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**Minutes of the Commission Meeting  
Held on March 18, 2010  
In the Stone Building  
33 New York Avenue, Oak Bluffs, MA**

**IN ATTENDANCE**

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

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

Staff: Mark London (Executive Director), Bill Veno (Senior Planner), Paul Foley (DRI Coordinator), Christine Flynn (Affordable Housing & Economic Development), Bill Wilcox (Water Resource Planner)

**Christina Brown** opened the meeting at 7:05 p.m.

**1. EXECUTIVE DIRECTOR'S REPORT**

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**Mark London** gave the Executive Director's Report

**1.1 Island Plan**

Newspapers this week contain the Island Plan flyer. The full version is also being distributed. The Island Plan Steering Committee is meeting to discuss how to transition to the next phase.

**1.2 Wind Energy Work Group of Dukes County**

Representatives from each town and the Tribe met to work on wind energy planning, particularly focusing on items that relate to Commission jurisdiction. Among the goals of the work group are to recommend possible modifications to the DRI threshold for projects that have regional impact and to make recommendations on DRI criteria. The Commission has been given a mandate by the Ocean Management Plan to determine appropriate scale in state waters. The Work Group will also look at the DCPCs and work on model bylaws.

### **1.3 Agricultural Self-Sufficiency**

Staff is just completing a study of potential agricultural self-sufficiency, which will be e-mailed to commissioners. JoAnn Taylor will present it to the statewide conference of agricultural commissions.

### **1.4 DRI Checklist**

The revised checklist has been sent to towns. Staff will be going to towns to explain the revisions.

**Christina Brown** explained that the major changes are when a DRI isn't developed, the once/always criterion is dropped. The other changes are related to concurrence.

## **2. TISBURY MARKETPLACE: DRI 485-M5 – MODIFICATION REVIEW**

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*Commissioners present: B. Bennett, J. Breckenridge, C. Brown, P. Cabana, F. Hancock, C. Murphy, J. Joyce, L. Jason, K. Newman, N. Orleans, C. Rose, D. Sederholm, H. Stephenson, L. Sibley. A. Woodruff*

*For the applicant: Sam Dunn, owner/architect; Elise Ellison architect; Doug Hoehn, engineer*

**Linda Sibley** opened the public hearing and read the hearing notice.

### **2.1 Staff Report**

**Paul Foley** gave the staff report.

- Sam Dunn met with the Tisbury Site Plan Review Board and has submitted a revised plan.
- The proposal is to build a 6,500 sq. ft. building with two to three retail units, one office, one apartment, and one marine related unit, with a 3,700 sq. ft. footprint, on the lawn. The proposal would be a 30% increase in the total square feet of the marketplace and a 40% increase in square feet of retail.
- The project was referred by the Tisbury Conservation Commission.
- In 1987, the applicant wanted to build in approximately the same site. The proposal was denied based on proximity to wetlands and the lagoon and traffic. There's been incremental growth over the years.
- Key issues are: lot coverage, character and use of what is currently open space, incremental growth, traffic, proximity to wetlands, proximity to boatyard, and traffic and turning issues.
- The building would extend over the 50-year flood plan.
- Tisbury Conservation Commission allowed the paving of the parking area with the agreement that 50% of the lot area needs to remain pervious.
- Part of the building is in the Waterfront Commercial District. There is no specific business proposed for the ground floor of this section, which would have to be a marine business.
- There will be foundation plantings
- Exterior lighting would be recessed, downward shielded, and on timers.
- There will be a high level of insulation.
- The project will be attached to town sewer and has been approved for additional flow of 438 gallons per day. There will be a bioengineered swale.

