



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 June 21, 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)	P Chris Murphy (E-Chilmark)
P 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)
- 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)	P Holly Stephenson (E-Tisbury)
P James Joyce (A-Edgartown)	

Staff: Bill Veno (Senior Planner), Paul Foley (DRI Planner), Sheri Caseau (Water Resources Planner), Christine Flynn (Economic Development and Affordable Housing Planner)

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

1. MINUTES

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

John Breckenridge moved and it was duly seconded to approve the minutes of June 7, 2012 with corrections as noted. Voice vote. In favor: 12. Opposed: 0. Abstentions: 2. The motion passed.

2. RYMES PROPANE (DRI-638) CLOSE OF WRITTEN RECORD

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

Doug Sederholm, Hearing Officer asked Paul Foley for any additional information regarding the project.

Paul Foley presented a staff report based on consultation with MVC counsel.

- The entire property has to be looked at as a Development of Regional Impact (DRI).
- Possible wording of the conditions would be:
 - With the approval of Rymes Propane as a Development of Regional Impact, the entire parcel becomes a DRI.

- In addition to approving the Rymes Propane installation, the Commission approves the use of the remainder of the parcel for exterior storage, provided the vegetative buffer along High Point Lane is preserved and no activities are added that could introduce nitrogen or toxins into the water table.
- This development is approved for a period not to exceed three years (or six years) after which the use shall cease and the installation shall be removed.
- After this temporary use of the property has ceased, this project approval and the DRI designation shall be deemed to have been rescinded without further action by the Commission and shall have no future effect on the use or development of the parcel.

Doug Sederholm noted that this wording will become part of the record. He then closed the written record and noted that there may be deliberation and decision later in the meeting.

3. MVTV REDUCTION (DRI-625-M) MODIFICATION REVIEW

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

For the Applicant: Bruce MacNelly (Architect), Stephen Warriner (MVTV Executive Director), Anne Lemenager (Chairman, MVTV Board of Directors)

3.1 Applicant's Presentation

Bruce MacNelly presented the following information.

- When the project was presented to the MVC last winter, it was for a building that was 6,600 square feet plus a 600 square foot garage for a total of 7,200 square feet.
- This was their wish list. However, funds are only available for a smaller building.
- The building will now be 4,000 square feet and 24 feet in height.
- Parking will be the same and in the back. It will be paved from the church driveway and a permeable surface in the back.
- They had the septic in front and now it is being proposed to connect to the sewer.
- They will clear in the front of the building for construction only and maintain a 50 foot buffer from the back lot to the parking.
- They will address any issue regarding the buffer with the abutters.
- It is a similar aesthetic.

3.2 Commissioners' Questions

Doug Sederholm asked if there was any resolution with their church neighbors. **Stephen Warriner** said that they met with Paul Foley first and they are going to review any issues with their attorney. They have indicated that they may want some changes. They are worried about the future use of the property should MVTV sell the property, such as who would be able to purchase it and the type of use that would be allowed. They are also concerned about the shared parking, snow removal and signage. **Doug Sederholm** noted that it would have to be a non-profit / educational use.

Erik Hammarlund asked if the new footprint is within the old footprint. **Bruce MacNelly** said it is within the footprint and it has one step back to allow for possible future expansion. It is 50 x 80 feet, for a total of 4,000 square feet.

Chris Murphy asked if the Commissioners wanted to have an updated staff report. The Commissioners declined.

3.3 Land Use Planning Committee (LUPC) Staff Report

Doug Sederholm said the LUPC voted unanimously to recommend to the full Commission that this is an insignificant change to the DRI and to approve the modification.

3.4 Deliberation and Decision

Doug Sederholm moved and it was duly seconded that the Commission find that this is an insignificant change to the DRI. Voice vote. In favor 14. Opposed: 0. Abstentions: 0. The motion passed.

Doug Sederholm moved and it was duly seconded that the Commission approve the modification. Roll call vote: In favor: J. Breckenridge, C. Brown, P. Cabana, E. Hammarlund, L. Jason, J. Joyce, C. Murphy, K. Newman, N. Orleans, C. Rose, D. Sederholm, L. Sibley, B. Smith, H. Stephenson. Opposed: none. Abstentions: none. The motion passed.

