



PO BOX 1447, OAK BLUFFS, MASSACHUSETTS, 02557, 508-693-3453
FAX 508-693-7894 INFO@MVCOMMISSION.ORG WWW.MVCOMMISSION.ORG

**Minutes of the Commission Meeting
Held on April 7, 2011
In the Stone Building
33 New York Avenue, Oak Bluffs, MA**

IN ATTENDANCE

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

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

Staff: Mark London (Executive Director), Paul Foley (DRI Coordinator), William Veno (Senior Planner), Jo-Ann Taylor (DCPC Coordinator), and Christine Flynn (Economic Development and Affordable Housing Planner).

Chris Murphy called the meeting to order at 7:00 p.m.

1. MINUTES

1.1 March 10, 2011 MVC Minutes

Christina Brown moved, and it was duly seconded, that the minutes of March 10, 2011 be approved. A voice vote was taken. In favor: 11. Opposed: 0. Abstentions: 2. The motion passed.

1.2 March 24, 2011 MVC Minutes

Fred Hancock moved, and it was duly seconded, that the minutes of March 24, 2011 be approved as amended. A voice vote was taken. In favor: 11. Opposed: 0. Abstentions: 2. The motion passed.

Amendments:

- **Doug Sederholm** said that Line 89 was unclear. It should state “an additional capacity of 500” instead of “a capacity of 500”.
- **Brian Smith** said that Line 362 and 373 refer to the owners next to Dreamland and it should state the owners of the Dockside Inn.

2. ISLAND WIND DCPC FOR EDGARTOWN – PUBLIC HEARING

Commissioners Present: B. Bennett, J. Breckenridge, C. Brown, P. Cabana, E. Hammarlund, F. Hancock, C. Murphy, K. Newman, N. Orleans, C. Rose, D. Sederholm, L. Sibley, B. Smith, H. Stephenson

2.1 Staff Report

Jo-Ann Taylor gave the staff report.

- The Island Wind DCPC Ocean Zone was designated in November 5, 2009.
- Interim regulations were adopted for the Ocean Zone in for each town including Edgartown on November 4, 2010. The moratorium ended when the interim regulations were voted.
- The purpose of the Public Hearing is for the Commission to receive evidence and hear testimony regarding finding conformance with the proposed Edgartown regulations for the Edgartown Ocean Zone of the Island Wind DCPC.
- The proposed regulations require that applicants to erect offshore wind turbines in Edgartown waters first obtain a special permit from the Edgartown Planning Board and approval from the Martha's Vineyard Commission as a DRI.
- The proposed regulations appear to conform with the Martha's Vineyard Commission Developmental Guidelines.
- The regulations would require a 2/3 vote at town meeting to become law.
- There is no boundary in the regulation as it appears on the warrant, which the Town Planning Board is planning to insert one as an amendment on the town meeting floor.
- The Planning Board may also remove the reference to the Wind Energy Plan, which has not been finalized.
- It is recommended that the Commission find conformance with the insertion of the boundary, with or without the reference to the Wind Energy Plan, and with minor points of clarification that could be made during town meeting.
- The Edgartown Town Meeting is being held on Tuesday, April 12, 2011.
- A vote of conformance will impact only Edgartown's interim regulation which will be superseded.

Jo-Ann Taylor clarified that the warrant did say Planning Board, noting that the Zoning Board reviews only the land based projects.

2.2 Testimony from Public Officials

Mike McCourt of the Edgartown Planning Board said they had not been actively involved in preparing this regulation as they understood that applications would be handled primarily by the Commission.

2.3 Commissioners Questions

Mark London said that the Commission must make a determination as to whether the regulations conform to the goals and guidelines of the DCPC. Commission counsel has reviewed the proposal and noted that the fact that all projects must be approved as a DRI by the MVC

means that the Commission is empowered to ensure that the project is in conformance with the goals and guidelines of the DCPC. Therefore, he thought that the regulation could be found in conformance with the goals and guidelines.

Christina Brown said that she wanted to be clear that the projects reviewed by the MVC would be subject to the guidelines and not the proposed model regulations that the MVC have prepared. **Mark London** said they would be reviewed with respect to the goals and guidelines. Also, by the time an application is presented to the Commission, the Wind Energy Plan should be adopted and ready for use.

Christina Brown asked the Edgartown Planning Board members if they were planning on deleting the reference to the Wind Energy Plan and adding the geographic location. The Planning Board members present said yes.

Fred Hancock said the A, B, and C requirements are not designated in any order. He asked if they could be in any order if there was a designation. **Jo-Ann Taylor** said that the Planning Board cannot issue a permit while the Commission is reviewing a project, but can hold a hearing.

Linda Sibley said that anything over 220 feet high would be reviewed by the Planning Board and Commission.

Douglas Sederholm asked if the regulation was changed to zero (0) feet high on Town Meeting floor, would it return to the Commission. **Jo-Ann Taylor** said the area of 0 – 220 ft is not now part of the DCPC, and would have to be nominated, considered, and designated as a DCPC. It could be voted as a town bylaw rather than a DCPC regulation.

2.4 Testimony from Public – None

Chris Murphy closed the Public Hearing.

