



BOX 1447, OAK BLUFFS, MASSACHUSETTS, 02557, 508-693-3453
FAX 508-693-7894 INFO@MVCOMMISSION.ORG WWW.MVCOMMISSION.ORG

**Minutes of the Commission Meeting
Held on February 2, 2006
In the Stone Building
33 New York Avenue, Oak Bluffs, MA**

IN ATTENDANCE

Commissioners: (P = Present; A = Appointed; E = Elected)

P James Athearn (E – Edgartown)	P Ned Orleans (A – Tisbury)
P John Best (E – Tisbury)	P Megan Ottens-Sargent (E –Aquinnah)
P John Breckenridge (A – Oak Bluffs)	P Deborah Pigeon (E – Oak Bluffs)
P Christina Brown (E - Edgartown)	P Jim Powell (A – West Tisbury)
P Carlene Condon (A – Edgartown)	P Doug Sederholm (E – Chilmark)
- Martin Crane (A – Governor Appointee)	P Linda Sibley (E – West Tisbury)
- Mimi Davisson (E – Oak Bluffs)	P Paul Strauss (County Comm. Rep.)
- Chris Murphy (A – Chilmark)	P Andrew Woodruff (E – West Tisbury)
P Katherine Newman (A –Aquinnah)	

Staff: Mark London (Executive Director), Bill Veno (Senior Planner), Paul Foley (DRI Coordinator), Bill Wilcox (Water Resource Planner)

The Chairman called the meeting to order at 7:35 p.m.

1. EXECUTIVE DIRECTOR'S REPORT

Mark London reported that the Lagoon Pond drawbridge that had been closed earlier in the week for emergency repair re-opened this day. Traffic jams weren't as significant as last time, possibly because the closing was well publicized beforehand. He participated in the selection committee for the engineer to design the permanent drawbridge. Three firms have sketched designs and have made presentations. MassHighway will finalize its choice and negotiate a contract during the next few months.

2. RED GATE FARM: DRI NO. 589

For the Applicant: Richard Renehan, lawyer; Doug Hoehn, engineer; Doug Cooper, earth scientist/habitat expert; Edwin Schlossberg, applicant

Christina Brown, chairman of the Land Use Planning Committee, opened the public hearing and read the hearing notice on the application to subdivide 366 acres into 7 lots.

Megan Ottens-Sargent pointed out for the record that she has been involved in the adjacent Moshup Trail Project but that it would not prevent her from evaluating the application fairly.

2.1 Applicant's Presentation

Edwin Schlossberg stated that he and his wife care deeply about this land and Martha's Vineyard. He is very pleased to have put this plan together; he believes it meets the needs of the environment and the family. He appreciates the Commission taking the time to consider the plan.

Dick Renehan gave a brief overview of the plan, which was developed with LandVest, Doug Hoehn, and the family.

- It intends to:
 - Create an estate plan for the three children.
 - Protect the Kennedy-Schlossberg Homestead.
 - Allow two lots to be sold, if needed.
 - Preserve the environment in the area.
- He outlined the subdivision:
 - Lots 3, 4 and 5 are being created for the three children
 - Lot 2 is 106 acres and protects the existing Kennedy Homestead
 - Two lots, 39 and 53 acres, may be sold.
 - Lot 7 is 61 acres and forever non-buildable.
- He concluded by:
 - Emphasizing that this is not a building development plan but an estate plan.
 - Noting that it has received support from Sheriff's Meadow, Vineyard Conservation Society, and an editorial in the Gazette.
 - Noting that it has received strong support from everyone they've been able to talk to including officials in Aquinnah who approve of the plan and think it's first rate.

Paul Strauss asked if they'd heard from the Wampanoag Tribe. **Dick Renehan** said Tribe representatives were at their meeting with the Aquinnah Housing Committee; he infers that they will support the plan, which conserves 85% of the acreage as non-buildable.

Doug Hoehn explained the physical facts of the property, how the development envelopes were created, and Aquinnah Planning Board control.

