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Minutes of the Commission Meeting Held on May 19, 2016 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 James Joyce (A-Edgartown)
- Yvonne Boyle (A-Governor)	P Joan Malkin (A-Chilmark)
P John Breckenridge (A-Oak Bluffs)	- 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)	P 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), Priscilla Leclerc (Transportation Planner), Christine Seidel (GIS Coordinator).

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

1. GOSNOLD/CUTTYHUNK PRESENTATION

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

Christine Seidel presented the following.

- Cartography and mapping are her main goals at the MVC but she is also the planning liaison to Gosnold/Cuttyhunk.
- She visited Cuttyhunk in April with Christine Flynn.
- Gosnold consists of the five Islands off Martha's Vineyard which includes Cuttyhunk comprised of 580 acres.
- Cuttyhunk is nine miles from Menemsha and there is ferry service from there. Public ferry access is also from New Bedford and it is passenger service only.
- The off season population is 15 to 20 people and in the summer approximately 300 people.
- The school has two children and goes to the eighth grade.
- The eastern side of the island has the most development and the other side is 44% privately owned. 42 acres are owned by Mass Audubon.
- Current projects for Cuttyhunk include:
 - A main goal is an online reservation system for Summer 2016.
 - Install a municipal solar array for Fall 2016.
 - Rebuild the public dock in Fall 2016.

- An ongoing study by the Woods Hole Group (WHG) to stabilize the beach at Church’s Beach.
- Upcoming projects include:
 - Road maintenance abutting the historic stone walls.
 - Redesign the interior of the Coast Guard building.
 - For Barges Beach, carry out the recommendations made by WHG to help improve the berms and the dunes on the beach. The cost is approximately \$3 million so they will need to find funding.
- Some of the roads on Cuttyhunk are paved and some are golf cart paths.
- Long term goals include:
 - Attract ten new people per year.
 - Keep the Island vibrant.
 - Keep the school open.
 - A related goal is the need for affordable housing for residents and the workforce.
- Challenges include:
 - The ferry runs two times per week in the off season and is only a passenger ferry.
 - There is a small market and it is only open in season.
 - There is internet service but it is unreliable and slow. If the service was better perhaps people would telecommute. Currently the service bounces off the Outermost Inn in Aquinnah.
 - There is a lack of affordable housing and short term workforce housing. The challenge is to build affordable housing as the Town owns very little land and there are limited town finances to purchase properties on the market. And there would be a need for workforce housing for the contractors.
- The spirit of hope/visions of opportunity include:
 - The Town has a good turn out and participation at their community dinners.
 - The island has privately owned land and the buildings may change hands or may have a change of use.
 - In redesigning the interior of the Coast Guard building there is a vision for a mixed use space as a welcome center, shelter for ferry passengers and an arts/crafts center.
- MVC assistance and recommendations:
 - Have the Town conduct an inventory of the town’s assets and lodging.
 - Improve internet infrastructure and seek out a rural development grant.
 - The MVC will assist with securing Chapter 90 and funds to improve walls and road infrastructure.
 - To keep the selectmen abreast of various support resources.
 - To provide ongoing technical assistance.

Adam Turner noted that the MVC has been out to Cuttyhunk a couple of times in the last year and will continue to assist them. The first thing that he is working on is internet connection and then they would be able to view the MVC meetings. All utilities are underground but they do need repair.

2. LAGOON RIDGE FORM C-OAK BLUFFS DRI 464-M2 CONTINUED PUBLIC HEARING

Commissioners Present: T. Barnes, J. Breckenridge, C. Brown, R. Doyle, J. Goldstein, F. Hancock, L. Jason, J. Joyce, J. Malkin, D. Sederholm, A. Seiman, L. Sibley, E. Thomas, J. Verduynde.

For the Applicant: David Danielson, Eric Peters, David Bennett

Fred Hancock, Public Hearing Officer opened the Continued Public Hearing at 7:15 p.m.

Paul Foley noted the eligible Commissioners are T. Barnes, J. Breckenridge, C. Brown, R. Doyle, J. Goldstein, F. Hancock, L. Jason, J. Joyce, D. Sederholm, L. Sibley, E. Thomas and J. Vercruysse.

2.1 Staff Report

Paul Foley presented the following.

- The proposal is a Form C Definitive Plan for a subdivision of approximately 32.5 acres of land to create 23 lots with up to 25 dwelling units.
- The Staff Report includes a third party peer review letter, letters from Alan Robillard, DRI 464_M Conditions and the plans for the project.
- The applicant is using the Flexible Development By-law for Oak Bluffs based on Section 7.3: Flexible Development; a provision of the Oak Bluffs Zoning By-laws which may allow density bonuses for certain development decisions such as affordability, over 55 housing and open space.
- Section 7.3 has never been used before.
- Key Issues include:
 - Should the MVC proceed assuming that since the Planning Board referred the project twice to the MVC that the Yield Plan is confirmed and the applicant is entitled to the maximum allowable density bonus?
 - Has the Form C Submission complied with the requirements of the Form B conditions?
 - Denitrification:
 - How will the sewage package treatment plant be maintained?
 - Has the wastewater treatment facility plan been reviewed and approved by an outside engineer approved by the Oak Bluffs Board of Health?
 - How does the plan cover the costs of maintaining the wastewater treatment system in perpetuity?
 - Affordable Housing:
 - Does the offer to donate two lots in Cluster C meet the “units” requirements of the Oak Bluffs Flexible Development By-law?
 - How does the plan protect affordable units with respect to association fees?
 - It is not clear how the affordable housing units will be exempt from all covenants and association fees as stipulated in the MVC’s Affordable Housing Policy.
 - Does the applicant have a “Declaration of Restriction” as required by NHESP and DRI 464-M2?
 - Does having three “clusters”, two of which have large or standard sized lots, really meet the goals of clustering and flexible development?
- The covenants grant to the residents of Oak Bluffs the perpetual right to use of the north/south ancient way the applicant calls Bar Rail Trail.
- The Land Bank has written that they would be willing to accept management responsibility via the conveyance of an easement for the oversight and maintenance of the Old Road Trail aka Cross-Oak Bluffs Trail and Bar Rail Trail, the Jib Stay Trail and a new lateral trail to Barnes Road.
- The area outside the Building Envelope for each lot is not a “no cut” area (see Section 1.(5) of the covenants).
- The covenants concerning “Use of Common Lands and Non-Residential Lots” (Section N, p.9) state the open spaces are to be managed for passive recreation by the Association. The Association can also approve appurtenant buildings and the significant alteration of vegetation.