3. ISLAND WIND DCPC FOR EDGARTOWN – DELIBERATION AND DECISION

Commissioners Present: B. Bennett, J. Breckenridge, C. Brown, P. Cabana, E. Hammarlund, F. Hancock, C. Murphy, K. Newman, N. Orleans, C. Rose, D. Sederholm, L. Sibley, B. Smith, H. Stephenson

Christina Brown moved, and it was duly seconded, that the Commission find that the proposed regulation conforms to the Goals and Guidelines adopted in the Decision Designating the Island Wind District as a District of Critical Planning Concern, so long as the boundary is included as follows “that portion of the air space over all ocean waters which exceeds two hundred twenty feet (220’) in height above mean sea level, and extending from the Mean Low Water Line seaward to the bounds of the municipal corporation.” It finds conformance whether or not the Town chooses to delete the reference to the Wind Energy Plan for Dukes County. These regulations replace the Commission’s Interim Regulations. A roll call vote was taken. In favor: Bill Bennett, John Breckenridge, Christina Brown, Peter Cabana, Erik Hammarlund, Fred Hancock, Chris Murphy, Kathy Newman, Ned Orleans, Camille Rose, Doug Sederholm, Linda Sibley,

Brian Smith, and Holly Stephenson. Opposition: None. Abstentions: None. The motion passed.

4. TOWN OF AQUINNAH DCPC – PUBLIC HEARING

Commissioners Present: B. Bennett, J. Breckenridge, C. Brown, P. Cabana, E. Hammarlund, F. Hancock, C. Murphy, K. Newman, N. Orleans, C. Rose, D. Sederholm, L. Sibley, B. Smith, H. Stephenson

4.1 Staff Report

Jo-Ann Taylor gave the staff report.

- The Town of Aquinnah was designated as a DCPC in 1999 as a Cultural and Historic District with goals and guidelines to protect the scenic vistas and the rural character.
- In 2000 the designation was amended to add the goal “to promote and maintain its rural character and culture.”
- The Planning Board prepared and presented amendments to Article III “Site and Dimensional Density Regulations”, Article VI “Administration, and Article XIII “The Town of Aquinnah District of Critical Planning Concern.
- The Goals of the Town of Aquinnah District are to: “To protect the scenic character of the District from undue visual intrusion and to promote and maintain its rural character and culture”.
- The section under review is: “That appropriate exterior design, height and/or siting regulations be developed for any potential new structure proposed for construction within the District, to ensure that any and all new construction shall be consistent with the rural character of the Town of Aquinnah and shall not radically alter or interrupt the existing skyline of the Town as viewed from any public way including any public water body and including the lookout at the Gay Head Cliffs. “That the appropriate administration of exterior design, height and/or siting regulations, through a procedure to include site plan review, be developed; and that the site plan review procedure include clear and objective criteria for review...”
- The Town has submitted a proposal for amendment to Article X Section 10.2 Flood Plain Zone, which does not need conformance review. The Commission has no designation, goals or guidelines regarding the Flood Plain Zone.
- The Town has submitted amendments to the Homestead Lots Section that would delete the language in Sections 3.3-3 and replace it with the proposed language.
- Frontage is addressed because there is a plan to add to the DCPC Regulation Section 13.4-10 Minimum Frontage: All lots shall have a minimum frontage of 200 feet on a public or private way; and amend Section 3.7 Minimum Frontage: “All lots shall have a minimum frontage of 200 feet on a public or private way.”
- Amend Administration Section 6.4-1 to change in the second sentence the word including, to excluding and to add a new section, Section 6.4-3 Zoning Determinations.
- Staff suggests that it is appropriate for the Commission to find conformance, so long as conformance is restricted to those geographic areas designated in the Town of Aquinnah District but not also designated in the Coastal District, Island Road District, Special Places

District, Moshup Trail District, Gay Head Cliffs Area District and/or the Wild and Scenic North Shore District.

- The Commission should not take action regarding the Flood Plain Zone and the Town should forward this regulation to the Attorney General.
- The Aquinnah Town Meeting is May 10, 2011, which allows time to continue the Public Hearing.

Linda Sibley said that the only district in the Public Hearing Notice was the Town of Aquinnah DCPC. The other districts were not advertised. If they are more restrictive and are overlays, they would just remain even though this DCPC was amended.

Camille Rose, as representative of the Town of Aquinnah, withdrew the request to review the proposed addition of a new Section 6.4-3.

John Breckenridge said that the text withdrawn contained the word "small". He suggested reviewing it because it was not clearly defined.

There was a discussion regarding Section 6.4-1, changing the word "including" to "excluding".

- **Jo-Ann Taylor** explained that it was in regards to an appeal. The time would now exclude the time that it takes to pursue and await determination.
- **Linda Sibley** said that she would have liked to see the whole sentence instead of foot notes in order to understand what was being changed.

4.2 Testimony from Public Officials

Camille Rose gave a presentation on the proposal on behalf of the Town of Aquinnah.

- The amendments to the Homestead Lot Section did not come from the Planning Board, but from the Affordable Housing Committee. It is the same as the current regulation except it would allow an acre to be removed from a 3-acre lot rather than a 4-acre lot.
- The proposal regarding frontage is replacing the word private, which was left out when it was amended, to state 200 ft was required and to provide clarity.
- The proposed amendment to the Administration of Special Permits is intended to address issues that have arisen in the way the permits are extended. There are no real changes, but rather a way to formalize the process.

Christina Brown asked if the regulations regarding the Homestead Lots have been used and how successful they are. **Camille Rose** said that they are not currently desperate for affordable housing land. It would increase the density of the town, but would not change the character of the town. Currently there is not much demand.

4.3 Testimony from Public – None

Chris Murphy closed the Public Hearing.

Doug Sederholm moved, and it was duly seconded, that the Commission deliberate on the question at this meeting. A voice vote was taken. In favor: 13. Opposed: 0. Abstentions: 0. The motion passed.

