Minutes of the Commission Meeting
Held on December 15, 2011
In the Stone Building
33 New York Avenue, Oak Bluffs, MA

IN ATTENDANCE

Commissioners: (P= Present; A= Appointed; E= Elected)
P Bill Bennett (A-Chilmark)
P John Breckenridge (E-Oak Bluffs)
P Christina Brown (E-Edgartown)
P Peter Cabana (E-Tisbury)
P Martin Crane (A-Governor)
P Erik Hammarlund (E-West Tisbury)
P Fred Hancock (A-Oak Bluffs)
P Leonard Jason (A-County)
P James Joyce (A-Edgartown)
P Chris Murphy (E-Chilmark)
P Katherine Newman (E-Aquinnah)
P Ned Orleans (A-Tisbury)
P Camille Rose (A-Aquinnah)
- Doug Sederholm (E-Chilmark)
P Linda Sibley (E-West Tisbury)
Brian Smith (A-West Tisbury)
- Holly Stephenson (E-Tisbury)

Staff: Paul Foley (DRI Coordinator), Bill Veno (Senior Planner), Jo-Ann Taylor (Coastal Planner DCPC Coordinator), Michael Mauro (Transportation Planner), Sheri Caseau (Water Resources Planner)

Chairman Chris Murphy called the meeting to order at 7:05 p.m.

1. MEETING MINUTES


Minutes of December 8, 2011

Fred Hancock moved and it was duly seconded to accept the minutes of December 8, 2011 as written. Voice vote. In favor: 11. Opposed: 0. Abstentions: 2. The motion passed.

2. 426 STATE ROAD (SIBLEY MIXED USE) (DRI-77-M3) - MODIFICATION REVIEW

Linda Sibley recused herself from the agenda item concerning DRI-77-M3 and left the room.

For the Applicant: Doug Hoehn (Agent), Simon Bollin (Assistant to Applicant).

2.1 Staff Report

Paul Foley gave an overview of the project:

- The applicants are Linda and Donald Sibley, represented by Doug Hoehn (Agent) and Simon Bollin (Assistant to Applicant).
- The project location is 426 State Road, Tisbury Map 22 Lot 8.
- The proposal is to relocate Vineyard Electronics from its current location on State Road and renovate and create a mixed-use building at 426 State Road in the building that formerly housed Vineyard Home Center. Two year-round, three-bedroom apartments would be created on the second floor. Space is to be rented in the back for light manufacturing or warehouse uses.
- There are two main sections to the existing building:
  - A shingled, two story building in front (approximately 3,280 square feet footprint) which has housed retail on both floors.
  - The retail would now only be on the first floor but split among two units. One retail unit of 1,500 square feet may be rented to a possibly high trip generating use.
  - Attached to the back is an unfinished steel-framed, metal sided structure (7,445 square feet footprint).
  - 1,500 square feet of the back metal building will be renovated into finished active office storage space for the front retail. The rest would be light industrial/warehouse.
- The total building is approximately 13,800 square feet with a 10,725 square feet footprint (not including the porticos). 3,280 square feet of retail on the second floor of the front building will be converted from retail to apartments. The apartments will be offered for no more than the maximum rate approved by the DCRHA for a family of four at 80% Area Median Income.
- There will be a decrease in the amount of retail, and the light industrial/manufacturing has less traffic impact than existed with the previous retail use of the property.
- The Land Use Planning Committee (LUPC) voted unanimously on December 5, 2011 that this modification does not require a public hearing review as a Development of Regional Impact (DRI) given that the project should result in fewer vehicular trips, less hardscape, aesthetic improvements, better landscaping and screening, two affordable housing units, and has detailed offers.
- The Applicant will landscape with native trees, shrubs, grasses and perennial flowers. Planting beds will be designed and vegetated to hold run-off. The Applicant has also made standard MVC offers regarding fertilizers, insecticides and herbicides.
- The Applicant has offered the following with respect to lighting.
  - Lighting in the parking lot will be low, downward shielded and turned off after the close of business.
- Lighting for apartment entrances will not exceed what is required by code and may be left on at night.
- Lighting on the building will be downward shielded and turned off after the close of business.
- Any security lighting will be motion sensitive and not left on continuously at night.
- Leases will require commercial tenants to restrict interior night lighting to no more than 20% of full capacity and utilize interior motion sensitive security lighting if necessary

