IN ATTENDANCE

Commissioners: (P = Present; A = Appointed; E = Elected)
P    James Athearn (E – Edgartown)
P    John Breckenridge (A – Oak Bluffs)
P    Christina Brown (E - Edgartown)
-    Peter Cabana (A – Tisbury)
P    Martin Crane (A – Governor Appointee)
P    Mimi Davisson (E – Oak Bluffs)
-    Mark Morris (A – Edgartown)
P    Chris Murphy (A – Chilmark)
P    Katherine Newman (A – Aquinnah)
P    Ned Orleans (A – Tisbury)
P    Jim Powell (A – West Tisbury)
P    Doug Sederholm (E – Chilmark)
-    Susan Shea (A – Aquinnah)
P    Linda Sibley (E – West Tisbury)
-    Paul Strauss (County Comm. Rep.)
-    Richard Toole (E – Oak Bluffs)
P    Andrew Woodruff (E – West Tisbury)

Staff:  Mark London (Executive Director), Bill Veno (Senior Planner), Paul Foley (DRI Coordinator),
Jim Miller (Traffic Analyst), Bill Wilcox (Water Planner)

The meeting was called to order at 7:15 p.m.

1. ADOPTION OF MINUTES

Commissioners present: J. Athearn, J. Breckenridge, C. Brown, M. Crane, M. Davisson, C.
Murphy, K. Newman, N. Orleans, J. Powell, D. Sederholm, L. Sibley, A. Woodruff

1.1 December 8, 2005

Christina Brown moved, and it was duly seconded, to adopt the minutes of

1.2 January 19, 2006

Jim Athearn moved, and it was duly seconded, to adopt the minutes of January

1.3 February 16, 2006

Christina Brown moved, and it was duly seconded, to adopt the minutes of
February 16, 2006, with the following changes:

Line 79: corrected comma
Line 400: Add “is”

1.4 May 11, 2006
Christina Brown moved, and it was duly seconded, to adopt the minutes of May 11, 2006, as written. In favor: 8. Opposed: 0. Abstentions: 4. The motion passed.

1.5 May 25, 2006
Christina Brown moved, and it was duly seconded, to adopt the minutes of May 25, 2006, as written. In favor: 7. Opposed: 0. Abstentions: 5. The motion passed.

2. HART PLUMBING: DRI NO. 549M – PUBLIC HEARING (RE-OPENED)
Doug Sederholm recused himself and left the room.

Christina Brown opened the public hearing.

Chris Murphy moved that the minutes of the March 5, 2006, LUPC meeting be entered into the record for this public hearing. In favor: 11. Opposed: 0. Abstentions: 0. The motion passed.

Paul Foley summarized the staff report.

- Permits needed are: a special permit from the Zoning Board of Appeals, and a special permit from the Planning Board for rendering impermeable more than 15% of the property within the greenlands of the Water Resources Protection District.
- The Zoning Board of Appeals has already been granted a setback relief of 19 feet on the east side. They were granted an 11-foot setback, instead of 30 because of the narrowness of the lot.
- The Conservation Commission will review the project after the Zoning Board of Appeals reviews it.
- John Corbo and Susan Sanford wrote a letter expressing concern about increased stormwater run-off onto his property. Amy and Jeff Carignan requested that Mr. Hart plant evergreens as high as the house. The West Tisbury Planning Board wrote that it was inappropriate for them to comment because the project was not in front of them. The Estrellas spoke at the public hearing.
- The regional issues are nitrogen loading, lot coverage, the retaining wall, and local character.
- The applicant has submitted a revised plan.
  - The service road has been eliminated.
  - The buffer will be along the property border rather than along the retaining wall.
  - The retaining wall has been shortened somewhat to accommodate a 50-foot turnaround at the back of the building.
  - The plan accommodates future easements on the property boundary.
  - Three parallel parking spaces have been eliminated; three or four unpaved spaces have been added.
  - Seven or eight mature trees that were going to be cut will be kept.
- A buffer is included around most of the property.
- The plan includes less pavement, with some areas where the applicant would prefer to keep the pavement.

