

**Minutes of the Commission Meeting  
Held on May 5, 2011  
In the Stone Building  
33 New York Avenue, Oak Bluffs, MA**

**IN ATTENDANCE**

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

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|------------------------------------|---------------------------------|
| P Bill Bennett (A-Chilmark)        | - Chris Murphy (E-Chilmark)     |
| - John Breckenridge (E-Oak Bluffs) | P Katherine Newman (E-Aquinnah) |
| P Christina Brown (E-Edgartown)    | P Ned Orleans (A-Tisbury)       |
| P Peter Cabana (E-Tisbury)         | P Camille Rose (A-Aquinnah)     |
| P 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 Leonard Jason (A- Dukes County)  | P Holly Stephenson (E-Tisbury)  |
| - James Joyce (A-Edgartown)        |                                 |

Staff: Paul Foley (DRI Coordinator), Mark London (Executive Director)

**Doug Sederholm** called the meeting to order at 7:00 p.m.

**1. NEW BUSINESS**

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**1.1 Executive Director's Report**

- **Mark London** reported that Doug Sederholm, Camille Rose and he attended a meeting in New Bedford of the Bureau of Ocean Energy Management, Regulation and Enforcement joint meeting of the MA and RI task forces.
- **Doug Sederholm** said that the purpose was to update and review a Request for Information (RFI) document that the bureau will issue shortly which seeks comments from interested parties and expressions of interest from developers in the RI/MA Area of Mutual Interest (AMI), located southwest of Martha's Vineyard and south of Block Island. It is separate from the RFI area south of Martha's Vineyard and Nantucket. Both areas are 12 nautical miles from the inhabited shores. The fishing community is encouraging BOEMRE to remove some of the area in the AMI that is important to the fishing industry, but they are reluctant to do so.
- **Mark London** mentioned that an informal group has started discussing implementation of the Island Plan including preparing an annual report card and working with the work groups to determine what has been done, what is underway and to prioritize the projects in the coming year.

**1.2 Committees**

- **Katherine Newman** would like the status reports from each subcommittee for the PED meeting sent to her by May 6th so staff has time to prepare for the next meeting.

## **2. DRI-309-M2 – OCEAN CLUB EXPANSION – CONTINUED PUBLIC HEARING**

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*Commissioners Present: Bill Bennett, Christina Brown, Peter Cabana, Martin Crane, E. Hammarlund, Fred Hancock, Leonard Jason, K. Newman, N. Orleans, C. Rose, D. Sederholm, Linda Sibley, Brian Smith, Holly Stephenson.*

*For the Applicant: Jack Collins (Applicant's Counsel), Mark Wallace (Owner), Mike Wallace (Owner), and James Parr (acoustical consultant)*

*The hearing was called to order at 7:15 p.m.*

### **2.1. Applicants Presentation**

- **Doug Sederholm** summarized the proposal and status.
  - The applicant is proposing to use the second floor of the building as a function hall.
  - On April 21, 2011 a report was submitted from AcenTech Acoustical Engineers with a cover letter from the Young's (the hotel owner) attorney.
  - The applicant's consultant has submitted a one page statement addressing the noise levels.
  - The MVC's acoustical consultant, Mr. Tocci, submitted two memos, on April 27, 2011 and May 4, 2011.
  - MVC received offers from the applicants dated May 11, 2011.

There was a discussion of meeting dates.

