

THE MARTHA'S VINEYARD COMMISSION

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Date: July 11, 2002
To: Planning Board, Town of Edgartown
From: Martha's Vineyard Commission
Subject: Development of Regional Impact
Re: subdivision of land
Applicant: B.A.D.D. Company, LLC
c/o Richard Barbini
Schofield, Barbini & Hoehn
Post Office Box 339
Vineyard Haven, MA 02568
Map 36 Lot 102 (Edgartown)

Decision of the Martha's Vineyard Commission
Summary

The Martha's Vineyard Commission (the Commission) hereby approves, with conditions, the granting of permits for the development, as submitted, contained in the application of B.A.D.D. Company, LLC, c/o Richard Barbini, Schofield, Barbini & Hoehn, Post Office Box 339, Vineyard Haven, MA 02568, as shown on the plan entitled: "Plan of Land in Edgartown, Mass.; Prepared for B.A.D.D. Company, LLC; Scale 1' = 60', February 5, 2002; Schofield, Barbini & Hoehn Inc., State Road, Vineyard Haven, Mass., MV 2248," consisting of one (1) sheet.

This Decision is rendered pursuant to a vote of the Commission on May 23, 2002.

The Planning Board of the Town of Edgartown may now grant the request for approval of the Applicant's proposal in accordance with the conditions contained herein and may place further conditions thereon in accordance with applicable law or may deny the request for approval.

BK 891 PG 424

Facts

The proposed development is a Development of Regional Impact (DRI) as defined by the Commission's Standards and Criteria, Developments of Regional Impact, Section 3.204b. The Application was referred to the Commission by the Planning Board of the Town of Edgartown for action pursuant to Chapter 831 of the Acts of 1977, as amended (the Act). The Application and notice of public hearing relative thereto are incorporated into the record herein. Martha's Vineyard Commission staff document exhibits are also incorporated into the record by reference.

A duly noticed public hearing on the Application was conducted by the Commission pursuant to the Act and M.G.L. Chapter 30A, Section 2, as modified by Chapter 831, on Thursday, May 9, 2002, at 7:30 p.m. in the Commission Offices, Olde Stone Building, 33 New York Avenue, Oak Bluffs, Massachusetts. The hearing was closed the same night.

The proposal is for the subdivision of a 24± acre parcel into eight lots.

A summary of the testimony provided at the hearing is available at the Commission Offices. The hearing summary is for the convenience of the reader and was not relied upon by the Commission in reaching its Decision on this matter.

Findings and Conditions

The Commission has considered the Application and the information presented at the public hearing and, based upon such considerations, makes the following findings pursuant to Section 14 of the Act.

- A. THE COMMISSION FINDS THAT THE PROBABLE BENEFITS OF THE PROPOSED DEVELOPMENT, AS MODIFIED BY THE CONDITIONS IMPOSED HEREIN, WILL EXCEED THE PROBABLE DETRIMENTS AS EVALUATED IN LIGHT OF THE CONSIDERATIONS SET FORTH IN SECTION 15 OF THE ACT (SECTION 14(A) OF THE ACT).**

The purpose of the Commission, as set forth in Section 1 of the Act, is to "protect the health, safety and general welfare of island residents and visitors by preserving and conserving for the enjoyment of present and future generations the unique natural, historical, ecological, scientific and cultural values of Martha's Vineyard which contribute to public enjoyment, inspiration and scientific study."

891PP425

1. Based on the record and testimony presented therein and in considering whether the development will favorably or adversely affect the environment, the Commission finds that the development, as proposed and subject to the following conditions, will have benefits which will outweigh its detriments as measured against the interests and values protected under the Act (Section 15(b) of the Act).

a. That the Applicant shall provide town water to the seven (7) subdivided parcels fronting along Banker's Way and Crocker Drive;

and further

b. That the Commission accepts the Applicant's offer to line the greenhouses and use only slow-release nitrogen fertilizers.

2. Based on the record and testimony presented therein and in considering whether the development will favorably or adversely affect other persons or property, the Commission finds that subject to the following conditions, on balance, the development will favorably affect other persons and properties (Section 15(c) of the Act):

a. That the Applicant shall relocate the soda machine so that the lights will not intrude upon the abutting property.

B. THE COMMISSION FINDS THAT THE PROPOSED DEVELOPMENT WILL NOT SUBSTANTIALLY OR UNREASONABLY INTERFERE WITH THE GENERAL PLAN OF ANY MUNICIPALITY OR THE GENERAL PLAN OF THE COUNTY OF DUKES COUNTY.

This project is compliant with all local and regional plans.

