

**Edgartown Planning Board**  
**Town Hall – Selectmen’s Meeting Room**  
**Tuesday, February 15, 2011 – 6:30 p.m.**  
**Minutes**

Members in attendance: Alan Wilson, Chairman. Robert Cavallo, Fred Mascolo, Michael McCourt, Robert Sparks and James Cisek, Alternate.  
Staff in attendance: Georgiana Greenough, Assistant, and Bricque Garber, Part-time Clerk.

The meeting was called to order by Chairman Alan Wilson at 6:30 PM.

**Arundale, Form A (28-234), 26 Louis Field Rd., Sweetened Water Farm subdivision**

*In attendance: Doug Hoehn, Schofield Barbini & Hoehn, Inc.; Peter Vincent, Esq., Pam & Michael Dolby, Gail & Bob Avakian, Cindy Meisner, Mark DiOrio, Mark & Karel Mattison, Eric Peters, Esq.; Floyd Norton*

Chairman Wilson opened the meeting with a Form A application for Dwight Arundale. Mr. Hoehn of Schofield, Barbini & Hoehn, Inc. presented the application and provided the board with ANR plans to divide “Lot 3” into two lots. Mr. Hoehn said the application before the board is the division of a 2.59 acre parcel of land in R-20 (1/2 acre zoning) with road frontage for 2 lots. He said Sweetened Water Farm (SWF) Subdivision was approved by the planning board under a Form C process in 1973. There are 3 types of roads for a Form A; a public road (which this is not), a way in existence prior to subdivision control law (which this is not) and a Way approved by a full planning board process (which this is.) This is a well maintained dirt road as seen by the planning board members at a recent site visit. Mr. Hoehn said it is adequate for division. Mr. Arundale asked to have a driveway easement on the plan to allow for access to both lots as a branch of the existing driveway to lot 2.

Peter Vincent, attorney for Mr. Arundale, is here to address any issues from the homeowners in the community. Mr. Vincent said the HOA was put into place in 1973 for 30 years [sic]. On November 15, 2003 those restrictions disappeared. There was no renewal until 2005 and subsequently recorded in 2007. This owner (Arundale) did not sign the document with regard to an HOA and has maintained there are no restrictions on this property.

The Chairman asked if 100% of homeowners need to sign the document renewing the restrictions. Mr. Vincent said that this rule applies only if the document is signed prior to the expiration. Again Mr. Wilson questioned Mr. Vincent about the percentage of signers needed for the ‘new’ document in regard to sub-division restrictions. Further discussion ensued regarding HOA rules and state law requirements. Mr. Vincent maintained that his client did not sign the document and was not bound to any subdivision rules. Mr. Sparks, Mr. Wilson and Mr. Mascolo asked about a legal opinion from Town Counsel. Mr. Mascolo asked Ms. Greenough to get a copy of the legal opinion for the board. Ms. Greenough left the room.

Mr. Sparks asked Mr. Hoehn if the subject road is a 30’ wide road? Mr. Hoehn showed the original road plan of a 40’ way changing to a 30’ way. Pam Dolby, subdivision resident, asked to see the road plan. Mr. Sparks asked if there are any vacant lots in the subdivision. Ms. Dolby

said there is one but it is owned.

Mr. Mascolo asked if everyone else signed the homeowners' agreement. Mr. Vincent said no. He said most of the lot owners have signed the covenant restricting the subdivision. When this buyer (Arundale) bought the lot he was told the restrictions did not apply to this lot. Attorney Vincent said the state statute restricted the original 100-year subdivision covenant to 30 years.

Ms. Greenough returned and delivered, to the board, an opinion regarding the Arundale Form A from Attorney Eric Wodlinger, who substituted for Ron Rappaport as Town Counsel had a conflict of interest in this case. The document was summarized by Chairman Wilson. (Exhibit A.) The attorney's opinion recommended that the planning board endorse the Form A plan. Chairman Wilson did not read the entire opinion into the record. He asked if any one present from the public, was in favor of this subdivision. No one responded.