- **Mark London** noted that the Town Administrator of Oak Bluffs sent an email indicating that the Board of Selectmen requested an extension to the public hearing through May 11, 2011 so it can comment further.
- **Doug Sederholm** asked if a meeting could be held on May 12, 2011 to accommodate this request.
- **Mark London** stated that the Commission needed to check the members' availability to establish a quorum. It was noted that the BOS meeting is Tuesday so MVC could meet on Wednesday May 11, 2011.
- **Doug Sederholm** made it clear that the summer season is fast approaching and the Commission is trying to expedite a decision on this application. The MVC will do everything possible as a courtesy Oak Bluffs BOS to give them an opportunity and if needed will continue the public hearing on May 11, 2011.
- **Mark London** suggested that the record be closed at noon on Wednesday, LUPC meet Wednesday afternoon and the MVC meet on Wednesday night.
- **Mark Wallace** asked for clarification on the DRI as it appears that there is some misinformation and it is causing aggravation for the applicants. The applicants did not apply for a nightclub expansion. The Ocean Club is already expanded and the only outstanding issue is the entertainment license from the Oak Bluffs BOS.
- **Doug Sederholm** stated that the applicant is here because the MVC has determined that the project is a DRI, and is therefore reviewing all aspects of the project.

There was a discussion of noise.

- **Doug Sederholm** asked if the applicant wanted to make a presentation regarding how to mitigate the impact of noise on the abutters.
- **Jack Collins** said that this was addressed at the first session of the public hearing. The applicants understood that this issue was closed and that they are now here to determine how to make the plan work and not debate the issue. The consultant's report noted that all noise issues are fixable. The key point is if the noise will be too bothersome to the abutting locations, they can mitigate the issue. Therefore can the presentation on sound be waived? They need to know how to proceed and the Oak Bluffs BOS wants guidelines to follow.

## **2.2 Commissioners' Questions**

- There was a general discussion regarding whether the MVC should vote now on the project and if the only remaining concern is the noise level, could the Oak Bluffs BOS handle that as part of the entertainment license. The Commissioners felt that the MVC needed to ensure that the noise standards are properly worked out.

There was a discussion of noise.

- **Doug Sederholm** asked if the applicant is willing to follow the protocol issued by Mr. Tocci on 5/4/11. **Jack Collins** confirmed that the applicants would follow this protocol.
- **Doug Sederholm** said that with a clear protocol setting exterior noise limits, the specific sound mitigation could be left to the applicant. In the event that the corrective measures are not successful, they would not be able to operate.
- **Peter Cabana** noted that the noise reduction is within and outside of the Ocean Club. Very specific steps must be taken to mitigate and the applicant is agreeing to do what is required.
- **Doug Sederholm** and **Mark London** asked if the applicant was agreeable to keeping in the offers the specific proposals for insulation and acoustical upgrades that they had offered earlier. **Jack Collins** said that the applicants agreed to do so.
- **Christina Brown** inquired how the Town of Oak Bluffs handles a noise complaint. **Mark Wallace** said that the complaint is usually filed with the Police Department and the Oak Bluffs BOS is later informed.
- **Eric Hammarlund** mentioned that the Police do not enforce the civil complaints, only criminal ones.
- **Mark Wallace** said that if the issue was disturbing the peace, the Police would respond and the applicant stated they will comply with the law and would address any complaint and ensure compliance.
- **Linda Sibley** felt there needed to be an objective standard and also a mutually agreeable procedure to ensure that the decibel levels are maintained.
- **Linda Sibley** asked if the BOS can enforce an MVC condition. **Mark Wallace** suggested that it can impose it as a condition of the entertainment license, rather than having the MVC impose a noise standard as a DRI condition.
- **Doug Sederholm** felt that the noise issue needs to be addressed as part of the DRI because it has a direct impact on the abutters. He noted there is not a clear enforcement mechanism for noise conditions imposed by the MVC. It is easier to require that the applicant install the proper equipment as a condition to issuance of the town permit.

- **Linda Sibley** noted that this is not just an issue of working it out with neighbors but the MVC has two letters from other businesses that are direct abutters and testimony from the movie theater. This is an impact on neighborhood not just abutters.
- **Leonard Jason** wanted to know what the alleged impact is.
- **Fred Hancock** noted that this was reviewed as a space for weddings, events, and music/entertainment in the evening in an establishment that would also be serving food and alcohol. He asked what the difference was between this and a night club. **Mark Wallace** said that a nightclub does not have to serve food but a restaurant does.
- **Doug Sederholm** felt that the applicants will do what is needed to pay the rent. They will always have food and alcohol served but may not always have entertainment. Is the main focus the wedding business or a nightclub?
- **Jack Collins** noted that they are waiving any testimony by their acoustical consultant at this time, but would like to address this later if needed.
- **Doug Sederholm** confirmed that would be possible as well as adding any additional comments.

