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Minutes of the Commission Meeting Held on April 12, 2018 In the Stone Building 33 New York Avenue, Oak Bluffs, MA

IN ATTENDANCE

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

P Gail Barmakian (A-Oak Bluffs)	P Michael Kim (A-Governor; non-voting)
- Trip Barnes (E-Tisbury)	P Joan Malkin (A-Chilmark)
P Leon Brathwaite (A-County)	P Katherine Newman (A-Aquinnah)
P Christina Brown (E-Edgartown)	- Ben Robinson (A-Tisbury)
- Peter Connell (A-Governor; non-voting)	P Doug Sederholm (E-West Tisbury)
P Robert Doyle (E-Chilmark)	P Linda Sibley (E-West Tisbury)
- Josh Goldstein (E-Tisbury)	P Ernie Thomas (A-West Tisbury)
- Fred Hancock (E-Oak Bluffs)	P Richard Toole (E-Oak Bluffs)
P James Joyce (A-Edgartown)	P James Vercruysse (E-Aquinnah)

Staff: Adam Turner (Executive Director), Bill Veno (Senior Planner), Paul Foley (DRI Planner), Christine Flynn (Economic Development and Affordable Housing Planner).

Chairman James Vercruysse called the meeting to order at 7:00 p.m.

1. PUBLIC ANNOUNCEMENT

Commissioners Present: G. Barmakian, L. Brathwaite, C. Brown, R. Doyle, J. Joyce, M. Kim, J. Malkin, K. Newman, D. Sederholm, L. Sibley, E. Thomas, R. Toole, J. Vercruysse.

Adam Turner presented an art installation that was dropped off at the office earlier in the week. He said an artist walked on South Beach for one hour and collected Styrofoam and other garbage on the beach. They made a composite of the findings and the intensity of what was found was shown. 99% of all birds will eventually have digestive plastics in their system. Pollution does affect our wildlife.

2. SWEET AND TREAT-OAK BLUFFS DRI 617-M MODIFICATION REVIEW

Commissioners Present: G. Barmakian, L. Brathwaite, C. Brown, R. Doyle, J. Joyce, M. Kim, J. Malkin, K. Newman, D. Sederholm, L. Sibley, E. Thomas, R. Toole, J. Vercruysse.

For the Applicant: Donald Benefit, Danny Chan, Candace Nichols

2.1 Staff Report

Paul Foley presented the following:

- The proposal is to locate an ice cream and candy business in a retail space on the ground floor, and the proposed menu includes a variety of flavors of hard and soft ice cream, bubble tea, fried ice cream, and candy.
- Site photos were reviewed.
- The prior approved site plan was shown.

- Photos of the current location were reviewed.
- In 2008, the MVC approved with conditions the demolition of the original building and the construction of a two story 2,800 gsf (1,400 sf footprint) multi-use building with retail on the ground floor, and two one-bedroom housing units on the second floor that shall be occupied on a year-round basis.
- The current proposal required referral to the MVC as a Concurrence Review.
- The MVC DRI 617 Conditions included typical MVC landscaping and lighting conditions, that both residential units be rented year-round, that vehicular access only be from the rear, that modifications including high traffic generators had to return to the MVC for review, that the building had to be tied to sewer, that mechanicals were to be located in the basement or attic, that there be cedar siding and white trim exterior, and no construction during summer.
- The applicant applied for a business license, and the Selectmen said they needed to go before the MVC due to the food service, which is considered a high traffic generator.
- A key issue is does the Commission need to review an ice cream and candy business in a retail space in a B-2 Commercial District as a DRI through the public hearing process?

Joan Malkin asked if the modification was only for a change of use. **Paul Foley** said it is a change of use, because it is food service.

Gail Barmakian said this was a DRI, and asked if it was originally intended to be retail or office space. **Paul Foley** said it was retail with two one-bedroom year-round units on the second floor.

