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Minutes of the Commission Meeting Held on May 8, 2008 In the Stone Building 33 New York Avenue, Oak Bluffs, MA

IN ATTENDANCE

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

P James Athearn (E – Edgartown)	P Ned Orleans (A – Tisbury)
P John Breckenridge (A – Oak Bluffs)	P Jim Powell (A – West Tisbury)
P Christina Brown (E - Edgartown)	P Doug Sederholm (E – Chilmark)
P Peter Cabana (A – Tisbury)	P Susan Shea (A – Aquinnah)
- Martin Crane (A – Governor Appointee)	P Linda Sibley (E – West Tisbury)
P Mimi Davisson (E – Oak Bluffs)	P Paul Strauss (County Comm. Rep.)
- Mark Morris (A – Edgartown)	P Richard Toole (E – Oak Bluffs)
P Chris Murphy (A – Chilmark)	- Andrew Woodruff (E – West Tisbury)
P Katherine Newman (A – Aquinnah)	

Staff: Mark London (Executive Director); Paul Foley (DRI Coordinator); Bill Veno (Senior Planner); Jo-Ann Taylor (DCPC Coordinator).

The meeting was called to order at 7:40 p.m.

1. OTHER

Doug Sederholm reported that Kate Warner and the Aspen County Building Inspector will be giving a talk on drafting a Vineyard efficiency overlay to the residential building code. The Aspen Building Inspector will talk about how a similar code impacted his county. The meeting will be at the Stone Building on May 12th at 7:00 p.m.

2. AQUINNAH ENERGY DCPC – PUBLIC HEARING

Commissioners present: J. Athearn, J. Breckenridge, C. Brown, P. Cabana, M. Davisson, C. Murphy, K. Newman, N. Orleans, J. Powell, D. Sederholm, S. Shea, L. Sibley, P. Strauss, R. Toole

For the proponents: Camille Rose, Aquinnah Selectman; Peter Temple, Aquinnah Planning Board

Doug Sederholm explained that the two issues for consideration are the boundary amendment and conformance to guidelines. He read the public hearing notice. The proposal is to amend the boundary to delete the words:

- . . . that portion of the airspace over . . .
- . . . which exceeds 32 feet in height above mean natural grade for land areas or mean sea level for water areas,

2.1 Staff Report

Jo-Ann Taylor explained the question before the Commission.

- The Commission's task is to amend the boundary and to determine whether the proposed boundary conforms to the guidelines.
- There has been a moratorium for construction above 32 feet in height since the Commission accepted the DCPC.
- Since the Commission accepted for consideration the boundary amendment, there has been a town-wide development moratorium. When the Commission votes conformance, the moratorium will end.
- The boundary amendment is simple. It brings the effected district down to the ground. Originally the Commission made the designation, the Commission approved a limited moratorium to give the Town some time to develop regulations and to see if that elevation limitation was adequate.
- They've discovered that they can't make adequate regulations starting at 32 feet, which was anticipated in the Commission's decision.
- In evaluating the newly proposed boundary, the Commission is guided by the criteria. It would appear that the proposed boundary remains acceptable according to the criteria in that this boundary is the logical planning area that should be considered in adopting a set of regulations to protect a critical resource or critical area.
- The proposed regulations fall into two areas: responsible use of energy, conservation of energy, and renewable energy facilities, particularly for wind facilities.
- There is a comprehensive application and review procedure.
- There are clear definitions, sitings and guidelines.
- The regulations appear to conform very closely with goals and guidelines, particularly in regards to land-based wind facilities.
- There's more work to do on the conservation side and how to retrofit existing facilities, but the Town intends to do that in the future.
- The regulations are very strong on wind. There's room for more work on other sources of renewable energy. There's not much they can do on solar because the Commonwealth allows solar.
- There's a proposal to review regulations in five years in light of new technology such as geothermal heat pumps.
- Where the new regulations are comprehensive, they very closely conform to the guidelines.
- The goals are to reduce consumption and facilitate local generation of renewable energy.
- The Commission, in creating the town-wide DCPC in Aquinnah, determined that the Town is an important resource for its cultural values, particularly scenic vistas. Any new siting of renewable energy facilities should focus on protecting the vistas. The Commission's decision made very clear that renewable energy is a great thing, but doesn't necessarily overcome the need to protect vistas.
- The Commission set the Town the task of balancing the need to protect vistas and character and to promote renewable energy.
- There is one piece of correspondence from Chris Fried

