the new station.

Ms. Sibley explained: "If it's a commodity of convenience, all the other gas stations know that, too. They're going to lose a certain amount of their business based on the convenience of this gas station... Now, do you think that the gas station that's just lost 10 or 15 percent of its business based on convenience, not price, is going to lower their price to compete? I don't think so."

Mr. Wey argued that a consumer could go to the A&P or Cronig's or Reliable Market to buy food on sale if he wanted to. "Where can you go on this Island to buy gas on sale?"

he asked. "This gives an opportunity ... to buy gas for some people who need, who just don't have the money, to have the opportunity to buy gas on sale and perhaps, in the future, lower the prices of gas on this Island."

Mr. Toole pointed out that if the Commission did not approve the project, they would never find out the answers to these questions. Those on the Island who planned their lives should have the opportunity to save a few dollars, he said.

Mr. Schweikert expressed agreement with Messrs. Wey and Toole. It depended upon one's income whether the price of gas was a priority or not, he said. Another sliding scale was the issue of convenience. "It's really hard to put numbers on that," he remarked, "and I think what Richard [Toole]'s saying is a good point." If the Island held a ballot vote about whether residents wanted lower gas prices, he observed, "I think we'd get an overwhelming 'Yes' from these people, and that's how I'm kind of looking at this."

Mr. Best pointed out that far more people would go to the new station if there were a 25-cent-per-gallon difference than for a 5-cent-per-gallon discount. So it was very difficult to know at this point what the effect of the new station would be. And if, in fact, the price-per-gallon dropped at the other gas stations, then the project will have been a success in terms of the Commission's constituency, he noted.

Mr. Best referred to the Gervais-Goldsborough proposal, which had been denied, and stressed that the compelling difference in the case of the Application before them was the promise of lower gas prices. "So we really do have to deal with where that savings is going to take us," he concluded.

Mr. Athearn remarked that this was a "very well-thought-out proposal." If one assumed that the price-per-gallon would be lower at the TFS facility for a significant period of time, the short-term effect would seem to be a positive one, he said. But what the long-term effect of that down the road would be was less certain. His own conclusion was that the prices all over the Island would eventually come down because people would be making the decision as they drove by Up-Island Auto or deBettencourt's that if they waited until they were in the vicinity of the Tisbury Fuel Services station, they would save money.

Another thing Mr. Athearn said he could speculate was that a business like Up-Island Auto and the other stations would have to buy from a tanker tank that had come over on the ferry in order to save money. And the cost of losing a storage facility at Packer's Wharf, "if that's what it came to in 10 years, again, I'm not sure how that fits into our Island planning, but I speculate that that's a dangerous element to our future if we don't have the ability to store gasoline," he concluded.

Mr. Woodruff commented that one thing that was missing was a geographic market survey, which would enable one to figure out how many people would in fact buy their gas if it were available for a significantly lower price. He thought there was the potential, he said, to put an existing small station out of business. If such a station pumped 800,000 gallons annually and had to charge 10 cents less per gallon, for example, \$80,000 less would be taken in, and that was not a loss that he believed a small station could easily absorb.

Mr. Woodruff remarked as well on the contradictory nature of some of the testimony, which made this Decision even more difficult for him.

Addressing Mr. Toole's point, Ms. Sibley observed that if there were no detriments to the project, she would agree entirely with allowing the residents to have an opportunity to buy gas at a lower price. The question was whether it would be worth risking the detriments of the project in achieve the possible benefits, she emphasized.

"We should be cautious," Ms. Sibley warned. "This is not something we can reverse easily. I mean, the expense involved, the infrastructure changes involved – the potential detriments are not something we can turn around and reverse if it didn't lower the prices and it has caused serious [traffic] problems."

Ms. Sibley also stressed that the traffic report offered by the Applicant had tried to make the traffic situation on State Road seem less serious than it was. "It isn't," she declared. "This is a disaster fairly frequently, and clearly this has got to contribute to that. That bothers me a lot."

She was deeply concerned as well, continued Ms. Sibley, with the problem of large trucks coming down Woods Hole Road. The more successful the Applicant was, she said, the more trucks there would be headed for the ferry. She recalled that some years before there had been an issue in Wood Hole about trucks carrying hazardous materials and the Fire Chief's having expressed concern about this.

And it had been clear to Ms. Sibley during her tenure as a County Commissioner, she said, that Falmouth's top priority was, in fact, to get trucks carrying hazardous materials off their roads. "And I think that at our peril we ignore that serious concern of our sister Town," she added.

Mr. Israel objected that the Applicant's traffic video had not shown head-on and close-up any VTA buses turning into High Point Lane on their way to the Tisbury Park-and-Ride. The fact was, the buses occupied most of the road when making that turn, he said.

