

# THE MARTHA'S VINEYARD COMMISSION

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## Minutes of the Regular Meeting of February 5, 2004

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

### IN ATTENDANCE

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**Commissioners:** Jim Athearn (Elected – Edgartown), John Best (Elected – Tisbury), Linda DeWitt (Appointed – Edgartown), Katherine Newman (Appointed – Aquinnah), Ned Orleans (Appointed - Tisbury), Megan Ottens-Sargent (Elected - Aquinnah), Deacon Perrotta (Appointed – Chilmark), Robert Schwartz, (Appointed – West Tisbury), Doug Sederholm (Elected – Chilmark), Linda Sibley, (Elected – West Tisbury), Richard Toole (Elected – Oak Bluffs)

**Staff:** Mark London (Executive Director), Bill Veno (Senior Planner), Bill Wilcox (Water Resources Planner), Christine Flynn (Housing and Economic Development Planner)

### 1. MINUTES

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Discussion and approval of minutes was deferred until a later date.

### 2. EXECUTIVE DIRECTORS AND STAFF REPORT

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**Mark London** gave a summary of the All-Island planning boards meeting held February 4th. Planning Board representatives explained where each town is in preparing or updating master plans. Representatives also discussed various population projections in the build-out study, the Regional Transportation Plan, and the community development plans (Executive Order 418).

**Bill Wilcox** explained the study of storm drain systems of Oak Bluffs and Tisbury, financed by a grant from Coastal Zone Management under their Coastal Zone Remediation Program.

- The purpose of the grant was to map the systems, to identify the potential impacts of discharge into surface waters, and to prepare a preliminary engineering design to correct two of the problems. The work done under this grant gives towns a leg up into the second round of funding which will be to correct the problems.

- Fieldwork was done to calculate relative amounts of runoff to prioritize systems for correction. Outflows from five sites in Oak Bluffs and five sites in Tisbury were sampled for nutrient content, sediment and bacteria.
- Sites were selected based on the prioritization process and on the input of each town's Department of Public Works. Engineering design work was done by George Sourati of SouratiGroup. A design has been done to correct Grove Street off upper Main Street in Tisbury, half way up to West Chop. In Oak Bluffs, a preliminary design has been done to correct discharge across Jetty Beach and Inkwell Beach by infiltrating run-off to the corner of Waban Park.
- The grant was for about \$25,000. The work was finished on time and slightly under budget.
  - A similar correction had been done in Aquinnah at the Herring Creek Crossing, funded by the Tribe, and that work under Coastal Zone Management grants had been done at Lagoon Pond Road a couple of years ago.
  - In response to a question about a special limestone system for the runoff from Causeway Road in Tisbury, Bill indicated that the system was tested and that the sediment was hugely reduced but the nitrogen content was somewhat elevated. First flush systems with limestone are also used near the Yacht Club and in the Fairfield and Daggett drainage area. Testing indicated elevated levels of silt and slightly elevated levels of nitrogen.
  - In response to a question from Deacon Perrotta, Bill said that he didn't do testing of metals. This is expensive. The Tribe now has equipment to test for a number of metals.
  - Bill indicated that budget restraints mean the problems will have to be corrected over time. Reducing the total flow through infiltration farther up in the watershed is part of the plan.
  - In response to a question from Megan Ottens-Sargent about sites with higher nitrogen level, Bill said that the Board of Health did try to determine a source of nitrogen at the Owen Little Way discharge through dye testing. Tests can also be done to determine whether nitrogen is acid rain or septic system generated, but whether the source is human or animal can't be determined.

**Mark London** gave an update on MassHighway's proposal to replace the drawbridge. Tisbury and Oak Bluffs Boards of Selectmen have named representatives to a committee to work with MassHighway on its proposal to build a temporary drawbridge. A letter was sent by the Boards of Selectmen urging MassHighway to look at a "one- bridge" solution, i.e. avoiding the construction of the temporary bridge. MassHighway believes the present bridge may not stay in operating condition for the time needed to build a permanent bridge, which could close Beach Road. A delegation will be going to Boston to work with MassHighway.

**Bill Venno** gave an update on the Executive Order 418 Community Development planning process. The Oak Bluffs and West Tisbury steering committees met again. Last night's meeting with the All-Island planning boards was helpful in getting input on growth projections that will be presented to steering committees of the towns.

Work done with Oak Bluffs and West Tisbury can be applied to other towns in terms of the methodology for mapping data such as natural resources.

