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## Minutes of the Commission Meeting Held on April 29, 2010 In the Stone Building 33 New York Avenue, Oak Bluffs, MA

### IN ATTENDANCE

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

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|-------------------------------------|--------------------------------------|
| - Bill Bennett (A- Chilmark)        | P Katherine Newman (E –Aquinnah)     |
| P John Breckenridge (E- Oak Bluffs) | P Ned Orleans (A – Tisbury)          |
| P Christina Brown (E - Edgartown)   | - Jim Powell (A – West Tisbury)      |
| - Peter Cabana (E – Tisbury)        | P Camille Rose (A - Aquinnah)        |
| - Martin Crane (A – Governor)       | P Doug Sederholm (E – Chilmark)      |
| P Fred Hancock (A – Oak Bluffs)     | P Linda Sibley (E – West Tisbury)    |
| P Chris Murphy (E – Chilmark)       | P Holly Stephenson (E – Tisbury)     |
| P Jim Joyce (A – Edgartown)         | P Andrew Woodruff (E – West Tisbury) |
| - Lenny Jason (A – County)          |                                      |

Staff: Mark London (Executive Director), Paul Foley (DRI Coordinator), Mike Mauro (Traffic Coordinator), JoAnn Taylor (Coastal Planner/DCPC Coordinator)

**Christina Brown** opened the meeting at 7:10 p.m.

### 1. MINUTES

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Commissioners present: *Commissioners present: J. Breckenridge, C. Brown F. Hancock, J. Joyce, C. Murphy, K. Newman, C. Rose, D. Sederholm, L. Sibley, H. Stephenson, A. Woodruff*

**John Breckenridge moved, and it was duly seconded, to approve the minutes of April 15, 2010. A voice vote was taken. In favor: 11. Opposed: 0.**

**Abstentions: 3. The motion passed.**

### 2. EXECUTIVE DIRECTOR'S AND CHAIRMAN'S REPORTS

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- **Mark London** reported that a public hearing was held on April 29, 2010 on the design of the permanent Lagoon Pond Bridge. The plans are moving along. The timetable is to complete the permanent bridge by 2015. The Drawbridge Committee will submit comments. Individuals may submit comments to the Committee or directly to the Massachusetts Department of Transportation.
- **Christina Brown** reported that the Minerals Management Service is in discussion with Massachusetts and Rhode Island about federal waters off of Massachusetts and Rhode Island. She and Mark London will keep Commissioners posted.

### **3. TISBURY MARKET PLACE - DRI 485 M5: CONTINUED PUBLIC HEARING**

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*Commissioners present: J. Breckenridge, C. Brown F. Hancock, J. Joyce, C. Murphy, K. Newman, C. Rose, D. Sederholm, L. Sibley, H. Stephenson, A. Woodruff*

*For the applicant: Sam Dunn, Owner/Developer; Bob Daler, engineer*

**Linda Sibley** read the hearing notice on the proposal to build a new building at Tisbury Market Place, and she reopened the public hearing.

#### **3.1 Staff Report**

**Paul Foley** gave the staff report.

- The proposal is for a 2-story building of 6,500 square feet, with one to two commercial units totaling 2,800 square feet, one office of 1,450 square feet, a residential unit of 1,450 square feet, and one marine-related use of 800 square feet.
- The property has a Mass DEP Chapter 91 license from 1936, but the license will need to be reviewed.
- In 1984, the original development did not come before the Commission because Tisbury was not a member of the Commission at that time.
- The proposal increases total square footage by 28% of buildings in the Tisbury Marketplace.
- New key issues are: the possible impact of the Town's acceptance of beer and wine at restaurants on traffic and parking; rise of water level; and the procedural question of whether applicants asking for additional sewer flow should be referred to the Commission.
- On-going key issues are: incremental growth, character, lot coverage, and open space on the site.
- Regarding Chapter 91, the State feels that the site is filled tidelands. The Commission will forward its decision to the Conservation Commission which then forwards it to the DEP. The MV Commission could ask for a Determination of Applicability.
- The traffic report has not substantially changed since the previous hearing and the consultant is here to answer questions.
- Correspondence includes new letters from the Conservation Commission and Site Plan Review Board of the Tisbury Planning Board.
- He reviewed the location and proposal using slides and elevations of the proposal.
- The current proposal has gable roofs.
- The landscape plan is primarily foundation plantings.