- **Basic nitrogen reduction hasn’t changed, but the applicant receives credit for affordable housing and smart growth so the project falls within the Commission’s basic nitrogen loading limit.**
- With the lot fully paved, it could accept rainfall of .77 inches per hour. Anything over that would overflow into the neighboring property. .77 inches happens once or twice per year. With the amount of paving reduced and the added buffer the property should be able to handle somewhat larger rainfalls than .77 inches.
- A West Tisbury Zoning Board of Appeals representative came to LUPC and spoke.

**Bill Wilcox** said there were some fairly extensive changes to the plan.
- The stormwater numbers have changed with less impervious area. He suggested that a stormwater management plan be submitted to LUPC.
- He had been concerned that there would be erosion when the system overflowed that would clog the soil in the so-called drainage lot. Now there is a stormwater drain and he expects the plan will address the erosion question.
- The Bio-Clerde de-nitrification system is a provisional system and has 50 units installed in the state. He’s not sure that the state will require that nitrogen be tested as one of the parameters in monitoring the system. He suggested that the Commission may want to require that nitrogen be monitored through testing.

### 2.2 Applicant’s Presentation

**Jim Hart** said that Paul Foley explained the major changes.
- The major changes were made to the back of the lot.
- The impermeable area could be just the parking, from Indian Hill to the handicapped ramp.

There was a discussion of the truck ramp.
- **Christina Brown** clarified that trucks would drive in, turn around in the back and then back up to the ramp at the rear of the building. The slope would not be paved at this time.
- **Dick Barbini** clarified that the larger trucks would probably turn around in the upper parking lot and back up toward the back of the building. The smaller vans would use the rear turning area. The plan also accommodates the possibility of connecting to the two possible easements.
- **Jim Hart** clarified that he would be willing to have the ramp specified as unpaved and he would return to the Commission for approval if it needs to be paved in the future.

**Dick Barbini** clarified that the privacy fence, if built, would be up near where the four parking spaces were to have been, but the vegetation and small stone retaining wall might be sufficient; a final landscaping plan will be submitted to LUPC.

**Linda Sibley** suggested that it might be possible to put some trees at the end and suggested looking at where the light comes from on the property and areas that will be in deep shade.

There was a discussion of parking.
• **Dick Barbini** said that they would try to fit the four parking spaces between existing trees. If the parking spaces don’t fit, they’ll eliminate one.

• **Dick Barbini** confirmed that the original approved plan included eight spaces. The current plan includes three spaces for housing, two spaces for employees in the hardware store, and eleven or twelve for hardware store customers, for a total of sixteen or seventeen, plus one handicapped

• **John Breckenridge** suggested approving the plan with eighteen spaces, but suggesting that the applicant put in fourteen and leave the additional four between the trees to add if they find they are necessary.

### 2.3 Public Comment

**Manuel Estrella** suggested that the project should include a border of trees between his property and the applicant’s. Also, there are eleven-foot setbacks from the property line and the plan looks like trucks will be turning closer to the property line than eleven feet.

• **Christina Brown** said that the eleven-foot setback comes out of the West Tisbury Planning Board and should be addressed by the Zoning Board of Appeals when they review and fine tune the plan.

• The applicant isn’t proposing to cut down any trees.

• **Kathy Newman** suggested that the applicant’s landscaping plan, should include the larger existing trees, as well as include vegetation that would act as a screen.

**Susan Sanford**, owner of Vineyard Complementary Medicine and the building at 49 State Road, submitted a letter. She added that she’s excited about the development of the property which will help the aesthetics of the area and business.

• Her concern is that their property that abuts Indian Hill Road is the designated drainage area for the surrounding lots. Apparently, their lot is receiving run-off from the whole surrounding area and their back lot is saturated and the septic is failing. They want to minimize/eliminate any additional run-off.

• She also would like additional buffering where the two properties meet and is concerned about the driveway that extends into the setback.

**Dick Barbini** said the applicant’s intent is to keep drainage on his property.

• Their wastewater numbers show run-off maybe once a year.

