



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

## **Minutes of the Commission Meeting Held on April 5, 2012 In the Stone Building 33 New York Avenue, Oak Bluffs, MA**

### **IN ATTENDANCE**

---

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

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

Staff: Bill Veno (Senior Planner), Paul Foley (DRI Planner), Jo-Ann Taylor (Coastal Planner DCPC Coordinator)

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

### **1. TOWN PROVISION AT AIRPORT (DRI-636) - DELIBERATION AND DECISION**

---

Commissioners Present: J. Breckenridge, C. Brown, P. Cabana, E. Hammarlund, L. Jason, J. Joyce, C. Murphy, N. Orleans, C. Rose, D. Sederholm, B. Smith.

#### **1.1 Staff Report**

**Paul Foley** presented the Staff Report.

- The minutes of the post public hearing Land Use Planning Committee (LUPC) meeting and Staff Report were circulated.
- The offers are listed in the introduction of the LUPC meeting notes dated March 26, 2012.

#### **1.2 LUPC Report**

**Doug Sederholm**, LUPC Chairman, presented the LUPC Report.

- The offers were reviewed at the March 26, 2012 meeting.
- It was moved unanimously with one abstention, to recommend approval with the offers to the full Commission.
- The Offers are:
  - The store will close at 8:00 p.m. on nights when there is a show at the property.
  - The applicant will install bike racks on the property.
  - The building will be constructed to obtain energy efficiency of at least 20% better than the Massachusetts Building Code.
  - All exterior lighting will be down lighting.
  - The applicant will use his best efforts, subject to approvals and financing, to install solar panels on the roof.

- The roof runoff will be captured in barrels for irrigation.
- The store will not sell single beers or spirits packages less than 750 ml after 6:00 p.m. on the nights of live shows at the property.
- The applicant will ensure there are sufficient trash barrels outside the building.
- The shed containing the recycling machine shall be insulated to reduce noise.
- Deliveries and bottle recycling may only occur during hours that the business is open. The recycling machines will be on timers and will shut off at 6:00 p.m. for noise abatement.
- The applicant has agreed to an affordable housing contribution of \$1,500 that will be payable within thirty days of receipt of the Certificate of Occupancy for the building.
- The concern was discussed at LUPC and at the public hearing that this might be a precedent for other retail operations at the airport. However, it appears this is all that can happen, based on the zoning. It appears to be a one off situation.

### **1.3 Benefits and Detriments**

***Ned Orleans moved that staff fill in the benefits and detriments after the vote, but the motion was not seconded.***

**Christina Brown** stated that it makes sense that the Commission make some clear comments regarding benefits and detriments.

#### Benefits

- It is more appropriate in the suggested location versus the current location, which appears not to be profitable. It is a benefit to the applicant.
- It will not have an impact on wastewater as it is on sewer.
- It is a green building and will exceed the Massachusetts Building Code.
- It is on a bus route and will divert traffic from downtown.
- The applicant listened to the abutters and tried to meet their needs.
- The applicant is making a donation to affordable housing.
- It conforms to zoning provided it obtains a special permit.
- It will assist to sustain the two other businesses and it is an economic benefit.

#### Detriments

- It will move activity out of downtown in the winter.
- It is inconsistent with the Regional Plan.

**Christina Brown** noted that there are business districts where each of the Towns has said it is appropriate to have liquor stores.

**Erik Hammarlund** said that generally speaking, the Commission appears about to set a horrible precedent. We need to review the concept of inconsistency. We should stick to the standard such as the Regional Plan.

**Ned Orleans** said we are exercising our judgment based on documents that have been developed as a guideline.

**Brian Smith** noted that it is appropriate and essential versus the alternatives. The applicant has stated that they will go out of business if they do not move.

**Bill Venoc** questioned making a land use decision based on the financial needs of the applicant.

**Doug Sederholm** said it is not essential to downtown but it will benefit Up Island. Appropriateness is in the eye of the beholder.