**Jo-Ann Taylor** gave some background on the waterfront.

- The beach between Five Corners and the Drawbridge is a barrier beach. As a barrier beach, it moved in the past, but has been stabilized.
- In the 1930s the Army Corps dredged the harbor and dumped thousands of yards of fill on Bass Creek.
- As far as licensing is concerned, DEP is concerned with the closest 250 feet to the open shoreline.

- The site does appear to be close enough to be called within the tidelands. The existing Chapter 91 license required clean sand for fill. The site will need licensing to put up a new structure.
- The DEP licensing is very complicated. There will be a comment period so the Commission decision can be submitted.
- Most of the closest part of the fill is the boatyard. DEP's sole focus is access so they will solely be interested in the ground floor and grounds.
- The filled area was once the town's. Chapter 91 licenses are most often a 99 year lease. No one can really give away water that belongs to the public. Part of this is private tidelands as well.
- The licenses to fill are separated out to different owners.
- Hinckley's used to own the whole area.
- The dredge material was dumped; the licensing is for filling with clean sand. Then there's a separate license for building on the land.
- There is also a license to maintain the bulkhead.

**Paul Foley** gave the traffic report update.

- Regarding adequacy of parking, based on ITE estimates, there is sufficient parking.
- Based on the existing uses, ITE estimates that 117 parking spaces are required.
- Sam Dunn's proposal requires 15 or 18 spaces, which uses up the current "surplus". The total number of spaces would be more than the ITE estimate requirement.

**Charlie Crevo** explained the traffic report.

- With 2012 factored estimates and added improvements, the traffic problem remains that Beach Road goes to Level of Service F, which is stop-and-go traffic.
- The difference on Beach Road for turning using 2010 no-build figures and 2012 after the improvements figures is negligible.
- Based on ITE parking standards, the existing mixed use would require 113 spaces; the new site would add a needed 15. There are currently 130 or 131 spaces.
- There has been discussion about reversing the entrance and exit. There are pros and cons to changing the traffic pattern.
  - Presently, 65% of the vehicles going into the Market Place come from Five Corners during peak hour and 65% exit toward Five Corners. If the driveways are reversed, the traffic will conflict. Also it's counterintuitive.
  - An internal cut-through within the parking lot would create a loss of 4 spaces and there are some safety issues. A positive could be the looping within the lot to find a space.
  - Another turning movement count could be done in the summer to see if the percentages change.
- The back area parking is dirt; the spaces could be delineated with white pickets along the fencing. The area in back could be devoted to employees and owners. But signage could be added to direct drivers to back parking spaces.
- Gannon and Benjamin has two designated spaces at the access.

**Sam Dunn** added further information.

- The parking at Gannon and Benjamin is in the entrance. The fence is removable for moving boats, etc.
- He's not sure where the Hinckley property line falls in relation to the parking along the line. He knows they've been parking there for thirty years.
- Any development between building A and B would eliminate nine spaces.

**Charlie Crevo** said the traffic counts are from February and are factored for the summer by 2.7.

**Linda Sibley** said ITE doesn't seem to apply well to Vineyard traffic.

**Mark London** said the summer population increases by a factor of about 4. But the 2.7 ratio of traffic numbers reflect actual counts on the Vineyard.

**Charlie Crevo** said he doesn't know how many spaces are taken by employees. He uses building floor area for estimating parking numbers which includes employees and customers.

**Sam Dunn** said there are 15 parking spaces that are leased by the condominium association year round. He objects to the association, on the one hand, taking spaces away from the development and, on the other, using the lack of parking as a reason to object to the additional development.