- He summarized the traffic report, prepared by Charlie Crevo.
  - Using the 2.7 factor to adjust February counts to summer levels, the current development generates 165 trips in and 250 trips out in the afternoon peak hour. It is estimated that the project would add 18 trips during the peak hour. In the summer the intersection with Beach Road has level of service F.
  - There will be a net loss of one parking space. Charlie Crevo, using the ITE parking generation guide, calculates the existing marketplace requires 113 parking spaces. The new building generates a need for an additional 17 parking spaces. The number of spaces just meets ITE standards.
  - There is no crash data shown as being located at the site's entrance or exit accident.
  - Sight distances are adequate.
  - Regarding internal circulation, the Tisbury Site Plan Review Committee suggested reversing the traffic flow of the interior loop.
  - There is good pedestrian access through the Tisbury Marketplace and there is a potential plan for a shared-use path along the water.
  - The site is serviced by the VTA.
  - Traffic-wise, there are no significant deficiencies to the proposed plan. The main issue is that west bound traffic trying to make a left hand turn into the project will slightly increase the delay on Beach Road.
  - Improvements could include improving signage, looking at flow, installing the shared use path, providing employee bus passes, and installing a pedestrian crosswalk across Beach Road.
- The applicant has offered an affordable housing contribution to Habitat for Humanity of approximately \$6,000. The residential condo unit will be restricted from being rented on a weekly basis.
- Affected businesses are Gannon and Benjamin, and Hutker Architect.
- The Commission has received comments related to proximity to wetlands, increased density, filled tidelands, viewscape, and validity of marine designation.
  - The Tisbury Site Plan Review expressed concerns with traffic and discussed the concept of the flat, "living" roof.
  - Letters have been received from: Vineyard Conservation Society, and Rum Dummy Charters, Tisbury Waterways
  - Ginny Jones called with concerns.
- He presented slides of the project.

**Mark London** added that the building doesn't meet Tisbury's design guidelines for the area, which calls for pitched roofs. The flat roof provides more interior headroom on the second floor and an opportunity for a roof deck, but has greater visual impact than a building with a pitched roof.

## **2.2 Applicant's Presentation**

**Sam Dunn**, presented information about the project.

- He bought the property in the early '80s. It was a potpourri of junk with a number of structures in various states of disrepair. You could barely discern it was a waterfront property.
- They went through a difficult permitting period.
- Every store and office has a view of the water. The marketplace has become a local institution and is very stable with year-round Island-owned businesses.
- The open space along the Lagoon has become a beloved space for many people. It is the largest piece of private ownership that gives public access to the water. There's been talk of the degree of open space and proximity to wetlands.
- This is by far the least developed property of any developed property along Beach Road. The buildings occupy 12% of the property. In the context of the area, it is by far the least developed property with any public access and any attempt to treat stormwater. Bio-retention filters were installed when the parking lot was paved.
- He believes that this approach to the space and wetlands is a superior example. He believes the developers have done an exemplary job of taking care of the environment.
- Gannon and Benjamin lease the land. It's hard by the wetland.
- The location is one of three locations for which he retained development rights. He has already developed the Saltwater Restaurant. After this, the only other potential development is the space next to Rocco's. This building is located in a place where all the condo owners have known that this is one of the three potential places where expansion could occur.
- He pushed the building back into the confines of the development area, because he felt he couldn't get agreement to move it outside.
- The site is 100 feet from the water, where Tisbury encourages development close to the water for marine and residential use. This is the zoning that the town encourages. They desire an environment where people live and work. From a cultural point of view, one arm of the town has said that it wants this kind of development. The line that's 100 feet from the water describes the place in the building where there's an angle.
- It has a green roof which makes it different-looking from the other buildings. There is a conflict between the design and recommended standards for the area. When you understand what green roofs do, it's very persuasive, cutting air conditioning bills, cooling the building, and absorbing rainfall.
- He wasn't surprised at what happened with the site plan review board. He'll try to design a roof that can accommodate the green roof and more closely meet the design standards and the 28 foot height maximum. It's possible to combine technology with vernacular architecture.
- There is a simple landscape plan.
- The Parking and Traffic study finds that parking is adequate with 133 spaces. The back area is completely underutilized and haphazard. The condominium has to enforce its own regulations.
- Changing the traffic flow could be a good idea. It's something the condominium has to do.
- The proposal passed the Energy Conservation Program.
- 30% of the property is impervious.

**Paul Foley** clarified that in B-1 there's no requirement for parking and the Waterfront Commercial District limits the lots to 10% for driveways and parking. The development predates the waterfront by-law, so it is not limited to the 10% but can't add to parking.

