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## Minutes of the Commission Meeting Held on September 20, 2007 In the Oak Bluffs Senior Center 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 Breckenridge (A – Oak Bluffs)	- Jim Powell (A – West Tisbury)
P Christina Brown (E - Edgartown)	P Doug Sederholm (E – Chilmark)
P Peter Cabana (A – Tisbury)	- Susan Shea (A – Aquinnah)
- Martin Crane (A – Governor Appointee)	P Linda Sibley (E – West Tisbury)
- Mimi Davisson (E – Oak Bluffs)	P Paul Strauss (County Comm. Rep.)
P Mark Morris (A – Edgartown)	P Richard Toole (E – Oak Bluffs)
P Chris Murphy (A – Chilmark)	P Andrew Woodruff (E – West Tisbury)
P Katherine Newman (A – Aquinnah)	

Staff: Mark London (Executive Director), Paul Foley (DRI Coordinator), Christine Flynn, JoAnn Taylor

The meeting was called to order at 7:40 p.m.

### 1. ISLAND ROAD DCPC: PUBLIC HEARING

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Commissioners present: J. Athearn, J. Breckenridge, C. Brown, P. Cabana, C. Murphy, K. Newman, N. Orleans, D. Sederholm, L. Sibley, P. Strauss, R. Toole, A. Woodruff

**Mark Morris** recused himself because he is a direct abutter.

**Doug Sederholm** explained that the Commission's role is to decide whether the geographic areas involved should be designated for the Island Road DCPC.

#### 1.1 Staff Report

**Jo-Ann Taylor** explained that the Commission has been asked by the Edgartown Planning Board to expand the boundaries of the Island Road District to add five special ways. There has been a vote to accept the nomination for consideration. There is a moratorium and the time limit for making the determination is October 4<sup>th</sup>.

- In order to determine whether to make the designation, the Commission uses the Critical Planning District Qualifications, also referred to as the standards of criteria.
- The Commission does not need to consider specific regulations as part of this hearing and vote.

- Regulations for the District exist. Should the Town decide that the regulations are adequate for the new area and the Commission makes the designation, then Town Meeting would have to approve the expansion by a two-thirds vote, and the existing regulations would cover all the special ways, Dr. Fisher Road and the 5 ways under consideration.
- The Edgartown Planning Board has expressed doubts that the existing regulations are adequate or appropriate for the area of the new nomination. If the Town were to desire changes to the regulations, the Planning Board would bring proposed changes to the Commission for a public hearing on conformance, then the regulations and boundary expansion would be voted on at Town Meeting. Until then, the nominated area would not be covered by regulations, but would remain covered by the moratorium.
- The nominated areas are each twenty feet from the centerline of Middle Line Path, Ben Toms Road, Pennywise Path, Tar Kiln Path, and Watcha Path.
- There was a discrepancy in the nomination as submitted by the Planning Board between the map and written description. The Planning Board confirmed that the map is the area to be considered. The mapped area is slightly larger. Counsel has confirmed that it would be acceptable to designate the larger area.
- The public/private debate has been raised in terms of the designation. Counsel has advised that the Commission may proceed under the assumption that the ways are public enough to meet the Criteria.
- Commissioners are bound by the Criteria. When making a boundary amendment, the Criteria for size and shape of the district are especially important. *The district shall consist of the land and water which reasonably belong in the district for the three following reasons:*
  - *it is the critical area or critical resource which is in need of protection;*
  - *it is the logical planning area which should be considered in adopting a coordinated system of regulations to protect the critical resource or critical area;*
  - *the dimensions or landmarks which follow the boundary of the district are convenient and recognizable.*
- The qualifications appear to have been met in the nomination.
- All the other special ways use the centerline of the road as a convenient and recognizable boundary. A number of other Districts use the centerline of the road as a boundary.
- The paths may have shifted over time, but still form a convenient and recognizable boundary. Other Districts use even more ephemeral boundaries, such as the "inland edge of any marsh or dune grass" in the Coastal District.
- The Island Road District was one of the first Island-wide districts, along with the Coastal District and Special Places District, which were designated in 1975.
- Additional ways have been added for West Tisbury, Oak Bluffs and, in 2000, Dr. Fisher Road in Edgartown.

**Bill Veno** presented a slide show on the ways being proposed for designation.

- About fifteen Special Ways were designated over the last 30 years.
- The Special Ways were designed to protect the character of the old roads.

- The act of designating a Special Way puts restrictions on it without taking away people's rights to use the way, but restricting the manner in which people use it.
- The five proposed ways are not just footpaths. They have a variety of uses.
- Of the other fifteen ways across the Island, 30% are used by motor vehicles, 10% are limited to 4-wheel drive, 10% are overgrown or impassable, and 50% are for only foot traffic. There is a mixture of transportation modes.
- Middle Line Path runs adjacent to Fisherman's Knot Road by the Edgartown Meadow Subdivision.
- Middle Line Path has had some clearing and grading.
- A lot of Edgartown subdivisions back up to Pennywise Path and Tar Kiln Path, which has prompted Planning Board members to question whether the regulations fit the existing conditions and may need modifying.

## **2.2 Town Boards**

**Roger Becker**, Edgartown Planning Board, said the Board has been wrestling with this because of the issue of the regulations that are in place and they are aware that changes will have to be made to address the differences in these areas. The areas need to be protected. The ways need to be protected so their uses and character remain.

