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

7

8 **IN ATTENDANCE**

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

- | | |
|--------------------------------------------|-----------------------------------------|
| 10 P James Athearn (E – Edgartown) | 19 P Ned Orleans (A – Tisbury) |
| 11 P John Best (E – Tisbury) | 20 P Megan Ottens-Sargent (E –Aquinnah) |
| 12 P John Breckenridge (A – Oak Bluffs) | 21 P Deborah Pigeon (E – Oak Bluffs) |
| 13 P Christina Brown (E - Edgartown) | 22 P Jim Powell (A – West Tisbury) |
| 14 P Carlene Condon (A – Edgartown) | 23 P Doug Sederholm (E – Chilmark) |
| 15 - Martin Crane (A – Governor Appointee) | 24 P Linda Sibley (E – West Tisbury) |
| 16 - Mimi Davisson (E – Oak Bluffs) | 25 P Paul Strauss (County Comm. Rep.) |
| 17 - Chris Murphy (A – Chilmark) | 26 P Andrew Woodruff (E – West Tisbury) |
| 18 P Katherine Newman (A –Aquinnah) | |

27

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

30

31 **1. EXECUTIVE DIRECTOR’S REPORT**

32 **Mark London** reported that the Lagoon Pond drawbridge re-opened. Traffic jams weren’t as
33 significant as last time, possibly because the closing was well-publicized. He participated in the
34 selection committee for the engineer to design the permanent drawbridge. Three firms have
35 sketched designs and have done presentations. MassHighway finalize its choice and negotiate a
36 contract during the next few months.

37

38 **2. RED GATE FARM: DRI NO. 589**

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

41 **Christina Brown** opened the public hearing and read the hearing notice on the application to
42 subdivide 366 acres into 7 lots.

43 **Megan Ottens-Sargent** pointed out for the record that she has been involved in the Moshup
44 Trail Project.

45 **2.1 Applicant’s Presentation**

46

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

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

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

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

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

- 73 • The property has approximately 7,000 feet of Squibnonocket Pond frontage and 3500
74 feet of Atlantic frontage.
- 75 • Lot 2 is the Homestead Lot with house, garage, guest house, pool, tennis court, garden,
76 caretaker house, garage, and barns; Lot 3 has a small camp.
- 77 • Roads will stay the same; Lot 1 has a grass/dirt road; Lot 2 has the main road to the
78 house and to the other lots.
- 79 • An aerial topographic and planometric plan was done.
- 80 • Within each of the proposed lots is a small building envelope.
- 81 • Doug Cooper identified wetlands; development envelopes were created with a 100-foot
82 buffer from wetlands and 30-foot property line setbacks and 150-foot road setbacks.
- 83 • The subdivision and building envelopes were created with Commission open space and
84 priority habitat protection goals in mind. Over 80% of the acreage remains open space
85 areas. The development envelopes make up 15.7% of the acreage.
- 86 • Doug Cooper prepared a habitat assessment and wrote that the sites selected represent
87 areas that have the lowest potential for impact for sensitive resources; also envelopes are
88 large enough so that development activities can be shifted.

- 89 • Doug Cooper wrote that his evaluations are adequate for subdivision design and estate
90 planning. A more specific habitat review is recommended when building is proposed.
91

92 **Doug Hoehn** outlined Aquinnah Planning Board review process.

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

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

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

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

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

118 Offers include:

- 119 • Lot 7 will be non-buildable. The applicant does not want a conservation restriction or a tax
120 deduction. If the Commission were to include a condition that Lot 7 is unbuildable, the
121 applicant would agree.
122 • If lots 1 & 6 are sold outside the family, the applicant will accept a condition that they
123 cannot be subdivided.
124 • There's an outstanding subdivision of about 155 lots. The applicant waives that
125 subdivision and will replace it with the subdivision plan of 7 lots.
126 • The applicant will give \$100,000 to an affordable housing project in Aquinnah
127 • With respect to wastewater:
128 - The Kennedy property has minimal impact on Squibnocket Pond.
129 - Since Squibnocket Pond has nitrogen problems, the applicant is donating \$15,000
130 toward Aquinnah's share of the Mass Estuaries Project study of the pond.
131 - 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.

134 **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.

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

142 **Megan Ottens-Sargent** pointed out that Aquinnah has a 2-acre zoning residential by-law
143 allowing one house for every 2 acres of property. There must be seen in relation to the regulation
144 that any construction on a parcel over 2,000 square feet needs a special permit. She suggested
145 it may be interesting to look at the current plan in light of the possible approximately 151-lot
146 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.

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

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

155 **2.2 Staff Report**

156 **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. 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.

- 173 - The property has a wide variety of vegetative communities.
- 174 - The entire property is listed as priority habitat.
- 175 - Stewardship of the land has kept the property as a large tract.
- 176 - The Affordable Housing policy isn't triggered but the applicant is donating to an
- 177 Aquinnah project.
- 178 - Economic Impact is related to conservation of Lot 7; a conservation organization is
- 179 saved from having to purchase the land and it stays on the tax rolls.
- 180 - Visually, potentially a few things could be seen from the road.
- 181 - 15.7% of the total land will be within development envelopes.
- 182 • Correspondence:
- 183 - Aquinnah Planning Board and Conservation Commission wrote in support
- 184 - Sheriff's Meadow and Vineyard Conservation Society expressed satisfaction with the
- 185 plan.