**Sam Dunn** clarified that weddings and functions go through the condo association and there's a permit requirement from the town.

### **2.3 Testimony from Public Officials**

**Tony Peak**, Planning Board and Planning Board Representative to Site Plan Review Board for the Waterfront Commercial District, said there are a number of issues.

- Traffic is frequently stopped and backed out on to Beach Road. Reversing the flow of the traffic would give more opportunity for people to look for parking.
- The Site Plan Review Board appreciates that there are certain things Mr. Dunn cannot unilaterally accede to or change by himself, and must be addressed by the condo association.
- The 10% parking lot coverage for the Waterfront Commercial District was intended to lessen traffic, increase pedestrian traffic, and lessen run-off in the proximity to wetlands.
- Most of the parking in the Market Place was created prior to the by-law of 1996. Any changes or expansions do require a special permit.
- His own interpretation would lead him to say additional parking would not be permitted in the waterfront parking area. To make changes to the pre-existing, non-conforming structure, the permit-granting authority needs to make the finding that the proposal would not be more detrimental to the existing situation. The association has substantially more than 10% of its area in parking so reducing the number of spaces brings the development more into conformity.
- The Conservation Commission requires open space equal or greater than the total impervious space.
- Open space doesn't include parking.
- An entire architectural vernacular shouldn't be set aside for technologies which can be coordinated with the architecture.
- In creating the Waterfront Commercial District, the concern in the marine section was to control development rather than encourage it.
  - The concern was that Tisbury would lose certain types of businesses. The idea was to retain the waterfront for waterfront uses, and to retain the scale and character of the area.
  - For the waterfront management area, the 100-foot setback is strictly a linear boundary from the high water mark. On the harbor side it is half the lot but not less than 100 feet.
  - The 100 foot setback is from the high water mark in Lagoon Pond. In the wetlands, the Wetlands Commission regulations prevail.

**John Best**, of the Tisbury Conservation Commission said they opened a hearing in the fall and referred the plan to the Commission.

- The plan has gone through a number of revisions. On March 16 they saw the most recent plan, but didn't have the Doug Cooper wetlands flag line. They did have the Cooper line toward the south between the project and Maciel Marine.
- They haven't been able to take proper ratios on pervious surfaces.
- The 100-foot setbacks do intersect in the building. All the parking spaces with the new building and the ones that face Gannon and Benjamin are within 100 feet of the wetlands. Those spaces will by necessity become more utilized.
- They don't know anything about the level of maintenance that will be required for the roof garden. They don't have a track record for functionality.

## **2.4 Public Testimony**

**Bruce Rosinoff**, Vineyard Conservation Society, referred to the letter from the director.

- VCS has a long history with Tisbury Marketplace. In the 1980s, VCS vehemently opposed the project because of the density. They applauded the final plan with open space and the reduced density. The DRI of 1987 supported the open space.
- The Island Plan really scared the daylights out of the Conservation Society when it came to growth and development. It is projects like this with incremental growth that will get the Island there. That's why it's so important that the Commission take such a hard look at this one.
- With respect to the Chapter 91 filled wetlands issue, these are definitely filled tideland with a non-water-dependent-use project. The project would block access to some degree to a great pond.
- Regarding wastewater, the Island is already behind the eight ball. The Island needs all the capacity it already has for existing development rather than accommodating sewage from additional development. It's a major mistake to approve a project like this knowing that it's going to use future capacity. All future growth should be looked at with the idea of achieving no net gain in flow and nitrogen, and this project runs contrary to that.

There was a discussion of the chapter 91 issue.

- **Doug Sederholm** said he very strong supporter of access to great ponds, but he's having a hard time seeing how this project limits public access to a great pond. The building is 58 feet from the wetlands and 71 feet to the high water mark of the Lagoon. He asked for documentation on how the project limits access.
- **Linda Sibley** asked for documentation that the land is filled tideland.
- **Doug Sederholm** asked, if the land is filled tideland, what the procedure is for informing the DEP.

There was a discussion of the marine uses issue.

