

THE MARTHA'S VINEYARD COMMISSION

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Minutes of the Meeting of April 8, 2004 Held in the Oak Bluffs Elementary School Cafeteria, 50 Tradewinds Road, Oak Bluffs, Massachusetts

IN ATTENDANCE

Commissioners: James Athearn (Elected - Edgartown), John Best (Elected - Tisbury), John Breckenridge (Appointed - Oak Bluffs), Christina Brown (Elected - Edgartown), Linda DeWitt (Appointed - Edgartown), Jane A. Greene (Appointed - Chilmark), Katherine Newman (Appointed - Aquinnah), Ned Orleans (Appointed - Tisbury), Megan Ottens-Sargent (Elected - Aquinnah), Robert Schwartz (Appointed - West Tisbury), Doug Sederholm (Elected - Chilmark), Linda Sibley (Elected - West Tisbury), Paul Strauss (County Comm. Rep.), Richard Toole (Elected - Oak Bluffs), Andrew Woodruff (Elected - West

Staff: Jo-Ann Taylor (Coastal Planner), Mark London (Executive Director), Bill Veno (Senior Planner)

James Athearn opened the meeting by explaining that the main topic was a public hearing on the Preserve at the Woodlands, which would begin at 7:45 p.m. after other agenda items were taken care of.

1. ISLAND CHILDREN'S SCHOOL – MODIFICATION/CONCURRENCE REVIEW

Commissioners present: J. Athearn, J. Best, J. Breckenridge, C. Brown, L. DeWitt, J. Greene, K. Newman, N. Orleans, M. Ottens-Sargent, R. Schwartz, D. Sederholm, L. Sibley, P. Strauss, R. Toole, A. Woodruff

James Athearn explained that the Island Children's School is planning a 600 square-foot addition. The school will not be adding new students. The Commission needs to decide whether this is a minor change that can proceed without a public hearing.

Bruce MacNelly, architect, explained that the proposed addition of 600 to 800 square feet will add to the existing 2016 square-foot building and will give the school more elbow room. No staff or students will be added. The school has begun clearing the site and removing trees to reconfigure the parking lot and to make room for the addition.

Bob Schwartz asked about the stairs on the plan. Bruce MacNelly explained that currently a pull-down stair is used for attic storage access; with the addition, the stairs will be changed to walk-up, but the upstairs space will only be used for storage.

Linda Sibley asked about the parking lot plan. She said that Hilary Noyes had presented parking lot and landscape plans to the LUPC. Bruce MacNelly said that the driveway will remain the same and explained the reconfiguration of parking.

Richard Toole moved and it was duly seconded that the proposed modification is a minor change and doesn't require a hearing.

- Megan Ottens-Sargent asked how many students are at the school and how many cars are in the parking lot. Bruce MacNelly said six adults are in the building during the day with four or five cars in the parking lot at a time. The school may have 22 or so students in the morning with two or three staying into the afternoon.
- Andrew Woodruff stated that the school is a fabulous asset for the Vineyard and thanked Bruce MacNelly for fixing the parking lot.

A voice vote was taken. In favor: 15. Opposed: 0. Abstentions: 0. The motion carried.

Richard Toole moved and it was duly that the Commission approve the proposed plans to allow the addition. A roll call vote was taken: In favor: J. Athearn, J. Best, J. Breckenridge, C. Brown, L. DeWitt, J. Greene, K. Newman, N. Orleans, M. Ottens-Sargent, R. Schwartz, D. Sederholm, L. Sibley, P. Strauss, R. Toole, A. Woodruff. Opposed: None. Abstentions: None. The motion carried.

2. VINEYARD YOUTH TENNIS – EXTENSION OF DEADLINE

Commissioners present: J. Athearn, J. Best, J. Breckenridge, C. Brown, L. DeWitt, J. Greene, K. Newman, N. Orleans, M. Ottens-Sargent, R. Schwartz, D. Sederholm, L. Sibley, P. Strauss, R. Toole, A. Woodruff

Representative for Applicant: Alan Schweikert

James Athearn explained that Vineyard Youth Tennis is coming before the Commission to request an extension on the date to remove the bubble over the courts. Alan Schweikert explained that Vineyard Youth Tennis would like to keep the cover on for an additional two weeks because the weather is unpredictable and the center is trying to maintain its program. He also said that Vineyard Youth Tennis will be coming before the Commission in the fall with a permanent modification and other proposals.

Megan Ottens-Sargent disclosed that her daughter is enrolled in the organization's tennis program this semester.

Jane A. Greene moved and it was duly seconded that the deadline for removing the bubble be extended for two weeks. A voice vote was taken: In favor: 15. Opposed: 0. Abstentions: 0. The motion carried.

3. OPTIONS IN EDUCATION (M.V. PUBLIC CHARTER SCHOOL): DRI NO. 423M-5 – CONCURRENCE REVIEW / MODIFICATION

Commissioners present: J. Athearn, J. Best, J. Breckenridge, C. Brown, L. DeWitt, J. Greene, K. Newman, N. Orleans, M. Ottens-Sargent, R. Schwartz, D. Sederholm, L. Sibley, P. Strauss, R. Toole, A. Woodruff

Presentation and discussion postponed until the meeting of April 15, 2004.