## **2.2 Testimony from Public Officials**

- **Gail Barmakian** clarified why the Oak Bluffs Board of Selectmen wanted to keep the public hearing open. A letter had been sent to MVC by the former board in support of the project. There is a change in the board by two members and they have asked to keep the record open. Noise is an issue on the waterfront and decibel levels are nearly impossible to enforce. The Oak Bluffs BOS is trying to avoid this issue but the impact of traffic is also creeping into the neighborhoods. Parking for this type of venue could be an all-day issue for the town, based on the type of event or function. The Oak Bluffs BOS wants the MVC to pay attention to the issue of enforceable off street parking.
- **Doug Sederholm** asked if the BOS had any suggestions. **Gail Barmakian** noted that parking behind the building may be a possibility and perhaps available space could be allocated for parking, but they do not have a clear solution.
- **Doug Sederholm** asked if there was availability at the Oak Bluffs School with the use of a shuttle system. **Gail Barmakian** noted it has not been permitted for commercial entities.
- **Katherine Newman** asked if there was a park and ride in Oak Bluffs. **Gail Barmakian** confirmed there is not, it was tried but failed.

## **2.4 Public Comments**

- **Connie Teixeira** stated there is a concern regarding the impact of noise and parking on the motel. In the off season, the motel provides rooms for the homeless. If the business cannot survive in season, there would be an impact to the homeless program in the off season.
- **Patrick King** noted he is a direct abutter to the hospital and that project put him out of business. Therefore, it is extremely important to address this issue for the abutters so that it does not have such a severe impact on them, as the hospital had to his livelihood. Perhaps an insurance policy would help to protect the abutters against loss of income.

- **Kerry Scott** noted that when she served as a selectman for Oak Bluffs it was very difficult to enforce noise complaints. Noise is a regional impact and it is increasing. Hotel rooms are being lost at a significant rate and we need to support other businesses as well in the community. Offsite parking had been tried but it created a problem in the residential areas. The Town of Oak Bluffs has issues with its noise bylaws and they are lacking a mechanism to enforce them. The Police receive the complaints, notify the town officials, and then it is brought to a public hearing 10 days later. This process just doesn't happen. Enforcement is not an MVC issue, it is a town issue. We need to find a way not to make it too restrictive.
- **Mark Wallace** noted that the consultant's letter is on record with the MVC and suggests that everyone agrees with the comments from Greg Tocci and the applicant should show how to comply. **Doug Sederholm** noted that the consultants suggested a monitoring system be put in place that would notify the sound board operator if the noise levels were reaching maximum decibel levels. This appears to be a reasonable approach for compliance. **Jonah Sacks** of AcenTech confirmed that the cost would be several thousand dollars.

**Doug Sederholm** asked if there were any additional questions or comments:

- **Katherine Newman** noted that in the offers the applicant would set up informational advertising to hear about alternative transportation for events.
- **Linda Sibley** mentioned that the applicants will contact organizers for weddings with information such as transportation.
- **Jack Collins** summarized that the building has existed for over 100 years and new hotels are built to sound proof standards, so we cannot address all concerns all of the time. We will do our best to make it correct. Event planners will work with the location and with the guidelines to ensure compliance. Information will be issued via websites and other informational strategies to do the right thing for the business. The applicants are here to address the noise concerns and we will continue to address every issue such as the traffic studies. We do not have the perfect solution; the public will be monitoring and watching constantly. If there is a single issue that arises and it has not been addressed, we will obtain the MVC approval. We are asking to move the process along due to the season fast approaching

## **2.5 Offers**

With respect to the offer that the hours of operation and scheduling of events will be from 7:00 am to 1:30 am.