5. TOWN OF AQUINNAH DCPC – DELIBERATION AND DECISION

Commissioners Present: B. Bennett, J. Breckenridge, C. Brown, P. Cabana, E. Hammarlund, F. Hancock, C. Murphy, K. Newman, N. Orleans, C. Rose, D. Sederholm, L. Sibley, B. Smith, H. Stephenson

Doug Sederholm moved, and it was duly seconded, that the Commission find that the proposed changes of to the Town regulations conform to the Goals and Guidelines of the Town of Aquinnah DCPC. Roll call vote. In favor: Bill Bennett, John Breckenridge, Christina Brown, Peter Cabana, Erik Hammarlund, Fred Hancock, Chris Murphy, Kathy Newman, Ned Orleans, Camille Rose, Doug Sederholm, Linda Sibley, Brian Smith, and Holly Stephenson. Opposition: None. Abstentions: None. The motion passed. The Commission took no action on proposed amendments to Section 10.2 Flood Plain Zone

6. VINEYARD HOME CENTER RELOCATION DRI 339-M4 – CONCURRENCE REVIEW

Commissioners Present: B. Bennett, J. Breckenridge, C. Brown, P. Cabana, E. Hammarlund, F. Hancock, C. Murphy, K. Newman, N. Orleans, C. Rose, D. Sederholm, L. Sibley, B. Smith, H. Stephenson

For the Applicant: Adam Wansiewicz (owner) and Doug Hoehn (engineer)

6.1 Staff Report

Paul Foley provided the staff report.

- The applicant is Adam Wansiewicz, owner of Vineyard Home Center.
- The proposal is to move the Vineyard Home Center operation out of 454 State Road and wholly into their property two doors down at 426 State Road.
- The project location is 426 State Road and is 1.37 acres.
- There is a project narrative, site plan, and LUPC notes included in the staff report.
- There is a letter from David Dutton, the owner of the 454 State Road building that Vineyard Home Center would be moving out of, letting it be known that he plans to re-market the property as a lumber yard and building supply.
- The building the Vineyard Home Center would be moving out of is a 12,600 sf. Building and the building they would be moving into a 9,900 sf. building. The 426 State Road property itself is larger though not a rectangular parcel.
- The property is located in the B2 Commercial District.
- The local permits needed would be from the Town Building Inspector; Planning Board for parking and storm water run-off, egress, landscaping and lighting; Board of Health for occupancy; and ZBA for a modification of their special permit.
- The surrounding land uses are NAPA Auto parts, Eden Gardens, and Black Dog Tavern.
- The following is the history of MVC review of the property.
 - This property first came to the MVC in August 1978 as DRI 96 with a proposal to construct a metal building over 3,000 sf. for the Woodchips Designers, Inc. The MVC approved the plan when the applicant offered to provide suitable vegetative screening along State Road in response to Commissioner's concerns.

- In 1991 the property returned as DRI 339 when a new owner proposed to transform the building into Spinnaker Bowling Alley. DRI 339 was approved with conditions that required a revised parking and lighting plan, relocation of a sign, and that the septic system would be consistent with Title 5 requirements. A further condition stated: "That should there ever be a B-II Master Plan developed and said plan propose an access road to the rear of the Applicant's property, then an easement for a portion of said access road shall be dedicated by the Applicant if requested..." In 1998 as a modification of a previous decision the MVC approved DRI 339M as an insubstantial change.
- The proposal by the Black Dog Tavern Company was to use the property at 454 State Road for storage, office space, and a small retail operation. In 1999 the Black Dog returned with a request to add a 16' by 24' shed for storage of packages as DRI 339M-2. The MVC voted this an insubstantial change.
- In 2004 the Vineyard Home Center purchased 426 State Road and moved their kitchen and bath section and some warehousing to this property.
- The project was referred by the Tisbury Building Inspector for change in use.
- The LUPC voted unanimously to recommend to the full Commission that it is not a significant enough change in intensity of use to require a full DRI review.
- Some of the key issues are: how will the site handle the increased use and how much of an increase in traffic will be generated.
- As of May 1, 2011 the previous site will be put up for sale as a lumber yard / building supply facility.
- It is not located in a habitat area.
- There is an increase in parking spaces to 29 spaces; a total of 30 are technically required by zoning. Given that the proposed site has significantly more parking than the previous location and that in addition to the marked spaces there is additional space for delivery pickups and parking staff feels the parking is adequate.
- According to the size of the building, the trip generation would be less than both existing properties combined. However, the previous properties will presumably have other uses that have their own trip generation so the MVC looks at the previous and proposed use of the subject property.
- At this time there are no changes to the streetscape or architectural detailing.

Doug Sederholm provided the LUPC report.

- LUPC reviewed the proposal on March 28, 2011 with nine Commissioners present.
- The LUPC agreed that the specific location would have an increase in traffic but that it was unlikely that traffic would be an issue.
- The peak hours, which are 7 am to 8 am., differ from the general public as the clients are primary contractors.
- It would have more parking than the previous location.
- The LUPC voted unanimously to recommend to the full Commission that there is not a significant enough change in intensity of use to require a public hearing as a DRI.
- The LUPC voted unanimously to recommend to the full Commission that they approve the proposed modifications.

Erik Hammarlund asked if it was deemed that this increase of use doesn't warrant a DRI, would it have to come back to the Commission if it makes other changes in the future. **Doug Sederholm** said that the property is already a DRI and that any changes would have to be presented to the Commission as a modification.