### **1.4 Deliberation and Decision**

**Doug Sederholm moved and it was duly seconded to accept all the offers and approve the application.**

- **Christina Brown** is not opposed to this particular project but is concerned that the Commission considers the balance between this project and others. We have to look at it and balance it with our own plan. The Regional Policy Plan and the Island Plan both say one of the ways to foster a lively downtown is to not allow businesses at the airport. This is the only liquor store in downtown Edgartown. The Town has not done what is necessary to keep businesses downtown. A liquor store in the middle of the Island is very different than a liquor store in the villages and towns, and if the Commission approves, it needs to state this is not a usual approval and the reasons why. Edgartown as a town and business community has not done much to keep businesses downtown in the winter. We as the Commission in some ways and Edgartown are not doing much to encourage downtown businesses. We want to remind ourselves that if we approve this, we need to acknowledge that this is an exception to our general policy of keeping retail in towns.
- **Doug Sederholm** agrees with Christina Brown and that this is a special case. The applicant is having a hard time surviving in downtown, especially since no one is there. It is a special case and we cannot hold him hostage. The only year-round liquor stores in Edgartown are at the Triangle. We cannot be too concerned about setting a precedent.
- **Leonard Jason** is also concerned about what Edgartown does to promote business.
- **Chris Murphy** said that alcohol sales on Martha's Vineyard have always been an iffy business. In Massachusetts there are not many towns that are still dry, but it does exist on the Island. Down-Island towns sell liquor and Up-Island towns don't. This liquor store is a great stretch to consider as an expansion of a pre-existing use, and it will be a couple of hundred feet from West Tisbury. It is important to consider the change it will make to the Vineyard and urges everyone to vote no on it. It is a poor precedent to have it on public land that is just a couple of hundred feet from West Tisbury.
- **Brian Smith** has not heard anyone in West Tisbury object to this and has not heard this voiced as a concern in the town.
- **Erik Hammarlund** has larger concerns. The harsh reality is that when you have a border there is always someone too close to that border. As a West Tisbury representative, he doesn't know if anyone in West Tisbury knows about it. It was not well publicized.
- **Doug Sederholm** felt that made no sense. That is why we have public notices and it is on TV. It is silly to put it off for that reason.
- **Leonard Jason** said all the "hoards" of people that will come to the store are certainly not all from Up Island.
- **James Joyce** said we tried the "not having enough notice" with the solar project in Vineyard Haven and we did not receive any more input or public expression. He feels it is a good project and would even like to see more, such as a store like Our Market. It will benefit the Island as a whole.
- **Peter Cabana** said that the public does pay attention to the notices in the paper and when the issue is near and dear to their heart, they do show up.
- **Camille Rose** said that one of the functions of the selectmen is to notify the public and they should do that regarding matters in their town.

**Roll call vote. In favor: J. Breckenridge, C. Brown, P. Cabana, J. Joyce. N. Orleans, C. Rose, D. Sederholm, B. Smith. Opposed: C. Murphy. Abstentions: none. The motion passed.**

Ned Orleans excused himself from the meeting and Linda Sibley joined the meeting.

**Chris Murphy** noted that the Commission has asked if Erik Hammarlund can deliberate on a matter on which he is not eligible to vote. **Linda Sibley** suggested that the Commission ask the advice of Counsel. **Chris Murphy** noted that the Commission will discuss this matter at a later time.

## **2. VINEYARD ARTS FACILITY – EDGARTOWN (C.R.-1-2012) CONCURRENCE REVIEW**

---

*Commissioners Present: J. Breckenridge, C. Brown, P. Cabana, E. Hammarlund, L. Jason, J. Joyce, C. Murphy, C. Rose, D. Sederholm, L. Sibley, B. Smith.*