### 3. LUPC MEETINGS

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- Monday, February 9 at 5:30 P.M. Coleman Subdivision and Bridge Housing

**Mark London** explained that Bridge Housing has made several improvements to the plan with an landscape architecture engineering firm to the plan in terms of building siting and set backs. When the plan was originally approved, Mark was authorized to approve small adjustments. However, Bridge Housing wanted the LUPC or Commission to look at the plan again and it has requested a concurrence on the modifications.

### 4. CHARITABLE CONTRIBUTIONS

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*Commissioners present: J. Athearn, J. Best, L. DeWitt, N. Orleans, M. Ottens-Sargent, D. Perotta, R. Schwartz, D. Sederholm, L. Sibley, R. Toole, A. Woodruff.*

**Jim Athearn** said that Chapter 831 states that the Commission is able to receive gifts of money and land. It was suggested that a blind trust be set up to avoid any bias on the part of the Commission. He invited public input.

**Barbara Day** said that in the beginning, she thought the blind trust was a good idea, but now believes it may be counterproductive. With donors identified, the MVC would gain a group of supporters. With a trust, no one knows who has given. She suggested doing the opposite of a blind trust and publishing names of donors, which would make support completely out in the open. With a blind trust, the implications is that the MVC doesn't trust the public to trust the MVC to make the right decisions. If the aim is to raise money, publishing names is an important fund-raising tool and a way to bond the people of the Vineyard and the MVC together.

**Whit Manter** is against the concept of a blind trust for accepting donations. The MVC should go to the towns and take the chance of being voted down. The MVC is a public agency. The MVC's debt is the towns' debt and should be presented to the towns. However, there is no reason for not accepting gifts, but it should be completely in the open. In a blind trust oversight is nearly impossible and the rumors might be worse than the benefits.

**Maura McGroarty** is against the practice of a government body accepting secret funding. A publicly funded body is publicly funded. It is un-American for a public agency to accept money the source of which cannot be identified.

**Bruce Nevin** thinks the blind trust is a good idea. Nothing prevents people giving gifts directly. He asks why the source of money being unknown is a bad thing. In a political campaign, you want to know where the money is coming because it has an influence.

But in this case the purpose of the blind trust would be to remove the means for it to have any influence. Money couldn't be earmarked to produce a particular result because the Commissioners wouldn't know where it came from. There would be oversight but the trustees that would preclude donations from anyone having any business before the Commission presently or in coming years. Rumors will arise but how can rumors influence the MVC in a blind trust situation?

**Mark London** summarized two letters received on the issue. Michael Dutton, Oak Bluffs selectman, reiterated his opposition to anonymous donations. Art Flathers was also against anonymous donations but said that private donations could be acceptable for expenses such as planning or building repairs, but not for regulatory or legal fees.

**Linda Sibley** asked whether the Commission should have a fixed policy that gifts over a certain amount would require a signed declaration that the donor would not come before the commission for a fixed period of time.

**Barbara Day** supported the idea of a signed declaration for all donations.

**Whit Manter** believes that donations will more likely come from people who don't want a project to go ahead. A golf course or gas station owner might fund legal defense to support the denial of a competitor's project.

**Barbara Day** said that anyone donating to influence a decision is taking a gamble because the Commission is going to do what it thinks is right.

**Jim Athearn** asked whether, if a gas station proposal came forward and an existing competitor donates \$25,000 for water studies, should the Commission accept the donation, knowing his motivation?

**Whit Manter** said, if the donation were totally out in the open, he would leave it up to the Commission's judgement.

**Barbara Day** proposed that donors wouldn't be able to stipulate where the money would be used.

**Linda Sibley** said that they could ask people to sign a declaration saying they had no financial interest. **Whit Manter** said that on the Vineyard, that would be nearly impossible. **Megan Ottens-Sargent** asked whether the Commission would then be put in the position of then suing donators who misrepresented their interest.

**Maura McGroarty** said that she donated money to have Oak Bluffs pull out of the MVC. A large amount of money was donated from people who were not residents of Oak Bluffs or the Vineyard and, in her opinion, those donations influenced the vote. At least she knew who was donating. Anything that is done by elected officials should be done out in the open.

**Bruce Nevin** noted that there was no oversight to those donations and no limits. People have to trust the trustees.

**Linda DeWitt** said that the Declaration of Independence and the Constitution were based on a reaction to secrecy and they were set up for transparency. In the Commission's case, appointed members have a different responsibility than elected members and must do their disclosures to the town. According to the Ethics Commission, if a Commissioner finds out the name of a donor, he should still be able to make an impartial judgment and not have to recuse himself from a decision. She also wanted an opinion from the Ethics Commission as to whether it was ethical for the Commission's counsel to work pro bono on the trust proposal since he might benefit.

