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**Minutes of the Commission Meeting
Held on September 12, 2013
In the Stone Building
33 New York Avenue, Oak Bluffs, MA**

IN ATTENDANCE

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

P Tripp Barnes (E-Tisbury)	P Joan Malkin (A-Chilmark)
- John Breckenridge (E-Oak Bluffs)	- W. Karl McLaurin (A-Governor)
P Christina Brown (E-Edgartown)	P K. Newman (A-Aquinnah)
- Madeline Fisher (E-Edgartown)	- Ned Orleans (A-Tisbury)
P Josh Goldstein (E-Tisbury)	P Camille Rose (E-Aquinnah)
P Erik Hammarlund (E-West Tisbury)	P Doug Sederholm (E-Chilmark)
- Fred Hancock (A-Oak Bluffs)	P Linda Sibley (E-West Tisbury)
P Leonard Jason (A-Edgartown)	P Brian Smith (A-West Tisbury)
P James Joyce (A-Edgartown)	

Staff: Mark London (Executive Director), Paul Foley (DRI Planner)

Acting Chairman Erik Hammarlund called the meeting to order at 7:00 p.m.

1. MINUTES

Commissioners Present: T. Barnes, C. Brown, J. Goldstein, E. Hammarlund, L. Jason, J. Joyce, J. Malkin, K. Newman, C. Rose, D. Sederholm, L. Sibley, B. Smith.

Christina Brown moved and it was duly seconded to approve the minutes of August 22, 2013 correcting the spelling on line 432 to "Coastal". In favor: 8. Opposed: 0. Abstentions: 4. The motion passed.

2. WEISNER ANR - CHILMARK (DRI-80-M5) - MODIFICATION REVIEW

Commissioners Present: T. Barnes, C. Brown, J. Goldstein, E. Hammarlund, L. Jason, J. Joyce, J. Malkin, K. Newman, C. Rose, D. Sederholm, L. Sibley, B. Smith.

For the Applicant: Zachary Wiesner

Doug Sederholm recused himself from the meeting, he has counseled the Wiesner's and is also a Trustee for them.

2.1 Staff Report

Paul Foley presented the following:

- The packet of information includes an Applicant Narrative, a letter from the engineer, LUPC Meeting Notes and the land and site plans.
- A slide presentation was reviewed of the site plan and the lots.
- In 1977, the Wiesner's came to the MVC with DRI 80, with the help of the Vineyard Open Land Foundation, with a plan for their land in Chilmark. The plan subdivided the land into eight buildable lots and two Open Space lots. Lot nine, which contained nineteen plus acres along the shore of Menemsha Pond was placed in perpetual conservation restriction. Lots 2, 3, 4 and 5 were given to their four children, Lot eight was planned to be an affordable housing lot and they retained the rest.
- In 1991 they subdivided lot one into Lots 1A and 1B and lot nine into Lots 9A and 9B for a total of twelve lots. There was an existing house on the conservation lot.
- In 1992 they subdivided Lot 1B into Lots 1C, 1D and 1E for a total of fourteen lots.
- In 1994 a half acre of Lot 4 was joined to Lot 5 and Lot 1C joined Lot 4 for a total of thirteen lots.
- The actions in 1991, 1992 and 1994 do not appear to have been reviewed by the MVC.
- In 2005 the property returned to the MVC when Lot 10 was subdivided into two lots, Lot 10A and 10B. Lot 10B, 2.37 acres was joined with 0.68 acres from Lot 2 and subsequently given to Elisha Wiesner, a grandson of Jerome and Laya Wiesner.
- The project is to add one more four-acre lot to an existing fourteen lot subdivision of 81.5 acres
- One nineteen acre lot "the beach lot" has a Conservation Restriction on it.
- The "Field and Streams" lot was 16 acres until 2005. At that time two acres were carved out of it to create an additional building lot.
- The current proposal carves four acres out of the "Field and Stream" lot.
- Based on the wetlands delineation done by Russell Walton and reviewed and confirmed by Cooper Environmental Services, Inc., there exists no area available for the construction of a septic system which meets the current Chilmark Board of Health Regulations, 150 ft separation from wetlands other than the area proposed on the May 5, 2013 submittal.

