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## Minutes of the Commission Meeting Held on August 12, 2010 In the Stone Building 33 New York Avenue, Oak Bluffs, MA

### IN ATTENDANCE

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

P Bill Bennett (A- Chilmark)	P Katherine Newman (E -Aquinnah)
P John Breckenridge (E- Oak Bluffs)	P Ned Orleans (A - Tisbury)
P Christina Brown (E - Edgartown)	P Camille Rose (A - Aquinnah)
- Peter Cabana (E - Tisbury)	P Doug Sederholm (E - Chilmark)
P Martin Crane (A - Governor)	P Linda Sibley (E - West Tisbury)
P Fred Hancock (A - Oak Bluffs)	P Brian Smith (A - West Tisbury)
P Lenny Jason (A - County)	P Holly Stephenson (E - Tisbury)
- Jim Joyce (A - Edgartown)	- Andrew Woodruff (E - West Tisbury)
P Chris Murphy (E - Chilmark)	

Staff: Mark London (Executive Director), Paul Foley (DRI Analyst/Planner), Christine Flynn (Economic Development and Affordable Housing Planner)

**Christina Brown** opened the meeting at 7:00 p.m.

### 1. EXECUTIVE DIRECTOR'S REPORT

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**Mark London** reported that the Wind Energy Work Group has had recent work sessions on noise and on scenic values. A comprehensive meeting is being planned in September. Information is available through the Island Plan website. Meetings can be viewed on the MVTV website.

### 2. TISBURY MARKET PLACE: DRI NO. 485-M5 - PUBLIC HEARING (CONT.)

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Commissioners present: J. Breckenridge, C. Brown, C. Murphy, K. Newman, N. Orleans, C. Rose, D. Sederholm, L. Sibley, H. Stephenson

**Linda Sibley** opened the continuation of the public hearing on the proposal to build a new building.

#### 2.1 Staff Report

**Paul Foley** gave the staff report.

- Parking: The public hearing was continued on April 29<sup>th</sup>, at which time there was a lot of discussion about parking. Staff looked at the parking during the high season. Staff did an

analysis of parking on Friday, July 9<sup>th</sup>, from 8 a.m. to 7 p.m., looking at it by space and by time.

- During the course of the day the back lot was about 50% filled.
- The front lot was 89% full at 1:15 p.m. The lot was 75% full at 7:00 p.m. There were always some spaces throughout the day. The overall lot was between 25% and 11% empty.
- The first section of spaces is used for short term parking and there's a lot of turnover throughout the day. Different sections of the parking lot have different characteristics and different problems.
- The fish market seems to generate 50-60% of traffic.
- Charlie Crevo's study showed 130 existing parking spaces. The proposed 133 spaces in the new plan meets ITE guidelines. The peak demand for the existing Market Place is 115 spaces. The proposed plan demand is about 130 spaces. The new plan uses up all existing capacity.
- Design: The design has been modified. The original building plan had an area that would have protruded into the 100-foot Waterfront Shore Zone which would have required marine use. The new plan eliminates the section in the shore zone on the ground floor level that would have required a marine use. The current plan is to have an open deck on the first floor and residential space on the second floor. Two retail units are proposed for the ground floor.
- Correspondence: Letters were submitted about the project, including a letter from the Tisbury Planning Board with comments related to their original concerns.

**Mark London** asked whether there is anything in the condominium agreement that requires long term parkers to park toward the back or that limits the length of time that people can park in front. **Sam Dunn** said employees tend to park in front, many stores aren't aware that there is a problem with taking up spaces in the front, and that there is nothing that requires that employees park in the back. He said that at 8 a.m., there are 19 vehicles in the front and these are clearly not customers. Even with this going on, the lot is never full. At the most peak time, 25% of the spaces are available. It's a matter of management. He clarified that he has offered to give up the declarant right to develop the open space, and the right to use the open space for parking.

## **2.2 Applicant's Presentation**

**Sam Dunn** discussed the project.

- At 8:00 a.m. the 15 cars in the lot are employees or scofflaws. At any point in the day there are 15 to 20 employees parked in the lot. There are many cars that stayed for four hours or more. Many people park and walk off the lot to other sites. Removing the employees or scofflaws would mean the lot would be 50 to 60% full. Tisbury Marketplace has 25% more spaces than are ever used.
- He's made parking lot recommendations to the Trustees:
  - Label spaces in the back as belonging to specific businesses;
  - Start booting cars;
  - Run the traffic in the opposite direction which would open the unused portion of the parking lot and.

- Make a path through the central berm.

Commissioners discussed traffic flow and the decision-making process.