C. THE COMMISSION FINDS THAT THE PROPOSED DEVELOPMENT IS CONSISTENT WITH MUNICIPAL DEVELOPMENT ORDINANCES AND BY-LAWS, TO THE BEST OF THE COMMISSION'S KNOWLEDGE.

The requested subdivision meets all town requirements for a "Form A" subdivision.

D. THE COMMISSION FINDS THAT THE PROPOSED DEVELOPMENT IS NOT WITHIN ANY DISTRICT OF CRITICAL PLANNING CONCERN AND THEREFORE THIS ISSUE IS NOT PERTINENT TO THE PROPOSAL.

The Applicant must, consistent with this Decision, apply to the appropriate Town of Edgartown Officers and Boards for any other development permits which may be required by law.

This Decision is written consistent with the vote of the Commission: May 23, 2002.

Any Applicant aggrieved by a Decision of the Staff or Committee hereunder may appeal to the full Martha's Vineyard Commission, which shall decide such appeal, after notice and hearing, within twenty-one (21) days of the close of the public hearing.

Any party aggrieved by a determination of the Commission may appeal to Superior Court within twenty (20) days after the Commission has sent the development Applicant written notice, by certified mail, of its Decision and has filed a copy of its Decision with the Town Clerk in the Town in which the proposed development is located.

The applicant shall have two (2) years from the date of receipt of the Decision of the Martha's Vineyard Commission contained in this document to begin substantial construction, and should substantial construction not occur during said two (2) year period, then this Decision shall become null and void and have no further effect. This time period may be extended upon written request from the Applicant and written approval from the Martha's Vineyard Commission.

Jan P. W.
Chairman

July 11, 2002
Date

Joanna Taylor
Notary
My commission expires 2-12-04

July 11, 2002
Date

Edgartown, Mass. July 15, 2002
at 3 o'clock and 25 minutes P M
received and entered with Dukes County Deeds
book 891 page 423

Attest:
Joanne E. Powers Register

EXHIBIT A***Excerpt from the Minutes of the Full Commission Meeting of May 9, 2002.*****Public Hearing: B.A.D.D. Company, LLC Subdivision (DRI #551).**

[Mr. Donaroma, who had a conflict, left the meeting room before the notice was read. Thus, the Commission members seated for the Hearing were: J. Best; C. Brown; J. Greene; T. Israel; M. Ottens-Sargent; L. Sibley; R. Toole; J. Vercruysse; K. Warner; R. Wey; A. Woodruff; and R. Zeltzer.]

Mr. Toole read into the record the Notice of Public Hearing for the B.A.D.D. Company, LLC Subdivision in the Town of Edgartown (DRI #551). *[See the Full Commission Meeting File of May 9, 2002 (the meeting file) for a copy of said notice.]* Mr. Toole then explained the Hearing procedure that would be followed that evening.

Applicant's Presentation.

Richard Barbini, President of Schofield, Barbini & Hoehn, Inc., introduced himself and stated that he was there to represent the Applicant. The piece of property in question, he said, was about 25 acres in area and currently had a variety of topographical levels due to the fact that a number of manmade pits had been dug there over the years. The lowest elevation – in the abandoned gravel pit – was a seven, and the highest part of the lot was an Elevation 30, he reported. The lot was fronted by Katama Road on the east; Crocker Drive on the south; and Banker's Way, which was partly paved, to the southeast. All of these were public roads, he added.

Mr. Barbini related that the property was often referred to as Grant's Pit, and in fact an asphalt plant had once operated on the site. Later, the land had been sold to White Bros.-Lynch Construction, who in turn had sold it to Mr. Barbini's clients. His clients, he said, had been filling in the pit on the Crocker Drive end with clean fill and were chipping and removing stockpiled brush and stumps from the construction. Currently, he explained, the area was being used for the storage and growing of plants as well as the storage of landscaping construction materials like rocks and ties.

Mr. Barbini reported that he had spoken with the Town's Zoning Enforcement Officer, who had informed him that as an agricultural enterprise, the landscaping-business use did meet local zoning. The engineer added that the construction-business use had been operating prior to the establishment of zoning and so was a pre-existing, nonconforming use.

Currently, two buildings occupied the site – an office and a shop/garage, continued Mr. Barbini. The property was located in the R-20 Zoning District, where the minimum lot size was one-half acre or about 22,000 square feet. In addition, he said, zoning required 50 feet of frontage on a public way.

Mr. Barbini went on that the Applicant proposed to divide the land into seven 30,000-square-foot lots, plus one lot for the landscaping-construction business use. "We are doing seven lots and one big lot," he explained. Three and a half of the smaller lots would front Crocker Drive, he said, and three and a half would front Bankers Way.

