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Minutes of the Commission Meeting Held on July 1, 2010 In the Stone Building 33 New York Avenue, Oak Bluffs, MA

IN ATTENDANCE

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) | P Camille Rose (A - Aquinnah) |
| - Peter Cabana (E – Tisbury) | P Doug Sederholm (E – Chilmark) |
| - Martin Crane (A – Governor Appointee) | P Linda Sibley (E – West Tisbury) |
| - Fred Hancock (A – Oak Bluffs) | P Brian Smith (A – West Tisbury) |
| P Lenny Jason (A – Dukes Cnty. Comm.) | - Holly Stephenson (E – Tisbury) |
| P Jim Joyce (A – Edgartown) | - Andrew Woodruff (E – West Tisbury) |
| P Chris Murphy (E – Chilmark) | |

Staff: Mark London (Executive Director), Paul Foley (DRI Analyst/Planner), Christine Flynn (Economic Development and Affordable Housing Planner), Bill Wilcox (Water Resource Planner)

Christina Brown opened the meeting at 7:00 p.m.

1. MINUTES

Commissioners present: J. Breckenridge, C. Brown, L. Jason, J. Joyce, C. Murphy, K. Newman, N. Orleans, C. Rose, D. Sederholm, L. Sibley, B. Smith

Commissioners reviewed the minutes of June 17, 2010.

Linda Sibley moved, and it was duly seconded to approve the minutes of June 17, 2010. In favor: all but one. Opposed: 10. Abstentions: 1. The motion passed.

2. EXECUTIVE DIRECTOR'S REPORT

Mark London reported that a public hearing before the Gosnold Zoning Board of Appeals will take place on July 2nd on the proposal to put up a MET tower in anticipation of a potential off-shore project.

3. BIG SKY TENT RENTALS: DRI NO. 618M – PUBLIC HEARING

Commissioners present: J. Breckenridge, C. Brown, L. Jason, J. Joyce, C. Murphy, K. Newman, N. Orleans, C. Rose, D. Sederholm, L. Sibley, B. Smith

For the Applicant: Jim Eddy, applicant; Reid Silva, engineer/agent

Linda Sibley read the hearing notice on the proposal to build a 9,600 sf (footprint) building on Dr. Fisher Way in the West Tisbury Light-Industrial District to house a tent and party rental business, and opened the public hearing.

3.1 Staff Report

Paul Foley gave the staff report.

- The location is 90 Dr. Fisher Road, West Tisbury, located on Map 21, Lot 12.
- The proposal is to build a 9,600 sq. ft. building to house a tent and party rental business.
- The site is in L-1 zoning and in the Dr. Fisher DCPC. The stated purpose of the L-I District is "to allow locations for uses that might negatively affect residential areas, such as the airport, landfill, and light industrial uses that are best segregated from other land uses". The purpose of the Dr. Fisher Road DCPC is "to keep the Doctor Fisher Road open to public use". Any use permitted in the respective zoning district is allowed provided that the Dr. Fisher Road remains open to public use.
- The proposal needs a building a permit, a special permit from the zoning board of appeals, and a site plan review.
- Surrounding land uses are rural residential district and light industrial district, including the Keene pit, as well as Bizarro Waste Management.
- There was a previous proposal for truck parking.
- The building footprint is about 80 feet by 120 feet.
- The business has three trucks, possibly expanding to four.
- The business is busy seasonally.
- The ridge height will be 24 to 28 feet, with sidewalls sixteen feet high.
- The proposal was referred by the ZBA.
- Ten years ago the L-1 District was expanded.
- The key issues are: expansion of the L-1 district, intensity of use, and buffers on Fisher Road.
- The site was cleared a few years ago.
- The site is in a Natural Heritage area. In the last proposal, Natural Heritage didn't review the proposal because they don't review lots of only an acre.
- The applicants are proposing to build a vegetative buffer.
- The trucks don't have back-up beepers.
- The building may create a slight noise buffer.
- In terms of wastewater: the site is in the Tisbury Great Pond Watershed. The previous use was residential so the proposed use does not exceed that previous use.
- The applicant has granted an easement to Bizarro so both businesses will use the same access from Dr. Fisher.
- Their parking demand at this time is 12 to 15 spaces. They have 18 parking spaces on the plan. The daily trip generation during the week, in reality, will be about 25 trips a day. There will be a slight increase in industrial trips.
- Affordable housing mitigation would be \$10,200.
- This is an allowable use within the L-1.

- Hours of operation are about 6:00 a.m. to 6:00 p.m. No food preparation or washing will take place on site.
- There will be a scenic impact, but they are trying to create a rural look by using shingles.
- The ZBA members said informally they are favorable to the project.

Bill Wilcox gave the water report.