- The office and storage space to be developed will be heavily insulated. Appliances in the apartments will be ENERGY STAR certified.
- The Applicant is replacing the pre-1970 septic system with a new Title 5 septic system and will install a Bio-Fast system or equivalent de-nitrification system.
- The estimated nitrogen load for the proposed project with two, three-bedroom apartments and a de-nitrifying system would be 21.99 kg/yr (this calculation includes the runoff) and is less than the previous use.
- Trip generation would be less with the proposed use than the previous use at this location.
- The Applicant will be dedicating more space to parking than the previous use.
  - The Town of Tisbury Zoning Bylaw for a B-11 District requires one space per 150 square feet of retail space. In making this calculation, 20% is deducted from the floor area. Based on this requirement, a total of 26 spaces would be needed for the new retail.
  - The combined uses require 33 spaces according to zoning.
  - The Town zoning also allows the ZBA to allow a reduction of one-third of the calculated required parking spaces and also allows the ZBA to allow half of the required parking to be off-site if within 1/10th mile.
- The metal building will be shingled and they plan to close-in the portico on the southwest side of the building.
- The windows on the front of the building will be altered to reflect residential use on the second floor and a more standard commercial storefront on the first floor.

2.2 Applicants Presentation

- Doug Hoehn stated that Paul, as usual, covered it all. Doug added some information regarding the parking:
  - Spaces on the north side of the building are intended for use by the apartments.
  - The Applicants believe that the 33 spaces required by the Tisbury Building Inspector exceed the actual need. If this proves to be true, the Applicant may replace some of the gravel lot with grass, while still holding the spaces open for overflow parking.
2.3 Commissioners’ Questions

Chris Murphy stated that the purpose of the proposed Modification Review is to determine if the project rises to the level which requires a Public Hearing and if not, are the proposed modifications acceptable.

James Joyce asked if there would be a change to the building by adding the apartments. Simon Bollin replied there would not be and that only the portico is being framed in.

John Breckenridge asked if the Town of Tisbury eventually sewers the area, would the Applicant hook into it. Doug Hoehn replied that it was not in the offer due to implementing the de-nitrification system. Simon Bollin stated that it could be added to the offers. As soon as the sewer was available they would be willing to hook into it. Erik Hammarlund suggested that the MVC allow the applicant a year or two to hook into the sewer.

Fred Hancock felt the trip generation report was confusing. Mike Mauro stated that looking at the retail trip estimates from the Institute of Transportation Engineers (ITE) trip numbers, the proposed use is substantially less than estimates of the previous use; 260 vs. 623. The total proposed uses of the building are still somewhat below the estimated previous use; 604 vs. 623. Doug Hoehn noted that the Applicant had initially intended to offer a threshold amount of trips to stay within, but that the estimates are not precise. Instead, they are relying upon the estimates saying the proposed uses will be less than the previous use, and any changes in use will come back to the full Commission.

Bill Bennett asked what is meant by light industrial use. Simon Bollin replied that 3,500 square feet will be a screen printer.

Bill Bennett moved and Christina Brown seconded (for purposes of discussion) that the MVC review the proposal as a Development of Regional Impact due to questions about nitrogen loading, traffic, and the change of use and the numerous offers.

