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## **Minutes of the Commission Meeting Held on July 7, 2005 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 James Athearn (E – Edgartown)	P Ned Orleans (A – Tisbury)
P John Best (E – Tisbury)	P Megan Ottens-Sargent (E – Aquinnah)
P John Breckenridge (A – Oak Bluffs)	P Deborah Pigeon (E – Oak Bluffs)
P Christina Brown (E – Edgartown)	P Jim Powell (A – West Tisbury)
P Carlene Condon (A – Edgartown)	P Doug Sederholm (E – Chilmark)
P Mimi Davisson (E – Oak Bluffs)	P Linda Sibley (E – West Tisbury)
P Martin Crane (A – Governor's Appointee)	P Paul Strauss (County Comm. Rep.)
P Chris Murphy (A – Chilmark)	- Andrew Woodruff (E – West Tisbury)
P Katherine Newman (A – Aquinnah)	

Staff: Mark London (Executive Director), Bill Veno (Senior Planner), Paul Foley (DRI Coordinator), Christine Flynn (Affordable Housing and Economic Planner), Srinivas Sattoor (Transportation Planner)

**Linda Sibley** introduced Martin Crane, the Governor's Appointee, who will be a voting member.

### **1. VINEYARD HOUSE INC: DRI NO. 582 – DELIBERATION & DECISION**

*Commissioners Present: J. Athearn, J. Best, J. Breckenridge, C. Brown, C. Condon, M. Davisson, C. Murphy, K. Newman, N. Orleans, J. Powell, D. Sederholm, L. Sibley, P. Strauss*

*For the applicant: Brian Mackey, Executive Director*

**Christina Brown** explained that LUPC unanimously recommended that the Commission approve the application as presented with several conditions on the grounds that the benefits of the proposal to the community outweigh any negative impacts, and that the location was appropriate.

**Christina Brown moved and it was duly seconded that the Commission approve DRI 582 - Vineyard House with the following conditions:**

- **As offered by the Applicant, 25 to 50% of the trees in the grassy area behind the women's building and behind the rear parking lot are to be cleared and the understory will be brush cut rather than a mowed lawn**

- ***As offered by the Applicant, the rear parking lot may be constructed at a later stage as needed and may be smaller or may be reconfigured within the perimeter as shown on the plan in order to preserve as many trees as possible.***
- ***The denitrification system shall meet the design and monitoring requirements of the Amphidrome operation and maintenance manual submitted June 24<sup>th</sup>, 2005. If the system fails and needs to be replaced, it must be replaced with a system with equal or better nitrogen reduction. Reports on the wastewater, as specified in the Amphidrome operation and maintenance manual, shall be filed with the Commission and the Tisbury Board of Health.***

[The Commission took a momentary recess to address a procedural question, after which, Megan Ottens-Sargent left the meeting.]

### **1.1 Landscaping**

**Mimi Davisson** asked whether, because of the cleared area being brush cut rather than mown, is there a provision for a play area for children. **Christina Brown** said LUPC discussed the brush cut area as being cleared but it would not be a seeded lawn.

**Mimi Davisson** asked whether a split rail or stockade fence would be along the gravel pit. **Mark London** said the plan shows split rail along the pit with plantings and stockade along the back, maintaining the dense understory.

**Linda Sibley** asked whether LUPC's recommendation to approve the application included the landscaping plan as part of the application. **Christina Brown** confirmed that the landscaping plan is part of the application.

**Mimi Davisson** expressed concern about children's safety. **Paul Foley** said that the plan specifies a split rail fence with wire metal grid and a plant barrier.

**Linda Sibley** noted that the landscape plan as reviewed by LUPC varies from the original application. The specifics of the buffering plan indicate that it should create a visual barrier between the parking lot and the road.

**John Breckenridge** asked for clarification on the proposed back parking area. He asked whether the landscaping plan had been changed to add a buffer strip to assist with run-off and as a visual barrier. **Mark London** said that it may be helpful to add the buffer zone because the applicant had said they would add a vegetative buffer strip to the plan. The Commission discussed the landscape plan, buffer area, and cutting of the understory.

***John Breckenridge moved, and it was duly seconded, to amend the condition to add a 8 – 10 foot undisturbed buffer strip around the north and west sides of the rear parking lot, if developed, to assist in run-off filtration and visual impact.***

- **Ned Orleans** asked whether this was a new offer. The Applicant confirmed that they had agreed to do it.

