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Minutes of the Commission Meeting Held on April 3, 2008 In the Stone Building 33 New York Avenue, Oak Bluffs, MA

IN ATTENDANCE

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

P James Athearn (E – Edgartown)	P Ned Orleans (A – Tisbury)
P John Breckenridge (A – Oak Bluffs)	P Jim Powell (A – West Tisbury)
P Christina Brown (E - Edgartown)	P Doug Sederholm (E – Chilmark)
- Peter Cabana (A – Tisbury)	P Susan Shea (A – Aquinnah)
P Martin Crane (A – Governor Appointee)	P Linda Sibley (E – West Tisbury)
P Mimi Davisson (E – Oak Bluffs)	- 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)
- Katherine Newman (A – Aquinnah)	

Staff: Mark London (Executive Director), Christine Flynn, Paul Foley (DRI Analyst/Planner), Bill Veno (Senior Analyst)

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

1. VINEYARD GOLF CLUB: DRI 484-M5 – PUBLIC HEARING

Commissioners present: J. Athearn, J. Breckenridge, M. Crane, M. Davisson, M. Morris, C. Murphy, N. Orleans, J. Powell, D. Sederholm, S. Shea, L. Sibley, R. Toole, A. Woodruff

For the applicant: Dick Barbini, agent and engineer; Jeff Carlson,

Richard Toole opened the public hearing on the proposal by Martha's Vineyard Golf Partners, LLC, to modify the DRI decision so that Condition 1a reads: *To allow the construction of nine houses for members.* They would also like to build additional staff housing and a bathroom on the golf course.

1.1 Staff Report

Paul Foley gave the staff report.

- The proposed staff housing is for eleven rooms. They are offering to donate another off-site affordable housing lot.
- There was a compliance review in December. They have pretty well complied with all the conditions of the original decision.

- The applicants would like to modify one particular condition, namely that all housing must be for staff.
- In the original application, the developers proposed fifteen houses for members. During deliberations, it was decided that all housing would be for staff.
- The currently proposed houses would be limited to four bedrooms each, with a maximum of a 5,000 square foot footprint.
- Each house would be allowed a maximum managed lawn area of 3,000 square feet.
- The applicants are proposing an additional staff house with eleven rooms.
- The project was submitted by Dick Barbini, engineer/agent.
- Key regional issues include
 - The original decision stated that housing would be for staff only; is there a reason for changing this?
 - Part of the entire original site is within protected habitat. Natural Heritage wrote that no further review is necessary.
 - This area proposed for member housing has been approved for housing.
 - Bill Wilcox has added some information on turf management. There was one condition on organics. The applicants have complied with the organic condition in terms of active ingredients but inert ingredients are difficult to keep track of and the review committee suggests changing the definition.
- The project is on town water. Wastewater is hooked up to Edgartown Wastewater Treatment facility.
- The daily trip generation is twelve per unit for the market housing, plus trips for staff housing. The traffic impact would be minimal.
- The original affordable housing mitigation in the original proposal was fulfilled, including two affordable housing lots for Edgartown and an annual donation to CPI and to the Dukes County Housing Authority. If this were a separate application, nine houses wouldn't trigger the affordable housing policy; however, they are offering one off-site lot and staff housing.
- Currently there are 113 workers at the golf course.
- They allow charity tournaments. They helped Morgan Woods with their infrastructure needs.
- Construction of nine houses would generate temporary and permanent jobs.
- Nine houses would generate real estate taxes for the Town of Edgartown, possibly \$68,000 annually.
- Several houses would be visible from Dr. Fisher Road.
- The Commission has received no correspondence.
- Paul Foley showed a slide show of maps and views.

Bill Wilcox spoke about the original condition that the golf course be strictly organic.

- It defined organic as being derived from plant materials, biological organisms, or mined from natural deposits. It is an extremely difficult definition to apply to turf products. There is no organization that certifies organic pesticides as there is for vegetable operations.

- The review committee formed by the original decision has struggled with the definition and its application to new materials that have great promise, such as synthetic versions of organic pesticide. Some manufacturers won't release information about inert ingredients.
- The review committee has developed a revision to the condition to include the **four** items that are in the staff report.
 - A protocol for reviewing synthetic materials that are demonstrated to be safe providing the review committee with guidelines for review.
 - Requiring that inert materials be at least clearly not contained in the EPA's definition of toxic inert materials.
 - Allowing a little wiggle room in the fertility program. If the greens aren't kept growing at a good rate, they are prone to disease. The best way to promote growing is to apply small amounts of synthetic nitrogen fertilizer.
 - The committee would reserve the right to disprove any products if there's some indication of significant risk to the environment.

