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**Minutes of the Commission Meeting  
Held on April 6, 2006  
In the Stone Building  
33 New York Avenue, Oak Bluffs, MA**

**IN ATTENDANCE**

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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)
- 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), Christine Flynn (Affordable Housing & Economic Planner)

**1. EXECUTIVE DIRECTOR'S REPORT**

**Mark London** announced that the public kickoff of the Island Planning Process will be next week when surveys go out.

**2. VINEYARD TRANSIT ASSOCIATION – CONCURRENCE REVIEW**

Commissioners Present: J. Athearn, J. Best, J. Breckenridge, C. Condon, K. Newman, N. Orleans, M Ottens-Sargent, D. Pigeon, J. Powell, D. Sederholm, L. Sibley, P. Strauss, A. Woodruff.

For the Applicant: Bob Conti, CEO, Vineyard Nursing Association

**Linda Sibley** noted that LUPC voted to recommend a non-concurrence with the referral because this is a temporary installation.

**Bob Conti** explained the proposal:

- The VNA occupies part of the hospital that will be torn down and rebuilt. The VNA will need to leave the facility in June.
- The VTA has offered space in their parking lot at the Airport for three trailers, totaling 60 x 36 feet, to house the VNA for three years during hospital reconstruction.
- The Airport Commission approved the plan.
- The Edgartown Planning Board has given them a three-year approval.

**John Best moved and it was duly seconded that the Commission not concur with the referral of the project for Commission review. A roll call vote was taken. In favor: J. Athearn, J. Best, J. Breckenridge, C. Condon, K. Newman, N. Orleans, M Ottens-Sargent, D. Pigeon, J. Powell, D. Sederholm, L. Sibley, P. Strauss, A. Woodruff. Opposed: None. Abstentions: None. The motion passed.**

### **3. RED GATE FARM: DRI NO. 589 – DELIBERATION & DECISION**

Commissioners Present: J. Athearn, J. Best, J. Breckenridge, C. Condon, K. Newman, N. Orleans, M Ottens-Sargent, D. Pigeon, J. Powell, D. Sederholm, L. Sibley, P. Strauss, A. Woodruff.

For the Applicant: Richard Renehan, lawyer; Doug Hoehn, engineer; Caroline Kennedy Schlossberg, applicant

#### **3.1 Offers & Conditions**

##### ***Section 1: Further Subdivision***

**Ned Orleans** read the three offers and one condition dealing with further subdivision, which were recommended for approval by LUPC. These were accepted as is:

- 1.1 As offered by the applicant, Lot 7 shall be deed-restricted in perpetuity to be a non-buildable lot.
- 1.2 As offered by the applicant, if one or both of Lot 1 or Lot 6 are sold outside the family of the present applicants, such lots are prohibited from further subdivision.
- 1.3 Any further subdivision of any lots on this property must be reviewed by the MVC, for concurrence as to whether the particular proposal is a Development of Regional Impact; such review will be done in accordance with all policies, guidelines, and regulations in place at the time.
- 1.4 As offered by the applicant, this proposed subdivision plan will supersede all previous subdivision plans for the property and, specifically, the applicant waives any right to use subdivision plans of approximately 150 lots created prior to zoning.

##### ***Section 2: Further Development***

**Mark London** summarized section 2 of the draft conditions dealing with further development. He noted that draft Condition 2.5 reads that, before planning any development, the applicant must prepare wildlife and botanical survey conducted in accordance with Natural Heritage protocols for the development area and adjacent areas and submit it to Natural Heritage and town boards.

##### ***Section 3: Preliminary Development Areas***

**Carlene Condon** summarized section 3 of the draft conditions dealing with preliminary development areas indicated on the subdivision plan, as recommended by LUPC.

- Development may take place only in the preliminary development areas.



- The southern preliminary development area on Lot 6 (closest to the water and Chilmark) has been excluded because it was found to have extensive dunes within it.
- The delineation is a result of a very preliminary evaluation based on wetlands, and will be subject to further review by Natural Heritage and the town.