**Dudley Levitt**, Edgartown ByWays Committee, explained that they began exploring the issue last winter.

- The trails are threatened. Paths were being lost to use, some paths were so overgrown that people stopped using them. In some cases, landowners discouraged the use of the paths by putting up *No Trespassing* signs or including the path in a landscape project.
- Other trails are threatened by becoming access roads for residential developments.
- The ByWays Committee felt they didn't have clear legal definition of the status of the roads or their uses. Watcha and Pennywise already have sections that serve as vehicular access to developed properties, a situation created incrementally.
- If the ways were extended indefinitely, they would become overburdened and dysfunctional. There has been no clear framework through which the problem could be addressed.
- The Committee hopes to create a network of trails for non-vehicular traffic, using the old rights of way.
- Several complicated questions are involved.
- The ByWays Committee hopes that the Commission accepts the designation, so the expertise of the Commission may be used to arrive at a resolution that will be fair and balanced and can serve as a model for similar situations in the future.

## **1.3 Public Comment**

**Paul Ulyatt**, Edgartown Meadows, said the Middle Line Path cutting demonstrates the need for protections.

- 350 feet of the path was changed to road and another 400 feet was cleared.
- He is concerned that not much effort or time would be required to finish turning the path into a road.

- He would like some language to be inserted, if possible, to protect the path.

**Warren Gosson**, Edgartown Meadows, said Edgartown Meadows hired their own surveyor to mark out the centerline of Middle Line Path *[which delineates the edge of the 40-foot right-of-way for Fisherman's Knot Road]*.

**Susan Sellers** voiced her support and appreciation. She loves the ancient way, and hates to see more use than the road can bear. It was shocking to see Middle Line Path cleared and widened. It should be put back to the state it was in, as should Ben Toms Road. She and volunteers have been picking up trash and debris. People want property access, but it's time to protect it and preserve it. The ways should be preserved. The sacrifices that people make for zoning are worth it.

**Warren Gosson** said before the new excavation on Middle Line Way was done, there was no way to access Middle Line Path into Edgartown Meadows. The excavation created another access into Edgartown Meadows.

**Richard Olsen** said his northern boundary is Middle Line Path and the eastern boundary is Ben Toms Road.

- Until recently Middle Line was a footpath. When Ben Toms was cleared, trees were cut down on his property and he doesn't know what to do about that.
- He wonders, if the roads are put into a DCPC, what his legal recourse is if trees are taken down on his property.

**Linda DeWitt**, 77 Watcha Path, submitted a photograph from 1974 that shows an old tree with a bent trunk, presumed to be an old marker of the path. The tree remains today. Parts of the Path look the same now as then.

**Susan Sellers** urged that this be voted on tonight to protect the paths until Town Meeting. She added that ATVs are a huge problem and hoped that, if the paths are designated, there will be a way to restrict ATV access.

**Doug Sederholm** said that when the Commission voted to consider the designation, there was an automatic moratorium on development within twenty feet of the centerline, which will remain in effect until Town Meeting votes on the designation.

**Linda Sibley** said that the Commission has in the past considered the cutting of trees as development.

**Doug Sederholm** said that upgrading such as filling and widening – if it has already been done in the past, in the same manner as it's been done before – is probably not an issue.

- If the work is changing the road's condition in a way that has not been done before, it is arguably "development."
- He added that, if someone believes that development has occurred since the moratorium, he or she should call Commission staff or the Selectmen.

**Warren Gosson** said a resident of Edgartown Meadows who has engineering plans, counted forty-five trees cut down, some on Edgartown Meadows' property. **Doug Sederholm** responded that the Commission can only deal with what's happened since it voted to consider

designation; he suggested that if they wanted to submit the engineering plans, they could do so while the public hearing is open.

**Geoff Patterson**, Watcha Path, said it's important that the designation for Watcha Path go through to protect it.

**Chris Downing**, Jenney Lane off Watcha Path, supports the designation. A few years ago two thousand feet of Watcha Path was cleared fifteen feet wide, without notice or consideration.

**Ben Hall. Jr.** spoke in opposition to the designation.

- A number of legal issues have been responded to by MVC Counsel Eric Wodlinger.
- He is a little concerned that no Selectmen from Edgartown are at the public hearing. Over the past thirty years, the Board of Selectmen has consistently refused to consider as public ways the ways that are proposed for designation. They have been asked to do so a number of times and they have suggested that the Town does not want the ways to be considered as public ways. MVC staff has informed the Commission that it can assume that the ways are public for purposes of discussion but apparently the Town of Edgartown does not want the ways to be public.
- If the Commission is considering the proposal, possibly under the presumption that the ways are public, the Commission is potentially opening up the area for development. No one, including the Hall family, wants the roads to be widened and become full Town roads. The Commission is running the risk that that is exactly what could happen if the Commission designates the ways in the manner they've discussed. No one has bothered to look at the potential impact of the public roads designation by the Commission.
- The Commission's own criteria for standards for DCPCs that were adopted in the 1970s says the ways that are designated have to be visible or accessible to the residents of one or more town. He asked how the Commission would do that unless the districts are entirely public. The criteria say the entire district must be accessible.
- The district proposal is to open up a forty-foot wide stretch of land to the public. That would make it a public way and would have to have public rights. Otherwise the Commission would be encouraging trespassing.
- Users of the path have been trespassing but that doesn't empower the Commission, as a lawful body sworn to uphold the laws of the State and its own rules and regulation, to say it's okay for everyone to trespass up and down these ways that are arguably public but may not be entirely public. One memorandum he read agreed that it's possible that some of these ways could possibly not be public at all. If they've been blocked for a long enough period of time, if they were prescriptive public ways, the rights of the public would have been extinguished long ago.
- He urged Commissioners to be exceedingly careful.
- He asked to make a point of order about the suggestion to amend the proposed district at this meeting. At the last meeting, when the Commission agreed to accept the district for consideration, it set the boundaries of the district for the public hearing by adopting the proposed district by its terms. The public was under the impression that the Commission was designating only those sections of roads that were before the Commission. Now there's the suggestion that the designation is being opened up to thousands more feet of

road affecting many dozens of residents who didn't have a clue that they could possibly be brought into the discussion. He believes the Commission's enabling legislation says it can't amend the district boundaries except at the original acceptance of consideration. A month ago, when the Commission set the boundaries, that night was the night to modify or adjust the boundaries.