• In response to a commissioner’s question, he said that the storm drains on the gravel ramp to the basement would need maintenance. The sediment will have to be cleaned out. When the pea stone is packed enough the sediment will be controllable. Erosion control should not be necessary because the run-off will stay on site.

**Andrew Woodruff** asked for clarification on whether the Vineyard Complementary Medicine lot has been specified as a designated run-off area. **Susan Sanford** said they are trying to figure that out.

**Dick Barbini** said that the final proposal is for a fence along a specific area but not all the way down. The Zoning Board of Appeals will definitely review the fence.

**Mrs. Estrella** said that they have never seen a final plan and she is concerned that there are still plans that aren’t final.
Christina Brown clarified that final landscape plans and drainage plans need to be finalized. The plans have been talked about in concept in LUPC. The approved plans would be final until or unless the applicant returned to the Commission for changes. The Planning Board of Appeals may also make modifications.

Chris Murphy explained that the way the system is supposed to work is that the Commission applies conditions to the project, which become part of the permit issued by the Planning Board. Commission’s condition can’t be removed by the Planning Board. If the Estrellas were to have concerns about the plan, their recourse is through the West Tisbury Zoning Officer.

Christina Brown clarified that the whole board would have seen the concept plan, and that minor changes could be made to the landscape plan by LUPC.

There was a discussion of the screening on the west side.

- Mrs. Estrella commented that they would like a fence on the boundary or some trees to fill in and mask the building. It sounds like the building will be 60 feet tall and the trees are 20 feet tall. They feel they’ll see the building no matter what.
- Dick Barbini said that the applicant would be willing to put a fence where the Estrellas would like it.
- Christina Brown said it would be appropriate to show the final landscape plan to the Estrellas and she encouraged Mr. Hart and the Estrellas to work it out with the right kind of screening. The final plan should be very close to the concept in the presented plan.
- Linda Sibley suggested that the Commission judiciously instruct LUPC to take into consideration the letters and testimony that requested improved screening in the corner. After working with the abutters, the applicant could bring a final plan to LUPC that is helpful to the abutters as well as feasible for the space.

Mark London asked whether, now that the service road is removed from the plan, it would be still be necessary to put a condition about the use of the access road. Dick Barbini said the same condition would apply to the service drive to the basement.

There was a discussion of the Planning Board’s involvement.

- Chris Murphy suggested that staff write a reply to Mr. Douglas’s letter from the West Tisbury Planning Board noting that the referral came from the Planning Board and that its comments might have been very helpful.
- Christina Brown read the March 5th letter from David Douglas, chairman of the Planning Board, for the record, in which he stated that, as the application is not before the Planning Board, it would be inappropriate to comment. The Board believes however, that the project will require a special permit from the ZBA that will assess the intensity of use, parking, landscaping and other concerns. He explained other applicable permits and procedures.
- Paul Foley said he spoke with the Planning Board and they said they have their own state-mandated public hearing process. They want the Commission to do its job and then they can then add or subtract to that.

Christina Brown closed the public hearing.
3. HART PLUMBING: DRI 549M – DELIBERATION & DECISION


Chris Murphy moved, and it was duly seconded, to waive referral to LUPC and go forward with deliberations. In favor: 11. Opposed: 0. Abstentions: 0. The motion passed.

Jim Powell moved, and it was duly seconded, to approve the application with offers dated 2/5/07, with conditions that a landscaping plan and a stormwater management plan be submitted to the approval of LUPC, and that LUPC consider in the landscaping plan the use of evergreens that would grow to the height of the new building along the Carignan, Estrella, and Corbo property line.

Jim Powell clarified that the landscape plan should be based on recommendations discussed at LUPC and should take into consideration the people who live in the area. Mass DEP may enforce consent orders to upgrade denitrification standards in the near future in environmentally sensitive areas.

Commissioners agreed to the following addition to the motion.

The Commission recommends that the development of the four gravel parking spaces be postponed until the need for them is determined and this recommendation should be included in the final landscape plan.