- The wastewater design is for 200 gallons per day. Expected use is 120 gallons per day.
- The applicants are proposing a drip effluent disposal system which reduces the nitrogen load. The Massachusetts Alternative Septic System Test Center at Otis is monitoring this system. Preliminary tests show that the drip systems are functioning at about the same level as a BioClere. The system measures the water flow. Suction lisimeters which Otis is using can measure nitrogen.
- The previous use was residential. The average wastewater in West Tisbury is 144 gallons per day so there is an expected net reduction of 24 gallons of wastewater per day.
- There's about 15,000 sq. feet of impervious or low pervious surface adding about 0.7 kilograms of nitrogen per year.
- The applicant confirmed that they generally wash tents at the job site, but Bill Wilcox said that rinsing tents wouldn't be a nitrogen issue.

3.2 Applicant's Presentation

Reid Silva gave the applicant's report.

- The applicant spent quite a bit of time with the West Tisbury ZBA to iron out their issues and neighbors' concerns.
- They pushed the building location as far back as they could to help create a buffer with Keene.
- The site doesn't front on Dr. Fisher Road. They're getting an easement through Larkosh for access and are combining access with Bizarro.
- They have 12 spaces for cars and 4 for trucks.
- They chose the drip field wastewater system because there is agreement that it reduces nitrogen.
- The parking has been rotated back to the building to keep as much vegetative buffer as possible.
- A schematic of the site was shown.
- The height is 27 feet 8 inches. Once they confirm the size, they'll get a more detailed architectural rendering.
- The affordable housing contribution is suggested at \$10,400. The building is large but the intensity of use is not the same as retail or office. They would like to offer \$5,000 at the time of construction. The applicant does a lot of work with the affordable housing community and would like to offer that as an offset.

Jim Eddy confirmed that they rinse tents at the job sites and ship tents off-Island in the off-season for cleaning. Dishes will continue to be washed at the airport site. Drying of tents, when necessary, can take place inside the facility.

Reid Silva continued the presentation.

- He believes that Bizarro's access from Pine Hill can't be completely restricted because Pine Hill is their frontage. Bizarro wants to cut down on their traffic and it would be beneficial to them to use the back of the property.
- The location of the loading dock is to keep as much buffer on the Dr. Fisher side as possible.
- The applicant will grant Bizarro a 12 foot easement along the lot line by Manter's.
- The site is basically open woodland with white pine. He is proposing to plant small clusters of white pine which will spread, provide a buffer, and match what's there.

Mike Mauro said that based on ITE, ten parking spaces would be required.

3.3 Public Comment

Melissa Manter, abutter, and close neighbor, said the proposal will change the character of the neighborhood, especially a building of that size.

- She added that the applicants can't add a trail along Dr. Fisher Road [a possibility raised in the staff report] because she owns the property along the north and south sides of the road.
- She is concerned with the traffic along Dr. Fisher Road. She's not sure that there's enough room to make the turn onto Dr. Fisher and whether the cut out on Dr. Fisher would allow two trucks to pass each other.
- Her main concern is to maintain the character and safety of the road.
- There are accidents between State Road and Old Stage Road.
- Parts of her would like to go along with the project, but she's not sure what to believe in terms of traffic and activity at the site.

Dan Larkosh said he's the closest abutter.

- Neighbors are not happy that this area was re-zoned by the town.
- A building is probably the most compatible use with the residential area.
- There is a lot of noise from the Keene lot. This building will do a lot to buffer that noise.
- The re-routing of the traffic through the light industrial district will help.
- He's in favor of the proposal. Even though neighbors would like the area to stay residential, the town re-zoned it, and this is one of the better uses of the property.
- Bizarro has indicated that he'll use the new access; it's shorter and less intrusive. Most of the Bizarro problem is noise not odor, but the predominant noise is from Keene.

Mike Mauro said that there was one accident in three years between Old Stage and State Road.

Constance Breese expressed her concerns.

- She's concerned about the size of the building. Cronig's Up-Island Market is considerably smaller. Looking at average size of existing structures as suggested in the Island Plan would be beneficial. This building is off-the scale.
- There seems to be a lot of traffic coming together at the landfill, tent business, and Bizarro.
- The re-zoning happened without notification. There's a whole history of lack of notification.

- Here we are with a proposal for an enormous building for roads that are ten or twelve feet wide and that have historic value.

Paul Foley confirmed that there is about 400 feet along Dr. Fisher from Old Stage to the entrance to the site. There are three or four turnouts.

Jo-Ann Taylor confirmed that the Town has its own special ways designation for Dr. Fisher.

Bill Coogan said he's lived out there since 1982. He's in agreement with Missy and Constance.