- **Christina Brown** asked when other establishments close. It was confirmed that they stop serving food at 12:30 a.m.
- **Fred Hancock** wanted to know whether there should be different hours during the week vs. the weekend to make the offer more reasonable.
- **Camille Rose** was concerned about the noise level that rubbish removal creates in the morning and should that be addressed.
- **Mike Wallace** and **Mark Wallace** noted that the town of Oak Bluffs dictates the hours of operation for trucks and all businesses are under that guideline.

**Brian Smith** asked that the offer be reworded that nothing would be scheduled 15 minutes prior to starting time or 15 minutes after the departure.

With respect to the offer that traffic and parking will be addressed via a webpage on how to get to the venue without a car and using public transportation and that organizers will also post this information on their websites.

- **Doug Sederholm** asked to change the wording to “require” on line item B.
- **Erik Hammarlund** suggested that valet parking be coordinated unless the town prohibits.

With respect to the offers on noise.

- **Doug Sederholm** asked the applicants if they choose to modify the noise.
- **Jack Collins** agreed to comply with the protocol set forth on the May 4, 2011 proposal; line item 3A remains, line item 3C being removed regarding the insulation in the soffits, and line item 3D is being removed per counsel.
- **Christina Brown** suggest that line item D9 remain.
- **Peter Cabana** asked the applicant to clarify that the windows closed included the porch area as well.
- **Mark London** noted that if the noise levels are being checked regularly, the opening of the doors regularly would affect the decibel level.
- **Doug Sederholm** and **Fred Hancock** asked the applicant to reword line item E; that staff and organizers shall not dump bottles at night and set up or break down of equipment will not be done outdoors.
- It was noted that line item 4 and 5 are ok as is.
- **Mark London** did not feel that the noise level issue has been completely clarified. The MVC approval includes that it be part of the entertainment license. It is not clear how this standard would be enforced. We need to talk with town officials to clarify i.e. a built in monitoring system. **Doug Sederholm** noted it might be the most technically efficient system. **Katherine Newman** asked that it be looked into. **Jack Collins** agreed they would do so.
- **Mark Wallace** wanted it noted that the goal of the MVC and the Oak Bluffs BOS is to develop a policy to cover all venues and not just the Ocean Club.
- **Linda Sibley** wanted to know if the monitoring system noise standard is set for inside the building, how the system also monitors the outside. **Mark London** said the system actually monitors the outside and triggers a notification inside so the noise level can be controlled. It could allow for occasional spikes.
- **Jack Collins** asked that they take the next week to work with staff and Mr. Tocci to determine how to monitor the noise level and develop a solution.
- **Fred Hancock** asked if it was the intent to have a house sound system. **Mark Wallace** confirmed they will have a house system and performers can also use their own.
- **Leonard Jason** wanted to know if the MVC is thinking of a noise level that is below the level of disturbing the peace and, if so, would that involve the building inspector. **Doug Sederholm** felt it would be a bad idea to involve the building inspector and what is needed with regards to the noise level will be worked on next week.

- **Jack Collins** summarized that they need to do what is required to make the neighbors happy and they in turn have entrusted that to the MVC. The sound levels that were given were those that are an acceptable standard and should be enforceable for all.
- **Doug Sederholm** noted that it is very clear that the applicant will follow Mr. Tocci's recommended protocol.

## **2.6 Action**

Doug Sederholm will keep the public hearing open until 7 p.m. May 11, 2011 at which time the public hearing will be closed without hearing any additional oral testimony unless substantive new information is received that merits public discussion. Initial written comments should be submitted by 4:30 p.m. May 1, 2011 to allow other parties to subsequently provide comments. The public hearing will be closed on May 11, 2011 (barring substantive new information). The LUPC will meet on May 11, 2011 at 5:30 p.m. and an MVC meeting will be held at 7:30 p.m.

