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## Minutes of the Commission Meeting Held on May 18, 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)

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|--|-----------------------------------|
| - Tripp Barnes (E-Tisbury)               | - 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)          | - Doug Sederholm (E-West Tisbury) |
| - Peter Connell (A-Governor; non-voting) | - 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).

**Chairman James Vercruysse** called the meeting to order at 7:00 p.m. and turned the meeting over to Acting Chairman Robert Doyle.

### 1. DIAS MIXED USE/HIGH POINT LANE-TISBURY DRI 653-M DELIBERATION AND DECISION

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*James Vercruysse recused himself.*

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

**Fred Hancock** suggested having a general discussion before Deliberation and Decision.

**Adam Turner** noted that the written record was kept open and the MVC received written testimony.

#### 1.1 Staff Report

**Paul Foley** summarized the written testimony.

- There are two packets of correspondence received by the MVC.
- Included in the packet of information are the applicant's offers of May 12, 2016, response from the applicant to the Commissioner's questions, the plans for the project and the LUPC Meeting Notes.
- Letters were received in support of the applicant as well as concerns regarding the mini golf.
- The applicant said he would not be open on the weekends but that is not in the offers.
- Receiving hours are before 10:00 a.m. but there will be deliveries after 10:00 a.m. to their clients.
- If the ferry is late there maybe deliveries after the 10:00 a.m. time slot.

**Ernie Thomas** said the MVC already approved this applicant for use of this property and traffic. Aren't we only looking at the modification change to the building by adding the addition to the back?

**Fred Hancock** said what is before the MVC is the modification to the MVC original Decision to expand the building to two lots. If we denied the modification the applicant still has the original approval.

**Adam Turner** said the Commission is looking to see what the impacts would be of the modification.

## **1.2 Review of Applicants' Offers**

**Adam Turner** handed out the changes to the Dias conditions and noted that this is the applicant's offers for the modifications. The handout shows the existing approved conditions compared to the applicant's April 12, 2016 offers.

There was a discussion about how to review the offers.

- **Katherine Newman** asked which offers the MVC should be looking at.
- **Bill Veno** clarified that the handout is the original offers showing how they have been modified.
- **Fred Hancock** added the handout is the result of accepting the offers.
- **Joan Malkin** asked if the grammar is not to her personal liking does she suggest changes to that now.
- **Adam Turner** said no but you could condition something you don't like and make it clearer later. He also noted that section one and two are really the gist of the modification.

**Katherine Newman** questioned the service road versus the connector road. **Paul Foley** clarified that the connector road would be proposed to be behind the businesses but it is not likely to happen.

**John Breckenridge** questioned the delineation of section 3.4 under Traffic and Parking noting it is a substantive change.

**Fred Hancock** noted that the length of the vehicles is noted in section 3.3 under Traffic and Parking.

**Joan Malkin** said the size of the trucks that can be used is now noted in section 3.3 under Traffic and Parking.

**Christina Brown** questioned if testing is needed for the septic system.

**Adam Turner** noted that language "based on a 25 year storm event" was added to section 8.2 under Stormwater and he also noted that lighting has to come back to LUPC.

## **1.3 Conditions**

### **1 Building Use**

**Joan Malkin** suggested revising the language to "the property will not be operated as a retail location" in section 1.2 and to add the hours of operation.

There was a discussion about the hours of operation.

- **Fred Hancock** suggested language that would say wholesale only and only open weekdays from 9:00 a.m. to 5:00 p.m.
- **Adam Turner** said he believed the applicant said the hours of operation were from 7:00 a.m. to 5:00 p.m.
- **Josh Goldstein** asked if the applicant wants to have Saturday hours would he have to come back to the MVC.
- **Fred Hancock** said the applicant testified it would not be open on weekends.
- **Christina Brown** said it was noted that it would be open on weekdays except under occasional and unusual circumstances.
- **Joan Malkin** said the language could state the usual hours of operation are Monday to Friday 7:00 a.m. to 5:00 p.m.

**John Breckenridge moved and it was duly seconded that Building Use Section 1.2 state as offered by the Applicant, the property shall not be operated as a retail location and the hours of operation are 7:00 a.m. to 5:00 p.m.**

- **Robert Doyle** said he prefers that the motion state Monday to Friday.