- **Greg Cimeno** asked if there would be a marine-related business in the southwest corner of the building which is in the marine district, and, if so, how the business would access the waterfront.
- **Sam Dunn** explained that in the marine zone there will be a rental unit on the first floor and an apartment above. The rental unit can only be rented to a water-related use, but access to water is not a requirement. There could be a deed restriction for the usage, but the zoning takes care of the use.

- **Tony Peak** explained that the marine district allow mixed use.

**Mike Diaz**, West Tisbury, came to speak about development and asked that the Commission look at the development and environmental impact.

- Condo associations have strict bylaws. This kind of development is very positive because of the strict bylaws.
- We need development. Condo owners have a sense of ownership and pride which is a positive development.

**John Best**, speaking, as a resident, asked about the parking spaces on the Hinckley side. The paved area of the alley appears to be 16-feet wide. It seems narrow.

- He asked about the calculations for the net difference of the parking area which might go against the 10% bylaw.
- A great many marine-related uses might be inappropriate for a site with residential above and retail abutting.
- He asked why the sewer commission can grant additional capacity without referring the DRI to the Commission.

**Sam Dunn** explained that the wastewater is not additional flow. This is part of the original approval that the development paid for. The wastewater commission approved the flow for this building.

**Fred Hancock** asked about the two parking spaces slotted at the access to Gannon and Benjamin. **Sam Dunn** said the two spaces in the opening are Gannon and Benjamin's spaces.

**Tad Crawford**, West Tisbury, said people going to Gannon and Benjamin need access to the back of Tisbury Marketplace.

**Richard Toole**, Oak Bluffs, spoke about the project.

- He would question the wisdom of building anything so close to the water. There should be some thought about potential storm effect.
- The present design has less impact on the view and streetscape. He questioned the need for more retail space. Maybe owner occupied would be a good thing.
- He requested that Commissioners look closely at the vegetative roof which may be a good direction to go in.

## **2.4 Commissioner Questions**

**Linda Sibley** asked Commissioners to ask the questions that will be addressed at the continuation of the public hearing.

**Lenny Jason** asked for an explanation of how the developer can get rid of 10 spaces, add 9 spaces, build a 7,000 square foot building, and say the parking is adequate.

**Holly Stephenson** asked whether there is any guarantee that there will be no more development and public access will continue. She would like to see documents related to development rights and growth. She would like to see some kind of guarantee that there will be no more growth in the area of public access.

**Jim Joyce** said he'd like to hear from the condo association on their opinion of the project.  
**Sam Dunn** said they agreed to be neutral.

**Linda Sibley** asked Commissioners to submit questions to Paul Foley by Wednesday, March 24<sup>th</sup>. She asked Bruce Rosinoff to submit maps as soon as possible.

### **3. ISLAND FUELS: DRI 566-M2 – PUBLIC HEARING**

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*Commissioners present:* B. Bennett, J. Breckenridge, C. Brown, P. Cabana, F. Hancock, C. Murphy, J. Joyce, L. Jason, K. Newman, N. Orleans, C. Rose, D. Sederholm, H. Stephenson, L. Sibley, A. Woodruff

*Applicant:* Jay McMann

**Linda Sibley** opened the public hearing and read the hearing notice. The application from Island Fuels, Inc. is to locate a fuel company with three trucks at 44 Evelyn Way in Tisbury and install a 10,000 gallon ConVault above-ground storage tank with two compartments for Number 2 Heating Oil and Diesel.

#### **3.1 Staff Report**

**Paul Foley** gave the staff report.

- The map of the project shows the location of the fuel storage tanks, parking for trucks, and landscaping.
- The project is in the B2 district.
- The building won't be changed at this time.
- There is a revised engineered site plan.
- No vehicles other than delivery trucks will be fueled on the site.
- Vehicle maintenance will be done on site.
- There will be no retail business; a few people might pay bills at the site.
- The shaded area on the map will be a concrete pad with a lip on it, as requested by LUPC.
- There will be three trucks at this location. On a very busy day two trucks might return once or twice for refills.
- The 10,000 gallon tank is there as a reserve in case there is difficulty getting on and off Island in the summer. A large truck goes off-Island once or twice a week, leaving in the morning and returning in the afternoon.
- In the summer a truck leaves in the morning to fuel fishing boats and leaves at 8:00 to fuel tour and school buses.
- The issues are: is this an appropriate site for fuel storage? Are there issues with Homeland Security?
- The applicant submitted containment control documents and permits and specs.
- LUPC approved a traffic waiver and asked the applicant to put together a statement on traffic and circulation, particularly large tractor trucks.
- The proposal doesn't trigger the affordable housing policy.