Linda Sibley explained that West Tisbury doesn’t have an eleven-foot setback that applies to roads; it applies to construction. However, the Board of Appeals through its special permitting process can address the appropriateness of the road coming to the edge of the boundary.

Christina Brown moved, and it was duly seconded, that a condition be put on the approval that the approximately 50-foot turnaround for trucks at the rear of the property be designed to the town’s specifications with a minimum of a five-foot buffer to the southern property line.

Dick Barbini confirmed that trucks would still able to turn around with a five-foot buffer.

There was a discussion of the screening relative to abutters.

- Jim Powell clarified that he did not specify any location of trees or fence. He wants the property owners to also express their interest in where they’d like trees and fence and have their concerns worked out through the plans submitted to LUPC.
- John Breckenridge said he believes that vegetative screens in landscaping plans can accomplish the same thing as a fence. But he believes the Commission needs to give guidance about whether it wants to see a landscape buffer or a fence.
- Andrew Woodruff said he believes the motion allows LUPC the flexibility it needs.
- Linda Sibley said that from the point of view of the Commission’s concern of regional impact, it would not be appropriate that a fence to go all the way down to Indian Hill Road.
- Jim Powell said that it’s very important to emphasize that the Harts and abutters will have to all live together.
• **John Breckenridge** recommended that the abutters and applicant have a chance to review the landscape plan when it’s submitted to LUPC.

**Mimi Davison** wondered if there should be a condition related to impervious coverage.

**Christina Brown** stated that the plan the applicant submitted limits the impervious coverage.

**Mimi Davison** wondered whether the Commission should develop a condition based on Bill Wilcox’s recommendations. **Mark London** suggested using Bill Wilcox’s wording.

**Commissioner’s agreed to the following additions to the motion.**

Before a certificate of occupancy is issued, the applicant must submit a stormwater control and an erosion/sedimentation control plan to address the potential erosion of the bank along the eastern property line causing siltation into the abutting drainage lot in the even of large storm events. The plans shall be intended to keep all stormwater on the property. This plan is subject to the approval of the Land Use Planning Committee.

The effluent from the Bio-Clere wastewater treatment system shall be tested on a quarterly basis for at least two years and continued as determined by the West Tisbury Board of Health. Analysis for total nitrogen as well as other parameters shall be performed on all samples as required by the Board of Health of the Massachusetts Department of Environmental Protection as described in Table 5 of the MVC Water DRI Policy.

**Linda Sibley** read the condition on Energy Efficiency and Lighting. As offered by the applicant the project will use florescent lights and Energy Star appliances. As offered by the applicant, outdoor lighting will be downward shielded and will be turned off when the business is closed. She wondered if the exterior lighting plan should come back before LUPC. **Dick Barbini** agreed that it should.

**Christina Brown** read the applicant’s offer that one of the apartments will be permanently deed restricted and suggested adding that it should be affordable in accordance with the West Tisbury by-laws.

**Andrew Woodruff** said that he wants to be on the record that West Tisbury made a mistake when they set up the business district when they didn’t look further at possible traffic impacts on Indian Hill Road. He hopes that in the future, neighbors and developers can look at an alternative access road and he would hope that in the future the town could work to create interior access from State Road that is pedestrian friendly. His major concern is the traffic that could be added by business on Indian Hill Road.

**Chris Murphy** said he would like to see staff codify Andrew’s comments and send them to the West Tisbury Planning Board, noting that the Commission would like to assist them in any way it can.

**Christina Brown** said Mr. Hart’s project is a benefit to the Island and a benefit to up-Island to have a small hardware store available. The location reduces traffic and encourages the local economy, as well as being a convenience.
Mimi Davisson said she’s comparing this to the permitted structure. She is concerned about the density of parking and traffic, especially because there hasn’t been guidance about how they see the area.

Jim Athearn said that it’s a benefit that it is smart growth because it’s business in a business area. It’s also a detriment because it introduces traffic onto Indian Hill Road. It’s too bad that there hasn’t been more visionary thinking about the area with the creation perhaps of a central parking area, which may happen in the future.

Andrew Woodruff said that affordable housing is a major benefit.

Kathy Newman thanked the applicants for staying with the process and for resubmitting the plan.