The groundwater was right at the bottom of the pit that remained, Mr. Barbini related. As for an affordable housing contribution offer, the Applicant was not proposing one at this time, he said, noting that this was consistent with the Commission's Affordable Housing Policy. However, if the current proposal was approved and the Applicant later came back to do something with the 20-acre piece, he added, such a contribution would be considered at that point.

Questions from Commission Members.

County Commission representative Roger Wey asked if there was any hazardous waste on the site. The Applicant had had a study done, answered Mr. Barbini. A standard 21(e)? inquired Robert Zeltzer, a Commissioner member at large from Chilmark. No, not a full study like that, replied Mr. Barbini.

Tristan Israel, the Tisbury Selectmen's Appointee, wanted to know why the Applicant had not made an affordable housing contribution offer. It's fewer than 10 lots, responded Mr. Barbini, and according to the Commission's policy, an offer was not required.

Mr. Israel also asked if pesticides and fertilizers would be stored on the site. Right now there was a composting pile on the upper level of the 20-acre lot, answered Mr. Barbini. In the future the greenhouses would be lined with plastic, he continued, and there would be no storage of pesticides on the site that he knew of. Christina Brown, a Commission member at large from Edgartown, noted that Staff could probably comment on the 21(e) aspect of the project.

Those plants are going to be fertilized? wondered Mr. Wey. They're planting trees in the ground, replied Mr. Barbini, and the greenhouses currently had potted plants. Fertilizers were restricted to the slow-release type, he said, and the greenhouses would be lined with plastic in the future.

Did the Applicant have a composting permit from the State? inquired Andrew Woodruff, a Commission member at large from West Tisbury. Mr. Barbini explained that he had talked to the agent at the Board of Health about that. He had found out that a farming operation did not require a composting permit if it did not produce more than 10 tons annually. He added that the Applicant was working with the Board of Health now on determining what permits would be necessary for the operation.

Responding to a question from Mr. Israel, Mr. Barbini said that the shrubs and trees on the site would either have canvas-covered soil balls or would be in the ground. He pointed to an area on the site plan where these would be located.

If any type of fertilizer spraying were done, asked Mr. Israel, that wouldn't be in the low area, would it? Right, answered Mr. Barbini. And where is the compost pile? inquired Mr. Israel. Mr. Barbini pointed to its location on the site plan. It would be moved to the top level in the future, he added.

Staff Report.

DRI Coordinator Jennifer Rand referred the members to her Staff Report dated May 1, 2002. *[See the meeting file for a copy.]* She explained that the proposal had been referred under Standards and Criteria Section 3.204(b) – any development that proposed to divide a contiguous or related ownership of land of 15 acres or more into three or more lots not irrevocably prohibited from future subdivision.

Ms. Rand continued that she had spoken to the Edgartown Building Inspector, who had assured her that the proposal was compliant with zoning. There was no affordable housing contribution offer on file, she said, and the Applicant was currently working with the Board of Health on a best management practices plan. "The Board of Health doesn't know yet what permits are required," she noted. Ms. Rand also remarked that the project met the zoning regulations regarding frontage.

More Questions from Commission Members.

Mr. Israel wanted to know if there would be a retail operation or customer pickups of purchased merchandise at the site. Yes, probably in the future, replied Mr. Barbini, who added that that was allowed under the agricultural exemption. There was also the possibility of a nursery, he said. Would there be parking requirements then? wondered Mr. Israel. Agriculture was always exempt from zoning, explained Mr. Barbini, and there was plenty of space for parking on the site already.

Apropos Mr. Israel's concerns, Kate Warner, the West Tisbury Selectmen's Appointee, related that the Planning Board in her Town had struggled with the issue of nurseries and that the State gave "quite a wide berth" for agricultural activities.

Chairman Vercruysse confirmed with Mr. Barbini that the 20-acre lot was currently mixed use and that the landscaping-construction business would stay. Mr. Barbini replied that yes, a company that he thought was called Bettencourt-Donaroma Inc. or something like that would continue to operate that business. And was that a pre-existing use? asked the Chairman. Yes, responded Mr. Barbini.

John Best, a Commission member at large from Tisbury, asked if the future lot owners would be connected to the Town water system. No, answered Mr. Barbini, there were no plans for that.

Mr. Wey wanted to know what kind of building materials were currently stored on the site. The materials were all related to the landscaping and irrigation business, said Mr. Barbini, things like bricks and stones.

Testimony from Members of the Public.