Mr. Wilson asked if there was anyone, from the public, in opposition. He asked that those wishing to speak in opposition to please sign in. Mark DiOrio of 21 Louis Field Road, Sweetened Water Farm read a prepared statement in opposition to the subdivision (Exhibit B.), citing several cases as provided in his letter to PB several months ago.

Cynthia Miesner, resident SWF, spoke in objection to the subdivision making the argument that there will be a major impact on the entire subdivision which may result in adding an additional 25 houses if carried to its logical conclusion.

Gail Avakian, resident SWF, has questions regarding utilities, electricity and tie-in to existing utilities. She was answered from the floor that the electricity is private and the homeowners do not have an obligation to subsidize additional houses, and that the utilities infrastructure was designed for 15 lots.

Chairman Wilson said this is why there are HOA agreements. This is a problem the subdivision may face.

Pamala Dolby answered to say the cable belongs to us. Sweetened Water was a model subdivision in cooperation with the town of Edgartown and in accordance with all the rules. She said she understands the ANR and has worked in zoning for the town of Edgartown for some time but.... "Sometimes common sense must prevail." The Planning Board approval of this subdivision was for 15 houses, cable for 15 houses, and stalls for 15 horses. Yes, covenants have run out but she has done research and cannot find a single case of subdivision allowed under these conditions. There is another person (in the subdivision) who has not signed the covenants. She believes the decision made tonight could set the flavor for this subdivision and much thought should be put into any decision before it is made.

Bob Avakian, resident SWF, is opposed to this subdivision and said the homeowners own the road. He said he has questions regarding adding water to the many lots that could be created.

Eric Peters, Esq. of the Vineyard Open Land Foundation read a prepared statement regarding land plans (Exhibit C.) This was the first planned subdivision and probably the most visible.

There was the possibility that 110 houses might have been built here if maximum density was observed. Mr. Peters gave handouts to the members of the board and reiterated that this subdivision was created for 15 lots and careful thought was taken in planning this subdivision. Mr. Peters said this plan does not conform, that documents supporting the 15 lot subdivision are in the title for the land, and that the dirt road is not sufficient for more subdivision.

Mark Mattison, resident SWF, an immediate abutter, stood to say he is opposed to the (Form A) division saying that he has lived there for decades and it would be terribly distressing to have understandings they have had for 35 years overturned for one applicant.

Michael Dolby, resident SWF, is also opposed to the division, describing the disturbing visual affect it would have on the rolling fields on the approach to Edgartown if further subdivision is made, saying it will be offensive.

Mr. Sparks asked Mr. Vincent, "How do you respond to the fact that your client may not have access to roads or utilities?" Mr. Vincent said his client will have access.

Mr. Floyd Norton, West Tisbury Road stood to say he is definitely opposed. Mr. Sparks asked Mr. Vincent about easement for utilities. Mr. Vincent said Mr. Arundale has an easement even for new utilities. There was further discussion regarding electrical service.

Mr. DiOrio maintains there are regulations recorded that are clear regarding "Rights of Way" for 15 lots only and he said this subdivision violates the rules and further that this was not the intention of the original subdivision. Mr. DiOrio added that if this is approved, the homeowners are not obligated to finance any improvements to the road or utilities by virtue of the obligations and declarations approved by the planning board in 1973 for a subdivision of 15 lots. Mr. Vincent said his client did not sign the HOA rules and regulations and the conditions adopted by the HOA do not apply to Mr. Arundale.

Mr. Wilson asked the board if they feel comfortable making a decision at this time.

Mr. Vincent said that his client is not non-sympathetic to the home owners and will agree to a statement that there will be no further subdivision.

Mr. Mattison said Mr. Arundale has taken down the home that existed on the lot while other owners were compliant in building their homes based on the open space plan. Mr. Arundale has already staked a building that is not in compliance with the original subdivision plan.