6.2 Applicant's Presentation

Doug Hoehn provided the Applicant's Presentation

- He said that Paul and Doug had presented the proposal thoroughly and accurately. The only thing he would add is that a special permit is not needed to operate a lumber yard at the property location. It is a specially permitted use, but it was obtained in 2004 when the property was purchased.
- The outdoor display permit was also obtained in 2004.
- The outdoor display permit is being modified because racks are being added.

Adam Wansiewicz said the only modification is to add display racks.

Chris Murphy asked if there was any comment from the public, which there was none.

Mark London asked if the landscaping would be kept the same within the first 20 feet from the roadside. **Adam Wansiewicz** said the landscaping along the roadside would remain the same. There would be some trimming along the driveway to get the racks in.

Ned Orleans moved, and it was duly seconded, that the Commission find that the proposal is not a significant enough change in intensity of use to require a public hearing as a DRI. A roll call vote was taken. In favor: Bill Bennett, John Breckenridge, Christina Brown, Peter Cabana, Erik Hammarlund, Fred Hancock, Chris Murphy, Kathy Newman, Ned Orleans, Camille Rose, Doug Sederholm, Linda Sibley, Brian Smith, and Holly Stephenson. Opposed: None. Abstentions: None. The motion passed.

Christina Brown moved, and it was duly seconded, that the Commission approves the modification of the previous DRI decision as proposed. A roll call vote was taken. In favor: Bill Bennett, John Breckenridge, Christina Brown, Peter Cabana, Erik Hammarlund, Fred Hancock, Chris Murphy, Kathy Newman, Ned Orleans, Camille Rose, Doug Sederholm, Linda Sibley, Brian Smith, and Holly Stephenson. Opposed: None. Abstentions: None. The motion passed.

7. WAVELENGTHS DRI 623-M: CONCURRENCE REVIEW

Commissioners Present: B. Bennett, J. Breckenridge, C. Brown, P. Cabana, E. Hammarlund, F. Hancock, C. Murphy, K. Newman, N. Orleans, C. Rose, D. Sederholm, L. Sibley, B. Smith, H. Stephenson

For the Applicant: Jayne Steide and Melissa Montession (owners), Chuck Sullivan (architect) and Doug Hoehn (engineer)

7.1 Staff Report

Paul Foley provided the staff report.

- The applicants are Jayne Steide and Melissa Montesson; Chuck Sullivan (architect); Doug Hoehn (engineer); and Colin Jones (Project Manager).
- The project is located at 223 Upper Main Street, Edgartown Map 20-A Lot 95 (0.29 acres).
- The proposal is to remove an existing one-story building on Upper Main Street and replace it with a three-story 5,309 sf. mixed use building.
- The permits needed in addition to a building permit are a special permit from the Planning Board.
- On December 2, 2010 the Commission reviewed and approved the proposal to have a three-story 4,198 sf. mixed-use building and build a new three-story 5,381 sf. building with three 2-bedroom residential units in the back of the property.
- The applicant was not able to obtain access to adjoining properties and now must have a maximum 50% floor area ratio.
- Therefore the modified proposal has eliminated the rear building and increased the square footage of the front building by 22%. The previous building proposal had 4,198 sf. and the current proposed building would be 5,381sf.
- There will be five commercial condominium units totaling 2,884 sf., an apartment of 1,140 sf., and a basement of 1190 sf.
- The LUPC voted unanimously to recommend to the full Commission that the modification is not a significant enough change to warrant a public hearing as a DRI.
- The LUPC voted to approve the modification with the addition that all the previous conditions would carry forward with the exception of the affordable housing calculation be reduced to \$3,309 to correlate with the reduced square footage.
- The key issues are, is it a significant modification, how will the building fit the streetscape, and will there be adequate parking and circulation.
- The estimated trip generation at peak hour is less than the previously approved project and the total daily trip generation should remain about the same.
- The proposed plan shows 18 parking spaces on site and the turn-around is slightly larger.
- The Edgartown Planning Board has verbally approved the modification, but is waiting for the MVC decision before finalizing their decision.

Doug Sederholm provided the LUPC Report

- A building has been eliminated and the square footage has been reduced by half.
- The parking and circulation has improved.
- The traffic remains the same.
- The new proposed building will be larger; however the additional massing will be in the rear of the building.
- With the exception of the Affordable Housing contribution the conditions would remain the same.
- LUPC recommended that the full Commission approve the proposed modification with the conditions to the previously approved project with the only change being the modification to the Affordable Housing contribution.

7.2 Applicant's Presentation

Chuck Sullivan said the streetscape has not changed in the proposal.

Mark London noted that the proposal shows 5 commercial units, however the commitment and what is binding is the actual square footage. The calculation for the number of parking spaces required is based on the square footage and not the number of units.

Chris Murphy asked if there was any comment from the public, which there was none.

Linda Sibley moved, and it was duly seconded, that the Commission find that the proposal is not sufficiently substantial to require a public hearing as a DRI. A voice vote was taken. In favor: 13. Opposed: 0. Abstentions: 0. The motion passed.

Linda Sibley moved, and it was duly seconded, that the Commission approve the modifications to the project with the retention of all previous conditions with the exception that the affordable housing contribution shall be \$3309. Roll call vote. In favor: Bill Bennett, John Breckenridge, Christina Brown, Peter Cabana, Erik Hammarlund, Fred Hancock, Chris Murphy, Kathy Newman, Ned Orleans, Camille Rose, Doug Sederholm, Linda Sibley, Brian Smith, and Holly Stephenson. Opposition: None. Abstentions: None. The motion passed.