- The applicant shall have the wastewater treatment facility plan reviewed and approved by an outside engineer approved by the Oak Bluffs Board of Health and the said approved plan filed with the MVC. Concerns with the system were addressed by Bennett Engineering.
- The third party review has been completed and issues found were corrected, additional questions concerning reduced flow conditions and time needed by the operator were also addressed and are attached to the Staff Report.
- Correspondence was received by the MVC from Alan Robillard and is included in the Staff Report.

2.2 Applicants' Presentation

David Danielson presented the following.

- He thanked Paul Foley for his advice and long term effort since 2011.
- Under Section 7.3 of the Oak Bluffs Zoning By-law has never been used before. John Bradford said we are the guinea pigs. Who interprets it the MVC or Oak Bluffs.
- The geographic features and the affordable housing for the project are unique and doing the project in the location was crucial to us.
- The By-law allows density bonuses for certain obligations such as affordability, over 55 housing and open space. Bonus lots are granted on a formula.
- The project started in 2011 and this is a continuation of the modified plan.
- The Form B Conditions have been completed.
- The major issue is denitrification.
- Sheri Caseau invited the Amphidrome team to the meeting at the Grange on May 12, 2016 and they presented extensively.
- They have five years of data on Brewster and have presented consistently below standards; 10 mg/l in the effluent in the Brewster Nursing home, 6.8 mg/l in a high school in Connecticut and in a Chili's restaurant in Hingham 4.9 mg/l. We are only required to meet 14 to meet the MVC standards.
- Two lots have been offered for affordable housing and the requirement under the Flexible Development By-law will be met as reviewed by the Oaks Bluffs Planning Board. Flexible Zoning 7.3 assigns to the Planning Board of Oak Bluffs what the affordable housing requirements are. We will do whatever they tell us to do and his request is to clear the Commission as quickly as he can.
- Eric Peters will speak to the covenants.
- David Bennett of Bennett Environmental Associates, Inc. is here tonight to present on the Peer Review for the sewage treatment system.

David Bennett presented the following.

- His firm completed the Peer Review from the Town of Oak Bluffs and it has been submitted to the MVC as well.
- It was found that the system was compliant with provisions of Title 5.
- He will frame his responses to the concerns that have been expressed in this hearing.
- His firm operates four of the underground plants that are more than 10,000 gallons per day and another 150 in Barnstable County. In Martha's Vineyard they operate 35 IA systems.
- The capacity and ability to remove nutrients is something has been studied over the last eight years by the Barnstable County Health Department which has gathered information on wastewater systems and has tabulated performance with regards to efficiency.
- He can speak to the performance of the systems with regards to low flow which represents problems that are challenging to the operator.

- Sometime ago there was interest in the effect on wetlands and environmentally sensitive areas with regards to nitrogen. Work in Title 5 was done to allow the IA system in environmentally sensitive areas to get to a nutrient neutral application. There was a need to build a better mouse trap to accommodate growth and to sustain growth.
- Historically Boards of Health would specify systems, they would be installed and that was the end and the last time anyone visited them. Barnstable County started to decide that they needed to be monitored, maintained and adjustments might be needed. These systems have the capability of meeting these standards.
- There is variability in performance but the proposed system in this case will treat to a certain capacity in the removal of nitrogen. It will reduce nitrogen from 35mg/l to 19mg/l and realize that not all effluent is 35mg/l. Some nitrogen is higher. There is a lot of flex in looking at the numbers straight on.
- There are not always two people in each bedroom and the effluent and influent will have variables.
- He is convinced that the proposed technology is one of the leading technologies and has certain provisions that allows for various flow strengths and it is up to the operator to understand those and adjust for those and get the performance that is set for the general use approvable.
- Using the amphidrome technology something you can expect to be achieved on a regular basis is 14 mg/l.
- There will be a start-up period of time when it will be low flow and that will be a challenge.
- You have to look not so much at the mg/l but in gallons per day and look at the pounds going into the environment.
- Start-ups, control adjustments and remote start-ups can be done via smart/wireless or phone technology and that exists in the amphidrome systems.
- These systems are typically monitored quarterly for certain parameters.
- Monthly reporting is incorporated into the proposal and is important to understand that everything is working, flow is up to speed and the system is working as it should.
- It has been stated that the cost to maintain the system is approximately 5% of the initial cost of the system per year and that stated number is too high. In the first month there might be several trips made to ensure the system is working properly. To show the standards and to prove the thresholds have been met it will need to be done over four quarters but he does not believe the costs will be a hardship to the homeowners.

David Danielson said Sheri Caseau spoke with the Board of Health and they are ready to sign off. Legally the Board of Health is responsible for the management of the systems. The cost to operate is typically electricity and testing and the burden will be shifted to people with larger houses. If there is only three houses the homeowners won't be hit hard for the expense of the system. His family owns the land so the LLC would be paying the expense.