*For the Applicant: Sean Murphy (Agent)*

### **2.1 Staff Report**

**Paul Foley** presented the Staff Report.

- The packet of information includes correspondence from Sean Murphy, the Town of Edgartown Planning Board, and a narrative from the Vineyard Arts Project.
- The Applicants are the Vineyard Arts Project (Ashley Melone, Executive Producer) and Sean Murphy (Agent).
- The project location is 211-219 Upper Man Street and 26 Curtis Lane, Edgartown, MA. There are two buildings. The one fronting Main Street is 8,586 square feet with bedrooms, kitchen, living space, laundry room, two 2000 square foot rehearsal studios, and a fitness room/pilates/yoga studio. The one on Curtis Lane is a 6,229 square foot building with bedrooms, kitchen, living space, laundry room and two rehearsal studios (one approximately 2,000 square feet and one approximately 1,000 square feet).
- The proposal is to convert a residence with two houses to an educational facility.
- The houses were built in 2003 and 2005 as a ballet space for Mr. Melone's daughter. The first students arrived in the summer of 2004. Over the ensuing years it grew and in 2008 it was formalized into the Vineyard Arts Project, a not-for-profit educational facility under IRS code 501(c)(3). Last year the applicants applied for a sign permit at which point the Building Inspector inquired as to why a residence would need a sign.
- The proposal is to convert a residence with two houses to an educational facility.
- The Vineyard Arts Project provides a state-of-the art studio and housing compound with performing arts residency space that fosters the development of new work in dance and theater.
- The present uses are as an artist-in-residence program that hosts world renowned dancers, performers, and artists from June to September.
- A DRI referral was made by the Edgartown Planning Board on March 14, 2012. In their referral letter, the Edgartown Planning Board requests and recommends that the MVC not concur that this proposal is a DRI requiring a public hearing.
- The DRI trigger is 3.1f (change of use); a concurrence review. If the performance spaces accommodate more than 50 people then it may also trigger DRI Checklist 6.1 (Place of Assembly for 50 or more).
- The Land Use Planning Committee voted on April 2, 2012 to recommend to the full Commission to not concur that this is a proposal that requires a public hearing review as a Development of Regional Impact (DRI) provided that assurances are made that this will not become a regular place of assembly.
- Key issues include:
  - The property has been operating as a summer dance school for several years. Had the proposal been presented before development, would the Commission have reviewed and conditioned it?
  - What is the capacity for shows?
  - Does the site provide adequate parking and circulation?

- How will the programs or building expand in the future?
- The site plan was reviewed. It is a total of 14,815 square feet with two buildings.

## **2.2 Applicants' Presentation**

**Sean Murphy** presented the following:

- Over the years, the facility has been formalized into the Vineyard Arts Project.
- It is a great project that brings in artists to train from all over the country.
- It is a benefit to the community.
- Mr. Melone has invested millions of dollars to establish the facility.
- The Edgartown Police Department has no traffic problems or issues with the facility.
- The abutters do not have any issues.
- The applicant asks that the MVC does not concur.
- The Edgartown Planning Board is having a public hearing.

## **2.3 Land Use Planning Committee Report**

**Linda Sibley** said that Paul Foley covered the details of the project. If they had planned this, it would have come before the Commission to consider the potential impacts, but since it has been operating, the answers are already there.

## **2.4 Commissioners Discussion**

**Linda Sibley moved and it was duly seconded that this proposal does constitute a Development of Regional Impact requiring a public hearing.**

- **Christina Brown** noted that Sean Murphy said that if it becomes a performance venue it would have a problem with zoning. It will continue to be used as an educational facility that has performance as ancillary to its educational use. If that changes, he will bring it back to the Commission.
- **Erik Hammarlund** questioned if it needs a public hearing. **Chris Murphy** said that we are about to vote that it does not rise to the level of a public hearing and the town will give it a public hearing.
- **Erik Hammarlund** noted that the goal is to get people to file for permits. Are we setting a precedent that if you are operating without a permit, it is okay to continue.
- **Chris Murphy** said that they realized they needed a permit when they applied for one, so they are now following the proper procedure.
- **Christina Brown** asked whether there are regional issues that the Commission needs to deal with or not. Do the issues in this proposal rise to a regional impact or are they local?
- **Chris Murphy** reminded the Commission that a yes vote is to not concur.

**Roll call vote. In favor: J. Breckenridge, C. Brown, P. Cabana, E. Hammarlund, L. Jason, J. Joyce, C. Murphy, C. Rose, D. Sederholm, L. Sibley, B. Smith. Opposed: none. Abstentions: none. The motion passed.**

John Breckenridge and Leonard Jason excused themselves from the meeting.

## **3. AQUINNAH DCPCS – DELIBERATION AND DECISION**

*Commissioners Present: C. Brown, P. Cabana, E. Hammarlund, J. Joyce, C. Murphy, C. Rose, D. Sederholm, L. Sibley, B. Smith.*

### **3.1 Commissioners' Discussion**

**Chris Murphy** noted that this will be a detailed discussion and it could be lengthy.

**Jo-Ann Taylor** stated that the Town is hoping for a vote tonight.

**Chris Murphy** said that we can review this now or review at the April 26, 2012 meeting or the May 3, 2012 meeting.

**Linda Sibley** noted that if we postpone, we should postpone it when it is the only thing on the agenda.

**Chris Murphy** noted that if we start tonight and we do not finish, we will need to do it when we can have the same quorum present.

**Christina Brown** said that we may not need to review as much as we think and we may only need to review the issues that the town is bringing back.