4. LEAF MIXED USE/284 MAIN STREET (DRI-637) WITHDRAW AND RESUBMIT REVISED PLAN

*Commissioners Present:*J. Breckenridge, C. Brown, P. Cabana, E. Hammarlund, L. Jason, J. Joyce, C. Murphy, K. Newman, N. Orleans, C. Rose, D. Sederholm, L. Sibley, B. Smith, H. Stephenson.
*For the Applicant:*Chuck Sullivan (Architect)

Linda Sibley moved and it was duly seconded to allow the Applicant to withdraw their proposal without prejudice.

Linda Sibley, Acting Hearing Officer, presented the following update from LUPC:

- It became evident that there was a sense that the project was too large for the property and they have a revised plan.
- The revised plan is responsive to the concerns, but it is enough of a change to require a new hearing or re-open the hearing.
- By allowing the Applicant to withdraw and have a new proposal, it allows all of the Commissioners to participate versus the current quorum for the closed public hearing.

Chuck Sullivan said that they are planning to come back to LUPC on July 2, 2012.

Voice vote. In favor: 12. Opposed: 0. Abstentions: 2. The motion passed.

5. PACHICO HIGH POINT LANE ANR (C.R.2-2012) CONCURRENCE REVIEW

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

For the Applicant: Tom Pachico (Owner)

5.1 Staff Report

Paul Foley presented the Staff Report:

- The Applicant is the Pachico Family Trust; Tom Pachico.
- The location is High Point Lane, Tisbury Map 22-A lot 13.11 (1.2 acres).
- The proposal is an ANR division of one 1.2 acre parcel into four (0.28-0.32 acre) lots.
- This wooded hillside is the last undeveloped parcel in the neighborhood. At one time it had a small barn with a couple of animals. The lot has been owned by the Pachico family for generations. At one time Tom's father owned the whole area down to State Road including the Trip Barnes lot and the mini golf lot.
- When the previously owned lots were subdivided there was just a dirt road access to the water department.
- Mr. Pachico has stated that an electrical supply company may be interested in buying Lot 3 and possibly Lot 4, and that that project would likely be in front of the Commission as a DRI.
- Tom Pachico would like to save a couple of smaller parcels for the future for his children or himself.
- The subdivision plan was reviewed.
- There are no development plans, so there are no nitrogen or traffic impacts to project.
- The DRI trigger is 2.1 and 3.3: Division of Commercial Land – both Concurrence Reviews.

5.2 Land Use Planning Committee (LUPC) Report

Doug Sederholm said the concern about the possibility of the approval of this without obtaining a DRI designation and its cumulative effect if it was developed was discussed at LUPC. On June 18, 2012 the LUPC passed a motion (5 to 1 with 2 abstentions) to recommend to the full commission that his proposal does not rise to the level of regional impact and the MVC should not concur with the referral and send it back to the Town.

Christina Brown said there might be a cumulative impact if the four properties are developed and it is the responsibility of the Commission to look at the long-term cumulative impact. Nitrogen loading, perhaps, may be reviewed as a trigger separate from the traffic issue.

Katherine Newman commented about the 5 to 1 vote, saying the vote was not as straight forward as indicated. There was a lot of discussion at LUPC that included the possibility of changing the DRI Checklist to address some of the issues posed by this division of commercial land. She had abstained from that vote. Because of the rate we change our checklist, the less comfortable she is.

5.3 Applicants Presentation

Tom Pachico presented the following:

- His family has had the property for over 60 years. His father is now 86 years old.
- They want to sell the property and have had an offer from an electric company for two of the lots.

- They have no plans at this time for the other two lots. They would like to keep them in the family and have them available for the future.

5.4 Commissioners' Discussion

Linda Sibley noted that Tom Pachico mentioned at LUPC that he petitioned the town for a new water main. That has been replaced.