2.2 Applicant's Presentation

Zachary Wiesner said the plan has been approved by the Chilmark Board of Health and the well and driveway locations have been approved by the Chilmark Conservation Commission.

2.3 Commissioner's Questions

Katherine Newman asked how many buildable lots there are. **Paul Foley** said nine lots are built and there are two buildable lots for a total of eleven (one is owned by the Wiesner's and the other is not owned by them).

Brian Smith asked if the proposal is the last buildable lot. **Paul Foley** confirmed it is, unless it is reconfigured again and that would require coming back to the Commission.

There was a discussion about the number of bedrooms:

- **Katherine Newman** asked if the Commission has ever talked about the number of bedrooms.
- **Paul Foley** said no, but it has been brought up in the Houlahan project and for the Field Club.

- **Mark London** added that if it was a nitrogen sensitive area, the number of bedrooms would be brought up.
- **Paul Foley** noted that the project is for a four bedroom house and is restricted to where it can be built on the lot.
- **Joan Malkin** noted that if this project was not for the wetlands, it could be larger than four bedrooms.

Linda Sibley moved and it was duly seconded that the project is not a substantial change requiring a public hearing.

- **Erik Hammarlund** asked Zachary Wiesner how much he is willing to lock up the Field and Stream lot to prevent future subdivision.
- **Zachary Wiesner** said in 2005 the MVC approved the project but said if he wanted to subdivide he had to come back to the Commission so the MVC would know what and how the subdivision was done. He does not feel there is any other buildable area on the lot and is happy to say this is the definitive subdivision plan. A barn or shed might be placed on the lot so he doesn't want to say that he won't build anything else, but he would not subdivide any further.
- **Katherine Newman** asked if the offer of not building any further goes into writing.
- **Erik Hammarlund** said it becomes part of the DRI.
- **Mark London** noted that would depend on if the Field and Stream lot is buildable. The twenty-acre lot is still only approved for one house. A shed or barn is not adding a house, but it is not completely clear that the entire rest of that lot is prohibited from development because it is wetlands.
- **Joan Malkin** noted the property does not appear on the GIS as wetlands.
- **Erik Hammarlund** asked Doug Hoehn if the large lot was all wetlands.
- **Doug Hoehn** said it is wetlands and is a thick wetland of clay and lousy soils. A specific onsite investigation was done to determine if it was wetlands.

Voice vote. In favor: 11. Opposed: 0. Abstentions: 0. The motion passed.

Linda Sibley moved and it was duly seconded to approve the modification as presented by the applicant.

- **Erik Hammarlund** asked if the motion can be amended to include the conditions.

Linda Sibley amended her motion to include the conditions as offered and it was duly seconded. Roll call vote. In favor: T. Barnes, C. Brown, J. Goldstein, E. Hammarlund, L. Jason, J. Joyce, J. Malkin, K. Newman, C. Rose, L. Sibley, B. Smith. Opposed: none. Abstentions: none. The motion passed.

Doug Sederholm rejoined the meeting.

3. BAYSIDE/HOULAHAN SUBDIVISION - EDGARTOWN (DRI-450-M3) – DELIBERATION & DECISION

Commissioners Present: T. Barnes, C. Brown, J. Goldstein, E. Hammarlund, L. Jason, J. Joyce, J. Malkin, K. Newman, C. Rose, D. Sederholm, L. Sibley, B. Smith.

For the Applicant: Sean Murphy, Doug Hoehn

Erik Hammarlund recused himself from the meeting.

Doug Sederholm noted that Fred Hancock asked him to chair the Deliberation and Decision since Erik Hammarlund cannot participate and he did attend the LUPC meeting on Monday.

3.1 Land Use Planning Committee (LUPC) Report

Brian Smith presented the following:

- There was a lengthy discussion on the conditions.
- LUPC asked the applicant to revise the site design and landscape offer wording.
- There was a question about the septic and it was addressed in an email received from Sean Murphy.