4. PRESERVE AT THE WOODLAND / SOUTHERN WOODLANDS RESERVATION: DRI NO. 555-2, PROPOSED SUBDIVISION – PUBLIC HEARING

Commissioners present: J. Athearn, J. Best, J. Breckenridge, C. Brown, L. DeWitt, J. Greene, K. Newman, N. Orleans, M. Ottens-Sargent, R. Schwartz, D. Sederholm, L. Sibley, P. Strauss, R. Toole, A. Woodruff

For the applicant (Corey Kupersmith): Brian Lafferty (developer), James Lengyel (Martha's Vineyard Land Bank), Paul Killeen (attorney), Lawrence Ducharme (engineering and design)

Christina Brown, chairman of the LUPC, opened the public hearing, read the hearing notice, and explained the hearing procedure. She also made an informal statement regarding the decision-making process of the Commission:

- The Commission members have not prejudged or discussed at any length the application.
- The Commission heard a preview of the application on April 3rd at a public meeting.
- The Commission held an executive session to discuss pending legal matters.
- The public hearing is to hear public comments and to listen and weigh the proposal.
- Following the public hearing, the Commission will hold a discussion among Commission members, in public and make its decision.

4.1 Applicant's Presentation

Brian Lafferty, representing Corey Kupersmith, introduced Paul Killeen, attorney, Larry Ducharme, engineer, and James Lengyel of the Martha's Vineyard Land Bank.

James Lengyel explained the history of the Martha's Vineyard Land Bank's involvement in the Southern Woodlands property.

- The Land Bank always prioritizes properties of significant size, especially unbroken woodland with significant habitat. The Land Bank has been interested in the Southern Woodlands property for quite some time and between 1988 and 1998 made offers on the property but failed to acquire it.
- In 2000, the Land Bank met with Mr. Lafferty to talk about whether one of the applications before the Commission could have a Land Bank component. The Land Bank would have purchased a portion of the property in connection with one of the golf course proposals but the golf course proposal was denied and the Land Bank's involvement with that plan lapsed.
- In 2002 or 2003 Richard Combra asked if the Land Bank would be interested in meeting with Mr. Kupersmith and Mr. Lafferty. The parties met could not see eye to eye on a purchase price or purchase parameters.
- The Land Bank continued to keep the project on its radar screen, which meant that the Land Bank kept the project as part of its cash analysis.
- In late winter 2004, the Land Bank and Mr. Lafferty met again. A plan was developed that Mr. Lengyel felt would be of interest to the Land Bank Commission and the Oak Bluffs Land Bank Board. The Land Bank Commission and the Oak Bluffs Land Bank Board have both unanimously accepted the current plan. A preliminary land use management plan has also been adopted by the Land Bank and the Oak Bluffs Land Bank Board.

Larry Ducharme, of Ducharme and Wheeler, engineer for the proposed subdivision, outlined details:

- The site is 290 acres.
- To the west is Barnes Road, to the north is three subdivisions, to the east is a Land Bank parcel on County Road; to the south is a subdivision, several separate parcels, various sites owned by the Oak Bluffs Home Site Committee, Martha's Vineyard Arena, Island Elderly Housing, and the Land Bank. Holmes Hole Road follows the site down to the south.
- The topography of the site is 75 to 130 feet above sea level. The 130-foot location is on an isolated hill about 25 feet high; topography is rolling except for a few hills here and there; the westerly section has a bluff with views of Lagoon Pond.
- A land-locked piece of property with no access owned by the Town of Oak Bluffs is located in the center of the property, but is not part of the property.
- The site is predominantly made up of well-drained soils.
- Vegetation is a mix of white oaks, pitch pine, white pine, and beech. The more mature trees are in the west side in the Webb's Campground area.
- There are no wetlands.
- Areas of archaeological and historical significance are included on the site and are within the land being purchased by the Land Bank.
- The subdivision proposal calls for 26 lots in an R-4 district requiring lots of 130,000 square feet of land per lot and 200 feet of frontage. The subdivision has

several overlay districts: the Island Roads District within 200 feet of Barnes Road, an Island Roads District within 200 feet of County Road and a Coastal Wetlands District which is 500 feet from Lagoon Pond.

- He indicated the boundaries of the subdivision on the map.
- Any old structures on the site were part of Webb's Campground.
- The vegetation is primarily deciduous trees with some pitch pine.

Megan Ottens-Sargent asked about the Ancient Ways on the property and whether they are considered 'Special Ways'. **Larry Ducharme** said, according to his reading of the zoning by-laws, no Special Ways designation had been made as yet. **Christina Brown** said staff would probably answer questions about trails and Ancient Ways in the staff report.

Larry Ducharme explained the map showing the proposal to divide the property.

- It is proposed that just over 190 acres would be purchased by the Land Bank.
- The map indicated two parcels (designated a lighter green) that it is proposed to swap. One is the landlocked parcel owned by the Town of Oak Bluffs. The second is an alternate, equally sized parcel of land closer to Edgartown/Vineyard Haven Road, which is part of the land designated for purchase by the Land Bank and abutting other property owned by the Town of Oak Bluffs.
- This proposal includes the possibility of swapping the two pieces of land for the benefit of both parties; the open space would be more continuous and the property to be owned by the Town could be developed for municipal purposes. This swap would need the approval of Town Meeting.