The committee has reviewed a lot of products, but it needs some guidance on how to review the projects. The help and guidance would be to revise the conditions.

Commissioners and staff discussed whether the organic condition should be part of the modification discussion. Apparently, the applicant could be considered as not in compliance with the current condition and it may make sense to deal with both modifications at the same time.

- **Chris Murphy** said he doesn't see the fertilizer issue as part of application for houses.
- **Linda Sibley** said if this wasn't part of the hearing notice, then people who have an interest in this wouldn't know that they could show up to give testimony. The fertilizer is a different modification.
- **Jim Athearn** said if the fertilizer issue had come to the Commission as a minor change, there wouldn't have a public hearing or notice.
- **Andrew Woodruff** asked if a modification is out of compliance with the original DRI. Actually, the applicant is asking how to be in more compliance.
- **Mark London** said he is concerned that, if the committee applied the condition absolutely to the letter, the golf course might not be able to use some materials that are presently being used, or would be in non-compliance if they continued to use these materials. It is in the applicant's interest to request and get this modification.

1.2 Applicants' Presentation

Dick Barbini gave the applicants' presentation.

- The major difference from eight years ago is that there is a built golf course now.
- He added that the people who built the Vineyard Golf Club did a good job and they've met the conditions.
- Based on their owners' past track record, they're asking for a modification.
- The piece of land is about 275 acres total. The only place that is developable for houses is a specific area. The only thing they're asking for on the golf course is a small restroom that would be tied into Morgan Woods sewer system
- The second thing is a dormitory for eleven beds. There is a facility now that has two duplexes and a dormitory with a total capacity of forty beds. They're losing flexibility with

two beds per room. Staff won't be increased by 20%; they want the flexibility of more single rooms.

- The third thing is member housing. His understanding was that at the 11th hour of the original DRI approval, member housing was pulled out and turned into staff housing. There were 16 proposed leased lots in the original proposal, with one building a piece. The only restriction in the decision was that all housing be staff housing.
- The owners would like to take the sixteen lots, make them a little smaller at 22,000 to 30,000 square feet, and put greenbelts around them. The structures would be limited to 5,000 sq. ft. and 4 bedrooms.
- Construction of the houses would provide more jobs in construction and maintenance. The homes would increase the tax base by about \$68,000. Town service increase would be minimal. These won't be year-round residents. The homes will use town sewer and water.
- Detriments are that we don't want nine more houses. But the benefits outweigh the detriments. The applicants will provide two affordable house lots, with the condition that they be administered through the Edgartown Affordable Housing Committee. They'll provide one lot after the first golf club lot is lease, and the second lot after the fifth golf club lot is leased.
- There will be a 99 year lease on the golf club lots, which will be under the guidance and supervision of the golf club.

1.3 Commissioner Questions

Jim Athearn asked how the proposal fits with zoning. **Dick Barbini** said that this is R 60 with acre and a half lots. It doesn't have to go to Edgartown Planning Board because it's not a subdivision. If approved, it will be Zoning Board of Appeals to modify their original decision. The affordable housing lots aren't specifically located yet.

Dick Barbini explained that staff housing would be maximized at 51 beds. If they need 51, they'll maximize it, but they're actually looking for more flexibility for staff. They'll provide up to 51, but how they're used is up to staff. They're having a tough time telling people that housing will be provided but they'll have to share a room.

John Breckenridge said that the original presentation made by Mr. Larkin said that the approach of MV Golf Partners was to provide environmental and economic benefits; what are the environmental benefits of this new proposal? **Dick Barbini** said limiting lawn space, leaving buffer areas, limiting lighting to code requirements, and including energy efficiencies are all environmental benefits; however, some natural vegetation will be destroyed.

Andrew Woodruff asked about need for the housing and how it impacts the golf course.

Dick Barbini said that when this original development was brought to the Commission, one of the major parts of the ability to build it was that there was going to be member housing. It was an integral part of the original economic package.

- The developers are looking to go back to member housing to incorporate it into their profit scheme.
- The majority of golf courses are built with member housing. It offsets the expense of building golf courses, which are very expensive.

Doug Sederholm said that Mr. Barbini has raised a number of benefits, but they were all available when the proposal was originally approved, with only staff housing on the leased lot. **Dick Barbini** said yes, that's true; the developers feel that they're good neighbors, but they would like to recoup the benefit to them of selling member housing.

Dick Barbini said the caretaker house lot will be sold off for member housing. The caretaker house will be moved to the side of the road with staff housing or off site.

Mimi Davisson asked if the developers had considered clustering the housing more, and asked about tennis courts and pools on the lots. **Dick Barbini** said they're pretty clustered now; if these were normal lots they'd be 1.5 acres; these are 0.5 acres; there are no intended restrictions on pools and courts; the majority will probably have pools, but not courts; they would have to apply to the ZBA for a special permit for a pool.