3.2 Staff Report

Paul Foley presented the following:

- The packet of information contains the applicant's offers, FAST information on viruses, Post Public Hearing LUPC Notes, the DRI-450 1999 Conditions, the Public Hearing Minutes and the Bayside Plan of Land.
- In a conventional septic system, about 10%-40% of the treatment occurs in the tank, leaving a majority of the work to be done by the soil in the lateral field; whereas, the FAST system does 95%-99% of the treatment to keep the "friendly" bacteria alive and thriving to remove organic material, pollutants, and viruses out of the wastewater.

3.3 Commissioners' Discussion

There was a discussion about the septic and the viruses;

- **Leonard Jason** asked how fast the viruses travel.
- **Paul Foley** said 120 feet per day.
- **Leonard Jason** asked what kind of viruses they are.
- **Paul Foley** said that is not known but he would check the files to see if any named viruses were mentioned in the past.

There was a discussion about the clarifications.

- **Brian Smith** noted that LUPC voted to move forward based on the two clarifications for the setback of the septic systems and the review of the landscape plans.
- **Doug Sederholm** said he was confused about the LUPC vote and asked what was the resolution about the location of the septic and how were these two issues resolved.
- **Joan Malkin** said the location of the septic was no longer an issue since the FAST treatment resolves the virus issue.
- **Paul Foley** said that Offer 3a (DRI Offer 3. MVC Site Design and Landscape Policy) was revised from LUPC.
- **Doug Sederholm** noted that his understanding now is that the recommendation is subject to the revision of Offer 3a.
- **Paul Foley** noted the applicant wants to remove the 1999 DRI Conditions and replace them with the Offers.

3.4 Deliberation and Decision

Doug Sederholm opened the discussion to review the Offers.

MVC Water Quality Policy

Doug Sederholm noted the following;

- The applicant offers to install advanced de-nitrification treatment on septic systems on all lots.
- The applicant offers to limit the number of bedrooms to 78 bedrooms maximum.
- The applicant offers to place septic systems on the five waterfront lots inland of the Coastal District Line.

There was no further discussion on this Offer.

MVC Open Space Policy

Doug Sederholm noted the applicant offers to permanently preserve the open space through a combination of deed restrictions and conservation restrictions which will be held by a third party to provide the MVC with the Conservation and Management Plan for the open space that is currently being worked on with NHESP.

There was a discussion on the MVC Open Space Policy offer.

- **Doug Hoehn** clarified that the offer covers all open space.
- **Doug Sederholm** asked what part of the open space NHESP will be approving and what is restricted.
- **Sean Murphy** and **Doug Hoehn** said all of the open space protection is by private deed restriction and private conservation restrictions.
- **Brian Smith** asked if the MVC should include who has to approve the plan.
- **Sean Murphy** said the NHESP has to approve the third party.
- **Doug Sederholm** noted that once the applicant has worked out the deed and conservation restrictions, they will have to come back to the MVC and asked if the applicant has the timing on when that will be done.
- **Sean Murphy** said he did not know when that would be completed because NHESP has to sign off on the entire package first and nothing can happen, building or sale, before NHESP approval.

MVC Site Design and Landscape Policy

There was a discussion of offer 3a.

- **Doug Sederholm** asked how the MVC has the appropriate oversight over development beyond 200 feet from the wetland boundary.
- **Mark London** noted the applicant did not want to have to come back to the MVC for every building. Various options were reviewed at LUPC and offer 3a is what was decided to be in conformance with the MVC policy. A suggestion is to state that only two thirds of each development envelope could be clear cut without coming back to the Commission, and additional clearing was also permitted with the approval of LUPC.
- **Joan Malkin** said she felt the Edgartown Conservation Commission would ensure that nothing outrageous would happen.
- **Sean Murphy** said offer 3a is a convoluted condition and thought that Mark London's suggestion of the two thirds would be simpler and acceptable. The applicant is comfortable with that and it would be a good limit.
- **Josh Goldstein** said based on the size of the lots he did not think anyone would clear cut the lot to see their neighbor's lot.