- **Linda Sibley** asked whether the Planning Board would have some power to require the condo association to change its parking or use of a curb cut if it deems the change to be in the public interest.
- **Henry Stephenson**, co-chairman of the Tisbury Planning Board, said it can recommend a plan, but it doesn't have authority to require someone to redirect traffic. He added that the reorganization of the flow would improve the flow of traffic on Beach Road, giving the question a regional aspect.
- **Lenny Jason** pointed out that the modification of parking would be the subject of a special permit.
- **Henry Stephenson** said the short answer is that there is an overlap area between the development areas that belong to Sam Dunn and the condominium areas. The special permit would be about the shift in the parking spaces. The shift doesn't involve the overall flow. The overall flow and whether it is within the Planning Board's purview will be discussed by the Planning Board.
- **Linda Sibley** said that the fact that there are three parties – the applicant, condo association, and Commission – makes the situation tricky.
- **Mr. Seidman**, member of the Tisbury Planning Board, said that Dunn is asking to move the parking. Because it's a condo association there's a question about what his rights are. As far as conditioning, Seidman believes that it would be difficult to force something on the association. He's not sure of the legalities.
- **Linda Sibley** wondered whether the planning board has some other unrelated powers over parking and circulation.
- **Christina Brown** said that if the project requires a special permit, the planning board has the ability to condition the project with the condition being on the applicant, not the third party, to fulfill the condition.
- **Sam Dunn** said the declarant has pretty broad rights. As to whether he could say that the flow could be reversed, he's not sure, but he believes he could.
- **Henry Stephenson** said that by and large, these recommendations seem to be practical and beneficial to the condo association so it's likely that they'll like them.
- **Ned Orleans** suggested that the study of reversing traffic should happen soon.
- **Linda Sibley** said she's not persuaded that one day of a traffic study is scientific. Some analysis of variables including weather would be important.
- **Chris Murphy** said that this is an absolute real picture of what happened one day in the summer. Traffic is one piece of the puzzle. He believes they don't need to do anything further on the question of traffic.
- **Linda Sibley** said she would like to see one sample done in the rain, to get a more complete picture of traffic. The parking is of concern to the Commission because it affects regional traffic.

**Maureen Barrow** asked whether the land by Saltwater can be built on because it's so close to the highwater mark.

**Sam Dunn** concluded with the following:

- The project has gone through several iterations.
- The roofs are still green roofs.
- The plan is for a smaller building.
- There's a unanimous approval from the Tisbury Site Plan Review Board.
- They've arrived at a design that has the appropriate amount of building. It doesn't impinge on the view, fits into the architecture, and allows the green use.
- They've eliminated the marine use so the retail areas have a view of the water and there's a covered porch in the back.
- The question of whether the residential use is permitted in the marine area needs to be answered.
- He would argue that this building does not impinge in any material way on the pocket park. About half of the building is on top of existing parking. The building projects 20 to 25 feet into the parking lot. They've done everything they can do to preserve the open space by giving up the declarant rights, although he can't guarantee what the condo association will do. He would support the shared public use path.
- The building is 100 feet back from the highwater mark. The porch is 83 feet back. The wetland line to the porch is about 71 feet.
- Bob Daylor of TetraTech, original Marketplace consultant, wrote a letter clarifying what a buffer zone is. In Tisbury the first 25 feet of buffer can't be filled or built on. Daylor states that the project meets the wetland standards. Taking up paved parking area and replacing it with sand and adding the green roof meets the standards.
- He would be willing to agree that the deck base would be permeable, not slab.
- There are a number of letters from people in the condo association who are concerned about traffic, but the far side of the parking lot where there are usually empty spaces can't be seen from most of the stores.
- One letter stated that the project only benefits the developer. He objects to that. The condos are home to many successful Island businesses. There are public benefits to having businesses. Another benefit is that the open space will remain open.
- The only additional building that can be built is next to Rocco's.

**Linda Sibley** referenced the earlier proposal that was denied. The sewer issues are different now because the site is now on town sewer.

**Holly Stephenson** asked about the waterfront development rights. **Sam Dunn** said that, under the condominium documents, Sam Dunn has the right to build floats, slips, and docks by permission of the permitting authorities.

### **2.3 Town Boards**

**Henry Stephenson** said he understands that the MVC wants to work with the Planning Board on projects on the Beach Road Corridor. After Commission review, the Planning Board will be reviewing the project for a special permit.

**John Best** said the Conservation Commission has a letter on file.

- The ConCom has concerns with the project being within the flood zone. The 100 foot buffer passes through the building and the proposed additional parking.
- The parking lot was expanded in 2004 - 2005 without a permit.