Linda Sibley asked about restricting the amount of lawn. **Dick Barbini** said they're not limiting the building envelope, but the house footprint is limited. **Linda Sibley** said it would be helpful to see a development envelope and to understand how much of the lot can be developed.

Linda Sibley said that the homes are year-round but are lived in for a few months a year. Most of the houses will be kept at least at low heat when not lived in. It's an environmental issue that many houses are kept at lived-in condition when no one's in residence.

John Breckenridge said there seems to be a change in the marketing strategy of the homes; the original proposal was for 15 houses at 3,000 sq. ft.; now they're proposing 9 houses at 5,000 sq. feet. **Dick Barbini** said the current trend and demand is for larger houses.

Mimi Davisson asked for clarification that the land would remain under the DRI but the houses themselves would not be separate DRIs. The conditions for lighting and fertilizer and landscaping would apply to houses if the Commission so specified.

Doug Sederholm clarified that the house footprint is limited to 5,000 sq. feet.

Susan Shea asked about lawn space and open space. The Commission's policy is that 60% be retained as open space. **Dick Barbini** said that about 50% of the land, excluding the leased lots, is open space.

Jim Athearn asked how many members the golf course has. **Dick Barbini** said that they are limited by permit to 300 memberships and they're currently about 12 shy of 300; by permit, they're required to provide 125 Island memberships, and currently have 162 Island members.

Jim Athearn asked whether it would be more useful to have thirty condos that members could stay in for a few weeks at a time. **Dick Barbini** said he believes that there's no way they could get 30 condos approved on the site; he added that the members wouldn't want condo housing and believes that there are not many members who want a house on the golf course.

Chris Murphy was hoping that the developers would come in with something that would be really dramatic and have a positive social impact. He doesn't see how they can ask the Commission to overturn a hard-fought decision for limited benefits.

Dick Barbini said that this is the best proposal. They're giving two affordable house lots for a nine lot subdivision, and the Commission policy doesn't require any affordable housing mitigation for this proposal. They've sweetened the offer as best they can.

Mark Morris said the developers want to build nine houses. They could build 16 houses here and not say a word about it.

Dick Barbini said that the \$2.5 million figure on which to base the estimated tax revenue is in the ball park

Doug Sederholm asked for confirmation that what was approved was only staff housing.

Mimi Davisson asked how generously the developers could apply the criterion for 'staff' for housing. **Dick Barbini** said that if the space were available, the developers would probably provide housing for construction workers or landscapers; it's still up in the air whether the owner or the club would build the house; they could, in theory, provide staff housing for other businesses, but in general it probably wouldn't be possible.

There was a discussion of the organic condition.

- **Doug Sederholm** asked for comments on Bill Wilcox's proposal to modify the organic condition.
- **Dick Barbini** said this is the first time he's heard the word non-compliance. They're having a very difficult time getting lists of ingredients. It's a critical issue. He's heard of problems with definitions.
- **Bill Wilcox** said the review committee has been in a difficult position trying to figure out pesticides. In the strictest definitions, some of the materials are not compliant. They're asking for some explication of "organic" given the world of what's out there for pesticides for turf.
- **Jeff Carlson** said he's part of the committee that formulated the four points. Bill and everyone on the committee have worked on it. He's concerned with the word "non-compliance" as well.
 - There's not a really good definition for organic and turf. There is the word "derived" in the definition.
 - The golf course has worked really hard to be in compliance. They're trying to fine tune and come up with an organic definition for turf. They're far ahead of the curve of organically managed turf. They're probably one of three organically managed golf clubs in the world. It's really been hard to manage it.
 - They're comfortable with what's been proposed. They're almost having to make the rules as they go. If they can't take up this issue in this forum, Vineyard Golf could come back and reapply for this modification.

Jim Powell asked how much non-organic pesticide could be used. **Linda Sibley** pointed out that would be up the review committee.

Bill Wilcox listed the members of the review committee: Rick Johnson, Sherriff's Meadow Foundation; Dudley Levic, Ponds Advisory Committee; Matt Poole, Board of Health; Jeff Carlson, and Jane Varkonda.

1.4 Public Officials

Michael Donaroma, Edgartown Selectman, said the one thing that the Board was concerned with was the tax ramifications. They also wanted to hear about the affordable housing. Personally, the only thing that's missing is all the good work that the Commission originally did. The organic thing is new in the world of golf. The whole of the United States is looking at the golf course. It deserves a little support.

1.5 Public Comment

John Best said that, as a former Commissioner, he voted against approval of the original DRI.

