

# THE MARTHA'S VINEYARD COMMISSION

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## Minutes of the Regular Meeting of June 19, 2003

Held in the Olde Stone Building,  
33 New York Avenue, Oak Bluffs, MA

### IN ATTENDANCE

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**Commissioners:** James A. Athearn, Chairman (Elected – Edgartown), John Best (Elected – Tisbury), Christina Brown (Elected – Edgartown), Linda DeWitt (Appointed – Edgartown), Tristan Israel (Appointed – Tisbury), Debra Moore (Elected – Aquinnah), Katherine Newman (Appointed – Aquinnah), Robert E. Schwartz, (Appointed - West Tisbury), Alan Schweikert, (Appointed – Oak Bluffs), Doug Sederholm (Elected – Chilmark); Linda Sibley, (Elected – West Tisbury), Richard Toole (Elected – Oak Bluffs)

**Staff:** Mark London (Executive Director), Bill Veno (Regional Planner), Jennifer Rand (DRI Coordinator), Jacqueline Campbell (Staff Secretary)

There being a quorum present, James A. Athearn, Chair, opened the Commission Meeting at 7:40 p.m.

### 1. HUMPRHEY'S / ISLAND ELECTRONICS (DRI No 571) – CONCURRENCE VOTE

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*Commissioners present: J. Athearn, J. Best, C. Brown, L. DeWitt, T. Israel, D. Moore, K. Newman, A. Schweikert, D. Sederholm, R. Schwartz, L. Sibley, R. Toole.*

Christina Brown reported that LUPC met on June 9, 2003 and recommended that the Commission concur with the Town of Tisbury's referral and consider the project a Development of Regional Impact, largely because of traffic concerns.

Mr. Eric Peters represented Mr. Diaz who was unable to attend because of his son's graduation.

Jennifer Rand described the project as being an 868 sq. ft. take-out restaurant, similar to the Humphreys in Edgartown. There will be two to three employees and it will be open from 7:00 a.m. to 7:00 p.m., seven days a week. There will be 14 parking spaces and a handicapped spot. The building will be moved 6' farther back from State Road and Colonial Drive to make it compliant with zoning. If business is good in the future, the owner might want to stay open later in the evening.

Christina Brown noted that the retail food establishment is permitted in Tisbury's B2 commercial zoning district. Other than the Board of Health review, it would automatically be approved.

Tim Anthony, owner of the property, said there would be handicapped accessible bathrooms. He said that they intend to close off an existing access on Colonial Drive and move it down on the property. They want to come into the entrance from State Road near Cronigs and exit on Colonial Drive. They propose a handicapped parking space on the front of the property. They are prepared to give some space on Colonial Drive so it could be widened. There are several letters from the neighborhood in support of the project.

Linda Sibley commented that the main regional issue is traffic, and since it is a take-out restaurant, there is a potential to create a considerable amount of traffic, which has been a concern of the Commission.

*Doug Sederholm moved and it was duly seconded that the Commission concur with the referral of the project.*

Tristan Israel commented that if there are hearings, it opens the process up to many issues but the main thrust is traffic.

Linda Sibley also raised the question of landscaping.

*Jim Athearn asked that all in favor of the motion to concur to raise their hands. In favor: 9. Opposed: 0. Abstentions: 2. The motion passed.*

## **2. BADLANDS CANTINA, LLC (FIESTA MEXICANA) (DRI. 571) – CONCURRENCE VOTE**

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*Commissioners present: J. Athearn, J. Best, C. Brown, L. DeWitt, T. Israel, D. Moore, K. Newman, A. Schweikert, D. Sederholm, R. Schwartz, L. Sibley, R. Toole..*

Christina Brown said that the project is to allow a new Mexican restaurant to offer full service on the outdoor terrace with 28 additional seats. LUPC recommended that the Commission not concur with the Town of Edgartown's referral of the project as possibly needing a hearing as a DRI.

Jennifer Rand read a letter from the Edgartown Planning Board. In summary, the Planning Board members felt that the project was not a DRI. The Planning Board would hold Public Hearings and review the project in terms of the guidelines of the Upper Main Street Plan and requirements of the B-II Zoning Bylaw. If approved, the project will have conditions addressing several issues, based on the criteria of the Plan and the zoning.