- Bill Bennett believes that the Modification needs to be looked at due to the numerous changes.
- John Breckenridge said that the LUPC wrestled with this Modification. It looked at the positive aspects: removal of a considerable amount of hardscape, adding a de-nitrification system, and the added housing factor. In every step of the way the LUPC found that the project was dotting the “i”s and crossing the “t”s in a positive way.
- Bill Bennett asked if the Commissioners felt that the LUPC reviewed every aspect and the Modification was addressed in the same way that the Commission would. If the Modification is not addressed as a DRI it avoids a public hearing and many factors need to be looked at in a public forum.
- Fred Hancock noted that without the addition of the affordable housing, this project could go forward without the review of the MVC. The fact that the Applicant is willing to come forward to the MVC for a review process indicates goodwill.
- Bill Bennett asked if what is being stated is: that the Commission does not need to look at the issues because the LUPC has addressed them.
Chris Murphy noted that with the current situation, Vineyard Electronics could move without coming before the Commission. The mixed use factor triggers it coming to the Commission and the mixed use is a good benefit. LUPC felt it did not need a review. Bill Bennett asked the Applicant if they had to go to public hearing review, are they willing to go to review with the affordable housing. Simon Bollin replied yes and noted that Linda Sibley did not present the project before the LUPC. Doug Hoehn asked that Linda Sibley not be penalized and held to a higher standard just because she is a Commissioner. Kathy Newman asked Bill Bennett if there was a review, what part did he think was questionable that would require a public hearing, since it is just the affordable housing that brings it to the Commission. Bill Bennett noted that he had already stated the reasons he felt it required review and it is a highly visible location with a list of changes to occur. Peter Cabana noted that a similar motion was brought forward at LUPC, but after analyzing the merits it was determined it did not need a DRI review. LUPC did a thorough review. Ned Orleans is concerned that the television audience will get the wrong idea of the role of the LUPC and the process it goes through to make its recommendations. The LUPC does an extensive review and it determined unanimously that the modification did not require a public hearing. Erik Hammarlund asked if this wasn’t a standard process for the LUPC. John Breckenridge stated that the LUPC helps an applicant prepare for a potential public hearing. If the applicant is suggesting or if the discussion moves in the direction of a modification without a public hearing, the LUPC wants to ensure that all details are in writing. Erik Hammarlund asked if the Commission was setting a precedent by not referring to a public hearing due to the large number of offers that were presented. Chris Murphy replied it was not and that the Commission is not doing anything that has not been done before. Leonard Jason thought Bill Bennett may be hung up on the offers and noted that the modification is not going to generate more traffic than the lumber yard. Bill Bennett felt that it would be better presented in a public forum.

Voice vote. In favor: ?• Opposed: ?• Abstentions: 0. The motion did not pass.

Fred Hancock moved and it was duly seconded to recommend to the full Commission that this modification does not require a public hearing review as a Development of Regional Impact (DRI) given that the project should result in fewer vehicular trips, less hard scape, aesthetic improvements, better landscaping and screening, two affordable housing units, and detailed offers. Bill Bennett stated there is a lot of confusion about the traffic analysis. Christina Brown noted that the traffic report has comparatively good numbers. Mike Mauro clarified that the confusion appeared to be about the definition of what a trip is with regard to the ITE standards vs. a round trip and it is now clear. Christina Brown noted
that in lessening the traffic and with the minor parking change to the building, there is no regional impact.

**Voice vote. In favor: 11. Opposed: 1. Abstentions: 0. The motion passed.**

John Breckenridge moved and it was duly seconded to approve the modification, accepting the Offers including tying into the wastewater treatment plant should it become available. Roll call vote. In favor: B. Smith, C. Rose, N. Orleans, K. Newman, J. Joyce, L. Jason, F. Hancock, E. Hammarlund, P. Cabana, C. Brown, J. Breckenridge, B. Bennett. Opposed: none. Abstentions: none. The motion passed.

Linda Sibley returned to the meeting.

### 3. BIZARRO/ABC (CR) 6-2011 CONCURRENCE REVIEW

Brian Smith recused himself from the discussion of the Bizarro/ABC concurrence review and left the room.

**Commissioners Present:** B. Bennett, J. Breckenridge, C. Brown, P. Cabana, E. Hammarlund, F. Hancock, L. Jason, J. Joyce, C. Murphy, K. Newman, N. Orleans, C. Rose, L. Sibley.

**For the Applicant:** Monte Bizarro (Owner), Christine Ewing (Agent), ABC Disposal (Tenant).

#### 3.1 Staff Report

Paul Foley presented the Staff Report.