**Sam Dunn** explained that buildings are built on pilings because FEMA described the site as a settling zone. If water flows under the building it will flow into the ground.

A question is whether the ground under the buildings is considered pervious.

### **3.2 Applicant's Presentation**

**Sam Dunn** said he would like to address a few things.

- He was asked to combine the existing vernacular with the green roof concept. The floor heights are compressed to stay under the 28-foot height limit. There are gable roofs which mimic facing gable ends. There is a transverse gable going along the building to compensate. It's a hybrid between the two and they're happy with it. The Site Plan Review Board seems happy with it.
- Site Plan Review recommended that the building be reduced in scale. He disagrees. This design is in scale. There isn't a design rationale to reduce scale. From the logical point of view, size is relative. The size of the building should relate to the size of the property. This is one of the largest pieces and is among the least developed. The building covers 12% of the area and impervious is only 25%. It's not overbuilding.
- The only other design change is that they moved two or three parking spaces in the rear to get them out of the waterside management area.
- They will start the special permit process to move the parking spaces.
- The planning board has commented on the project, although he hasn't been before them yet. The project will go before the planning board.
- For anyone to build on the lawn area, 100% of the condo owners would have to approve it. He is willing to commit to not voting for building on the lawn. Building there would compromise the views of many other condos. He wishes he could promise that the lawn would never be developed but he doesn't have that power.

- He could amend the documents to give up the declarant rights to the areas of his condo lots that are not used – the Saltwater lot and the new building lot. He would offer that.
- Some letters he's seen are for and some against the project. It's hard for him to trust the letters. At one time members of the current condo were going to move into the building and everyone was for it. They lost some of the support.
- Everyone who purchased a condo knew that these areas were reserved for future development. He regrets not making those provisions more stringent to prevent people from blocking him from doing what he has a right to do.
- Regarding the sewer, they haven't asked for or obtained any additional sewage flow. They have the original allotment that they paid for at installation. They pay based on the amount of usage. They aren't close to using what was originally allotted and what they paid for.
- The Conservation Commission and Bill Wilcox approved the retention filters which are appropriate size for the new buildings.
- The property is 25% impervious. The condo association has special order of conditions that allowed them to pave the parking lot. The numbers are accurate and produced under a stamp of a registered engineer.

**Bob Daler**, Tetratex Rizzo, Senior Vice President, has done a lot of work on the Vineyard and has been part of government regulatory affairs.

- This project will require a Chapter 91 license. The rear portion of the building sits in former tidelands filled under a 1936 license.
- Referring to a map of the area, he pointed out two critical lines: the solid yellow line and the dashed yellow which is the historic low water as DEP finds it and as shown in the 1847 coastal charts. The importance is the public's rights in the bottom. The state holds the waters in trust for the public. The public has limited rights in the bottom. Private tidelands is the area at the bottom covered between high and low water; the rights are fishing, fowling, walking, and navigating. Those rights in the tidelands in this instance were extinguished by the license. But this building constitutes a change in use, so Mr. Dunn will have to get a license for the building.
- The project will have to get approval from the Martha's Vineyard Commission, then an order of conditions from the Conservation Commission which will allow the applicant to apply for the license.
- This project doesn't fill any tidelands. None of the project touches the tideland or wetlands. There's nothing closer than sixty or seventy feet.
- There are, in the event of a hundred year flood, portions that would have six to 18 inches of water. The building will be raised up out of the flood zone.
- The building won't restrict any flow across Lagoon Pond. It's entitled to a permit under the Wetlands Protection Act. From the tidelands and wetlands issues, he believes the project is approvable.
- There isn't water running off this site into Lagoon Pond and it has been successfully designed and redesigned to infiltrate water.

**John Breckenridge** asked for clarification on whether the FEMA maps are the new 8 or old 8.

**Chris Murphy** said there are so many possible numbers; Commissioners need clarification on where the mean high water numbers come from.

A new design for bio-retention will be submitted.