Mr. Israel also remarked that he had found the discussion of Level of Service confusing. At some point State Road was assigned an LOS of F, and now he was hearing that the Level of Service was a D. It should be remembered, though, he stressed, that during the

Nobnocket Hearings in the late '80s and early '90s, the proponents themselves had agreed that that section of State Road had a Level of Service of D, and that had been 15 years before.

In addition, Mr. Israel pointed out that the presence of the sewage treatment plant down High Point Lane would bring an increase in traffic, as would the addition of any other municipal facilities on the Town land there. "It's a horrendous intersection," he declared. "It's an intersection that's nightmare now with the Radio Shack-video store complex across the way, with Cronig's, with Shirley's, with the [mini] golf course. This is not like a benign low-traffic corner, and I think that's one of the primary reasons we denied another project in a similar location, in close proximity."

If the Applicant were to sell 1.25 million gallons a year, Mr. Israel went on, one would divide that by 15 or 20 gallons per vehicle and come up with an awfully large number of cars going in and out of the station. Moreover, he said, he did not believe that the Commission should be approving facilities to promote the automobile on Martha's Vineyard. "I think that's a big mistake and not a legacy that I want to be a part of," he said.

Mr. Israel argued as well that at least two additional tanker trucks would be traveling down Woods Hole Road each week as a result of the new station, and if the facility were a success, there would be even more.

Another issue, continued Mr. Israel, was whether there was a more appropriate location for the development, and he for one could imagine better places to put a new gas station, where the issues of ingress and egress were not as pressing. "I have not seen, no one has demonstrated for me, the need for a new station," he said. "While there are less stations, pumping capacity is at least the same or increased. So on that basis alone, I have not seen a need."

Mr. Israel summed up: "This is a very high-intensity use that will, under a lot of circumstances, draw a substantial amount of traffic into an area that is a nightmare in my opinion. I drive it every day."

Ms. Warner noted that she had "very mixed feelings" about the proposal because people who lived Up-Island tended to have different feelings than those living Down-Island. She had not realized, she said, that no hazardous materials were carried on the ferry on Fridays, Saturdays and Sundays, and that this would be problem for people like the Jenkinsons of Up-Island Auto if they switched to tanker-truck delivery.

In addition, stated Ms. Warner, if other stations lowered their prices and in doing that had to have their gas trucked over, "that's not going to work because that goes against the way we're trying to work with the Cape and it goes against the ferry policy we've made." Moreover, she said, she had not realized that the Jenkinsons had so little capacity.

"I think the State Road corridor is in terrible shape," Ms. Warner declared. "It's in terrible shape if we look at this proposal, and it's in terrible shape when you think about next week's proposal, the Islander building [DRI No. 444-1]. I think we're all kidding ourselves to think it's a lot of fun to be on State Road in the summertime. And I think we hired this new Director, whose specialty is planning – we need to look at the *planning* in this district with the help of Tisbury, and we need to look at what's happening in West Tisbury, which is not that much different, just a number of years behind."

Ms. Warner went on: "And I think in the best of all worlds, we wouldn't consider these things until we let Mark [London] have a crack at working with the boards on how intelligently we can deal with these districts. Because it's just not a lot of fun to be on Martha's Vineyard in the summertime for any of us."

Also, Ms. Warner said, the argument that drivers bought gas close to home did not really fit on the Island, since there were two major supermarkets on the Vineyard – both Down-Island – and most people went to one or the other. She pointed out that during the summer West Tisbury people shopped at Up-Island Cronig's because they could not get near Cronig's State Road Market. In the winter, though, they drove the additional distance because the Down-Island store was so much better stocked.

Ms. Warner concluded by stating that she would like to see this Decision postponed. She recommended that the Executive Director talk to Steamship Authority officials about the transport of hazardous materials, for instance. But more planning had to be done before one could make a sound Decision, she emphasized.

Ms. Cini emphasized the benefit of the affordable housing contribution the Applicant was offering. In addition, she believed "instinctively" that the new station would relieve traffic at the Five Corners intersection and that its location "off the beaten path" was an improvement over the site at 412 State Road (DRI No. 489-2).

Disclosing that her son-in-law rode with the Tisbury Fire Department, Ms. Cini noted that the Applicant intended to make a hazardous-materials-equipment contribution to the Fire Department and that this was a benefit.

She also instinctively believed, continued Ms. Cini, that consumers would "follow their own loyalty" and would act on that loyalty. In addition, she was wary of the Commission's wading into the territory of assessing the effect a new business would have on existing one. The elements of the economy sought their own level, she said, and the Island had definitely experienced much economic healing since she had arrived in 1995.