Larry Ducharme described the 93-acre, 26-lot subdivision.

- Each lot will be 130,000 square feet.
- Under Community Development rules, the subdivision needs to include 25% of land as open space, bringing the subdivision into an R-3 district. Under this proposal, 28% of the subdivision will be open space.
- Included will be a barn, stable, and a riding ring.
- A pond with a polyethylene liner to retain water is planned for 3.5 to 4 acres. The plan calls for a well for the pond, generating 60,000 gallons of water or less in a given week. Possible surface water drainage tie-in to the pond is being investigated but is dependent on a number of factors.
- Each of the 26 house lots is designed for five bedrooms. A stable and barn with a two-bedroom guest/caretaker quarters is planned as well as a six-bed workers' bunkhouse.
- Nitrogen load levels are calculated at .31-.39 parts per million which is well below the required maximum of 1 part per million. Included in the nitrogen calculations is potential livestock.

Larry Ducharme explained access and egress:

- Oak Bluffs zoning calls for two means of egress.

- The proposal calls for access/egress on County Road and an emergency egress through a way onto Barnes Road.
- The emergency egress will remain unimproved.
- The plan maintains the 50-foot required buffer from Special Ways.
- Four driveways in the subdivision would have to cross trails; the plan proposes using two shared driveways to minimize crossings.

Bob Schwartz asked about runoff from pasture. Larry Ducharme said runoff from the pasture would not go into the pond. Some runoff from the roadway may go into the pond to minimize the use of well water, but run-off configuration will depend on the ecology of the pond. Horses will be fenced and will not have access to the pond. Natural vegetation will surround the pond.

In response to Megan Ottens-Sargent, Larry Ducharme clarified that the natural vegetation in the 50-foot Ancient Way buffer will be maintained; according to his reading of the by-laws the vegetation may be maintained as is or replanted.

Brian Lafferty explained that the Land Bank has been interested in the land since Down Island III.

- In the current proposal, Oak Bluffs Selectmen did a great job of taking the initiative and they and James Athearn were instrumental in bringing the parties together. The current proposal is a collaborative effort between himself and James Lengyel.
- The priority land for the Land Bank was the Webb's Campground and the associated bluffs, as well as Bergeron Hill and the trails.
- The subdivision plan went through a few configurations but, finally, in view of the Land Bank's desire for continuity and the needs of the subdivision, the present configuration with the housing in the north part of the property with access from County Road and abutting presently residential land made the most sense.
- The subdivision proposal includes swapping an inaccessible, 23-acre parcel owned by the Town of Oak Bluffs and for a Land Bank parcel of 23 acres. The parcel currently planned to be purchased by the Land Bank abuts a parcel currently owned by the Town of Oak Bluffs, which has already approved for affordable housing. The swap would allow the Land Bank a contiguous 190-acre piece of property and would allow Oak Bluffs the trade of an inaccessible 23-acre parcel for one that would expand a Town-owned lot on County Road.
- The original Down Island proposal was for a 219-acre site. This proposal calls for 225 acres going into open space conservation. Thus, there is more land going into open space conservation in this proposal than there was total land in Down Island I.

Brian Lafferty clarified that this deal was negotiated between the Land Bank and Corey Kupersmith. The Commission was not involved in any aspect of the negotiation. The time frame is guided by the litigation in place. The design team felt it had a good grasp

of what the Commission considers important or significant and tried to tailor the design to address the Commission's priority concerns:

- A limitation is placed on cutting on individual lots.
- The 50-foot setback from lot lines is maintained.
- The lots include 15,000 square feet of impervious area. Lot owners are limited in what they can cut.
- The houses in the subdivision will be subject to a declaration of protected covenant, like a condominium association agreement. The covenant protects against the use of fertilizers and pesticides. The association will maintain control over various aspects of the subdivision.
- Vegetation in the subdivision will be native; common areas will be planted with native, low-maintenance vegetation. One of the themes in planning has been to maintain island culture and tradition.
- Some aspects of the plan are not firm because only preliminary discussion has taken place with the Oak Bluffs Planning Board:
- The subdivision plan will ask for a variance on a second means of egress and common driveways where appropriate.
- In terms of trails, most trails are on proposed Land Bank property, including Old Back Way. The trails on the property will be maintained as much as possible, but where necessary will be moved and maintained according to DCPC regulations. Trails in the subdivision will only be accessible to residents.

Brian Lafferty explained the affordable housing aspect of the project.