**Peter Cabana** felt that the Commission should move forward.

**Chris Murphy** stated that the Commission is voting on whether the changes conform to the MVC Goals and Guidelines.**Doug Sederholm** added that staff has suggested that some may not.

### **3.2 Staff Report**

**Jo-Ann Taylor** presented the Staff Report:

- Since the close of the Public Hearing the record was left open and we received two pieces of correspondence from the Town of Aquinnah Planning Board. The correspondence is with regards to the dates for establishing grandfathering and zoning determination.
- Grandfathering is not standard for DCPCs, but may be proactively introduced. In the past, the Commission has included in Goals and Guidelines or found conformance of proposed regulations with grandfathering as of the designation date (or date of acceptance of the nomination).
- The 200 foot frontage requirement became part of the Aquinnah DCPC on May 10, 2011, so to use the date of designation for the DCPC of June 17, 1999 would not protect any new homes or additions to existing homes that were built during the 12 years between those dates on lots with less than 200 feet of frontage. This would impact a lot of properties and would not likely pass at Town meeting. It is common sense to grant the Town grandfathering on this. For all other DCPCs grandfathering would be on the date of designation.
- A proposal to exempt municipal land from all regulation would not conform to the Goals and Guidelines for the Coastal District, Gay Head Cliff Area District or Moshup Trail District and in particular contradicts the Goals and Guidelines for the Moshup Trail District. Specific proposals for latitude regarding setbacks have been proposed, and individual staff recommendations are annotated in the text.
- The Town did not ask for a date for the following; "any pre-existing non-conforming structure or use which does not conform to the provisions of this By-law or any amendment thereto may nevertheless continue in its use". However, the staff recommendation is for the following designation dates:
  - o Coastal District December 22, 1975
  - o Gay Head Cliff Area District May 4, 1989
  - o Moshup Trail District September 7, 1995
  - o Town of Aquinnah District June 17, 1999

**Doug Sederholm** proposed that the Commission go through section by section and vote on each one.

**Bill Veno** noted that pages 3-5 have the same issue and asked if the Commission is going to require a grandfathering date of the designation.

**Erik Hammarlund** felt the Commission should go through each proposed amended regulation.

**Linda Sibley** noted that there is still a unifying principal and suggests that what Jo-Ann Taylor has recommended is correct. To grandfather something that may have been done incorrectly while the DCPC was in place is a bad precedent. Any grandfathering date should be prior to the date of the DCPC.

**Doug Sederholm** said that the 200 foot frontage has to be addressed separately. We have to determine whether their proposed changes are in conformance and they are not just the dates. We need to find that the date we are proposing is also in conformance.

### **3.3 Deliberation and Decision**

Each of the proposed amended regulations (in the text of the staff notes for April 5) was reviewed with staff recommendations noted by line number.

- 13.4-11 Pre-existing, nonconforming Structures and Uses:
  - Lines 69-129 are in conformance, inserting the date of June 17, 1999.
  - Lines 131-134 are in conformance.
  - Lines 136-145 are in conformance.
  - Line 147-151;
    - **Christina Brown** asked if the latitude refers to a setback. **Jo-Ann Taylor** said no, but to be a little less restrictive such as the beach lots and Land Bank property.
    - **James Joyce** finds it wrong to allow the Town to do it, but not a private property owner. There should also be latitude for private property owners.
    - **Chris Murphy** noted that we are not looking at the right or wrong of it. We are looking at if it conforms to the Goals and Guidelines of that district.
    - **Erik Hammarlund** has a worry if it is part of the Coastal District.
    - **Peter Temple** clarified that there is a provision in the Town wide DCPC (13.11) for coastal areas.
  - Lines 155-156 are in conformance.
  - Lines 160-176 are in conformance for the Town of Aquinnah District only, striking the reference to overlapping Districts on line 174.
- 13.4-1 Zoning Determinations:
  - Lines 190-196 are in conformance for the Town of Aquinnah District only, striking the reference to overlapping Districts on line 196.
  - Lines 210, correct grammar by adding...“by” Special Permit....
  - Lines 200-215 conform, inserting the date of December 22, 1975.
  - Lines 218-222 conform.
  - Lines 225-227 are not in conformance.
  - Lines 230-237 are in conformance, including insertion of the date of September 7, 1989.
  - Lines 239-243 are in conformance, inserting reference to Moshup Trail Site Design Guidelines.
  - Lines 248-252 are not in conformance.
  - Lines 254-271 are in conformance, inserting the date of May 4, 1989.
  - Lines 273-276 conforms, revised to “provided however, the setback shall not be less than 50 feet”.
  - Lines 279-284 are not in conformance.
  - Lines 286-292; not noticed for hearing or discussed; the Commission is not approving it, but not denying it.
  - Lines 294-315, the grandfathering shall apply to the earliest of any date of adoption to the district it applies for pre-existing, non-conforming structures. It was reviewed that it is easier to have a date for each district and list the dates for each pre-existing, non-conforming structure by district. If located in more than one district, the earliest date will apply.
  - Line 303 to include the 50-foot limit whenever it applies.



