Minutes of the Special Meeting of January 8, 2004

Held in the Olde Stone Building
33 New York Avenue, Oak Bluffs, MA

IN ATTENDANCE


Staff: Mark London (Executive Director), Jennifer Rand (DRI Coordinator), Bill Veno (Senior Planner), Bill Wilcox (Water Resources Planner)

Jim Athearn welcomed new Commissioners, Deacon Perrotta from Oak Bluffs and Ned Orleans from Tisbury, and announced that DRI Coordinator Jennifer Rand has been named Executive Secretary for the Town of West Tisbury.

There being a quorum present, Christina Brown, Hearing Officer called the public hearing to order at 7:39 P.M. and read the Public Notice.


Jim Athearn declared a conflict of interest and left the meeting.


Present for the applicant: Michael Donaroma, owner, and, Dick Barbini representative.

Christina Brown made a disclosure to the effect that, as a member of the Conservation Commission, she is an appointed official from the town of Edgartown. One owner of the property in question, Michael Donaroma, is a member of the Board of Selectmen, the appointing authority for the Conservation Commission. She noted that she was elected at large to the Martha’s Vineyard Commission, and not associated with the town in that respect. The Conservation Commission manages the Waller Farm, an abutter to the property in question. After consultation with the Ethics Commission and her appointing authority, she does not consider that her appointment would constitute a conflict. She has filed a statement to this effect with the Ethics Commission.
Linda Dewitt said that she is appointed by the Board of Selectmen, one of whom is Michael Donaroma. Since she is appointed by the board and not by an individual, she doesn’t see a conflict.

1.1 Applicant’s Presentation

Michael Donaroma explained the background:

- This was Grant’s Pit for about fifty years. It was a gravel pit and used for cement and asphalt. After various sales, it was used for asphalt and cement production. It was offered for sale to the Town and Land Bank. There was no interest, and it was ultimately sold to the current owners in the spring of 2001.
- The proponents are presently cleaning up the site and using it as much as possible for landscape construction business. When they started using it, there were many calls from neighbors to the Building and Zoning Official and the Board of Health. The latter held a series of public hearings and they produced a Best Management Plan. This plan had been presented to the Katama Association along with the subdivision plan.
- The Best Management Plan requires that:
  - only clean fill be used (no stumps or brush other than that from the landscape business, chipping only during the off-season, limits on the area of brush accumulation), and this be monitored;
  - limits on hours of operation (7:30 A.M. to 7:30 P.M., seasonably variable, no site work on Sunday);
  - not turn the compost pile during the summer (June 15 to September 15);
  - poly on floors of poly houses;
  - move the entrance road away from a nearby house;
  - move the equipment and a maintenance building down into the pit and therefore far away from residences;
  - keeping the dust down (watering and sweeping);
  - permitting the compost pile;
  - limit to five irrigation wells and groundwater quality monitoring and annual nitrogen testing each September.
- The filling will decrease as the site is developed for residential use, although a portion of the nursery business may continue.

Dick Barbini explained the proposal:

- Edgartown Health Agent Matt Poole has recommended a condition that the Best Management Practices plan be implemented no later than 90 days after MVC decision; B.A.D.D. respectfully requests that it be based on the Edgartown Planning Board approval, rather than on M.V.C. approval.
- R-20 zoning requires 1/4 acre lots with 50’ of frontage. The entire neighborhood is now 1/4 acre lots except for two farms preserved for farming. B.A.D.D. contends that the proposal fits into the character of the neighborhood.
- The property includes just over 25 acres of land. It is a scar on the neighborhood. The pit covers 1/3 of the property and is about 25 feet deep.
- The ultimate goal is that it would be a 32-lot subdivision. It might end up being part housing and part nursery.
- Under zoning, there could be 45 lots. The size of the proposed lots varies from 22,000 square feet up to about 2.5 acres. Only two lots could be further subdivided. The total area of proposed lots is 23 acres, with 2 acres of roads.
• This is north and east under the Board of Health regulations. Based on these regulations, there could be 111 bedrooms. B.A.D.D. proposes to spread this bedroom allowance over the 32 lots; some with three bedrooms and some with four bedrooms.

• The whole project would be served by town water. This now runs down Katama Road and would enter at Crocker Drive into the subdivision. Once the water line is extended, other properties would then be able to tap into the line.

• He cannot draw a contour or landscaping plan at this point. He explained a general plan indicating planned fill. Part would need little regrading; some would require substantial regrading and the part at the bottom of the pit would be raised 3-5 feet to be high enough for septic systems and foundations. The slopes along the western side would be left in its present configuration, well vegetated and stable.