- If the Commission were to modify the boundaries, it would have to go back to the nominating board, renominate it, and accept the renominated district bounds, and restart the clock.
- A lot of the issues raised at the public hearing could be cleared up and the Commission could get less ambiguous answers.
- The public ways in the State are governed by State Statute, Chapter 84, Section 1. The authority of the Town to manage and maintain the ways, if these ways are public ways, and the ways are somehow designated forty feet beyond the paths, or somehow taken under Town jurisdiction, and the full district becomes a public way, then the Commission will have trouble regulating what the Town does because no regulation can impact how a town addresses its own public ways.
- The Commission can't tell the Town to improve or not improve the ways in a particular fashion. If the Commission does say the ways are public ways, all the ideas and authority that the Commission would be stopping these ways from becoming something other than wide-open town streets is nullified. The possibility that they could become wide-open town streets, which nobody wants, is wide open.
- Any suggestion by a public authority that these ways have public connection is just another step on the road to having all these roads become cut-through roads wide enough for two cars because under the Statute the Town has to maintain the way is safe for the public. That means two cars passing each other in the way. That means fire trucks. Once these become public ways, overhead wires come with them. These are things that are counter to what the Commission is trying to protect, the rural character of the ways.
- It's not true that one can't cut along these old roads. People who have rights in the private roads have absolute rights, a point which has been adjudicated in the courts. In private roads, people who have rights can maintain the road, put gravel down, and improve the road over time. The use of the road can evolve from narrow character to accommodate ambulances with a way ten feet wide. All the people who own along these ways have the right to have public service vehicles access their property. That's what people pay taxes for. These properties are potentially landlocked but for these roads. Any access and any use of the properties which people have been paying taxes for, requires that they be able to access them down these very roads.
- Some people who testified in the public hearing access their properties off of the ways that are being discussed. They have improved their stretch of the road significantly, so the fire trucks and ambulances and police cars can have access. What about the people who live a little further down the road.
- If the town's proposed by-laws are simply voted through with the proposed district included, which would be a very unwise thing. If that were to happen, in a rush to judgment – there seems like there's been this great rush to try to stop whatever's going on down there – we're going to forget the people who live down the road.

- With respect for the moratorium, it's not a moratorium on development. It's a moratorium on development permits. If no permit is needed to do work along this road, then the moratorium has no effect. You don't need a permit to cut a tree down. The moratorium doesn't have the impact that people believe.
- He urged the Commission to refrain from the compulsion to give into calculated political pressure. There's a great deal of pressure to stop what's been going on and he suggested that what's been going on is far more minimal than what's been advertised. One of the ways was blocked off by an old Volkswagen.
- In the 1960s, his parents bought almost one hundred acres along Ben Toms Road – originally was known as Pennywise Path – and along Middle Line Path and Pennywise Path. His family members are the last people to do any real form of development along those roads. People have been enjoying the paths that the family has left largely untouched to this point, and the Halls have enjoyed them as their own private property. The Commission shouldn't be used as a tool to continue to impose new rules upon people who have actually done the right thing and haven't done the large-scale development that everybody's afraid might happen along those roads.
- He urged the Commission to look at its guidelines before it imposes them on new special ways. There are some significant problems with guidelines that would force the Town to draft the regulations according to the guidelines for special way zones. It says no way or road shall be constructed within a special way zone of a width of more than twelve feet. But if it's a public way, most fire chiefs want a fourteen-foot roadbed. He urged the Commission, at the very least, to amend the guidelines.
- There are to be no fences or walls within twenty feet of the centerline of a special way. About nine acres of his family's property would be unfenceable and would prohibit them from keeping people from their own property. There are two major sticks in the bundle of rights of land ownership. One is the right to get to it and use it. The other is to keep everyone else off it. If the Commission is saying a landowner can't have a fence against his own property line or reasonably so, and is shifting it back twenty feet, the Commission is saying that his family can't restrict people from coming onto nine acres of the property. He doesn't feel that that's fair or right.
- He asked whose property is being impacted by the district. 68% per cent of the property along the ways belongs to his family. A bunch of the other property that it fronts on is already in the public domain. Some of it is already in subdivision roads and there are really only four or five other people that are impacted by the potential designation. He thinks they are actually looking forward to the designation because they believe it's going to make the road public and allow them to have full access and full subdivision rights along this way.
- He doesn't believe the Commission can do what people want and he urges the Commission to carefully consider that. He hopes that counsel has looked more closely into that than the memorandum simply stated.
- He hasn't seen a full history and study of cultural uses of the ways, if a real history had been done, even if the roads had been correctly named on the maps. Ben Toms Road is a local colloquial name for a stretch of the road given to a part of the road that was called Road to the Plains to Holmes Hole Road, which has been recognized by the Town and by

some of the landowners along the road to be actually part of Pennywise Path. The stretch that people are calling Middle Line Path is probably Simon's Path also known as Middle Line Path, also known as the way from Tom Benson's house to Simon Benson's house. The road they call Pennywise Path that goes from the fork in what is called Ben Tom's Road going west has never, in any legitimate deed or any deed that he has seen, been called Pennywise Path. It's always been called by other names. If a full history had been studied, then we would have some basis for it, but at this meeting it seems like we're looking at this as potentially a cultural district rather than a historic district and he urged the Commission to consider that.