Katherine Newman asked if the approved DRI enumerated what type of retail. **Paul Foley** said it was just retail.

Ernie Thomas asked if there was ever retail in the space. **Paul Foley** said no.

2.2 Land Use Planning Committee Report

Richard Toole, LUPC Chairman, said the LUPC did not find any issues. The LUPC recommends to the full Commission that the project does not rise to the level requiring a public hearing.

2.3 Commissioners' Questions

Doug Sederholm asked what Bubble Tea is. **Candace Nichols** said it is tea mixed with tapioca in different flavors and it can be sweetened.

Kathrine Newman asked if this project would be reviewed by the Board of Health. **Danny Chan** said they require indoor and outdoor grease traps.

Linda Sibley moved and it was duly seconded that the proposal is not significant enough to require a public hearing. *Voice vote. In Favor: 12. Opposed: 0. Abstentions: 0. The motion passed.*

Linda Sibley moved and it was duly seconded to approve the project as requested by the applicant.

- **Adam Turner** asked if the project requires landscaping.
- **Paul Foley** said he can look that up to see what was required with the approved DRI.
- **Candace Nichols** said there is grass there now, and some additional landscaping could be done.
- **Joan Malkin** said all conditions of the approved DRI should continue, and one is the landscaping.
- **Paul Foley** said the landscaping plan will come back to the MVC.
- **Linda Sibley** said the landscape plan would come before the LUPC.
- **Candace Nichols** said the applicant would come back with that.
- **Richard Toole** said the landscape should be salt tolerant for this location.

Roll call vote. In favor: G. Barmakian, L. Brathwaite, C. Brown, R. Doyle, J. Joyce, J. Malkin, K. Newman, D. Sederholm, L. Sibley, E. Thomas, R. Toole, J. Verduyze. Opposed: none. Abstentions: none. The motion passed.

Christina Brown said it should be stated that all of the original conditions of the DRI are still applicable. Are the apartments controlled as being year-round with a recordable document? **Candace Nichols** said the apartments have not been rented yet, only used by family. The DRI is recorded so the conditions are on record.

3. GREEN AVENUE HISTORIC DEMOLITION-EDGARTOWN DRI 681 CONCURRENCE REVIEW

James Joyce recused himself.

Commissioners Present: G. Barmakian, L. Brathwaite, C. Brown, R. Doyle, M. Kim, J. Malkin, K. Newman, D. Sederholm, L. Sibley, E. Thomas, R. Toole, J. Vercruysse.

For the Applicant: James Joyce

3.1 Commissioners' Discussion on can a Commissioner Present

There was a discussion on whether or not a Commissioner can present their own project.

- **Linda Sibley** questioned if a Commissioner could present to the full Commission. She was told by the Ethics Commission that she could not with her project.
- **James Vercruysse** read the opinion of the MVC attorney that said it should be avoided if at all possible, and it would be better if someone else presented.
- **Adam Turner** said counsel said it is basically the MVC's own rules.
- **Doug Sederholm** said there is a basic rule that you should go to the Ethics Commission first.
- **Christina Brown** said you have to be designated as a Special Town Employee in order to sit and represent yourself, but that does not speak to what the MVC attorney said that it has to be our own rules.
- **Leon Brathwaite** said the easy way is that the applicant requests to the MVC to present, and the Commission approves so then it would no longer be a conflict.
- **Gail Barmakian** said this board may not have the authority to do that, especially if the Ethics Commission says no.
- **Michael Kim** said he believes it is explicitly in the Ethics Commission that you can always represent yourself in any form.
- **Adam Turner** said the MVC counsel is well schooled in processing.
- **Gail Barmakian** said counsel may be saying it is okay to go through with it, but would that stand?
- **James Vercruysse** reread the statement from counsel. She says that she rather that you didn't present but you can if you insist.
- **Adam Turner** said Paul Foley can give the Staff Report.
- **James Joyce** said he was just going to answer questions.