**John Breckenridge amended his motion and it was duly seconded to add “the hours of operation Monday to Friday...”. Voice vote. In favor: 8. Opposed 1. Abstentions: 0. The motion passed.**

## 2 Access

**Christina Brown** said at LUPC the Commissioners talked about the access road and there are concerns about the two access roads and the truck use of High Point Lane and the mini golf access road. Both access roads are to State Road. When you have two accesses close together you have more conflict of trucks turning right and left and the flow of traffic on State Road is a concern. The MVC has often looked at curb cuts close together. There is potential for traffic snarls on State Road and there is concern for the use of High Point Lane being a town road and the maintenance of it.

**Christina Brown moved and it was duly seconded to condition that the applicant obtain access to this project and the sole access to the project be from High Point Lane and the applicant develop an engineered plan to be presented to the Land Use Planning Committee for approval before receiving the Building Permit.**

- **Adam Turner** showed the easement and the property owned in fee simple and how the access could be accomplished supporting each party. Both the mini golf and the applicant would have to agree. It would protect the mini golf and gives the applicant what he needs. It is a win-win for both.
- **Paul Foley** reviewed the topography for a new access.
- **Adam Turner** noted it could be engineered to work.
- **Katherine Newman** said she really supports a revised access.
- **Joan Malkin** said that Christina Brown spoke eloquently about the traffic implications but the safety implications are crucial and supports the condition.
- **Fred Hancock** said it would be a benefit if the curb cut could be from High Point Lane. It is something to think about.

**Voice vote. In favor: 8. Opposed: 1. Abstentions: 0. The motion passed.**

There was a discussion about how the condition would affect the hours of operation and the truck size.

- **Leonard Jason** now questions the hours of operation and the truck size.
- **John Breckenridge** noted if Christina Brown’s motion regarding the access is worked out with the applicant and the owners of the mini golf there are two or three different things that come into play; the hours of operation and the 24 foot long trucks. The MVC is now in a position if the applicant comes back to LUPC we can re-examine as a modification the hours of operation and trucks over 24 feet in length.
- **Fred Hancock** said that would be too much for LUPC it would have to come back as a regular modification. He agrees with Leonard Jason that at least the restriction on the truck size is no longer an issue.
- **Leonard Jason** said he is more concerned that the applicant has a successful business.
- **John Breckenridge** said the MVC did not confine him to weekday hours.
- **Joan Malkin** said the MVC did confine him to weekday hours due to concern of safety for the mini golf. If the access can be worked out a lot of the other conditions could be removed.
- **Christina Brown** suggested that the MVC could adjust some of the applicant’s offers as conditions.

- **Joan Malkin** said these conditions were proposed when the access was the easement. Why not leave them and if the new access is worked out they won't make sense and the applicant could come back to the MVC.
- **Katherine Newman** said the hours are most constraining so why not tie them into the result of the new access road.
- **Fred Hancock** said the MVC usually asks people what their hours of operation are but we could take them out.

***John Breckenridge moved and it was duly seconded to modify condition 1.2 to the usual business hours will be 7:00 a.m. to 5:00 p.m. Voice vote. In favor: 9. Opposed: 0. Abstentions: 0. The motion passed.***

### 3 Traffic and Parking

**Christina Brown** said section 3.1 is not necessary on this approval.

**Joan Malkin** said the MVC no longer needs to accept it.

***Joan Malkin moved and it was duly seconded that the MVC not accept all offers in Section 3 Traffic and Parking. Voice vote. In favor: 9. Opposed: 0. Abstentions: 0. The motion passed.***

### 5 Housing

**John Breckenridge** said there were some concerns about when the workforce housing would be made available and there seemed to be no guarantees.

There was a discussion about the timeline.

- **John Breckenridge** would like to modify section 5.3 and change from three years to two years and revise from the DRI Decision to date of the Building Permit.
- **Joan Malkin** questioned two years from the date of the Building Permit, how many Building Permits is he pulling?
- **Adam Turner** said the revision would affect the initial Building Permit and the applicant would not be able to forget about the apartments and just build the showroom.
- **Ernie Thomas** asked what is the point of reducing from three years to two years.
- **Fred Hancock** said perhaps the MVC needs to agree on the condition and then determine the time line.
- **Paul Foley** said you do not know how long it will take to get through the town permitting so that would be a reason to change from the Decision date.
- **Fred Hancock** said one of the benefits of the project is having workforce housing so you want to be sure it gets done.
- **Katherine Newman** asked what is the rationale to change from the Decision date to the Building Permit date.
- **John Breckenridge** said the MVC doesn't know how long it will take to get through the permit process as well as working out the access with the mini golf.
- **Katherine Newman** said if the MVC left it in place the applicant would just have to come back to the MVC.
- **Robert Doyle** said the MVC is trying to give the applicant more flexibility.

