

# THE MARTHA'S VINEYARD COMMISSION

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## Minutes of the Regular Meeting of October 16, 2003

Held in the Olde Stone Building,  
33 New York Avenue, Oak Bluffs, MA

### IN ATTENDANCE

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**Commissioners:** James A. Athearn, Chairman (Elected – Edgartown), John Best (Elected – Tisbury), Christina Brown (Elected – Edgartown), Linda DeWitt (Appointed – Edgartown), Jane A. Greene (Appointed – Chilmark), Katherine Newman (Appointed – Aquinnah), Megan Ottens-Sargent (Elected – Aquinnah), Bob Schwartz (Appointed – West Tisbury), Doug Sederholm (Elected – Chilmark); Linda Sibley, (Elected – West Tisbury), Paul Strauss (Appointed – County), Richard Toole (Elected – Oak Bluffs), Andrew Woodruff (Elected – West Tisbury)

**Staff:** Mark London (Executive Director), Jennifer Rand (DRI Coordinator), David Wessling (Transportation Planner), Bill Wilcox (Water Resources Planner), Bill Venno, (Comprehensive Planner; Trails & Byways), Christine Flynn, (Regional Planner)

### 1. CK ASSOCIATES (DRI No 555) – DELIBERATIONS AND DECISION

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*Commissioners present: J. Athearn, J. Best, C. Brown, L. DeWitt, J. Greene, K. Newman, M. Ottens-Sargent, R. Schwartz, D. Sederholm, L. Sibley, P. Strauss, R. Toole, A. Woodruff.*

There being a quorum present, James Athearn, Commission Chairman, opened the Meeting at 7:30 p.m.

**Christina Brown**, Chairman of the Land Use Planning Committee, reported the LUPC's evaluation of the benefits and detriments of the proposal. She noted that the proposal includes environmental impacts as well as provisions for affordable housing, and that those must be balanced in the Commission's decision-making process. The Applicant presented the project as an alternative to previously rejected plans for the property. She noted that the committee found that the information presented was, in some cases, not complete enough for it to make as good a determination as might otherwise be possible. She reported that LUPC found that the proposed detriments outweigh the proposed benefits, and that LUPC recommended that the project be denied. She invited members of the LUPC to summarize sections of the committee's written report.

**James Athearn** presented a summary of the *groundwater and wastewater* issues.

- Under the benefits section, the Zone of Contribution for the Lagoon Pond well would be protected, as this area has been set aside by the Applicant for archeological protection and open space.
- Under the detriments side, the nitrogen loading to groundwater would exceed the three mg/l standard of the Southern Woodlands DCPC and would exceed the MVC guidance limit for loading to Lagoon Pond. Lagoon Pond is a nitrogen-sensitive pond, approximately at its nitrogen limit and showing signs of degradation at the present loading level.
- MVC generally does not accept projects that meet only the standard of Title V, but more often seeks superior groundwater protection, because Title V does not address nitrogen loading as it effects aquatic habitat.
- The proposal does not include an erosion and sedimentation plan, particularly significant for the portion of the site on Barnes Road where slopes are steeper and contiguous to the wetlands around the upper pond.
- There is no clear stormwater management plan.

**Megan Ottens-Sargent** reported additional *wastewater and groundwater* factors.

- No revised wastewater plan with nitrogen mitigation was provided.
- There is no analysis of the impact of nitrogen loading on Sengekontacket.
- Groundwater recharge before and after the project would likely be about the same.
- The amount of turf associated with the project is uncertain, as there are no building envelopes identified. The associated nitrogen loading is not certain and could be significant.

**Mark London** added that unrestricted use of chemical pesticides and fertilizers and associated health risks was raised as a concern of the Commission's that inadvertently was omitted from the LUPC's summary table, to which Commission members agreed to add as a detriment of the project.

**Linda Sibley** asked and it was agreed to consider the draft "*LUPC meetings of September 29, 2003 and October 8, 2003 – Preliminary Summary of Benefits and Detriments*" to be a part of the record of the meeting, as written, without the necessity of reading the entire document into the record.

**Megan Ottens-Sargent** presented a summary of the environmental issues regarding *Open Space, Natural and Community Habitats*, beginning with the benefits.

- A benefit would be the proposed increase in habitat for suburban species.
- Another benefit would include the proposed 59 acres of open space; this would total 70 acres if the 25' buffer around the perimeter were included. She added that much of that open space would be impacted by the surface drainage disposal areas.

She noted detriments.

- The plan would destroy and fragment woodland habitat, at least 70% according to the plan, possibly more on individual lots. No wildlife mitigation plan was proposed, particularly regarding avian species that would be impacted.
- A lack of detail prevents the quantification of how much open space would be altered for stormwater drainage.
- The property is shown on the Commonwealth's Biomap as core habitat. Moth studies for the site did not include the entire acreage but discovered evidence of the threatened Imperial Moth and two species of concern (the Barren Zale and Spiny Oak Worm).
- Lighting would impact habitat, particularly for the moths. No mitigation was proposed.