Mr. Toole asked for testimony from members of Town Boards; none was forthcoming. He then asked for testimony from members of the public in favor of the proposal; there was none. Next, he asked for testimony from members of the public in opposition to the proposal.

Buzzy Gardner, an abutter to the site of the proposal, stated she had some questions she wanted to ask first. She wanted to know, she said, if the seven smaller lots were going to be filled in. "They're on the edge of the pit," she said, "and I see that as being 15 to 20 feet below the Crocker Drive level." "That's right," replied Mr. Barbini. So the bottom of the pit was 15 to 20 feet below Crocker Drive? inquired Ms. Gardner. In some places it was 21 feet below, said Mr. Barbini, and in others, 23 to 30 feet below. "The groundwater is right there," he added.

Ms. Gardner then inquired how soon one could build on lots that had been filled. "They can sell them tomorrow," answered Mr. Barbini. Where would the owners put their septic systems and wells? wondered Ms. Gardner. Mr. Barbini showed her on the site plan.

Ms. Gardner also wanted to know if the landscaping business would be using synthetic fertilizers. She remarked that considering the earlier activities on the site, the Board of Health or the Department of Environment Protection should have insisted on the use of at least lysimeters, if not monitoring wells, to ensure good water quality. Mr. Barbini reiterated that the Board of Health would be coming up with a best management practices plan for the Applicant.

Ms. Gardner then inquired if under State law, horticulture and nurseries were considered the same as agriculture. "There's no difference under the State law," replied Mr. Barbini. Mr. Woodruff, a farmer, noted that even having horses on one's property could be considered an agricultural use. The same was true of owning cows, commented Jane A. Greene, the Chilmark Selectmen's Appointee.

Elaine Putnam stated that she had owned a **house on of Bankers Way** for the past 15 years and that it would be “a gross injustice” to sell the proposed lots to unsuspecting buyers who were unaware of the property’s history. She described the stump-dumping that had gone on there for years as well as the rocks and debris strewn about the site. “I would be terrified to ask someone to use water from those lots,” she remarked.

Ms. Putnam recounted how in the past there had been on the site a turned-over oil drum, its contents emptied into the ground. She emphasized that she was not arguing against the development of the lots per se. “You can call it agriculture,” she said, “but it *is* a business.”

Ms. Putnam spoke about how she came down to the Vineyard every summer and how she loved its people. “This is an injustice to you folks,” she declared, adding, “I’ve worried about those lots.” She then related that at night the light from a Coca-Cola dispensing machine on the site, 400 feet away, glared into her bedroom windows. “You really have to put in codicils to protect the buyers and abutters,” she urged.

Mr. Barbini had also mentioned a construction business, Ms. Putnam continued. “And we’re getting approved for *agriculture*?” she asked. “They really got a bargain [for the site] ... How can someone say it’s a construction site and then they’re approving agriculture?”

Ms. Putnam added, “I want the affordable housing offer in writing now, not later. Don’t sell me promises.”

Ms. Brown suggested that this might be a good time for Water Resources Planner William Wilcox to give his Staff Report.

Staff Report [continued].

Mr. Wilcox noted that Mr. Barbini had already covered the fact that the groundwater was expected at elevations between 5 and 7 feet NGVD (National Geodetic Vertical Datum), placing it some 20 feet below the ground level outside the excavated area and 5 feet or less below the bottom of the gravel pit.

The groundwater flowed off to the southeast toward Katama Bay, Mr. Wilcox continued, explaining that although that bay was nitrogen-limited, he had no data on exactly what its loading limit was. He referred the members to his Staff Report entitled *B.A.D.D. Company, LLC: DRI #551; W. Wilcox Staff Notes; 24 April 2002. [A copy is in the meeting file.]*

Mr. Wilcox described how a Phase I Environmental Site Assessment had been done and that this would have uncovered “any gross contamination” on the site. The company doing the assessment, though, had “not performed the services necessary for it to render any opinions or reach any conclusions,” said Mr. Wilcox, quoting from page 2 of the report prepared by ENSR. *[A copy of said report can be found in DRI File No. 551.]*

The report had listed a number of potentially hazardous materials on the site, Mr. Wilcox went on, namely: a 275-gallon No. 2 fuel tank in the office building basement; a 1,000-gallon tank in a concrete vault for No. 2 fuel oil near the former asphalt plant; a concrete vault which formerly had contained a 20,000-gallon asphalt bitumen tank; two underground fuel tanks (2,000 and 3,000 gallons) that had been removed in 1999; and a 1,000-gallon underground waste-oil tank and a 275-gallon No. 2 fuel-oil tank that had been removed under the supervision of the consultant.