Doug Sederholm asked how far out to sea the corporate limits of the Town are and whether the proposed regulations could potentially regulate renewable energy facilities three miles out. **Jo-Ann Taylor** said that the Town has authority up to three miles out from mean low water, though developers might want to site a facility more than three miles out.

Doug Sederholm said he's concerned that the regulations don't include anything on new construction. The Commission's goals and guidelines state that the town shall establish measures to ensure that new construction shall minimize the use of energy and fossil fuels. The question is whether the regulations can conform if they don't address that guideline.

Jo-Ann Taylor said everything that's written is in conformance. The regulations can be in conformance even with the omission. The Town has a plan to address it.

Peter Cabana commented on the New Construction section; pools and hot tubs are grandfathered, but the section implies that any new pool or hot tub would have to use non-fossil fuel heat. **Doug Sederholm** clarified that new construction of a hot tub or pool would have to conform to the requirements, but any other new construction would not have to at this time.

2.2 Proponents' Presentation

Peter Temple, Planning Board, presented information about the proposal and apologized for the late amendments and map. The changes were a result of the recent public meeting and definition of the overlay district.

- The proponents decided that they wanted to address wind first because they have a number of people in town who want to apply.
- Then they want to address the tougher issues of new construction and energy efficiency.
- The regulations, except for 16.1. – 5, will apply to a longer document. 16.1 – 5 applies to just wind.
- Hot tubs and swimming pools were a quick add and are not terribly difficult to address. They're treated as a luxury in the regular zoning, so it wasn't difficult to request that they be non-fossil fuel heated.
- The energy audit is something they're trying to do short term because an energy audit can't be done on a house that hasn't yet been built. Likewise, if someone is going to apply for a wind-generating facility, Aquinnah would like them to do an energy audit to make sure the rest of their house is in order.
- In existing overlay districts, only a small wind facility would be considered and only after a fairly extensive list of qualifications. They don't want to interrupt those important viewsheds. They do, though, want to take advantage of the rest of the excellent wind resource.
- They've tried to move structures inland and upland away from the shores and have created the medium and larger overlay district. It's the land 125 feet above sea level and higher, much of it above 150 feet. It's also close to State Road which is where the main interconnect to the power grid is. One of the goals is to protect the viewscape so they're hoping to push facilities farther back.
- Given zoning restrictions, setbacks, and average lot size, they anticipate it would be difficult to put multiple wind turbines on one lot. A goal was to encourage economy of

scale, rather than many individual small turbines, so they encourage communal use wherever possible.

- It would not be possible to have DAS antennae attached to turbine towers because there would be too much interference.
- The first goal of reducing fossil fuels through alternative energy and increased efficiency has not been addressed yet.

2.3 Commissioner Questions

Peter Temple answered Commissioner questions.