- The adjacent herring run would be further stressed by increase in population and demand for use of the run.

She noted general comments.

- The project would provide access to the 24-acre town-owned parcel surrounded by the project. It is not clear how this access would retain, enhance or diminish the existing open space and habitat resources of the parcel.
- Some pitch pine habitat would likely be preserved at the western end of the property, due to the proposed avoidance of archeological resources, but this is not assured by a management plan.
- Clearing and grubbing of large areas of land can lead to a one-time release of nitrogen, although the magnitude of this release and the implications for nutrient loading of groundwater, and more specifically, Lagoon Pond, is not assessable.

**Linda Sibley** suggested and it was agreed to remove references to the Imperial Moth regarding core habitat as shown on the Biomap, noting that core habitat is shown on the map, but not with a reference to the Imperial Moth.

**Jane A. Greene** suggested and it was agreed that there was no need to read the written report aloud, but rather to summarize and to make additional input.

**Christina Brown** summarized that there would be great negative impact from the proposal regarding *lighting and noise*, both for neighbors and for wildlife.

**Linda Sibley** summarized detriments regarding *traffic and transportation*. There were no benefits noted.

- She noted concern about the consultant's traffic analysis being based on lower trip generation rates (9 vehicle trips per day instead of 13) than used by the same consultant for similar subdivision projects on Martha's Vineyard.
- The applicant's consultant has noted that there could be significant impacts at the Fire Station intersection, possibly requiring costly mitigation measures, the expense of which would be borne by the town.

She suggested removal of the draft detriment "*Concern that the proposed mitigation of regrading banks along Barnes Road to improve sight distances is contrary to other community objectives*". **James Athearn** suggested labeling it as a comment rather than as a detriment.

**Linda Sibley** agreed, but also would like specific mention of the protection afforded the archeological resources.

**Bob Schwartz** summarized the section regarding *scenic values*.

- He noted detriments associated with the vista from the pond and from the opposite shore, particularly the impact of breaking the treeline with houses.
- He noted the benefit that most of the development would not be visible from existing roads.

**Bob Schwartz**, regarding *character and identity*, noted particular concern for the suburban character of the proposal.

- Suburban character would result from the monotony of the layout. Plantings could add to the suburban character, as there are no proposed restrictions.
- Impacts on abutters would include lighting impacts, the elimination of open space and habitat, and the nature and width of the proposed 25' buffer.

**Christina Brown** added the detriments of the proposed physical impacts to the special ways, regardless of public access considerations.

**Megan Ottens-Sargent** added that the scale of construction would create impacts on abutters.

**Linda Sibley** acknowledged that the public may not have rights of access to the site's special ways, but noted that other DRI subdivision proposals have included creation of walking rights.

**Andrew Woodruff** noted that the public, himself included, has enjoyed unimpeded access to these special ways for decades.

**Christina Brown** summarized impacts to *supply of needed low and moderate-income housing*.

- The proposal to provide affordable housing would be a benefit, but none for the working people with 81 to 140% of median income who have difficulty in purchasing homes. It has been Commission practice to approve projects providing housing for a wider income range of affordability than that proposed.
- Additional affordable housing would be needed for the workers associated with the construction phase.

**Katherine Newman** summarized *impact on services and burden on taxpayers*.

- Individual septic systems would not burden taxpayers.
- There would be negative impact on fire and emergency services, possibly requiring an additional station.
- Although the town's water supply is considered adequate to provide for the proposal, an additional town well would be needed sooner.
- There would be burden on the capacity of the schools.
- As a benefit, the proposal offers access to town-owned land in the interior.
- The Applicant estimates the annual financial burden on taxpayers at \$1.5 million. Impacts of potential traffic mitigation measures have not been considered, but could also add to the burden on taxpayers.

**John Best** added concern for the burden of providing disposal for pumpouts from the proposed septic systems. Regarding energy use, he questioned the inclusion of respecting Energy Star standards, of particular concern for the affordable units. **Jane A. Greene** added that some of the units would not have their own septic systems, so the total would be less than 320 septic systems.

**Christina Brown** discussed *consistency with or ability to achieve town, county and state plans and objectives*.

- It is consistent with the state's goal of achieving affordable housing through Chapter 40B.
- It is consistent with policies of the Regional Island Plan concerning affordable housing, including III-1 and III-4.
- It is inconsistent with a number of policies of the Regional Island Plan, as detailed in the LUPC summary of benefits and detriments.

**Megan Ottens-Sargent** suggested removing some of the references to inconsistencies with the Regional Island Plan, as discussed with Mark London who noted that policies IV-2, IV-24 and IV-25 have more to do with the Commission's processes, and that IV-14 is quite general, so it is not clear whether or not the proposal is consistent. **James Athearn** added that policy IV-12 says the same thing but more clearly.