Underneath where one of the tanks had been removed, reported Mr. Wilcox, the consultant had tested for hydrocarbons leakage and had found none. Saunders Associates had tested as well two locations where hydrocarbon-containing tanks had been located in the past, he said, and had concluded that hydrocarbons had not leaked from those tanks.

Mr. Wilcox also related that ENSR had found no indication of a reportable spill associated with the 1,000-gallon waste-oil tank removed in 2001. In addition, a total of 45 cubic yards of oil-impacted soils had been removed from beneath the 275-gallon tank. The 1,000-gallon tank in the vault had left “a minor oil stain,” he said,

Mr. Wilcox described how ENSR had overseen the excavation of two testing pits and had screened the soil for volatile organic compounds (VOCs). No problems had been found, though it was his feeling, Mr. Wilcox said, that a more thorough study was needed before declaring the large 20-acre lot to be free of contaminants. Also, he had looked at aerial photographs of the site taken in 1998 in which there appeared to be some stored objects in the vicinity of Lot 8, but he had not been able to tell much from these pictures.

More Questions from Commission Members.

Ms. Warner asked Mr. Wilcox if the residential lots should have Town water. “I wouldn’t want my well there,” replied Mr. Wilcox. Commenting on concerns voiced about nitrogen-loading from the 20-acre lot, Mr. Wilcox noted that that parcel was big and that he did not expect any nitrogen runoff from it to be “a big deal” at the proposed level of development.

And there were no other contaminants on the site? inquired Ms. Warner. Mr. Wilcox answered that the complexity level of the ENSR report and study was “inadequate for me to say the water is pristine.”

Ms. Warner also wanted to know if the houses across the street from the site had Town water. Ms. Gardner, a member of the public who had spoken earlier, pointed out that the neighborhood had always had wells and that she had been the last one to get hooked up to the Town water system.

Ms. Warner asked how one would determine the permeability of the water on the site. Mr. Barbini explained that this testing would be done on the front, non-disturbed areas of the lots. Ms. Warner suggested that some sort of liner could be put in, since the areas right behind them were pretty disturbed. “Stuff could filter a long ways,” she observed. “No,” responded Mr. Barbini, “it doesn’t make any difference.” He pointed out that the soil was basically sand with perhaps a bit of clay in it.

Mr. Wilcox remarked that when private wells were put in, a post-drilling water sample would be required. At that point, he suggested, a VOC scan would be done as well. “That’s not normally done,” said Mr. Barbini.

Mr. Israel referred to the last paragraph of Mr. Wilcox’s Staff Notes, where it was stated that “each lot except for number 8 is shown on the plan to include a portion of the perimeter of the old mining area.” Was the area contaminant-free? he wondered. Mr. Wilcox replied, “I would think that a banker looking at a mortgage might want to make sure there were no hydrocarbons there.” “I’m the banker,” said **Alex Alexander, a B.A.D.D. Company, LLC partner** who was seated in the audience.

“But is there a potential for problems?” asked Mr. Israel. Mr. Wilcox explained that that would depend on where the houses were going. It seemed to him that the residential lots were mostly covered with pitch pines of a size that indicated the lack of a recent disturbance.

Mr. Woodruff inquired about aligning the wells. Yes, that was a possibility, answered Mr. Wilcox. He added that the primary groundwater flow was off to the southeast and water testing on seven of the eight lots would provide “a pretty good indicator” of the water quality.

Mr. Woodruff also wanted to know if there had ever been any dumping on the site. “I don’t know,” responded Mr. Barbini. He said that the Applicant had been putting clean fill in and that it appeared that everything that had been buried was at the other end of the site, on the proposed 20-acre lot.

Mr. Wey asked Mr. Wilcox if the consensus of the consultant had been that further testing was necessary. Mr. Wilcox replied that the 20-acre parcel was most likely where there would be problems, if in fact there were any. "But they're all tied together," observed Mr. Wey, who also requested a copy of the site assessment.

In addition, Mr. Wey wondered if any hazardous material had been removed from the site. **Mr. Alexander, one of the partners of B.A.D.D. Company who had spoken earlier**, said that yes, the oil-impacted soil had been removed.

Aquinnah Selectmen's Appointee Megan Ottens-Sargent wanted to know to what degree the Board of Health would be looking at VOCs and other such pollutants. "There's been a couple of cases where a VOCs test was required," said Mr. Barbini, adding, "Nobody's lost a well from contamination from the pit. They have to have an avenue to test for volatile organic compounds."