Mr. Athearn pointed out that on a small place like the Vineyard, private enterprise worked differently. For instance, the Jenkinsons had chosen not to have a convenience store with their gas station so as not to interfere with the business of Alley's General

Store or Back Alley's down the road. "And that's the way people operate, and it's not according to economic rules," he declared.

On the side of benefits, Mr. Athearn mentioned the sale of Tisbury Park-and-Ride tickets, the restrooms and the out-of-sight location. The affordable housing contribution was also "a big benefit," he noted. "I'd call those ... benefits ancillary, though, because they don't speak directly to the selling of gas itself," Mr. Athearn explained. "They come with it."

The idea of cheaper gas and the convenience of the location were what Mr. Athearn saw as the primary benefits of the development. But in trying to weight them as to their value, he had considered that if one saved 25 cents a gallon on 20 gallons of gasoline, he would save \$5 a week. But \$5 a week covered only, say, five cups of coffee. So he did not see the lower gas price as "that big of a chunk of somebody's spending cash."

The argument had been made, related Mr. Athearn, that 99 percent of the residents of Tisbury lived to the west of the Five Corners intersection and that if they could get their gas on that side of the Town, they would have no need to drive through Five Corners. But that might only be true for those who didn't drink, he joked.

Ms. Sibley related that she had thought very hard about the issue of economic engineering. "We've been pretty thoroughly slammed in a couple of newspapers for what they perceived as protecting businesses against competition," she said, "and I thought we were very careful in our Decision. We did talk about that and came to the conclusion that we were only, it was only our valid concern to be looking at preserving resources for the community and make certain that ... facilities were available for geographical distribution. And that's what our Decision said."

Ms. Sibley continued: "But if you consider it inappropriate to look at the possible negative impacts of competition, then it's inappropriate for us to look at the possible *benefits* of competition. And as a matter of fact, the proposed benefits for this project are strictly based on the notion that competition is going to bring down prices. For if we're going to look the possibility of the benefits of competition, then we have to look also at the detriments, or we shouldn't be here."

Ms. Sibley stated emphatically that the price of gas was the last thing that the Commission should be worried about lowering the price of. "We should be *very* worried about the cost of food on this Island," she declared. "We should be *desperately* worried about the cost of land and housing on Island, maybe even the cost of clothing, for all I know."

"But gasoline is a petroleum product," Ms. Sibley went on. "This is a non-renewable resource. We are raping it in the world, we are wasting it. The costs of petroleum products in the United States are artificially depressed by tax policies that encourage us to pump it and use it. And while it may be incredibly unfair that Martha's Vineyard should

have higher prices than everybody else in the United States, we should all have higher gasoline prices to discourage the use of the automobile. It is lower gasoline prices that make us more dependent on the use of the automobile.”

Ms. Sibley concluded: “So I find it very hard to get enthusiastic about the idea of encouraging someone to drive three miles using up a bunch of petroleum and polluting the air in order to get a little, slightly lower price for gasoline.”

Mr. Woodruff stated that he agreed with Ms. Sibley’s point about looking at the possible detriments of pricing if one was also looking at its possible benefits. He explained why: “Because someone could come in here with a great location, a really geographically superior spot, to sell a whole hell of a lot of fuel and say, ‘You know what? We’d like a permit, and in return we’ll do a really significant benefit by offering a really low price.’ I feel a little bit uneasy looking at that as a Commission benefit.”

Mr. Woodruff wished to make clear that he was not against the idea at looking at the fuel-supply system on Martha’s Vineyard and exploring ways of improving it and lowering the price of fuel. But if the only major benefit of the project was to lower the cost of fuel, that was not good enough reason to approve the project, he concluded.

Commenting on Mr. Woodruff’s and Ms. Sibley’s observations on “studies that need to be done and promises that need to be made,” Mr. Toole stressed that he was concerned that the Commission would be perceived as having made “a really stupid Decision by turning this down.” He was convinced that a Vote to Deny was the right vote in this case. “But we need to promise the people that live on this Island that we will try and figure out and work on a way to bring the price of fuel down,” he cautioned. “Because if we don’t, ... I think we’re really disappointing a lot of people.”

Part of him wanted to approve the project and let the marketplace decide the fate of the new station, continued Mr. Toole. “But this isn’t exactly a free marketplace on Martha’s Vineyard,” he declared, “and so that’s why I can’t vote for this project... Things just don’t work the way they would normally work over in Falmouth. That’s why we have the prices that we have. But I really have a problem with the discussions that took place at the Hearing the other night, how clear they made it that the prices are what the prices are because there are two distributorships.”