John Breckenridge noted that Tom Pachico said that he would connect to the sewer and noted that this is theoretical, is not part of the plan and does not flow with the deeds. **Tom Pachico** noted that they are not looking at doing anything at this time except for the possible sale of two of the parcels. At LUPC, he said they would connect to the sewer if it comes through and they are willing to put in a combined nitrogen reduction for the four lots.

John Breckenridge noted that they may be potentially four projects and they will have a nitrogen impact. It seems that potentially they could have something in the deeds that would address the nitrogen as well as a provision to agree to connect to the sewer. At this time there does not appear to be a lot of detail.

Leonard Jason asked what the permitted uses are. **Tom Pachico** said it is B-2 Commercial and it is outside Zone 2. **Sheri Caseau** confirmed that it is outside Zone 2. **Tom Pachico** also noted that \$160,000 of studies have been done on this property.

Katherine Newman said is confused about the proposal and about the precedent. The Commission doesn't know what these four lots will be.

Chris Murphy reminded the Commission that this is a discretionary referral and we are deciding if we accept the referral or not.

Camille Rose noted that it was discussed that we should not presume assumptions for the property.

Linda Sibley asked what could be allowed that would impact the nitrogen load. **Sheri Caseau** said projects such as classrooms or a restaurant.

Holly Stephenson said there is one easement in the center and that goes to all four lots, so will there only be one curb cut to High Point Lane. **Tom Pachico** said he could not say what would happen in the future. **Leonard Jason** asked if all the lots would be using that roadway. **Tom Pachico** said he did not know at this time.

Chris Murphy again reminded the Commission that this is a discretionary referral.

Holly Stephenson said that the access and the nitrogen load are issues and how it affects the site when the parcel is subdivided and goes from one lot to four lots. **Sheri Caseau** said that currently it is 6.72 which is the equivalent of one small house. If the site is subdivided it will be 1.79 to 1.68 per parcel.

Chris Murphy said that currently there are no nitrogen loading requirements for the Town of Tisbury.

Holly Stephenson said that the four projects could be below the threshold. **Erik Hammarlund** said we have the thresholds so if it changes it needs to be brought back to the Commission.

James Joyce said he did not believe it needs a full DRI. It can go back to the Town to meet its building regulations.

Doug Sederholm said that the main issue is the potential to impact Lake Tashmoo for excess nitrogen. We don't know what impact it will have. We may address that with the DRI Checklist. Are we willing to impose a regulatory burden on these four lots when we don't know what will be there and burden the Applicant when nothing may actually happen?

Erik Hammarlund asked if it is possible to condition a non-concurrence. **Chris Murphy** said it was not.

Peter Cabana said we don't know what will happen in the future, we should not regulate it at this time, but perhaps state that if it were divided in the future that the nitrogen load be stated.

Bill Veno said that would be making a recommendation based on the representation.

Linda Sibley noted that the Applicant has stated on several occasions that he wants to keep his options open. We need to be clear that if we follow the recommendations of LUPC it is okay to subdivide.

Chris Murphy noted that it is in front of us because it is a Checklist item, such as the traffic impact and the impact on abutters. It is not just a question of nitrogen loading.

Katherine Newman said it seems that planning is not being considered.

James Joyce said that according to the Checklist it does not have to come back if it is under the nitrogen load. However, the town may require the Applicant to come back for other reasons.

Peter Cabana moved and it was duly seconded that this proposal does not rise to the level of regional impact and the MVC should not concur with the referral.

Roll call vote. In Favor: C. Brown, P. Cabana, E. Hammarlund, L. Jason, J. Joyce, N. Orleans, C Rose, D. Sederholm, L. Sibley, B. Smith, H. Stephenson. Opposed: J. Breckenridge K. Newman,. Abstentions: none. The motion passed.

6. TISBURY FARM MARKET (DRI 631) NOTICE OF USE BEFORE DEVELOPMENT

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

Chris Murphy said that Elio Silva would like to run his business at the site prior to construction. The business will consist of the Tisbury Farm Market in the front building to sell produce and groceries, an art gallery in the back building and storage on the second floor.

Erik Hammarlund said it appears that he came before us to open a grocery and it would be the same use.