- In conjunction with Corey Kupersmith's previous proposal, an acre of land was donated to Island Elderly Housing.
- The swap of the landlocked 23 acres owned by the Town of Oak Bluffs for 23 acres on County Road adds to the affordable housing aspect of the deal by providing the Oak Bluffs Affordable Housing Committee with a viable piece of land of totaling approximately 35 acres.
- As part of the subdivision, the applicant is establishing the Kupersmith Affordable Housing Trust with trustees made up of an Oak Bluffs designee, Corey Kupersmith's designee, and a Commission designee. When each of the 26 lots is sold, \$10,000 from the sale will be put in the Trust. Also, each lot in the subdivision will carry a deed restriction specifying that \$500 per year of ownership will accrue and make a subsequent contribution for affordable housing when the lot is sold; after ten years, the amount of the annual accrual could be adjusted for inflation.
- The purpose of the fund will be to provide affordable housing incentives and programs. The first \$50,000 will be designated for the Local Homesite Committee for a feasibility study on the existing Oak Bluffs site plus 23 acres on County Road.
- Mr. Kupersmith will absorb the cost of managing the trust.

Brian Lafferty concluded by saying that the DCPC zoning requirements have been met and that the Commission's rules and guidelines have been met. The Commission, in

response to Down Island II, said it would like to see a small cluster development of twenty to thirty houses. The current proposal calls for a cluster development, affordable housing, and a large tract of contiguous open space. This is a good proposal, consistent with regulations, consistent with what the Commission has asked for, and consistent with what opponents have said they'd like to see. From a business perspective this proposal is prudent and it is good for Oak Bluffs, the Commission, and for Martha's Vineyard.

James Lengyel summarized the Land Bank's preliminary management plan for the 190 acres. Prior to the purchase of any land, the Land Bank Commission and advisory board of the particular town adopt goals and a preliminary plan; when the land is finally purchased, no surprises arise between the Land Bank and the town as to how the land will be managed. Five goals guide the plan.

- **Nature Conservation:** The Land Bank will conduct a biological survey of the entire premises for a period of at least four seasons to identify the species that use and rely on this property. That survey becomes the plinth on which the Land Bank develops its management plan. The second nature conservation goal is to identify rare and endangered species and to prepare a plan to protect those species and to expand the population.
- **Natural Products:** The land will be category B, available for hunting.
- **Scenic Goals:** The Land Bank will complete the work on the 'Barnes Road Field Creation Project'.
- **Recreational Goals:** Public access will be allowed for hiking, horseback riding, and non-motorized bicycles. The Land Bank will maintain existing trails and will create new trails as needed. The Land Bank expects to access this land through the trailhead at Featherstone. If necessary, a second trailhead will be established. The Land Bank will investigate the feasibility of resurrecting Webb's Campground, possibly leasing the campground area to a camping entrepreneur who would manage the campground. The Land Bank will seek to connect the property via trails to other conservation areas.
- **Administrative Goals:** The Land Bank intends to complete the draft land management plan by December 2005; it will be brought to a public hearing for comment on all aspects of the Land Bank property. Should the plan be approved by the Oak Bluffs Land Bank Board, it will go to the Land Bank Commission. With approval, the plan goes to the Secretary of Environmental Affairs who places the final signature on the plan. The only intended alteration to the property is to 'tune up' the 'field creation project'. The only intent for the property is to create trails. One of the appeals of this property is that it will not be difficult to manage.

James Lengyel said the land doesn't need a conservation restriction. By definition, Land Bank properties are subject to Article 98 of the Commonwealth Constitution, which says that when property is purchased or acquired for conservation purchases by a public entity, it cannot be converted to any other use, without approval by a host of public entities.

- Part of the contract with Corey Kupersmith is a conservation restriction on the 26-lot subdivision that is designed to protect the non-developed areas in the subdivision.
- In response to a question from **Megan Ottens-Sargent** about working with the Commonwealth's Natural Heritage Department, **James Lengyel** explained that after the Land Bank plan is submitted to the Secretary of Environmental Affairs, she submits the plan to appropriate agencies, including Natural Heritage, for their feedback and recommendations. The Land Bank also submits a letter to Natural Heritage telling staffers that a property is under consideration, showing the priority habitat map and asking for their input from the start.
- In response to a question from **Doug Sederholm** about the scope of the conservation restriction on the open space in the subdivision. **James Lengyel** explained that it is a clause in the contract; the standard conservation restriction form, tailored to this property, will probably be used and the Division of Conservation Services will oversee the decision.

Brian Lafferty explained that a memo from Jim Ward, attorney, outlines the way the conservation restriction works. The Town of Oak Bluffs will also require that open space be restricted according to their zoning by-laws. Initially the Oak Bluffs Planning Board will impose the requirements; then the paperwork is submitted to the Division of Conservation Services. The developer will propose that the beneficiaries of the conservation restriction will be the Land Bank and Town.

Linda Sibley asked which portion of the Land Bank property might be subject to view easements. **James Lengyel** said that the view easements are granted for lots that may benefit from long distance water views. The terms of the contract call for the view easement terms to be negotiated between the Land Bank and the developer. The terms in the contract are still to be negotiated and are subject to public hearing.

4.2 Staff Report

Mark London gave the staff report which began with a brief summary of the proposal.

- The traffic study done by the applicant was reviewed by the Commission's traffic engineer who concurred with the study's findings that traffic impact would be minimal.
- Water calculations done by the Commission concurred with nitrogen levels under the limit of 1 part per million.
- The Affordable Housing aspect of the proposal was been reviewed by staff.