Ms. Ottens-Sargent suggested that the Commission could write a Condition that VOCs testing had to be done on a lot-by-lot basis as they were sold. Mr. Barbini responded that the newly drilled wells would have to be tested anyway before getting approved by the Board of Health.

Was there a minimum acreage that had to be committed to agricultural activities to qualify as being an agricultural use in terms of the State law? wondered Ms. Ottens-Sargent. "I don't believe so," said Mr. Barbini. So, continued Ms. Ottens-Sargent, there was an as-of-right business on the site as well as a pre-existing business. Were there any constraints on how much of the property could be used for those businesses? she inquired. Mr. Barbini stated that the majority of the property would be used for the landscaping-construction business, which qualified as an agricultural use, and that there were no constraints on that.

Responding to another question from Ms. Ottens-Sargent, Mr. Alexander noted that there were "a dozen or a half-dozen trucks" on the site, as well as a few Bobcats and some rocks and bricks. "The majority of it is plantings," he stressed, "and nothing in the law restricts that."

Ms. Brown, who is the Assistant to the Edgartown Planning Board, explained that under Chapter 40A the Town was not permitted to restrict agriculture, that is, that it could not enact zoning requirements for areas devoted to such a use. On the other hand, she said, the Town could have Special Permit requirements on such areas if they measured 5 acres or less.

Ms. Greene asked Mr. Wilcox if the Applicant had to have a well-drilling log. Mr. Wilcox answered yes, but that this provided just a general description of what was found and was not a detailed engineer's or geologist's log. If the well-driller found something unusual or that this was a contamination zone, he went on, that should show up.

Mr. Israel said that he worried about "the retail end" as opposed to the agricultural use. "I'm concerned about the scope of the retail business," he said, "and what traffic would be generated." He pointed to the example of Mahoney's in Oak Bluffs. Ms. Rand emphasized that the only thing being reviewed by the Commission in this Hearing was the Form A subdivision, not any retail business. "The other lot is concurrent with zoning," she said, adding, "If anything changes in terms of use, it will come back because it's a DRI."

"We're talking about one whole lot," stressed Mr. Israel. "Everything on that property is open for discussion. That's always been the way we look at things." Mr. Barbini responded that he would not have mentioned the possible future retail use except he knew the Commissioners were going to ask. "We are here for a subdivision for eight lots only," he declared. Mr. Zeltzer pointed out that if the Commission did not approve the project, the activities on the site would not change. The Chairman agreed, saying, "The use is established. If that changes, it *will* come back."

Mr. Best confirmed with Mr. Barbini that each of the lots would be a little over 30,000 square feet. If a lot had a well, what would be the maximum number of bedrooms an owner could build there? asked Mr. Best. Three, replied Mr. Barbini. “It would be five with Town water,” he added.

More Testimony from Abutters.

Ms. Putnam, an abutter who had spoken earlier, wanted to know how wide Bankers Way was on its unpaved portion. “It’s a Town-accepted road,” said Mr. Best. “The Applicant says 30 feet,” noted Mr. Toole. “The right of way is 30 feet,” confirmed Mr. Barbini.

Ms. Gardner, another abutter who had spoken earlier, said that she thought that there had been well problems in the area. **Sandy Mocariski, also an abutter**, reported that in a subdivision slightly to the south where there was 1.5-acre zoning, the owners had been required to hook up to the Town water system. “That was *their* choice,” responded Mr. Barbini, who explained that the residents had wanted to build more bedrooms than would have been allowed under zoning if they had had their own wells. Ms. Brown confirmed that Mr. Barbini was correct.

More Questions from Commission Members.

Ms. Sibley wondered if the filling would be completed before the lots could be sold, foreseeing that there might be a problem if the filling was not all done at the same time and the lots were sold off individually. Mr. Barbini replied, “The intent is to work this pit so it will look more presentable... They [the lots] could be sold before it’s finally filled.”

Ms. Sibley said she believe that the topography of the lots had to be treated as a whole, and she hypothesized that the owner of Lot 5 might object to what remained to be done on Lots 4 and 6. “It’s one geological problem here,” she remarked. “They have the right to do that,” responded Mr. Barbini. “You can’t make everything perfect for every buyer.” He then added, “We’re not necessarily putting them on the market tomorrow.”

Correspondence.

Ms. Rand referred the members to the two pieces of correspondence she had reported on in her Staff Notes. One was from Edgartown Health Agent Matthew Poole, who had written in October about the issues of stump-dumping and composting on the site. The other letter was a copy of one that the Katama Association had faxed to various Town Boards, stating their concerns about stump-dumping.