#### **Section 4: Affordable Housing**

**Kathy Newman** summarized the LUPC recommended conditions for affordable housing, namely:

- Accept the applicant's offer to donate \$100,000 to the Aquinnah Affordable Housing Committee.
- Accept the applicant's offer that, upon construction of a tenth dwelling, they will either come back to the Martha's Vineyard Commission or will make one of three possible affordable housing contributions. The tenth building permit will not be issued until the Commission issues a certificate of compliance with respect to this condition.
- The latter condition will also apply if and when a twentieth dwelling is built.
- LUPC discussed whether the existing three buildings should be included in the ten-dwelling trigger. The majority of LUPC voted that the trigger should be ten new dwellings.

#### **Section 5: Wastewater**

**John Breckenridge** summarized the recommended wastewater conditions.

- During public testimony, it was noted that Squibnocket clearly shows signs of being a eutrophic pond. The pond doesn't fit into the Commission's usual nitrogen load calculations; because of the limited flushing and size of the pond, acid rain has a significant impact.
- The applicant's offers include:
  - Fertilizers and pesticides will not be used.
  - A nitrogen-reduction system will be part of any new septic system.
  - A shared contribution with Aquinnah will be made to match the cost of Aquinnah's share of the Massachusetts Estuaries Project.
  - During public testimony it was noted that phosphorus contribution can be reduced by placing leaching fields 300 feet from Squibnocket Pond or by adding a phosphorus reduction component to any new septic system. The applicant has agreed to this as an offer (5.4).

**Carlene Condon** said that LUPC voted to recommend approval of the application with the offers and conditions outlined in Sections 1 through 5.

**Mark London** said that the applicant's agent has agreed to various clarifications made to offers that were presented at the public hearing.

**John Best moved, and it was duly seconded, to approve the application with conditions.**

## **3.2 Discussion & Deliberation**

### ***Section 1: Further Subdivision***

**Doug Sederholm** clarified that Lot 7 is unbuildable but is subject to further subdivision; further subdivision would be subject to review by the Commission.

**Doug Sederholm** asked if there was further discussion of definition of 'family'. **Ned Orleans** said LUPC assumed the usual definition of family as being related by blood or marriage.

### ***Section 2: Further Development***

**John Best** clarified that a fourth dwelling on any lot would trigger Commission review and wondered how the number of dwellings on each lot might play out in terms of affordable housing triggers.

**Megan Ottens-Sargent** said she felt the fourth dwelling trigger for review would not allow for looking at the entire development holistically.

**Carlene Condon** noted that the Commission can use the fourth dwelling trigger to review any aspect of the subdivision that's appropriate at the time.

**Andrew Woodruff** was concerned with the potential visual impact on lots 1 and 6; by the time a fourth dwelling review is triggered, he's not sure what a Commission review might be able to accomplish.

**Carlene Condon** said the 'preliminary development areas are subject to extensive review by Aquinnah town boards. There's a good chance that lots may not be able to accommodate four dwellings.

**Andrew Woodruff** said his concern is that he is passing off his responsibility as a Commissioner to boards that may or may not be operating with the same restrictions ten years from now.

**John Best** said that the critical issue is that the conditions/offers have enough information for future commissioners to understand the intent of the language. The fourth house on a lot bothers him.

**Megan Ottens-Sargent** feels the Commission needs a trigger to review the entire project. This is an estate plan rather than a subdivision plan; why not create a condition which addresses that any material change, including the delineation of the development envelopes for concurrence after the botanical and wildlife survey, would trigger a review. She is concerned that under Condition 2.2, the Commission would be looking at one house rather than the regional impact.

**Linda Sibley** clarified that the MVC is not limiting development to three houses per lot but rather is setting a threshold for return to the MVC for DRI Review after three new houses on any lot.

**Jim Athearn** said any development will be subject to exhaustive DCPC review by Aquinnah, a DCPC that was formed with Commission approval. Commission approval of the subdivision/development plan is an endorsement that the plan is ready to go into the DCPC process. The fourth dwelling trigger for Commission review is a further level of caution.



**Carlene Condon moved and it was duly seconded to include a comment in the written decision to the effect that, referring to Condition 2.2, if the Commission reviews a potential fourth (or more) dwelling on a given lot, it should consider that proposal in light of all existing and potential future dwellings of the parcel and entire subdivision. A voice vote was taken. In favor: 13. Opposed: 0. Abstentions: 0. The motion passed.**

**Megan Ottens-Sargent** asked whether Lot 1 and Lot 6 could be limited to a two-house trigger, as the two most visible lots.