- The housing was very much a part of the decision-making process. They were weighing the benefits and detriments of the golf course versus the alternative of housing.
- The potential of the [previously approved] 140 units of housing was negative compared to a golf course.
- He doesn't recall anything positive about proposed membership housing and doesn't recall anything specific about 13 staff houses.
- There is a potentially huge opportunity for profit for using this land and tying it into memberships.
- He suggested that Commissioners read counsel's letter. It's not the Commission's role to insure the profitability of a project by approving conditions after the fact.
- The most important aspect of this project is tying it into the sewer. They will be taking up capacity that could be more useful for the town elsewhere.
- The Commission has been concerned about the proliferation of trophy homes.
- Denial neither denies anyone their rights nor constitutes a taking

Russell Walton, chair of Dukes Conservation District, asked whether stormwater would be channeled into the sewer system. **Dick Barbini** said just wastewater will be.

Chris Murphy suggested that Dick Barbini look into returning wastewater for use onto the golf course. **Dick Barbini** reported that Massachusetts is getting close to promulgating new regulations on water re-use; the effluent from the Edgartown Wastewater Treatment plant doesn't yet meet the requirements for re-use; there are very strict requirements when effluent is sprayed on places that might be coming in contact with humans; it's a whole additional treatment process.

Andrew Woodruff asked whether this is about generating additional income for the golf course.

Dick Barbini explained the following.

- The membership was capped at 300 because of the kind of golf course that was built. It's made that way so members can play whenever they want.
- He looks at this building parcel as the last part of the 275 acres that hasn't been developed.
- The frost bottom was developable. It's not a wetland. It was protected as a natural feature. It could have been developed. Sanford Evans raised a stink.
- Contrary to what John Best said, there is a lease plan for 16 lots that was part of the last decision on which the developers could build staff housing.

Mimi Davisson asked whether the developer would consider being out in front by putting green requirements for sustainable energy. **Dick Barbini** said he would have to ask the owner.

Mark London asked about air conditioning, and addressing the question of how the buildings would be managed when the homeowners aren't there.

Mark London asked about the cost of treatment for wastewater re-use. **Dick Barbini** said the polishers that would treat the effluent to an appropriate level of reuse cost many hundreds of thousands of dollars; the golf is open to and in favor of water re-use; it's not cost-effective at this time for the Town to change their treatment; he sure the golf course would be interested.

John Best requested that an August' 07 *Vineyard Gazette* editorial on the golf course be entered into the written record.

Dick Barbini reiterated that the capacity of the Edgartown Wastewater Treatment Plant is extremely capable of handling the nine lots. It's not fair to say that the nine lots will be taking away capacity from other, more worthy, projects.

Richard Toole closed this session of the public hearing. He continued the public hearing until April 17th for the purpose of receiving written testimony.

2. MIDDLE LINE ROAD: DRI 597 – PUBLIC HEARING (CONT.)

Commissioners present: J. Athearn, J. Breckenridge, C. Brown, M. Crane, M. Davisson, C. Murphy, N. Orleans, J. Powell, D. Sederholm, S. Shea, L. Sibley, R. Toole, A. Woodruff

For the applicant: Warren Doty (Selectmen); Riggs Parker (Selectman); Frank Fenner (Selectman); Chuck Hodgkinson (town employee); Andy Goldman (Chilmark Affordable Housing Committee).

Paul Foley explained that the Phase 2 archaeological study was completed and the study made the following recommendations:

- Middle Line Road is not considered eligible for the National Register of Historic Places.
- It was a short-term activity site area where a quartzite boulder was reduced to flakes and any tools were removed from the site.
- The site's research potential has been exhausted and is not likely to yield additional information beyond that which is already known.
- No further survey or excavation is recommended.

Doug Sederholm pointed out that the survey cost the taxpayers \$38,000, and commended the Town for being thorough.

Paul Foley referenced a letter from Blair and Diane Brady Emin received today.

- They reaffirmed their concerns about adequate supplies of groundwater.
- They would like to be assured of adequate screening between their property and the proposed houses.
- They cited the USGS survey that outlines the unreliable availability of groundwater in this area. They feel the Town should not proceed until they are sure that there is adequate groundwater for the project.

Bill Wilcox, in response to a question from John Breckenridge about groundwater, explained.

- In that part of Chilmark, it is difficult to predict what the subsurface geology looks like. Finding groundwater can be iffy.
- Subdivision regulations require that water be on the site before it's sold.
- Water availability to multiple wells might be an issue if the aquifer is at a confined layer with no recharge area. If there's a recharge area, then availability probably wouldn't be affected; it depends on the size of the aquifer,

Chris Murphy explained that under Chilmark's by-law, a site has to have a viable well before the building site is approved. It's the next step in the process.