- There are a number of letters in Commissioners' packets from: Charlie Blair, Edgartown Harbormaster; Sherm Goldstein, customer; Anne Bresnick, client; Scott Dario, customer; Susan Parker; and one from fishing boat captains.

### **3.2 Applicant's Presentation**

**Jay McMann** presented information about the project.

- All new trucks have a safety valve inside. There aren't incidents of complete tank failure.
- There will be a pitch back and containment as required by the fire officials. He'll do whatever the fire officials require.
- They have a vested interest because they don't want to contaminate the land.
- All the trucks have spill containment on them, and they keep containment equipment on site and at fill sites.
- They've been in business near to 25 years in Boston and haven't had an incident.
- They may have to put a fence up for security requirements. They can have motion sensitive lighting and a camera.
- They've been in operation for three years as IFP. The DEP has visited and found everything in satisfactory condition.
- Competition is healthy.
- The concrete pad has been moved back ten feet with a row of trees and shrubs. It will be nice looking.
- Employees are himself, his wife, and a local driver.

Commissioners discussed landscaping. The applicant is expanding on the landscaping that was approved.

### **3.3 Public Comment**

**John Schilling**, Tisbury Fire Chief, finds the plans in compliance with the regulations of the Commonwealth of Massachusetts regarding the handling and storage of materials.

- He will recuse himself from the approval process because Jay is a member of the Tisbury Fire Department. The final approval will come from the State Fire Marshall. Mr. McMann's operation is the only operation on the Island that has passed that kind of scrutiny.
- The concrete slab is the same type of thing that's put in at service stations. There's a scored slope, rather than a lip. He's not aware of any catastrophic failures of the ConVault system. It's an excellent system.
- A marine fueling facility falls under Homeland Security. This plan only requires regular security.
- He's encouraged by this change in location.
- The applicant has been the subject of a number of anonymous complaints to DEP, which he chalks up to anonymous competitors. DEP has investigated and there have been no problems.
- The scoring on the holds any spill.

### **3.4 Commissioner Questions**

**Fred Hancock** asked about engineering. **Jay McMann** confirmed that Sourati stamped the plans.

**Andrew Woodruff** asked about deliveries. **Jay McMann** said that he fuels the tour buses at night which keeps the traffic off the road and out of the fuel lines; he also fuels the Charter School Bus and IFP trucks.

**Holly Stephenson** asked about fueling at Tashmoo Landing. **Jay McMann** explained that he's licensed and insured. He's stopped fueling there, but individuals are now fueling themselves using 55 gallon drums which is less safe. He has a marine fueling permit and the insurance company finds it benign to fuel boats. The Selectmen are trying to find new sites for fueling boats.

**Richard Toole** spoke in favor of competition. He highly encourages the operation. He likes the location.

**Jay McMann** The applicant said it would probably be a good idea to have a chain link fence at some point.

**Dana Thornton**, Edgartown, Island Fuel, said a chain-link fence isn't going to stop someone who seriously wants to do damage.

**Linda Sibley** closed the public hearing and the written record.

### **3. YMCA: DRI NO. 600 – MODIFICATION - CONCURRENCE**

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*Commissioners present: B. Bennett, J. Breckenridge, C. Brown, P. Cabana, F. Hancock, C. Murphy, J. Joyce, L. Jason, K. Newman, N. Orleans, C. Rose, D. Sederholm, H. Stephenson, L. Sibley, A. Woodruff*

*For the applicant: Judy Crawford*

**Christina Brown** explained that the YMCA is requesting a modification to the site plan.

**Paul Foley** gave the staff report.

- The applicant wants to add:
  - a walking bridge over the swale between their parking lot and the ice arena;
  - a handicapped accessible playground (50' by 60') in the back;
  - an outdoor basketball court on the future site of the gymnasium; and
  - a covered pavilion (16' by 40') and shed (10' by 12') for the camp.
- The applicant also wants to modify condition 4.3 (no town water for landscape use) and install temporary irrigation to get the plantings established. They had said when they were here that they would be collecting rainwater to use for irrigating plants but now want temporary irrigation.
- The proposed modification would also modify Condition 7.1 which states that at least 45% of the property would be retained as open space.
- As mitigation for Natural Heritage, they'll plant trees. They might consider doing some additional landscaping.