8. OCEAN CLUB EXPANSION DRI 309-M2: CONTINUED PUBLIC HEARING

Commissioners Present: B. Bennett, J. Breckenridge, C. Brown, P. Cabana, E. Hammarlund, F. Hancock, C. Murphy, K. Newman, N. Orleans, C. Rose, D. Sederholm, L. Sibley, B. Smith, H. Stephenson

For the Applicant: Mark Wallace and Michael Wallace

Doug Sederholm opened the continuation of the public hearing.

Doug Sederholm said that the Commissioners have received a substantial amount of new correspondence and before they deliberate and decide, they need to review the new material. The traffic study was distributed to the Commissioners.

8.1 Staff Report

Paul Foley provided an update to the previously presented staff report.

- There is a packet of letters that were distributed but there were also quite a few letters that were just handed in within the last hour or so and cannot be reported on because they had not been reviewed.
- In 1990, the Commission approved Dreamland to consist of two floors of office space, 254 sf. conference room, and hotel rooms, and to add a third floor with 13 hotel rooms.
- The Commission has received a letter from Joe Alosso, Oak Bluffs Wastewater Facility, which states there has not been an official vote but the Wastewater Commissioners by a count of 2 to 1 seem to be amenable to allow the necessary flow for a function hall on the second floor. Joe added that they reviewed the project as a function hall only and that if it was an expansion of the restaurant it would require additional flow.
- In terms of economic impact it should be noted that the patrons of the function hall should provide residual economic increase to the other businesses in the area.
- The applicant is a residential abutter to the property.

- Offers have been submitted.

Charlie Crevo provided the traffic study.

- The current traffic was determined by using 2010 summer figures.
- There was no specific use category for a function hall in the ITE Trip Generation Handbook, so the rate of a theater with a matinee was used at a rate of 20 trips per 1,000 sf.
- For a 6,200 sf. facility, there would be an estimated 126 vehicular trips.
- The 126 trips was added to the current traffic figures and calculated to be a Level of Service of B, with a difference of 11 to 13 seconds added to wait times and a less than 2 second delay at intersections.
- MVC staff estimated that there are between 500 to 600 on-street parking spaces in the downtown, Ocean Park, and harbor area of Oak Bluffs.
- Mitigation could include ensuring that functions not start or end at a time that conflicts with the ferries, that the doors be opened earlier and later so that the crowds do not all arrive and depart at the same time, that the organizers of events provide information on alternative transportation, that shuttle services be provided for certain events, and that a valet service could be provided.

Peter Cabana asked why the rate of traffic for a theater was chosen over the rate of traffic for weddings. **Charlie Crevo** said that the ITE Trip Generation Manual was used and there is no wedding category. The theater use category was used because it is a place of assembly where people gather for events at a specific time and leave at the same time. Using a theater with a matinee was used because that allows for more than one function per day.

Mark London added comments about the traffic study.

- The trip generation was looked at two different ways;
 - Using the ITE Trip Generation Manual as a theater;
 - Using the maximum capacity of 500 people and reducing it by 50% to account for people who would walk or be coming to Oak Bluffs for other purposes, and then dividing that number by 2 assuming that there would be an average of 2 people per car.

Both calculations result in about 125 trips.

- The traffic calculations were based on the worst case scenario of everyone driving to the Ocean Club within the same hour. The calculations did not include the traffic during peak time ferry arrivals and departures. Adding 125 cars during those times would be problematic.

There was a discussion regarding the parking.

- **Chip Mitchell**, Oak Bluffs resident, said that the maximum amount of parking spaces being used by the Ocean Club could be 250 spaces and mitigated down to 125. There are 500 to 600 parking spaces available and there is the potential that half of the spots would be used for one function.
- **Doug Sederholm** said that if there was a function of 500 people, they were not going to Oak Bluffs for any other reason, and there were 2 people per car, it could be the case.

- **Chip Mitchell** said if the facility is used as a nightclub there could be 500 people showing up. Therefore there is the potential that one facility would use up half of the parking spots in town.
- **Kate Young**, Surfside Motel, said she has substantial parking in the rear of her property. The Ocean Club has parking available in the rear of their property. She asked if the owners were willing to dedicate any of their own parking spaces to functions.
- **Mark Wallace** said the rear parking is for the car rental company. If someone was willing to pay \$30 to park a car it may be an option. The Ocean Club does not own that property; it is owned by a separate company. The cars that are there at night need to be there in the morning.
- **Paul Foley** said that Pricilla Sylvia, Oak Bluffs School Board, called to clarify that there have been past agreements to park employees at the Oak Bluffs School, but cannot be used as a park and ride for the customers of functions.
- **Elizabeth Young**, Surfside Motel, asked for clarification regarding who owns the car rental business.
- **Doug Sederholm** said that it was clear that the Wallaces owned it and controlled the space.
- **Kate Young** asked for more information on the process of the valet parking. There is no parking in the front of the building.
- **Mark Wallace** said they don't have a parking space, but there is a curb cut where they could pull a vehicle off the side of the road. He would not choose the back of the property as the best option for valet parking.
- **Michael Wallace** said that valet parking could be provided at Jim's Package Store after closing hours, which are 9:00 p.m. in the winter and 10:00 p.m. in the summer.
- **Erik Hammarlund** said that at most places where there is valet parking, there is a line. He asked how that would be handled where it is a lane of traffic.
- **Mark Wallace** said that if it was a traffic issue, the Oak Bluffs Police would not allow it. He compared the Ocean Club to the Atlantic Restaurant in Edgartown, which offers valet parking. He does not think people would be willing to pay to park.
- **Kathy Newman** said that the problem appears to be with summer parking and that a condition requiring large summer events to provide group transportation may be needed.