- Page fourteen lists off-shore wind-generated facilities, water-generated facilities, and solar and geothermal. There are no limits on the water-based side, yet.
- The Planning Board Plan Review Committee is a super committee that consists of the five members of the Planning Board, one person appointed by Selectmen, usually a Selectman, and one by the Conservation Commission. The Committee makes all the siting decisions for all the DCPCs. They are the special permit granting authority.
- Energy audits are mandatory for special permits.
- Requiring energy audits for building permits seemed to be too much before the energy savings guidelines were developed.
- Special permits are required when someone is expanding an existing structure or going up in height – basically changing the envelope. They used the term weather walls because if someone were adding a deck, for instance, an energy audit shouldn't be required.
- If someone has the audit, he would have to come in with a punch list of how the issues will be addressed. The building inspector would follow-up on the punch list before issuing the certificate of occupancy.
- Justification can be submitted if a person has a reasonable explanation of why they can't or don't want to pursue an aspect of the energy audit.
- The proponents expect that anyone applying for a special permit would want to plug the leaks and do the cost effective things. The applicants should be telling the Planning Board Review Committee what they want to do to reduce their fossil fuel consumption.
- The idea is to give people a target and let people decide how they want reduce their fossil fuel consumption.
- When Aquinnah writes the reduction of fossil fuels section, it may be taking an Energy Star standard approach or an energy reduction percentage approach.
- There is a super energy audit that is free.

Peter Cabana said there are two levels of energy audit that Cape Light Compact performs. The more extensive, comprehensive audit looks at windows and insulation and makes recommendations. Sometimes money is available to make improvements.

Mimi Davisson asked why one would have an energy audit on all the buildings in a multi-building complex. **Peter Temple** said, if the goal is to reduce fossil fuel consumption, it would make sense to perform the energy audit on all the buildings.

Paul Strauss said the Kate Warner and Gino have done a couple of presentations on energy consumption reduction. They incorporate these things into their energy audit. **Peter Temple** said they will have a list of people on the Island who do energy audits.

Doug Sederholm recommended that the proponents clarify the difference between shall and should. He reminded Commissioners that the decision is whether the proposed boundary conforms to the guidelines and whether the proposed regulations conform to the guidelines.

Linda Sibley asked whether it would be appropriate to say that changes in language the proponents make for clarification after Commission approval would not invalidate the approval.

John Breckenridge asked whether the regulations would have to come back to the Commission for approval if they were amended. **Doug Sederholm** said that any amendment, addition, or revision would have to come back before the Commission; Aquinnah can't implement DCPC regulations without coming before the Commission.

Peter Temple explained that they determined the cut-offs for the small, medium, and large categories by looking at by-laws from other towns. The wind facility at the high school is 10kw and is considered to have a 'small' diameter. There's not necessarily a correlation between power and rotor diameter.

Peter Cabana said using rotor diameter regulations is a logical initial step.

Chris Murphy suggested that line 24 doesn't need to state south and west. **Peter Temple** explained that the experts they talked to felt that the prevailing wind direction was sufficient; a turbine 30 feet below the treeline, is not going to be efficient; if people put up towers, they want them to be efficient so the proponents set the minimum and did it to the prevailing wind direction. The typical tree line is 30 to 60 feet high.

Linda Sibley said she's puzzled by the definition of commercial. **Peter Temple** said if you're not selling a majority of it, then it wouldn't be commercial. **Linda Sibley** disagreed with the way commercial is defined.

Peter Cabana explained that Cape Light Compact can only buy and generate electricity at the retail level. The Cape Light Coop can buy and generate electricity at the wholesale level.

Chris Murphy asked about the assessment of migratory birds. He would like to see a bird impact study be a condition of approval for windtowers.

Mimi Davison asked about the different setback requirements for the different size towers.

Peter Temple explained that they are bigger for medium and big wind towers, is so the towers won't loom over neighbors so much.

Mimi Davison asked about the proponents' desire to balance the public benefit with the goals of the DCPC and how they will determine the public benefit. **Peter Temple** said the public benefit is to the Island and the Town; they believe that the Town doesn't want the towers on the cliffs, at this time; that may change in the future; the people on the special permit committee makes decisions based on regulations. **Camille Rose** added that the public has input through the public hearing process, and the public can appeal any decision; additionally, some of the larger projects will probably be reviewed as DRIs.