- The property has approximately 7,000 feet of Squibnonocket Pond frontage and 3500 feet of Atlantic frontage.
- Lot 2 is the Homestead Lot with existing house, garage, guest house, pool, tennis court, garden, caretaker house, garage, and barns; Lot 3 has a small camp with uninsulated buildings.
- Roads will stay the same; Lot 1 has a grass/dirt road; Lot 2 has the main road to the house and to the other lots.
- An aerial topographic and planometric plan was done.
- Within each of the proposed lots is a small building envelope.
- Doug Cooper identified wetlands; development envelopes were created with a 100-foot buffer from wetlands and 30-foot property line setbacks and 150-foot road setbacks.
- The subdivision and building envelopes were created with Commission open space and priority habitat protection goals in mind. Over 80% of the acreage remains open space areas. The development envelopes make up 15.7% of the acreage.

- Doug Cooper prepared a habitat assessment and wrote that the sites selected represent areas that have the lowest potential for impact for sensitive resources; also envelopes are large enough so that development activities can be shifted.
- Doug Cooper wrote that his evaluations are adequate for subdivision design and estate planning. A more specific habitat review is recommended when building is proposed.

Doug Hoehn outlined Aquinnah Planning Board review process.

- Aquinnah has the most comprehensive land use regulations of any town on the Vineyard.
- The Conservation Commission and Planning Board are happy with the plan and are confident that the town has all the regulations in place to deal with development on the land.
- Three DCPCs apply to this property. All building in Aquinnah requires a special permit from the Planning Board Planning Review Committee. Most construction requires 2, 3, 4, or 5 special permits.
- Applicants have to go through Planning Board Planning Review Committee and Mass Historic Commission to do any work on the property including soil testing.
- Aquinnah Zoning By-Law has a siting regulation.
- Any building exceeding a 2,000 square feet footprint, which includes all structures, requires a special permit.
- Any applicant in Aquinnah is required to file with Natural Heritage under the Priority Habitat Program, which usually imposes some sort of envelope.

Megan Ottens-Sargent asked about the Coastal District buffer. **Doug Hoehn** said the Coastal District regulations are already incorporated in the by-laws. **Megan Ottens-Sargent** clarified that there are limitations within 200 feet of any resource area and that, in the Coastal District, development within 100 feet of a resource is limited to marine-related activities.

Christina Brown clarified that any permitting requests would require more comprehensive on-the-ground work.

Dick Renehan asked Commissioners to restrain themselves in considering the application.

- A more specific habitat study will be done when anyone is ready to build.
- He asked Commissioners to not move lines around at this point and to not require conditions that would put off a potential buyer. Aquinnah has safeguards in place through their permitting process.

Offers include:

- Lot 7 will be non-buildable. The applicant does not want a conservation restriction or a tax deduction. If the Commission were to include a condition that Lot 7 is unbuildable, the applicant would agree.
- If lots 1 & 6 are sold outside the family, the applicant will accept a condition that they cannot be subdivided.
- There's an outstanding subdivision of about 155 lots. The applicant waives that subdivision and will replace it with the subdivision plan of 7 lots.
- The applicant will give \$100,000 to an affordable housing project in Aquinnah
- With respect to wastewater:
 - The Kennedy property has minimal impact on Squibnocket Pond.

- Since Squibnocket Pond has nitrogen problems, the applicant is donating \$15,000 toward Aquinnah's share of the Mass Estuaries Project study of the pond.
- Any new buildings on all lots will have state-of-the-art denitrification systems.
- No non-organic fertilizer or chemical pesticides will be used.
- The applicant is offering to limit building to the development envelopes.

Doug Sederholm asked whether the family has any interest in the adjacent lots.

- **Dick Renehan** said they were guided by registered land covered by title insurance. All land in the proposed subdivision has been assessed to the Kennedy/Schlossbergs for 30 years.
- **Edwin Schlossberg** clarified that the family has a small fractional interest in adjacent lots with title issues that won't be resolved for a long time.

John Best asked whether the acreage continues across to the Chilmark barrier beach. **Dick Renehan** said that it does not.

Megan Ottens-Sargent pointed out that Aquinnah has a 2-acre zoning residential by-law allowing one house for every 2 acres of property. There must be seen in relation to the regulation that any construction on a parcel over 2,000 square feet needs a special permit. She suggested it may be interesting to look at the current plan in light of the possible approximately 151-lot subdivision.

- **Dick Renehan** responded that the Vineyard Conservation Commission has noted that the merger of lots is a significant benefit.
- **Doug Hoehn** said the town was divided into set-off lots in 1880s. The previous owner went through land court process to clear lots; there are currently about 30 parcels within the 366 acres.