- Lines 317-322 should include a reference to Moshup Trail Site Design Guidelines and in the Gay Head Cliff Area District setbacks should not be less than 50 feet.

**Doug Sederholm moved and it was duly seconded that the Commission find that the proposed amendments are in conformance with the various Districts of Critical Planning Concern (DCPCs) by the inclusion by the Commission by the date of adoption by the various DCPCs as the operative date except the 200 feet frontage which is May 10, 2011, with the further exception that the provisions at lines 225-228 and 248-252 and 279-281 are not in conformance. The Commission is not ruling on lines 286-292 and where references were noted in the discussion to the Gay Head Cliff Area District will be no less than 50 feet and the Moshup Trail Site Design Guidelines are being incorporated.**

**Erik Hammarlund moved and Doug Sederholm accepted to amend the motion to include any grammatical edits made on the floor as well as on the Town Meeting floor.**

**Roll call vote on the motion as amended. C. Brown, P. Cabana, E. Hammarlund, J. Joyce, C. Rose, B. Smith, C. Murphy, L. Sibley. The motion passed.**

**Doug Sederholm** applauded the Town of Aquinnah Planning Board, especially the chairman, as well as Jo-Ann Taylor for doing an exceptional job of walking the Commission through the proposed amendments.

#### **4. OTHER BUSINESS**

---

Commissioners Present: C. Brown, P. Cabana, E. Hammarlund, J. Joyce, C. Murphy, C. Rose, D. Sederholm, L. Sibley, B. Smith.

##### **4.1 Reports from Chairman**

**Chris Murphy** read correspondence from the Martha's Vineyard Land Bank commending Chris Seidel of the MVC.

There is a workshop on April 12, 2012 from 9:00 a.m.-1:00 p.m. at the Vineyard Transit Authority, 11 A Street, Edgartown for Stormwater Management in Massachusetts, a primer for municipal staff and volunteers and other interested persons. It is a Regional Circuit Rider Workshop, co-sponsored by the MVC.

##### **4.2 Other Business**

**James Joyce** asked about the DRI-632-M Kidder Subdivision Lot line Change that was on the agenda.

**Chris Murphy** said that it was suggested that he first go back to LUPC.

**Erik Hammarlund** asked about going back to review the Island Road District for Aquinnah. **Chris Murphy** said that the MVC will see what can be done to have a hearing.

##### **4.3 Committee Meetings**

**Doug Sederholm** said there will be a continued discussion of the revision of the DRI Checklist for commercial structures on April 9, 2012.

The meeting was adjourned at 9:00 p.m.

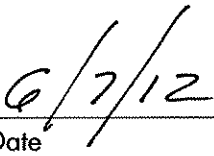
#### **DOCUMENTS REFERRED TO DURING THE MEETING**

- Martha's Vineyard Commission – Land Use Planning Committee – Notes of the Meeting of March 26, 2012

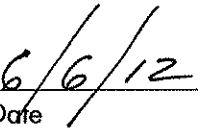


- Martha's Vineyard Commission – Concurrence Review 1 -2012: Vineyard Arts Facility – MVC Staff Report-2012-04-02
- DCPCs in the Town of Aquinnah, Town of Aquinnah District, Coastal District, Moshup Trail District, and Gay Head Cliff Area District - Discussion and Vote April 5, 2012 - Conformance of Proposed Amended Regulations - Staff Notes (Jo-Ann Taylor, DCPC Coordinator)
- Massachusetts Department of Environmental Protection, Bureau of Resource Protection-Wetlands & Waterways Program; Regional Circuit Rider Workshop, co-sponsored by the Martha's Vineyard Commission

  
Chairman

  
Date

  
Clerk-Treasurer

  
Date