There was a discussion about the workforce housing and the mitigation fee.

- **Joan Malkin** asked if she was the only person not happy with the mitigation fee noted in the last part of section 5.3.
- **Fred Hancock** said he does not think the MVC wants 5.3 to say the applicant is exempt from building the apartments in lieu of the mitigation fee.
- **Christina Brown** and **Robert Doyle** said the way they read it, it is a choice.

- **Fred Hancock** thought the MVC should be saying this isn't an option. The applicant's option is that he needs to build apartments. Part of the benefit of the proposal is to build workforce housing.
- **Leonard Jason** said it is his choice or don't include the mitigation fee so there is no option.
- **Bill Veno** said the applicant conditioned there will be two apartments as part of the project. To ensure it would be done in a timely way the mitigation fee was added. It was designed as the "stick".
- **Fred Hancock** said the MVC could rewrite and if not done in the time limit the applicant cannot use the showroom, he pays the mitigation fee as a penalty and still has to build the apartments.
- **John Breckenridge** suggested revising the language to read no Certificate of Occupancy for use of the showroom will be permitted until the Certificate of Occupancy is secured for the two apartments and rented as described in section 5.2.
- **Joan Malkin** suggested revising the language and to add specific dates for the length of time to build the apartments.

***Joan Malkin moved and it was duly seconded to revise the language to section 5.3 that the relative timeframe is two years from issuance of the initial Building Permit for the project. Voice vote. In favor: 8. Opposed: 1. Abstentions: 0. The motion passed.***

There was a discussion about the Certificate of Occupancy.

- **Leonard Jason** said isn't the applicant going to get the building tight within a set timeframe.
- **Joan Malkin** said that isn't in the offers but it was testified the shell would be weather tight.
- **Leonard Jason** asked if the buildings are to be built at the same time within two years.
- **Fred Hancock** asked if it will be two separate Certificates of Occupancy. Can the applicant get one Certificate of Occupancy for the warehouse versus the showroom and the apartments?
- **Leonard Jason** said it is up to the Building Inspector.
- **John Breckenridge** said the applicant will build weather tight and secure Certificates of Occupancy for the two apartments within two years of the date of the Building Permit. If this has not been completed the mitigation of \$14,250 will be applied. No Certificate of Occupancy will be provided until the apartments are completed.
- **Katherine Newman** said she does not think it is clear that the whole building is built at the same time. Perhaps the building as you agreed will be weather proofed at one time.
- **Robert Doyle** asked the applicant to clarify.
- **Chris Dias** said he is building the building tight to the weather, the warehouse and the building on High Point Lane. It will be steel and stick frame so he can get the Certificate of Occupancy for the warehouse and then finish the rentals as soon as he can afford it.

***Joan Malkin moved and it was duly seconded that within two years of the issuance of the initial Building Permit for the project the combined structure will be built and made weather tight. The Certificate of Occupancy will not be issued for the showroom unless the Certificate of Occupancy for the workforce housing has also been issued.***

- **Christina Brown** noted that before the applicant can use the showroom he has to get the apartments finished but the motion does not mention the mitigation fee.

***Voice vote. In favor: 9. Opposed: 0. Abstentions: 0. The motion passed.***

**Joan Malkin** noted that for section 5.2 the applicant's offer was made for not less than 90 days and asked if that is the right amount of time. **Fred Hancock** said that is the standard language.

#### Building Design

There was a discussion about the roof.

- **Fred Hancock** noted that building design is not noted in the offers and the proposed is a metal roof building. On the Bowling Alley the MVC did not specify that the roof not be a bright and shiny roof. He suggested a condition that the proposed project be a painted metal roof or perhaps not a shiny roof.
- **Joan Malkin** suggested that perhaps the language could be a non-reflective roof.
- **Katherine Newman** said the issue is the roof should be non-glare.

***Joan Malkin moved and it was duly seconded that the metal roof shall be non-glare material. Voice vote. In favor: 8. Opposed: 1. Abstentions: 0. The motion passed.***

There was a discussion about the walls of the building.