There was a discussion regarding noise mitigation.

- **Doug Sederholm** said that a written description of the proposed noise mitigation was requested at the first meeting.
- **Mark Wallace** said that the proposal was addressed in the offers.
- **Linda Sibley** said that what is in the offers was not as complete as what was requested. She would like a description of the material, thickness, and exact locations.
- **Mark Wallace** said the building is in a unique situation. The issue is the wall between the Surfside and Dreamland and not any of the other walls. The Town of Oak Bluffs has a noise bylaw, which they can not violate. The proposal is before the Commission to obtain an entertainment license, which is an annual process. Every other bar has to go through the same processes and they are constructed with 2"x4" construction. If the building was constructed with regular 2"x4" materials, he would not be offering the current measures

that already exist, such as the concrete wall. The best mitigation measure is to keep the music turned down and not to violate the noise bylaw.

- **Linda Sibley** said that the proposal does not lead to an enforceable condition. If the property changes ownership the condition becomes out of control. The condition is being dependent on the applicant, which is not something that can be enforced. She asked if he would write down on a piece of paper the material used.
- **Mark Wallace** said he would.
- **Doug Sederholm** said the acoustical panels are not included in the offers.
- **Mark Wallace** said the acoustical panels are for sound quality within the room and not for noise mitigation. The measurement of the noise mitigation is included in his license. The Commission is trying to enforce something that the Town has the capability to enforce.
- **Doug Sederholm** said the Commission has the power to address what mitigation measures should be taken to address the possibility of excessive noise. The Commission has the power to determine if mitigation measures should be taken, regardless of whether an entertainment license exists and is effectively enforced. The applicant's point is that the Commission should be deferring to the Oak Bluff's Board of Selectmen on the noise issue.
- **Jeff Young** said that he has someone that has dealt with the four events held in the building who can make comments on it. He has contacted the sound engineer, who is willing to come out and do testing and provide a report. He currently does business with eight airlines on a nightly basis. If those customers are disturbed, he will lose their business.
- **Bob Muzik**, a resident of the hotel and nighttime supervisor, said that that the noise from a commercial sound system resonates through the concrete. When there is music, his bed vibrates. He fields calls from guests regarding the noise. The thumping from the sound system is constant through the night until it is shut down. It cannot be turned down. There has to be some serious consideration for a sleeping establishment next to a nightclub.
- **Brian Smith** asked if Bob Muzik was living at the Surfside when the Game Room was operating.
- **Bob Muzik** said that he thinks he was living there at the time and noise from the pinball machines was a lot different than a commercial sound system.
- **Sara Young**, Surfside employee, said she has been working at the front desk of the Surfside for 15 years. There were complaints sometimes regarding the Game Room, but it is nothing like the complaints received during the four events that were hosted by the Ocean Club in this space. There was such a difference in complaints and the level of anger the guests had. There were lines of people at 7:00 a.m. demanding to speak to the manager and owners. The guests demand refunds, they leave, don't return, some don't return to Oak Bluffs, and some don't return to Martha's Vineyard. Letters have been submitted by people stating they will cancel their hotel reservations if the nightclub does go through, even with sound-proofing. There have been issues with people from the Ocean Club parking in the Surfside parking lot and guests could not find parking. There has been loitering in the courtyard, outside of the courtyard, and in the parking lots, which also leads to noise complaints. There are also issues with littering.
- **Bob Muzik** said that he observed a man leaving the Ocean Club who entered their courtyard and urinated on the soda machine.

- **Ned Orleans** asked if the Commission could write a condition that is tighter than the town's regulation.
- **Doug Sederholm** said he believes the Commission has the power to write any reasonable, clear, understandable, and enforceable condition with an issue like noise. He is not suggesting they do or don't.

Doug Sederholm said that he was thinking of keeping the written record open so that the applicant can submit any further measures but not expecting to take any further oral testimony.

Chip Mitchell said that the proposal is a nightclub with up to 500 people in it. It does not make sense to have the largest nightclub ever proposed on the Island next to a hotel. He would like to see a real engineer provide a proposal on the noise mitigation.

Doug Sederholm asked how late amplified music would be played.

Mark Wallace said if the hearing is continued he won't answer the question right then.

Michael Wallace said that typically the amplified music ends at 1:00 a.m.

Doug Sederholm said that they would not be held to the time. The hearing would be left open so that written submissions could be made.

Elizabeth Young said that her family is there reluctantly. Her parents bought the hotel over 25 years ago and it has been a successful business that has brought good things to the Island. When the property was originally purchased it was an arcade, then Balance, then Danny Quinn's, and now the Ocean Club. For 25 years they have peacefully co-existed with the neighbors. Their business is directly threatened by the new proposal. They are not assumptions, but things that have already happened with the four events already held. The police have been called on all four events. They do not call the police lightly. It is causing a massive amount of damage to their business. It does not make sense to create a detriment for one business to benefit another business.

There was a discussion regarding what happened when the police were called.

