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## Minutes of the Commission Meeting Held on May 5, 2016 In the Stone Building 33 New York Avenue, Oak Bluffs, MA

### IN ATTENDANCE

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

P Tripp Barnes (E-Tisbury)	P James Joyce (A-Edgartown)
- Yvonne Boyle (A-Governor)	P Joan Malkin (A-Chilmark)
P John Breckenridge (A-Oak Bluffs)	P Katherine Newman (A-Aquinnah)
P Christina Brown (E-Edgartown)	P Doug Sederholm (E-West Tisbury)
- Peter Connell (A-Governor; non-voting)	P Abe Seiman (E-Oak Bluffs)
P Robert Doyle (E-Chilmark)	- Linda Sibley (E-West Tisbury)
P Josh Goldstein (E-Tisbury)	P Ernie Thomas (A-West Tisbury)
P Fred Hancock (E-Oak Bluffs)	P James Vercruysse (E-Aquinnah)
P Leonard Jason (A-County)	

Staff: Adam Turner (Executive Director), Bill Veno (Senior Planner), Paul Foley (DRI Planner), Sheri Caseau (Water Resources Planner), Christine Flynn (Economic Development and Affordable Housing Planner), Priscilla Leclerc (Transportation Planner).

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

### 1. LARDER FOOD STAND-TISBURY C.R. 6-2016 CONCURRENCE REVIEW

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Commissioners Present: J. Breckenridge, C. Brown, R. Doyle, J. Goldstein, F. Hancock, L. Jason, J. Joyce, J. Malkin, K. Newman, D. Sederholm, A. Seiman, E. Thomas, J. Vercruysse.

For the Applicant: Jefferson Munroe

**James Vercruysse**, Chairman noted the Concurrence Review is to determine if this is a project of an intensity to warrant a public hearing as a DRI.

#### 1.1 Staff Report

**Paul Foley** presented the following.

- The applicant is Jefferson Munroe and Danielle Barrick.
- Location is 342 State Road, Tisbury Map 33-A Lot 19 (0.15 acre).
- The proposal is to renovate an existing farm stand and replace the butchery and coffee roaster with a commercial kitchen for let in the B-2 Business District.
- The site has been a food stand with a butcher and coffee roaster run by Elio Silva for several years.
- The building is being renovated not expanded.
- There is an existing apartment on the second floor that will be retained for workforce housing.
- After consulting with the Board of Health in Vineyard Haven it was decided that it would be best to install an oversized grease interceptor for all their waste water.
- Key issues include.

- Does this proposal rise to the level of requiring a public hearing as a DRI?
- The site is very small (0.25 acres) and therefore does not have a lot of parking or land for nitrogen loading. However, the intended use is similar to what has already existed for many years. The previous use was never referred to the MVC because they never applied for a Building Permit or did work requiring permitting other than the Board of Health. The Tisbury Board of Health has long refused to send projects to the MVC for DRI Review.
- Preliminary Nitrogen Loading Evaluation.
  - The site is within the Tashmoo Pond watershed. The nitrogen load limit that we currently use for the Tashmoo watershed to maintain average water quality conditions is 5.6 kilograms per acre per year. The policy load limit for the property is 0.84 kg.
  - This property is in the immediate vicinity of the proposed extension of the sewer line for which the Town of Tisbury is currently preparing engineering plans. There is no firm timetable yet for the construction of the line.
  - Since the proposed use will be similar to the previous use water use records were obtained for this site. Prior use at this site averaged 67,000 gal/yr.
- LUPC voted on April 21, 2016 to recommend to the full Commission that this does not require a public hearing review as a DRI with the understanding that the Board of Health will require them to connect to the sewer when and if it becomes available.

### 1.2 Commissioners' Discussion

**John Breckenridge** asked that it be confirmed on the plans that the second floor be labeled as workforce housing as that was asked for at LUPC. **Adam Turner** said the applicant did submit one plan with that on it.

There was a discussion about the nitrogen load.

- **Joan Malkin** said that LUPC recommended that the MVC not concur but the Staff Report lists nitrogen mitigation and she would like clarification on that.
- **John Breckenridge** said if the use exceeds 67,000 gal/yr the applicant has to come back for a modification.
- **Fred Hancock** said if the MVC does not concur then the MVC cannot condition. The Commission could send a referring letter back to the referring authority and if it changes we would ask it be resubmitted.
- **Adam Turner** noted that it was not referred before. The figures are here because existing uses have a track record. Based on what is going on with the slight adjustments the applicant would be in conformance.
- **Joan Malkin** said with the extent it mimics the existing use it is okay but if it doesn't what happens?
- **Fred Hancock** said that would be something for a Commissioner to weigh when making a decision.
- **Paul Foley** said based on the size of the property it would be hard to exceed the limits. We also looked at the previous use and the usage for Little House.
- **Doug Sederholm** said there are some numbers missing. What is the nitrogen load at 67,000 gal/yr?
- **Sheri Caseau** said it was in the prior report and she will get that information.
- **Paul Foley** said he thought Sheri Caseau had said at LUPC that it is the equivalent of 2.5 houses.
- **Sheri Caseau** said the nitrogen load is 8.87 kg.

- **Doug Sederholm** said that is about ten times the amount that is allowed for this property under the MVC Nitrogen policy. When Little House was approved, it was another example of death by a thousand cuts in protecting the ponds.