3.2 Staff Report

Paul Foley presented the following:

- The applicant is James Joyce and the project location is 9 Green Avenue, Edgartown Map 20-D Lot 14.
- The proposal is to demolish one section of a house that is a thin old two story building of unknown age (at least 1920) and rebuild larger.
- There are conflicting records on when the building was built. According to the Assessors records the land was purchased in 1917 and a dwelling and building was built in 1920. In 1928, it is listed as a homestead and shop. However in 1983, the National Register nomination for the area describes 9 Green Avenue as built circa 1870-1890 and describes it as a shop. It could be that the section in front that is used for storage and has the added "Eastlake" bay window that is

proposed to be demolished was a shop that was built earlier than the section behind it. A newer section was built in 2013-2014.

- Photos were shown of what is to be demolished.
- Site photos were reviewed.
- The applicant would like to demolish one section of a house that is an old building of unknown age (at least 1920) and rebuild larger. The house section in back where the applicant lives is 1,090 sf and was built in 2013-2014. The existing two story “shop” area in front that is proposed to be demolished is used for storage and is an approximately 622 sf. The proposed new two story residential addition would be 1,786 sf.
- The applicant said he is happy to donate the Eastlake bay window if someone wants it.
- The project was referred under DRI Checklist Section 8.2 (Demolition of Historic Structure). It is unclear whether the project triggers mandatory DRI Review or Concurrence. The LUPC reviewed it as a Concurrence Review.
- A key issue is does the proposed demolition require a public hearing review as a DRI?
- The Edgartown Historic District Commission sent a letter from Bricque Garber (HDC Assistant), and the members see this building as quite unique and historically significant to the fabric of historic Edgartown. The building sits just outside the boundary of the Historic District. However, the members have great interest in the distinctive historic building and are opposed to the demolition.

Joan Malkin asked if a review was done under the Demolition Policy. **Paul Foley** said it was not done, but it could be done tonight.

3.3 Land Use Planning Committee Report

Richard Toole, LUPC Chairman, said the LUPC did not feel that the proposal had a great impact but that it did need to be reviewed at a public hearing. Two members of the Edgartown Historical Commission stated that the building was important and they thought a public hearing should be held, even though it was outside of the historic district. Linda Sibley had asked why it was not included in the district due to the expansion a few years ago, and they did not know why. The LUPC recommended to the full Commission that the proposed demolition has a regional impact and should be reviewed as a DRI with a public hearing.

Adam Turner said the two people that were present at the LUPC from the Historic Commission did not know, and because the LUPC did not know all of the specifics, they thought it needed a public hearing.

James Joyce said if anyone wants any parts of the building, they can have them. The window is the only thing that he feels has any significance. The window is 6% of the total building that he wants to take down.

3.4 Demolition Checklist Review

The Commissioners reviewed the criteria in the Demolition Checklist.

- **Katherine Newman** said it looks like somebody slapped a window on a building, so does that make a building historically significant?
- **Michael Kim** said that is a “Yankee” thing to do and that element is distinctive. Long term it could improve your site elevation.
- **Joan Malkin** said for sake of clarity, the total from the Demolition Checklist is 4 to 5 points and that is in the range that does not require further review (0-5 points). The site location cannot be seen unless you drive on Green Avenue, the design and construction shows some significance, the history and culture is vague, and we don’t know the exact age.
- **Adam Turner** said two members of the Historic Commission came to the LUPC, the Historic Commission wrote a letter and they asked that a public hearing be held.

Christina Brown moved and it was duly seconded that a “tidy” public hearing be held to clarify the issues and the Edgartown Historic Commission asked the MVC to hold such a hearing and it is just outside the Historic District. It would be in the community’s best interest.