Doug Sederholm pointed out that there's a provision in subsection A to allow wind facilities in areas where otherwise it's strongly discouraged; a wind turbine could go up in a sensitive area; if the public benefit outweighs the degree to which the goals are not met, the Board would be able to allow that. **Peter Temple** said a medium wind facility could be sited in areas that are not particularly visible.

Doug Sederholm asked whether there were any criteria for addressing public benefit outweighing the degree to which the goals of the DCPC are not met. **Peter Temple** said that the committee has been able to decide when something is too visible; there are specific rules that attempt to define the extent to which they'll go to protect those areas.

Commissioners and the proponents discussed the large and medium overlay district regulations.

- **Peter Temple** explained that a migratory bird impact assessment or habitat evaluation may not be required if a prior applicant had already done a study of the same area. It's not Aquinnah's intent to let an outside developer come in before residents and the Town have had a chance to take advantage of the resource. They'll take a look at whether safety and design should be certified by both an engineer and someone from the State.
- **Doug Sederholm** suggested that the Town require, along with proof of liability insurance, annual certification of insurance.
- **Peter Temple** explained that lattice poles add more mass to the eyes. Monopoles blend in better, but they can be more expensive. The regulations also include allowing guyed towers, which may be a more economic installation.
- **Jim Athearn** said that sometimes **fearing** is added to monopoles to reduce sonic vibration, but the **fearing** makes the power more visibly obtrusive. **Camille Rose** said that lattice towers are hardly ever used in big winds.
- **Peter Temple** explained that noise and vibration are balanced out in the regulations. They used the DEP standard. The setbacks may be greater if noise is tested and found to be significant.
- **Susan Shea** said the noise from the high school wind turbine is unbearable. **Camille Rose** said it's not functioning properly. If a similar noise problem were to happen in Aquinnah, the tower would be shut down immediately and would have to meet the DEP regulations.

Commissioners and proponents discussed general requirements.

- **Doug Sederholm** suggested that, on page 11 and 12, *will* should be changed to *shall*. He said there appeared to be a conflict between condemnation and abandonment.

Commissioners and proponents discussed siting guidelines.

- **Peter Temple** explained that they wanted to protect the view of big wind facilities from the land. They will be seen from the water.
- **Jim Athearn** explained that if the Commission found that the loophole of the public benefit was too vague that could negate the entire DCPC, what would the effect on the entire by-law.
- **Peter Temple** explained that they would have to come up with a clear or more distinct standard. The trick was to try to have some means to deal with changing technology and

changing need. They didn't want to go to absolutes, but they've tried to say Moshup Trail and 1,000 feet from the shoreline are protected.

- **Linda Sibley** added that anything big will probably be coming to the Commission as a DRI. Protection doesn't exist right now and should be addressed in the DRI Checklist when it's rewritten.
- **Mark London** said they might be willing to make the moral engagement that they'll make a discretionary referral for any large wind towers.

Jo-Ann Taylor reviewed the section on views and vistas.

- Identify significant public views and vistas prioritizing those with greatest public importance, public use, and visibility.
- Provide criteria for reasonable protection of the views and vistas such as siting to minimize the visual impact on views and vistas as well as considering use of other electrical generation.
- That's the standard that was given to Aquinnah by the Commission. The Commission has to determine whether they've provided criteria for reasonable protection.

Doug Sederholm reviewed the section on term of special permits.

- The project has a fifteen year term with five year renewals after that.
- The renewal will to meet whatever test at the time is the requirement.
- His concern is that if you have an existing facility and the technology has changed, the proponents haven't spelled out the criteria for renewal. It seems that it's a big omission to not have criteria for renewal.
- He suggested that it would be helpful to state that a renewal would require meeting the criteria for a new permit.

Christina Brown suggested that the Planning Board should have the leeway in considering a renewal to allow a wind turbine to stay in place if meeting new technology requirements would require a new turbine.

Doug Sederholm reviewed the section on swimming pools and hot tubs; all existing pools and hot tubs are grandfathered; he asked how the proponents would ensure new ones will have a renewable system that will be properly sized. **Peter Temple** said they will probably be dealt with within the energy saving and new construction and energy saving package part of the by-law.