Tristan Israel said that this area is almost as critical as the one we just saw (Humphrey's DRI No. 571). The restaurant looks like it will be successful. If this were a venture for a new restaurant, how would it be treated? He said he this is on a major artery.

Linda Sibley said that the big difference is that in Edgartown, the special permit process allows the Town to review the project and condition or deny it if necessary, whereas the other project has no possibility of review other than the Martha's Vineyard Commission. It is also a lesser expansion in that the seats have been in use in the past; and may, in fact, result in less of an impact since the seats will be used for sit-down service rather than take-out [resulting in less turnover].

John Best said that this was an expansion of an existing use, while the other is a new use.

Christina Brown said that the letter from the Edgartown Planning Board had asked the Commission to provide planning assistance. David Wessling and the Edgartown Police Chief have been working together to look at the traffic issue.

Deborah Moore said that she feels that the Edgartown Planning Board would appear to be capable of dealing with it, but wondered whether coming to the Martha's Vineyard Commission would offer greater possibility for public input.

Christina Brown commented that the public actively comes to meetings of the planning board.

Linda Sibley noted that the Commission has encouraged towns to prepare plans for their business districts, so smaller projects like this didn't have to come to the Commission.

*Richard Toole moved and it was duly seconded that the Commission not concur on the project.*

Tristan Israel said that this is a major regional artery and doesn't find that a 28-seat restaurant is innocuous.

Linda DeWitt asked whether it would be open for lunch and wondered about the impact of noise on the neighborhood.

Christina Brown said that the Selectmen have looked at the issue with the question of the liquor license.

Jim Athearn said that if local boards have the ability to review this type of project, they should be encouraged to do so.

*Jim Athearn asked that all in favor of the motion not to concur with the referral to raise their hands. In favor: 9. Opposed: 1. Abstentions: 1. The motion to not concur passed.*

### 3. BRIDGE HOUSING CORPORATION (DRI No. 560) – VOTE ON WRITTEN DECISION

*Commissioners present: J. Athearn, J. Best, C. Brown, L. DeWitt, T. Israel, D. Moore, K. Newman, A. Schweikert, D. Sederholm, R. Schwartz, L. Sibley, R. Toole*

Mark London introduced the newest draft written decision regarding the Martha's Vineyard Commission's approval with conditions of the Bridge Housing Corporation's housing development proposal.

Linda Sibley suggested that on page 4, section A3, paragraph 4, the wording be "... if all rural areas of the Island were deemed "off-limits" for this kind of project ..."

Tristan Israel in relation to page 8, condition 3.1 questioned the probability of the State certifying the project for 40B affordable housing inventory, with the applicant pursuing the cooperative ownership model. John Best said that it would probably be all or nothing.

Christina Brown commented that in section A4, that the Commission often referred to low and moderate units as affordable, whereas 40B says this only applies to under 80%. She suggested that the decision make clear the distinctions. John Best suggested that it say "as little as 25% are affordable by State definitions" and later refer to either "40B affordable" or to "affordable to low and moderate income Island residents". The Commission instructed the Executive Director to finalize the wording throughout the document based on this clarification.)

*Linda Sibley moved and it was duly seconded to adopt the written decision as amended. Roll call vote. In favor: J. Athearn, J. Best, C. Brown, L. DeWitt, T. Israel, K. Newman, A. Schweikert, L. Sibley, R. Toole Opposed: None. Abstentions: None. The motion carried. (Deborah Moore, Robert Schwartz and Doug Sederholm were not eligible to vote.)*

#### 4. HILLSIDE VILLAGE III (DRI No. 564) – VOTE ON WRITTEN DECISION

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*Commissioners present: J. Athearn, J. Best, C. Brown, L. DeWitt, T. Israel, D. Moore, K. Newman, A. Schweikert, D. Sederholm, R. Schwartz, L. Sibley, R. Toole.*

A copy of the draft written decision was distributed.

Doug Sederholm noted that page 6, heading B should read "consistent".

John Best noted that on page 4 the wording should be "traffic from buildings shall be instructed to exit".

Tristan Israel said that traffic directional instruction was also to be given to delivery trucks and caregivers.