• During the groundwater testing, a small, contained oil spill was found where the asphalt plan used to be. It is about 40-79 feet wide, and unknown length. It is very heavy oil, which is not moving in the groundwater. It has been reported to DEP, and the consultant is looking at a variety of solutions. It will require a restriction on development until it is cleaned up.

• B.A.D.D. is amenable to either giving 10% of the lots or 20% of the assessed value for affordable housing.

In response to a question from Linda Sibley, Dick Barbini explained that there was little vegetation on the site except for a few trees near the entrance area, some bushes along some of the slopes, and a few scattered trees. B.A.D.D. does not anticipate any landscaping on the perimeter of the site or within the property, other than what would be required to make lots more attractive. The priority is to make the slopes more workable.

In response to a question from Linda Sibley, Dick Barbini said that proposal is for the affordable housing contribution to go to the Edgartown Resident Homesite Committee, per its choice of cash or lots. 20% of the assessed value after approval by the Town, presently just under $1 million, to be released when the first lot is sold. If the three lots are chosen, B.A.D.D. would like to see them go to the Resident Homesite Committee, and have the lots released as the lots are sold, i.e. one for each ten lots sold.

In response to a question from John Best, Michael Donaroma said that some trees, brush and phragmites that had been at the bottom of the pit have been covered by fill. There is presently no vegetation at the bottom of the pit.

In response to a question from Kathy Newman, Dick Barbini said that as soon as the water line is put in along Crocker Drive, the 7 lots along Crocker Drive could be sold with no further enhancement. If the plans are approved in June, the water could go in the fall. The second phase would involve building the first part of the internal road and subdividing along the internal road, a year to a year and a half later. The last phase would be extending the last part of the road, but this part might be used as a nursery for an extended period.

In response to a question from Linda Dewitt, Dick Barbini said that he believes that Matt Poole asked to have the Best Management Plan go into effect within 90 days in order to provide a "hammer" to get it done. Michael Donaroma said that they are already actively working on much of the plan.

In response to a question from Doug Sederholm, Dick Barbini said that there is a topo plan that was originally submitted. The central plateau would be lowered by a few feet to fill in. It is hard to submit a final plan at this point but the plan that was submitted represents the minimum that would be done. B.A.D.D. might want to do more fill. He envisions that there
would be three plateaus, one at elevation 30 (Crocker Drive and the entry area), one about 5-10' lower and then one 5-10' lower than that.

In response to a question from Mark London, Dick Barbini said that the existing slopes on the west and north sites would not be changed; they are steep but existing and haven’t moved for thirty years. Michael Donaroma said that he has started planting on these slopes. On the other slopes to be regraded, the maximum slope would be 1 in 3. Bob Schwartz suggested giving the elevations of the centers of the road. Michael Donaroma said that this still doesn’t lock them in because each lot could be higher or lower than the street. It is a work in progress and the owners don’t want to lock themselves into how it will end up.

In response to a question from Andrew Woodruff, Dick Barbini said that the Planning Board’s Rules and Regulations for Subdivision specify the width and pitch of the road and require the road elevations, although the Planning Board might leave the final details to the highway department.

Janc Greene suggested that the applicant offer to come back with final drawings after the first phase has been sold.

1.2 Staff Reports

Jennifer Rand summarized the staff report.
- The project appears to meet town zoning and the MVC affordable housing policy.
- The MVC traffic planner had done an original review of the traffic consultant’s report; there were several items that he had wanted clarified. This was since done and David Wessling’s addendum said that he then considered that the regional impact would be insignificant.
- The consultant concluded that the total number of daily trips would go from 268 to 448 daily trips and from 42 peak hour trips to 46 peak hour trips. After conclusion of the construction phase, the proposal would replace heavy trucking with a residential use.
- David Wessling concurred with the consultant’s updated estimates and conclusions.

Bill Wilcox summarized his report:
- The site is in the sandy-gravel deposits of the Wisconsin glaciation with Carver loamy coarse sand. There are no prime agricultural soils.
- He agreed with Dick Barbini’s comments on the excavation. He did calculations on the regrading: if feathered to a 15% grade, it could require 70,000 – 80,000 cubic yards, but with plateaus as proposed, this would be less.
- He estimates that 15 lots would be bisected by the present bank. The five lots at the bottom of the pit have groundwater elevation problems, requiring fill in order to meet groundwater separation requirements for septic systems.
- Clean Harbors’ studies indicate a southerly flow for groundwater. Bill’s study indicates southeast but, at any rate, this leads to Katama Bay.
- He confirmed the 111 bedrooms allowable.
- The nitrogen loading would be 154 kilograms, or about 6 kg per acre, estimating 17 seasonal and 15 year-round houses. There is no data available with which to determine a nitrogen-loading limit for Katama Bay.
- Given the density, he agreed that it makes sense to bring in town water to both the lots being created and those to the south on Crocker Drive.