Jim Athearn said Aquinnah has promised to write the new construction section, but without it, the by-law appears not to meet the requirements.

Jo-Ann Taylor said everything conforms, but it's up to Commissioners whether to give the proponents the benefit of the doubt. An issue is the moratorium. If the Commission does find that these regulations are in conformance then the moratorium can end. If the Commission finds that they don't adequately conform because they don't have enough on new construction, the moratorium continues.

Jim Athearn said that Commissioners need to be satisfied that they didn't just turn a blind eye to a gaping hole. **Camille Rose** and **Peter Temple** said their intent is to complete the section within the original time frame of one year.

Doug Sederholm said, regardless of the Commission's vote, he wanted to commend the proponents on a tremendously good job of getting this together in such a short time with this amount of detail.

2.4 Public Comment

There was no public comment.

Doug Sederholm closed the public hearing.

3. AQUINNAH ENERGY DCPC – DELIBERATION & DECISION

Commissioners present: J. Athearn, J. Breckenridge, C. Brown, P. Cabana, M. Davisson, C. Murphy, K. Newman, N. Orleans, J. Powell, D. Sederholm, S. Shea, L. Sibley, P. Strauss, R. Toole

Linda Sibley moved to accept the proposed boundary amendment. A roll call vote was taken. In favor: J. Athearn, J. Breckenridge, C. Brown, P. Cabana, M. Davisson, C. Murphy, K. Newman, N. Orleans, J. Powell, D. Sederholm, S. Shea, L. Sibley, P. Strauss, R. Toole. Opposed: None. Abstentions: None. The motion passed.

Jim Powell moved to find that the Aquinnah DCPC regulations as proposed is in conformance to the Commission's guidelines.

Jim Powell withdrew his motion to Commissioners could discuss amendments.

Commissioners suggested the following amendments:

- At Section 16.1-3, language should be added that the proponents shall return to the Commission with the section on new construction.
- The definition of commercial should be clarified and the 50% threshold as non-commercial should be looked at by counsel.
- On Page 2, the *shoulds* should be changed to *shalls*. Where the proponents would like more flexibility, as in requiring an energy audit, the statement *unless a waiver is granted* could be added.
- At 16.1-3, the Committee can't update the plan. It can recommend updating the plan.
- The proponents shall consider including language that as part of the migratory impact study; they'll do an after the fact count.
- Page 13, line 29. *Wind facilities shall not be located in open or highly visible areas unless the degree to which the goals of the Town of Aquinnah DCPC are not met is commensurate with the public benefit of the proposed facility.* The language will be used throughout the document where the public benefit is referenced.
- Add *annual certification of liability insurance.*
- Page 32, Line 11, add parenthetical reference to abandonment paragraph below where abandonment is defined.
- Page 7, Line 37 and 47, manufacturer *and* engineer.
- Page 8, Lines 9-12. Add: *The operator of any wind facility shall annually provide said certificate of liability insurance to the Planning Board Plan Review Insurance.*

- Minor amendments for clarification don't need to be reviewed by the Commission.

Jim Powell moved, and it was duly seconded that the Aquinnah DCPC regulations will amendments is in conformance with the Commission's guidelines. A roll call vote was taken. In favor: J. Athearn, J. Breckenridge, C. Brown, P. Cabana, C. Murphy, K. Newman, N. Orleans, J. Powell, D. Sederholm, S. Shea, L. Sibley, P. Strauss, R. Toole. Opposed: None. Abstentions: M. Davisson. The motion passed.

Doug Sederholm again commended Aquinnah for their hard work.