Erik Hammarlund moved and it was duly seconded that the Commission accept this temporary use and it is consistent with the approved DRI. Voice vote. In favor: 14. Opposed: 0. Abstentions: 0. The motion passed.

7. MOTION ON RECISSION OF DRI 633 DECISION

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

Leonard Jason moved and it was duly seconded to rescind the Commission's approval of the Oak Bluffs roundabout.

Chris Murphy read a statement to the Commission.

- Because the MVC never formally adopted Roberts Rules of Order, the Commission is guided by the Chairman.
- According to Roberts Rules, among the things you cannot rescind is a nature of contract.
- The Town and MassDOT have spent a lot of money on the project.
- The towns of West Tisbury and Edgartown, as well as the MVC, have spent money arguing over this.
- It is a political issue.
- The Commission is a regulatory body and there is nothing that allows the Commission to rescind a DRI decision.

He concluded that he has the greatest respect for Leonard Jason and his opinions, as well as the opinions of the Commission. However, in his role as Chairman, he has to rule that the motion is out of order.

Chris Murphy asked Leonard Jason if he could accept that. **Leonard Jason** said no.

Chris Murphy then handed out a letter from MVC Counsel about the issue.

Chris Murphy recessed the meeting at 8:00 p.m. to allow time to read the letter and reconvened at 8:05 p.m.

Leonard Jason said it was a difficult choice on his part. He feels that as elected officials, Commissioners have the responsibility to do the right thing. The MVC is a regional body and Commissioners should look at the regional ramifications. Somebody has to speak for the people. The MVC should not appear to play favorites and should look at what is best for Martha's Vineyard.

Doug Sederholm, referencing the letter from counsel, said he thinks whether or not the Commission can rescind the DRI decision goes beyond the Chairman's ruling. It is a matter of law and counsel has said that we cannot rescind. Our statute does not give us the power to rescind a previously granted permit. He doesn't think the Commission has the power and there is good reason for that. The Town of Oak Bluffs and the Commonwealth have relied on the Commission to make the decision and they have spent a lot of money on the project. It would be unfair to revoke. The right thing to do is to abide by the decision.

James Joyce said he thought the State could do what it wanted and it is so far along with the project that most likely it won't stop.

Brian Smith said he thought it had been a sloppy process. The Commission did not do the most basic things that it does with any project: it did not do a site visit, it didn't talk about the Land Bank, and what about the trees? Is counsel saying that the Commission can never correct a mistake?

Camille Rose asked for clarification on the last statement from counsel; "Finally, even where a DRI approval properly may be rescinded, as for material misrepresentations or violations of conditions, due process entitles the holder of the DRI approval to notice and an opportunity to be heard prior to such rescission".

Katherine Newman felt that the process has been a little misrepresented. There are people who believe one way and others who believe another way. When the Commission closed the hearing, there was no one forcing it to do so. The Commission does its best to dot the "i's" and cross the "t's". The vote is the vote, it is the end. The Commission followed the process and the procedure.

Linda Sibley said if the Board makes a decision because they made errors it does give them the right to revise. If the applicant misrepresented, then you may be able to do it.

Leonard Jason stated the following misrepresentations:

- Did the Land Bank give permission to relocate the Shared Use Path?
- The question of if it has an impact on other towns is debatable.
- It was reviewed ad nauseam.

Linda Sibley said that there is strong opinion against this on the Vineyard, but it is way too late for us to reverse this. The Commission would flat out lose in court. Are the Commissioners going to ignore its counsel?

Leonard Jason said the question is whether the Commission is going to be fair to the community. Does it ignore the 3,200 names on the petition?

Brian Smith said we did not know which permits we approved. **Chris Murphy** stated that they are held to the conditions that were approved.

Brian Smith asked what about lighting, landscaping and the bike paths. How can MassDOT go out and bid without Commission review? **Erik Hammarlund** said that we have no control over their bid, but it cannot build without our approval. **Chris Murphy** said that MassDOT has given every indication it will do what the Commission asked of it.

Holly Stephenson said that she agrees that we do owe something to the community, but we had public hearings and we listened to public testimony and we made a decision based on the regional impact. She doesn't think we can rescind that decision. The only thing that changed is the popular vote and not the technical merit.