A roll call vote was taken on the motion to approve the project with conditions. In favor: J. Athearn, J. Breckenridge, C. Brown, M. Crane, C. Murphy, K. Newman, N. Orleans, J. Powell, L. Sibley, A. Woodruff Opposed: M. Davisson. Abstentions: None. The motion passed.

Commissioners took a short recess, at which time Doug Sederholm rejoined the meeting.

4. APPROVAL OF MINUTES (CONT.)


4.1 June 1, 2006
Correction: Page 3 . . . the Commonwealth of Massachusetts
Linda Sibley moved, and it was duly seconded, to approve the minutes of June 1, 2006, as corrected. A voice vote was taken. In favor: 10. Opposed: 0. Abstentions: 2. The motion passed.

4.2 June 29, 2006
Christina Brown moved, and it was duly seconded, to accept the minutes of June 29, 2006, as written. A voice vote was taken. In favor: 10. Opposed: 0. Abstentions: 2. The motion passed.

4.3 September 7, 2006
Corrections:
Line 255 Melissa Norton Vincent
Line 444 . . . is not of critical concern to the region . . .

Linda Sibley moved, and it was duly seconded to approve the minutes of September 7, 2006, as corrected. In favor: 10. Opposed: 0. Abstentions: 2. The motion passed.

4.4 August 24, 2006
Christina Brown moved, and it was duly seconded, to accept the minutes of August 24, 2006, as written. A voice vote was taken. In favor: 10. Opposed: 0. Abstentions: 2. The motion passed.
4.5 November 8, 2006

Jim Athearn moved, and it was duly seconded, to accept the minutes of November 8, 2006, as written. A voice vote was taken. In favor: 11. Opposed: 0. Abstentions: 1. The motion passed.

4.6 November 9, 2006

Correction: Line 260 . . . from

Linda Sibley moved, and it was duly seconded, to accept the minutes of November 9, 2006, as corrected. A voice vote was taken. In favor: 11. Opposed: 0. Abstentions: 1. The motion passed.

4.7 September 21, 2006

Christina Brown moved, and it was duly seconded, to accept the minutes of September 21, 2006, as written. A voice vote was taken. In favor: 9. Opposed: 0. Abstentions: 3. The motion passed.

4.8 Deferred Action on Minutes

Commissioners agreed to defer approval of the minutes of August 10, November 2, November 16, all from 2006, and February 15, 2007.

5. OTHER BUSINESS


5.1 Calendar

March 12th @ 4:30 p.m. and March 15th @ 9:00 a.m: - Oyster Bar Site Visits
March 22nd @ 8:30 a.m. - 15 North Summer Street Site Visit:
April 9th @ 4:30 p.m. – YMCA site visit
May 3rd, 2007 – YMCA Public Hearing
March 9th is the last day to register for the Citizens Planner Training Collaborative Workshop in Worcester on March 17th

5.2 Commission Meeting Schedule

The Charter Commission Committee is meeting twice a month, which may create a conflict for Commission meetings starting at 7:00 p.m. on second and fourth Thursdays. It was agreed that if there are any Commission meetings on the second or fourth of the month, they should start at 7:30 p.m.

No Commission meeting will be held on April 19, which is during school vacation week.

Christina Brown moved, and it was duly seconded to move the regularly scheduled April meeting from the third Thursday of the month to the second Thursday of the month to begin at 7:30 p.m. A voice vote was taken. In favor: 12. Opposed: 0. Abstentions: 0. The motion passed.

Commissioners took a short recess.
6. HART PLUMBING: DRI 549M - WRITTEN DECISION


Doug Sederholm recused himself and left the meeting.

Mark London presented a Written Decision reflecting the Commissioners’ decision to approve the DRI earlier in the meeting.

Commissioners agreed to the following changes:

- Section 4.1 . . . privacy of the abutter.
- Section 4.4 Delete first sentence of 4.4.

Andrew Woodruff would like to instruct LUPC that the fence shouldn’t go all the way to Indian Hill Road. He believed that the decision should reflect that minimum fencing and maximum vegetation are preferred.