4. COTTRELL: DRI 39M-5 – CONCURRENCE REVIEW

Commissioners present: J. Athearn, J. Breckenridge, C. Brown, P. Cabana, M. Davisson, C. Murphy, K. Newman, N. Orleans, J. Powell, D. Sederholm, S. Shea, L. Sibley, P. Strauss, R. Toole

For the applicant: Robert Tonti, CEO, Vineyard Nursing Association

4.1 Staff Report

Paul Foley gave the staff report.

- The site is part of Woodland. The building was rebuilt by Chris Cottrell.
- The building is not a DRI.
- Part of the building was designated for storage.
- The applicant wants to convert the storage space to house the Visiting Nurse Service. They want to add three full time office employees, three additional nurses, and four aides to the existing five office employees, eight nurses and twenty-three aides.
- The applicant wants cubicles, a meeting room upstairs, and a computer office.
- The proposal is that the space will revert back to storage after three years.
- It's a change in use for three years, after which and approval would expire.
- It's a 25 % increase in the number of personnel on site.
- They offered a dormant easement which eventually could connect to other easements.

Linda Sibley moved, and it was duly seconded, that the Commission should expedite this application but it is sufficiently major as to require a public hearing.

Linda Sibley added that she couldn't see the Commission waiving its nitrogen requirement without having a public hearing.

Ned Orleans added that now it's unclear that the Hospital will have space for the consolidated VNA/VNS program in three years.

Robert Tonti responded that the program will move in three years either to the Hospital or to another location.

Linda Sibley said based on the applicant's original presentation, the Commission didn't have a public hearing. In retrospect, the applicant's presentation was inaccurate and was not a demolition.

Paul Foley continued the staff report.

- There are twenty spaces around the building.
- There are a few plantings along the front.
- The main floor has two offices. Upstairs is an apartment and storage. There are three bays that are empty.
- The VNA has one meeting a week with all of their employees for an hour.
- This building was originally a one story wooden structure.
- The site plan shows where the applicant wants to add meeting and office space.
- The key issues are nitrogen. The applicant would be increasing employees by 25% for three years.

Richard Toole Gave the LUPC report.

- The committee weighed the issues of nitrogen and the urgency of the situation. They voted to recommend to the full Commission to not concur with the referral and not hold a public hearing.

Christina Brown said that it's important that the Commission doesn't overlook procedures.

However, in this case, she feels that the Commission itself overlooked its own procedures.

- The Commission voted to approve the building.
- The applicant is now asking to modify the building to build offices, then revert back to storage after three years.
- She suggested that the Commission not look at the issue of whether or not this should have been a DRI.
- She believes that the public benefit of the VNA's having a place to house itself outweighs or balances the Commission's setting aside its policy for three years.

4.2 Applicant's Presentation

Robert Tonti explained the application.

- On March 12th, Community Services announced that they were going to close their offices on June 30th. They immediately started referring patients to the VNA.
- The VNA knew it was going to have a problem and would need to increase staff.
- The VNA moved into the Cottrell building and thought they would be able to move out a year from now, but the Hospital won't be ready.
- He is committed to finding a permanent solution. They haven't found any other solutions..
- They've brought on aides, and nurses. Their patient load has gone from 120 to 170. They have to add administrative people.
- They recognized from day one that nitrogen is going to be an issue.
- They have initiated a building committee to work on finding an alternative solution. We need a building and parking lot.
- Vineyard Haven is giving them a waiver for this site because, as storage space, it only has one egress.

Linda Sibley said she doesn't think that an emergency justifies the Commission's setting precedents about what gets reviewed.

- The original project was not reviewed because the Commission gave the applicant credit because this was a reconstruction and because the Commission overlooked all of the storage.
- Storage never stays storage. It always gets converted.
- This space is 'storage' and is clearly able to be converted to habitable space.
- The Commission has an obligation to the public if it is going to override its own nitrogen policy, even for three years, and if it is going to approve changing approved storage space to active space, even for only three years.

Kathy Newman asked what the purpose of the holding a public hearing is. She wondered if there is a way to fix the broken pieces without holding a public hearing. This is a service to the Island which makes it different from other emergencies.