Mr. Arundale has abused the conservation regulations, Ms. Avakian said, and based upon the actions of Mr. Arundale with regard to the conservation of the land, she does not trust him.

Ms. Dolby spoke again to precedence for more subdivision, saying Mr. Arundale could have 5 lots based on the size of his parcel. More discussion ensued regarding open space, field, home location, etc.

Mr. Sparks made a motion to continue this application for 2 weeks, seconded by Mr. McCourt.

The motion was passed unanimously.

**Stop & Shop, (20A-57.1) 239-241 Upper Main St, SP: Display and sell garden products.**

*In attendance: Matt Guilman, Assistant Manager, Stop & Shop*

*Materials provided: None.*

Chairman Wilson opened the public hearing by reading the public notice. Matt Guilman spoke for Stop & Shop for a plan is to set up outdoor floral display on black racks on the right side of the building as you face the building the same as in years past. The site visit was done by members of the board, this morning. Mr. Wilson stated that the planning board has some concerns. Mr. Mascolo said that a bench was to be provided for elderly on the inside of the store. Mr. Guilman said the bench is there. Mr. Wilson said that the bike rack is in poor condition and there is a problem with the black top. Mr. Guilman said the black top will be repaired and has been repaired many times. He also said the bike rack will be repaired or replaced and moved to a better location, noting there are two bike racks. One is in good order and the other will be repaired.

James Cisek spoke in support of the proposal saying that the place has been kept clean and a good job is done there.

John Hawks (Middletown Nursery) spoke and said he is not necessarily opposed but has questions about size of area. Mr. Guilman said 10 ft x by 3 ft.

A letter in opposition from a group of island nurseries was read by Alan Wilson. The letter concerns itself with the competition with local growers whose livelihood is dependent upon sale of island plants and the size of Stop & Shop provides for the big store to sell items that are less than the actual cost of the smaller island growers. It further stated that Stop & Shop is a year-round business while local nurseries have a very limited season.

Mr. Wilson closed the public hearing.

Mr. Sparks asked if it is within the board's purview to regulate competition for the sale of plants. Mr. Wilson said, "It is not". Further, Mr. Sparks asked if there was any way that local cooperatives could work with Stop & Shop to the benefit of both with regard to the sale of plants. Mr. McCourt said that it would be a good idea to think about selling some local plants at Stop & Shop. Further discussion ensued.

A motion to approve with conditions was made by Mr. Sparks, seconded by Mr. McCourt. Mr. Wilson read the list of conditions. The board voted unanimously to approve the motion with conditions.

**Arthur Allen, 1 Plantingfield Way (13-15) SP: Swimming pool in Coastal District.**

*In attendance: Lil Province, landscape architect and Ted Rosbeck, pool contractor.*

*Materials provided: Site Plan – Arthur Yorke Allen, Scale: 1" = 40', Jan. 11, 2011, Schofield Barbini & Hoehn, Inc. MV-6778; Landscaping Plan - Athearn House, Planting Field Way,*

*Edgartown, Scale 1' = 10', Pool Site Plan, Province Design, Box 102, Edgartown, January 11, 2011, Revised January 16, 2011.*

Chairman Wilson opened the hearing by reading the public notice. Mr. Sparks recused himself and left the room as his firm has a business relationship with Mr. Allen. James Cisek, alternate, sat in for Mr. Sparks.

Landscape architect, Lil Province presented Mr. Barbini's site plan (Schofield Barbini & Hoehn) and application for a special permit for a swimming pool. She handed members copies of the site and landscape plans describing the project including lighting, landscaping and fencing. The property is not in the shore zone (it is in the inland zone.) The shape of pool is 16' x 34' rectangular, with a depth of 7 feet. All will be enclosed with black mesh per state codes. There will be six pool lights downward shielded. Additional information regarding pool equipment was provided by Ted Rosbeck, builder for the pool. Equipment will be located next to the house.