- He asked which side won't be shingled. **Reid Silva** confirmed that the side that faces Keene's pit would not be sided.
- He asked about night lighting.
- He asked about hours of operation and whether they will be strictly adhered to.

John Pavlick explained the following:

- He recently experienced encounters with Bizarro trucks where he had to back down to Old Stage Road. The turnouts and road are inadequate for this kind of traffic.
- This building is grossly out of scale with the neighborhood.
- The vegetation that they're proposing measures about 25 feet. A lot of trees will have to be cut and smaller trees will be planted.
- The project will change the character of the neighborhood and the property.
- Bizarro's access sounds good on paper. But Bizarro would have to change the layout of his property.
- The road is used by bicyclists, horseback riders, etc. This use will impact the road severely.
- He asked that the Commission consider this impact and future impacts.

Dan Larkosh said aesthetically there's a visual impact and a noise impact. The noise impact is not easily erased. As far as he's concerned, the bigger the building the better because it will block noise to the residential neighborhood. Bizarro's trucks are now coming through the residential area. This proposal will eliminate the commercial traffic along Pine Hill so it is an improvement if it's done properly.

Linda Sibley said Commissioners need to know the length of Dr. Fisher Road., as well as the West Tisbury Special Ways regulations, and who can or cannot improve or repair the road, adequacy of turnouts, and whether they can be enlarged.

Reid Silva said that Big Sky Tent would have no control over Dr. Fisher except to make sure there are not ruts. Bizarro has been maintaining the road with gravel which Missy Manter does not want. Big Sky has agreed to use clean hardener sand. The applicant is not proposing a bike path. Big Sky can't do anything in relation to Dr. Fisher except maintenance for ruts.

Linda Sibley continued the hearing to August 12th.

4. ISLAND ROAD DCPC: EDGARTOWN -BOUNDARY AMENDMENT FOR CONSIDERATION

Commissioners present: Commissioners present: J. Breckenridge, C. Brown, L. Jason, J. Joyce, C. Murphy, K. Newman, N. Orleans, C. Rose, D. Sederholm, L. Sibley, B. Smith

Jo-Ann Taylor explained the issue before the Commission.

- The Commission's decision is whether there is enough information to accept for consideration the nomination of Jeffers Lane and Old Wood Road. If the nominations are accepted for consideration, there would be a building moratorium within twenty feet of the centerline until designation determination were to be made.
- No neighbor has complained that they would be prohibited from building during the moratorium.
- No specific different bylaws are proposed.
- Should the Commission accept the nomination for consideration the Commission would have to give reasons for consideration.

Linda Sibley moved, and it was duly seconded, to accept for consideration the nomination of Jeffers Land and Old Wood Road for their cultural and historic value.

- Edgartown representatives confirmed that there are no plans to build and no permits have been issued for those areas.

A roll call vote was taken. In favor: J. Breckenridge, C. Brown, L. Jason, J. Joyce, C. Murphy, K. Newman, N. Orleans, C. Rose, D. Sederholm, L. Sibley, B. Smith. Opposed: None. Abstentions: None. The motion passed.

There will be a public hearing in August.

5. LITTLE HOUSE CAFÉ: CR NO.1 – CONCURRENCE REVIEW

Commissioners present: J. Breckenridge, C. Brown, L. Jason, J. Joyce, C. Murphy, K. Newman, N. Orleans, C. Rose, D. Sederholm, L. Sibley, B. Smith

For the applicant: Jenik Munafo (owner); Merrick Carreiro (owner); Geoghan Coogan (attorney)

Linda Sibley gave the LUPC report.

- The project should have been referred to the Commission earlier because it is a restaurant.
- LUPC recommended that this proposal not have a full review provided that the applicant submit information indicating that nitrogen will be reduced within ten years.
- The applicant and Commission lawyer agreed that a deed restriction with the Commission and Tisbury Conservation Commission would create an enforceable agreement.

Christina Brown added that LUPC reviewed the other regional issues raised by this project including traffic and landscaping.

Doug Sederholm said the timeframe reference in the materials is five years. **Linda Sibley** said there may be some question of how quickly the Commission would expect the applicant to comply.

Geoghan Coogan outlined the proposal.

- The proposal is for a 31-seat restaurant in a commercial space that has been an antique store and travel agency.
- This project doesn't need to be a DRI because Louis's, across the street, is no longer a restaurant.
- The regional impact is the nitrogen issue. The policy sets the requirement that is not attainable unless that there is town water. The applicants thought of a way to mitigate the nitrogen as reasonably as possible which would eventually tie the water into the town system. They want to establish an escrow account that would accrue money over ten years to pay for hook-up or another nitrogen mitigation technique.
- The parking is suitable; Sam Sherman will allow his five spaces at night. There doesn't seem a concern about traffic.
- The applicants spent \$20,000 on a new septic system. They're looking at a creative way to get the proposal in a position that would gain Commission approval.