Christina Brown clarified that this plan would erase all the previous lots.

Dick Renehan said they would rely on the letter from Doug Cooper to explain the habitat assessment.

2.2 Staff Report

Paul Foley outlined the contents of the staff report.

- He reviewed maps, lot lines, and definition of wetlands.
 - The proposal is to create an estate plan of 7 lots for the 366-acre property.
 - Zoning is rural residential.
 - 4 DCPCs apply to the property: The Town of Aquinnah DCPC; Moshup's Trail DCPC; The Island Roads DCPC; and the Coastal District DCPC. Aquinnah regulations limit clear-cutting, as do the Moshup trail regulations.
 - The current plan requires Planning Board endorsement, not approval.
 - The property was purchased in 1978; it is mostly undeveloped.
 - The goals are to give each child a lot so they have a stake in the land and to maintain the privacy of the family.
 - The project was referred by the Aquinnah Planning Board under section 3.205 of the DRI Checklist as a subdivision of 30 or more acres.
- Key issues include:
 - This tract lists two federally listed species and at least ten state species; extensive review will be required when development is proposed.

- Squibnocket Pond is a nitrogen-sensitive watershed.
- Development will need to be sensitive to habitat and scenic values.
- The property has a wide variety of vegetative communities.
- The entire property is listed as priority habitat.
- Good stewardship of the land has kept the property as a largely undisturbed tract.
- The Affordable Housing policy isn't triggered but the applicant is donating \$100,000 to an Aquinnah affordable housing project.
- Economic Impact is related to conservation of Lot 7; a conservation organization is saved from having to purchase the land and it stays on the tax rolls.
- Visually, potentially a few things could be seen from the road within a few of the development areas.
- 15.7% of the total land will be within development envelopes.
- The development areas will not be fully developed and will be further limited by local regulations and the Natural Heritage and Endangered Species Program (NHESP).
- Correspondence:
 - Aquinnah Planning Board and Conservation Commission wrote in support
 - Sheriff's Meadow and Vineyard Conservation Society expressed satisfaction with the preliminary plans.

Bill Wilcox reported on wastewater:

- The entire project is located in the Squibnocket Pond watershed.
- The property takes up 28% of the watershed and about 41% of the Aquinnah portion of the watershed.
- Squibnocket is different from the other saltwater ponds; there is no measurable tide and circulation is sluggish; it takes in excess of a half year to flush the pond.
- Squibnocket is close to its nitrogen-loading limit; additional nitrogen will stimulate further growth of phytoplankton. Despite the eutrophic conditions, the pond is productive in oysters and herring.
- The property is cut by two streams. It has two substantial freshwater ponds and substantial wetlands.
- The primary soil is Nantucket Plymouth complex with rocks and boulders making up close to 3% of the ground surface.
- The water table is 6 feet or greater in depth in most areas. High water table should not be a problem.
- Nitrogen from wastewater can be reduced with denitrification systems. Also, wetland attenuation of the nitrogen is likely to occur, reducing nitrogen by another 30%.
- Nitrogen load numbers are based on the assumption of 5 new dwellings added to existing dwellings, wastewater denitrification and wetland attenuation, resulting in an estimate of 9.5 kgs of nitrogen on an annual basis from 8 houses.
- The possibility of fertilized landscape is limited possible because Aquinnah requires a special permit for any clearing over 200 sq. ft. Nevertheless, if each lot had 10,000 square feet of fertilized landscaping, there would be a total of 13-15 kgs of nitrogen per year, after the 30% attenuation is calculated.

- As proposed, the project's wastewater and fertilizer would annually contribute a total of 24 kgs. nitrogen. This is less than one percent of the present day nitrogen load, the main source being acid rain.
- The Mass Estuaries Project would be the way to get to most accurate nitrogen limits. The study can develop recommendations for nitrogen loading limits. This could lead to new regulations which future applicants would be required to meet when building takes place. The applicant has offered to contribute up to \$15,000 toward the cost of the project's local share for Aquinnah and Chilmark.

John Beckenridge asked about eutrophic conditions. **Bill Wilcox** said that phosphorus, also released by wastewater, could be contributing to the problem. A recommendation would be to set back leaching areas 300 feet.