- If the MVC and Town approve the project, then they move forward with drilling the wells.
- If some issues arise in that process then they might have to come back. There's no guarantee. Some development has to take place to get to the well site.
- They'll clear enough to get to the well site. They'll do it in such a way to preserve as much of the lot as possible.

Warren Doty explained that at Town Meeting, there are two warrant articles for improving roads, bringing utilities, and drilling the wells. This is no different from any development.

- Chilmark had a feasibility study done by South Mountain. It is a developable site.
- The USGS survey cited in the letter from the abutters about the difficulty of finding water in this area was a 1975 survey. We've progressed a long way since then.

Doug Sederholm noted that the leeway for well sites is very tight.

Susan Shea asked what the town will do if a neighbor's well runs dry and it looks like it's because of the development. **Chris Murphy** said it's the same answer as any development; everyone has an equal right to the subsurface groundwater. **Warren Doty** said the Town was not doing test sites, it is drilling wells, with \$13,000 per well appropriated.

Christina Brown said the Commission looks at the broad picture. Then the town boards do their serious work. The Board of Health will be looking at the wells. If there are things that don't work, the Town will deny it and send it back to us.

Doug Sederholm asked if the applicant has thought about how they might address the issue with their neighbor if the new wells do affect the neighbor's well. **Riggs Parker** said there are always possibilities for well failure; to get into a what-if proposition is not useful.

Warren Doty explained the process.

- Chilmark came before the Commission with a Form B subdivision plan. They've done a lot of improvements. They spent a significant amount of money for the new intersection, and they've addressed other concerns such as fire safety.
- Their feeling is that they've gone through a long process that 's been very open.
- They're asking that the Commission approve the plan at this meeting so they can go back to the planning board.

There was a discussion of landscaping.

- **John Breckenridge** asked whether there is a formal landscape buffer offering.
- **Warren Doty** said there is a plan that was presented as part of the last hearing.
- **Jim Powell** asked whether there wasn't a misunderstanding with regard to landscaping.

- **Riggs Parker** said there is a 50-foot buffer zone and trees will be planted where the Emins want them on the Emins' side.

Chris Murphy pointed out that the meeting was held open mainly to respond to the archaeological study.

George Davis, representing the Emins, spoke about various aspects of the project.

- He asked about water and emergency services water.
- The 1975 USGS survey is the most current survey there is.
- The agreement between the parties about screening was related to the access property.
- Even though they agreed to 36 trees, they're not happy with that amount. They're hoping that the Commission will look at the screening and recommend above and beyond what the agreement calls for. The agreement doesn't call for trees to be planted on the Emin property but they are amenable to trees being on their property.

Doug Sederholm noted that there is a fire service tank.

Riggs Parker added that the agreement says that the buyer will provide screening on the property line.

- Screening will consist of 36, six to seven foot high trees, approximately ten foot on center as recommended by David Handlin.
- When the time comes for the placement of the trees, sellers will have reasonable input for placement thereof. It is important that the Emins have input on the placement of the trees.
- Chilmark has agreed to a 50% greater setback and screening than required by the by-laws. The Emins have not agreed to a 50-foot setback on their side of the lot, nor to adding screening.
- It's unseemly for the Commission to consider trumping an agreement that's been negotiated over a very long period of time between two other parties.

Russ Walton said the original agreement recommended red cedar. It's better to use white pine and holly. Placing the trees should be a matter of situating the trees so that they're staggered.

Diane Emin said they're happy with the 36 trees. However, they maintain that they don't think that it's enough.

- They had the same experience in West Tisbury, where a house was built fifty feet away. The project is for six houses, two of which are duplexes.
- Yes, it's a 21-acre piece of property but only one section, along their entire boundary, is being developed because of the well siting issues.
- They're trying to make the best of the situation, but they're worried. They're losing privacy. It's no longer going to be woods. It's going to be a village. All they're asking for is a little more screening.

George Davis explained that the agreement for 36 trees related to a separate issue, the sale of the access lot for \$210,000 plus the trees and other concessions. They're hoping that the Commission will recognize the need for more screening.

Riggs Parker said the agreement is negotiated and the Emins have signed it. If you look at this historically, it was bought to be an expansion of the dump. He feels they've solved the regional issues with the buffers and screening.

Christina Brown reminded Commissioners that the town verbally offered to put a walking easement on Holman Road and on old Middle Line Road. In the interest of public, Island-wide, she hopes those easements are put in writing.

Warren Doty explained that one of their purposes in buying the Jacksa Lot was, with the cooperation of the Land Bank, was to take Middle Line Road and move a foot trail through the Jacksa Lot off Tabor House Road along the edge of the landfill and connect with Pasture Road then Peaked Hill Road.