Ned Orleans said that before we look at interconnecting roads, we might want to look at the reason why the Town of Oak Bluffs did not come to the MVC ten years ago. We need a change in our legislature if necessary, so the Commission can designate these developments of regional impact on its own if the towns do not refer them.

Brian Smith said that 89.7% of the letters sent to the Commission were against the roundabout. The testimony before it was against the roundabout. The fire chief and the police came before the Commission with regards to safety yet other information contradicted that.

Erik Hammarlund said whether to rescind the approval is a question regarding the future of the MVC as a reliable body. The Commission does not reconsider things after the approval period has expired. There will be errors and the Commission will occasionally make a mistake. He

agreed with counsel. To change the process and open up the Commission as a body that cannot produce finality is not correct. The MVC has an important role on the Island. How do we distinguish every other decision and if it should be rescinded?

Chris Murphy said members have expressed and heard the opinions. There are grave consequences if the Commission rescinds the DRI Decision. As Chairman, he reiterated that the motion to rescind was not proper.

Leonard Jason respectfully disagreed. The Commissioners have a right to govern themselves. First they were told that the money would disappear but that is not true as the money has been extended, that permits are not needed but it is part of the DRI Checklist. Why did we rush to judge as it is not even out to bid yet? We shouldn't just acquiesce.

Chris Murphy said that the Commission voted on Mr. Jason's proposal [motion to reconsider the Approval in October 2011] and it was denied. The Commission did not acquiesce. It is time for the Commission to move on.

Leonard Jason moved and it was duly seconded to appeal the Chairman's decision not to entertain the motion to rescind.

- **Doug Sederholm** reminded the Commission that the appeal of the Chairman's decision is to get the Commission into a position for more discussion and asked whether it needed more discussion. He said that what Leonard Jason is asking the Commission to do is illegal.
- **Christina Brown** said that during her tenure on the Commission she has not heard a Chairman make this type of decision.
- **Erik Hammarlund** said that the Commission should not even be considering a motion to rescind, it is illegal and the Chairman's decision is correct. The appropriate thing to do is recognize and consult with counsel and the motion to rescind is illegal.
- **Linda Sibley** said the Chairman is telling us that the Commission cannot hold this vote because counsel has told Commissioners that they can't. The Chairman is doing his job.
- **Katherine Newman** said that Commissioners have supported the Chairman and it is their obligation to listen to what he is saying and act as a body. It is like an uprising; why are Commissioners having this discussion?
- **Camille Rose** referenced the last paragraph of the memo from counsel. He is not saying it is against the law, he is saying there may be reasons why it can be rescinded and has given Commissioners the opportunity to discuss this.
- **Ned Orleans** said the Chairman has been able to make the decision he made because the Commission has not adopted any rules such as Roberts Rules of Order, so the Chairman has the ability to do so.
- **Christina Brown** said that Commissioners entrust the Chairman to do so and all read the same material, so it is reasonable as a group that it review. She hoped that Commissioners would agree to decide among themselves so the Chairman would not need to make a decision.
- **Chris Murphy** reiterated that the motion is to override the Chairman's decision.
- **Doug Sederholm** noted that a vote against the motion is to affirm the Chairman's decision that the Commission not vote to rescind.
- **Chris Murphy** stated that a yes vote is to overturn the Chairman's decision.

Voice vote and show of hands. In favor: 4. Opposed 9. Abstentions: 1. The motion did not pass.

Chris Murphy recessed the meeting at 8:45 p.m. and reconvened at 8:50 p.m.

8. OYSTER BAR WITHDRAWAL

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

Chris Murphy referred to an email received by Paul Foley from Fielding Moore, President, The Edgartown National Bank regarding the withdrawal of the bank's application for the Oyster Bar project and noted that there is nothing to be voted on.

9. NEW BUSINESS

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

9.1 Reports from Chairman, Committees and Staff

Leonard Jason asked if the Executive Director has come up with a plan to assign a staff member to each Planning Board. **Chris Murphy** stated that he has not received an answer yet and Bill Veno will ask for an answer by next meeting.