## **3. TISBURY FARM MARKET, TISBURY (DRI 631) DELIBERATION & DECISION**

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*Commissioners Present:* Bill Bennett, Christina Brown, Peter Cabana, Martin Crane, E. Hammarlund, Fred Hancock, Leonard Jason, K. Newman, N. Orleans, C. Rose, D. Sederholm, Linda Sibley, Brian Smith, Holly Stephenson.

*For the Applicant:* Elio Sylva (business owner and prospective buyer)

### **3.1 LUPC Report**

- **Doug Sederholm** gave the LUPC report.
  - LUPC met Monday and reviewed the proposal and offers.
  - The applicant has clarified the offers based on the discussion.
  - After the review the LUPC voted unanimously to recommend to the full Commission that it accept the applicant's offers of May 11, 2011 as clarified and that it approve the application with the offers.
- **Fred Hancock** asked if further review was needed. **Doug Sederholm** said that the applicant will meet with the ZBA and then come back to the LUPC with a revised site plan. The plan shown at the current MVC meeting will be the plan that is cited in the project description.

### **3.2 Commissioners Discussion**

- **Erik Hammarlund** noted typos on line item 4.3. **Doug Sederholm** confirmed it should state at the end of the sentence "standing seam metal roof over the lower porch".
- **Ned Orleans** noted that line item 1.1 regarding the parking lot layout may be revised and did not understand why the sentence was in the paragraph. **Doug Sederholm** confirmed it was stricken in the notes.
- **Linda Sibley** felt that the plan shown should be described as the plan presented to the Tisbury Zoning Board of Appeals. **Christina Brown** also questioned the plan description and it was confirmed that it is stated as a final landscape plan and the parking layout has been submitted and approved by LUPC.

- **Fred Hancock** noted that the plan referred to is the plan submitted on April 30, 2011.
- **Holly Stephenson** thought the wording on line item 8.1 needed clarification; not 20 % over the stretch code but 20% over basic code. Perhaps it should state “Massachusetts Standard Energy code by 20%” and not refer to the stretch code. The applicant is ok with the change.
- **Linda Sibley** noted that on line item 10.1 the LUPC removed the word substantially.

***Doug Sederholm moved and it was duly seconded to accept the offers as just clarified as conditions and to approve the application with conditions.***

- **Leonard Jason** questioned the parking lot left turn on 2.2 and the plan in general. **Linda Sibley** noted that the traffic engineer looked at it and the plan incorporates his suggestions and recommendations.
- **Mark London** noted that there was an extensive traffic study done for this project. High Point Lane presently has little traffic, but when the connector road is built, the level of congestion will increase significantly. Generally, separate curb cuts are desirable, but in this case, adding all the farm market traffic to traffic at the foot High Point Lane turning onto State Road would be problematic. In this case, the consultant concluded that prohibiting the left-hand turn from the farm market onto High Point Lane made the flow more acceptable with the connector road.
- **Linda Sibley** noted that the plan provides better and adequate parking and is safer.
- **Fred Hancock** noted that at the LUPC meeting line item 4.1 stated that all four buildings will be clad in white cedar shingles or fibrous cement shingles and there would be no vinyl siding.

### **3.4 Benefits and Detriments**

#### Benefits

- **Doug Sederholm** stated it will offer a choice of grocery stores and may help to provide lower prices.
- **Doug Sederholm** also mentioned it will offer a mixed-use building with four apartments and two will be for employees at 120% AMI or lower.
- **Erik Hammarlund** noted it will combine two businesses into one and be closer to the park and ride.
- **Christina Brown** said that opening a new business fosters on-Island business.

#### Detriments

- **Doug Sederholm** noted the traffic will increase in an already congested area. Also there will be a loss of some trees, but hopefully that will be mitigated.
- **Doug Sederholm** noted that this proposal is substantially larger than the current operations combined into one and currently there are no living spaces.