### **1.3 Applicants' Presentation**

**Jeff Munroe** presented the following.

- It is his understanding that part of the reason why the project was referred to the MVC was that they are a food establishment.
- They will be making ice on the property and that will be part of their water budget.
- From what he has seen there appeared to be another space in the building that was occupied other than the apartment so he doesn't expect to exceed the nitrogen usage since that space will no longer be occupied.
- His business is seasonal and Danielle's business is also seasonal.
- They are anticipating heavy usage in July and August and trailing off in the Spring and the Fall.
- He and Danielle want to mitigate the nitrogen as much as possible. It goes with their business principles and they will do other mitigation if the sewer is not available in five years.
- There will not be a public bathroom.
- Most water usage will be for rinsing vegetables and icing things down.

***Fred Hancock moved and it was duly seconded to not concur with the referral. Although nitrogen is above the MVC usage numbers the proposal is consistent with the use at this site and the project supports local agriculture.***

- **Christina Brown** noted that the applicant can report to the Board of Health on water usage and the applicant has said they are open to do other things for mitigation if the sewer was not available in five years. She would like some clarification on the slaughtering/butcher use.
- **Jeff Munroe** said he would not be slaughtering at the property, just breaking down cuts into smaller pieces.

***Roll call vote. In favor: J. Breckenridge, C. Brown, R. Doyle, J. Goldstein, F. Hancock, L. Jason, J. Joyce, K. Newman, A. Seiman, E. Thomas, J. Vercruysse. Opposed: J. Malkin, D. Sederholm. Abstentions: none***  
***The motion passed.***

## **2. OAK BLUFFS BOWLING ALLEY CONDITIONS MODIFICATION DRI 645-M2 PUBLIC HEARING**

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*Doug Sederholm recused himself as his law partner has represented the applicant.*

*Commissioners Present: J. Breckenridge, C. Brown, R. Doyle, J. Goldstein, F. Hancock, L. Jason, J. Joyce, J. Malkin, K. Newman, A. Seiman, E. Thomas, J. Vercruysse.*

*For the Applicant: Sam Dunn, Erik Hammarlund, Michael Sawyer*

**Fred Hancock**, Public Hearing Officer opened the Public Hearing at 7:20 p.m. and read the public hearing notice. The location is 13 Uncas Avenue, Oak Bluffs Map 11 Lot 153.1 (0.62 acre). The proposal is to modify Conditions in the DRI 645 Decision on a trial basis until October 1, 2017.

### **2.1 Staff Report**

**Paul Foley** presented the following.

- The proposal is to modify the Conditions in the DRI 645 Decision relative to opening and closing time, exterior lighting, capacity of the function room and amplified music. The applicant has revised the modification request to be a trial basis until October 1, 2017 for all of the proposed modifications except the one on exterior lighting.

- The Staff Report includes the modification request, DRI 645 Conditions and correspondence received by the MVC.
- Specifically the applicant would like to change:
  - Condition 1.1: The applicant would like to change opening hour to 8:00 am from 9:00 am.
  - Condition 1.2: They would like to remove the restrictions on last call for food, alcohol and bowling. Last call is currently conditioned to be 10:30 p.m. on weekdays and 11:30 p.m. Friday and Saturday. They are asking for closing time to be set by the Town according to the policy that applies to other businesses serving alcohol.
  - Condition 1.4: They would like to remove the restrictions on the number and size of events (currently limited to 50 people twice per week).
  - Condition 5.5: They would like to remove the restriction on live amplified music.
  - Condition 8.1: They would like to change the condition on exterior lighting and are asking for lighting in the parking lot with details to come back to LUPC. Specifications that were submitted show 20 foot tall lampposts.
- The project is not currently in compliance with the affordable housing condition that there require two affordable housing units certified by the DCRHA. Two of the HVAC units also are violation as they face a residentially zoned house. The number and size of events is difficult to monitor and therefore compliance is not known.
- On March 14, 2016 LUPC voted to recommend to the full Commission that the proposed changes to the bowling alley conditions in DRI 645 requires a public hearing as a DRI. The applicant chose to go straight to a public hearing without going before the full Commission for modification review.
- Key issues include.
  - Condition 1.1: Would changing the opening hour to 8:00 a.m. impact the neighborhood?
  - Condition 1.2: Would removing the restrictions on last call for food, alcohol and bowling have an adverse impact on the neighborhood?
  - Condition 1.4: Would removing the restrictions on the number and size of events require more parking? Would it require other mitigation measures relative to traffic and noise?
  - Condition 5.5: Would removing the restriction on live amplified music have an adverse impact on the neighborhood?
  - Condition 8.1: Is lighting necessary in the parking lot and if so what kind?
  - Compliance: The project is not currently in compliance with the affordable housing condition and two of the HVAC units face a residentially zoned house in violation of 5.9. Should the MVC entertain modifications to projects that are not in 100% compliance with a DRI Decision?
- The applicant is not in compliance with the Affordable Housing Conditions as stipulated in the MVC's Written Decision.
  - As indicated in an email dated March 14, 2016 from David Vigneault, Executive Director, Dukes County Regional Housing Authority and two other emails;
    - One of the two required Affordable Housing apartment units has been income certified and rented year round at 80% or less than the Area Median Income.
    - Income certification has not been done for the second apartment and the project is therefore not in compliance with the MVC's Written Decision.