John Breckenridge suggested that a condition might potentially be a leaching field setback of 300 feet or a phosphorus reduction component. **Doug Hoehn** responded that a 300-foot setback may be appropriate and added that, down the road, technology may be so advanced that phosphorus reduction may be part of any system.

Doug Sederholm asked what could be done to improve the health of Squibnocket Pond.

- **Bill Wilcox** said that the primary issue is circulation. Herring Creek has a hump in it, which may be inhibiting tide flow.
- **Edwin Schlossberg** confirmed that the beach has opened to Squibnocket Pond during Nor'easters.

Paul Strauss asked about the nitrogen contribution from the remainder of the watershed. **Bill Wilcox** responded that total nitrogen load is about 3,500 kgs, 3000 kgs is from acid rain; the proposed project is less than 1% of the total present-day load.

Jim Athearn said there should be some discussion of the agricultural potential of any DRI.

Christina Brown said the Commission has encouraged applicants to keep land open. **Bill Wilcox** said the USDA doesn't rate the soil as good for agriculture; the land has history as sheep farm.

Megan Ottens-Sargent pointed out that the proposal does not reference a number of houses so it is difficult to calculate nitrogen load. **Edwin Schlossberg** said there are currently 11 bedrooms in existing houses.

Doug Hoehn confirmed that development envelopes are 150 feet from Moshup Trail.

2.3 Public Officials

Sara Thulin, Aquinnah Conservation Commission Chair, said the project has been through the town process and she and Camille Rose, Aquinnah Planning Board Chair, had a good give and take with LUPC.

- Doug Hoehn gave a good overview of the by-laws.
- An important by-law addresses open and visible development. Any future building project would be subject to initial site review for open and visible space. Aquinnah has been successful in mediating and establishing appropriate siting and footprint for buildings.

- For conservation purposes, they review anything within 200 feet of a wetland or resource area.
- The review process allows them to bring people in to talk about projects.
- The Aquinnah Planning Board and Conservation Committee support the project. The selectmen support it. It is very responsible and good for the town.

Andrew Woodruff asked whether Aquinnah has faced a 10,000 sq. ft. house. **Sara Thulin** said a very visible 7-8000 sq. ft. project was reduced to 2800 sq. ft. and moved to conceal the house. Aquinnah regulations have not been challenged in court and the Planning Board has been successful working with people. The open and visible rule emphasizes vistas and open space.

John Best noted that town has everything in place to limit development with the 2,000 sq. ft. footprint and 24 ft. height restriction, but that the legality of zoning regulations could be challenged.

Kathy Newman said a letter on behalf of the Aquinnah Selectmen states that it's a good project.

Megan Ottens-Sargent said there appears to be some discrepancies about the boundaries of the Coastal District. She is very concerned about the development envelope on lot 6 and protecting the resource features. **Sara Thulin** said that the Planning Board would not do a formal review until it had a specific plan with house design and landscape plan, but at that time Aquinnah would address Coastal District regulations; the town Boards have not officially reviewed the proposed development envelopes.

Doug Hoehn said the development envelopes aren't based on on-site identification of features. The Planning Board would never grant approval based on the subdivision plan. A building plan would trigger more extensive work.

2.4 Public Comment

Bob Woodruff, former staff biologist for the Vineyard Conservation Society, spoke in support of what he called an excellent submission of a very good long-range estate plan.

- Many of the 30 acres on Moshup Trail that he helped preserve about the Kennedy/Schlossburg property.
- The property is an extremely amazing habitat, which supports a pair of northern harrier hawk and a rare orchid species; 12 rare or endangered species are on the property.
- Mass Natural Heritage has extensively studied the property.
- Thousands of tons of sand move around the property by wind every day, including in inland areas.
- At the Commission site visit to Lot 6, some concerns were raised about the southeasterly building envelope, which is near a completely secondary dune. He suggested that if some building envelope lines were moved in lots five and six, more habitat could be better protected.
- What the family has done and will do, will be right and smart for the Island and the town.

Ted Cameron, an abutter, said he welcomes the project with open arms; it's an asset. He asked about the family's land on the northwest side of Moshup Trail. **Edwin Schlossberg** said it's not part of this project.