**Megan Ottens-Sargent** said that the Commission is a regulatory agency, a planning agency, and a political body. Estimating costs in advance, particularly legal fees, is difficult. Budget increases may drive a town to want to pull out of the Commission; a withdrawal affects the whole island. The idea of the blind trust came up for two reasons: to avoid any possibility of influence and to allow donors to maintain their anonymity, if they wish. This is one possible solution to fund an agency important for Martha's Vineyard.

**Deacon Perotta** said that he has seen in government agencies cut budgets to make them palatable and then be forced to raise rates to cover costs. The Commission should present a full budget and have it supported or not. As far as integrity, donors would have to influence nine members. Members will still vote on merits of the project. The Commission's legislation allows it to accept money or land, and donations should be public. It is hard to raise money since there is no product.

**Ned Orleans** said that when the subject of the blind trust came up, he was not a Commissioner and it was easy to come up with reasons on both sides. When he became a member of the Commission and looked at the blind trust issue again, he felt that he would make the best decision independent of the money, but he would feel better if he didn't know where the money came from. He would like to have further discussion rather than make a decision tonight.

**Mark London** explained that the background document he prepared includes budget estimates, the financial needs of the Commission, and a summary of some of the key arguments in favor and against the trust. Some people believe that the Commission should take the full budget to the towns and others have said that towns are very reluctant to see increases. The Commission has proposed two numbers: one that is a basic operating budget and a second that funds doing a better job. No attempt has been made to hide or disguise real costs. The Commission believes at this time it's worth doing the "better job" because it's a critical time for the Vineyard.

**Bruce Nevin** said that in campaign financing there is a proposal that donations be anonymous just as the ballot box is anonymous.

**Doug Sederholm** thought at first that this was much ado about nothing. He realizes that there is a disconnect between how the Commission operates and the perception of some members of the public. He has been on the Commission for a year and cannot imagine how any donation of any amount would sway a majority of Commissioners. These are independent thinkers. Whether donations are blind or not, it will not affect how decisions are made, the Commission has made difficult decisions. Public perception is important which is not only about impropriety but also the appearance of impropriety. He doesn't think establishing the blind trust is worth it because the public perception, even by detractors, is too important. The Commission must maintain a public perception of integrity.

**Linda Sibley** clarified the Commission's budget. Whether moneys are from assessments, grants or donations, every expenditure is on the budget.

**Michael Donaroma** said the blind trust is about public perception. This Commission said has made difficult decisions for thirty years. The perception of the Commission and its budget is squeaky clean and should stay this way.

**Barbara Day** said that the Commission needs to keep the fundraising process open to raise money.

**Brian McGroarty** said that he is not a supporter of the Commission. There is a tremendous tax disparity on the towns of the island. Towns with high property values have a lower tax rate. The result of the body of work of the Commission and other regulatory agencies is that the interests of the wealthy are inadvertently protected at the expense of some of the less well to do on the Island. Linda Sibley said that there are probably several wealthy people were willing to donate. Wealthy people like his friend Corey Kupersmith know how to protect their own interests. If donations are in the open, the Commission will be open to less criticism.

**Jim Athearn** thanked the people who had come and offered their comments and said they would be considered when the Commission takes up the matter in the future.

## 5. B.A.D.D. COMPANY SUBDIVISION (DRI 551M) – DELIBERATION AND DECISION

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*Commissioners present: J. Best, L. DeWitt, K. Newman, N. Orleans, D. Perrotta, R. Schwartz, D. Sederholm, L. Sibley, R. Toole.*

**Richard Toole** gave the LUPC report.

*At its January 26, 2004 meeting, the Land Use Planning Committee voted to recommend that the application for B.A.D.D. Company subdivision be approved with conditions.*

*In making this recommendation, the LUPC noted that this particular site, the former Grant's Pit, is presently in a severely degraded state and has no significant vegetation or other natural features. In the opinion of committee members, the proposed subdivision of land is appropriate on this property in that it does not create any untoward traffic or environmental impacts and it would be an improvement over the former use and disturbed appearance of the site.*