- The applicant has said that they have had a delinquent tenant and that they have temporarily housed an employee in the second unit free of rent and utilities with the plan they would take over the existing delinquent tenant's apartment. But that cannot happen until they get unit # 1 vacated. They have promised David Vigneault that they would be submitting an application for the other dwelling unit sometime next week.
- The Dukes County Regional Housing Authority's administrative fee has not been billed to the applicant at this time.
- The applicant's offer to host one annual fund raiser for Affordable Housing for three years has not been done yet though it has not been requested yet either.
- The project is in a B-1 Commercial District but abuts several residentially zoned properties.
- A number of letters have been received at the MVC and they were summarized as noted in the MVC Staff Report.

## **2.2 Applicants' Presentation**

**Sam Dunn** introduced Michael Sawyer (Manager of the facility) and Erik Hammarlund (attorney) and he noted that Erik Hammarlund is up to speed on the affordable housing issue.

**Sam Dunn** and **Erik Hammarlund** presented the following for the Affordable Housing issue.

- We started renting the larger unit and the tenant immediately stopped paying rent. Another tenant was qualified but then the current tenant filed bankruptcy.
- We allowed an employee to live in the smaller unit rent and utility free during the waiting period to move into the larger unit.
- The eviction should be done fairly soon and we also have a new tenant qualified for the smaller apartment.

**Sam Dunn** presented the following.

- We learned from our customers that we need modifications made to accommodate them as well as our economic health.
- When we opened the facility we didn't realize the need for this type of facility.
- We have had twelve fund raisers and we have a significant number of leagues.
- There has been a terrific response to the bowling alley.
- We have yet to have one incident from the public and have not found any of our customers doing anything wrong.
- The police have been there several times at the request of one of our neighbors and they found the complaints unfounded. That neighbor has since moved on as we bought him out.
- We have proven we can operate the business in a way that is friendly to the town.
- We ask for a trial period as we know these modifications are controversial.
- We will not break our trust with the MVC in keeping a business that is family friendly and wanted by the town.
- The parking lot is a dim and dark place and we have heard concerns about that and we think it is an accident waiting to happen. Lighting will be similar to the Tisbury Marketplace and we would like to turn that over to LUPC. We feel it is a safety issue and encourage the MVC to take a look at it as it is now.
- We want to increase the capacity of the event room. We have a legal capacity of 94 but are limited to 50 people and events twice a week in the DRI. That was based on the nitrogen load and he believes Sheri Caseau can attest to that. But we have changed the system to the sewer

and we should have brought this modification up then. We have usage numbers and they are way below the limit.

- Paul Foley made a point that we would need more parking. We have a parking lot per zoning and we meet zoning and there are hardly any businesses in Oak Bluffs that have a parking lot. We are also on a street that has nothing on it. He does not think parking is a problem and if it is it has not been brought to his attention.
- The MVC gave us permission to play amplified recorded music at any decibel level. We play music every minute that we are open. We don't want to play music that loud, it is not in the notion of what we are. We just want to occasionally have the availability for live music for the event room.
  - **Michael Sawyer** said they have had requests for wedding receptions, celebrations and award ceremonies and have occasionally been asked to have live music for these events such as a guitarist.

The floor plan was reviewed and Sam Dunn noted that he does not think architecturally there is an issue with live music based on the design.

- Sam Dunn asked Michael Sawyer to elaborate on the hours of operation.
  - **Michael Sawyer** said the change in the early hours is almost exclusively for schools, the YMCA and the Boys and Girls Club. We would like more flexibility to accommodate the kids.
- We have league bowling every night of the week except Friday and Saturday. Often people who have bowled at 8:00 p.m. don't finish until 10:00 p.m. or 10:30 p.m. and they want to get a beer at the bar after and they can't. We are having a problem accommodating people using our facility. I has become unreasonable to tell our customers we can't serve them food or beverages yet they can bowl up to 10:30 p.m.
  - **Michael Sawyer** added that he is there 25 hours a day and he doesn't want to be a Ritz and deal with that. He wants to periodically be able to serve and accommodate customers. Recently we had a mens team that couldn't understand that I had to say no at 10:15 p.m. and that is the thing we want to fix.
- We find ourselves in an awkward position to tell our customers we are not allowed to serve them. We are not in the business of kicking people out if they want to stay. We are in an awkward position of last call and closing being different.
- There might be neighbors who bring up issues of noise and parking and we are willing to address those.

### **2.3 Commissioners' Questions**

There was a discussion about live music.

- **James Joyce** asked if the live music would be limited to upstairs.
- **Michael Sawyer** said they would like flexibility for the entire venue but most often it would be in the event space. The Oak Bluffs Fire Department had a fund raiser and it might have been a draw for them if we had the ability to have live music.
- **James Joyce** asked if music is downstairs don't you think there would be an issue for the neighbors.
- **Sam Dunn** said it would not be an issue. We can play amplified recorded music.
- **John Breckenridge** said the event space can hold 94 and that would not include the square footage used for storage in the golf simulator space and it is essentially buffered by the room. You did not put in sound mitigation in that area.
- **Sam Dunn** confirmed that is correct.

- **Katherine Newman** said the applicant plays music from the time they open and asked if live music would also be played from the time they are open.
- **Sam Dunn** said possibly if someone wanted to give a party in the afternoon but it would primarily be in the evening.
- **Erik Hammarlund** said that most likely those playing live music would not book during that early timeframe and neither would that clientele want to attend at that time.
- **James Vercruyse** said the noise is an issue. The matter is can the applicant reach the threshold that was approved outside the building. That is what the MVC should consider. He asked if the applicant feels they can meet that and the neighbor's concerns.
- **Sam Dunn** said they had a sound engineer and have met the standard that was set. We cannot make noise 10 decibels above the ambient in the neighborhood. We have vetted that issue. It doesn't seem logical that live music will affect residential neighbors. We are an asset to the town and we are just asking for flexibility.