- He has a question about the manner in which the description of the district that's been developed along Ben Toms Road. There's a vague description *to a west fork*. It's very open and he doesn't think anybody could regulate or know what stretch is exactly being talked about. He thinks they would need to pick a map, then take a map and say that's the district rather than trying to use the description, but the Commission voted to accept the description a month ago.
- He wants to stress a few things that have been pointed out. The work that took place within Fisherman's Knot Road – he doesn't want people to think that Fisherman's Knot Road and Middle Line Path and the other road where Tar Kiln Path lay along side of it, were not one and the same. Middle Line Path is the boundary of Fisherman's Knot Road. Fisherman's Knot Road goes over at least half of Middle Line Path. The two are synonymous for the southern half of Middle Line Path, so any work that takes place that's already been permitted within those roads, that have already approved by the Planning Board that basically give them open season to work in those rights of way as needed to maintain those ways, to keep the roadbeds open and to do any other work the Planning Board concedes one might need to do within those rights of ways. That would include trenching for power, for water and now for sewer. Fisherman's Knot Road is designated for sewer. Where is the sewer supposed to go? It's going to have to go along the edge of Middle Line Path.
- The whole notion of Middle Line Path and the work that's taking place – the work was taking place within the Fisherman's Knot Road layout and included and incorporated a small section of Middle Line. What you're looking at is designated sections of roads that are already regulated and have already been approved for full use. And now you're saying *ex post facto* that it's okay to go in and say you can't use twenty feet of that road. That would mean that where the water runs now and part of the existing road would be within your district, which is clearly a private way.
- People don't want Fisherman's Knot Road to be considered a public road or even part of it considered a public road. That would mean that everybody and their uncle would drive up and down those roads to get to the beach, to cut through, to take the shortcut.
- Pennywise Path was listed for having a layout of a 40-foot road. The 1970s Planning Board was allowing the B2 Triangle Upper Main Street Commercial Zone to be created and developed. They foresaw the trouble that would occur unless they had a relief road that cut through to the West Tisbury Road so that everybody coming into Town did not have to go into the Commercial District to get to the other side of Town. They proposed this bypass road. It went to Town Meeting and the Town accepted it and approved



having it laid out. And it was laid out and during the interim period, knowing that this road was laid out, the Town allowed all the divisions of land along Pennywise Path that now have houses on them for the most part. As soon as those houses were built and the thing came up for vote to actually accept the layout of the road so it would become a formal Town road, the neighbors came out and screamed that they didn't want their road to be a by-pass road. They didn't want their neighborhood ruined, even though they'd been given their permits based on the fact that this road would go through.

- The Town voted it down and now you have the situation where you have an ill-defined road. Is it public, is it private? If the Commission keeps it private and doesn't designate and finds some other way to regulate, it will be leaving it within the hands of what one can do within a private way. You can't willy-nilly take a private old road and just expand it infinitely. You are allowed to keep it relatively maintained, to slightly improve it, or to allow it for access of public safety vehicles. And that is it. The rural character would largely remain the same. If the Commission goes with a public road and accepts this designation, it has to find that not only are the roads public, but twenty feet beyond the edge of the roads is also public. If the Commission finds that, then it is opening up a whole can of worms.
- He urged the Commission to be exceedingly careful in considering that because that will ruin those areas for all of us.

**Benjamin Hall, Sr.**, explained that Ben Tom's Road is passable by more than four-wheel drive vehicles. He goes through there regularly in his Caravan.

- His son has gone in and filled in the potholes and the puddles.
- He would want access to his property by ambulance and fire vehicles. The use of Ben Tom's Road and the upper end of Pennywise Path by the MSPCA should be maintained so public vehicles can access easily and without hazard.
- The road is heavily used as a bypass road to avoid the congestion in the business district and to avoid having to go way into town by the school.

**John Best** said that for the past twelve to fifteen years, he has represented in his profession in real estate the immediate abutter to Fisherman's Knot on the other side of Middle Line. For a stretch of about six hundred feet of Middle Line Road his client owns to the centerline of Middle Line Road opposite what the Edgartown Meadows Association Road owns.

- The layout of Fishermen's Knot is thirty or forty feet. Technically, you can put a road anywhere in the layout but what is lost in the discussion is that in any layout of forty feet of width, it doesn't mean that anyone can open the road up to forty feet. He doesn't believe it's a right and he suggested counsel look at that.
- His client owns to the centerline of the road and she's not speaking for or against the designation but she does have concerns because some of the trees were cut on her property outside the berm.
- There is a berm on Middle Line and there were trees growing up within the defined trail. Fifteen years ago you could drive a car up Ben Tom's right up to and alongside Fisherman's Knot. Eight to ten years ago you could take nothing much wider than a jeep. Recently you could take a mountain bike or motorcycle. Now it's been opened up completely.