There was a discussion of lot 6:

- **Doug Sederholm** said he is loathe to redraw the lines of the subdivision because of the planning that has been done, but he is also loathe to approve any subdivision plan that will allow construction on a secondary dune.
- **Bob Woodruff** said there is a vegetated secondary dune with beach grass and false heather. The dune is pure sand and geologically could be 20-50 feet deep.
- **Sara Thulin** said that if the Conservation Commission were looking at a 53-acre lot that has other building sites, it wouldn't allow building on a secondary dune, which would be protected in the Coastal District regulations.
- **Doug Hoehn** said they are not pretending they micro studied the lot. If they can't build there, they can't.
- **Dick Renehan** said it's likely that the northernmost building envelope that would likely be used first but he'd prefer that the second building envelope not be eliminated.

2.5 Commissioners' Questions

Linda Sibley said she is impressed by Aquinnah's regulations, which allows the Commission to let go of the regulating it's done in some towns. She's heard Commissioners' concern that some of the regulations are so innovative that they might be overturned and asked if the applicant and his representatives might think of some way to allow Commission oversight if Aquinnah's regulations were overturned.

Dick Renehan said he believes that it is the Commission's duty is to decide on the law as it exists. When town statutes are challenged, the towns win. He believes that the 2,000 sq. ft. by-law will be upheld.

Andrew Woodruff asked if there would be a willingness to consider a maximum building size regardless of the Aquinnah by-laws. **Dick Renehan** said that putting a limit on building size hurts the applicant and he doubts they would voluntarily offer that limit.

John Breckenridge said a DCPC can be rescinded by a 2/3 vote of the town. The property is currently protected by DCPCs, but there is no guarantee that those will always be in place.

John Best said the number of houses is of concern because of wastewater. He doesn't believe there is any threshold that would trigger further review by the Commission. He asked if there might be an offer of a threshold of the number of residences per lot that would trigger Commission review.

Dick Renehan said they would put something in writing and submit before the public hearing is closed.

John Best asked if there were anything that precludes the sale of the whole lot in the subdivided form.

Megan Ottens-Sargent said Sheriff's Meadow and Vineyard Conservation Society had written that they had not had the opportunity to do extensive review. She wanted to know whether the applicant was going to do a more extensive habitat inventory. **Dick Renehan** said Aquinnah Conservation Commission and Natural Heritage review should be enough and further Commission review shouldn't be necessary. They are not planning to do a more detailed habitat study of the whole property at this stage, but would when the time comes to do a project for the specific affected area.

Jim Athearn said this is a wonderful plan but he likes John Best's trigger. He is confident that Aquinnah will take care of the site review.

Carlene Condon said the applicant and professionals have done an extraordinary job of creating a comprehensive plan anticipating Commission concerns.

- The plan is environmentally sensitive; the lots offer the possibility of considerable habitat preservation.
- Thought has been given to maintaining vistas along Moshup trail.
- She is satisfied the Aquinnah process will stand up to appeal and protect future development.
- The affordable housing contribution is significant.
- At the appropriate time, she would move to approve it with the offers that the applicant has made.

Andrew Woodruff said he is concerned with lot 6 and whether there was enough height in the hill to tuck a house into. **Doug Hoehn** said the Aquinnah by-law is strict, but it looks like there is height in the southeast corner of the building envelope.

Kathy Newman asked about the size of the building envelopes. **Doug Hoehn** said that they are about 5 acres.

Doug Sederholm sees the need to build in some potential further review by the Commission. He knows that the Aquinnah regulations will be upheld and vigorously enforced, but the Island communities are politically volatile. He would like to see a threshold to trigger Commission review.

Carlene Condon suggested that the applicant could be bound by present Town regulations.

Megan Ottens-Sargent said this is a simple subdivision that addresses many things. One trigger for Commission review that wouldn't constrain the applicant could be the threshold of five houses and five guesthouses.

Christina Brown said that a site visit would take place on Sunday, February 5th at 9:30 a.m. The written record will remain open until 4:00 p.m. on February 9th. LUPC will meet on Monday, February 13th.

3. VINEYARD ENERGY PROJECT

Linda Sibley said that the Vineyard Energy Project has asked the Commission to create a small subcommittee to meet with them. Anyone interested should stay after the meeting to submit his or her name.

The meeting adjourned at 10:12 p.m.

Linda B. Sibley
Chairman

Sept 21, 2006
Date

Clerk-Treasurer

Date