There was discussion about the lighting.

- **Katherine Newman** said it is a nice family place and the parking lot is dark. You are stating the proposed lamps are 15 to 20 feet high.
- **Sam Dunn** said there would be one in the middle of the parking lot that would be 20 feet tall and have multiple heads.
- **Katherine Newman** asked if there was some type of option in the middle.
- **Erik Hammarlund** said the applicant could work the specifics out at LUPC. There may be other options.
- **Katherine Newman** asked if the applicant would be willing to change if needed.
- **Erik Hammarlund** said they would.

**Fred Hancock**, Public Hearing Officer noted that there is another public hearing tonight that has a quorum issue so the MVC will recess this hearing shortly and go to the other and then come back to this one.

#### **2.4 Testimony from Public Officials**

**Gail Barmakian** said the Board of Selectmen has not discussed the modifications. As a Wastewater Commissioner we have allotted the applicant a certain flow for the affluent and we have new beds but it still meets our approval.

**Mark Barbadoro** is the Oak Bluffs Building Inspector. There was a gentleman who was complaining and I sat on his porch and I heard the bowling and he asked in my view if it was in compliance with the DRI. I didn't know where the threshold was for "almost inaudible". I actually agree that the horse has left the barn when it comes to bowling and music probably won't be as loud as bowling. He wants it noted that there is a sound problem there. Perhaps a sound level benchmark should be set. Two walls out of the four were designed to a sound transmission class and that does not mean it is inaudible. The bowling echoes and reverberates. He is in support of lighting for the parking lot, it is a safety issue. The drinking at late hours is a lot quieter than bowling.

**Sam Dunn** read a letter from Mark Barbadoro that states that the bowling alley is in full compliance and submitted it for the record.

**Gail Barmakian** said we will probably take this up as a board. One thing that we were talking about was to have all the bars close at the same time. This might put a burden on public safety since the bowling alley is in a different location from the other in town bars.

**Mark Barbadoro** said if the applicant wants to increase the occupancy load it would require a Building Permit, alarm change and egress verification.

## **2.5 Public Testimony**

**Byron Barnett** lives at 12 Hiawatha Avenue and he thanked the MVC for allowing him to speak. He and his wife urge that the proposed changes not be approved. We had heated debates, the proposal was agreed on and now Sam wants to make changes again. It is as if Sam wants to get his foot in the door. Sam had submitted a sound study for 52 decibels. It doesn't seem fair that now he decides he needs to make changes and he said that no one had complained but I have complained to Sam, the Town Administrator, the Building Inspector, the Board of Selectmen and the MVC. Sam Dunn wants to impose more issues on the neighbors. More hours means more noise. If my arguments are not strong enough then at least look at sound proofing and do just that in a trial period. The business is in a residential area and we have some rights and we deserve some consideration. The sound is an issue.

- **Christina Brown** noted that he had mentioned a study where it was recommended 52 decibels and asked that it be submitted again for the record.

**Peggy Barmore** resides at 10 Hiawatha Ave and abuts the bowling alley along the rear property line and shares the side property line. She thanked the MVC for allowing her to address them. We detailed our concerns in a letter to the MVC. The project adversely affects residents on Hiawatha Avenue. We have lived with it for ten months and it affects our safety and quality of life. The issues need to be addressed. We have expressed our concerns with the MVC, the Board of Selectmen and Sam Dunn. Our main concerns are noise and vibration. Until our concerns are addressed the bowling alley should not be allowed to expand. We live with the noise, the issue with the air vents including the kitchen and the restaurant and the fans cycle on and off 24 hours a day all year. We have lost privacy from our bedrooms. The apartments look right into our bedrooms and vice versa. I can watch the TV in the apartments from my house. The music that was played at the bowling alley last summer was audible in our home and we did not complain about it because we knew it was going to end. This week the sound of the bowling balls down the lanes is clearly audible in our house with the windows and doors closed. We ask the MVC to hold an independent study by a sound engineer from 5:00 p.m. to 10:30 p.m. We also suggest erecting a sound absorbing fence that would be aesthetically pleasing and help mitigate sound. The attempts of landscaping have been grossly inadequate and we request that more be done. Traffic changes associated with the bowling alley have impacted Hiawatha Avenue. We appreciate the need for a balance of co-existence between the businesses and the residents in the town but we would like the MVC to consider the issues so the residents can live peacefully.

- **Katherine Newman** asked if there was a fence and the sound was addressed would you feel more comfortable.
- **Peggy Barmore** said she and the neighbors would.

**Fred Hancock**, Public Hearing Officer recessed the public hearing at 8:20 p.m.

## **3. DIAS MIXED USE / HIGH POINT LANE-TISBURY DRI 653-M CONTINUED PUBLIC HEARING**

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*James Verduyssen excused himself from the meeting.*

*Commissioners Present: J. Breckenridge, C. Brown, R. Doyle, J. Goldstein, F. Hancock, L. Jason, J. Joyce, J. Malkin, K. Newman, A. Seiman, E. Thomas.*

*For the Applicant: Chris Dias, Chris Alley, Doug Hoehn*

**Fred Hancock**, Public Hearing Officer opened the continued public hearing and noted that the applicant had made some changes.