- **Doug Sederholm** asked what happened when the police were called during the four events.
- **Bob Muzik** said that absolutely nothing happened.
- **Doug Sederholm** asked what time of year it was when the events occurred.
- **Kate Young** said that the Obama party was in January. Homecoming was in the fall. Smirnoff/Bobby Brown event was in the summer, which was downstairs. The police told her that they could make whatever noise they wanted to until 11:00 p.m.
- **Jeff Young** said their concern was for their airline pilots, contractors, NStar employees, and others who are up at 5:00 a.m. They were complaining and understood because it was a one shot event. They will not be in business if it is an on-going thing. They have been in business for over 25 years and have contributed over \$100,000 in revenue to the Town. They would like a professional evaluation from an engineer.

Tim Burke, Edgartown, said he agrees with Chip Mitchell. There should be a professional evaluation for the sound. If there is not professional installation of sound mitigation, the Surfside and other bed and breakfasts in the area will go out of business. He has been sending people

for 21 years to the Surfside. They have always had a great time until recently. If the Surfside closes there will be an impact to the other businesses.

Elizabeth Young said that 21,000 people go through their hotel doors annually. If it closes it would be a regional impact.

Doug Sederholm asked if there had been any other noise complaints other than the four events. **The Young Family** said no.

There was a discussion regarding if it would be used as a nightclub.

- **Christina Brown** asked if the application is for functions and a nightclub.
- **Mark Wallace** said it was for events. It is an extension of the downstairs restaurant.
- **Christina Brown** asked if it would be any type of a nightclub.
- **Mark Wallace** said it would be for ticketed events from fundraisers, musical events, and it would not be a nightclub.
- **Michael Wallace** said a nightclub would be a separate license.
- **Christina Brown** said it would be helpful if it was made clearer and more specific in the materials presented to the Commission.
- **Mark Wallace** said he already has permission to use the space. He is before the Commission for approval of an entertainment license, which is the first time the Commission is reviewing one. He does not think that it was clear at the LUPC meeting.
- **Doug Sederholm** said it was very clear at the LUPC meeting.
- **Christina Brown** said that she was requesting in writing more specifics on what they mean by function room verses a nightclub.
- **Doug Sederholm** asked for the maximum number of times per week, depending on the time of year, they expect to have live music.
- **Mark Wallace** said anytime someone wants to pay to use the room. He does not want any limitation on it.

There was a discussion regarding the hours of operation.

- **Fred Hancock** said that in the minutes of the pervious hearing it was stated the hours of operation would be from 10:00 a.m. to 1:30 a.m. In the offers it states the hours of operation would be from 7:00 a.m. to 1:30 a.m.
- **Mark Wallace** said that the bar does not open until 10:00 a.m., but a yoga group or someone else may want the space and he does not want to be limited. The live music events would not be happening prior to 10:00 a.m.
- **Fred Hancock** said more clarification would be good.
- **Doug Sederholm** said that they could state when amplified live music would be happening.
- **Mark Wallace** said that he could be clearer. He also said that they were forced to buy the property and met with the neighbors to discuss potential uses. There was a lawsuit which was thrown out. Now the Commission is being used as a board of appeals. They have a \$1,000,000 investment and had no revenue for the last two years. They have eleven children. They may go out of business as well.

There was a discussion regarding if the music was turned down when there was noise complaints made to the police.

- **Erik Hammarlund** said he wanted to know if the applicants were aware of the noise issues during the four events where the police were called, if the music was turned down, were the neighbors satisfied, and if not, why in the future would they be satisfied with the music being turned down.
- **Mark Wallace** said the neighbors are building a case against him with noise complaints. Maybe the police did not respond to the noise because there was not enough noise to respond to and file a noise complaint.
- **Michael Wallace** said that he was present at three of the events. He was not aware of any complaints. The neighbors did not come into the building and ask for the music to be turned down.
- **Erik Hammarlund** said he was looking at facts and just wanted to know if the noise was turned down. If it wasn't, it is fine, maybe there wasn't enough noise. He wasn't there, but wanted to know what happened.
- **Doug Sederholm** said that Michael Wallace stated it didn't get turned down because he was not aware that there was a problem.

There was a discussion regarding having amplified music played during a site visit.

- **Linda Sibley** said she went to a site visit and learned that only two Commissioners had been to the site. She asked if amplified music could be played at the venue during a site visit.
- **Peter Cabana** said that in order to understand the sound, it should be tested by a professional with the appropriate equipment, which would be measurable and enforceable.
- **Doug Sederholm** said the site visit is not the time for that discussion, but it is in the public hearing. There is an obligation to make sure the process goes forward and does not just sit.
- **Linda Sibley** said that a suggestion was made that maybe there was not a problem to begin with, so before the applicant is asked to have a sound engineer perform a study, they could make that determination.
- **Brian Smith** said that the Town has an ordinance stating what is acceptable. He is not sure if it is upon the Commission to state that the level is not acceptable for downtown Oak Bluffs.
- **Mark Wallace** said that he cannot use the property currently. He does not think the Commission wants to over-regulate the regulations of Oak Bluffs and be the noise police.

Michelle Kim Lee, attorney for the Young family, said that the reason why the Commission is reviewing the entertainment license is because it is for a 500-person capacity venue, which is the largest venue on the Island.

- The venue will have a huge impact on the Surfside, Oak Bluffs, and the entire Island.
- There have been unlicensed events and now there are statements being made that they will comply with the noise ordinance.
- There have been issues with noise, parking, and traffic. Pedestrian traffic has not been looked at. It is not a question of if there will be problems, but rather when.