Ned Orleans said that the Commission has the ultimate right of approval regardless of what the neighbors and applicant agree to.

Linda Sibley suggested adding to Section 4.4: If there is a stockade fence it shall be set back from Indian Hill Road and where possible, a vegetative buffer is preferred to accommodate the privacy of the buffers on all three of the non-road sides.

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Linda Sibley suggested adding to Section 4.4: If there is a stockade fence it shall be set back from Indian Hill Road and where possible, a vegetative buffer is preferred to accommodate the privacy of the buffers on all three of the non-road sides.

Mimi Davisson moved, and it was duly seconded, that the written decision be accepted as corrected. A voice vote was taken. In favor: J. Athearn, J. Breckenridge, C. Brown, M. Crane, M. Davisson, C. Murphy, K. Newman, N. Orleans, J. Powell, L. Sibley, A. Woodruff. Opposed: None. Abstentions: None. The motion passed.

Commissioners discussed the letter from the West Tisbury Planning Board.

- Chris Murphy said it was a good letter but he feels it’s a cop out; part of the Commission’s work is to get input from the Planning Board
- Linda Sibley said different towns and boards feel differently about the appropriateness of giving comment to the Commission when they themselves have not had a formal public
hearing. Some boards have received interpretation from town attorneys advising them to stay out of the discussion. West Tisbury may be acting out of an excess of caution, but she wouldn’t say their decision is incorrect.

- **Chris Murphy** said he would like to think that the Commission acts in the interest of the towns and his hope would be that the Commission receives as much input as possible. Given a situation where the Commission could influence a decision that could impact the town, the Commission would benefit from having input from the towns.

- **Ned Orleans** said he agrees but he feels that encouraging input needs to be done in a more personal way, not through a letter.

- **Andrew Woodruff** said that when there’s an issue that seems important to a planning board, they usually show up.

- **Mark London** said a Planning Board representative came to the concurrence hearing and staff does send letters to the towns asking them to come.
  - There is a misunderstanding or misapprehension on boards that as soon as they know a project triggers the DRI checklist, they must send it to the Commission and refrain from any further action. In fact, town boards may continue to consider a proposal and even hold hearings. The only thing they cannot do is make a decision before the Commission completes its process.
  - Staff could send a letter again to boards that explains the Commission’s interpretation of the limits and advantages of having town boards expressing concerns. Boards may hesitate to comment specifically on whether or not they would approve, but they may comment about precedents, concerns and town issues.

- **Kathy Newman** suggested that boards might benefit from hearing how helpful it is for the Commission to have input from a Planning Board member when a DRI is being reviewed.

- **Linda Sibley** said it might be appropriate to have the Commission’s attorney comment on his interpretation of Chapter 831.

- **Jim Powell** said it’s also helpful for Commissioners to attend other boards’ meetings. He benefited from listening to West Tisbury Planning Board meetings.

- **Christina Brown** added that letters about the checklist have gone to town boards; she encouraged Commissioners to talk with town boards about the DRI checklist.

- **Linda Sibley** said the notion that the particular project has to be before a board could be dispelled. Tisbury’s Planning Board gave impassioned testimony on a project that the Planning Board was not going to be able to review.

- **Martin Crane** cautioned that too much interpersonal contact could be construed as an erosion of transparency.

- **Linda Sibley** clarified that the interpersonal connection should be accomplished through attending planning board meetings.

- **Mimi Davison** said there was some frustration that West Tisbury hadn’t done more planning beyond stating this was a commercial area. She wondered how the Commission has helped and could help West Tisbury think through commercial issues such as access.

- **Mark London** said he has met with West Tisbury officials and will have a follow-up meeting. They are currently focused on North Tisbury, but they also feel that it would have been desirable to have had more of a plan for the Business District.
• Linda Sibley explained that this area was designated at the beginning of zoning. At the time there were a few small businesses in the area. It was a different time.

The meeting adjourned at 10:00 p.m.

[Signatures]

Chairman

Clerk-Treasurer

[Dates]

8-31-09

5-31-07