- The project location is Pine Hill Road off of Dr. Fisher Road, West Tisbury Map 21 Lot 12.1.
- Project History:
  - The original owner of the property, Mr. Williams, did a Form A that divided Lot 12 into three once acre parcels several years ago. That subdivision triggered the MVC DRI Checklist but was not sent to the MVC.
  - This property was then sold to Mr. Bizarro, who parked trucks and refuse containers in a fenced-in area at the rear of the property. The property has a driveway off of Pine Hill Road. Other than the driveway, the property had a 100 foot vegetative buffer along Pine Hill Road.
  - Within the last few years, Mr. Bizarro sold his business to ABC Disposal Service Inc., of New Bedford. ABC now leases that portion of the property from Mr. Bizarro who now works for ABC. ABC currently uses the site to store empty garbage containers and one truck.
  - In 2010, Big Sky Tents (DRI 618-M) was approved with conditions to build a 9,600 square foot building on the abutting middle of the three one acre lots. However, the approval has not yet been acted on.
  - During the public hearing for Big Sky Tents, a 12-foot easement along the western property boundary was created for use by the Bizarro lot in order to decrease vehicular activity along Pine Hill Road.
- Pine Hill Road is designated in West Tisbury Town By-Laws as a Scenic Road.
• The proposal is to clear and fence an additional 9,025 square feet (95’ x 95’) on a one-acre site to store dumpsters and roll off containers of ABC Disposal Service. The site already houses ABC Disposal Service within a stockade fence covering an area approximately 19,000 square feet (43% of the approximately 43,995 square foot property).

• With the new enclosure approximately 28,025 square feet (64%) would be within the stockade fences and 15,970 outside the fences. There is no limit on the number of containers. The Applicant estimates 50 containers would fit on the site. The site would be used for dead storage.

• The Applicant proposes to maintain a minimum 25-foot vegetative buffer between the new fenced area and Pine Hill Road (with the exception of the existing driveway).

• The property is in the National Heritage Endangered Species Program (NHESP) Priority Habitat of Rare Species.

• NHESP said in an email dated December 15, 2011 that the applicant will need to submit a new MESA checklist for this work.

• There will be no lighting. The property is not connected to electricity.

• The Applicant has said they will back all commercial vehicles in at the end of the day in order to contain the loud beeping noise when backing up trucks so as not to occur in the morning.

• The containers are sanitized but they are not allowed to be cleaned on site since no garbage is allowed on the site.

• LUPC recommend by a vote of five to two that the Commission not concur that this is a proposal that requires a public hearing review as a Development of Regional Impact.

3.2 Applicant’s Presentation

Christine Ewing stated that Paul had covered the proposal in detail and it is simply a use for storing containers. Pine Hill Road would still be used for access. The town had previously approved Bizarre for storing up to seven trucks along with containers. Although only one truck is currently stored on the property, the Applicant retains the authority to store seven vehicles.

3.3 Commissioners’ Questions

Linda Sibley asked if traffic will be lessened. Paul Foley said that if they only retrieve 1-3 containers a day it would be less traffic than when they had trucks coming and going. However, there is nothing that limits them to the 1-3 container retrievals a day.

Paul Foley added that the easement that was put through the Williams/Big Sky property was intended to remove as much traffic as possible from Pine Hill Road which is an historic way. At the time the MVC was told that Bizarre had verbally agreed to use the easement but there is nothing in writing that forces them to use it. They prefer to retain their current legal access off of Pine Hill Road since they have invested some money into it.

Kathy Newman noted that in their referral letter the West Tisbury Planning Board felt the proposal was appropriate and that they could handle it.

Christina Brown added that the West Tisbury planning requires that the project goes through the Site Plan Review. Paul Foley said that Site Plan Review was only advisory.
John Breckenridge noted that at the LUPC meeting, the concern was that the 95’ x 95’ expansion does not have a regional impact, but the abutting Big Sky Tent proposal was crafted to have exposure to Dr. Fisher Way. He asked the applicant if they would be willing to use the easement to Big Sky and Christine Ewing confirmed they would.

Linda Sibley stated that some site reviews are strictly advisory and other have more “teeth” to them.

Erik Hammarlund asked if he needed to recuse himself since he was a member of the Planning Board. Linda Sibley stated it was okay to serve on both and the Commission has previously had similar instances.

Tony Peak of the Tisbury Planning Board stated that site reviews were introduced to the Island by the MVC in the coastal District of Critical Planning Concern and in many cases the Planning Board is also the Site Plan Review Board. Site Plan Review is conducted differently in different towns, but ultimately it is only advisory.

Chris Murphy asked if anyone objected to hearing comments from the public, to which some Commissioners expressed objection.

Ned Orleans asked for clarification of why the application triggered the DRI Checklist. Paul Foley replied that the Town considered it an increase in intensity of use because more land area is being used.