**Mr. Daler** continued clarifying aspects of the project.

- The new building is slab on grade which has to be above the FEMA elevation.
- The Conservation Commission asks for impervious area to match open space.
- The roof run-off is guttered into the new bio-retention filters.
- The flow of groundwater is toward the ocean, not toward the Lagoon.
- The historic high water line was clarified.
- The back of the building is in former tidelands. Because that's a change in use, the whole building will need a license.
- Everything that happens in the former tideland will have a license.
- The benchmark for mean high water came from historic charts and maps. The current mean high water line is converted from data and known tide stations. That will be done for this license.

**Sam Dunn** said the way to resolve the traffic and parking issues is to get the real story on parking and traffic during the summer season. He would be in favor of continuing the public hearing to allow that data to be collected.

### **3.3 Testimony from Public Officials**

**Tony Peak**, Tisbury Planning Board, Site Plan Review Board, commented on the project.

- He apologized that Sam Dunn did not get a copy of the letter earlier.
- The Planning Board is concerned with the scale of the overall project, not just the scale of the building.
- The cascading roofs are one of the characteristics particular to the town.
- It wasn't an entirely random discussion about reducing the size of the building. Mr. Dunn could remove some of the points of discussion if the building were made short enough so that it no longer encroached on the waterfront management area.
- Mr. Dunn can put parking anywhere he chooses. As a gesture he could relinquish that right to ensure long-term space.
- The elevation shows a balcony on the second floor.
- There are questions about the numbers for open space and impervious space. Through the waterfront commercial district by-law; 40% of the lot shall consist of open space, free from impervious surface. The Conservation Commission does not consider the pervious space under the building as open space.
- The Tisbury parking restriction in the waterfront commercial district is that no more than 10% of the lot be for parking or loading. Some time ago, the building inspector conferred with the developer and upped the parking spaces to 86 spaces. Originally there were 50 spaces.
- Over the course of time the spaces have become head in which has doubled the parking in that area.

**Sam Dunn** said that when they paved the parking lot, they got permission to formalize the revised parking plan.

**Tony Peak** made the following additional comments.

- Leasing out spaces would change the status of parking spaces. That would have to be referred to the Zoning Enforcement Officer.
- In the waterfront commercial district, there is a maximum amount of 10% of lot coverage for parking.
- There is no parking requirement in zoning.
- The waterside management area is 100 feet back from the water. No more than 10% of the entire district from Five Corners can be used for parking, but most of the parking predates the by-law.
- The waterside management area is at the back of the building. The ground floor is designated for marine use.

There is a question of whether the apartment in the waterside management area can be used if there weren't a tenant downstairs.

**Linda Sibley** said that the hearing will be continued and re-advertised, to allow looking at in-season traffic and parking.

**John Best**, Conservation Commission, in Tisbury.

- They have submitted a letter.
- The issues have remained unchanged.
- Anything within the 100-foot buffer is of concern and within the ConCom's jurisdiction.
- Parking is of concern. Parking can be considered more critical than buildings.
- At the time the pavement was permitted, they had some candid discussions with the association. The parking had changed from parallel to nose in. The association had pushed the parking into the undeveloped grass area. It was permitted by neither the ConCom nor the Planning Board of Appeals.
- When they came in for the parking, they gave background on the number of spaces and leased spaces.
- The ConCom is not making the case that the project exceeds the ratio but they're probably in disagreement with his ratios.
- The buildings are considered impervious. But he's not making a case that it exceeds the ratio.

### **3.4 Public Testimony**

**Louis Larsen** commented on the project.

- When the new project was discussed originally, he made the comment that, in a perfect world, if all the stars line up, he'd be fine with it.
- There are four trailers that are rented and sit in parking spaces, there's a dumpster that takes two spaces, one space is used for by him.
- The parking area attached to the Saltwater unit was sold by Sam Dunn and is being used for parking by someone else.

**Doug Reece**, as a trustee of the Condominium Association, commented on the project .

- Some permit holders are contractors who only want to park at night.
- The Gannon and Benjamin lot is filled with boats so they park in the access way.
- The crown of the tree next to the new building site will be adjacent to the new building and will probably be affected by the new building and the moving of boats.