- **Christina Brown** said the applicant noted that the walls of the building would be painted brown and suggested to paint them gray similar to weathered shingles.
- **Fred Hancock** said he would prefer that the State Road side of the building be shingled as it will be seen.
- **John Breckenridge** said he has taken a look at the State Road side of the building and there is a narrow view channel. As part of the landscape plan there will be six trees to soften the building.
- **Robert Doyle** noted that if there is a change in the access the applicant may be able to add additional trees.
- **Katherine Newman** said that perhaps the MVC may want to say that if the Right of Way is not used as an access road either trees not be removed or additional trees planted.

***Christina Brown moved and it was duly seconded that all sides of the building be gray similar to weathered shingle gray. Voice vote. In favor: 5. Opposed: 4. Abstentions: 0. The motion passed.***

#### 6 Site Design and Landscaping

**John Breckenridge** and **Fred Hancock** both noted that the MVC may want to add that the purpose of the landscaping is screening the view from High Point Lane and State Road.

**Joan Malkin** asked if there is a timeframe for when the landscape plan is submitted for approval.

***John Breckenridge moved and it was duly seconded that the purpose of the landscape plan is to shield the building from High Point Lane and State Road. Voice vote. In favor: 9. Opposed: 0. Abstentions: 0. The motion passed.***

***Joan Malkin moved and it was duly seconded that the landscape plan shall be submitted to the MVC for final approval prior to the issuance of the Certificate of Occupancy. Voice vote. In favor: 9. Opposed: 0. Abstentions: 0. The motion passed.***

#### 1.4 Benefits and Detriments

**Fred Hancock** noted that Benefits and Detriments were reviewed at LUPC.

##### Benefits

- Traffic and transportation is a benefit with the new condition.
- Workforce housing will be provided.
- The project will generate additional taxes for the town.
- The project provides jobs and competition.
- The project does not unduly burden public services.
- The project is consistent with Town plans and meets zoning and there are no DCPC regulations in this area.
- It is an appropriate location. It was testified that the applicant looked for other venues for the project and was not able to find anything to meet his needs.

Detriments

- Currently property is vacant. Open space is eliminated.
- There is an impact on the abutters but it is improved with the new access condition.

Neutral Points

- Stormwater and ground water is in the middle.
- It was decided that wastewater is in the middle. The project is in an impaired watershed but the applicant will be conserving some land in a nitrogen sensitive watershed.
- Lighting is within code.
- Night light and noise is consistent with what is in a commercial area.

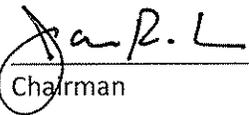
**Joan Malkin moved and it was duly seconded to approve the project with the applicant's offers and the conditions as proposed. Roll call vote. In favor: J. Breckenridge, C. Brown, R. Doyle, J. Goldstein, F. Hancock, L. Jason, J. Malkin, K. Newman, E. Thomas. Opposed: none. Abstentions: none. The motion passed.**

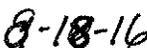
James Vercruysse rejoined the meeting.

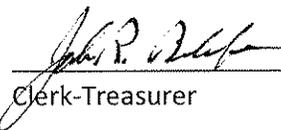
The meeting was adjourned at 8:30 p.m.

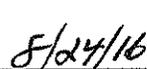
DOCUMENTS REFERRED TO DURING THE MEETING

- Martha's Vineyard Commission DRI #653-M Dias Phase 2 Mixed Use High Point Lane 2016-05-05, Correspondence Packet of Letters Received before 5:00 PM May 5, 2016
- DRI 653-M Dias Mixed Use High Point Lane – Correspondence List and Letters Received after 5:00 pm on May 5, 2016 – In this Packet
- Martha's Vineyard Commission Land Use Planning Committee Notes of the Meeting of March 21, 2016
- Martha's Vineyard Commission Changes to Dias (DRI 653) Conditions for Project Modification (DRI 653-M) Draft, Dated May 18, 2016
- DRI 653-M Dias High Point Lane Applicant Offers
- DRI 653-M Dias High Point Lane Applicant Response to Joan Malkin's Questions Email from Doug Hoehn
- DRI 653-M Dias High Point Lane MVC Staff Response to Joan Malkin's Questions, Dated May 10, 2016
- DRI 653-M Dias High Point Lane Site Plan, Dated January 26, 2016 and March 16, 2016
- DRI 653-M Dias High Point Lane SBS Lumber Yard/Office Exterior Elevations, Dated April 13, 2016

  
Chairman

  
Date

  
Clerk-Treasurer

  
Date