More Questions from Commission Members.

The Hearing Officer asked if there were any more questions. “Close the Hearing,” suggested Ms. Greene. “No, leave it open,” responded Mr. Israel, “we need more information.” He believed, he said, that the Commission should be looking at the density of the site development and the impact of the subdivision on the neighboring areas. “We’ve always looked at whatever is going on on the *whole* property,” he stressed. He also wondered if the agricultural-exemption regulations allowed for what he referred to as “wide-open retail.” “This is a relevant question that the Board should be asking,” he concluded.

“I sort of agree,” said Ms. Sibley, “but that doesn’t have to be explored within the Public Hearing. We can educate ourselves about this.” She pointed out that the fact was, the Commission did not have any control over what was happening on the site currently – these were pre-existing or exempt uses. “I might, however, want to talk about what would be the trigger for bringing it back [to the Commission],” she noted. “A change of use,” said Ms. Greene, answering Ms. Sibley’s question.

Ms. Sibley wondered what specifically would constitute a change of use. Mr. Zeltzer stated that the DRI Checklist held the answer. It could also be a change in the intensity of use, he added. Ms. Greene suggested, “Staff can bring back a report on Tristan [Israel]’s questions. Close the Public Hearing.”

Mr. Israel persisted, emphasizing that he wanted to know if, in fact, the State regulations for an agricultural use gave the Applicant carte blanche. The Chairman remarked that the proposed use for the large lot seemed like an appropriate one. “If we decide we need to, we can re-open the Hearing,” he said. “Chapter 40A may give them carte blanche,” declared Ms. Sibley, “but we’re under Chapter 831. So we have to be very thoughtful about what our role can be.”

“What if we want to withdraw?” wondered Mr. Barbini. Ms. Rand answered that the Applicant could withdraw at any time prior to the Oral Vote on the Application.

Ms. Ottens-Sargent inquired if there was anything that restricted the Applicant to using the land for a certain type of agriculture. “It’s not a food crop,” pointed out Mr. Wilcox. “It could be,” responded Ms. Ottens-Sargent. “Can we close this Hearing?” said Mr. Zeltzer. It was agreed that Staff would look into Ms. Ottens-Sargent’s query.

Mr. Toole then closed the Public Hearing as well as the Written Record. The time was 8:46 p.m.

Excerpt from the Full Commission Meeting of May 23, 2002.

Discussion/Vote: B.A.D.D. Company, LLC, Subdivision (DRI #551).

[Mr. Athearn, who had a conflict, left the Special Meeting at this point. Mr. Donaroma, who was one of the DRI Applicants, also left the room. Ms. Cini, who was ineligible to vote, left, as did Ms. Sibley, who was not feeling well. Shortly after this segment of the Meeting commenced, Ms. Brown recused herself due to a conflict. (See below.)]

Thus, the Commission members seated for the entirety of this segment were: J. Best; J. Greene; T. Israel; M. Ottens-Sargent; R. Toole; J. Vercruysse; K. Warner; R. Wey; A. Woodruff; and R. Zeltzer. All of these Commissioners were eligible to vote on this DRI.]

Richard J. Toole, Chairman of the Land Use Planning Committee and a Commission member at large from Oak Bluffs, provided a report on the LUPC’s “sparsely attended” Post-Public Hearing Review of the B.A.D.D. Company, LLC, Subdivision (DRI #551).

Mr. Toole related that the committee was recommending Approval with two Conditions: 1) that the lots must be hooked up to Town water; and 2) that the brightly lit soda machine must be moved. He added that the second Condition had, in fact, already been carried out. Who was present at the LUPC meeting? asked Mr. Best. “Me and Andrew [Woodruff],” replied Mr. Toole. (Mr. Woodruff is a Commission member at large from West Tisbury.)

At this point Ms. Brown stated, “I should abstain. I am the landlord of the abutting property.” She then left the meeting room.

Mr. Toole continued, “We did talk about requiring lysimeters and testing and a more thorough hazardous-waste study, checking for VOCs [volatile organic compounds].” But if the lot owners were to hook up to the Town’s water system, he explained, such testing would not be necessary. “I thought the Board of Health and the ZBA could deal with it,” he concluded.

Would the lot owners have to adhere to the three-bedroom limit under Title V in that zone? inquired Mr. Best. Ms. Greene suggested, “We can condition Town water and three bedrooms.” **Richard Barbini, an agent for the Applicant**, pointed out that the Town would allow the lot owners to build five bedrooms. Ms. Greene responded, “I

think there was concern about density.” Mr. Barbini pointed out that the land was being subdivided into 30,000-square-foot lots so that they could have more bedrooms.