Mr. Wey reiterated his view that the Commission had an opportunity that evening to lower the price of gasoline on the Island. “And we’re just going to pass it [up],” he said. “But it’s sad. It’s sad for me. I mean, there’s a lot of people, it would benefit a lot of people on this Island, lowering the gas prices, and it’s not going to happen, obviously.”

Mr. Schweikert remarked that it seemed the Commissioners were over-analyzing the proposal as a way to justify the way they would vote on the project. “And that’s unfortunate also,” he added.

Mr. Athearn agreed partly with this observation, although he wished to take issue with Mr. Schweikert's belief that they were over-analyzing the project to justify their reasons for Denial. Everyone he had spoken to felt the way he did, said Mr. Athearn, one day feeling pretty certain he was going to vote for the project because of the many good reasons to vote for it, for instance, to do something about the price of gas on the Island. Then this afternoon, as he was weighing the benefits and detriments, he ended up with a shift in his thinking. "But I was back and forth all the way," he remarked.

If lower gas prices were a benefit, stated Mr. Israel, that had to be weighed against the global outlook on transportation and the negative impact on the upper State Road corridor. "The price issue was intriguing to me," he said, "but for myself that was never really a primary factor."

Mr. Wey requested that a Vote be taken, that they were simply going around in circles.

Ms. Brown had a question: Besides the possible negative impact on State Road traffic, what exactly were the detriments of the project? "Traffic in Falmouth, haz-mat traffic," said Mr. Best. "Haz-mat traffic in *Tisbury*," noted Mr. Israel, who added, "And I think we're promoting making it more facile to use the automobile on Martha's Vineyard... I see that as a detriment." "And I think we still have the issue of the possible effect to our geographical distribution of fuel supply," offered Ms. Sibley, who referred the members to the report by the independent consultant which had indicated the possibility of a negative impact on existing stations.

Mr. Best pointed out that the proprietors of Up-Island Auto had stated in written testimony that they planned to install larger storage tanks in the future and so would not be dependent on a local distributor any longer. "That, to me, is every bit as important as the possibility that they might go out of business," he said.

Mr. Best continued: "I mean, I agree that them going out of business is not a good thing as far as geographic distribution of a service [is concerned]... But the more likely scenario is that they won't go out of business. They have already stated that they will upgrade, and once they upgrade, they will compete, they will go for the most competitive price, which according to most of the testimony we have heard, is by tanker truck. And again, if it's tanker truck, it's got to come through Falmouth."

"You know, it's really nice," Mr. Best went on, "and really easy for me to say, 'Yeah, I'd like cheaper gas prices,' and I look around this table at who's pushing the largest number of vehicles - Tristan [Israel] and Jim [Athearn]. Let's be realistic. He [Tristan Israel]'s got these old cranky trucks that probably drink more gas than ... I'll use in a month."

Ms. Sibley stated that with regard to the statement that the other stations could make up a 10 percent loss in business over five years, she had been struck by the notion that the

Commission accepted as a given that they were going to allow the traffic to grow by 2 percent per year. "But I think we should be looking again at mechanisms to stop the growth of ... traffic and even reduce it," she said, "and that also is something that needs to be factored in as a planning activity if we're looking at fuel on this Island."

Mr. Athearn commented on the oral testimony that it was very stressful for elderly people to have to negotiate the Five Corners intersection. It was a valid concern, he said. But that evening, Mr. Athearn continued, he had realized that the intersection of the Edgartown Road with State Road was just as stressful as Five Corners and may possibly be worse.

"Motion To Deny For The Reasons Given Throughout The Discussion," said Ms. Sibley. Mr. Athearn offered a Second. Mr. London then conducted a Roll Call Vote on the Motion, with the results as follows:

AYES: J. Athearn; J. Best; C. Brown; T. Israel; L. Sibley; R. Toole;
K. Warner; and A. Woodruff.

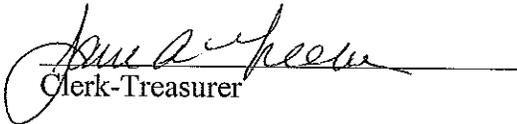
NAYS: M. Cini; A. Schweikert; and R. Wey.

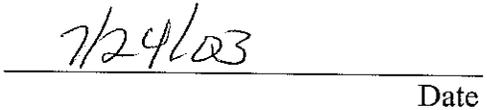
ABSTAINING: None.

The Special Meeting adjourned at 10:30 p.m.


Chairman


Date


Clerk-Treasurer


Date

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

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

[These Minutes were prepared by Staff Secretary Pia Webster using a tape recording of the Special Meeting as well as notes taken by the Executive Director.]