David Danielson said one of the main questions raised in the Staff Report is have we met the five pages of conditions in approval of the Form B. Eric Peters and I worked very hard on the covenants and he has asked him to address the covenants.

Eric Peters presented the following.

- He has worked on Homeowner Association covenants for thirty years on Martha's Vineyard. He has worked with Herring Creek Farm and Squibnocket Ridge and a few other homeowner associations.
- In his experience most homeowner associations are well run and it is reasonable to expect them to act in a way and to behave responsibly when they have a significant asset as well as to create capital accounts.

- There are restrictions against lighting. He has drafted them and used them before and they are intense.
- A Form B plan is not always the most concise thing from a conveyance and surveying point of view.
- With regards to the landscape plan there is now a 40 foot way where before there was 30 foot. Some of the lots might have slightly smaller square footage but at the end of the day we have so many acres that will be open space and we have met the NHESP requirements.
- The Building Envelope in the cluster in the middle is not shown on the plan because the lots are very small and the intent was to give flexibility so the covenants are designed to allow flexibility within the setbacks; five feet from the lot line and they can do what they want within those setbacks. For the other lots they have to record where they will be and have it filed.
- If every one of these lots had to have a septic system there would be a significant amount of land area that would be disturbed and that won't happen with the central system.

2.3 Commissioners' Discussion

John Breckenridge asked if the Town of Oak Bluffs is part of the equation or have they declined to table that role. **David Danielson** said he offered to send sewage to the sewer treatment plant and they declined that. We also talked about the cluster system but is glad to go back and present that.

John Breckenridge asked if there is a live presence required for operating the system and will that be out sourced to a company. **David Danielson** said he has spoken to four possible operators and he will have someone prepared to do a 24 hour round the clock response that can also be done by a smart phone. Most of the response will be to change from pump A to pump B.

John Breckenridge said typical calculations for Title 5 uses 60% catch rate and asked what is being used for calculations of the wastewater flow. **David Danielson** said we calculated 110 per bedroom per day. The flow is just under 7,000 per day. He asked for additional gallonage so if the two homes that were built on the Form A need to rebuild their septic they will be able to do so.

There was a discussion about operators for the system.

- **David Bennett** said it is typical for any operator to provide round the clock service. Systems will have alarm systems that will notify the operator that there is a problem. It is rare to have a round the clock operator for a system that is less than 100,000 gal/day.
- **John Breckenridge** asked if there are qualified people on the Island to do this.
- **David Bennett** said we welcome someone monitoring these systems and we know the MVC is tied to Barnstable County. Response time is usually within two hours. The system is only as good as it is maintained as well as the operation of the system.
- **Adam Turner** said it was mentioned that there is technical support for this on the Cape. What happens when this is turned on and should there be technical assistance on this Island?
- **David Bennett** said there are engineers on the Vineyard and there should be systems available here. There would be a requirement to have eyes and ears with an Island presence. There would be requirements to have access from every location. Not every alarm is a problem you need to deal with in any day. The systems are built with a redundancy so there is not an immediate need at 4:00 a.m. For example if one pump fails the second will pick it up. There can be alarms that are standard alarms. We do a lot of houses on the Cape that are seasonal. They open up the house, do a lot of laundry and wash with a system that has not been used in a while and the alarm goes off. But it can reset itself. Some of these systems have smart technology that they know they need to turn on and get reset.

There was a discussion about the cost of the IA system to the affordable housing units.

- **Adam Turner** said there is some expense for the system in the covenants and will the affordable housing units be exempt from the startup expenses.
- **David Danielson** said that was discussed with the Form B. We would like the affordable housing units to be responsible for the expenses including lighting and it was discussed as a possibility.
- **Adam Turner** asked if the applicant would support exempting the affordable housing units from the fees.
- **David Danielson** said the standard Title 5 system costs for affordable housing is \$12,000 to \$15,000 on the Island. The cost for this system is \$5,000 to \$7,000 so it is lower than the standard Title 5. The costs for the system are electricity and periodic testing. Service fees will be assessed by the number of bedrooms so it will shift the burden to those with larger houses.

Doug Sederholm said the applicant has probably done as much as could be expected with the nitrogen issue. He has met the policy that the MVC came up with quite a number of years ago and that policy has not been updated since it was initially set which was at least five years ago and maybe longer than that. If your system works perfectly you will be slightly under the nitrogen limit set for this project by the MVC policy. The analysis for Lagoon Pond has been completed and the MVC policy has no rational relationship to the goal to bring Lagoon Pond back to a healthy state. According to the Mass Estuary Project the Nitrogen from the septic systems is feeding into Lagoon Pond and needs to be reduced by 50% to restore the pond. Your project will add about 990 pounds (per his calculations) of nitrogen per year. I don't know that we can penalize you for that but it is not helping the pond. It is not your fault but the MVC needs to update its policy as the policy has no relationship to what has to be done to protect the pond. You can't turn down this applicant because he has complied with the MVC policy.

David Danielson agreed with Doug Sederholm. His son clams for a living and for years they had a simple cesspool in front of their cabin and no one ever raised a question about it. You can walk the shore of the pond and smell failed septic systems. Upgrading systems needs to happen. The cluster system perhaps could be sold to other real estate projects and developments close to the pond. But we should not be penalized for it being as far away from the pond as we are. By pumping 3/10 of a mile away from the pond the nitrogen will get eventually get there but at a rate of a half foot per day.