**Bruce Rosinoff**, Vineyard Conservation Society, spoke about wastewater.

- The Vineyard Water Alliance and the Martha's Vineyard Commission are trying to advertise that ponds are at capacity and that new projects shouldn't be sewered until existing nitrogen loading is addressed. We don't have the capacity or the money.
- It's irresponsible to let a new project consume capacity in a water treatment plant. When the hearing is rescheduled, Bill Wilcox should be asked some important questions about our ponds.

**Tony Peak** said one of the things Mr. Crevo could address is the tendency to enter and drop people off at the front of the parking area. If the entry were reversed, the back up wouldn't take place on Beach Road.

**Chris Murphy** asked about the multiple use path.

**Andrew Woodruff** asked whether any of the waterfront, or wetland areas could be improved or enhanced by mitigation.

**Linda Sibley** closed this session of the public hearing and continued the hearing to a date to be determined.

#### **4. YMCA: DRI NO. 600-M – WRITTEN DECISION ON MODIFICATION**

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*Commissioners present:* J. Breckenridge, C. Brown, F. Hancock, J. Joyce, C. Murphy, K. Newman, C. Rose, D. Sederholm, L. Sibley, H. Stephenson, A. Woodruff

Commissioners reviewed the written decision and made the following changes:

- Page 4, Section 3.4 add of
- Section 1.1.3 temporary irrigation, using town water in addition to gray water . .
- Modified conditions . . . the following conditions of the original approval

***Doug Sederholm moved, and it was duly seconded to approve the written decision a corrected. A roll call vote was taken: J. Breckenridge, J. Joyce, K. Newman, C. Rose, D. Sederholm, L. Sibley, H. Stephenson, W. Woodruff. Opposed: None. Abstentions: C. Brown, F. Hancock, C. Murphy***

#### **5. RICKARD BAKERY: DRI NO. 311 M-2- WRITTEN DECISION ON MODIFICATION**

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*Commissioners present:* J. Breckenridge, C. Brown F. Hancock, J. Joyce, C. Murphy, K. Newman, C. Rose, D. Sederholm, L. Sibley, H. Stephenson, A. Woodruff

Commissioners made the following corrections:

- Page 4, Line 132 location

- Page 6 proposed hours of operation need to be included; *no more than 5 a.m. to 10:00 p.m.*
- Line 269-271 delete
- Section 6 Replace with Chris Murphy's handout, deleting Lines 278 to 280

Commissioners postponed deciding on the written decision until the next meeting.

**6. ISLAND FUELS: DRI NO. 566 M-2 - WRITTEN DECISION**

Commissioners present: J. Breckenridge, C. Brown, F. Hancock, J. Joyce, C. Murphy, K. Newman, C. Rose, D. Sederholm, L. Sibley, H. Stephenson

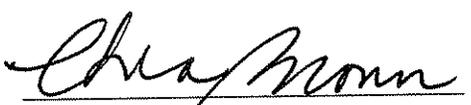
Commissioners agreed to the following changes:

- Line 250 shall evaluate
- Line 252 And will not be loud
- Line 282 Staff will add the appropriate conditions.

**Camille Rose moved, and it was duly seconded to approve the revision of Line 282, subject to final approval by Christina Brown. A voice vote was taken. In favor: 11. Opposed: 0. Abstentions: 0. The motion passed.**

**Doug Sederholm moved, and it was duly seconded, to approve the written decision as corrected. A roll call vote was taken. In favor: : J. Breckenridge, C. Brown, F. Hancock, J. Joyce, C. Murphy, K. Newman, C. Rose, D. Sederholm, L. Sibley, H. Stephenson. Opposed: None. Abstentions: None. The motion passed.**

The meeting adjourned at 10:10 p.m.

  
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 Chairman

7/22/10  
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 Date

  
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 Clerk-Treasurer

7/22/10  
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 Date