- **Katherine Newman** said it is interesting in comparison to the project in Oak Bluffs for the house with the church affiliation. If two people emerge that think it is historic, what does that mean? Does that put a burden on the MVC to hold a public hearing?
- **Joan Malkin** said it is a sign of some respect to listen to the experts.
- **Christina Brown** said it would allow us to review some eccentricities about the project that might come out in a public hearing.
- **Leon Brathwaite** said we just went through the Demolition Checklist which indicates not to have a public hearing, so he would vote no.
- **Richard Toole** said without disrespect, he was there when the two Historic District members came to the LUPC, but they were not necessarily experts.
- **Doug Sederholm** said we are Commissioners and we may not be experts either.
- **Joan Malkin** asked if the applicant wanted to advertise about the Eastlake window.
- **Doug Sederholm** said we could ask him to offer that now.
- **Linda Sibley** said we are not at a public hearing, so how would you codify that?
- **Joan Malkin** asked if Linda Sibley was correct and at this stage is the applicant able to make offers?
- **James Vercruysse** said there was testimony that the applicant would make the window available.
- **James Joyce** said it is on social media right now and the Town requires you to offer it up for 60 days.
- **Gail Barmakian** clarified that it is not just two people of the Historic Commission, the letter is from the whole Historic Commission.
- **James Vercruysse** said that a yes vote to the motion is to hold a public hearing.

Roll call vote. In favor: G. Barmakian, C. Brown. Opposed: L. Brathwaite, R. Doyle, J. Malkin, K. Newman, D. Sederholm, L. Sibley, E. Thomas, R. Toole, J. Vercruysse. Abstentions: none. The motion did not pass.

There was a discussion about contacting the Ethics Commission.

- **Adam Turner** said he would also contact the Ethics Commission.
- **Linda Sibley** suggested to not call the MVC attorney but that the MVC write a letter to the Ethics Commission to clarify the issue if a Commissioner can present.
- **Leon Brathwaite** said usually if someone puts it in writing via a letter that they want to present and send it in, it no longer is a conflict.
- **Linda Sibley** said she felt it was an appearance of a conflict.
- **Gail Barmakian** said we need to have a ruling.

4. DISCUSSION OF SHORT TERM RENTAL BILLS

James Joyce rejoined the meeting.

Commissioners Present: G. Barmakian, L. Brathwaite, C. Brown, R. Doyle, J. Joyce, M. Kim, J. Malkin, K. Newman, D. Sederholm, L. Sibley, E. Thomas, R. Toole, J. Vercruysse.

4.1 Presentation of Short Term Rental Bills

Adam Turner presented the following:

- The first part of the legislation is to tax short term rentals, as it has an impact in Boston with the Airbnb rentals but it also impacts the Island.
- Both proposed pieces of legislation are similar but have distinct differences; the most notable being the Senate version contains a section that would institute an additional 2.75% tax to be spent on water quality projects.
- The second part of the Senate version establishes a Water Quality Trust to collect the additional 2.75% tax. The tax would be used on the Cape and the Island to any place that has a 208 Plan certified after June 2015 or a suitable equivalent. Barnstable has a 208 Plan.
- The provisions of imposing a 2.75% Cape and Island Water Protection Trust Fund is only mentioned in the Senate Bill. It mandates that a Trust shall collect and distribute funds collected by the Airbnb tax revenue program in the amount of 2.75%, in addition to the Airbnb taxes and distributed to such Cape and Island towns that have an area-wide water pollution abatement plan certified after June 15, 2015, or a suitable equivalent. There is no definition of a suitable equivalent.
- Barnstable County's 208 Plan was a regional Comprehensive Plan for the county funded by the State and Federal governments.
- The bill states that "Ten percent of the annual revenue shall be deposited to the Department of Environmental Protection Agency's state fund for the purpose to contract with a simple regional planning agency or non-profit corporation to evaluate and report on the efficacy management measures to reduce nitrogen pollution of coastal waterways undertaken to pursuant to a 208 Plan." Does that exclude the MVC and Nantucket from accessing these funds because we do not have a 208 Plan and given that we have a different approach?