**Sam Dunn** said the whole property is within the 100 foot flood zone. The building's elevation is 7 feet.

**John Best** said Tisbury has tried to keep as much of the Beach Road area as permeable as possible. They made a big exception here by allowing paving, but they made the allowance because there was so much open space. To see the open space encroached upon is of concern. And the new parking is right next to the vegetative wetlands. He added that the ConCom said they haven't discussed soil recharging and slab versus pilings.

**Sam Dunn** completed his comments.

- The building will be on a slab above the 100 year flood. The project is not in a velocity zone. There are basins underneath the existing buildings.
- They did an energy study on the original proposal; they haven't done it on this revision. They are prepared to respond to questions about how the project responds to the MVC energy policy.
- They have a landscape plan; they haven't added sidewalks.
- He will need approval from the condo association for the walking cut-through.

**John Best** said that buildings of this size should be 20% higher than Energy Star certified

**Linda Sibley** said some information about how the green roof will be maintained would be helpful.

**Mark London** reiterated the offers.

## **2.4 Public Comment**

**John Best**, speaking as a citizen, outlined his concerns.

- The building is in harm's way in that it is close to the water, is close to resource levels.
- Energy conservation is a concern.
- Wastewater is a concern. Saltwater has an allotment of 1725 gallons of flow per day for a restaurant alone. Net Result has 880. The remaining is 1732. There is less than 800 gallons surplus. Mr. Dunn has asked for and received about 400 gallons a day.
- All of the allotment of the rest of the development is about 300 gallons. He has concerns with that. The Lagoon is at a critical point. Water people are looking at every gallon of current usage that they can possibly treat for nitrogen reduction, versus business growth.
- Wastewater and massing are the issues. This may not be the area you want to have a lot of new growth.
- With the increased level of usage, where is parking going to go?

**Mr. Seidman**, speaking as a citizen, commented on the project.

- The scope of the building has come down, but looking at a car versus a building has a different impact.
- Smart growth versus beneficial growth should be looked at.

- Benefits of the building will go to the developer and residents; he's not sure that's a benefit to the public in general. The green roof is a great idea, but the question is whether it will be maintained.

**Linda Sibley** said the design capacity of the treatment plant is 104,000 gallons per day. Capacity is limited by the discharge capacity.

**Holly Stephenson** said the way development sites are divided is an issue the Commission has to deal with. As a site is incrementally developed parking and sewer are issues. She asked if there's a way for the Commission to review a whole piece of property at one time.

Issues that need to be addressed include the questions raised by the Planning Board and the requirements of second floor residential in the marine district.

**Linda Sibley** continued the public until September 2<sup>nd</sup> for the purpose of receiving written testimony. Barring any significant new information, the public hearing will be closed at that time without taking additional oral testimony.

**Sam Dunn** explained that the sewer flow allocated to the development was divided up by the condo owners. They only have to pay for what they're using, essentially.

### **3. DCPC SPECIAL WAYS – WEST TISBURY NOMINATION**

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*Commissioners present: B. Bennett, J. Breckenridge, C. Brown, M. Crane, F. Hancock, L. Jason, C. Murphy, K. Newman, N. Orleans, C. Rose, D. Sederholm, L. Sibley, B. Smith, H. Stephenson*

**Cynthia Aguilar**, West Tisbury By-ways Committee explained that West Tisbury would like three ways to be considered for nomination to the Special Ways DCPC.

***Doug Sederholm, moved, and it was duly seconded, that the nomination of specific sections of Pine Hill Road, Red Coat Hill Road and Motts Hill Road, and Shubael Weeks Road be accepted for consideration.***

**Jo-Ann Taylor** explained that the moratorium would be on development within 20 feet of either side of the centerline of each way. There is no intention at this time to change the special ways regulations that already exist. The proposal does not affect the Big Sky application. The property is included, but only within 20' of the centerline of Pine Hill Road, where there is no development proposed.

**Chris Murphy** asked whether Dr. Fisher Road has been designated. **Cynthia Aguilar** explained that it is only protected to the extent that it must remain open for passage. The abutters haven't made a cohesive effort to support protection. **Jo-Ann Taylor** said that that she will distribute a memo on the history and status of the Dr. Fisher Road DCPC. It is distinct from the Special Ways.