Jane Greene expressed concern about the Affordable Housing offer made by the applicant, which relies on land donated more than a year ago. **Brian Lafferty** explained that the one-acre donation to Island Elderly Housing was made as part of the golf course proposal, which also included a sewage treatment plant. The applicant was to help Island Elderly Housing with denitrification, but as the golf course proposal stalled, the applicant donated the land to help with Island Elderly Housing's denitrification

averaging. In response to further discussion, **James Lengyel** said that the Land Bank is considering a policy for a future date related to nitrification credits, but is not in a position to help Island Elderly Housing at this time.

4.3 Testimony from Public Officials

Richard Combra, Chairman of the Oak Bluffs Board of Selectmen, is happy to report that the Oak Bluffs Selectmen voted unanimously in their support of this proposal. They are proud that the Land Bank is going to invest in Oak Bluffs. Oak Bluffs will do its due diligence on the land swap. The 290 acres represents 1/7 of the land in Oak Bluffs. The 26-lot subdivision will benefit the tax rolls, and the Land Bank purchase will benefit the town.

Roger Wey, Oak Bluffs Selectman, spoke in favor of the proposal, saying it was a good compromise. He praised the representatives of the Land Bank and of the Down Island Golf Course. Under this proposal 2/3 of the Southern Woodlands is preserved.

Deacon Perotta, Oak Bluffs Water District, said he has no problems with the plan.

In a letter sent to the Commission, the **Oak Bluffs Conservation Commission** stated that, although public access to all the trails would be the ideal, they support for the Land Bank's plan for providing public access to the trail system and maintaining access to the cross-Island trail system.

In response to a question about the subdivision well, **Brian Lafferty**, explained that they have agreed to voluntary compliance to any water limits requested by Oak Bluffs during a dry season.

4.4 Public Testimony

Richard Williams, on the original committee to designate the land as a DCPC, described the proposal as a win-win situation.

Robert Lane said they have been abutters to the Southern Woodlands since 1991. He would like to say "thank you" to the Land Bank and Down Island Golf Course for agreeing to come together to work out a solution.

Kerry Scott thanked the proponents for preserving the process. She expressed concern about water issues and would like to hear more about the management of the pond.

Jerry DeBettencourt, a Martha's Vineyard native, apologized to Brian Lafferty for comments she made at a previous meeting. She suggested, as a final good deed, Mr. Kupersmith could donate land for a new hospital that could be named the Corey Kupersmith Hospital.

Judy Crawford spoke in support of the compromise and consensus the project represents. She applauded every member of the Commission, **Brian Lafferty** and **James Lengyel** for their work. Highlights of the proposal are the affordable housing component, the potential for resurrection of **Webb's Campground**, and the maintenance of indigenous plantings. She asked whether mopeds and motorized vehicles would be allowed on the trails; **James Lengyel** said that they are never allowed on Land Bank trails. She requested that around the pond be a 25-foot perimeter of natural vegetation for animals and for filtering pollutants. And she hoped that the elimination of lawsuits has been worked into the plan.

Robert Hammet said he is on the Oak Bluffs Land Bank Advisory Board, but he wanted to speak personally to thank everyone for putting together a plan that is positive and cooperative. He liked the plan and its preservation of a large tract of open space, which will add to the quality of life in Oak Bluffs.

Christina Brown read a letter from the **Dukes County Regional Housing Authority** supporting the spirit of the applicant's affordable housing offer. The letter stated that the financial aspect is not consistent with the Commission's affordable housing policy and they would prefer that **Mr. Kupersmith** increase the donation and work with the existing authority, rather than creating a new fund.

She also read excerpts from a letter from **Isaac Russell of Bridge Housing**, supporting the land swap and suggesting that **Mr. Kupersmith** sell land to Bridge Housing or another affordable housing entity.

James Lengyel outlined the proposed process of the Town/Land Bank land swap. The Land Bank will approach the Oak Bluff's Selectmen and propose that the Town parcel be exchanged with part of the land to be sold to the Land Bank on the southeast corner. If the town is interested, the plan will be brought to Town Meeting. If the Town doesn't approve the swap, the Land Bank will own the southeast corner and Town will continue to own its landlocked parcel. The plan has an 18-month window, allowing the Town enough time to present the proposal to Town Meeting.

A letter from the **Vineyard Conservation Society** asked that the open space be preserved in perpetuity. **Brian Lafferty** clarified that the Land Bank will be the beneficiary of the open space. The VCS also asked about the status of guest houses.

4.5 Commissioners' Questions

Brian Lafferty responded to questions from various Commissioners and others:

- Any tree cutting would be subject to Fish and Wildlife and Town of Oak Bluffs zoning regulations.
- Shared driveways will be used to limit crossing of trails, subject to approval by the Oak Bluffs Planning Board.