**Linda Sibley** suggested that it was pertinent to read some of the policies aloud, and proceeded to read policies III-2, IV-12, IV-13, and IV-18. She noted also that the Regional Island Plan addresses the issue of creating affordable housing, while doing so in a manner which preserves and enhancing the character of the Island.

**Megan Ottens-Sargent** read aloud Regional Island Plan policy IV – 9.

**Andrew Woodruff** discussed how the project *conforms to zoning*. He noted that the proposal does not conform to zoning and that the proponent has not demonstrated that the sheer scale of the project would be necessary in order to provide quality affordable housing.

**Paul Strauss** added that the town's cluster zoning limits phasing of a development's dwelling units to 10% of the total units per year. This proposal would be done in 6 –10 years, or 40-50 units per year. For comparison, only about 30 units have been permitted in the whole town in each of the past several years. **Mark London** added that the Commission may approve a proposal that does not conform to zoning, if it would help a significant number of Islanders obtain opportunities for affordable housing. The question is whether or not the project has to be as non-conforming as this project is in order to achieve that objective. In this case, the recommendation is that it doesn't have to be.

**Paul Strauss** discussed how the proposal *conforms to DCPC regulations*.

- Several DCPC are included, one of which, the Southern Woodlands DCPC, encompasses the entire proposal.
- The Coastal District is included, but with no activities proposed there.
- The Island Roads DCPC regulation requires 1,000' spacing between curbcuts. The proposal includes a curbcut separation of approximately 325'.
- The Lagoon Pond DCPC regulation requires 15,000 square feet per bedroom. The proposal does not comply.
- There are a number of specific numeric standards included in the Southern Woodlands DCPC regulation, with which the proposal does not comply.
  - The regulation requires keeping natural vegetation within 50' of the perimeter.
  - The regulation requires keeping natural vegetation within 100' of Barnes Road.
  - Special ways may not be paved.
  - Nitrogen concentration in groundwater should not exceed three mg/l.
- Paul noted that the proposal triggers eight of thirteen criteria for requiring a special permit under the Southern Woodlands DCPC regulation, and would require a special permit.

**James Athearn** reiterated that predicted nitrogen concentration does not meet the Southern Woodlands DCPC standard.

**Linda DeWitt** noted that the Southern Woodlands DCPC was designated because, among other things [*reading from the LUPC summary*], *"The Commission specifically finds that controlled development of lands and waters within the Southern Woodlands District is necessary for the prevention of pollution of ground and surface waters in and around the District and the water quality of nearby bodies of water. In addition, lands and waters within and around the District support and affect important wildlife habitats and contribute substantially to the Island's wildlife, natural, scientific and ecological resources."*

**Mark London** added that there is a special permit procedure for the Island Roads curbcut requirement that could reduce the standard separation distance.

James Athearn said, in summary, that the LUPC recommendation was to deny the project.

Christina Brown added that the provisions of Chapter 831 require the Commission to review the project in light of alternatives. There are alternative uses for this site that could have a greater public benefit, but that would not have the negative environmental impacts of this proposal, or the burden on taxpayers. She noted, for example, that a cluster plan of market rate and affordable homes would preserve more open space while still achieving the objective of affordable housing.

*Andrew Woodruff moved, duly seconded, to deny the project for the reason that the benefits outweigh the detriments, as enumerated in the LUPC recommendation.*

Andrew Woodruff responded to the Applicant's comments that the MVC has done nothing for affordable housing. His property value tripled in five years and, since then, many local people have come together to take on 100% affordable projects. There are better alternatives to deal with affordable housing; this is not a good proposal.

Megan Ottens-Sargent recalled statements by Brian Lafferty that Martha's Vineyard is not unique, and compared it to the Town of Concord, where he resides. She had called the Planning Department in Concord, where she was given some data for comparison.

- 2/3 of the land is protected.
- The average house value is \$600,000, and there are no rental units.
- 40Bs include 42-, 82- and 56-unit properties, all aimed at rental units for public service sector employees. The developments were more appropriately scaled than this proposal and were welcomed by the community.

*Roll call vote. In favor: J. Athearn, J. Best, C. Brown, L. DeWitt, J. Greene, K. Newman, M. Ottens-Sargent, R. Schwartz, D. Sederholm, L. Sibley, P. Strauss, R. Toole, A. Woodruff. There were no votes in opposition or abstentions. The vote was unanimous to deny the DRI application of CK Associates.*

## 2. JENNEY LANE (DRI # 573) DELIBERATIONS AND DECISION

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*Postponed*

## 3. MINUTES OF PREVIOUS MEETING

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*Postponed*

## 4. UPCOMING LUPC MEETINGS, SITE VISITS AND OTHER MEETINGS

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- October 20, Jenny Lane post public hearing LUPC, with a view to a vote by the Commission on October 23. Commissioners were reminded to prepare their benefits/detriment worksheets prior to the LUPC meeting.

The Meeting was adjourned at 8:40 p.m.

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Chairman

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Date

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Clerk-Treasurer

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Date