- **Christina Brown** said that specifics of the amendment were discussed at LUPC; personally she feels the amendment is too restrictive and the requirement that the area be brushcut, rather than mowed, is adequate.
- **Jim Powell** asked about the northeast side of the parking lot.
- **Paul Foley** explained that the plan's key shows that the area will be cleared for construction and re-graded and will be part of the drainage program.
- **Jim Athearn** asked why screening is necessary since it will only be visible from within the eproperty and not from the public way. He said he thought the Commission could leave it to the Applicant's discretion unless there was a reason to require a screen.
- **John Best** said the plan is adequate, especially with the change to brushcutting. He suggested that Vineyard House use its discretion for screening and final landscape plan.

***A voice vote was taken on the amendment: In favor: 1. Opposed: 12 Abstentions: 0. The motion did not pass.***

**Doug Sederholm** raised the issue of safety and the split rail fence with wire mesh and plant barrier. He suggested that the fence go along the perimeter of the pit.

***Doug Sederholm moved, and it was duly seconded, to amend the landscaping condition to extend the split rail fence with the wire grid along the entire perimeter of the pit.***

- **John Best** questioned the efficacy of the fence and asked about the gradient to the pit. The drop to the pit is 10 or so feet. He said if there is a risk, then run the fence as far as the risk extends.
- **Jim Athearn** suggested that the language refer to the specific boundary.
- **Linda Sibley** suggested that staff develop language to cover the condition, the purpose being the safety.

***Doug Sederholm revised his amendment; he moved, and it was duly seconded, to amend the landscaping condition to extend the fence in both directions to the fullest extent necessary to promote safety, including but not limited to the edge of the first lot to the northwest.***

***A voice vote was taken: In favor: 13. Opposed: 0. Abstentions: 0. The motion passed.***

**Mimi Davisson** said that traffic will inevitably increase on Holmes Hole Road and suggested including a condition that roadside vegetation will be retained or maintained with the goal of screening the view from the road as much as possible and practical. **Mark London** said the wording used for Dukes County Savings Bank that they would maintain existing vegetation would be appropriate. **Linda Sibley** said she felt that language was almost boilerplate and that it was implied in the Commission's approval of a landscape plan.

## **1.2 Parking**

**Jim Athearn** asked for clarification on the timeframe for developing the back parking lot and whether the two-year approval rule applies. **Christina Brown** said that if the Applicant has done a significant part of the project, the approval for the back parking lot cannot expire.

**Mimi Davisson** asked for clarification that whether the back parking lot is built is at the discretion of the applicant. **Mark London** said yes.

**Linda Sibley** said, hearing no further discussion, she would assume that the Commission had accepted the parking lot condition.

### **1.3 Wastewater/Septic**

**John Breckenridge moved, and it was duly seconded, to amend the condition to read that the maintenance contract should be submitted to the Martha's Vineyard Commission. The wastewater report would be kept on file with the Commission and the Tisbury Board of Health. The maintenance contract would stipulate quarterly inspections.**

- **John Breckenridge** explained that he made the motion because his understanding is that Amphidrome is responsible for the first round of testing for nitrogen content. Once they have achieved four quarters of good testing, they turn the maintenance system over to local representatives who are supposed to do quarterly inspections and an annual test.
- **Mimi Davisson** suggested that the condition include a time frame for filing reports with the Board of Health and the Commission.
- **John Breckenridge** specified that the maintenance contract include quarterly inspections and annual tests.
- **Doug Sederholm** asked for clarification on the offer from the Applicant. The goal is to make sure that the independent contractor is doing the inspections and tests.
- **Brian Mackay** clarified that maintenance would be done by an independent contractor who is certified by Amphidrome; the first year of testing is a state requirement. All the testing and inspections are to be done by a certified independent contractor.
- **Doug Sederholm** asked how often the system would need to be attended to. **Brian Mackay** said either once or twice a week.
- **Kathy Newman** asked Bill Wilcox what he recommends.
- **Bill Wilcox** said the system needs someone who is certified by Amphidrome who will do quarterly inspections and annual testing to measure the nitrogen content.

**Doug Sederholm moved and it was duly seconded that the motion be amended to read as follows: "The denitrification system shall meet the design, testing and monitoring requirements of the Amphidrome Operation and Maintenance manual and the Commonwealth of Massachusetts. Said work shall be done by an individual trained by and certified by Amphidrome and the maintenance contract shall be filed with the Commission. Reports on wastewater, as specified in the Amphidrome Operation and Maintenance manual, should be filed with the Commission and the Tisbury Board of Health."**

**Carlene Condon** asked for clarification on the four consecutive quarters. **Brian Mackay** clarified that the testing must be good for four consecutive quarters; then testing moves to quarterly inspections and annual testing.