Linda Sibley commented that the Commission's approval of the subdivision was subject to the resolution of the septage problem; the Commission was not only interested in the construction of the building but also in the subdivision, and that was the basis for the wastewater condition.

Doug Sederholm suggested adding a paragraph to the "Facts" section, noting that the Hillside III project is made possible by subdividing part of the Hillside I property to create a new lot.

Mark London said that Commission Counsel, Eric Wodlinger, advised that the Commission could impose a condition that mitigates the impacts created by the new project including the subdivision, but not condition the a previously approved project beyond the mitigation of these impacts. Therefore, requiring that there be no additional nitrogen loading as a result of the subdivision and the construction of the new project was proper.

*John Best moved and it was duly seconded to adopt the written decision with the amendments mentioned above. Roll call vote. In favor: J. Athearn, J. Best, C. Brown, L. DeWitt, T. Israel, D. Moore, K. Newman, R. Schwartz, D. Sederholm, L. Sibley, R. Toole Opposed: None. Abstentions: None. The motion carried. (A. Schweikert was not eligible to vote.)*

#### 5. OTHER BUSINESS

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##### 5.1 Letter from Island Elderly Housing

Jennifer Rand read a letter from IEH questioning the Commission's authority to impose a condition on Hillside Village I. Also, it said that administrative restrictions made it impossible to use funding for the new project to install the denitrification system in Hillside I, thus jeopardizing the construction of Hillside Village III. The project is funded by HUD, which will not fund off site improvements under any circumstances.

Christina Brown suggested we respond to IEH outlining the arguments raised by Commission's Counsel (see previous item) while noting that the Commission is always open to requests for modifications to its decisions and conditions.

Doug Sederholm commented that the Commission should disagree with IEH's assertion about the Commission's authority to impose the condition.

Linda Sibley said that IEH must demonstrate why and how the condition is unworkable, and why they couldn't fundraise for extra funds. It has to be more than just cost.

## 5.2 Changes to Urban Boundaries

Mark London summarized a memo from MassHighway on changes to urban boundaries. As a result of information from the 2000 census as well as a change in the criteria for defining an urban area, the census has defined two "urban" areas on the Vineyard, namely the central areas of Oak Bluffs and Vineyard Haven. MassHighway then works with the borders of the urban areas, in a process called "smoothing" that seeks to ensure that any given stretch or road is either within or outside an urban area, in order to clarify eligibility for federal aid for road improvements. The proposed change for urban roads includes the area of the Southern Woodlands in Oak Bluffs and would mean that County Road would become eligible for Federal funding. The designation as "urban" means the design requirements such as lane and shoulder width as well as sight lines are actually less strict. He has been assured not only by representatives of MassHighway but also from other Regional Planning Agencies that this designation applies only to federal highway funding and has no other planning or development implications.

Linda Sibley was concerned about designating an obviously rural area as "urban" because of funding. She wondered whether the Commission's work on the Rural Roads Initiative, with new design criteria for these roads, might be compromised because the Commission agreed that the roads were urban. Mark London said that he had been assured by MassHighway that this was not the case.

Katherine Newman suggested responding to Mass Highways saying that "smoothing" of the roads appeared to be fine, but questioned whether the program would lock us into the design requirements of urban roads.

Doug Sederholm suggested that the Commission send a letter to MassHighway saying that we would agree provided that this plan is purely to designate roads, although we don't see these blocks as urban.

Linda Sibley agreed with Doug Sederholm and suggested sending a copy to Doug Foy, Director of Commonwealth Development, with a cover letter saying we have endorsed the plan because we want the Town of Oak Bluffs to be able to receive these funds. However, the Commission thinks this is odd planning, and requests he look it over.

Tristan Israel said that we should clarify that this in no way means that the Commission agrees that this would be seen as an urban area but only "smoothing" for road designation purposes.

Linda Sibley said we are working on rural roads guidelines and worried that this would be excluded. We should make a disclaimer concerning planning and the rural roads initiative, and assert that the Commission does not agree that the road is urban in character.

Alan Schweikert said that the Commission should discuss issue with the Town of Oak Bluffs. Mark London said that he had already discussed it with the head of the Board of Selectman and the head of the highway department.