Linda Sibley did not want to discourage town boards from sending issues to the MVC, but this proposal clearly indicates that the actual increase in use will be negligible, even if all nine trucks are again stored on the property.

Christina Brown moved and it was duly seconded that the proposal is not a Development of Regional Impact and does not have regional impact and the issues will be dealt with by the West Tisbury Planning Board. Voice vote. In favor: 12. Opposed: 0. Abstentions: 0. The motion passed.

Brian Smith returned to the meeting.


For the Applicant: Reid A. (Sam) Dunn of the Ferryboat Village Partnership (FVP).

Linda Sibley, Hearing Officer, reconvened the Public Hearing of DRI-485-M7, the Tisbury Marketplace Theater.

Chris Murphy noted that staff had answered his question regarding the appropriateness of reviewing before the Applicant had filed for a building permit and since then the Applicant has filed for the building permit.

4.1 Staff Report

Paul Foley gave an update:
• The Applicant has presented additional offers.
  - The building will exceed the Massachusetts Energy Code by 20%.
  - Runoff from the roofs and from the adjacent unpaved parking area will be led to the swale under the building. Decks and porches attached to the building will be constructed of untreated wood spaced to allow percolation of rainwater into the soil.
  - The Applicant will make his best effort to reverse the flow in the parking lot at the Tisbury Marketplace. This would require a majority vote of the Condominium Association. The Applicant has raised the issue with them but it has not yet been acted upon.
  - During the summer, movies will not begin until 7:30 p.m., and upon a majority vote of the condominium unit owners the Applicant will extend this period to run from June 15 to the second week of September on the day prior to the applicant's film festival.
  - They will have a parking attendant on site prior to the 7:30 p.m. summer showings to direct movie goers to the rear lot.

• The MVC has received a letter from the Tisbury Fire Chief (John Schilling) and correspondence from Steve Auerbach and Suki de Braganca. The Fire Chief said this proposal would not affect his ability to fight a fire at the Tisbury Marketplace.

• The Building Inspector originally sent the project to the MVC based on a letter of intent from the Applicant. The Applicant has since filed a building application to the Building Inspector.

• The Building Inspector has suggested that eliminating the entire center island, formerly a leaching bed, and converting it into a landscaped pedestrian way could improve vehicular flow and pedestrian safety.

• There are no parking requirements in the Waterfront/Commercial Zoning District. However, the Building Inspector has indicated that since this is an expansion of a pre-existing non-conforming structure, the Town may impose parking requirements on the project.

• Leonard Jason had requested a copy of the original 1983 agreement between the Ferryboat Village and the Conservation Commission.

• There was an order of conditions because the project was in a low lying area and they are no longer binding. It is now obsolete because the Tisbury Marketplace is attached to the sewer. The raised leaching field was successful during its time but it is no longer necessary.

4.2 Commissioners’ Questions

Chris Murphy asked what the parking requirement is. Ken Barwick, Tisbury Building Inspector, stated that because it is an expansion of a pre-existing non-conforming structure it does trigger parking requirements. Chris Murphy noted that is concerning, the MVC cannot approve something that is not legal in the town. Paul Foley stated that the Applicant can request a special permit from the Town to obtain a one third reduction.

John Breckenridge noted that 95 spaces are required unless a special permit is obtained.
Linda Sibley noted that the national standard for this size theater is approximately 52 spaces and asked if this is a different issue for the town and asked if 95 are spaces required. Paul Foley confirmed that staff calculated the number of parking spaces based on national standards since the Waterfront/Commercial District has no parking requirements. He added that if based on the non-conforming status the Town determines they need 95 spaces, the applicant could request a special permit for one-third less than that, which could be accommodated on the site in the evening hours.

Sam Dunn disagreed with Ken Barwick. Chris Murphy stated that the Commission cannot interject between the Applicant and the Building Inspector. Ken Barwick noted that with the recent building under construction, the Planning Board issued a special permit regarding the non-conforming nature of the parking lot. If additional parking is required, it would require a Planning Board review to the current special permit. Sam Dunn said that the special permit was never used and it was to move some of the parking on the site and there are no parking requirements in this zone.