**Mimi Davisson** suggested that language be changed to *all reports shall be filed*.

**Jim Athearn** commented that a friend has an advanced denitrification system that has proved difficult getting maintained. He emphasized that it is important to have a trained person on the Island, which there must be because of the Wampanoag system.

**Doug Sederholm** commended the Applicant for going through a great deal of trouble to meet the 12.9 kg/acre nitrogen requirement of Tashmoo Watershed. He noted that recent calculations indicate that the watershed is slightly larger meaning that the load limit target for good water quality is now 11.4 kg/acre; however, he said that the new limit was not being imposed after the fact. He said the Applicant has made a valiant effort to meet the nitrogen numbers for good water quality, including adding two adjoining acres of additional land. **Mark London** confirmed that any possible development on the additional two acres would have to be approved by the MVC and that they have no additional nitrogen-loading capacity.

**A voice was taken on the amendment to the wastewater condition. In favor: 13. Opposed: 0. Abstentions: 0. The motion passed.**

#### **1.4 Pesticides**

**Linda Sibley** suggested that boilerplate language regarding pesticides, herbicides, etc., be added as a condition to the landscape plan.

**Paul Strauss moved, and it was duly seconded that, All fertilizers are to be slow-release, water-insoluble nitrogen source types. No synthetic pesticides including herbicides, fungicides and insecticides shall be used in the maintenance of landscaping. In favor: 13. Opposed: 0. Abstentions: 0. The motion passed.**

#### **1.5 Definition of Lots and Possible Future Development**

There was a discussion of the possibility of combining the two lots into one.

- **Chris Murphy** said the second lot is of concern because it could be sold and he suggested that the two lots should become one.
- **Jim Athearn** agreed with that concern. The project is acceptable because there are four acres.
- **John Best** said he does not feel that it is necessary to make the two lots one. The applicant bought the two acres from Goodale to make the nitrogen figures work. He does not object to the applicant leasing the two acres for a non-nitrogen contributing use.
- **Doug Sederholm** pointed out that once the two-acre lot is part of a DRI, it will always be a DRI.
- **Chris Murphy** asked whether the two lots would become one when the title changed hands.
- **Brian Mackay** said he thought not. They were asked to get the nitrogen rights and they did.

**Chris Murphy moved, and it was duly seconded, to add the condition that the title of the two lots be as one.**

- **John Best** said the motion creates no additional assurance that the lot would be referred to the Commission as a DRI.
- **Chris Murphy** said that, at the least, the lot would have to go before a regulatory agency when it's subdivided.

- **Paul Foley** said that the lots would have new assessor parcel numbers. He also noted that the Commission staff is working on creating a DRI GIS Map and Database that will make identifying parcels subject to DRI review much easier to identify.
- **Christina Brown** said the regulatory flag is no greater for one lot or two. She suggested that the Commission may be hamstringing the Applicant.

**A voice vote was taken: In favor: 5. Opposed: 8. Abstentions: 0. The motion did not pass.**

**Doug Sederholm moved that the written decision be recorded in the Registry of Deeds so that a DRI flag can be raised on both lots.**

- **Doug Sederholm** emphasized that both lots are conditioned by the decision in perpetuity.
- **Carlene Condon** asked whether it's redundant to use the wording for a condition: "any development of Lot 2 would be subject to review by the Commission."
- **Mark London** said staff is developing an exit procedure for applicants whereby they sign a document stating that they understand any change would come back to the Commission.
- **Christina Brown** said she liked Carlene's suggestion that any lot referrals cross-reference to the other lot.

**Mark London** suggested the condition be: "Any further development on the entire acreage must be referred back to the Commission." He also suggested that, if it turns out that the lots remain two separate lots, the decision would be recorded against both properties.

**A voice vote was taken to accept the language "Any further development on the entire acreage must be referred back to the Commission." and to record the decision against both lots if they remain separate. In favor: 13. Opposed: 0. Abstentions: 0. The motion passed.**

**Linda Sibley** said the Commission is assuming that there might be an acceptable use of the second lot.

**Jim Athearn** suggested that the use would be monitored by local agencies.

**Linda Sibley** read Bill Wilcox's concerns about drainage and construction of the road.

**Christina Brown** said that the Tisbury Planning Board would address the project. LUPC liked Bill Wilcox's suggestions but felt that the Planning Board and DPW would be the best place to address drainage issues.

**Doug Sederholm** said the pit is currently used for storage of vehicles; he asked whether a change in use would require the applicant to return to the Commission.