Adam Turner noted that the MVC has not received Condition 6.2 for DRI 463-M2 Form B; "For the Form C definitive plan submission to the MVC the Applicant shall submit a detailed offer with respect to affordable housing that meets the requirements of the Oak Bluffs Flexible Development By-law (7.3) and the MVC Affordable Housing Policy." and pointed out that the Commission might need to condition it.

2.4 Public Testimony

Steve Auerbach lives in Oak Bluffs and asked if there will be a reporting requirement to the Board of Health, the MVC or another authority to ensure the standards are being met for the denitrification and the monitoring of it.

Fred Hancock, Public Hearing Officer reviewed the public hearing process and the applicant will respond to the questions that were asked.

Alan Robillard said the maximum limit is 110 kg/ac/yr but the planned system to be installed is projected to operate at 106 kg so there is not much leeway for error. Based on the statistics that he found the systems only performs 60%-70% of the time. The 30% that does not perform will throw the applicant over the limit so it will be 250 lbs/yr into the Lagoon. If this is a fixed film system this fixed film is a living body and has to be nurtured and if not enough influent coming in it will die and the effluent will have considerably higher nitrogen. He asks that the MVC considers everything. He has no doubt that Davio (David Danielson) is sincere but he is in a position to put his best foot forward. He is hesitant to say but will note that this is common to advocate for a particular position. Typically it is said who is

paying the Advocate (David Bennett) and he would like to know that. Is the engineer an independent person? He realizes that this is a little savory to ask.

Kate Feiffer lives at 20 Oakland Lane and she has read through the covenants. Who will police these? Who is the committee for architectural review and how will they review these things?

2.5 Applicants' Response

David Danielson said he appreciates Steve Auerbach's question. The MVC made it clear that monthly reporting is to the Board of Health and the MVC for the first year as well as quarterly reports.

Fred Hancock noted that the Town of Oak Bluffs wanted a Peer Review for the proposed system and they hired Mr. Bennett's firm.

David Bennett said the MVC has an arrangement with the Cape Cod Commission that information will go into the database for all reporting and the DEP is also involved. The question about low flow; the system is designed based on a certain hydraulic and it is a fixed media not a fixed film. There are ways to adjust to make the system run and micro seed is used which is a molasses compound to feed the bugs. There is process and chemical control to make these systems work. He wouldn't throw the system under the bus. IA systems, satellite systems and the use of private wastewater management do play a role. The number of pounds per year (106.8/yr) is certainly something that is conditioned. If not met there is a bond. He firmly believes with this technology it can be met. You have to look at the total flow and effluent strength to meet it. He is glad the MVC used pounds rather than per day usage to meet the standards. You have to look at it over time and what the trend is. An IA system is one of the alternatives to big pipe sewerage. With regards to the Conflict of Interest he is a licensed professional and is being paid by Mr. Danielson to be at the MVC meeting tonight. Even if the MVC had asked him to be at the meeting Mr. Danielson would have had to pay for him to attend. Regardless of that his answers would be the same.

Eric Peters said with regards to the covenants he frankly plagiarized some of the ones that he has worked on over the years. When you sell a certain number of lots you turn over the covenants to that association. Until that time the subcommittees will be handled by Davio (David Danielson).

- **David Danielson** added that the covenants were drawn up after discussion with the Oak Bluffs Building Inspector.

2.6 Commissioners' Questions

John Breckenridge said on day one there will be 3 units. Two years down the road there will be 21 units and are we hitting the nitrogen level numbers at the early stages? **David Bennett** said no, because you have to hit the startup time. Within the initial six months of startup and the first 15 bedrooms you would hit the numbers. **David Danielson** said he thinks the data will speak for its self. Reporting would be monthly for a year and then three months of stable value before the reporting could be reduced.

There was a discussion about the rate of growth.

- **Leonard Jason** asked what the rate of growth is in Oak Bluffs and on the Flexible 7.3 By-law.
- **David Danielson** said the by-law doesn't have one that he knows about.
- **Fred Hancock** said the Town Of Oak Bluffs has been playing cat and mouse with Davio (David Danielson) and the MVC.
- **Doug Sederholm** said the rate of growth has not been addressed at all.

Leonard Jason asked if the DEP monitors the reports for the system. **David Bennett** said not if it is below 10,000 gallons per day. Every sample we take we report to Barnstable County.

Leonard Jason asked how many gallons per day is the system designed to handle. **David Danielson** said 6,100 gallons.

Leonard Jason asked if you don't get trapped with DEP coming knocking when you hit a certain tolerance. **David Bennett** said that is for sewage plants. They use a running average so you get relief on any one day. You would have a real concern if you saw a large increase in flow. The issue is that it is going to be pounds produced. The amount of pounds generated yearly will be substantially below the threshold. He used a campground as an example because there is concentrated usage in the Summer for that type of location.

Linda Sibley asked for clarification on performance of the system; the contribution per day is going up and when the requirement for the treatment plant meets each other then the nitrogen contribution stabilizes. **David Bennett** said it is a very slow process. If you see ammonia coming up and you see you have lost the nitrifying component you make subtle changes to meet permit.

Ralph Norton lives in Oak Bluffs and is an abutter. When you talked about building structures and the covenants being followed will the Building Inspector be ensuring that? **David Danielson** said some of them are modifications to zoning code and the Building Inspector will monitor that but will not be enforcing the covenants.

Eric Peters said there was an email last month between Sheri Caseau and David Bennett and he suggested that the Commission look at that. He hopes the MVC will approve the project and thanked the MVC for their consideration.

Sheri Caseau said she has the email from David Bennett and her biggest concern was if the system would work if there were only a few properties connected and he assured that it would. She was also concerned about how the affordable housing units would be affected and how it is handled for an operator. She is satisfied with the system.