- **Joan Malkin** said that assumption cannot be made.
- **Sean Murphy** said in theory the entire development envelopes could be clear cut and the project would still be in conformance with the MVC policy.
- **Leonard Jason** asked if the Commissioners are trying to rewrite the policy.
- **Brian Smith** said the discussion and review of the offer is to try and be more restrictive.
- **Christina Brown** said she appreciates the owner's intent to work with the MVC Open Space Policy and the Conservation Commission. She thinks the "two thirds" is a good suggestion. It seems from earlier discussions that clearing vegetation more than 200 feet from the edge of the wetlands is not subject to the Edgartown Conservation Commission's review. She asked for clarification on if the review goes to the Conservation Commission first and then their recommendation is reviewed with respect to the MVC Open Space Policy. What happens with the Conservation Commission recommendations?
- **Sean Murphy** said the Conservation Commission recommendations are included in what is brought back to the MVC to review.
- **Doug Sederholm** asked the applicant what they would do if the Conservation Commission recommended something different from what they want.
- **Mark London** added what if the Conservation Commission recommendations are different from the MVC policy; do they go back to LUPC?
- **Sean Murphy** said the applicant would have to go back to LUPC and said any percentage such as the two thirds would be okay to make offer 3a clear.
- **Linda Sibley** asked what the MVC's purpose is in this discussion, and noted the MVC needs to describe what the problem would be if the property was completely clear cut. If there would be no harm why is the Commission discussing two thirds or one third. If someone can make an argument that clear cutting the entire building envelope is ugly then the MVC needs to review. Fields are not ugly and fertilized lawns will not be put in since that is in the conditions.
- **Leonard Jason** said the fertilized lawn is not an enforceable condition.
- **Doug Sederholm** said the offer is that if the issue goes to the Conservation Commission, is reviewed by Staff, and meets the MVC policy, then it is okay.
- **Brian Smith** said the issue was discussed at LUPC and it was questioned if over the next twenty years if the applicant has to come back for every little change. The answer was no. If the change meets the Conservation Commission and meets the MVC policy, then it is okay and does not come back to LUPC.
- **Doug Sederholm** noted the Conservation Commission has jurisdiction up to 200 feet and asked if the applicant agreed that they would follow a recommendation from the Conservation Commission.
- **Sean Murphy** confirmed the applicant would but said he likes the two thirds suggestion as it is cleaner. The Conservation Commission won't let the applicant clear cut. The offer is referring to today's policies and not what the policies will be in twenty years. In defining the development envelopes, the applicant has met the Open Space Policy so technically they can do whatever they want within the development envelopes.
- **Joan Malkin** said the offer should be contingent on the policy that is in effect at the time of the application.
- **Sean Murphy** said it would not be fair to have to come back in the future. The lots will be sold. No one wants to buy a lot if the policy will change in the future.

- **Joan Malkin** noted that zoning laws change and policies could also change.
- **Sean Murphy** said with regards to zoning changes there can be pre-existing non-conforming conditions.
- **Linda Sibley** said she is not objecting to having restrictions to the MVC policy. The two thirds suggestion is okay, she just does not want it to be more convoluted than that.
- **Katherine Newman** asked how does the Conservation Commission have the approval?
- **Doug Hoehn** said that Edgartown is different from Aquinnah and in Edgartown the Conservation Commission has the approval. He also reviewed the 200 foot area on the plan.
- **Christina Brown** noted that the Conservation Commission has the review over the first 200 feet.
- **Doug Hoehn** said you cannot build between 100 – 200 feet without the Conservation Commission approval.
- **Katherine Newman** asked if the tree canopy is within the 200 feet.
- **Doug Hoehn** confirmed it is.

Linda Sibley moved and it was duly seconded to accept the applicant's verbal offer for 3a not allowing anyone to clear cut more than two thirds of the development envelope without coming back to LUPC.

- **Joan Malkin** said she would be interested to hear what other Commissioners think about tying into today's policy rather than what is in effect when the property is bought.
- **Linda Sibley** said she did not think the MVC has ever said the approval would change if the policies were altered.
- **Brian Smith** is not sure the wording "present" should be in the offer.
- **Doug Sederholm** said with the new motion that would not matter.
- **Brian Smith** asked why the MVC has an Open Space Policy if the offer is going beyond that policy.
- **Linda Sibley** said the Commission is trying to make the offer more restrictive.
- **Mark London** noted that a policy is general guidance, not a regulation, and the Commission may be more restrictive if it is appropriate for a given property.
- **Leonard Jason** said a policy is something written down so an applicant understands what they are presenting to the MVC.
- **Sean Murphy** restated the revised offer 3a: the applicant can develop two thirds of the Development Envelope without any restrictions by the MVC and if any development is done to the remaining one third it would require LUPC approval.
- **Trip Barnes** said this is the best plan he has ever seen by a developer. It seems the MVC is chipping it apart. If a house is built it will take up one third of the lot and then it would have to come back for any further development. The Commission is making it too complicated.