- They had a trail planned with the Land Bank which was not going to be the old road, but which was going to be the new road and carry a trail off Tabor House Road. That would be the continuous trail off the black top. There will be a cross-Chilmark trail starting at Tea Lane Farm connecting to Middle Line and off Tabor House and to Peaked Hill.
- The trail plan doesn't involve the old way to get to Tabor House Road. They intend to keep Holman Road as an open trail, linking it to North Road, which links it to Great Rock Bight. The easements have been purchased to carry a trail from Tea Lane to Great Rock Bight.

Richard Toole said that wasn't what was said last time, but it sounds good.

Linda Sibley said it would be great if the applicant could put the trail plan in writing and consider it as an offer.

Warren Doty said the trail plan is in cooperation with the Land Bank. He added that there will be no development on the newly purchased lots. They might reserve the right to build a utility building, but they are not be used for resident lots.

Richard Toole closed the public hearing.

Chris Murphy asked if it would be appropriate to move that the Commission move on the project at this meeting. **Doug Sederholm** said he would love to be able to accommodate the wishes of the applicant, but there are other items on the agenda that will likely take up all the time available.

Chris Murphy moved, and it was duly seconded, to waive referral to LUPC.

- **Jim Athearn** said there are a number of issues still on the table.
- **Warren Doty** said they would like to have the Form C approved by the Planning Board before the Town Meeting.
- **Andrew Woodruff** said he respects that the applicants have been waiting a long time but he finds that when Commissioners rush a decision, they overlook things.
- **Doug Sederholm** said as much as he'd like to make a decision at this meeting, it's not fair to the process. The Commission will meet in one week and deliberate and decide on the application next Thursday.

A voice vote was taken on waiving referral to LUPC. In favor: 13. Opposed: 0. Abstentions: 0. The motion passed.

Warren Doty said he knows the Commission works hard, but all three selectmen and three town employees came to the meeting. They've been there for 2½ hours, and they've been before the Commission numerous times.

Doug Sederholm said he felt the characterization was unfair.

- There's a process the Commission goes through and Chilmark didn't tell the Commission that they wanted a vote at this meeting. The Commission can waive referral to LUPC but there are three other things on the agenda for this meeting and it is already past 10:00 pm.
- The public hearing had to be continued to April 3rd because of the archaeological survey and the MVC did not receive the results of that study until this past Monday. Furthermore, the MVC could not pre-suppose the results of the archaeological study.

Linda Sibley said the decision process is complicated. The Commission has to go through all the benefits and detriments, and specify the offers. Waiving LUPC, and reviewing offers as a whole body, requires a couple of hours to organize the decision in order to have it be a valid decision. No matter how much we want to accommodate an applicant, we are legally bound to do the process.

The Commissioners agreed by consensus to ask staff to prepare a draft decision for possible consideration at the next meeting, after the deliberation and decision.

3. CORNERSTONE/MV ELECTRIC: DRI NO. 588M – WRITTEN DECISION

Commissioners present: J. Athearn, J. Breckenridge, C. Brown, M. Davisson, C. Murphy, J. Powell, D. Sederholm, S. Shea, L. Sibley, R. Toole

Commissioners made the following corrections:

Line 52: Delete 'public' . . . notice of a public hearing.

Line 154: Correction . . . high efficiency furnace

Line 253: Correction . . . exterior lighting on the building

Section 4.1 Line 280: rewording added after Section 6.1

The Town's building inspector shall not issue a Certificate of Occupancy until it has received a Certificate of Compliance issued by the Executive Director or DRI Coordinator of the Martha's Vineyard Commission confirming that the following conditions in this Decision have been satisfied: 1.1, 1.2, 3.1, and 3.3.

Linda Sibley moved, and it was duly seconded, to approve the written decision as corrected. A roll call vote was taken. In favor: J. Athearn, J. Breckenridge, C. Brown, M. Davisson, C. Murphy, J. Powell, D. Sederholm, L. Sibley, R. Toole. Opposed: None. Abstentions: S. Shea.

4. PLUMBERS SUPPLY: DRI 206M. – WRITTEN DECISION

Commissioners present: J. Athearn, J. Breckenridge, C. Brown, M. Crane, M. Davisson, C. Murphy, D. Sederholm, S. Shea, L. Sibley, R. Toole

Chris Murphy suggested two additions to Section 5, Conditions:

Line 262: Revision *The Town’s building inspector shall not issue a Certificate of Occupancy until it has received a Certificate of Compliance issued by the Executive Director or DRI Coordinator of the Martha’s Vineyard Commission confirming that the following conditions in this Decision have been satisfied:*

Section 5: Addition *Chris Murphy’s*

Linda Sibley, referring to the second bullet under Section 5.8, moved, and it was duly seconded, that applicants sign a statement saying they understand that the approval is contingent on the development proceeding as proposed and that any substantial change of the proposed development as submitted shall revoke the approval. F A voice vote was taken. In favor: 10. Opposed: 0. Abstentions: 0. The motion passed.