John Breckenridge asked that the email be posted on the MVC web site.

Fred Hancock, Public Hearing Officer closed the Public Hearing and the written record. The post public hearing LUPC will be on May 23, 2016 with Deliberation and Decision on June 2, 2016.

James Vercruyse, Chairman recessed the meeting at 8:30 p.m. and reconvened at 8:35 p.m.

3. OAK BLUFFS BOWLING ALLEY CONDITIONS-MODIFICATION DRI 645-M2 CONTINUED PUBLIC HEARING

Doug Sederholm recused himself due to a conflict.

Commissioners Present: T. Barnes, J. Breckenridge, C. Brown, R. Doyle, J. Goldstein, F. Hancock, L. Jason, J. Joyce, J. Malkin, A. Seiman, L. Sibley, E. Thomas, J. Vercruyse.

For the Applicant: Sam Dunn, Erik Hammarlund

Fred Hancock, Public Hearing Officer opened the Continued Public Hearing.

Paul Foley noted the eligible Commissioners; T. Barnes, J. Breckenridge, C. Brown, R. Doyle, J. Goldstein, F. Hancock, L. Jason, J. Joyce, J. Malkin, K. Newman, A. Seiman, E. Thomas, J. Vercruyse.

Fred Hancock noted that those Commissioners that are not eligible cannot participate in the Continued Public Hearing.

3.1 Staff Report

Paul Foley presented the following.

- The Staff Report includes the applicant's offers and their correspondence regarding sound barriers, the parking lot plan, lighting specifications and floor plans and correspondence received by the MVC.

- The applicant submitted revised offers on May 18, 2016.
 - Condition 1.1: The applicant would like to change the opening hour to 8:00 a.m. from 9:00 a.m.
 - 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 30 minutes earlier than the town policy.
 - 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). The applicant has testified that the second floor event space currently has a capacity of 94.
 - Condition 5.5: They would like to remove the restriction on live amplified music. Offers ask for unlimited “trios” and unlimited “larger musical groups (bands)” for client events and bands twice monthly for Barn sponsored events.
 - 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. The request is for a single 20 ft tall lamppost with three LED fixtures facing downwards.
 - Some abutters have requested a sound absorbing fence be installed. The applicant has submitted a letter from their acoustic expert (Cavanaugh Tocci Associates) suggesting they add a 5/8 inch layer of plywood to the back existing stockade fence which could help attenuate the decibels.
 - Additionally the applicant has submitted a sketch for seven parking spaces on an abutting residential lot with a 70 foot curb cut that would have cars backing into Uncas Avenue. This is not part of the DRI so the applicant may re-track.
- Compliance: The project is not currently in compliance with the affordable housing condition that there are two affordable housing units certified by the DCRHA. Two of the HVAC units face a residentially zoned house in violation of 5.9. The number and size of events is difficult to monitor and therefore compliance is not known.
- 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 8.8: 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?
- Letters received after the first public hearing on May 5, 2016 were summarized as noted in the Staff Report. Letters include those in support and those opposed.
- The site photos were reviewed, the outside sign asking to respect the neighbors, the view from the function room overlooking the bowling alley, the function room, the residence abutting the bowling alley, the stockade fence and HVAC units.
- The proposed additional parking plan that may be re-tracked was reviewed and the lamppost with the LED lights was reviewed.

3.2 Applicant's Presentation

Sam Dunn presented the following.

- He would encourage the MVC to read the letters that been ben written on behalf of the bowling alley.
- The bowling alley is important to the Island and that is the main point and these changes have come mostly from our customers.
- We have a \$5 million investment in the project and we really need these changes to get this business into a place that is stable and sustaining. So there is a selfish motive here.
- He thinks the bowling alley deserves a level playing field with the other businesses in town.
- We offered to close earlier noting the Police Chief's concern.
- With regards to the event space usage the nitrate production is a mute-point since we are now tied into the sewer.
- We should be allowed to bolster our business with regards to live music and have a guitar player singing with a microphone to bolster our business. If a client wants to bring a band in for their event such as a wedding they should be able to and we should be able to occasionally have live music for our events.
- In addressing the noise and the fencing our neighbors have noted Mass regulations and we have complied. We are less than 10 decibels above the ambient. There will be some noise. There has to be some objective standard here.
- The neighbors have had one year to come up with something other than we don't like it. We don't think it is fair to have them put the onus on the MVC to make that decision for them.
- We have submitted a letter from our sound engineers that address the sound study. They have noted that the sound leakage can be eliminated by adding a layer of 5/8 inch plywood to the back side of the stockade fence. The neighbors request is unnecessary and a wrong approach regarding the fence. We have agreed to take the existing fences and tighten them up to prevent sound going through them. We are well below the standard and are below 10 decibels and we are willing to correct the fence.
- The parking is where people have been parking for years. We are not saying that we are going to permit the additional parking spaces and it is not an offer. We are just saying that our tenants and employees can park in the adjacent lot and it will be a lesser impact on the neighbors.
- We are hopeful that the lighting matter can be taken up at LUPC.

3.3 Commissioners' Discussion

There was a discussion about the fence.

- **Josh Goldstein** asked if the applicant is going to raise the height of the fence so it covers the handler unit.
- **Sam Dunn** said the handler went on the sides of the building because the MVC would not allow it on the roof. We planted two trees on the neighbor's property to hide them. It is a line of site issue and we will level out the height of the fence.
- **Christina Brown** asked if the applicant can get a special permit to raise the height of the fence.
- **Sam Dunn** said he would ask.
- **Erik Hammarlund** said the applicant does not mind asking but if we can't we can't.
- **Joan Malkin** asked if there is a low fence and a high fence.
- **Sam Dunn** said there is a fence that is 6 to 7 feet high and another that is a couple of feet lower and he believes the maximum height allowed is 8 feet.
- **Christina Brown** noted that what is being asked is to have the fence higher to deflect the sound.
- **John Breckenridge** said this would also have to go before Cottage City to regulate the fence.