Voice vote. In favor: 7. Opposed: 2. Abstentions: 0. The motion passed.

MVC Affordable Housing Policy

Doug Sederholm noted the applicant offers to contribute \$300,000 to the Edgartown Affordable Housing Committee to be used for an affordable housing project in the Town of Edgartown.

There was no further discussion on this offer.

Piers

Doug Sederholm noted the applicant offers to limit the number of potential piers on the property to three additional piers (five total), subject to review by the Edgartown Marine Advisory Committee and approval by the Edgartown Conservation Commission, the Edgartown Planning Board, the Department of Environmental Protection and the Army Corps of Engineers.

Josh Goldstein noted the applicant wants the right to ask permission.

Walkways

Doug Sederholm noted the applicant offers to limit the number of potential walkways across the salt marsh on the property to two additional walkways (five total) subject to review and approval by the Edgartown Conservation Commission and the Edgartown Planning Board.

There was no further discussion on this offer

Guest Houses

Doug Sederholm noted the applicant offers to prohibit guest houses on lots 5, 8 and 9.

There was no further discussion on this offer.

View Channels

Doug Sederholm noted the applicant offers to create view channels as permitted by the Edgartown Conservation Commission and according to Edgartown Conservation Commission policy and NHESP review.

Doug Sederholm added the view channels would be within 200 feet of the wetlands.

Lighting

Doug Sederholm noted the applicant offers to limit outdoor lighting visible from any other properties and/or Katama Bay to be all down lighting, other than small landscape lights, an entry pole light at each property, entry lights and lighting as required by building code.

There was no further discussion on this offer.

Subdivision

Doug Sederholm noted the applicant offers to prohibit further subdivision that creates additional buildable lots. Property line adjustments are permitted provided no additional buildable lots are created.

There was no further discussion on this offer.

Covenants

Doug Sederholm noted the applicant offers to submit the Homeowner's Association Covenants and Planning Board Covenants to the MVC upon completion and approval of the covenants by the Edgartown Planning Board.

Doug Sederholm said the applicant is not asking for any approvals with this offer. **Sean Murphy** said Fred Hancock asked to add this to the offers.

3.5 Benefits and Detriments

Christina Brown noted this application is a remarkably sensitive plan for this piece of land and it is good that the applicant looked at the MVC policies as well as looking at the Edgartown Conservation Commission plans. It is a good plan and limits the development on a gorgeous piece of land.

Benefits

Environment:

- Wastewater and Groundwater; there will be FAST systems minimizing the impact on nitrogen.
- 72% will be open space.
- There will not be a lot of noise and night lighting from the proposed residences.

There was a discussion about Energy and Green Building:

- **Katherine Newman** asked for clarification on energy and green building for this project.
- **Sean Murphy** noted that the proposal is for raw land that will be sold. The applicant is not a developer.
- **Katherine Newman** said doesn't the MVC want to put in a nudge to make the project a little green. The applicant did such a great job on the view channels and lighting it would be nice to add energy and green building to the project.
- **Brian Smith** said the fact that the project is nine houses opposed to 28 houses is as green as it can be.
- **Leonard Jason** said from his experience houses built in this type of subdivision will most likely exceed energy efficiency and there will be a stretch code in the Commonwealth by the time these houses are built.
- **Joan Malkin** said the MVC should not be setting policy with a single applicant. If the MVC has a policy the project should be consistent with the policy.
- **Katherine Newman** noted that sometimes the Commission is remiss about bringing this topic up and now we did and it was discussed.

Persons and Property:

- Traffic will be minimal.
- The view from Katama Bay will be protected.
- There will be a low key impact on abutters.
- The project is within the character of Edgartown.