Mr. Mascolo asked how close the pool is to the nearest house. Mr. Rosbeck replied "the drive of a 9 iron." There was discussion regarding the air source heat pump and the noise it may emit verses propane. Mr. Rosbeck said that air source heat pump and propane are about the same noise level. The pump will be above ground. There will be a cartridge filter and salt system in combination with UV to cut chemicals. Chairman Wilson read the check list with project details provided by the applicant (Exhibit D.)

Mr. Cavallo made a motion to approve the project as presented with conditions. Mr. Mascolo seconded the motion and it was unanimously passed.

### **Zoning Bylaw Amendments**

Chairman Wilson read the public notice for zoning bylaw amendments to open the hearing. Mr. Sparks returned to his seat on the board. Mr. Cisek departed.

### **Board Of Health - Coastal District amendment**

Matt Poole, Edgartown Board of Health Agent, handed out proposed revisions to the Coastal District regulations. He said there is a need for upgrades to some septic systems in the Coastal District. He showed the board a diagram outlining the possible problems with some older existing cesspools. Mr. Poole said it is a complicated dynamic in that most cesspools are pre-1972. There are set back issues for older homes when abutting lots have built newer homes that are in compliance with newer laws that these new homes may impact set back requirements for the older homes. Mr. Poole said he is looking for the blessing of this board in order to take this proposal to the MVC. The problem was brought to light by a current application and there needs to be some facility for the older homes to upgrade their septic systems. If there is no facility or special permit to upgrade, the result would be abandonment of the home, should a failure of the current system occur. The Board of Health is looking to find relief for the older homes that may not be in compliance, as the current regulation does not provide an answer to this problem. He stated, ultimately, the proposed revision to the Coastal District regulation will allow for the improvement or up-grade of some older systems resulting in an environmental benefit. The motion to support the amendment was made by Mr. Cavallo seconded by Mr. Mascolo and was unanimously agreed.

## Wind Energy Conversion System (WECS) amendment to the zoning bylaws

Sean Murphy, a member of the Zoning Bylaw Review Board explained the amendments for the WECS Bylaw. He said, first, there is a housekeeping change: The WECS section has been relocated from R-60 to its' own section, Article 24 of the zoning bylaws.

Section 24.2 proposes to increase the minimum setbacks from the height of the structure plus 20 feet to three times the height of the structure. It was discussed and agreed the setbacks were from property lines, and that "*from the property lines*" should be included in the bylaw language.

In Section 24.5 Mr. McCourt and Mr. Sparks suggested shortening the length of time a non-working WECS is considered abandoned. They recommended *6 months* vs. 2 years if the WECS is not properly maintained and required to dismantle the installation. A motion was made, seconded and unanimously approved to change the time a non-functioning WECS shall be considered abandoned and therefore dismantled.

Section 24.6 was language recommended by the MVC to have Edgartown comply with the Ocean Zone DCPC guidelines.

The WECS amendments were unanimously approved as revised.

### Abandoned Property

Mr. Murphy explained that no bylaw has been written or approved for abandoned property and therefore, the previously approved motion for a definition of abandoned property needs to be rescinded, and removed from the article. The motion was unanimously passed to remove the definition for "abandoned property."

### Wireless Communication Facilities modified to: *Personal Wireless Service Facilities*

Mr. Murphy said the existing bylaw does not refer to the Federal Telecommunications Act of 1996 which defines telecommunications.

The existing bylaw was reviewed by a telecommunications professional who provided specific language consistent with the newer technologies and federal regulations.

Mr. Murphy said a utility can trump zoning by showing necessity as outlined in 23.3. This bylaw requires all carriers to apply for a special permit.

Mr. McCourt, asked how the board can get the cell phone operators to conform to the new "stealth" technology. Ms. Greenough said, when the providers and carriers come to the board for special permits to modify their equipment on the tower, the board can ask them to consider it.

Bob Fynbo, a WISP (Wireless Internet Service Provider) operator located on Chappaquiddick, asked to be recognized. He handed out his recommended revisions to the proposed warrant article saying he wanted to make sure that high-speed internet services are covered.