- Details on the pond are impossible to put on paper until further work is done, but he expects that a buffer zone will be inherent in the pond design.
- Regarding guesthouses, Bill Wilcox had calculated nitrogen loads with each of the 26 lots building a guesthouse. Guesthouses are not allowed in the district until a property has been owned for three years and then a special application must be made.
- The amount of water needed for the subdivision is within the ability of the Town to provide and the subdivision will voluntarily limit its pumping of pond water when requested.
- An agreement was signed for the elimination of lawsuits. If the project proceeds through the Commission and through the Oak Bluffs Planning Board, the lawsuits will be eliminated.
- In regard to the speed of the process, it has been very intense, but the project has been reviewed in depth by the Commission.
- In terms of the affordable housing aspect of the proposal, the proposal offers land, money, and expertise which he feels is the best route to a productive contribution to affordable housing.

Linda Sibley asked about the yellow parcels on the map. **Brian Lafferty** clarified that they represent land that **Corey Kupersmith**, the Town, and the Land Bank hold fractional interests in. **Corey Kupersmith** has made confidential agreements with public entities to work out ownership.

Brian Lafferty responded to questions from **Jane Greene**:

- The pond water could be used for firefighting.
- The plan includes a two-bedroom unit for the caretaker and a six-room bunkhouse for seasonal workers.
- Possibly, if the bunkhouse were empty, it could be leased to outside workers.
- Horse waste will be removed weekly.

Jane Greene asked whether **Corey Kupersmith** could help with **Island Elderly Housing's** need for \$250,000 for their denitrification plan. **Brian Lafferty** said he could not and couldn't discuss it as part of this process.

Brian Lafferty responded to questions from **Paul Strauss**:

- The land swap between Oak Bluffs and the Land Bank would give affordable housing 23.8 acres. Added to the land already owned by the Town, the Oak Bluffs Affordable Housing Committee would have a total of 30 acres.
- Where the land is in a Zone 2, the Title 5 standard is one bedroom per 10,000 square feet of space. The nitrogen level is averaged over the total land being used, which, in this case, is 90 acres.
- Regarding rate of construction, Oak Bluffs has a three-year phase-growth by-law, but the project will take 4 to 5 years or maybe a bit longer.

Brian Lafferty clarified the proposal with respect to the maintenance of trails. Any trail relocation will have to be approved by the Oak Bluffs Planning Board. The

configuration of the subdivision allows for the Land Bank to own Old Back Way which adds to the trails' value as means for getting from one place to another. The subdivision's interior trail goes through green open space. They will ask the Commission to set a percentage amount of 40-50% of the trails staying as is.

Brian Lafferty responded to questions from **Katherine Newman**:

- Night lighting is to be low intensity shielded lighting that doesn't spill off site. Lighting will have to meet Oak Bluffs Planning Board lighting requirements.
- In terms of signage, the entrance off County Road would have a relatively non-descript sign.
- The entrance to the subdivision would be 150 feet off the road with a few spaces of trailhead parking.

Richard Toole asked if firewood could be made available to the public. **Brian Lafferty** said yes.

Megan Ottens-Sargent asked about Parcel F and the applicant's offer to provide a trail easement to the Land Bank on that parcel. **Brian Lafferty** responded that he didn't think the Land Bank wanted an easement, but, if it did, it could have one.

Larry Ducharme discussed the pond:

- The pond will be lined with a very thick Mylar impervious lining.
- Run-off to the pond and its surrounding buffer will be dependent on whether there will be any ecology in the pond.
- Homes will be on town water.
- One well on the property will be used to top off the pond.
- Most lots are 80,000 square feet; each lot could support an eight-bedroom house and still meet nitrogen level.

Linda Sibley wanted to insure that outdoor recreation lighting be off when not in use and security lighting be on motion sensors.

Mark London outlined the process that has been followed. The applicant completed the application for the subdivision and made a preview presentation to the Commission. The LUPC did an initial review. The applicant submitted clarifications. The public had access to information and opportunity to respond. The Commission staff has made a list of possible conditions based on conversations with the applicant. The conditions are based on the following:

- some flexibility to change the shape of the lots and common space
- some flexibility in the number of lots
- horse waste removed
- limitations on fertilizers and pesticides
- relocation of up to 40% of the trails within the subdivision
- lighting will be low-intensity shielded lighting but ultimately the lighting will be determined by the Oak Bluffs Planning Board

- use of pond water for firefighting

Andrew Woodruff asked about specifying trails in the conditions. **Brian Lafferty** stated that being more specific than a percent would be very difficult, given that configurations will change as the subdivision goes through Planning Board Review. He assured that the subdivision will be configured to have the least movement of trails as possible.

Megan Ottens-Sargent said she would like an opportunity to talk about the easement on Parcel F, given that the Land Bank doesn't want it. Secondly, she would like to reiterate the offer in the application stating that the vast majority of the property and wildlife will remain and that any alterations will be reviewed by MEPA and MassWildlife.

Mark London said anything in the application mentioned on the original application and supporting documents does not have to be repeated in conditions.

Larry Ducharme said he hoped that the Commission would not create conditions around the pond. The design and construction of the pond are still under review and he doesn't want to create a condition that can't be met.

James Lengyel wanted to correct a possible misperception that the Land Bank has offered to be subject to review by MEPA and MassWildlife. In response to **Megan Ottens-Sargent**, **James Lengyel** explained that Natural Heritage has been involved from the start and will review the Land Bank's management plan. He said that Land Bank law requires oversight by specific agencies. He would be surprised to see any conditions that affected the way the Land Bank drafted its management plan. Land Bank law requires oversight by specific agencies, just as Commission law does.