*The following are the proposed conditions.*

1. *There shall be no more than 32 buildable lots in the subdivision.*
2. *The project will be completed in three phases:*
  - a. *Phase 1 – lots 2-7*
  - b. *Phase 2 – lots 8-18*
  - c. *Phase 3 – lots 1 and 19-32*  
*(Lot numbers depicted on "Plan of Land in Edgartown, Mass." Dated February 21, 2003 and faxed to MVC on 1/26/04)*
3. *Prior to the release of lots for sale in Phase 3, the grading of the phase 3 lots will be reviewed and approved by the LUPC and the Edgartown Planning Board. The grading shall result in an elevation of no less than fifteen feet (15').*
4. *Lot 1 shall have a minimum of 1.5 acres of open space accessible to residents of the subdivision, to be created prior to the release of lots for sale in Phase 3.*
5. *There shall be no more than 66 bedrooms in Phases 1 and 2, and all homes constructed in Phase 3 shall have advanced denitrifying systems.*
6. *If the applicant proposes to combine lots resulting in fewer than 32 lots, they shall not have to return to the Martha's Vineyard Commission for approval. If lots are combined, the total number of bedrooms in Phases 1 and 2 shall not exceed 66, and the total land area included in each phase shall not change.*
7. *As offered by the applicant, there shall be three affordable housing lots given to the Edgartown Resident Homesite Committee or its assigns, two lots (9&10) prior to the release of lots for sale in Phase 2 and one lot (23)*

*prior to the release of lots for sale in Phase 3. The affordable housing lots shall be deed restricted to remain affordable in perpetuity. Any combining of lots resulting in the reduction of the total number in the subdivision shall not affect the total number of affordable housing lots given.*

8. *Town water shall be provided throughout the subdivision and a pipe shall be run along Crocker Drive to end of subdivision to allow neighbors to tie in if they desire, at their own expense.*
9. *There shall be no street lighting. Residential lighting shall be restricted to that required by building code and motion-sensitive security lighting; all such lighting to be shielded down-lighting only.*
10. *The Best Management Plan as submitted by the Applicant and endorsed by the Edgartown Board of Health shall be implemented within 90 days of the Edgartown Planning Board's final approval of the subdivision.*
11. *There shall be a public trail easement along the length of the southwest side of the property.*

John Best said that in condition 6, with respect to apportioning bedrooms, a complicated discussion with Matt Poole took place. If the subdivision were brought down to 22 5-bedroom lots, the total number of bedrooms would probably be reduced since it is unlikely that everyone would build the maximum number, which would reduce wastewater loading on the property. With three-bedroom lots, all the bedrooms would likely be built. After discussion with Matt Poole, he proposes that the Best Management Plan designate the maximum number of bedrooms per lot and that this limit be maintained.

Doug Sederholm looked at the number of bedrooms in phases 1 and 2, versus phase 3. He wants to make sure that a significant number of the bedrooms get denitrified.

Mark London suggested that a maximum number of bedrooms be specified per phase.

John Best clarified that the condition is denitrification of phase three.

Doug Sederholm proposed in number 5 of the proposed conditions that there should be no more than sixty bedrooms in phases 1 and 2.

Kathy Newman asked how the numbers were determined.

Dick Barbini clarified that the number 66 came from 22 lots in phases 1 and 2 times 3 bedrooms. Also, this should not be in the Best Management Plan since it has nothing to do with subdivision. He also clarified that the denitrification is in phase 3 because the lots are lower and closer to the water.

*Doug Sederholm moved and it was duly seconded that the number of bedrooms permitted in condition 5 be changed from 66 bedrooms to 60 bedrooms. Voice vote. In favor: 9. Opposed: 0. Abstentions: 0. The motion carried.*

In condition 3, the elevation should specify elevation NGVD.

John Best discussed the wording for the proposed number of lots and the allotment of bedrooms per lot to avoid maximizing the wastewater load into the groundwater.

*John Best moved and it was duly seconded that there should be no more than 4 bedrooms on each lot with the presently proposed number of lots in each phase, and that each lot's bedroom allotment shall be recorded with the Board of Health when the subdivision is approved and not be increased thereafter. Should the number of lots in a phase be reduced (with the lots redivided), the number of bedrooms should be redistributed as equally as possible among the lots. Voice vote. In favor: 9. Opposed: 0. Abstentions: 0. The motion carried.*

*Doug Sederholm moved and it was duly seconded to approve the proposal with the conditions in the memo and as amended in this discussion. Roll call vote. In favor: J. Best, L. DeWitt, K. Newman, N. Orleans, D. Perrotta, R. Schwartz, D. Sederholm, L. Sibley, R. Toole. Opposed: None. Abstentions: None. The motion carried.*

The Meeting was adjourned at 9:45 p.m.

James A. Atkerson  
Chairman

Joe A. Heese  
Clerk-Treasurer

April 1, 2004  
Date

4/01/04  
Date