Leonard Jason questioned the conditions of the original agreement. Sam Dunn noted that because the Tisbury Marketplace is now on sewer there is no leaching into the wastewater system. Leonard Jason felt that the conditions may be limited and was concerned about hydrocarbon runoff which can be a result of the parking lot and noted that anytime you make a change both parties have to agree. Paul Foley noted that they cannot create anymore impervious surfaces. Sam Dunn stated that parking on gravel is not on an impervious surface and not over the 50% and was non-conforming because the new regulations state you can only use 10% of the property as parking.

4.3 Testimony from Public Officials

Ken Barwick noted that removing the raised leach bed may provide better safety by creating a pedestrian walkway. He also noted that if there is a change in use, the Applicant is subject to review by the Planning Board. If the Applicant has the ability to remove the leased parking spaces and if they are given back to the condominium association, that would provide more spaces for the theater’s use. These are only suggestions.

Tony Peak of the Tisbury Planning Board noted that this is a heavily traveled traffic way of the Island. The traffic events that happen in this small area make him believe it has regional impact. He questioned the control Mr. Dunn has on the parking and the lack of control of the parking is his own creation. Mr. Peak felt Mr. Dunn should be held accountable for mediation. Mr. Dunn does not own the land but he has maintained control of the property and there are 26 separate tax entities on the property. There comes a point when you can only agree to what new uses are being presented and he is concerned that without phase one completed and its demonstrated use, having phase two introduced is not a good idea without some mediation. What happens if it fails, what is the recourse? Christina Brown asked Mr. Peak what his recommendation or bottom-line is. Linda Sibley asked if he was speaking for himself or for the Planning Board since he was speaking in generalities. Tony Peak said he was speaking for himself and that the condominium association should be involved. This should not go forward without concrete remediation and he would suggest that the project be postponed.
Ned Orleans pointed out to Mr. Peak that he is not alone in his thoughts. He is also concerned with what happens on Beach Road at the point of entrance to the Tisbury Marketplace. The offers have included having a parking attendant but that does not deal with the traffic entry point issue. He thinks the direction of traffic flow should be reversed. He added that in all of the years he has been using the Tisbury Marketplace he has never had a problem finding a parking space.

Tristan Israel of the Tisbury Board of Selectman spoke for himself. He noted that what Richard Paradise has brought to the town is wonderful; however, he is concerned about trip generation on Beach Road. It is a mess because there are successful ventures such as the Net Result. If plausible there should be a traffic plan for egress and ingress. Perhaps hiring a traffic cop would be successful. The impact on Beach Road is constant. He is not speaking against the project but if the project happens, traffic needs to be reviewed.

4.4 Public Testimony

Phil Combra noted that the Fire Chief said there would not be a need to utilize the back area for fighting a fire for the Marketplace; however it was used in fighting the Maciel Marina fire. He noted that there are two restaurants on Main Street and the Marketplace has three. It is time to stop taking business away from Main Street.

Beebee Horowitz noted there is an agreement that she and Sam put together dated December 4, 2011 that all condominium owners signed. Sam signed a letter that the parking that is depicted on the plan will be constructed prior to occupancy. We are trying to settle existing parking issues and crosswalks and making them work now. She encourages the MVC to allow the Tisbury Marketplace to absorb what is being done now and then move forward.

Tristan Israel noted that this is a failed road now.

4.5 Applicant’s Presentation

Sam Dunn turned it over to Richard Paradise.

Richard Paradise noted that he is not an applicant but a potential tenant and not a condominium owner.

- Traffic is a major concern and he has sat in traffic in many places on the Island and mostly in the summer.
- Studies note that parking and traffic is at its worst at midday.
- The plan is to have screenings in the evening at 7:30 p.m. and the heat of the traffic situation should be dissipated by then.
- Jeff Kristal of the Tisbury Board of Selectman noted that this is a positive thing for downtown. Downtown is not just Main Street.
- The national average for occupancy in a theater is 20%. That would be 38 patrons in a 190 seat theater.
- A 190 seat theater fits the configuration and it is designed to accommodate a special instance for when it may be needed.
- Some patrons will walk or car pool or bike to the theater. So even with a sold out showing we will not see 190 cars.
There is a difference between a profit and non-profit theater. Non-profits give back to the community. We do not have a permanent home which will provide a quality presentation.

- The majority of the correspondence received is in support and only 10% is not in support.
- The business plan is based on 26% occupancy to sustain as a non-profit.