**Andrew Woodruff** said he thinks Lot 1 and Lot 6 should be scrutinized differently because of the environmental sensitivity of Lot 6 and the visual impacts of Lot 1 and 6.

**Doug Sederholm** said Lot 1 is 40 acres and Lot 6 is 53 acres. He said that almost 90% of the land is guaranteed not to be developed. The applicant has even taken the southernmost lot off the table because of the dunes. The developable lots are huge and there are significant restrictions already.

**Megan Ottens-Sargent** said that the Commission has not addressed density and has not approached the project as it might other projects, such as referencing smart growth values and clustering. About 15% of the land is all that can be developed because of wetlands. The Commission should be involved because of habitat and scenic values.

**Kathy Newman** said 15% is about 50 acres. **Megan Ottens-Sargent** responded that with 21 houses, that equals about 2-acre zoning.

**John Best moved, and it was duly seconded to accept Section 2 as written.**

**Megan Ottens-Sargent** said there are federally listed species are associated with Lot 7 and Lot 5; the Commission hasn't set any conditions to protect impacts to the listed species. Lot 7 and Lot 5 are unbuildable lots so there aren't any triggers for impact review. **Megan Ottens-Sargent** suggested adding a condition that there is to be no vehicular access along the beach and the dunes in lot 5 and lot 7. **Linda Sibley** said the motion would be appropriate at the end of the discussion, not in the context of the further development section.

**A voice vote was taken on the motion to accept Section 2. In favor: 12. Opposed: 0. Abstentions: 1. The motion passed.**

### **Section 3: Preliminary Development Areas**

**Doug Sederholm** suggested a clarification of the building area of Lot 6 to read the upper or northern development area.

**John Best moved, and it was duly seconded, to approve Section 3 as written, with the clarification. A voice vote was taken. In favor: 13. Opposed: 0. Abstentions: 0. The motion passed.**

### **Section 4: Affordable Housing**

There was a discussion of interest rates:

- **Doug Sederholm**, referencing section 4.2 (b), asked for a definition of accrued interest.

- **Richard Renehan** suggested using the legal rate of interest in Massachusetts, which is currently 12%.
- **Carlene Condon** suggested prime rate as more reasonable.
- **Richard Renehan** said prime rate would be acceptable to the applicant, as would 6%.

***Carlene Condon moved, it was duly seconded, and the Commission voted to accept 6% as the rate of interest, as offered by the applicant.***

**There was a discussion of the definition of the term affordable.**

**Richard Renehan** said a house for a caretaker it is by definition affordable.

**Christine Flynn** said the Mass General Law is very clear that to qualify for affordable house, income is capped at 80% of area median income.

**Doug Sederholm** suggested that 4.2c should be removed and the caretaker not be limited to staying under 80%AMI. The applicant will undoubtedly continue to have a caretaker in that house.

**John Best** suggested that the definition of caretaker is vague and a caretaker shouldn't be limited to staying under 80% AMI.

**Jim Athearn** said he believed the applicant should get credit for creating affordable housing and that it is a benefit to have an affordable house available to a caretaker or other islander.

**Andrew Woodruff** said he would look at this offer as a great way to create year-round housing but not necessarily appropriate as part of this application.

**John Best** pointed out that it's difficult to consider the caretaker's house as part of affordable housing stock and wouldn't want to impose a requirement that the house be rented if it weren't occupied by a caretaker.

**Jim Athearn** said the concept is difficult to work with. He pointed out the applicant creates a benefit by creating a job and a house to live in through the caretaker's position.

**Linda Sibley** repeated that the Commission's policy is that for every ten houses there should be one affordable house built, using the state's definition of affordable. The language as written would accomplish providing affordable housing at 80% AMI. There is obligation to restrict the existing house to 80% AMI. The offer is that the applicant would come back to the Commission for application of the Affordable Housing Policy unless he or she made one of the three outlined provisions, but is not obliged to do any of them.