- The Commission needs some clarification about public ways and public rights. He lives on a road between two roads that Tisbury maintains. His dirt road is private, but the public seems to have rights to traverse it because they do. The residents of the road can't put up gates but the town will not take the road unless residents go before Town Meeting. The distinction is cloudy.
- Maybe what you're talking about here is that it's not a public way in the sense that the Town accepts it as a public way, but that the public has rights to traverse it. It's semantics rather than legal terminology. Is it public because the public has the right to traverse it and it's not really a 'public road'?

**Benjamin Hall, Sr.** made the following comments.

- The designation is from the centerline twenty feet out, totaling forty feet. This is the way that you want the public to have access to whether it is by vehicle or horseback. That means that people using the path would have access 20 feet into people's property and would be trespassing.
- If you're taking the right to prevent people from coming onto owners' land, then you're taking the land. If owners can't fence it off and prevent people from going there, it's a taking. On their property that's nine acres, which is rather valuable.
- He wants to keep the roads in a rural nature and setting. Ben Tom's is still a 14-foot road through the woods and is not a highway. It's the kind of nature the family wants to keep there.
- It's pioneer nature that people want to put fences up, but you people want to take fences down. Please consider the designation carefully.

**Doug Sederholm** clarified that the Commission is not talking about whether this is a 'public way'. Commissioners are only talking about whether they will designate this area as is a special way. Just like any other DCPC, which can be private land or public land, it would be subject to regulations that would be determined by the Town and would have to be approved by a 2/3 Town Meeting vote after it comes to the Commission to determine whether the regulations meet the Commission's guidelines.

- Commissioners should not be diverted by the issue of whether or not they're dealing with whether these ways are public ways. Commission counsel has written a memo about whether or not these ways are sufficiently public to be submitted to the Commission for nomination by the Selectmen. Edgartown town counsel Mr. Rappaport is opining that they are. Commission counsel, Eric Woddlinger, has reviewed Mr. Rappaport's letter and has indicated that the public character of ancient ways is often unclear and requires significant historical research. He doesn't see anything in the case law that indicates that Mr. Rappaport's letter is unsound or lacks basis in fact. He says that the Town has enough evidence to suggest that these may be public and Commissioners can assume they are, for their consideration.
- Commissioners are not determining whether or not they are public ways. That's not part of the Commission's mandate tonight. Commissioners are to decide whether they should be Special Ways under the DCPC that already exists.
- Regarding whether the public hearing was properly noticed, Commission counsel says the published notice, although not identical to what is under consideration, has provided fair

notice of the subject matter and would be sufficient notice. He is satisfied, but a Commission member could move to refer it back for further definition or Commissioners could vote it down.

**Gail Craig**, of Edgartown Meadows, said she has a Dodge Caravan. She wouldn't drive it down Ben Tom's Road. She feels if the Commission doesn't vote in favor of the designation tonight, the Halls will disregard the moratorium.

**Mrs. Hall** said it's disgusting that people would think that the Halls would do anything to injure the town they love. They wouldn't hurt the town or its people. To think that you have to watch us so carefully and guard the town hurts her to the core. She urged Commissioners to not vote for this. It's an insult. 68% of the land is the Halls. Her children and grandchildren would not destroy the town and they would not destroy what the neighbors are so afraid of. We love the town.

**Ben Hall, Jr.** commented on the boundaries.

- The boundaries can't be expanded at the Town Meeting vote. The Commission can't expand the district without noticing the people who might be affected by it. The Commission can't expand the boundaries.
- If the town counsel says roads are public, he will defer to his opinion, but he doesn't think the Selectmen and townspeople would be welcoming in town streets along those roads. The Commission has to look at its own regulations, which say that the residents of more than one town have access. Then Commissioners are saying these roads are of a public enough character to allow people to go up and down them and they'll have some issues of trespassing of people coming up and down other people's property.
- If the Commission is going to expand the district tonight and there are additional stretches of road, to the north of Ben Tom's Road that continue out to Holly Bear Lane, then those stretches should also be included in your designation. The continuation of the very same roads that have the very same problems should be under consideration as well.

**Doug Sederholm** closed the hearing.

**Linda Sibley** suggested discussing and voting on the designation after the Veira Park Hearing.

**Richard Toole** said he would like the opportunity to review paperwork, as did other Commissioners.

Deliberation and decision is schedule for October 4<sup>th</sup>.

Commissioners took a five-minute recess.

## **2. VEIRA PARK BASEBALL: DRI NO. 605 – PUBLIC HEARING**

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Commissioners present: J. Athearn, J. Breckenridge, C. Brown, P. Cabana, M. Morris, C. Murphy, K. Newman, N. Orleans, D. Sederholm, L. Sibley, P. Strauss, R. Toole, A. Woodruff

For the Applicant: Sam Berlow, President, Little League of Martha's Vineyard; Doug Hoehn, surveyor, Schofield, Barbini, & Hoehn

**Christina Brown** opened the public hearing on the application of the Little League of Martha's Vineyard proposal to expand the use of Veira Park.