- The Young family does not want to see another business fail, however they can't have another one be so detrimental to them. They have coexisted with other businesses, but no one has proposed a 500-person venue.
- There is a letter from the Town Administrator stating they support the proposal, but they have less information than the Commission. She questioned what proposal is being supported.
- They have followed the rules of the noise ordinance by filing a complaint, which has led to nothing. If there is a noise violation there is supposed to be a hearing. There have been no hearings held.
- It is a dangerous venue. There is only one mode of egress for 500 people.
- There is no handicap accessibility for the community venue, which isolates the handicapped and elderly community.
- The sprinkler systems may not be sufficient for 500 people.
- The materials used for the noise mitigation should be looked at from a fire precaution angle, because there have been incidents in the past such as The Station in Warwick, RI when things are not closely regulated.
- The proposal is before the Commission because it is not a small capacity bar or just a function hall for weddings. The Town referred the proposal for a reason.
- There have been two public hearings and there is still nothing detailed in writing.
- They will continue to oppose the project as it currently stands.

Chip Mitchell said that when Mark Wallace was asked if it was a nightclub or a function hall, Mark responded that it was a function hall. At the last public hearing Mark Wallace had admitted that during July and August it was going to be used as a nightclub.

Doug Sederholm said that there was a very clear answer to the question already. He had asked Mark Wallace how often amplified music would be used, which he responded that "anytime anybody wants to pay me to use it." It must be assumed that it could be as much as seven days a week. They are just getting the facts in order to make an appropriate decision. It is a public hearing to gather information. There will be another meeting for discussion.

Mark London read the Oak Bluffs bylaw, which states that the bylaw only applies after 11:00 p.m. and up to 8:00 a.m. The definition of noise is boisterous noises, amplified music, and other sources, which is plainly audible from a distance of 150 ft. from the building, structure, or premises in which it is produced. The police will only regulate noise if it is after 11:00 p.m. and plainly audible from 150 ft. away. If it was 125 ft. away, it appears that the police would have no jurisdiction.

Doug Sederholm said that there has been discussion regarding sound studies. If anyone wanted to produce an expert report he wants there to be enough time to have it submitted and commented on by the other party before closing the public hearing. A detailed description regarding the sound mitigation is still needed.

There was a discussion regarding a professional sound study.

- **Tim Burke** said that if there was a sound study, access to both properties would be needed.

- **Doug Sederholm** said that he is not suggesting it needs to be done. He is saying that others are saying it needs to be done. It is their responsibility and their burden. He is providing one last chance if they want to do it. He cannot make the Wallaces or the Youngs make their properties available.
- **Tim Burke** said that noise pollution is the same as litter or air pollution. As stewards of the Island he is asking the Commission to address the issue.
- **Peter Cabana** said that any acoustical engineer should be able to take an existing building and formulate a design of a system to determine the sound. Engineers can do it and either party can do it.

Christina Brown moved, and it was duly seconded, to extend the rules and continue the meeting by 7 minutes. A voice vote was taken. In favor: 13. Opposed: 0. Abstentions: 0. The motion passed.

Mark Wallace said that he does not think he is ever going to make his neighbors happy. The Town of Oak Bluffs has the authority to give entertainment licenses and regulate. It is a slippery slope where every neighbor could use the Commission as a conduit to solve the entertainment problems in Oak Bluffs. He hears it that the Commission has the authority, but he is not sure they would want the authority. The Edgartown courthouse is for people who don't follow the law. The Commission is not the venue to decide whether or not he is bothering his neighbors. He has not even bothered them yet.

Doug Sederholm said that he would give the applicant the opportunity to give a summation on April 28, 2011. The applicant will have the opportunity of the last comments.

Mark Wallace said that he needs to get the process over as soon as possible because he cannot use the space.

Doug Sederholm said that he understands and would have closed the public hearing if he had not heard the concerns regarding having a professional sound study. He asked Paul Foley to schedule another site visit for the Commissioners.

Doug Sederholm continued the public hearing to April 28, 2011. He asked the applicant and others to provide additional information, primarily on the acoustics and noise issue, by April 21, 2011, and people to respond to this additional information by April 27, 2011.

8. DCPC SPECIAL QUALIFICATIONS

Commissioners Present: B. Bennett, J. Breckenridge, C. Brown, P. Cabana, E. Hammarlund, F. Hancock, C. Murphy, K. Newman, N. Orleans, C. Rose, D. Sederholm, L. Sibley, B. Smith, H. Stephenson

Chris Murphy said, after consulting with counsel, that the Commission could take time in making the decision on the DCPC Special Qualifications and recommended putting it off until it can be further reviewed.

Doug Sederholm moved and it was duly seconded that the Commission rescind its March 10, 2011 decision to amend the Specific Qualifications for Cultural and Historic Districts of Critical Planning Concern. A roll call vote was taken. In favor: Bill Bennett, Christina Brown, Peter Cabana, Erik Hammarlund, Fred Hancock, Chris Murphy, Kathy Newman, Ned Orleans, Camille Rose, Doug Sederholm,

Linda Sibley, Brian Smith, and Holly Stephenson. None. Abstentions: None. The motion passed.

The meeting adjourned at 10:07 p.m.

DOCUMENTS REFERRED TO DURING THE MEETING:

- March 10, 2011 Martha's Vineyard Commission Meeting Minutes
- March 24, 2011 Martha's Vineyard Commission Meeting Minutes
- Island Wind DCPC Proposed Regulations for Edgartown – Staff Notes
- Town of Aquinnah DCPC Proposed Amendments to Regulations – Staff Notes
- Vineyard Home Center DRI 339-M4 - Staff Report
- Vineyard Home Center DRI 339 – M4 – Letter from David Dutton

Vice

Chairman

Date

5-11-11

Clerk-Treasurer

Date

5/12/11