Line 232: Revision *. . .the residence on the lot will be . . .*

Line 250: Correction *. . . NStar*

Chris Murphy moved, and it was duly seconded, to approve the written decision as corrected. A roll call vote was taken. In favor: J. Breckenridge, M. Davisson, C. Murphy, D. Sederholm, S. Shea, L. Sibley, R. Toole. Opposed: None. Abstentions: J. Athearn, C. Brown, M. Crane. The motion passed.

5. EDGARTOWN SPECIAL WAYS REGULATIONS: CONFORMANCE CONFIRMATION

Commissioners present: J. Athearn, J. Breckenridge, C. Brown, M. Crane, M. Davisson, C. Murphy, J. Powell, D. Sederholm, S. Shea, L. Sibley, R. Toole

Doug Sederholm clarified that the issue is whether the final version of the Edgartown by-law is consistent to what was approved by the Commission. The yellow highlighting in Jo-Ann Taylor’s handout is wording that was added or clarified and then passed.

Jim Athearn said he doesn’t see anything that would rise to the level of being inconsistent to what the Commission voted on February 7. There doesn’t seem to be anything substantially different.

Doug Sederholm said that, although this isn’t a public hearing, he would give Ben Hall an opportunity to comment briefly on the by-law.

Ben Hall said he’s passionate about this by-law.

- The by-law is basically turning upside-down the laws of the State and taking away the rights of people, some of whom are handicapped, to get to their property. He doesn't believe this was the intention the Commission had when it sent the proposal to Edgartown to be voted on.
- Edgartown made changes to the by-law and then snuck in Article 2, which gives the Town the right and the obligation to arrest people who are driving to their property unless they are authorized to do so under the by-law.
- The Planning Board had Article 2 in their back pocket the whole time and didn't have the guts to bring it before the Commission.
- This is no less of a registration requirement for individual people than was required in 1935.
- The Planning Board would not even bring to the Commission that they were going to have the police out there arresting people for driving down roads they've been driving down for decades.

Jim Athearn suggested that Article 2 is up to the attorney general and wasn't before the Commission.

Ben Hall stated that he believes that the Commission does have power over the article. The Special Ways wouldn't exist but for the power the Commission gave the Town to enact the by-law.

- He believes that Jo-Ann Taylor's remark was inaccurate that Chapter 831 restricts DCPC regulations to those types of development regulations specifically articulated in Section Three of the Commission's act. That is not true. Section III also goes on to say that the Commission can enact other regulations.
- This is a use regulation within the Commission's purview and Edgartown didn't bring it before the Commission to decide whether it met the development guidelines. Nowhere in the development guidelines does it say that the police can go out and arrest people for driving on roads where they exert a pre-existing right.
- Tied into the by-law itself is new language that was not there before. Doug Sederholm brought it up and the Planning Board agreed at the time and then changed it before the Town Meeting and they changed it without coming before the Commission.
- The question was whether the issue of whether you could drive up and down those roads would be decided by another forum. Everyone agreed and understood that if you had a right to go up and down those roads, the Planning Board and no board in the town was going to decide whether you could go up and down the road. It's a pre-existing use and use that's allowed by right by the Edgartown by-laws before this by-law was enacted.
- They've anointed themselves as the only board in town to adjudicate whether or not a person has an active vehicular right of way.
- To continue to exercise his right to go up and down the road to his property he would have to go to the Planning Board and ask for permission. It would be a misdemeanor offense without permission.
- They have set up a separate police force of volunteer police of citizens they've deputized.
- It's a registration requirement.

- Article 14.2.d.7, nowhere in the by-law is motorized access allowed unless you receive permission from the Planning Board. The only evidence should be whether you own fronting on the way. He asked whether it should be the building inspector deciding whether you have a right on the way.

Linda Sibley said the Commission's purpose is to find out if the regulations are consistent with the guidelines and with the purposes of the DCPCs and the purposes of Special Ways.

- Commissioners are not constitutional scholars. She believes the regulations are consistent with the purposes, even though Ben Hall might have some good arguments that the regulations unfairly restrict your rights. He may have to take this to court.
- The Commission doesn't have the authority to say if something raises constitutional questions.