4.2 Commissioners' Discussion

Katherine Newman asked why the exclusion of the MVC and the Cape Cod Commission. **Adam Turner** said he did not know and we need to have a discussion.

Gail Barmakian said it is clear that the Cape Cod Commission is stated and the MVC is in second position. The maximum we can have is six slots and we will have a minority vote and it states that we have to have a 208 Plan which none of the towns have. It is clear that the Cape will get the majority of the money.

Adam Turner said it is his recommended action that the MVC write a letter to Representative Fernandes and Senator Cyr with our recommendations.

James Joyce said the money that comes from the Islands should be kept in each of the Islands.

Joan Malkin said she wrote to Representative Fernandes, and from his response his view is that he has made up his mind. We should meet with Senator Cyr and members of his committees. There is no clarity and this bill could have a great impact on the Island.

Gail Barmakian said a letter from the MVC should also be written with request for change and amendments.

Adam Turner said he looks at it as an opportunity that could generate a significant amount of money for the Island for water quality, but there are a lot of questions to be answered.

Gail Barmakian said she does not think we should ask the questions, we should be stating.

Joan Malkin said we should state these are the changes that we are requesting.

Adam Turner said the bill is moving along because they want the Airbnb part. Representative Fernandes said that a significant amount of money was addressed by the State for the Cape to come into compliance, so this is one of the mechanisms. He also views this as an opportunity for the Island as well.

Gail Barmakian said this was not popular with the cities and they had to push it.

Joan Malkin said she was surprised that she received a personalized response from Representative Fernandes. This could be good for us if we stayed together. He feels that we are all one community and that we are the same as the Cape, but we are not.

Bill Veno said day trippers do join us with the Cape.

Leon Brathwaite said there are hidden costs that the homeowner will be hit with; insurance will be affected, it could affect your mortgage and possibly you will be inspected and taxed. Those who rent their house will receive a lot of hidden costs.

Doug Sederholm said when they start to comply and start to do what they should be doing.

Joan Malkin said there are also costs to the towns to enforce.

Richard Toole asked if this is only for short term rentals. **Gail Barmakian** said yes 28 days or less.

Richard Toole said this is good to discourage illegal rentals and possibly open up more year-round rentals.

Gail Barmakian said she did not think it would encourage year round rentals.

Joan Malkin said she does not think there is a difference in the view that the Vineyard is getting side tracked from the Cape with regards to the water quality tax issue.

Christina Brown asked what is this fund and the essence of how the money will be used. **Adam Turner** said from all the short term rentals and additional 2.75% tax will be charged that can be used for all water quality projects for areas that have a 208 Plan or equivalent plan and the bill states how the money is dispersed. All short term rentals under 28 days will be taxed. The Airbnb money is used for affordable housing.

Joan Malkin said the water quality projects are still to be defined.

James Vercruysse said is the MVC going to write a letter and set up a meeting with Senator Cyr. **Adam Turner** said yes he will do that. They see it as a very positive thing and we need to work with them to get it to work.

Gail Barmakian said she thinks we need to take a more aggressive approach because they have already stated their perspectives.

James Joyce asked if anyone knows where Nantucket is on their housing bank with the 0.5% tax on real estate sales. **Adam Turner** said it is before the legislature now.

Katherine Neman said she believes we should write a letter and it is a good idea for a public forum and to invite Senator Cyr here so people can hear about it.

Joan Malkin said it might make a difference if the meeting is publicized and the newspapers write about it in advance of the meeting.

Gail Barmakian said they have made presentations prior, such as the All Island meeting. The Island has read the bill but the selling is very different.

Leon Brathwaite said the letter should be sent to the whole Conference Committee so it is put in front of everyone dealing with the issue.

5. NEW BUSINESS

Commissioners Present: G. Barmakian, L. Brathwaite, C. Brown, R. Doyle, J. Joyce, M. Kim, J. Malkin, K. Newman, D. Sederholm, L. Sibley, E. Thomas, R. Toole, J. Verduyze.