***A roll call vote was taken. In favor: B. Bennett, J. Breckenridge, C. Brown, M. Crane, F. Hancock, L. Jason, C. Murphy, K. Newman, N. Orleans, C. Rose, D. Sederholm, L. Sibley, B. Smith, H. Stephenson. Opposed: 0. Abstentions: 0. The motion passed.***

#### 4. KATAMA AIRFIELD HANGAR: DRI 624 – WRITTEN DECISION

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*Commissioners present:* J. Breckenridge, F. Hancock, L. Jason, C. Murphy, N. Orleans, D. Sederholm, L. Sibley, B. Smith, H. Stephenson

Christina Brown recused herself. Doug Sederholm chaired the Katama Airfield discussion and vote.

**Chris Murphy moved, and it was duly seconded, to approve the written decision. A roll call vote was taken. In favor: J. Breckenridge, F. Hancock, L. Jason, C. Murphy, N. Orleans, D. Sederholm, L. Sibley, B. Smith, H. Stephenson. Opposed: None. Abstentions: None. The motion passed.**

#### 5. BEACH ROAD PIZZA/BLUE CANOE – 45 BEACH ROAD/52 BEACH ROAD – CONCURRENCE REVIEW

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*Commissioners present:* B. Bennett, J. Breckenridge, C. Brown, M. Crane, F. Hancock, L. Jason, C. Murphy, K. Newman, N. Orleans, C. Rose, D. Sederholm, L. Sibley, B. Smith, H. Stephenson

**Doug Sederholm** disclosed that in the past he had represented a client in a legal matter with one of the applicants.

**Christina Brown** explained that the question before the Commission is whether the Commission concurs with the referral of the projects as developments of regional impact.

**Linda Sibley** gave the LUPC report.

- There are four proposals for projects along Beach Road.
- LUPC unanimously recommended that the Commission concur with the referral of the Blue Canoe proposal for review as a DRI. LUPC made its recommendation on the expansion of use.
- LUPC did not have time to make a recommendation on the Beach Road Pizza referral
- LUPC had two joint meetings with the Tisbury Planning Board which requested that the Commission hold full public hearings because of the traffic issues in that area and requested that the Commission review the projects in a coordinated manner.
- Blue Canoe is bringing a proposal for an additional thirty seats in their restaurant and additional parking on the same property as Beach Road Pizza.
- Additionally, LUPC and Tisbury discussed looking at traffic and the implications of additional development on Beach Road, and designing for the future expansions in that area.

**Henry Stephenson** added that the proposals have a cumulative impact on Beach Rd./State Rd. The Planning Board will want to do a study of what's happening on the road.

**Doug Sederholm moved, and it was duly seconded, that the Commission concur with the referral of both the Blue Canoe restaurant expansion and parking located at 45 and 52 Beach Road for review as DRIs because the Planning Board requested the review and because they involve the same site and interrelated issues of traffic and parking that impact a congested regional road.**

- **Geoghan Coogan** explained that the Blue Canoe lies on one piece of property. The restaurant has arrangements, as it has always had, for parking at other locations. The proposal does not increase the square footage. They're two separate pieces of property. The 50 seat restaurant was never a DRI.
- **Ned Orleans** said the question for him also includes the responsibility to the concept of island-wide impact. He's pleased that the Commission could look at the proposals together because of their impact.
- **Bill Bennett** said he sees he doesn't see the regional impact of a restaurant adding seats with no expansion of the building and with the arrangement of parking off-site.
- **Holly Stephenson** said the properties should be reviewed together because the applicants are proposing parking on the same site for two different businesses.
- **Mark London** suggested discussing the proposals looking at each property separately. The restaurant proposal is at 52 Beach Road with the pizza and parking at 45 Beach Road.
- **Geoghan Coogan** clarified that the owner of 52 Beach Road did not buy 45 Beach Road for parking; he bought it as an investment. The floor plan of the Blue Canoe has not changed. The restaurant is licensed for 52 seats; they want to be licensed for 80 seats.
- **Chris Murphy** said the increase in the restaurant generated the review and this is the Commission's opportunity to review parking and the commercial lot at 45 Beach Road.
- **Kathy Newman** said if it were at a different location the referral would not generate a review. The cumulative effect of three proposals creates the regional impact.
- **Lenny Jason** said the applicant is not creating new parking. They're taking advantage of existing parking which must be legal because it exists.
- **Linda Sibley** said the restaurant is an expansion. One question is whether it is in the public interest to have people crossing Beach Road. The proposal nearly doubles the traffic and has people cross the road.
- **Bill Bennett** disagreed that the increase in seats and people crossing the road is a regional issue.
- **Camille Rose** pointed out that increasing traffic on a failed road is a regional issue and the increases should not be reviewed piecemeal.