In response to a question from Doug Sederholm, he estimated that the nitrogen loading would be close to, or in excess of, the standard of 10 ppm (not on average but where the effluent plumes from septic systems combined to cause an additive effect). The concentration would
vary but this means that some of the lots would have potable water. He didn’t know how many of the houses on Crocker Drive have private wells, but suspected a large percentage. He said that the nitrogen might be more than 10 ppm at some of the down-gradient private wells. **Doug Sederholm** asked whether this could be mitigated; whether there could be baseline testing of the down gradient wells and an offer to deal with problems. **Bill Wilcox** said that this is not the offer, the offer is now to allow people to connect to the town water supply, every private well should be tested every three years.

In response to a question from Deacon Perrotta, he said that the M.V.C. has done no recent monitoring in the area. **Christina Brown** noted that the Board of Health has done a number of test well studies in the Katama area in the last 15 years or so.

**John Best** said that they are not really offering access to the water line since this is a right once it is built. **Dick Barbini** said that they could have provided the water another way and are doing it this way to allow access to the houses on Crocker Drive. He is not aware of any failed wells in the area.

In response to a question from Paul Strauss about nitrogen loading into Katama Bay, **Bill Wilcox** said that the M.V.C. doesn’t have data on Katama Bay. There is some 10-year-old data from investigations by Arthur Gaines, of the Woods Hole Oceanographic Institute. It is a nitrogen limited coastal pond, which would respond to nitrogen loading by lowered water quality. He does not know the limit for the system. The estimated load would be about 6 kg per acre is in the middle zone. If it were 16 kg per acre, he would be more concerned. Nitrogen loading could be reduced with denitrification, but he cannot say whether this is needed for the bay.

Recess from 9:10 to 9:15.

1.3 Testimony from Public Officials

**Christina Brown** read a letter from the Board of Health about the Best Management Practices plan. It said that the plan must be finalized by the applicant and approved by the Board of Health, and then implemented. The Board recommended that the MVC require that this go into effect within 90 days after M.V.C. approval. As to the housing, the Board recommended that town water service be extended to all down-gradient properties that would be impacted.

**Alan Wilson**, Edgartown Planning Board had the following questions and suggestions.
- He wanted to know whether the houses in the lowest level would have basements.
- He suggested that there be a contour plan and road grading plan.
- He suggested that there be a three phase plan. Under Edgartown zoning, there could not be more than ten houses per year.
- He is concerned that the houses in the lowest level would not be adequate and certain requirements should be conditioned. They are not marketable lots today.
- In response to a question from John Best, he said that the Planning Board could deal with these issues.

**Roger Becker**, Edgartown Planning Board is concerned about the co-existence of the construction and housing. Because of the odd contours of the properties, he suggested that there be building envelopes and septic leaching areas for each lot, to ensure they are buildable without having to undergo additional excavation. To build a large house on the stable slope would require so much excavation that it could undermine the slope, and would require retaining walls.
1.4 Public Testimony

Peter Allendorf lives at 16 Hillman Drive. He lives south, where the flow of the effluent will go. He has a shallow well. The bottom of the pit is at the water level. He is concerned about the plume of effluent, and suggested monitoring wells. With 32 houses and all those bedrooms, a tremendous amount of wastewater will enter the groundwater that he drinks.

Elaine Putnam appreciated the questions by the Commissioners. There had been fifty oil drums overturned and emptied. There should be a phasing plan. She is concerned about groundwater, drainage and the stability of the filled areas.

1.5 Commissioners' Questions

Jane Greene asked whether there would be a homeowners/roadway association or a limit on the size of the houses, or building envelopes. Dick Barbini said that there would be an association but doesn’t see a need for building size restrictions. He doesn’t see a need for building envelopes, given the size of the lots. Nor does he see a need for septic areas on the plans, since these are very heavily regulated by the Board of Health. Boat storage would be allowed on the lots.

Linda Sibley asked whether, in the homeowners association rules, there could be rules about landscaping and lighting. Dick Barbini said there would be no street lighting and there is a new by-law with respect to lighting that they would respect. Michael Donaroma said that he was prepared to accept a restriction on the use of chemical pesticides, herbicides or fungicides for landscaping.

Paul Strauss asked about the town setback requirements. Dick Barbini said that it is 10’ on the sides and rears, 30’ on the front.

Andrew Woodruff asked whether they would consider making some of the lots available to moderate income buyers. Michael Donaroma said he has no intention at this point but is open to anything.