## **2.1 Staff Report**

**Paul Foley** gave the staff report.

- The Little League of Martha's Vineyard is proposing is to add a second baseball field at Veira Park.
- The project is in the Cottage City Historic District and the R-2 residential district.
- The project has been approved by the Park's Department and will need to go before the Cottage City Historic District for the fencing.
- The project has been approved by the Community Preservation Act Committee for the funding and the funding has been approved at Town Meeting.
- The park was laid out by Robert Copeland in the original master plan and called Petaluma Park. In 1968, it was renamed Veira Park after Antone Veira.
- There was a citizen's petition against the Community Preservation Act funding which brought the funding vote back to a Special Town Meeting. The funding was approved by a vote of 89 to 81.
- The proposal is to build another baseball field at Veira Park with new batting cages, play area, viewing stands, picnic area, fences and parking. The entire park would have a new split rail fence all around the Park. The parking along the edges of the Park would be changed to perpendicular parking to increase the capacity.
- The proposed field will have fences 10 feet high to about the first and third bases and then 4 feet high along the outfield. The outfield fence of the new field would be removable.
- Some trees would have to be significantly limbed to accommodate the field and fencing.
- The referral came from the Oak Bluffs Selectmen under DRI trigger 3.60.
- LUPC met on July 16<sup>th</sup> and the Commission has had three site visits
- Key issues include:
  - Can the geometry of the local busy road network handle the increase in parking, traffic, and activity?
  - Should youth activities be expanded so close to a busy road network?
  - Is the existing field too close to the street?
  - Is it appropriate to make a neighborhood park 100% active as opposed to a balance of active and passive?
  - Are there ways that the Island can better accommodate the needs of its sports teams in baseball, soccer, and softball?
  - Is there a need for a second field?
  - How would this proposal affect the health of the existing trees in the park?
- The existing vegetation is healthy mature shade trees. The proposal calls for significant limbing of some of the trees.
- The site is not a Natural Habitat and Endangered Species habitat.
- The existing field is well-maintained. The rest of the park could be improved in terms of maintenance and water.
- The existing light poles will be removed and not replaced.

- Activity and noise can be expected to increase.
- The applicants have looked at alternative sites and they've decided that this is their best option.
- In terms of nitrogen loading, the park is three acres in the Farm Pond Watershed, which is a nitrogen sensitive coastal pond. The loading limit is 1.2 kgs per acre per year.
- The park currently has filtration for stormwater.
- The existing ball field is fertilized twice a year. The applicants have indicated that they will probably not fertilize the new field. If they decided to fertilize, they could use a slow release source of nitrogen with a treatment level of one pound for 1,000 square feet, for a total of 40,000 square feet or one field a year.
- There is a wastewater pumping station in the park.
- There are plans for two porta-potties.
- The Commission Affordable Housing Policy is not triggered.
- There has been a question about Community Preservation Act Funding but the Commission is not looking at funding.
- A second field would significantly alter streetscape.
- The fencing will be black chain link, up to twenty feet behind home plate, twelve feet down the baseline, and four feet beyond the bases.
- The local neighborhood would be negatively impacted by parking and diminishment of open space.
- There are a lot of letters, the vast majority in opposition.
- Residents of 59 Naushon Avenue said they've had two windshields smashed by foul balls.

**Jim Miller** reported on the traffic study, which was done with Charlie Crevo.

- They used traffic counters for daily traffic counts on Wing Road, Circuit Way, Naushon Avenue, and South Circuit Avenue. The Commission traffic intern did traffic turning counts.
- The computer model indicates that the increased traffic volumes could be easily absorbed by the intersections.
- However, one issue is safety at the five-legged intersection, including site lines at Oakland Avenue, and the lack of stop signs and stop bars. The only stop is on Naushon Avenue. Safety deficiencies should be addressed anyway for clear stop lines so people know where to stop. Also the turning radius is larger than necessary and there are no crosswalks. Safety could and should be improved. In relation to the project, the increase in traffic is relatively minor in comparison to the 6500 cars a day moving through the intersection.
- The second issue is the parking situation along Naushon Avenue. Foul balls damage cars and the current layout is chaotic. About 2500 cars a day go along Naushon Avenue. The proposal would increase traffic demand but would create a more delineated parking area. The majority of the activity will be between April to June which is not during the peak summer season.
- The third issue is safety along Naushon Avenue, with kids running into the street chasing foul balls and the foul balls, which are very difficult to quantify. Naushon Avenue is two way. Angled parking would require caution.

**Paul Foley** made the following clarifications:

- Oak Bluffs considered making Cannonicus a one way in 2003, but the proposal did not pass.
- The Little League Season is from the middle to late April ending in late June with All Star Teams and tournaments playing in July.

He showed a slide show of fields, fencing, trees, parking and the roads.

## **2.2 Applicant's Presentation**

**Sam Berlow**, president of Martha's Vineyard Little League, thanked the Commission for helping the Little League through the application process.

- The project started three years ago with the goal of creating a safer and more convenient Little League facility for the Island.
- Approximately 356 boys and girls participate each year. Three All-Star teams play in June and July, using one diamond.
- The Major League plays in Oak Bluffs and sometimes Edgartown. Minor League plays just in West Tisbury. The Farm League plays in Tisbury with T-ball.
- The new field proposal is for the Minor and Major League teams. Little League is looking for a park where the leagues can play at the same time because one out of three kids have siblings playing. Two teams playing at Veira Park could affect one hundred families.
- They believe the proposal would reduce the amount of driving and make games more convenient.
- It will also be easier to maintain two diamonds in one park.
- West Tisbury fields are great for T- ball and softball but both need to be improved for safety. Even with improvements, they won't meet Little League standards for safety.
- Safety requirements include enclosed areas for dugouts, protective fences for fans and parking. It's not possible to meet those safety requirements at the other fields.
- There isn't enough land to separate parking areas from viewing areas.
- The other fields are also multipurpose fields and scheduling is difficult.
- In 2005, the Little League looked at space including open space, dumps, airport, high school, etc. The cost of buying land and building a facility was too much. The money isn't available.
- Veira Park has tradition, space, and topography.
- The first plans were more ambitious. The current plan eliminates everything but the field and picnic area. There won't be a permanent batting cage.
- The Community Preservation Act voted \$200,000 for the project, which was re-voted and passed at the special town meeting.
- The plan calls for a split rail fence all the way around the park, an open area for fans to watch the game, and fences to enclose the ballpark.
- Currently there isn't anything between the parking area and spectators. The new field would change that.
- The new plan establishes child play areas with picnic tables for more comfort and safety.
- Parking will be all around the park.
- The applicants have changed the plan several times to alleviate neighbor concerns about parking, trees, and a permanent fence. There would be a temporary fence in the outfield