### **3.1 Staff Report**

**Paul Foley** presented the following.

- The Staff Report includes the revised plans, correspondence received by the MVC and it was noted that additional letters were received that have not yet been included.
- The plans have been revised to lower the height of the warehouse building from 42 feet tall to 35 feet tall.
- The elevations and the perspectives were reviewed.
- The 20 foot Right of Way through the mini golf property from State Road is the main access for the building and the lumber materials business.
- The estimated daily trips from State Road are 26 with 3 trips estimated for the PM peak hour and from High Point Lane 75 trips with 7 trips estimated for the PM peak hour.

### **3.2 Applicants' Presentation**

**Chris Dias** said the project has changed from the first MVC approval as he has bought another lot. He is increasing the parking and the building. It is a wholesale business. Someone had said do we need another lumber yard on the Island. When I grew up here there were six lumber yards and now there are four so he does not feel he is adding another lumber yard.

**Fred Hancock** noted that this is a modification of an existing DRI.

**John Breckenridge** noted that the old building was 60 x 60 and the new warehouse is 60 x 112.

**Chris Alley** said the project did evolve to an intermediate project. Offices have been eliminated that were going to be rented to third parties. The parking requirements were gone over by Ken Barwick. The big change is the physical building and the dropping of the roof to 35 feet.

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

**Dan Seidman** is the Chairman of the Tisbury Planning Board and a letter of concerns was provided to LUPC. The height was one of the concerns and they are glad that was reduced. The 2012 plan is the one that was registered. The Planning Board has other concerns; will it be phased in by building the warehouse and then the showroom and they would want a provision to ensure that it gets done and they don't believe a traffic study was requested and there are concerns about the traffic. They would like an analysis of the impact on abutters and State Road.

- **Joan Malkin** asked if he could submit the Planning Board's concerns for the record.
- **Dan Seidman** said he will submit them for the record.
- **Fred Hancock** said what was submitted to LUPC is on the record.

### **3.4 Public Testimony**

**Hyung Suk Lee** said he was not familiar with this project until two days ago. He found that the previous approval was one lot and one access but it has evolved into two separate projects. There is one access from the Right of Way and State Road and one from High Point Lane. The DeBettencourt project is accessing from High Point Lane. The 60 x 60 lumberyard and one studio apartment are presumed to use the easement road. Even though Fred Hancock said it is a modification he sees it as a new project because it requires double access into the lot. He does not believe that the warehouse and the showroom can be separated into two phases in order to conduct business. He finds it disturbing that a private Right of Way would be used to access a business. This Right of Way will be used by their truck drivers and that would not be safe. Why does the building have to be so tall and such a huge volume as well as removing the woodland so completely.

**Colin Young** has a concern about the access from State Road and how it affects the mini golf. He brings his children there and there are a lot of children that walk on that road. From a safety basis it should be looked at very carefully and it should be addressed.

**Trip Barnes** is speaking as a citizen not as a Commissioner. He has read the letters and he respects their opinions. What kind of town do we have? The applicant's father had a similar business. This is a huge commitment to the Town and Martha's Vineyard. The applicant has a plan and has provided apartments. The Town of Vineyard Haven put themselves in this corner with truck traffic. Mr. Dias has never run anyone over and he is a credit to the community as well as the Town tax base.

**Mary Gosselin** said she came to the Board 25 years ago to build the mini golf and the MVC required us to hire a business manager familiar with the type of business being put in. We researched the lighting and had to prove the lighting put in would not be bouncing off the property. We had to submit a landscape plan and leave shade trees and protect plantings. We changed our business design to create a water garden in order to do so. We changed the design of our building. The MVC challenged us to take a business idea and make it better. They made us work hard to ensure the project did not take away from the character and identity of the Island. We don't feel this is being done for this project. We have respect for Chris Dias and his business that he is building. The project started with a 60 x 60 foot building and the MVC conditioned it and we could work with that. Now that plan has morphed into something much bigger and is changing considerably. Who has the Right of Way when the property is divided is not clear to me. It was one lot and now it is four lots. Access to the four lots was to be off High Point Lane. Now there is an A.N.R. She respectfully asks that the DRI as it exists today be denied and to keep the public record open.

**Tom Pachico** is the property owner. The mini golf was put in as a mini golf and then they added ice cream, hot dogs and a climbing wall. The property was bought from my father. Trucks for Mr. Dias will be coming in the AM when the mini golf isn't open. Mr. Gosselin brings in bigger trucks now for deliveries and when the mini golf is open and they turn around in the parking lot when people are there. The Gosselin's bought the property from my father and he helped them and carried them. The property is for sale now. There is a parking lot across from the Right of Way and the Gosselin property is worth more if the Right of Way isn't there. They bought the property knowing full well of the Right of Way. We all know that things change and it is a business thing. Let's call a spade a spade. One question was does Chris Dias have enough room to turn around and now he does since he bought the other lot. Chris Dias will be bringing in trucks that are smaller than what the Gosselin's use to deliver food.

**Dan Seidman** said an A.N.R. , Approval not Required is not a typical subdivision. As long as certain specs are met they cannot turn it down.

**Dana Hodsdon** said there will be large trucks. How will you get lumber and large pieces without a tractor trailer. There is a 25 foot Right of Way and you have children walking down that street and that is a major concern. You have a dangerous situation. How do you deal with truck traffic on a Right of Way when you have access from High Point Lane. You have to take into consideration that the traffic will diminish the value of the mini golf property.