### **3.5 Decision**

***Fred Hancock moved and it was duly seconded that the commission approve the plan subject to the offers as modified. Roll call vote : In favor: Bill Bennett, Christina Brown, Peter Cabana, Erik Hammarlund, Fred Hancock, Jason Leonard, Katherine Newman, Ned Orleans, Camille Rose, Doug Sederholm, Linda Sibley,***

**Brian Smith, Holly Stephenson, Martin Crane. Opposed: None; Abstentions: None. The motion passed.**

#### **4. MINUTES**

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*Commissioners Present: Bill Bennett, Christina Brown, Peter Cabana, Martin Crane, E. Hammarlund, Fred Hancock, Leonard Jason, K. Newman, N. Orleans, C. Rose, D. Sederholm, Linda Sibley, Brian Smith, Holly Stephenson.*

April xx, 2011

- **Christina Brown** noted corrections needed to lines 73, 75 and 76.
- **Fred Hancock** noted that line 105 should be line 107.
- **Erik Hammarlund** noted corrections to line 120.
- **Fred Hancock** noted corrections to line 162, line 168 note should be on line 170 and corrections to line 183.

***Fred Hancock moved and it was duly seconded to accept the minutes with the noted corrections. Voice Vote. In favor: 10. Opposed: 0. Abstentions: 3. Motion passed.***

#### **5. OLD BUSINESS**

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##### **5.1 General Questions/Discussion**

- **Leonard Jason** wanted to know the status of the Hart DRI.
- **Doug Sederholm** stated that he has a conflict and will not be participating in the Hart DRI.
- **Paul Foley** said that it had been scheduled, and then postponed as they may want to withdraw. Paul will reschedule again.
- **Katherine Newman** noted that the plan made changes that the West Tisbury planning board did not like, but it did not come back to MVC.
- **Ned Orleans** noted that the West Tisbury planning board seems wants the site exactly as it was.
- **Mark London** stated that they need to decide if they want to come back or withdraw. If the site goes back to a residential use then our Counsel has suggested that they may not need to come back to MVC.
- **Katherine Newman** suggested that perhaps the West Tisbury planning board can get clarity and then MVC can meet with Hart.
- **Fred Hancock** noted that a decision is needed if they want to surrender or move forward.

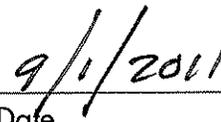
***It was moved and duly seconded to extend the meeting time by 10 minutes. Voice vote. In favor: 12. Opposed: 0. Abstentions: 1. Motion passed.***

- **Leonard Jason** asked about the proposed Affordable Housing Needs Assessment. The total funds required are \$30,000 and MVC was to contribute \$6,000. Perhaps MVC could do it in-house before subbing out, or could pay for the whole study.
- **Mark London** clarified that this is not a Commission project. It is a proposal from the Joint Affordable Housing Group made up of representatives of town affordable housing committees and non-profit organizations. The Group felt that there is a pressing need to do this assessment and that most of it should be done by an independent consultant. No one had the funds to pay for it but the idea was that each town and the MVC could each pay a small share. The MVC's budget does not allow paying such a large sum on its own. It has been suggested that the MVC could administer the project with a steering committee made up of town representatives. The MVC would not receive any of this funding.
- **Christina Brown** suggested that staff be asked to follow up, and clarify whether some of the work could be done in house.
- **Ned Orleans** noted that in order to provide sound planning services, it often it involves outside consultants.
- **Leonard Jason** suggested that perhaps the executive committee could set priorities and the direction to take.
- **Linda Sibley** stated that MVC has used consultants in the past. This issue was not raised when the MVC budget was done. It was brought up recently by representatives of various towns.

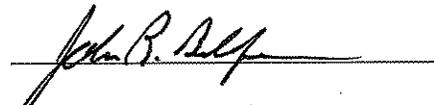
The meeting was adjourned at 10:10 p.m.



Chairman



Date



Clerk-Treasurer



Date