Christina Brown gave an update on the Housing Needs Assessment study and said it has gone out and they are receiving responses. The Committee will review the information on July 25, 2102.

Doug Sederholm said the next LUPC meeting will be devoted to the DRI Checklist and tentatively the landscape plan for the roundabout. They will spend as much time as needed to review the landscape plan.

9.2 Community Development Block Grants Update

Christine Flynn presented the following:

- The Governor announced that the Island will receive \$2,000,000 for the Community Development Block Grants and Housing Rehabilitation, Child Care Subsidy Programs.
- All six towns will receive funds through Oak Bluffs and Edgartown as the lead communities.
- The MVC staff worked with the towns and assisted the grant writer.

Linda Sibley excused herself from the meeting.

10. RYMES PROPANE (DRI-638) POSSIBLE DELIBERATION AND DECISION

Commissioners Present: J. Breckenridge, C. Brown, P. Cabana, E. Hammarlund, L. Jason, J. Joyce, C. Murphy, K. Newman, N. Orleans, C. Rose, D. Sederholm, B. Smith, H. Stephenson.
For the Applicant: John Rymes (Owner Rymes Propane Gas)

10.1 Staff Report

Paul Foley presented the Staff Report.

- The record had been left open to clarify whether the Commission could look at just a piece of the property and/or make a temporary approval.
- The Applicant would like to go forward and has requested to waive the LUPC.

Chris Murphy asked the Commissioners if they have enough information to move forward.

Doug Sederholm moved and it was duly seconded to waive the post public review by the Land Use Planning Committee and move directly to deliberation and decision. Voice vote. In favor: 14. Opposed: 0. Abstentions: 0. The motion passed.

10.2 Deliberation

Katherine Newman asked if the landlord understands that the entire property is a DRI and existing uses can continue.

Doug Sederholm said that the staff report provides the Commission with the details of the other uses and they are passive operations with no impact on nitrogen. The Applicant does not want this as a DRI forever and Mr. Rymes does not plan to be there forever. This could be accomplished in two ways: The owner can come back to the Commission when they are ready to cease operations, or the Commission can include a sunset clause in its Decision. It would be nice to know which option the Applicant wants to go.

Chris Murphy said the other option the Commission was given is to word it in such a way that if Rymes removes their equipment and returns the land approximately back to its current state, the DRI is deemed rescinded. **Christina Brown** said she thinks this is an elegant solution to a question the Commission has faced; once a DRI always a DRI.

Erik Hammarlund said they could also put in an outside time limit for the temporary use.

Leonard Jason said that they should set a timeline to review the project and have the Applicant come back. If they do not want to continue, the approval ends.

Erik Hammarlund said that it should also be added that it can be done by a modification.

Katherine Newman asked if the conditions are written, such as not cutting the buffer. **Doug Sederholm** said that can be written into the Decision.

Peter Goodale, the property owner, was concerned about leaving the decision to a future Commission. He prefers a timeline for eight years, of the removal of the tanks, and then the DRI will end if it is not extended by the Commission.

John Rymes noted that one condition of the Town's is for there to be security cameras. He has tried to locate solar cameras but the solar access may not be adequate. They may have to go with electric powered units, which will require bringing power to the site.

Brian Smith asked if another tenant was to be added to the property, how is that handled? **Chris Murphy** said they could modify the existing DRI if changes are to be made. Additional landscaping or outdoor storage activities would not be considered modifications as long as they did not trigger any other Checklist items.

Erik Hammarlund suggested language for the decision: ...approved for a period not to exceed eight years, after which the use shall cease, the installation shall be removed and the site returned to substantially pre-DRI condition. The Applicant may remove the equipment and return the site at any time without further MVC approval. Once the use of the property has ceased and the site restored, the project approval and DRI designation shall be deemed to have been rescinded without further action by the Commission and shall have no future effect on the use or development of the parcel.

Chris Murphy said that it should be added that the cessation of the use be certified by the MVC prior to the DRI being considered rescinded.