186 **Bill Wilcox** reported on wastewater:

- 187 • The entire project is located in the Squibnocket Pond watershed.
- 188 • The property takes up 28% of the watershed and about 41% of the Aquinnah portion of
- 189 the watershed.
- 190 • Squibnocket is different from the other saltwater ponds; there is no measurable tide and
- 191 circulation is sluggish; it takes an excess of a half year to flush the pond.
- 192 • Squibnocket is close to its nitrogen-loading limit; additional nitrogen will stimulate the
- 193 growth of phytoplankton. Despite the eutrophic conditions, the pond is productive in
- 194 oysters and herring.
- 195 • The property is cut by two streams. It has two substantial freshwater ponds and substantial
- 196 wetlands.
- 197 • The primary soil is Nantucket Plymouth complex with rocks and boulders making up close
- 198 to 3% of the ground surface.
- 199 • The water table is below 6 feet.
- 200 • Nitrogen from wastewater can be reduced with denitrification systems. Also, wetland
- 201 attenuation of the nitrogen is likely to occur, reducing nitrogen by 30%.
- 202 • Nitrogen load numbers are based on the assumption of 5 new dwellings added to
- 203 existing dwellings, denitrification and wetland attenuation, resulting in an estimate of 9.5
- 204 kgs of nitrogen on an annual basis from 8 houses.
- 205 • The possibility of fertilized landscape is limited possible because a special permit is
- 206 required for any clearing over 200 sq. ft. Nevertheless, if each lot had 10,000 square
- 207 feet of fertilized landscaping, there would be a total of 13-15 kgs of nitrogen per year,
- 208 after the 30% attenuation is calculated.
- 209 • The total wastewater and fertilizer annual nitrogen contribution is 34 kgs. This is less than
- 210 one percent of the present day nitrogen load, the main source being acid rain.
- 211 • The Mass Estuaries Project would be the way to get to most accurate nitrogen limits. The
- 212 study can develop recommendations for nitrogen loading limits. This could lead to new
- 213 regulations which future applicants would be required to meet when building takes place.
- 214 The applicant has offered to contribute up to \$15,000 toward the cost of the project's
- 215 local share for Aquinnah and Chilmark.

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

219
220 **John Breckenridge** suggested that a condition might potentially be a leaching field setback of
221 300 feet or a phosphorus reduction component. **Doug Hoehn** responded that a 300-foot
222 setback may be appropriate and added that, down the road, technology may be so advanced
223 that phosphorus reduction may be part of any system.

224
225 **Doug Sederholm** asked what could be done to improve the health of Squibnocket Pond.
226

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

229

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

233 **Jim Athearn** said should be some discussion of the agricultural potential of any DRI. **Christina**
234 **Brown** said the Commission has encouraged applicants to keep land open. **Bill Wilcox** said
235 the USDA doesn't rate the soil as good for agriculture; the land has history as sheep farm.

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

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

240
241 **2.3 Public Officials**

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

- 245
 - Doug Hoehn gave a good overview of the by-laws.
 - An important by-law addresses open and visible development. Any future building project
246 would be subject to initial site review for open and visible space. Aquinnah has been
247 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
248 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
249 selectmen support it. It is very responsible and good for the town.250
251
252
253

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

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

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

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

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

271
272 **2.4 Public Comment**

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

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

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

290 There was a discussion of lot 6:

- 291 - **Doug Sederholm** said he is loathe to redraw the lines of the subdivision because of the
292 planning that has been done, but he is also loathe to approve any subdivision plan that
293 will allow construction on a secondary dune.
- 294 • **Bob Woodruff** said there is a vegetated secondary dune with beach grass and false
295 heather. The dune is pure sand and geologically could be 20-50 feet deep.
- 296 • **Sara Thulin** said that if the Conservation Commission were looking at a 53-acre lot that
297 has other building sites, it wouldn't allow building on a secondary dune, which would be
298 protected in the Coastal District regulations.

- 299 • **Doug Hoehn** said they are not pretending they microstudied the lot. If they can't build
300 there, they can't.
- 301 • **Dick Renehan** said it's likely that the northernmost building envelope that would likely
302 be used first but he'd prefer that the second building envelope not be eliminated.
303

304 **2.5 Commissioners' Discussion**

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

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

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

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

318 **John Best** said the number of houses is of concern because of wastewater. He doesn't believe
319 there is any threshold that would trigger further review by the Commission. He asked if there
320 might be an offer of a threshold of the number of residences per lot that would trigger
321 Commission review. **Dick Renehan** said they would put something in writing and submit before
322 the public hearing is closed.

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

325 **Megan Ottens-Sargent** said Sheriff's Meadow and Vineyard Conservation Society had
326 written that they had not had the opportunity to do extensive review. **Dick Renehan** said
327 Aquinnah Conservation Commission and Natural Heritage review should be enough and further
328 Commission review shouldn't be necessary.

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

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

- 333 • The plan is environmentally sensitive; the lots offer the possibility of considerable habitat
334 preservation.
- 335 • Thought has been given to maintaining vistas along Moshup trail.
- 336 • She is satisfied the Aquinnah process will stand up to appeal and protect future
337 development.
- 338 • 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 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 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 Aquinnah 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 guest houses.

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.

The Commission took a short break.

359

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.

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367 _____
 368 Chairman Date

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371 _____
 372 Clerk-Treasurer Date

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