Mr. Sparks made a motion to approve the proposed WECS article and add the Fynbo amendments as requested, only if approved by town counsel. Mr. Cavallo seconded the motion and it was unanimously passed.

**Chasin - Form A (Map 34-38 & 39 + Map 42-81, 99, 101, 102)**

*In attendance: Glenn Provost, Vineyard Land Surveying & Engineering, Inc.*

*Materials provided: Revised site plan dated: March 26, 2010 Job No. 555-1*

Chairman Wilson said this is a public meeting continuation of a Form A returning to the Board after the referral to the Martha's Vineyard Commission. Revised plans were presented by Glen Provost, who said issues still exist between Chasin and the abutter, but Chasin has asked that the plan be presented to tie in with the recorded permit. He noted the plan was approved by the Commission. If there is a change per discussion with the abutter, Chasin will come back to the board. Mr. Provost said the plan as it stands, qualifies under the Form A process.

Mr. McCourt asked if the roads are in compliance for fire trucks, emergency vehicles, etc. Quomox Road is a public road owned by the town. Jeremiah Road is a private road and may be in better condition than the public road. It was built by the subdivision.

Discussion ensued about Chasin and abutter and plans were further reviewed. Nothing has been worked out between Chasin and neighbor but it is not a condition of the board when entertaining the Form A application.

A motion to endorse the Chasin Form A was made by Mr. Cavallo, seconded by Mr. Wilson and unanimously passed.

**Edgartown Meat & Fish Market (21-10.2) 240 Edgartown-Vineyard Haven Rd SP: Change of Use in B-II (continuation).**

*In attendance: Sean Murphy, McCarron, Murphy & Vukota, LLC; John Ready, and Sean Ready*

*Materials provided: Original copy of application package.*

Mr. Mascolo said he thought he was an abutter. Ms. Greenough said he was not an abutter, as it was checked out prior to the first meeting and hearing. Mr. Mascolo decided to recuse himself as he believes he may be an abutter. Mr. Murphy, applicant's agent was asked and agreed to proceed with only four members of the board.

Mr. Murphy told the board that the Martha's Vineyard Commission had voted 11-1 to approve the application. This will be a year round 1500 sq. ft. market and 800 sq. ft. deli selling meat and seafood. Mr. Murphy said there should not be a board issue regarding competition and explained that it will be a year round business and will provide a service to the community. He said it should not be discouraged as one board member had done in a previous meeting. He said the Ready family is making a year round commitment to the town. Mr. Murphy addressed truck traffic, garbage, and parking and said that the site is appropriate for this business in the B-II district. The public had no comments.

Chairman Wilson closed the public hearing. Mr. McCourt made a motion to approve the special

permit with conditions as outlined in a draft decision. The motion was seconded by Mr. Sparks and was unanimously passed. Mr. Murphy asked if the decision could be signed tonight with the addition of a condition requiring maintenance to bike racks and parking lines. The board signed the decision.

**Wave Lengths. Special Permit.** (Continued from 2/1/2011)

*In attendance: Jayne Steidle, Melissa Montession, Colin Young, Doug Hoehn, Chuck Sullivan. Materials provided: New site plan, "Wavelengths Site Plan, Edgartown, Mass Prepared for Jayne Steidle & Melissa R. Montession, Scale 1" = 10', February 15, 2011, Schofield Barbini & Hoehn Inc. MV 7939" and new elevations "223 Upper Main St. – Offices, First & Second Floor Plans (A01); Third Floor and Foundation Plan (A02); and Exterior Elevations (A-03), Sullivan O'Connor Architects, P.O. Box 989, Oak Bluffs, MA 02557, Date: 02-11-11, Map/Parcel: 20A-95, Job #:10U01."*