### **3.5 Applicants' Closing Statement**

**Chris Dias** said he does need tractor trailers and it is part of his offers.

- **Fred Hancock** noted it is a condition of the approved DRI.

He is not open in the evening when the mini golf is. There is a walkway on the road and he will commit to 5 mph going down the road. He is also concerned about safety. There are a lot more dangerous places to drive a truck on the Island. We will not be barreling down the road.

**Doug Hoehn** said one letter was received from the attorney (Michael Goldsmith). It was a four page letter that revolved around the road frontage issue in a B-2 District. Tisbury has requirements for B-2 and the frontage requirement is zero. He has done numerous A.N.R. plans in Tisbury in the B-2 District. He copied those plans and there are nine plans that were done with zero frontage including two more done for Tom Pachio so that equals eleven plans. This is why the back two lots have zero frontage.

### 3.6 Commissioners' Questions

**John Breckenridge** said the building being proposed is sheet metal. **Chris Dias** said it is but it can be made brown and it will look like shingles 380 feet from State Road. The piece on High Point Lane will be shingled. Phase 2 will be shelled in and weather tight.

**John Breckenridge** said the applicant will not have a Certificate of Occupancy for it but it will be shelled in, not finished and the office for the business will be in the High Point Lane building. **Chris Dias** confirmed that is correct.

There was a discussion about traffic.

- **Ernie Thomas** said there will be a 60 x 60 foot building with traffic and now the applicant is looking for an addition of the building that will create more traffic.
- **Chris Dias** said he did not think it will create more traffic.
- **Ernie Thomas** questioned if traffic is really an issue.
- **Fred Hancock** said the MVC would discuss that during deliberation but if you need clarification you would need to ask that of the applicant now.

**Katherine Newman** said with the increased size of the building you would put in more stuff and the hope would be more people would want more stuff. **Chris Dias** said it is the same business just more product. He doesn't plan to buy more trucks because of the increased warehouse space.

**Christina Brown** noted that the applicant had said there were six lumber yards with his fathers and now there are four. Can you tell me why there is a need for a fifth lumber yard? **Chris Dias** said he had people calling him to get them product. It is a wholesale business and it was how his Dad's business was.

There was a discussion about the access from High Point Lane.

- **Christina Brown** asked for clarification that there are contour problems with putting the road in from High Point Lane.
- **Chris Dias** said if he could have he would have put the access from High Point Lane.
- **Doug Hoehn** said there were no proposals for construction at that time. For the way the use of the property has evolved it is very difficult to accommodate the topography and the use proposed.
- **Joan Malkin** asked if it is that the trucks can't make the topography?
- **Chris Alley** said yes it is the hill. The way Chris Dias and Joe DeBettencourt projects are developed you have parallel projects with different elevations. So now neither one can make use of the access easement.

**Leonard Jason** asked why the applicant can't have two buildings. Is it about zoning, parking and nitrogen loading? **Chris Dias** said he had a project with offices in it to help pay for the building but when he brought it in there were too many bathrooms and not enough parking.

**Leonard Jason** asked he can't have the office and the apartment below and the warehouse above. **Chris Dias** said it would cost too much with the fill. **Chris Alley** said it goes from 110 to 126.

There was a discussion about closing the public hearing.

- **Fred Hancock** suggested closing the public hearing and leaving the written record open with Deliberation and Decision on May 19, 2016.
- **Joan Malkin** said she had not yet read the letters that were received as she did not receive them until right before the meeting. What if she has questions regarding the letters? She owes these letters an opportunity to be read and to be able to question them. She feels it is not right to do so otherwise.
- **Fred Hancock** polled the Commissioners to see who would be available on May 19, 2016 to ensure a quorum.

- **Christina Brown** agreed it is awkward with regards to the letters.
- **John Breckenridge** said if you have a letter from the public and as a Commissioner we have questions and points of clarification we can submit to staff. Fred Hancock's schedule would work.
- **Joan Malkin** said she can read the letters and as long as the applicant can read her questions and she has access to the applicant then she is happy with that.
- **Adam Turner** noted there is a full agenda on May 19, 2016.
- **Fred Hancock** said we could extend time on May 19, 2016 if more time is needed for Deliberation and Decision.
- **Fred Hancock** noted that after polling the Commissioners there would not be a quorum on May 19, 2016 and suggested another day of the week. It was decided there would be a quorum on May 18, 2016.

**Fred Hancock**, Public Hearing Officer closed the public hearing and left the written record open until 5:00 p.m. on May 12, 2016.

**Fred Hancock** recessed the meeting at 9:15 p.m. and reconvened at 9:20 p.m.

#### **4. RECONVENED OAK BLUFFS BOWLING ALLEY CONDITIONS MODIFICATION DRI 645-M2 PUBLIC HEARING**

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*Josh Goldstein excused himself from the meeting. James Vercruysse rejoined the meeting. Trip Barnes joined the meeting.*

*Commissioners Present: T. Barnes, J. Breckenridge, C. Brown, R. Doyle, F. Hancock, L. Jason, J. Joyce, J. Malkin, K. Newman, A. Seiman, E. Thomas, J. Vercruysse.*

##### **4.1 Continued Public Testimony**

**Amy Billings** is an abutter and a Park Commissioner. We have not had any problems with the Bowling Alley but there is a little more trash in the neighborhood. Personally she is against increasing the hours right now and questions if the event room will remain an event room and not a music venue to draw in customers. She wanted to remind everyone that Niantic Park was not open last year so there were no children in the area so that is just a thought for you.