Paul Foley gave the staff report.

- There is plenty of room for their parking spaces.
- There is less green space than the applicants anticipated.
- They put in a septic system.
- They'd be open 7 days a week, year round, 6 a.m. to 7 p.m.
- There will be prepackaged items.
- They don't plan to serve beer and wine at this time.
- It does trigger reviews, but LUPC voted to recommend non-concurrence, subject to adequate mitigation for the nitrogen.
- In addition to the wastewater offers, the applicant will recycle fryolater oil. They'll implement flow restrictions, use environmentally safe cleaners, give discounts for use of refillable mugs, and use recyclable take-out materials.
- There will be four year round employees.

Geoghan Coogan said the covenant regarding nitrogen reduction stays with the property. At ten years there has to be some action.

Mark London said Eric Wodlinger suggested that any approval could be "subject to Commission counsel's approval".

Geoghan Coogan said that the nitrogen fund is an escrow fund that stays with the property until such time as the Commission or Town releases it, even if the property were sold to new owners.

John Breckenridge said that this is a model of the closest thing we can do to actually address a very serious situation.

Bill Wilcox reported on wastewater.

- This area has the misfortune of being in the Tashmoo Watershed. Anything soluble will eventually reach the pond. Tashmoo has a history of eelgrass loss. The southern half of the pond has, at times, relatively poor quality, with murky water, excess plankton, algae and oxygen decline.

- The only way to address excess nitrogen is to put in sewer systems or expand them.
- This area is a pretty good candidate for expansion of the sewer system. Sewering areas where there are more intense uses is the cheapest way.
- This is a creative way to allow options to fall into place in the near future.

Linda Sibley moved, and it was duly seconded, to not concur with the referral because the applicant is offering to mitigate the impacts which can be enforced without Commission review and to accept the owner's offers.

- **Linda Sibley** said for the really small properties in this area which are zoned commercial there isn't enough property to mitigate nitrogen contribution in a cost-effective and efficient way. Tying to the sewer is the best solution for a small property.
- **Ken Barwick** said that if the Louis's building were to become a restaurant again, it would have to be referred for Commission review.
- **Doug Sederholm** feels that the project does have a regional impact, namely on the Tashmoo Watershed. The proposal would not provide adequate mitigation of nitrogen loading for the next ten years, but if the Town builds a sewer system in the next ten years, they'll hook up and be mitigated. He will vote to not concur, but we have to understand the Town really should sewer Upper State Road. Tashmoo isn't really going to improve its quality until there's sewerage.
- **Lenny Jason** said the Island has struggled with how we'll deal with growth. Now we're sewerage so we can limit growth. We're doing the right thing here to make the project work.
- **Christina Brown** said if the road isn't sewerage then the owner of the property will have to take other measures.
- **Linda Sibley** said that in the Island Plan this area was described as an opportunity zone. This is an area where growth is to be encouraged, which comes up against the fact that this is in the Tisbury Watershed. Sewerage will make sense here because this is a potential growth area.
- **Bill Wilcox** said there is a leaching field behind the DPW which the Commission shows is in the Harbor watershed.

A roll call vote was taken. In favor: J. Breckenridge, C. Brown, L. Jason, J. Joyce, K. Newman, N. Orleans, C. Rose, D. Sederholm, L. Sibley, B. Opposed: None. Abstentions: C. Murphy. The motion passed.

6. OTHER

6.1 Open Meeting Law

Lenny Jason went to a meeting on the new Open Meeting Law, and suggested that it would be beneficial to have a meeting with Ron Rappaport to review it.

6.2 PED

Kathy Newman reported that PED meet with Jim Athearn to discuss how the PED work can blend with work that was begun through the Island Plan.

Reid Silva made some final comments.

- The size has been a question since day one. Big Sky needs big space and there are not a lot of light industrial areas on the Island. Taking 2000 square feet off the building will not change the building on the lot substantially but it will change the operation.
- Cronig's Up-Island is about the same size. Misty Meadows barn in West Tisbury is 20,000 square feet.
- This is about as light a use as you could get for a light industrial area. Operation throughout the day is intermittent and is light compared to Keene's. He doesn't believe that this use will change the neighborhood dramatically and it may be a benefit.
- They'll come back with offers and plans.

Christina Brown continued the hearing to September 16th.

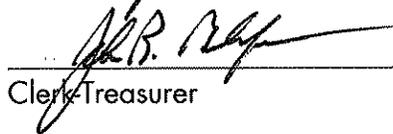
Meeting adjourned at 9:10 p.m.



Chairman

11/4/10

Date



Clerk-Treasurer

11/4/10

Date