of the new ball field that would be removed every year in late July and re-installed the following April. They've added gates to different parts of the fence.

- He met at least a dozen times with neighbors and listened to concerns. He understands why the opposition doesn't want the second field, which will cause more traffic and noise. However, the project creates an infinitely better situation. Veira Park will be used more because it will have healthy grass, a picnic area, two fields, more trees and plantings.
- In his opinion, and in the opinion of the Oak Bluffs voters, this project improves the park for active and passive recreation. It's good for baseball and it's good for the Town.

**Doug Hoehn** explained that he's the surveyor, but he's also been involved in Island baseball for twenty years. He has a good working knowledge of what other towns have done with Little League. Many towns have two fields. He is both a proponent and an agent for the applicant.

- There are a lot of physical features that had to be taken into account.
- They worked to fit the conceptual plan to the physical features. The major concern was preserving trees. There are two trees within the field, which will be moved. Every other tree is being preserved.
- The temporary fence is specifically designed to blend in. The fixed fencing is black vinyl-clad fencing, like at the high school.
- The existing fencing is being moved in, reducing the amount of park used for baseball.
- The parking plan shows the areas intended for parking for 63 spaces. Parking is perpendicular among the trees, and will remain grass and dirt.
- The split rail fence will delineate parking for 63 spaces, which is sufficient to service the park at its busiest.
- The fences are ten feet apart.
- The field is not perfectly symmetrical so it will fit with the trees.
- Other plantings will supplement the trees.
- Bill Wilcox wrote a three-paragraph summary on the maximum fertilization to maintain levels of nitrogen contribution. The field isn't being fertilized now, but he's not sure they said they wouldn't fertilize. They offer to do whatever Bill Wilcox recommended.
- The current field is approximately 56,000 square feet, 42% of the park. The plan for the old field is to fence 40,000 square feet, 30% of the property. For the new field, during the months the fence is up, the enclosed area will be 34,000 square feet, about 26% of the park. The total coverage of the park will be 74,000 square feet, about 56% of the park. A little over half the park will be enclosed for three or four months out of the year.
- There are no formal drainage structures. There won't be any re-grading except to make sure there's a crown to the fields.

### **2.3 Commissioners' Questions**

**Peter Cabana** asked about Naushon Avenue diagonal parking not being marked and whether someone parallel parking would create a problem. **Doug Hoehn** responded that he designed the parking spaces deeper than they need to be so that wouldn't create a problem with traffic on Naushon Avenue.

**John Breckenridge** asked about intensity of use. Sam Berlow said that the number of days of use and number of games is included in the traffic study; the outfield fence will be removed from the new field only.

**Doug Hoehn** will get more information about the field's elevation.

**Jim Athearn** asked about irrigation of the field. **Sam Berlow** said the existing field has a sprinkler system; the new field will also use a sprinkler system.

**Doug Sederholm** suggested having a removable outfield fence for the old field, as well, to increase the amount of open space. **Sam Berlow** said the Parks Department has installed a new outfield fence that isn't removable.

**Doug Sederholm** asked about change in use. **Sam Berlow** said that the Major League field use wouldn't increase; they are adding the Minor League field use for ten weeks a year and, possibly All-Star Team use in late June and July; the fence would be removed at the end of June.

**Paul Strauss** asked about nitrogen loading. Bill Wilcox and Doug Hoehn will report on current nitrogen loading.

**Chris Murphy** asked about the Circuit Avenue marked on the plan on the east side of the park.

**Doug Hoehn** explained that it isn't built; it was part of the old Oak Bluff's Land and Wharf subdivision; the Barmakian family owns from the centerline to one side; the Town owns the other side; no one travels it right now; he doesn't know why the existing field was built over the paper road.

## **2.4 Public Comment**

### **In Favor of the Proposal**

**Michael DeBettencourt** endorses the project wholeheartedly because it makes Veira Park a safer place for his children to enjoy baseball and open space. The Community Preservation Act endorsed the project, the residents endorsed it, and the Parks Department endorsed it. He encouraged the Commission to endorse it, too.

**Priscilla Sylvia**, speaking as a member of the Oak Bluffs Historical Commission, is adamantly opposed to the project.

- She said she's glad Oak Bluffs has a baseball diamond.
- Oak Bluffs is lucky to have had people in the 1800s who understood open space.
- She is opposed to the project because of the taking of open space. She asks the proponents to take this worthwhile project to another town and use Veira Park for open space.

**Michael DeBettencourt**, speaking for the Water District, endorses the project.

**Roger Wey**, Oak Bluffs Selectman, but speaking for himself, said it was difficult when his kids were playing at different fields.

- It's natural that kids would play at two fields in the same location. The use of the ball field would be 3 ½ to 4 months for full use.