There was a discussion about the noise.

- **Priscilla Leclerc** said she visited Peggy Barmore's porch today (May 19, 2016) and there are 1 to 2 handlers higher than the fence and it is pretty noisy.
- **Abe Seiman** said he would be more comfortable if the MVC could get a decibel reading from the closest house to the bowling alley.
- **Fred Hancock** said one was done and the Building Inspector had asked for it.
- **Leonard Jason** asked if the study passed.
- **Fred Hancock** said it did.
- **Joan Malkin** asked what the decibel number was.
- **Leonard Jason** said it would have to be less than 10.
- **Sam Dunn** said the ambient noise at night is around 40- 50 decibels. It was taken when the bowling alley was closed. When the bowling alley was open it was 6 decibels above the ambient.
- **Erik Hammarlund** said the change is 6 decibels when the wood fence is changed to a plywood covered fence.
- **Fred Hancock** noted that it was the MVC condition that the noise be no more than 10 decibels above ambient and the Compliance Committee found the building did what it was conditioned to do. It may not be right but it is compliant.

There was a discussion about the closing times.

- **Joan Malkin** said last call is 30 minutes earlier than the town policy and what time is that.
- **Sam Dunn** said it is 12:30 a.m. in Oak Bluffs on the weekends and 11:30 p.m. during the week.
- **Joan Malkin** asked what time the applicant proposes to close for the day.
- **Sam Dunn** said ½ hour after last call under the liquor regulations.
- **Josh Goldstein** said last call is when the last drink can be served and then there is a ½ hour to clear the tables and then a ½ hour out the door so a total of 1 hour from last call.

Joan Malkin asked how late live music would be played. **Erik Hammarlund** said the applicant is asking for no limitations other than the operating hours.

Christina Brown asked where the HVAC units were in the plan that the MVC approved. **Sam Dunn** said there are two at the extreme end but what is shown was in the original approval.

3.4 Public Testimony

Fred Hancock, Public Hearing Officer noted that if someone has previously testified to please not repeat that testimony. Any letters that have been received have been submitted for the record and asked that the comments be kept succinct.

Katherine Sullivan is speaking on behalf of the Hiawatha Path Condos. The applicant seeks to modify 5 conditions. All of the conditions on the March 20, 2014 Decision were essential. It was clear that the MVC was concerned about the residents. The conditions were to make this situation more tolerable and the applicant was adamant this was a family center and not a bar. It has not had one year of operation before being brought forth the request for a modification. The applicant does not appear to be in compliance with several of the conditions such as the noise. Due to the noise Ms. Barmore had to move her bedroom. 5.2 states solid walls and there are windows and exhaust fans looking into her client's home. In 5.7 no activities are to exceed noise regulations. The HVAC directly faces my client and has an impact on noise. The affordable housing is still not in compliance with those requirements. If the applicant cannot follow the current conditions he should not be allowed to modify the conditions. She had an opportunity to look at the applicant's newest offers. With the event room use, traffic and parking requirements and the amplified music are concerns. There is no actual plan presented for the applicant's proposal for a fence. From the prior noise study the fence should be 10 feet high with solid plates facing towards the abutters to be effective to absorb sound.

- **Fred Hancock** asked for the written copy to be submitted for the record.
- **Katherine Sullivan** confirmed she would.

Maura McGroarty is an Oak Bluffs resident and is not an abutter. Everybody knew the bowling alley was coming and was excited about it and it is a success but it has not been operating for one full year. To know how it is actually operating would require a longer period and to see if it accommodates expansion of the business. It needs more experience under its belt before the applicant asks for expansion of the restrictions. She believes Oak Bluffs extends last call in the summer on the weekends and that should be taken into consideration. The police are concerned about liquor establishments and the changes will make this business more of that rather than a bowling alley. She doesn't think that is what the community wanted. It is an entertainment area and not an alcohol based area and it should be looked at and that should be taken into consideration.

Debbie Milne is in support of the bowling alley. It is a community venue and not just a bar. The bowling alley is packed all the time. Community Services has used it for meetings and it was great. There are leagues and a lot of community things happening there so she asked that the MVC does not lose sight of that. What they are asking to change should be looked at but she doesn't think they are major.

Peggy Barmore said the information from the sound engineer that specialized in bowling alleys is what she looked at. When the study was done did it include the HVAC units and the fact that they face residential units that are in a business district but are clearly a residential use? When Mr. Dunn offered to plant trees we said okay. But when talking to the Building Inspector the applicant offered to do so because he couldn't fit them on his property and the Building Inspector said that was not true. So I called the landscaper and said do not plant them on our property and Sam Dunn received a written and verbal direction not to do so. I went on vacation and came back and the plants were on our property. The propane tanks were relocated to the back of the condo to allow for the parking lot of the bowling alley. The fence that is being proposed will probably increase the vibration and will not cover the handler units. The sound engineer said you want a sound absorbing fence not a blocking fence as it will create vibration noise. She read the statement regarding sound proofing from the sound engineer that substantiated what she had stated about vibration versus sound absorption. With live music it will increase the sound problem. They would like the HVAC equipment relocated off the property line and a sound absorbing fence be installed.

- **Joan Malkin** asked if her sound engineer provided her with a written report regarding the fence.
- **Peggy Barmore** said she did not request a formal report but the Barnetts might have one. We suggested as an option to mitigate the issue with a sound absorbing fence.