John Breckenridge said the issue is not just nitrogen. There are issues of parking and traffic, including a weekly meeting of 35 people. Even if the Commission looks at this as a three year project, it needs to find proper solutions.

Jim Athearn said he doesn't relish reviewing another building in the Woodland area. The problem is mostly the nitrogen. He wondered if the applicant could make an offer that after three years the space would revert back to storage and he would install a nitrogen reduction system.

Chris Murphy agreed with Jim Athearn. He supports the VNA. At the same time, when you're looking at 5 to 10 times over the nitrogen loading limit, there's a problem. He believes that the Commission could work with any good faith solution that the landlord puts on the table. The Commission needs to have the public hearing and deal with the wastewater issue.

Paul Foley said there could be a public hearing on May 29th or June 5th.

Bob Tonti clarified that the VNA approached Chris Cottrell about the storage space. He didn't approach them.

Chris Cottrell said he can show that the original studs were used and it was not a demolition. He'd be happy to go through the public hearing process.

A voice vote was taken on the motion to hold a public hearing. In favor: 9. Opposed: 3. Abstentions: 2. The motion passed.

Doug Sederholm said the public hearing will be held on May 29th. The two issues to be addressed are following proper procedure and responding to the needs of a public organization.

5. NOVA VIDA: DRI NO. 603 – PUBLIC HEARING

Commissioners present: J. Athearn, J. Breckenridge, C. Brown, P. Cabana, M. Davisson, C. Murphy, K. Newman, N. Orleans, J. Powell, D. Sederholm, S. Shea, L. Sibley, P. Strauss, R. Toole

For the applicant: Valci Carvalho, pastor; James Weisman, architect

Richard Toole opened the public hearing.

5.1 Staff Report

Paul Foley gave the staff report.

- The proposal is to locate a 150-seat church on the second floor of an existing building with a footprint of 2,560 sq. ft.
- A community center will be housed in the basement.
- A 28 child day care is housed on the first floor and is proposed to continue.
- Zoning is R-3 residential.
- Residential structures may be used for religious purposes.
- Surrounding uses are mostly residential businesses. The High School is nearby. The Mormon Church owns a nearby open lot.
- The building used to house a dance studio.
- It was permitted as a boarding house at one time.
- The church is now in the basement.
- The top floor has six unpermitted boarding rooms.
- The Commission needs to look at the proposed use.
- Referred by Jerry Weiner, Building Inspector.
- A few small additions to the existing building are proposed.
- Some of the key issues are: wastewater, mix of church and day care in a residential neighborhood, trees, and integration of proposed uses with the neighborhood.
- The property is in or on the edge of priority habitat.
- The applicants are proposing a 50 foot buffer zone between the street and the field in front which will be a combination of soccer field and overflow parking.
- They'll add screening to the west side of the property along Ryan's Way.
- They'll build a fence along the back and plant screening on the neighbor's side of the fence.
- Exterior lighting will be downward shielded.
- The church will be lit from within.
- The day care opens at 6:00 or 7:00 a.m. Services are on Sunday mornings and Wednesday nights. They also do counseling and some classes.
- The previous wastewater flow was for an 11 bedroom house, sized for 1,210 gallons a day. The total previous nitrogen load was 17.9 kgs, which would be allowed because it was previously approved.
- The run-off would be about the same.
- The proposed use would produce a nitrogen load of about 17.3 kgs per year. The limit for this size parcel is 5.9 kgs per year.
- More frequent use of the community center would increase the nitrogen load.
- Mitigation could include landscaping, fertilizers, on site denitrification, or tying into a future high school wastewater treatment.
- The previous use traffic study estimated 150 to 200 trips a day, with a peak hour of 25. Current use estimate is 194 trips a day with peak hour of 27. The proposed use traffic estimate is 226 a day, a 12% increase, with a peak hour of about 50. Day care and church use do not coincide with peak hour.