***Kathy Newman moved, and it was duly seconded, to accept Section 4.4 as offered by the applicant. A voice vote was taken. In favor: 7. Opposed: 5. Abstentions: 0. The motion passed.***

***Paul Strauss moved, and it was duly seconded, to accept Section 4 as offered. A voice vote was taken. In favor: 11. Opposed: 1. Abstentions: 0. The motion passed.***

## **Section 5: Wastewater**

***Ned Orleans moved and it was duly seconded to approve Section 5.***



**John Breckenridge** suggested that, although the applicant is proposing denitrification wastewater treatment systems when development occurs, wording should be added related to denitrification system maintenance contracts. He proposed the following:

*The applicant shall enter into a maintenance agreement with the installer of the nitrogen reduction system. The applicant will provide a copy of the contract and certification of test results to the MVC and the Board of Health. Such review will be done in accordance with all MVC policies, guidelines and regulations in place at the time with respect to nitrogen loading in the Squibnocket Watershed.*

**John Best** suggested that the Commission use its standard wording related to replacement of a failed denitrification system.

**Doug Sederholm** noted that John Breckenridge's proposal requires that the applicant comply with the town and Commission guidelines; this goes beyond the offer.

**Linda Sibley** said the applicant has offered that future development will use the denitrification system that gives the greatest percent of nitrogen reduction available, and should be held to that standard, not a loading limit for Squibnocket watershed.

**Megan Ottens-Sargent** said that it is difficult to address nitrogen concerns because of the nature of Squibnocket Pond and absence of a numeric standard. The applicant said they will do the best they can. She wondered how and/or when building in the watershed might be limited because of nitrogen loading.

**Doug Hoehn**, engineer, said failure is based on standards set by the permit.

**Richard Renehan** said the applicant's offer meets the need for a nitrogen-reduction system; the language related to the maintenance contract would be acceptable.

**John Breckenridge** changed the language to read:

*The applicant shall enter into a maintenance agreement with the installer of the nitrogen reduction system. The applicant will provide a copy of the contract and certification of test results to the MVC and the Board of Health.*

He also proposed adding the Commission's language for replacement of a failed system, based on the rated nitrogen reduction of the chosen system.

**Megan Ottens-Sargent** asked whether the Commission would want to require a 500-foot setback from the pond for phosphorus limits such as Chilmark's setback. **John Breckenridge** said Bill Wilcox had presented information that 300 feet is sufficient.

**Kathy Newman moved, and it was duly seconded, to approve the offers in Section 5 and the condition developed by the Commission as proposed by John Breckenridge and to be drafted by staff. A voice vote was taken. In favor: 11. Opposed: 0. Abstentions: 1. The motion passed.**

### **3.3 Other**

There was a discussion of traffic.

- **Megan Ottens-Sargent** suggested limiting vehicular traffic.
- **John Breckenridge** said the road is right along the beach.

- **Jim Athearn** suggested leaving it to wildlife experts.
- **John Best** said that vehicular traffic on the beach has been a tradition of the property. He said he doesn't imagine traffic will increase.
- The Commission agreed to discontinue discussion of the issue.

There was a discussion of invasive species:

- **Megan Ottens-Sargent** suggested an invasive species control plan be developed for the town review of the property. Natural Heritage would probably request such a plan.
- **Kathy Newman** said that Aquinnah has developed an invasive species elimination plan for Moshup Trail.
- **Linda Sibley** suggested that the applicant discuss the plan with town representatives..

### **3.4 Benefits & Detriments**

Commissioners noted the benefits and detriments of the projects.

#### ***Wastewater & Groundwater***

- **Doug Sederholm** said this plan is much better than the 150 lot subdivision that was previously approved.
- **Kathy Newman** said the plan has caveats for future potential problems.
- **Doug Sederholm** said it isn't as good as the current situation but the current situation can't last forever.

#### ***Traffic & Transportation***

- **Kathy Newman** said she doesn't regard either as an issue.

#### ***Scenic Values***

- **John Best** said the impact will be less than a maximized subdivision.
- **Andrew Woodruff** said that he never had a sense of what maximized development would be.
- **Linda Sibley** said she thought there has been concern about scenic values in the development of lot six.
- **Jim Athearn** said that they will have scenic values prominently in mind when they are siting the houses.
- **Jim Powell** said the applicant has also shown concern about the visual impact.

#### ***Consistency with and Ability to Meet Town or State Objectives***

- **Kathy Newman** said the application is consistent with the goals of the town.