- Oak Bluffs voters voted twice to support the project. He urged the Commission to support it, too.

**Jamie MacNeily**, coached Little League for the past seven years.

- The other fields are lacking for any safety measures for kids. Kids, players, and spectators can be hit by baseballs. The fields aren't well-maintained.
- It would be nice to have the games in one place on safe fields.
- It would be a great use of our open space to have a facility in Oak Bluffs that we can be proud of for our children.

**Chris Liebowitz**, Little League coach, said he has seen off-Island facilities with nice fields and viewing areas and safe places for playing. He'd love to see a field kids can be proud of for his kids and future kids.

**Adam Wilson**, Little League coach, sees the proposal as more beneficial to the Island Community than detrimental. The proposal is a great opportunity to help the program, families, and players.

**Sandy Sicourian**, speaking as a mother, said she would love to see safety improved. The improvement of moving the fence in and realigning parking will make a big difference for the neighbors. It's a great park.

**Jerry Shaw**, vice-president of Little League, endorses the project. It's a great thing for Little League on the Island. This will help out quite a bit coordinating kids and families.

**Philip Caan** was president and coach when Little League was regionalized on the Vineyard.

- When he was young, there were two fields at Veira Park, sometimes a football field.
- Vineyard Haven has two baseball fields and a soccer field. Oak Bluffs has more land than Vineyard Haven.
- He believes that the rest of the Island would help fund the Veira Park plan, if asked.

## **Pubic – Opposed to the Proposal**

**Ann Brownell**, works at 179 Circuit Avenue, directly across from the site. She has several major areas of concern.

- Is there enough room to accommodate a second field? No plan she's seen shows the dimensions of the bullpen, field and bleachers.
- What are dimensions of parking? Many of the vehicles attending games are trucks or vans. What is the drop off area for children?
- The parking and traffic study notes that during playoffs and championship days overflow parking will be shuttled from Waban Park.
- The traffic study also says that the Parks Department would have the ability to rent the park out to summer baseball. That doesn't appear in the proposal.
- She asked how the parking would be monitored.
- The expanded use and overflow parking in Waban Park aren't in the proposal. They're only mentioned in the traffic study.

- She's worried about the actual scope of the project and safety. There are five intersections and four driveways on the same blind corner.
- There is already a serious scarcity of parking.
- If Oak Bluffs has the ability to host tournaments, rent out the park, and have summer camps, use wouldn't end in June.
- The area is frequently overcrowded and dangerous for vehicles and pedestrians. There are frequent accidents. In the last five weeks, there have been two accidents.
- Testimony describes neighbors almost being hit crossing to the park, backing out of driveways, and children running after balls in the street, and the park has no real buffer zone.
- She noted that adults and children who use the park for non-baseball uses would be affected. Changing it from a multi-use park to a single use baseball park would change its character and the use for which it was intended.
- She asked whether more children should use an area that is already dangerous.

**Fred Baird** said there are new telephone poles along the street because they've all been broken by cars. In the summer, he can hear cars hitting the sidewalk curb all night long. The park filled up with 3" of water when the power went out; it doesn't seem anyone would want to put a ball field on top of a potential hazardous area.

**Alex Palmer** lives around the corner. He agrees with everyone who spoke about the joys and benefits of baseball.

- Ironically where safety may have been improved greatly, safety will decrease with the increase in traffic and number of cars.
- The intersection, even on a quiet March morning, is dangerous. You can't see to make the turns and people are speeding.
- The convenience of the second baseball field doesn't supersede the traffic dangers that would result from the increase in traffic, never mind the aesthetics for the neighbors.

**Thea Hansen** lives at the corner of Seaview and Canonicus. She believes that the second field will bring hundreds more cars with every game. Her concern is the possible use of the historic park for the second ball field.

**Gail Barmakian**, an abutter, said there's a difference between the ideal baseball game and the reality. It's unsafe. Baseballs are hit out of the park hitting people, etc. She requested a site visit for the benefit of the residents by the Commission so they can describe what goes on, where the dangerous corners are and what actually happens.

**Erik Schoenhoem** said the second time the vote was taken on funding at the Special Town Meeting, the vote was 89 to 81. It wasn't a majority of the Town that was saying this is a good idea.

A gentleman commented that his parents used to be abutters.

- East Circuit Avenue isn't represented properly. East Circuit/Naushon Avenue and Canonicus is a scary intersection.

- On of the goals of the Commission is to provide a bikeway through Oak Bluffs to Seaview and the multipurpose path. If Naushon and South Circuit are used for parking it's dangerous for bikers.
- Two fields at Veira Park are too many.
- After baseball, the kids like to go swimming. He would like them to be able to swim in West Tisbury or Chilmark.



**Christine Isherwood** said she has restored a building out of which she runs a therapeutic training center. As baseball will so drastically change the character of the park, she may not be able to run the business out of the location.

- Had she conceived that there would have been two baseball fields right across the road, she probably wouldn't have contemplated moving to the Island and locating at the site.
- A second field would endanger adults and children.

**Alley Sewell**, Canonicus Avenue, said that safety is a huge issue whether one is in opposition or support. There has been an incredible increase in traffic and speed over the last five years.

**Christina Brown** closed the session of the public hearing, continuing the public hearing to October 18<sup>th</sup>, and invited people to come back.

The meeting adjourned at 11:05 p.m.

  
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 Chairman  
  
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 Clerk-Treasurer

2-21-08  
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 2-29-08  
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