Low and Moderate Income Housing:

- The applicant is donating \$300,000 to Edgartown affordable housing.
- There was a discussion about affordable housing:
 - **Leonard Jason** said the \$300,000 will be given to affordable housing if the property is sold to a third party. How does the MVC ensure this money goes to affordable housing and that there aren't a series of property transfers using "straws" to avoid triggering this offer?
 - **Doug Sederholm** said there are likely to be conveyances between family members.

- **Sean Murphy** said it is stated in the offers that the funds will be paid to the Edgartown Affordable Housing Committee upon sale of the first waterfront lot to an unrelated third party.

Impact on Services and Burden on Taxpayers:

- The impact on taxpayers will be minimal.
- The tax base for the town will increase.

Consistency with/and Ability to Achieve Town, Regional, State Plans and Objectives: The applicant has met the policies.

Detriments

- Houses will be built.
- There will be a slight increase in traffic.

Christina Brown moved and it was duly seconded to accept the offers and approve the application with the modification of the new offers and offer 3a as was voted.

- **Linda Sibley** and **Christina Brown** noted that this approval would supersede the 1999 approval.

Roll call vote. In favor: T. Barnes, C. Brown, J. Goldstein, L. Jason, J. Joyce, J. Malkin, K. Newman, C. Rose, D. Sederholm, L. Sibley, B. Smith. Opposed: none. Abstentions: none. The motion passed.

Erik Hammarlund rejoined the meeting.

4. FERTILIZER DCPC REGULATIONS

Commissioners Present: T. Barnes, C. Brown, J. Goldstein, E. Hammarlund, L. Jason, J. Joyce, J. Malkin, K. Newman, C. Rose, D. Sederholm, L. Sibley, B. Smith.

Mark London presented the following;

- A more complete presentation of this topic will be given at the next meeting. Bill Veno and Sheri Caseau are currently giving a presentation on the subject at the All Island Selectmen Meeting and, since the MVC meeting is almost over, they won't be able to get back in time to present it to the MVC.
- The MVC is working with the All Island Boards of Health in adopting regulations regarding fertilizers and minimizing nitrogen.
- Regulations need to be done by the end of the year.
- The state is developing and imposing statewide regulations regarding the use of fertilizers and it apparently will deal only with phosphorous and not nitrogen. It will prohibit towns from adopting other regulations. However, an exemption was given to the Cape and Islands to develop their own restrictions that can be stricter.
- The regulations are for lawn fertilizers and they do not apply to agriculture.

The meeting was adjourned at 8:25 p.m.

DOCUMENTS REFERRED TO DURING THE MEETING

- Minutes of the Commission Meeting – Draft, Held on August 22, 2013

- Martha's Vineyard Commission, DRI #80-M5 Wiesner ANR, MVC Staff Report – 2013-09-12
- Applicant Narrative from Zachary Wiesner, Dated September 5, 2013
- Letter from Schofield, Barbini & Hoehn, Inc., Dated July 8, 2013, Re: Zachary Wiesner – Boston Hill Road – Assessor Parcel 30-76
- Martha's Vineyard Commission, Land Use Planning Committee, Notes of the Meeting of September 9, 2013-Draft
- DRI 80-M5 Wiesner Acres Lot Plan
- Plan of Land in Chilmark, MA, The Aquinnah Beach Lot and Lot 10 Chilmark Nominee Trust
- Tara Hills Trust/Houlahan DRI Offers, August 22, 2013 Revised September 11, 2013
- Email from Sean Murphy to Paul Foley, Dated September 11, 2013. Subject: Bayside
- Land Use Planning Committee Notes 2013-09-09; DRI 450-M3 Bayside/Houlahan Subdivision – Pre-Public Hearing Review
- DRI 450 Conditions 1999
- Martha's Vineyard Commission Meeting Minutes for Bayside/Houlahan Subdivision-Edgartown (DRI-450-M2) Public Hearing
- Bayside Plan of Land Edgartown, MA; Tara Hills Trusts et al

Chairman

Date

10-17-13

Clerk-Treasurer

Date

10-17-13