**Doug Sederholm moved, and it was duly seconded, that no use of the property shall result in an increase in nitrogen loading. A voice vote was taken. In favor: 13. Opposed: 0. Abstentions: 0. The motion passed.**

## **1.6 Lighting**

**Linda Sibley** asked whether there is a lighting plan.

**Christina Brown moved that all exterior lighting be limited to that required by the building codes and in fixtures which are shielded to shine down only.**

- **Christina Brown** noted that, if the Applicant finds the need for landscape or security lighting, they can come back before the Commission.
- **Jim Powell** said the site is zoned commercial, which would allow the site to fall under commercial codes.
- **Linda Sibley** explained that the Commission tries to limit exterior lighting.

**A voice vote was taken: In favor: 10. Opposed: 1. Abstentions: 0. The motion passed.**

## **1.7 Energy**

**Linda Sibley** referred to the applicant's testimony on energy efficiency. **John Breckenridge** read the energy efficiency plans, which included consulting with Cape Light Compact, using energy efficient appliances, and exploring the use of solar panels.

**Paul Strauss moved, and it was duly seconded, to accept the Applicant's plan for energy conservation. In favor: 13. Opposed: 0. Abstentions: 0. The motion passed.**

### **1k. Benefits and Detriments:**

The Commissioners discussed the benefits and detriments of the project.

- **John Best** said this is a community-oriented use that will benefit all people on the Island and it is the best-designed and best-looking piece of property in the neighborhood.
- **Jim Athearn** said the benefits are obvious; there are always detriments to development, but in this project they are very small. This is a residential project in a commercial area; it preserves open space and deals with effluent.
- **Mimi Davisson** said it is close to public transportation and in a good location for working people.
- **John Best** added that this is just about the best site for development of this kind: there are no NIMBY issues, it is convenient, it looks good, and it is affordable.
- **Jim Powell** added that there are a lot of workshops and businesses nearby for employment opportunities.
- **Christina Brown** said the project is a wonderful benefit to the community; it is completely publicly supported but without public money. She added that everyone has family or friends who have needed the services of Vineyard House.
- **Paul Strauss** said Vineyard House is already helping the community; this is an opportunity to make Vineyard House even better by serving people better and in better surroundings.
- **Katherine Newman** underscored the affordability aspect of the plan.
- **Linda Sibley** said she liked the quality of the plan. The planners thought hard about making the plan work.

- **Doug Sederholm** said most laudable is Vineyard House's intention to provide people with the opportunity to help themselves and get back into the community. He said the benefits are striking and Vineyard House has done an awfully good job of doing what is needed to fit the project into the community. Although there will be some detriments to traffic and wastewater, he applauds what they have done.

***A roll call vote was taken on the motion to approve DRI 582 with conditions as amended. In favor: J. Athearn, J. Best, J. Breckenridge, C. Brown, C. Condon, M. Davisson, C. Murphy, K. Newman, N. Orleans, J. Powell, D. Sederholm, P. Strauss, L. Sibley. Opposed: None. Abstentions: None. The motion passed.***

**Brian Mackey** thanked the Commission.

[Deborah Pigeon joined the Commissioners at this point.]

## **2. OTHER**

### **2.1 Minutes**

**Mimi Davisson** raised the possibility that minutes be shorter, possibly limited to decisions and action items. **Linda Sibley** said she personally finds it useful when the minutes of a public hearing are detailed. Minutes of the public hearing used to be included in the decision. She will set aside a time at a future meeting to talk about the format of minutes.

### **2.2 Water Quality Subcommittee**

**Bill Wilcox** asked that members of the Water Quality Subcommittee sign up for a meeting time.

### **2.3 Meeting Participation**

**Linda Sibley** said there had been a question about participation of a Commissioner in the deliberation and decision on Vineyard House because she had missed part of the public hearing. She explained that MVC Counsel says that if a Commissioner has missed any substantive part of the content of the presentation or hearing, it would be better if the Commissioner recused him or herself.

**Mark London** reported that Counsel said that it could be argued that the Commissioner could watch the meeting on videotape, but there is no jurisprudence to that effect in Massachusetts yet, and the MVC might not be the entity to take this on.

**Christina Brown** suggested that the Commission adopt a policy, with the priority being fairness toward the Applicant and public.

**Chris Murphy** said a simple way to deal with the problem would be a decision by the chair when someone comes in late.

**Linda Sibley** said that the Commission would develop a policy.

**Deborah Pigeon** said she had been late to the meeting because she was purposefully abstaining from discussion of the Vineyard House proposal.

The meeting adjourned at 9:40 p.m.

Linda B. Sibley  
Chairman

Aug 11, 2005  
Date

Nathaniel J. Means  
Clerk-Treasurer

Aug. 11, 2005  
Date