Brian Lafferty closed by saying he hopes the Commission looks on the application favorably.

The public hearing was closed at 10:30 p.m. (R. Schwartz left 10:30 p.m.)

The Commission took a short recess.

5. PRESERVE AT THE WOODLAND/SOUTHER WOODLANDS RESERVATION: DRI NO. 555-2 - PROPOSED SUBDIVISION - DELIBERATION

Commissioners present: J. Athearn, J. Best, J. Breckenridge, C. Brown, L. DeWitt, J. Greene, K. Newman, N. Orleans, M. Ottens-Sargent, D. Sederholm, L. Sibley, P. Strauss, R. Toole, A. Woodruff

Christina Brown moved and it was duly seconded the Commission suspend its usual rules by not referring the proposal to an LUPC meeting and by immediately going into

discussion and deliberation by the full Commission. A voice vote was taken. In favor: 14. Opposed: 0. Abstentions: 0. The motion passed.

Jane Greene moved and it was duly seconded that the Commission suspend its rules and continue the meeting beyond 11:00 p.m. A voice vote was taken. In favor: 14. Opposed: 0. Abstentions: 0. The motion passed.

Eric Wodlinger, Commission attorney, spoke to the settlement proposal. Eight pieces of litigation are outstanding. If the Commission approves the application and it is also approved by other boards, a stay of proceedings would occur and the cases would be dismissed with prejudice, meaning the cases could not be opened again. The settlement proposal does not have bearing on the benefits and detriments of the proposal.

Mark London explained that the application includes both the Land Bank parcel and the subdivision. The application is made up of three separate documents: the original application with additional comments for clarification, a memo from attorney James Ward, and a map.

Katherine Newman moved and it was duly seconded that the Commission approve the application and its supporting documents.

Linda Sibley moved and it was duly seconded that the Commission accept Condition 1 as written:

- 1. There may be minor adjustment of the following aspects of the plan without requiring additional approval by the Martha's Vineyard Commission, provided they are approved by the Oak Bluffs Planning Board:*
 - Lot lines within the residential subdivision, provided that the number of residential lots does not increase and the total area of publicly accessible open space does not decrease;*
 - Roadway layout;*
 - Number, size, location of the buildings in the common area provided the total footprint of said buildings does not increase by more than 10%;*
 - The size, shape and existence of the pond provided the area of the pond does not increase by more than 10%.*

A voice vote was taken. In favor: 14. Opposed: 0. Abstentions: 0. The motion passed.

Megan Ottens-Sargent moved and it was duly seconded that the Commission accept Condition 2 as written:

- 2. Subject to the approval of the Land Use Planning Committee, there may be minor adjustments to the subdivision line between the Land Bank portion of the property and the residential subdivision provided the area of the former is not reduced by more than 5% and the total area of publicly accessible open space is not reduced.*
 - Linda Sibley stated that she wants the plan to be clear that the land behind the development will belong to the Land Bank.*

- Christina Brown clarified that the minor adjustments are subject to approval by LUPC.

A voice vote was taken. In favor: 14. Opposed: 0. Abstentions: 0. The motion passed.

Christina Brown moved and it was duly seconded that the Commission accept Condition 3 as written:

- 3. As offered by the Applicant, manure shall be segregated and removed at no less than weekly intervals. Any exterior manure pile is to be sited so that surface water will drain away from it and it will be covered by a tarpaulin.*

A voice vote was taken. In favor: 14. Opposed: 0. Abstentions: 0. The motion passed.

Linda Sibley moved and it was duly seconded that the Commission accept Condition 4 as written:

- 4. As offered by the Applicant, all fertilizers are to be slow-release, water-insoluble nitrogen source types both within common areas and on residential lots. No synthetic pesticides, including herbicides, fungicides and insecticides, shall be used in the maintenance of landscaping of common areas or residential lots.*

A voice vote was taken. In favor: 14. Opposed: 0. Abstentions: 0. The motion passed.

Paul Strauss moved and it was duly seconded that the Commission accept Condition 5 as written:

- 5. As offered by the Applicant, existing Special Ways shall be preserved along with a 50' buffer of native vegetation as specified in the DCPC regulations. However, up to 40% of the length of the Special Ways within the subdivision can be relocated subject to the approval of the Oak Bluffs Planning Board.*
- Christina Brown stated that the wording should be such that the planning board and developer don't need to come back to the Commission. Paul Strauss asked if it were appropriate for the applicant to come back to the Commission for determinations made by the Oak Bluffs Planning Board. Christina Brown said ultimately the Oak Bluffs Planning Board has jurisdiction. Mark London said that the revised wording is more restrictive and won't be viewed as 'encouraging' the developer to relocate ancient ways. The condition will read:
 - 5. As offered by the Applicant, existing Special Ways within the residential subdivision shall be preserved and protected with a 50' buffer of natural and native vegetation as specified in the DCPC regulations. At some time in the future, the developer may request approval from the Oak Bluffs Planning Board to relocate up to 40% of the length of the Special Ways within the residential subdivision to make them more accommodating to the residents of the subdivision, without further review by the Commission.*

A voice vote was taken on Condition 5 as revised. In favor: 14. Opposed: 0. Abstentions: 0. The motion passed.