It was agreed that Mark London would send a note to MassHighway agreeing to the proposed boundaries while mentioning all the caveats mentioned above.

### 5.3 Mansion House Landscaping

Mark London explained that the Commission had expected that there would be one certificate of occupancy when the building was completed and the landscaping finished. However, the applicant would like a partial certificate of occupancy in order to open the retail and restaurant spaces, which the Commission staff is in agreement with. A letter has been drafted to the Building Inspector of the Town of Tisbury suggesting that a partial certificate could be granted, given that the large tree on Beach Road has been planted, but that the final occupancy permit should not be issued without a Certificate of Compliance from the Commission. That the certificate will be granted to the applicant once the rest of the landscaping around the building, as described by the applicant during the public hearing, has been completed. The Commissioners concurred with this approach.

### 5.4 Chapter 40B Task Force

Bill Veno commented that the report of the Governor's Affordability Task Force on 40B Affordable Housing was now available on the internet at [www.state.ma.us/dhcd/Ch40Btf/report/default.htm](http://www.state.ma.us/dhcd/Ch40Btf/report/default.htm).

## 6. ADOPTION OF MINUTES

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*Commissioners present: J. Athearn, J. Best, C. Brown, L. DeWitt, T. Israel, D. Moore, K. Newman, A. Schweikert, D. Sederholm, R. Schwartz, L. Sibley, R. Toole.*

*Richard Toole moved and it was duly seconded to adopt the following minutes as amended: November, 21, 2002, December 5, 2002, December 12, 2003, February 13, 2003, February 20, 2003, April 10, 2003, April 17, 2003, May 8, 2003, May 15, 2003 and May 22, 2003.*

Linda Sibley noted that minutes can be corrected at any time. If errors are found, they can be brought back to the Commission to be changed.

The following corrections to the minutes were proposed by Commissioners:

Doug Sederholm – May 8, 2003, AT&T Cell Tower, page 4, bullet 3, first sentence, insert after the word acceptable ...."to the applicant." Also in bullet 5 insert "Federal Telecommunications Act".

Christina Brown – April 3, 2003, page 3 should read "Delahunt."

Deborah Moore – April 17, 2003, page 5, Barbara Lewis's comment should be moved to those in support of project.

Mark London read changes to three meetings received over the past month:

- February 13, 2003, page 3, the correct reference is Norton land.
- April 10, 2003, page 3, bullet 4, delete "that had been close to", insert "away from." Page 3, line 39, after the words Brad Austin said that, insert "the driving surface." Page 5, line 16, delete "lots", insert "acres." Line 32, insert "not" after the words "how much of the leaching area was". Page 8, Line 28, delete "\$3,000" and insert "\$4,300".
- March 20, 2003, page 8, correct the spelling of the name to "Walter Sheble".

*Voice vote. In favor: 12. Opposed: 0. Abstentions: 0. The motion to approve the minutes of the meetings as amended carried.*

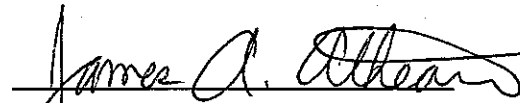
## 7. UPCOMING MEETINGS

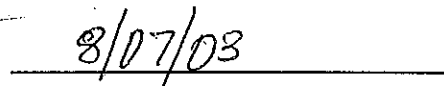
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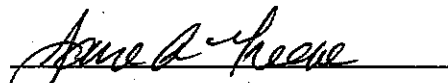
Christina Brown announced:

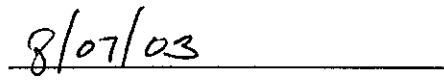
- LUPC Meeting, June 30, 2003, at 5:30 p.m. on CK Associates, for 320 houses in the Southern Woodlands.
- Site visits, July 7, 2003, at 4:30 p.m. for Woodside Village VI, and Aidyllberg II immediately following, then, at the Commission offices, a Pre Public Hearing on the Jenny Lane project.
- A Process & Procedures Committee Meeting is scheduled for June 25, 2003 at 5:45 p.m. in the Howe's House.

The meeting adjourned at 9:28 p.m.

  
Chairman

  
Date

  
Clerk-Treasurer

  
Date