Doug Sederholm said that there are other forums in which Ben Hall can question the by-law if he feels the Town has passed something inappropriate. **Ben Hall** said the Town passed the by-law because the Commission gave them the authority to do it; in no other town has there been an express prohibition about driving to your own property on your own road. **Linda Sibley** said in West Tisbury, there are sections of Special Ways where you can't drive; implicitly, the result of the by-law could be someone not being able to drive to their own property but they aren't as explicit about it.

Ben Hall said that Edgartown's by-law violates the Americans with Disabilities Act.

- In order to get a special permit, if they don't want to give one to you otherwise, you have to say that the development, uses or structures for which the imposition of these regulations would deprive the landowner of all economically viable use and value of the parcel of land owned or controlled by the applicant.
- Section 8 of the Commission's regulations says, essentially, that you can't put in a regulation that will result in undue harm to cultural economic or historic values. They are stating that they can take almost all economically viable use of the property and only then would they consider giving you a special permit. That's the only way he sees an ADA exception as possible.
- The new guidelines say that the goal of the guidelines stays the same and it requires that the property can be developed as primary vehicular access where no alternative access exists. The guidelines allow that to occur and the by-law does not necessarily.
- It also violates the guideline edict that you get any permitted use in the special ways district provided the use does not result in direct vehicular access to the public way.
- There is a prohibition of removing vegetation within 20 feet off the Special Way that would prohibit any agricultural use in that section of the Special Way District which is absolutely contrary to the guidelines. Without having an agricultural exemption within their guidelines, they violated Commission guidelines. It doesn't provide for that and you should reject it because they haven't provided for agricultural use in the district which is allowed as of right.
- He quoted from Crocker's Book of Common Forms. Use of a cart for passage along a way constitutes a general right of way for vehicles and doesn't restrict its use to horse drawn vehicles or limit the way to the width of vehicles in common use at the time. The

progression from horse to ox teams to tractors and trucks is reasonable and accords with common experience.

- The Commission is not requiring the Town to have an ADA exception. The Commission is also not complying with the Commission's guidelines that say the manner in which the Special Permits shall be administered be set forth in the guidelines. That has never been in any staff notes but it's required that the by law itself set forth exactly what has to be provided to the board at the time one is applying for a special permit. Section 6 that created the road district states that.
- The Act, in Section 10, says that four towns boards are supposed to be referred to the regulations and four town boards are supposed to work on the regulations to make sure they're all in conformity with what they'd like to see. Only the Planning Board worked on this. Only the Planning Board submitted something to Town Meeting. No other Town Boards worked on this. They had no input whatsoever into it and it was never discussed at any meetings he attended.
- He finds, mostly for the absolutely abhorrent reason that one has to go register to drive on a private road and authorizes the Town to stop people and ticket or arrest them for driving down their own road to get to their property which is the only way to get there because they aren't 'authorized.'
- It's something the Commission should dismiss as not in conformity with any guideline of human conduct, let alone your own guidelines.

Chris Murphy commented on Article 2. The Commission was told that nothing it was approving would interfere with anyone's current rights, and it seems that Ben Hall has made a good argument that Article 2 violates those rights. He suggested this question be referred to Town Counsel. He agrees that Article 2 isn't before the Commission; but if it is an amendment to Town by-laws based on the Special District the Commission just created, he questioned whether it should be before the Commission as a change of rule to the Special District just created.

Doug Sederholm said he believes that 'persons authorized' under Section 14.2.2 means that if the Planning Board finds that there has been active vehicular right of way preexisting this by-law, then those would be the persons that are authorized. **Ben Hall** said Section E states that the nature and extent of the use can't be increased without a special permit so that the people on the special ways are grandfathered for the nature and extent of the use; if they add another car, the second car might not be authorized; your liberty could be interrupted if you are stopped by a constable or police officer.

Doug Sederholm said he wanted Commissioners to be aware of Article 2, but it is not before the Commission. The Commission is being asked to pass on Article 1, based on what has been discussed and approved.

Linda Sibley asked whether it would be appropriate to ask our counsel whether it would be appropriate for the Town to use our DCPC designation this way. **Doug Sederholm** said it would be prudent to ask our counsel whether Article 2 falls within our purview, and whether the Town can use the DCPC designation, and whether Article 2 is an expansion of what we passed.

Jim Powell moved, and it was duly seconded, that Article 1 be approved as in conformance with the Commission's guidelines for the Special Ways District. A

roll call vote was taken. In favor: J. Athearn, J. Breckenridge, C. Brown, M. Crane, M. Davisson, J. Powell, D. Sederholm, S. Shea, L. Sibley, R. Toole. Opposed: None. Abstentions: C. Murphy. The motion passed.

The meeting adjourned at 11:00 p.m.



Chairman



Date



Clerk-Treasurer



Date