Ralph Friedman said in the beginning of the process tonight it was stated that the Commission received a number of letters for and against and he knows that emails were also sent. He asked if those were received as well.

- **Fred Hancock** said the emails had been received and are part of the record.

Steve Auerbach asked what the current closing hours are and what increase is proposed. Is it reasonable to say the applicant will close one hour before the bars close? Would that be reasonable? Regarding amplified music he thinks a guitar/trio would not be an issue but perhaps that could close down earlier than events on the second floor to accommodate the neighbors. He is worried about the increase in the occupancy numbers. It would be an increase of 44 parking spaces needed. Perhaps increased parking spaces could be added to help with the increase in the size of the functions.

3.5 Applicants' Closing Statement

Sam Dunn said the issue and thing with the trees is a he said she said situation. He thought he was doing them a favor. If they don't like them we can take them out. Trees do nothing for sound. An update on the affordable housing is that the tenant is moving out so it is on its way to being resolved.

- **Adam Turner** noted that he is not in compliance and asked what is happening with the other unit.
- **Erik Hammarlund** said the evicted tenants are leaving and the other tenant will move in and then they can rent the second unit.

Sam Dunn continued and said there are no openings or vents on the community side of the building so we are in compliance. With respect to parking this is an issue where no good deed goes unpunished. We have more parking than other businesses in Oak Bluffs. There is no evidence of issues with parking. Not one bad incident related to our business has happened and we are totally clean and no one has been arrested for drunk driving. This entire situation we are asking for on a trial basis. We have volunteered to come back to the MVC in one year. The non-abutter said this sounds more like a bar than a bowling alley. Bowling alleys have failed repeatedly on Martha's Vineyard because they were not comprehensive. They go part and parcel and come together.

Erik Hammarlund said regarding the fence the applicant can raise it to 8 feet where it is 6 feet and will apply to raise to 10-12 feet where the large air handler is.

- **Priscilla Leclerc** said 10 feet might not be high enough.
- **Erik Hammarlund** said if it needs to be 12 feet and they allow that, we will do so.

Trip Barnes said he received a call from his daughter who was having a birthday party for his grandson at the bowling alley and the entire first and second grade was there and they were having a good time.

- **Fred Hancock** said perhaps this is for a later discussion.

Steve Auerbach said he has nothing against a bowling alley he just thinks the applicant needs to be concerned about staying open longer to serve alcohol. The driving force on the liquor part is to keep up with the other liquor establishments and that should not be a focus.

Erik Hammarlund said the applicant hears the concerns and they are speculative. We want a chance to prove that wrong and that this is an outstanding project.

There was a discussion on how to evaluate the trial period.

- **Christina Brown** asked the applicant to suggest what they would use at the end of the trial year to show it is working and what would the MVC use to show that as well.
- **Sam Dunn** said he would think about that.
- **Fred Hancock** said the MVC could review that at Deliberation and Decision.
- **Christina Brown** said she would find it helpful if the applicant's suggestion was an offer on how the MVC evaluates if the trial period was successful.
- **Fred Hancock** felt it was something the MVC could make a determination on during Deliberation and Decision and the Commissioners would be polled to see if it is needed to make a decision.

Leonard Jason asked if the applicant is going to allow bowling if they stay open longer. **Sam Dunn** said bowling drives everything. **Fred Hancock** said the rules still apply. **Sam Dunn** agreed.

Peggy Barmore clarified that it is not just the Hiawatha Path Condo but also other neighbors that want a sound absorbing fence.

Fred Hancock, Public Hearing Officer closed the public hearing.

4. SQUIBNOCKET PARKING LOT RELOCATION-CHILMARK DRI 661 WRITTEN DECISION

Josh Goldstein excused himself from the meeting.

Commissioners Present: T. Barnes, J. Breckenridge, C. Brown, R. Doyle, F. Hancock, L. Jason, J. Joyce, J. Malkin, A. Seiman, L. Sibley, E. Thomas, J. Veracruzse.

Adam Turner noted that throughout the Written Decision that the DRI will be corrected to DRI 661.

There was a discussion about section 5 Conditions, 1 Landscaping section 1.1.

- **Adam Tuner** noted the language “before construction begins” should be revised to “ after... completed” and asked for suggestions on how to revise that language.
- **Fred Hancock** suggested language “after construction of the causeway”.
- **Joan Malkin** suggested language “after construction of the project”.
- **Linda Sibley** suggested “after construction of causeway/roadway is completed” and within a set time should also be added.
- **Leonard Jason** said isn’t that to be approved by the Conservation Commission.
- **Adam Turner** said their concept is that they want to see the appropriate place for landscape once the construction is complete.
- **Joan Malkin** said there should be a period of time to submit the plan.
- **Linda Sibley** suggested revising the language to read within 60 days of completion of the causeway and roadway.

Linda Sibley moved and it was duly seconded to approve the Written Decision as amended.

- **Fred Hancock** asked is there is a Certificate of Occupancy for a causeway.
- **Leonard Jason** said there is not.
- **Fred Hancock** said line 298 to 300 should be stricken.
- **Joan Malkin** noted that the causeway is built first then the Town will do its project, remove the existing road and build the parking lot. The Town will provide the MVC with their plan after completion and removal of the revetment.
- **Linda Sibley** revised her language to read after construction of the parking lot, causeway and association roads.

Christina Brown moved and it was duly seconded to extend the meeting time for ten minutes. Voice vote . In favor: 12. Opposed: 0. Abstentions: 0. The motion passed.