### **3.5 Discussion and Decision**

**Andrew Woodruff** said that this was originally presented as an estate plan. He has faith that the applicant will preserve the land, but he is concerned about Lot 1 and Lot 6 as viewsheds.

**Megan Ottens-Sargent** said she would prefer that there was a trigger to bring the plan back to the Commission for review when development occurs. She hopes that the town will work with Natural Heritage and will look at the land holistically.

**Caroline Condon** said the applicant has been responsive to Commission concerns and thanked the applicant's representatives for their information and cooperation.



**Linda Sibley** said that Aquinnah is the only town that has asked the Commission to declare the whole town a DCPC. She feels the Commission needs to respect the extraordinary efforts the town has made.

**Paul Strauss** said he found that the way the preliminary development areas were defined to be most very encouraging and he believes there will be a very comprehensive review of building siting which is usually under the purview of the Commission.

**Kathy Newman moved to approve the application as offered with conditions. A roll call vote was taken. In favor: Jim Athearn, John Best, John Breckenridge, Carlene Condon, Kathy Newman, N. Orleans, Deborah Pigeon, J. Powell, Doug Sederholm, L. Sibley, Paul Strauss. Opposed: Megan Ottens-Sargent, Andrew Woodruff. The motion passed.**

**Richard Renahan** said that, although the process was more demanding than he had expected, he appreciated Commissioners' efforts in reviewing the application.

**Caroline Kennedy Schlossberg** thanked the Commissioners for the care they've shown, and thanked the representatives from Aquinnah. The family considers itself stewards of the property and the plan is a critical component of taking care of the land for the future.

#### **4. EXTENSION REQUESTS**

##### **4.1 Bridge Housing**

**Linda Sibley** said that Bridge Housing has requested an extension of their approval.

**John Best moved, and it was duly seconded, to approve the extension request of their approval to June 30, 2008. A voice vote was taken. In favor: J. Best, J. Breckenridge, C. Condon, K. Newman, N. Orleans, D. Pigeon, D. Sederholm, L. Sibley, P. Strauss. Opposed: None. Abstentions: J. Athearn, M. Ottens-Sargent, J. Powell, A. Wooduff. The motion passed.**

##### **4.2 Pearlson Subdivision**

**Doug Sederholm** recused himself from the discussion and left the room.

**Linda Sibley** explained that the Pearlson Subdivision on Bijah's Way in Chilmark has requested an extension of their approval.

**Paul Foley** explained that the approval for a four-lot subdivision of 17 acres with one affordable housing lot expired in 2005. The owner wants to sell the property as a four-lot subdivision. The potential buyers would like an extension of the approval with the possibility of coming back to sell 2½ acres to the Land Bank making the subdivided lots slightly smaller. Chilmark will, in the future, request a change in the labeling of one of the lots from 'youth' lot to 'homestead lot'.

**Megan Ottens-Sargent** pointed out that approval of an extension doesn't allow further subdivision.

**John Best moved, and it was duly seconded to approve the extension request. A voice vote was taken. In favor: J. Best, J. Breckenridge, K. Newman, N.**

**Orleans, D. Pigeon, J. Powell, L. Sibley, P. Strauss. Opposed: J. Athearn.  
Abstentions: C. Condon, M. Ottens-Sargent. The motion passed**

**5. OTHER**

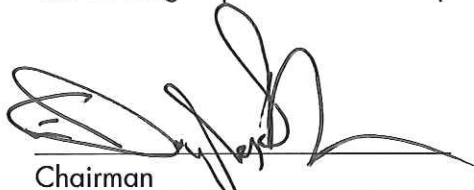
**5.1 SEED Workshop**

**Mark London** announced two SEED workshops on financing and running a business. The workshops will take place on Wednesday, April 26<sup>th</sup> and are sponsored by the Commission, the Chamber of Commerce and the Martha's Vineyard Cooperative Bank.

**5.2 Schedule**

**Mark London** said that the Commission has had difficulty getting a quorum together to review the Woodlands proposal. He suggested that the Commission may want to rehear and vote on the application on May 4<sup>th</sup>. **Linda Sibley** suggested the possibility be discussed with the applicant.

The meeting adjourned at 10:15 p.m.

  
Chairman

2-1-07  
Date

  
Clerk-Treasurer

2-15-07  
Date