***A roll call vote was taken on the motion. In favor: J. Breckenridge, C. Brown, M. Crane, F. Hancock, L. Jason, C. Murphy, K. Newman, N. Orleans, C. Rose, D. Sederholm, L. Sibley, B. Smith, H. Stephenson Opposed: B. Bennett. The motion passed.***

**Paul Foley** showed slides and current and past layout of the 45 Beach Road lot. The number of parking spaces has decreased by about 16 spaces. The proposal is to put a tenant at the site.

**Will Craffey**, applicant, said the use he's proposing will generate the same or less traffic than the pre-existing use. He said he's having a hard time understanding why a lesser use of a pre-existing property would be a development of regional impact.

**Linda Sibley** said LUPC did not make a recommendation. Their general concern was the impact of four concurrent proposals along a mile long stretch of Beach Road.

**Doug Sederholm** said a pizza place with no sit-down service might be a high traffic generating business.

***Doug Sederholm moved, and it was duly seconded, to concur with the referral.***

- **Paul Foley** said the lot used to have 60 spaces. Blue Canoe is reserving 14 to 16 car spaces.
- **Kathy Newman** asked how water and sewer fit into the triggers.
- **Brian Smith** reiterated the Blue Canoe restaurant isn't before the Commission during the discussion of 45 Beach Road.

***[Linda Sibley moved, and it was duly seconded, to suspend the rules for ten minutes. A voice vote taken. In favor: 12. Opposed: 2. Abstentions: 0.***

***Abstentions: The motion passed.]***

- Commissioners discussed whether the applicant should be the owner of the property. The permission that the Commission gives goes with the land, not with the renters.
- **Lenny Jason** said Commissioners need more information about the projects and traffic impacts; a public hearing would be appropriate.
- **Chris Murphy** said the Commission has had a request from the Tisbury Planning Board to help solve the problem. If the Commission holds a public hearing, at least the public has an opportunity to comment on solutions.
- **Kathy Newman** said she wants to make sure that the two businesses aren't getting caught up in something that the Commission wouldn't normally review.
- **Brian Smith** asked whether the Commission can ask property owners to talk about plans for their properties.
- **Christina Brown** responded that the applicants have made it very clear what they will do.
- **Camille Rose** said that the fact that 85% of his business will be take-out with cars coming in to pick-up doesn't minimize its impact on traffic.
- **Holly Stephenson** addressed the question of applicant versus owner. She believes the application for the Pizza Place should be considered as a DRI and it should be viewed in conjunction with the Blue Canoe.
- **Linda Sibley** commented on the motion.
  - A public hearing would be the forum for answering the questions that have been raised. Sometimes proposals have been so clearly defined that Commissioners vote to not concur with the referral because nothing would be gained by a public hearing.
  - The Beach Road proposals are way too confusing for a non-concurrence.
  - She takes Kathy's point on whether the applicants should be a "victim" of the four projects, but at the same time the public shouldn't be victimized either.

***[Linda Sibley moved, and it was duly seconded, to suspend the rules for five minutes. A voice vote was taken. In favor: 12. Opposed: 2. Abstentions: 0.***

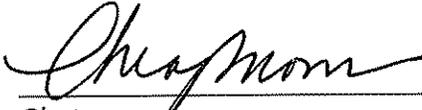
***The motion passed.]***

- **Bill Bennett** commented on the motion.
  - The Thai Restaurant with take-out that was proposed a half mile up the road was a non-concurrence. He doesn't know why this pizza restaurant, a half mile away would require a DRI review.

- The pizza place and the other concurrent proposals are not the problem. The problem is the road which has been a problem for ten years. The pizza place's additional traffic does not make this a regional issue.
- **Martin Crane** said he's looking at the totality.
  - He believes that each applicant deserves his day before the board.
  - This looks like an increase in use.
  - He thanked the staff for the amount and quality of information that allows him to make a decision.
- **Mark London** said he discussed the proposals with Eric Woddlinger who suggested looking at the proposals for each site separately, looking at the entire usage of each property. The restaurant looks like an increase in trips. For 45 Beach Road, he noted that staff has compiled the estimated total traffic and parking supply and demand for the whole property, past and present.
- **Linda Sibley** called the question.

**A roll call vote was taken on the motion to concur with the referral of 45 Beach Road. In favor: M. Crane, C. Brown, F. Hancock, L. Jason, C. Murphy, K Newman, N. Orleans, D. Sederholm, L. Sibley, B. Smith, H. Stephenson. Opposed: B. Bennett, J. Breckenridge. Abstentions: None. The motion passed.**

The meeting adjourned at 10:45 p.m.

  
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 Chairman

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