Roll call vote. In favor: T. Barnes, J. Breckenridge, C. Brown, R. Doyle, F. Hancock, L. Jason, J. Joyce, J. Malkin, L. Sibley, A. Seiman, E. Thomas, J. Vercruyse. Opposed: none. Abstentions: none. The motion passed.

5. SQUIBNOCKET FARM ACCESS CAUSEWAY-CHILMARK DRI 338-M2 WRITTEN DECISION

Commissioners Present: T. Barnes, J. Breckenridge, C. Brown, R. Doyle, F. Hancock, L. Jason, J. Joyce, J. Malkin, D. Sederholm, A. Seiman, L. Sibley, E. Thomas, J. Vercruyse.

Joan Malkin said the language on line 191 should be revised to “the location height and...”.

Joan Malkin suggested revising the language on line 285 to “LUPC within 60 days after the later of the completion of the causeway and roadway and the completion of the parking lot at the applicant’s discretion”.

Fred Hancock said line 310 to 312 should be stricken as it was for the Squibnocket Parking Lot Written Decision.

Ernie Thomas moved and it was duly seconded to approve the Written Decision as amended. Roll call vote. In favor: T. Barnes, J. Breckenridge, C. Brown, R. Doyle, F. Hancock, L. Jason, J. Joyce, J. Malkin, A. Seiman, L. Sibley. E. Thomas, J. Vercruyse. Opposed: none. Abstentions: none. The motion passed.

6. WOLF’S DEN PIZZA SEATING-TISBURY DRI 626-M2 MODIFICATION REVIEW

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

Doug Sederholm recused himself due to a conflict.

6.1 Staff Report

Bill Veno presented the following.

- The proposal is to put 8 to 12 seats in a pizza and sandwich shop at 45 Beach Road, Tisbury.
- The applicant is asking to remove Condition 1.2 and be allowed to have 8-12 seats inside.
- There would be no change to the size of the building. The space would be carved out of the Real Estate office.
- LUPC met on Monday, May 16, 2016 and voted to recommend to the full Commission that a public hearing is not required and to approve the minor modification.

Leonard Jason moved and it was duly seconded that the modification does not rise to the level requiring a public hearing. Voice vote. In favor: 12. Opposed: 0. Abstentions: 0. The motion passed.

6.2 Commissioners' Discussion

Linda Sibley said the original Decision said no seating and now the applicant wants seating.

Fred Hancock said it was brought to the attention of LUPC and the applicant came back at another time for the outside seating.

Linda Sibley said there is no delivery and asked why the MVC would prevent that. **Adam Turner** said the applicant did not ask for delivery service.

Leonard Jason moved and it was duly seconded to approve the modifications as presented. Roll call vote. In favor: T. Barnes, J. Breckenridge, C. Brown, R. Doyle, F. Hancock, L. Jason, J. Joyce, J. Malkin, A. Seiman, L. Sibley, E. Thomas, J. Vercruysse. Opposed: none. Abstentions: none. The motion passed.

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

DOCUMENTS REFERRED TO DURING THE MEETING

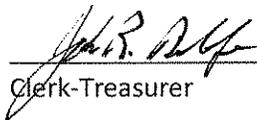
- Martha's Vineyard Commission DRI # 464-M3 Lagoon Ridge Form C Subdivision MVC Staff Report – 2016-05-19
- Letter to the MVC from Bennett Environmental Associates, Inc., Linda J. Pinto, P.E., Project Manager, Re: Peer Review Lagoon Ridge, Oak Bluffs, MA, Dated April 20, 2016
- Letters to the MVC from Alan Robillard, Re: DRI 464 M-3, Dated April 15, 2016 and Applicant Submission Revised 2016-03-30, Dated May 17, 2016
- Decision of the Martha's Vineyard Commission DRI 464-M3 Lagoon Ridge Form C Subdivision
- Site Plan, Lagoon Ridge
- Declaration of Protective Covenants and Agreement for Lagoon Ridge, Draft 4-11-2016
- Martha's Vineyard Commission DRI # 645-M2 Barn Bowl & Bistro Conditions Change MVC Staff Report – 2016-05-19
- Bowling Alley Modifications-Offer, Received at the MVC May 13, 2016
- Letter to Sam Dunn from Cavanaugh Tocci Associates, Subject: Oak Bluffs Bowling Alley – Sound Barriers for AC Condenser, Dated May 13, 2016
- Bowling Alley Plans Received May 18, 2016; Additional Parking, Exhibit C Lighting, First Floor and Second Floor
- Correspondence Received by the MVC for Oak Bluffs Bowling Alley from Danette Thornton, Dated May 7, 2016; Peggy Barmore, Bruce Feng, Martha Feng, Andrew Upton and Alison

Mitchell, Dated May 18, 2016; Additional Correspondence Dated May 18, 2016 from Brooke Bartletta, Doris and Jay Clark, Steven Furtaw, Nathan Thompson, Wendy Jacobs, David Merna, Amy Sullivan, Tom Murphy, Tia Sequeira and Rise Terney.

- Draft Decision of the Martha's Vineyard Commission DRI 661 – Squibnocket Beach Parking Lot
- Draft Decision of the Martha's Vineyard Commission DRI 338-M2 – Squibnocket Farm Access Causeway
- Martha's Vineyard Commission DRI # 626-M2 Wolf's Den Pizza Seating MVC Staff Report – 2016-05-16
- Wolfs Den Pizzeria Applicant Proposal, Dated March 21, 2016, To: Daniel Seidman, Chairman, Tisbury Planning Board, From: James Goff President
- Wolf's Den Pizzeria Seating Plan and Site Plan


Chairman

8-18-16
Date


Clerk-Treasurer

8/24/16
Date