**Hyung Suk Lee** said in his native country there are venues for music and he sees the good and the bad of it especially if it spills out into the streets at night. The applicant has to come with two different strategies; one for families and one for night life. It is hard to control sound with live music. He had a neighbor that had live music and when the doors were open the sound was unbearably loud especially with the vibration and he was 350 feet away. It is insufficient from his eyes with just having the sound walls. He knows that Sam Dunn is a responsible business owner but you have no control of people when they are outside and with more enthusiastic energy.

##### **4.2 Commissioners' Questions**

There was a discussion about the liquor and entertainment licenses.

- **John Breckenridge** said the applicant has a liquor license from the town and asked if they have an entertainment license for weekdays and Sunday which is separate.
- **Sam Dunn** said we have an entertainment license for Sunday for bowling and TV. We would have to go to the Town to modify for live music.
- **John Breckenridge** asked if the entertainment license is ongoing or if he has to resubmit to the Town.
- **Sam Dunn** said he believes he would have to resubmit.

- **John Breckenridge** asked if the applicant is asking for what every other business has in town for the liquor license.
- **Sam Dunn** said yes but he doesn't want to be the same type of business as the others but he is not asking for anything more than anyone else.
- **John Breckenridge** noted that based upon the applicant's offers and that the license has to be renewed yearly it plays into their offer to do this on a one year trial basis but the town cannot be more restrictive to them than anyone else.

There was a discussion about the trail period timeline.

- **Fred Hancock** asked what would be the trail period timeline.
- **Sam Dunn** said when this decision is approved to October 2017.
- **Erik Hammarlund** said based on his clients respectable history that is the timeline.
- **Ernie Thomas** said going from a capacity of 50 to 94 and from 10:30 p.m. to 1:30 a.m. is a whole different crowd. If there is a way of finding out about complaints maybe we could change the timeline.
- **Fred Hancock** said it would be up to the MVC during Deliberation and Decision and the MVC could change the timeframe.

There was a discussion about how the venue would be used for live music.

- **Joan Malkin** said she knows the applicant wants maximum flexibility but is he thinking of hiring someone like Johnny Hoy and opening it up upstairs.
- **Michael Sawyer** said upstairs is used as overflow.
- **Sam Dunn** said are you asking if we would initiate it. Yes but hardly ever. We did a Brazilian night and it was very successful. There was no live music but we might want to do it but not every Friday night.
- **Joan Malkin** said you do get a different crowd for a Friday night.
- **Erik Hammarlund** said this space is different than the space over the Chowder Company. It is a family environment so it is a little less appealing for that type of venue.

There was a discussion about parking.

- **Adam Turner** said the applicant is going to add to the capacity by 20 to 30 people upstairs and asked the applicant where he expects them to park.
- **Sam Dunn** said parking is approved by the Town and it meets the requirements.
- **Adam Turner** asked if the applicant sees people parking on the street to continue and asked where will these extra people park.
- **Sam Dunn** said he is adding 6 to 8 parking spaces on one of the lots they have purchased. People have the right to park on Hiawatha Avenue and go to the bowling alley. It is hard to quantify it. He does not think he has to accommodate everyone who comes to us with parking.
- **Erik Hammarlund** said they have more parking than any other business in Oak Bluffs.
- **John Breckenridge** noted that when the offsite parking idea was being discussed by the town it also was considering that employees could park at the offsite parking. And yes you are right businesses park all over town.
- **Sam Dunn** said he is preaching to the choir.
- **John Breckenridge** said the MVC could put in the decision language that if offsite parking was available it could be utilized.
- **Fred Hancock** suggested the applicant could incorporate in their offers that parking would be available in their adjacent lots.
- **Erik Hammarlund** said with regards to parking we are so far above and better than others in the B-1 District in Oak Bluffs.

There was a discussion about how the bowling alley has been advertised and the type of venue.

- **Fred Hancock** said there has been some advertising that the bar is a late night spot. It was always presented to the MVC that this was a bowling alley that had a bar and not the reverse.
- **Sam Dunn** said without the bowling alley we would be out of business.
- **John Breckenridge** said the applicant did advertise Peter Simon's services and it appeared as if it was a bar.
- **Sam Dunn** said it did not work well.
- **Fred Hancock** said per Joan Malkin's comment, is this an event area versus a music venue.
- **Joan Malkin** asked if there is a last call for bowling. Letting people hang out is different than bowling until 10:30 p.m.
- **Sam Dunn** said he sees where this is heading. That is a good question. Perhaps the deliberation phase will give us an opportunity to vet that.
- **Christina Brown** said the mission was a family oriented place. If you can serve to 1:30 a.m. how do you keep that from switching to a different type of facility.
- **Sam Dunn** said if kids didn't want to bowl we would be in trouble. The kids drive it and the parents eat while they bowl. It is very kid oriented. He knows a kid won't be there at 1:00 a.m. He takes Christina Brown's and Joan Malkin's point and at some point you are saying the crowd has to shift. The economics of our business is being hurt by this. We have \$5 million invested in this business. We need to get the business to where it is stable long term and we need some of this to do that.