Linda Sibley moved and it was duly seconded that Condition 6 be accepted as written:

6. As offered by the applicant, any vegetation used in the landscaping of common areas, shall be low-maintenance, native-type plantings.

- *Brian Lafferty said buffer areas which might be cut would be planted with low-maintenance, native-type plantings; the plantings requirement would be included in the Homeowners Association documents.*

A voice vote was taken. In favor: 14. Opposed: 0. Abstentions: 0. The motion passed.

Linda Sibley moved and it was duly seconded that Condition 7b be approved with revisions as follows:

7b. As offered by the applicant, only the following exterior lighting will be permitted:

- *Lighting as required by the building code;*
- *Lighting for outdoor recreational purposes that are designed and shielded to avoid up-lighting and are turned off when not in use;*
- *Motion-sensitive security lighting designed to avoid up-lighting or spilling onto any neighboring properties;*
- *Low-intensity street lighting designed and shielded to avoid up-lighting, or as specified by the Oak Bluffs Planning Board.*

A voice vote was taken. In favor: 14. Opposed: 0. Abstentions: 0. The motion passed.

Christina Brown moved and it was duly seconded that Condition 8 be approved as follows:

8. As offered by the Applicant, the documents related to the homeowners' association, the conservation restriction on the subdivision open space, and the affordable housing trust, as proposed in the Memorandum from James G. Ward to Brian Lafferty Regarding Interim and Permanent Restrictions, dated April 5, 2004, shall be drawn up incorporating the concepts therein and these conditions in a manner satisfactory to Martha's Vineyard Commission Council.

- *Jane Greene stated that she wanted the statement on record that she regrets that other housing needs can't be met.*

A voice vote was taken. In favor: 14. Opposed: 0. Abstentions: 0. The motion passed.

Linda Sibley moved and it was duly seconded that the conditions would include all offers made in various testimonies. A voice vote was taken. In favor: 14. Opposed: 0. Abstentions: 0. The motion passed.

Megan Ottens-Sargent asked about a condition regarding the pond. James Athearn commented that he believed that the developer and engineers will be spending a lot of money to create a showpiece for the subdivision and will be creating a plan to achieve

that. **Linda Sibley** said she believed that the applicant's testimony was that at this time engineers weren't in a position to be specific about the pond. She doesn't want to create conditions that can't be met and doesn't believe that the pond will be an environmental issue. **Brian Lafferty** said that the construction of the pond is like a big swimming pool.

***Andrew Woodruff** moved that the four open space parcels in the corner of the subdivision remain as natural vegetation.*

- **Brian Lafferty** explained that in the final plan the four corners may not exist as shown. 25% of the subdivision will be open space.

***Andrew Woodruff** withdrew his motion.*

Linda Sibley spoke to the benefits and detriments of the application.

- The plan is essential in view of the alternatives.
- Environmentally, the plan more than meets nitrogen restrictions in a nitrogen sensitive area.
- In regards to open space, the plan preserves a natural community of 190 acres.
- Night lighting is restricted to necessary lighting.
- Noise contribution is not an issue; the homeowners' association will restrict noise.
- The project will generate little traffic.

Richard Toole spoke about benefits.

- Scenic values are maintained.
- Character and identity are addressed in that open space is preserved and rural character is maintained.
- Affordable housing is addressed. The proposal is unique and the land swap will help the Town's Affordable Housing Committee.

Paul Strauss added that the affordable housing plan was a big contribution to Martha's Vineyard. **Linda Sibley** said that the impact on abutters was positive.

Richard Toole said that the plan combines a positive tax revenue generator with preservation of open space. The plan meets the Commission's regional plan goal of preserving open space.

Megan Ottens-Sargent said that **Brian Lafferty**, in presenting the plan, quoted previous decisions regarding the need to preserve open space, provide access, and management. The plan appears in all regards to be sensitive to access to open space and special ways, and promotes recreational agriculture.

Paul Strauss said the plan is consistent with Oak Bluff's master plan to encourage open space.

Linda Sibley said the plan conforms to zoning and DCPC regulations.

Linda Sibley moved and it was duly seconded that the application be accepted as written with additional conditions as outlined above.

- Andrew Woodruff commented that the plan is a big improvement on the golf course. These have been trying times and he appreciates Oak Bluffs' support in staying in the Commission.
- James Athearn said he feels that the plan is incredibly responsive to issues. Corey Kupersmith and the Land Bank have been flexible and giving, and the process and outcome have been quite remarkable.

A roll call vote was taken. In favor: J. Athearn, J. Best, J. Breckenridge, C. Brown, L. DeWitt, J. Greene, K. Newman, N. Orleans, M. Ottens-Sargent,, D. Sederholm, L. Sibley, P. Strauss, R. Toole, A. Woodruff. Opposed: None. Abstentions: None. The motion carried.

The meeting adjourned at 11:34 p.m.

James A. Athearn
Chairman

Sept. 9, 2004
Date

James A. Greene
Clerk-Treasurer

9/09/04
Date