Linda Sibley noted that the Edgartown Resident Homesite Committee might have standards that vary from those of the MVC. Christina Brown said that the Resident Homesite Committee restricts income to up to 140% of median, but if MVC imposes limits that are more restrictive, the Committee has a history of abiding by those requirements.

Linda Dewitt was surprised that there is no recent data on Katama Bay. She also noted that on Cape Cod, a development of 32 lots would require an on-site sewage treatment facility.

Andrew Woodruff asked about the required levels at the bottom of the pit. Dick Barbini said that they need to fill so that the ground is five feet above maximum groundwater. They foresee it ending up at 15’.

1.6 Applicant's Concluding Remarks

Dick Barbini concluded the presentation.

- He said that he has answered the questions about the septic systems.
- The Edgartown Planning Board has jurisdiction over road profiles.
- With respect to grading, he proposed a compromise solution; that this would initially be a two-phase project. The 7 Crocker Drive houses would be built first. Phase 2 would be made up of 9 lots in the entrance area and along the first road. If B.A.D.D. wanted to...
continue development after that, they would come back to the M.V.C. and Planning Board for review of grading at that time. B.A.D.D. would like approval for 32 lots now, however.

In response to a question by Andrew Woodruff about control over the number of bedrooms after subdivision, Dick Barbini said that the Edgartown Board of Health requires that subdivision approval include a maximum number of bedrooms for each proposed lot. Each lot would include a proposal for at least 3 bedrooms, in accordance with Title V regulations.

In response to a question by Mark London about timing of the release of the affordable lots, particularly if the property is divided among the 4 owners, Dick Barbini said that there would be one affordable lot released in phase 1, one in phase 2 and one in phase 3. Remaining lots could not be sold until then, no matter who owned the lots.

In response to a question by Mark London about the co-existence of housing and construction, Dick Barbini responded that there would be construction activities during all three phases. Michael Donaroma said that phase 2 is not very viable as long as the construction trucks are there, so it is in his interest to phase that out as soon as possible.

In response to a question by Mark London about the provision of open space and the possibility of further division of the large lot at the bottom of the pit, Dick Barbini proposed to restrict the entire subdivision to no more than 32 buildable lots, and that at least 1.5 acres of the 2.5 acre lot would be set aside for the recreational or open space for the use of the residents.

In response to a question by Mark London about landscaping and lighting, noting that the Commission has asked for plans in the past, Dick Barbini proposed that the lighting be limited to only that required by the building code, down lighting only.

Andrew Woodruff asked about sidewalks, particularly considering the co-existence of construction activities and residences. Dick Barbini said that none are proposed.

John Best asked whether it would be possible to create a path from the Waller Farm to connect Herring Creek Road and Katama Road. Michael Donaroma said that the Land Bank has shown an interest and if they wish to go ahead, he would provide an easement on the southwest side, but not on the Mattakesett side.

Christina Brown closed the public hearing at 10:04 P.M., thus also closing the record.

2. LUPC REPORT

Upcoming Meetings and Site Visits
- Monday, January 12, 2004 at 8:30 a.m. – site visit Coleman subdivision, Chilmark.
- Monday, January 26, 2004 at 5:30 p.m. – B.A.D.D. and plan for major revisions to DRI checklist
- Monday, February 2, 2004, at 5:30 p.m. – Tarkiln, Inc. modification proposal and possible post-public hearing discussion on Coleman

3. MINUTES OF PREVIOUS MEETINGS

Linda Sibley moved, and it was duly seconded, that the minutes of November 6, 2003 be adopted as presented. Voice vote. In favor: 10. Opposed: 0. Abstentions: 4.

Linda Sibley moved, and it was duly seconded, that the minutes of November 20, 2003 be adopted as corrected.

Jane Greene moved and it was duly seconded that the minutes of December 4, 2003 be adopted as presented. Voice vote. In favor: 10. Opposed: 0. Abstentions: 4.

4. OTHER BUSINESS

Kathy Newman noted how useful it was to have representatives of the Planning Board here tonight and hopes that Planning Boards will continue to come.

Mark London gave a brief report.
- There is a report that there has been additional tree cutting in the Southern Woodlands, on Barnes Road next to the Featherstone Gallery. He has asked the Town of Oak Bluffs to investigate and report on exactly what is happening, in preparation for further action by the Commission.
- There has been an appeal, in the form of legal action, of the Commission’s decision on the Jenney Lane project.

Jim Athearn reported that he met with Brian Lafferty during the day. This let him better understand where Corey Kupersmith and Brian Lafferty are coming from.

The meeting was adjourned at 10:22 P.M.

[Signatures]

[Date: March 18, 2004]

Clerk-Treasurer

[Date: 3/18/2004]