**James Joyce** asked if there is an ADA problem with the building as one letter received by the MVC noted that. **Sam Dunn** said there is no issue and there is an elevator. **Erik Hammarlund** said he has been in the elevator.

**Christina Brown** said she would find it useful to do a site visit to see the parking lot, etc. **Fred Hancock** said the MVC has not done a site visit but the building is in place and bowling happens every night so we could go on own schedule and he did not see any advantage to do it as a group visit.

There was a discussion about continuing the public hearing.

- **Adam Turner** said the purpose of a public hearing is to gather all the information that the Commissioners need to make a decision and asked if there was anything else that they needed.
- **John Breckenridge** said the MVC has thrown some things into their hat and the applicant would need to perhaps make offers.
- **Erik Hammarlund** asked if the public hearing could be closed if the applicant submitted offers tonight.
- **Fred Hancock** said the MVC could continue the hearing to the next meeting and the applicant could give the Commission offers and we could ask questions about those offers.
- **John Breckenridge** said the MVC has given Sam Dunn a lot to think about including Gail Barmakian's comment about the Police Chief's fear in Oak Bluffs if all bars are emptying out all at once.
- **Fred Hancock** said in terms of lighting he saw what was on the prior plan and he was not aware that the applicant was looking for a four head pole.
- **Erik Hammarlund** said we are asking that in LUPC the text/specs be finalized.
- **Fred Hancock** said the MVC has a post public hearing LUPC meeting and at that time members go over offers and provide recommendations to the full Commission by looking at the benefits and detriments.
- **Fred Hancock** said the members of the Commission would be happier to close the public hearing at the next meeting so if you had offers to give us we could ask questions at that time.

- **Adam Turner** said the MVC could hear the project on May 18, 2016 or May 19, 2016 and go to LUPC on May 22, 2016.
- **Christine Flynn** asked how the compliance issues that were raised will be handled.
- **Erik Hammarlund** said the affordable housing is addressed by simply promising and the HVAC can be reviewed.
- **Adam Turner** said the applicant can talk with staff and have it addressed.
- **Fred Hancock** said the HVAC also has to be addressed for compliance.

**Fred Hancock**, Public Hearing Officer continued the public hearing until May 19, 2016.

## 5. MINUTES

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*Commissioners Present: T. Barnes, J. Breckenridge, C. Brown, R. Doyle, F. Hancock, L. Jason, J. Joyce, J. Malkin, K. Newman, A. Seiman, E. Thomas, J. Vercruysse.*

**Fred Hancock move and it was duly seconded to approve the minutes of April 7, 2016 as written. Voice vote. In Favor: 10. Opposed: 0. Abstentions: 2. The motion passed.**

## 6. NEW BUSINESS

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*Commissioners Present: T. Barnes, J. Breckenridge, C. Brown, R. Doyle, F. Hancock, L. Jason, J. Joyce, J. Malkin, K. Newman, A. Seiman, E. Thomas, J. Vercruysse.*

### **6.1 Executive Director Report**

**Adam Turner** noted that the Innovative Alternative Conference is on May 12, 2016 at the Grange Hall and to please RSVP if you plan to attend.

### **6.2 Reports from Committees and/or Staff**

**Christine Flynn** said the Arts Martha's Vineyard 5<sup>th</sup> Annual Meeting was very successful. High level representatives from the Commonwealth presented on best practices and gave advice on the next focus for the future. She thanked Katherine Newman and Joan Malkin for attending the conference and representing the MVC.

The meeting was adjourned at 10:00 p.m.

## **DOCUMENTS REFERRED TO DURING THE MEETING**

- Minutes of the Commission Meeting – Draft, Held on April 7, 2016
- Martha's Vineyard Commission C.R. 6-2016 The Larder Food Stand MVC Staff Report – 2016-04-25 Concurrence Review
- Town of Tisbury Office of the Board of Health, Board of health Meeting, Minutes of December 22, 2015
- 342 State Road Commercial Kitchen Plan
- Martha's Vineyard Commission DRI # 645-M2 Barn Bowl & Bistro Conditions Change MVC Staff Report – 2016-05-05
- Request for Modifications to DRI 645 The Barn, Bowl & Bistro dba MV Bowl LLC, Received at the MVC April 15, 2016
- Lighting Specifications for DRI 645 Modification Request for ALED4T78, RAB Lighting
- DRI 645 Conditions

- 665 • Correspondence received by the MVC for DRI 645 Modification Request from Byron Barnett,
- 666 Bruce Feng, Martha Feng, Peggy Barmore, Andrew Upton, Alison Mitchell, Cindy Flanders and
- 667 Dannetta K. Thornton Owens.
- 668 • Martha's Vineyard Commission DRI # 653-M Dias Phase 2 Mixed Use High Point Lane MVC Staff
- 669 Report – 2016-05-05
- 670 • Site Plan, Tisbury Mass, Specialty Builders Supply, Inc. , Dated January 26, 2016
- 671 • Lumber Yard/Office, High Point Lane, Tisbury, MA Exterior Elevations
- 672 • DRI 653-M Dias High Point Lane Applicant Offers, Dated May 4, 2016
- 673 • Martha's Vineyard Commission DRI # 653-M Dias Phase 2 Mixed Use High Point Lane
- 674 2016-05-05 Correspondence Packet of Letters received before 5:00 p.m. May 5, 2016

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677 *Jan R. L.*  
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679 Chairman  
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8-18-16  
Date

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682 *John B. ...*  
683 Clerk-Treasurer

8/27/16  
Date