The Chairman opened the continuation of the Wave Lengths application. Revised plans were provided to the board by Doug Hoehn and Chuck Sullivan showing the removal of the rear residential building from the original plan. The front building has been slightly expanded to a point just below 50% (of the useable square footage in comparison to the square footage of the lot). They stated that they have removed any discussion regarding parking spaces as they are providing 18 spaces, meeting zoning by-laws and will provide more ease and a turn around. The front of the building will be the same distance from the road. The only change is slight expansion in the rear of the building. The building has been slightly re-configured to include 5 office spaces and a residential unit on the 3rd floor. The tower has been removed and a front and side entry porch added. The office space is a little longer than the original plan. This building is about 20% bigger than last drawing. The front of the building is slightly changed but the overall square footage is 40% smaller than the original plan which included 2 buildings. The 3rd floor apartment will have 2 bedrooms and is larger than the previous plan.

Discussion ensued about whether the new plan had to go back to the commission for approval. Applicant suggested a condition that the revised plan should be sent back to the Commission. The applicant was questioned about the basement and the response was there were no plans put forward about the basement specifically, but it would be storage. Mr. McCourt asked about parking and office space use. The office will be 250 sq. ft. and the applicant stated it will not be retail. Mr. Sparks asked questions about aesthetics including window treatments and landscaping. The applicant said the plan is for cedar shingle and shutters. There will be handicapped parking. The Board reviewed the plans and addressed employee parking. Calculations are in place for green space at 21% which is in compliance.

Mr. Mascolo made a motion to approve with the conditions to prepare the landscaping plan for planning board approval and to refer the project back to the Martha's Vineyard Commission. The motion was seconded by Mr. Cavallo and was unanimously passed.

**February 1, 2011 Minutes - Amendment**

Mr. Wilson brought up the minutes of the last meeting (February 1, 2011) saying Mr. Mascolo has an issue with the last paragraph. Mr. Mascolo asked Mr. Wilson and Mr. McCourt to reconsider their signatures on those minutes. Mr. Mascolo went on to say he did not use "a raised

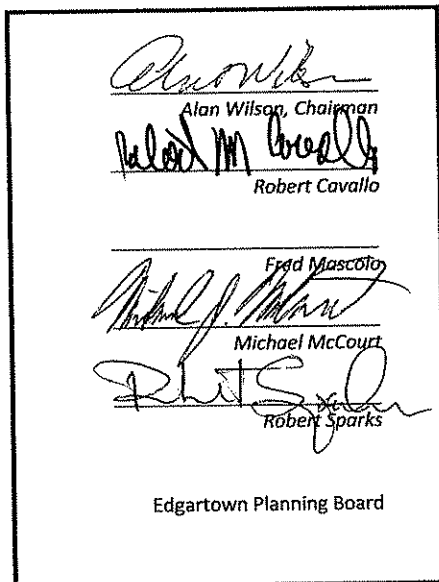


voice” and said he had asked for a recess and Mr. Wilson said “yes.” (Mr. Wilson did not confirm this statement.) Mr. Mascolo said he did not ask to speak to Ms. Greenough “in private” but did ask to speak to her “personally.” There was discussion regarding what words were remembered and by whom, with Mr. Mascolo saying he remembers clearly, and the minutes are not accurate as to the word “personally” not “privately.” Ms. Greenough agreed to change the word from “privately” to “personally.” Mr. Sparks asked “based upon the meeting this morning, should that part of the minutes concerning this issue be stricken?” Ms. Greenough said the minutes are part of the record, but if they want to amend the minutes, they have to vote on it. The motion was made by Mr. Sparks to strike ‘that paragraph’ from the meeting minutes of 2/1/11. Mr. McCourt said he would feel more comfortable and wanted to move forward. Mr. McCourt seconded the motion and it was unanimously passed.

DRI Checklist

Mr. Wilson reminded the board there would be a meeting at the Oak Bluffs Town Hall on February 17, 2011 to discuss the DRI checklist with the Oak Bluffs Planning Board to develop a protocol to present the two boards’ thoughts on the DRI checklist and process.

The meeting was adjourned at 9:10 p.m.



Respectfully submitted,

Bricque Garber, Part-Time Clerk