Linda Sibley asked why they are building a theater so large if they only anticipate 26% occupancy. Richard Paradise stated that the footprint accommodates it with stadium seating and they have hopes that at times it will sell out.

Phil Combra asked if it was possible to put the theater in the building that is currently under construction.

Sam Dunn asked the MVC where we go from here if the Hearing is closed tonight as well as the zoning questions regarding using the old zoning law. Linda Sibley noted that his zoning question is not for the Commission. We have to find that it meets zoning unless there is an educational exception.

Sam Dunn noted that the MVC has a nine member quorum for this DRI and wants to ensure they will be on the Commission and not leaving at the end of the year. Paul Foley confirmed that Peter Cabana and Erik Hammarlund are not eligible for this DRI. Linda Sibley said that unfortunately the Commission cannot control this issue.

John Breckenridge asked if the project is not successful what happens to the theater that has stadium seating. Sam Dunn said the seating is built on a flat platform and it can be converted.

Leonard Jason noted that he would like to hear from the Conservation Commission.

Linda Sibley continued the Public Hearing for the purpose of receiving additional written comments until January 5, 2012.

Chris Murphy recessed the meeting at 9:15 p.m. and reconvened at 9:20 p.m.

5. ISLAND ROAD DCPC - AMENDMENTS - CONTINUED PUBLIC HEARING

Erik Hammarlund and Peter Cabana excused themselves from the meeting.


Fred Hancock, Hearing Officer reconvened the Public Hearing continued from December 8, 2011, of amendments to the Island Road DCPC. The MVC has received correspondence from the West Tisbury Planning Board in favor and the Edgartown Board of Selectmen supporting the amendments except for the DRI referral. He asked if there was any new public testimony to be presented.
5.1 Public Testimony

Ben Hall Jr. presented the following.

- He submitted a copy of the 2008 Cozy Hearth decision of the Housing Appeal Committee which discusses how Watcha Path is affected. Fred Hancock noted that the hearing does not consider Watcha Path.
- He noted that there is no provision for turnouts and the safety issues presented.
- Proposed adoption of the findings that the "ways" are public would put restrictions on the public ways.
- The MVC guidelines restrict any pre-existing uses.
- The MVC is now proposing a new special permit that may need to be mandated by the town. This is unconstitutional and against the law.
- Prohibiting vehicular access to existing lots violates the uniformity requirements in Section 40A.
- The MVC has no testimony that these ways are 12 feet or less, so how can this restriction be put into place.

Jo-Ann Taylor, at this point, noted that he was referencing but not reading from a decision, and asked him to identify the new document from which he had been reading since the reference to turnouts. Ben Hall, Jr. identified the document as his own brief, the memorandum in support of the plaintiff's motion for summary judgment against the Town of Edgartown filed in July 2010. Bill Veno noted that Mr. Hall is repeating what is being litigated in court. He stated that raising them here will not decide those legal issues.

Ben Hall Jr. said the record has to be reviewed and the public that is impacted by the decision must be allowed to present the issues. Bill Veno asked if the references could be submitted for the record. Ben Hall Jr. said the briefs are long and he is summarizing and not submitting the testimony.

Ben Hall Jr. continued his presentation, reading from his brief filed in June 2010.

- What the MVC is potentially proposing to do is to create guidelines that for a forbidden purpose would take rights by imposing a District of Critical Planning Concern.
- There is a lack of an agricultural exemption and agricultural uses require vehicular use.
- Licensed drivers have a right to operate on public ways. Imposing a restriction is in violation of Chapter 90.
- It is illegal to restrict a public way.
- He objects to the proposed layout of alterations for guidelines for development [that was part of a handout for the December 15, 2011 hearing]. They should have been included in the public announcement.
- He objects to the grandfathering that is in the amendments for the December 15, 2011 hearing, as it appears the MVC is nullifying the existing guidelines.
- He noted the amendments violate the uniformity principal.
- He urges the MVC to refrain from adopting these changes and if the Commission is considering adoption then to review his draft of the proposed amendment.