10.3 Benefits and Detriments

Doug Sederholm outlined some benefits and detriments:

- There is no effect due to wastewater and groundwater.
- It is open space and there are no habitat issues.
- There is no night lighting or noise.
- There are no green building issues.
- There is a minimal to no impact due to traffic and transportation.
- With the buffer the scenic values are preserved.
- There is no impact to abutters, taxpayers or municipal services.
- It may increase the tax revenues to the Town of Tisbury.
- It conforms to zoning.
- It is within the Tisbury Business District.
- It will promote competitive rates for a clean fossil fuel.

Christina Brown disagreed with the benefit regarding promoting competition. It will bring more propane to the Island and hopefully it will enable the Island to use less oil. **Doug Sederholm** agreed to strike the benefit regarding competitive rates.

Doug Sederholm moved and it was duly seconded to approve the Development of Regional Impact (DRI) application with the understanding that it is for the entire parcel, with understanding that the applicant has the option to bring electric power to the leased area for the sole purpose of the security cameras, and with the condition that the Commission approves the use of the remainder of the parcel for exterior storage and screening materials as currently done by Dale McClure, provided the existing vegetated buffer along High Point Lane is retained and no activities are added that could introduce nitrogen or toxins that could harm the water table. Further, the approval of the propane storage is for a period not to exceed eight years, after which the use shall cease, the installation shall be removed and the site returned to substantially pre-DRI condition. The Applicant may remove the equipment and return the site at any time without further MVC approval. Once the propane storage use of the property has ceased


and the site restored and has been certified to the Commission, the project approval and DRI designation shall be deemed to have been rescinded without further action by the Commission and shall have no future effect on the use or development of the parcel.

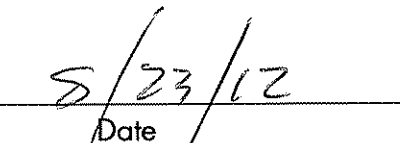
Roll call vote. In favor: J. Breckenridge, C. Brown, P. Cabana, E. Hammarlund, L. Jason, J. Joyce, K. Newman, N. Orleans, C. Rose, D. Sederholm, B. Smith, H. Stephenson. Opposed: none. Abstentions: none. The motion passed.

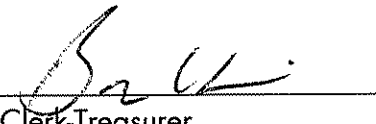
The meeting was adjourned at 9:15 p.m.

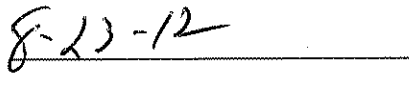
DOCUMENTS REFERRED TO DURING THE MEETING

- Minutes of the Commission Meeting of June 7, 2012 – Draft
- Letter to the Martha's Vineyard Commission dated June 21, 2012 from Jayne and Nils Leaf – Withdrawal of Proposal DRI-637 and Reapplication
- Martha's Vineyard Commission – Concurrence Review 2-2012 Pachico ANR – MVC Staff Report – 2012-06-21
- Letter to The Martha's Vineyard Commission from Elio Silva received June 18, 2012 , Tisbury Farm Market (DRI 631) Notice of Use Before Development
- Letter to the Commissioners from Gareth I. Orsmond of Rackemann, Sawyer & Brewster, P.C., dated June 21, 2012 regarding the question of whether a DRI approval can be unilaterally rescinded and, if so, under what conditions.
- Letter to Chris Murphy, Chairman, Martha's Vineyard Commission dated June 21, 2012 from the Town of Oak Bluffs, Robert L. Whritenour, Town Administrator, regarding the Oak Bluffs Roundabout
- Martha's Vineyard Commission – Land Use Planning Committee – Notes of the Meeting of June 18, 2012
- Memo to the Martha's Vineyard Commission from MacNelly Cohen Architect P.C. dated June 14, 2012, regarding MVTV Proposed Studio Facility, Description of Revised Project
- Email from Fielding Moore, President, Edgartown National Bank, to the Commissioners - received June 18, 2012 – Oyster Bar Withdrawal


Chairman


Date


Clerk-Treasurer


Date