Chairman Vercruysse wanted to know if the LUPC had discussed stabilizing the filled zones. Yes, answered Mr. Toole, but the committee had decided that this was a matter of “Buyer Beware” and not their responsibility. “My concern was stump-dumping by the previous owner,” noted Mr. Woodruff, “but the Board of Health can take care of that.”

The discussion turned to VOC testing. Ms. Greene emphasized that such testing could only be required if the lot owners were to put in individual wells. So with Town water, there would be no monitoring? asked Mr. Wey. “That’s right,” replied Water Resources Planner William Wilcox, who added, “I think Town water is the best solution ... You just avoid the whole issue of the quality of the groundwater.”

Responding to a query from Ms. Ottens-Sargent, Mr. Wilcox said, “I have no information that a more intensive survey is worth going through.” “We have to rely on local knowledge and local concerns and the Board of Health,” said Mr. Woodruff.

Mr. Israel expressed concern about families with small children moving in without the soil’s having been thoroughly tested. In addition, he said, he wanted to ensure that the Commission would review this DRI again if the nursery portion of it ever became a full-scale retail operation. “There’s a lot of traffic in and out of those places,” he remarked, “so we should make them come back for review ... Just state that in the Decision.”

Mr. Zeltzer disagreed: “If this was on State Road, fine. But I see this as an Edgartown issue and not one of regional impact.” “It was also stated they’d only be selling what they are growing on site,” Ms. Greene pointed out, referring to the Minutes of the Public Hearing on May 9, 2002. West Tisbury Selectmen’s Appointee Kate Warner noted that the Applicant would have to come back due to an increase in intensity of use if the nursery operation were to be expanded.

Mr. Barbini emphasized that what the Commission had before them was a Form A subdivision. “I feel concerned that the neighbors don’t know about the jump in the number of bedrooms,” commented Ms. Warner. “Right, that’s a 30 percent jump,” observed Chairman Vercruysse. “We should focus on the building lots,” stressed Mr. Wey, who added, “We have the Board of Health, the Board of Selectmen, et cetera to deal with the other issues. The only thing in front of us is the subdivision.”

Ms. Greene made a **Motion To Move To Item Six, Possible Vote**, duly seconded by Mr. Zeltzer. Then Ms. Greene made a **Motion That The Commission Approve The Application With The Condition That The Applicant Install Town Water**. Said Motion was also seconded by Mr. Zeltzer.

Ms. Ottens-Sargent pointed out that the Minutes for the Public Hearing stated that the farm would be limited to slow-release fertilizers. “Who is saying that?” she asked. Mr. Barbini answered, “Mike Donaroma, and it’s in the plans we submitted to the Board of Health ... It’s stipulated on our plan before the Board of Health.”

Responding to a question from Ms. Ottens-Sargent, Mr. Wilcox said, “I know very little about Katama Bay. I’m sure it’s nitrogen-limited, but what the limits are, I have no idea.” “The issue is that the greenhouses are 3 feet above the groundwater,” said Mr. Woodruff. The Staff Secretary mentioned that the Applicant had testified in Public Hearing that the greenhouses would be lined. *[See page 3 of the Full Commission Meeting Minutes of May 9, 2002.]*

Ms. Greene pointed out that although the May 9 Minutes had not yet been approved, the Applicant had in fact presented that the greenhouses would be lined and thus the Commission should accept that. Ms. Ottens-Sargent recommended that the Commission also accept the Applicant’s offer to use only slow-release nitrogen fertilizers. “We can just accept what the Applicant presented,” said Mr. Zeltzer.

Thus, Ms. Greene's Motion was amended to the following: **That The Commission Approve The Application With The Condition That The Applicant Install Town Water And That The Commission Accepted The Applicant's Offer To Line The Greenhouses And To Use Only Slow-Release Nitrogen Fertilizers.**

Mr. Best returned to the issue of limiting each lot to three bedrooms, and Mr. Barbini again argued that these would be 30,000-square-foot lots and that the owners ought to be able to build as many bedrooms as the Board of Health and the Zoning Board of Appeals allowed.

Chairman Vercruysse reiterated Ms. Greene's Motion, and Mr. Veno conducted a Roll Call Vote on it, with the following results:

AYES: J. Best; J. Greene; T. Israel; M. Ottens-Sargent; R. Toole;
J. Vercruysse; K. Warner; R. Wey; A. Woodruff; and
R. Zeltzer.

NAYS: None.

ABSTAINING: C. Brown.

The time was 10:25 p.m.