**Christina Brown** reported that LUPC made a unanimous recommendation to the full Commission that this is a significant change requiring a public hearing.

**Paul Foley** said the applicant did come back with a landscaping plan. The planting list and bioretention swales were approved, but a final plan wasn't submitted.

**Linda Sibley** said the trigger that sent them back to the Commission was that additional trees were cut. Since they had to come back, they are proposing new outdoor uses which may impact neighbors. The public has the right to weigh in.

**Kathy Newman** commented that neighbors are used to hear kids making noise.

**Andrew Woodruff** said he's questioning whether this is significant.

**Ned Orleans** added that this is the second most public building in terms of the level of interest to the public. The outdoor basketball court is a significant change from the original.

**Chris Murphy** said most of the ideas were floated by us, but he believes the public has the right to comment.

**Chris Murphy moved, and it was duly seconded, that the proposed modifications are significant enough to require a public hearing.**

- **Linda Sibley** said the YMCA has pledged many things that will deal with night noise, etc. It's appropriate that the modifications should be heard as part of the public hearing during which offers and conditions can be made official.
- **Holly Stephenson** said it would be important for the public to know how the tree cutting evolved.
- **Judy Crawford** said they felt that this probably was not significant because the five things have been mentioned. Both Community Services and Elderly Housing have no problems with the proposed modifications and outdoor activity.
- Commissioners discussed the significance of the changes and the opportunity for public comment.
- **Mark London** clarified that Natural Heritage will be commenting on the habitat issue from a Commonwealth perspective. The Commission needs to deal with the actual plan, including the changes to the vegetative buffer.

**A voice vote was taken. In favor: 8. Opposed: 6. The motion passed.**

The hearing date is tentatively set for April 8<sup>th</sup>. Natural Heritage should finish its review by that date.

#### **4. ISLAND FUELS: DRI 566-M2 – DELIBERATION & DECISION.**

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*Commissioners present:* B. Bennett, J. Breckenridge, C. Brown, P. Cabana, F. Hancock, C. Murphy, J. Joyce, L. Jason, K. Newman, N. Orleans, C. Rose, D. Sederholm, H. Stephenson, L. Sibley, A. Woodruff

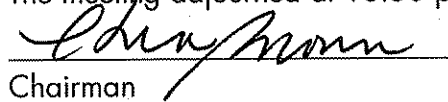
**Doug Sederholm moved, and it was duly seconded, to waive LUPC post- public hearing review, and vote on the proposal. A voice vote was taken. In favor: 14. Opposed: 1. The motion passed.**

**Doug Sederholm moved, and it was duly seconded, to approve the project with accepted offers as conditions.**

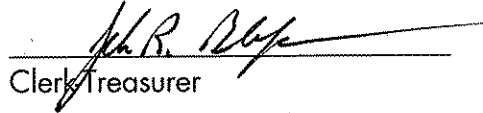
- Commissioners discussed the benefits and detriments.
  - The project will beautify Evelyn Way.
  - It improves the economic competition.
  - This is a perfect location, which is zoned for this use.
  - Businesses like this are important, and we need to have places for it.

**A roll call vote was taken. In favor: B. Bennett, J. Breckenridge, C. Brown, P. Cabana, F. Hancock, C. Murphy, J. Joyce, L. Jason, K. Newman, N. Orleans, C. Rose, D. Sederholm, H. Stephenson, L. Sibley. A. Woodruff. Opposed: None. Abstentions: None. The motion passed.**

The meeting adjourned at 10:30 p.m.

  
Chairman

5/20/10  
Date

  
Clerk/Treasurer

5/20/10  
Date