5.1 Executive Director's Report

Adam Turner said that we will discuss the Water Quality Policy at the May 3, 2018 MVC meeting. The presentation we had was excellent. If you have any questions please call the office so we can have answers for those questions prior to the meeting. He also thanked Richard Toole for his work on the Water Alliance Committee. He has been chairing the group and it has been excellent.

5.2 Reports from Committees and/or Staff

Legislative Reforms Affecting Local Zoning and Development Regulations

Bill Venio said the draft letter is about zoning reform. We are working with all of the Island Planning Boards and they are weighing in if they should sign and send a letter. They want a joint letter. He wants to know if the MVC wanted to also send a letter.

There was a discussion about the two-thirds majority vote versus a simple majority vote.

- Robert Doyle said if this was to reduce the two-third majority vote.
- Bill Venio said yes it is to change to a simple majority vote. We want to say it should be left to the communities to decide what the majority should be.
- Leon Brathwaite said you want the legislation to say the town should make the decision.
- Linda Sibley said a well written zoning article doesn't have much trouble getting a two-third majority.
- Adam Turner said the Governor is behind it and it will pass.

Bill Venio said the main premise that all three bills have is to encourage production of housing, require increased densities and require communities to have multi-unit housing. We are saying that is not feasible. The local communities are too different to have one standard and proper authority should be at the local level.

Gail Barmakian asked how this addresses variances. Bill Venio said if we are saying a community finds it is getting a lot of request for dispensation then the communities should change their law.

Bill Venio asked that the Commissioners take a look at the letter and if the direction of the points is what you support lets go ahead and if not take the points out.

Linda Sibley said there seems to be some urgency and would we be comfortable having staff draft the letter and have the Executive Committee approve.

Linda Sibley moved and it was duly seconded to have MVC Staff draft a letter regarding Legislative Reforms Affecting Local Zoning and Development Regulations and to have the Executive Committee approve.

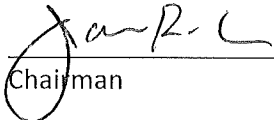
- Christina Brown said what are the key issues that we want the Executive Committee to include? She feels the Commission is reluctant to have a two-thirds majority vote versus a simple majority.
- Robert Doyle said he is stronger than reluctant.
- Joan Malkin said we want the Towns to decide.

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

The meeting was adjourned at 8:20 p.m.

DOCUMENTS REFERRED TO DURING THE MEETING


- Martha's Vineyard Commission DRI #617-M Sweet & Treat @Fortune World MVC Staff Report 2018-04-12
- Martha's Vineyard Commission Land Use Planning Committee Notes of the Meeting of April 9, 2018
- Vineyard Sweet and Treat Existing Floor Plan with Dimension Plan #3, Plan #7, Plan #5 and site plan
- Martha's Vineyard Commission C.R. #1 – 2018: Green Ave. Historic Demolition MVC Staff Report 2018-04-12
- Martha's Vineyard Commission Land Use Planning Committee Notes of the Meeting of April 2, 2018
- Letter from the Town of Edgartown Historic District Commission to the Edgartown Zoning Board of Appeals, Dated February 22, 2018, RE: 9 Green Ave (20D-14)
- Joyce Residence 9 Green Ave Edgartown plans and elevations
- Memo from Adam Turner to the Martha's Vineyard Commission, Subject: Update on State's Short-Term Rental Tax: House and Senate Versions, Dated April 12, 2018
- Table 1 Room Occupancy Tax Rates for Martha's Vineyard and Table 2 Proposed Short Term Rental Tax
- House No. 4314 Bill and House No. 4327 Bill
- Draft Letter RE; Legislative Reforms Affecting Local Zoning and Development Regulations, Dated April 5, 2018



Chairman

6.21.18

Date



Clerk-Treasurer

21 June 2018

Date