- They haven't offered specific traffic mitigation. They have a mini-bus for parishioner pick-up.
- Parking site plan has to be realigned. They accommodate up to 40 vehicles.
- The parking plan is for 34 spaces, including 2 handicapped spaces.
- Three trees will be removed.
- Parking areas will be pervious asphalt with an asphalt entrance.
- Several church members currently live in the building.
- The Commission's policy is that religious organizations are exempt from the affordable housing contribution.
- The religious use of the site exempts it from property taxes. However, the daycare use may have an impact on that exemption.
- The property is more visible from the street because a number of trees were taken down.
- The increased use has an impact on abutters. Some abutters attended LUPC meetings.

5.2 Applicant's Presentation

James Weisman presented information about the project.

- He clarified that there is essentially one addition and one removal and one move of a small addition from one spot to another.
- They're attempting to create a facility that is as good as possible while trying to make it work as well as possible for everybody.
- They made some changes to the external and internal plans since presenting to LUPC.
- They've also made changes to the site plan. On the west side of the property, they're keeping space in case there is a possibility of tying into the Mormon Church right of way as an entrance.
- At present the entrances and exists are as they exist.
- They've created a new parking area and an overflow area.

Darren Rubens presented additional information.

- The pastor would like a soccer field. They are proposing a sort of transparent net barrier along the back edge of the field.
- They have designed the sidewalks in keeping with LUPC comments about accessing the site without coming on Ryan's Way. They added a sidewalk can come into the site directly.
- For landscaping they used understory shrubs. On the State Road side, they are proposing that the screening be intensified with oak and pitch pine.
- The curb cut will be closed down and green added.
- Toward the neighbors' side they are proposing a 6-foot fence. If the neighbor wants plantings on his side, they will add those.
- They have a lighting proposal for 3 to 3.5-foot high downward shielded lights.

James Weisman added the following:

- The addition footprint is 16 ft. by 24 ft. and will house the elevator.
- It's harder to get agreement on the site plan than on the architecture.

The Commission suspended the rules for ten minutes.

5.3 Public Comments

Anthony Capelli, the abutter, referenced the Dover Amendment. No zoning ordinance by-law shall regulate the interior of a single family residence building, nor shall any such zoning ordinance by-law regulate for religious purposes. This site is in an R-3 district and is being used as a church. He said this is not a single-family residence.

5.4 Public Officials

Kerry Scott, speaking as a Selectman, but not speaking for the Selectmen, said there is an extraordinary intensity of use on the site.

- This was meant to be a home business zone.
- This doesn't resemble a home business.
- The residential component won't continue.
- The daycare is the Hospital's program and there's a question of what will happen when the Hospital project ends.
- She's heard from the neighbors that there's a lot of pressure on that area. People are being seriously impacted.
- The intensity of use is meant for an R-3 district.
- It is a commercial enterprise, even if it's a church. There's the daycare, and possibly a landscaping business.

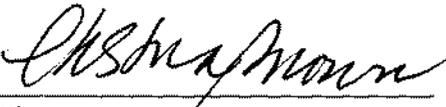
5.5 Commissioner Questions

Commissioners listed questions that they would like answered at the next session of the hearing.

- **Linda Sibley** asked if the applicant has thought about the design if there were a joint entrance with the Mormon Church.
- **Susan Shea** asked if the pastor had spoken with the neighbors.
- **Linda Sibley** suggested that the Dover Amendment be clearly explained at the next hearing.
- **Chris Murphy** asked what guarantee from the Selectmen that the conditions of approval will be enforced by the Selectmen.
- **John Breckenridge** asked where the septic is located. He would also like a clarification on the preexisting load of 17.0, and whether with a significant change of use, the old approved wastewater would apply.

Kerry Scott said she would work with Paul Foley on summarizing the history of the property.

The meeting adjourned at 11:10 p.m.


Chairman

5/21/09
Date


Clerk-Treasurer

5/21/09
Date