Minutes of the Meeting of the Martha's Vineyard Commission, December 15, 2011
5.2 Staff Report

Jo-Ann Taylor gave an overview:

- The recommended amendments are proposed by the Island Road DCPC Committee after seven weeks of review and discussion. The amendment proposal is a Commission action with no specific time limit. The Commission may choose to vote for some, all or none of the amendments, and is to be guided in its decision by the instructions for designation in Section 8 of Chapter 831 (the Act) which states:

  "In its designation of a District of Critical Planning Concern the Commission shall specify why the area is of critical concern to the region, the problems associated with the uncontrolled or inappropriate development of the area, and the advantages to be gained from development of the area in a controlled manner. The Commission also shall specify broad guidelines for the development of the District. The issuance of such guidelines shall be based on, but need not necessarily be limited to, the following considerations:........ (d) that development of the District will not result in undue harm to cultural, economic, or historic values."

- There are two different purposes for the Amendments.
  - Section 4 describes how the special ways meet the DCPC qualifications;
    - The proposal clarifies that ways in need of protection may be nominated and designated regardless of their public access status.
    - Section 4.12 describes how the Special Ways meet the specific criteria for designation as a Cultural or Historic DCPC.
  - Section 5 updates the goals and guidelines for development, which then form the basis of town regulations to govern the District.

- Regarding grandfathering of existing regulations, include the statement "the amended Goals and Guidelines apply prospectively to regulations adopted after the date of this vote. Existing regulations that the Commission has determined conform to prior Island Road DCPC Goals and Guidelines are grandfathered and remain in full force and effect."

- Regarding grandfathering of uses within the Special Ways Zone, amend Section 5 V B Permitted Uses part 1. (a) to read "the Special Way is identified as having provided the vehicular access for a specific development approved for a development permit prior to the Commission’s acceptance of the special way nomination, provided that the development permit for such development is in effect at the time of development."

- If the 1975 guidelines are kept without amendment, the following will remain in place;
  - There is no provision for width greater than 12 feet.
  - Permitted uses include those that do not result in direct vehicular access to the way.
  - Special permitted uses include those that result in direct vehicular access.

Fred Hancock closed the Public Hearing.

Chris Murphy asked if the MVC can postpone the Deliberation and Decision. Jo-Ann Taylor said that Deliberation and Decision does not have to be done tonight.

Leonard Jason asked if the MVC has to send the guidelines to the towns. Jo-Ann Taylor confirmed that. Leonard Jason asked if the Commission is adopting regulations for the towns.
Jo-Ann Taylor responded negatively. The MVC is not proposing adoption of regulations. These are guideline amendments that would affect future designations.

6. ELECTION OF OFFICERS


Chris Murphy asked the Nominating Committee to review its nominations for officers in 2012.

Christina Brown stated that the Nominating Committee recommends to the full Commission the following nominations for the next calendar year.

- Chris Murphy – Chairman
- Fred Hancock – Vice Chairman
- Brian Smith – Treasurer

Chris Murphy opened the nominations to the floor. No nominations were made and Chris Murphy closed the nominations.

**Voice vote on the slate proposed by the Nominating Committee. In favor: 11. Opposed: 0. Abstentions: 1. The nominations passed.**

7. OLD BUSINESS


7.1 Roundabout Litigation Process Update

Chris Murphy said he had been asked at the last meeting to call an executive session to provide information on the legal process for the roundabout suit. He outlined the legal steps, assuming the case is designated as a fast track case, as supplied by MVC counsel Brian Hurley:

- Counsel expects to have a draft answer by December 27, 2011.
- Dispositive motions will be filed and heard within five months.
- Discovery within ten months.
- Pretrial conference scheduled at twelve months.
- Trial scheduled twelve to fifteen months.

Camille Rose said at the last meeting she had asked that an executive session be set up for Commissioners to discuss a course of action different from litigation and that confidential information may be involved, such as mediation. The Commission’s credibility would suffer regardless how this turns out in litigation. Other parties may not agree with an alternative to litigation, but it is incumbent upon us to be gracious. Legal action is not the right way to go.

Camille Rose moved and it was duly seconded that the MVC pursue a course of mediation in this issue.

- Leonard Jason, as a point of order, asked if this isn’t a moot point. Don’t both parties have to agree?
- Chris Murphy said the motion is to pursue other options.
Camille Rose clarified that the motion is to make the offer to the other parties.
Fred Hancock said he has a problem with the motion in that the Towns are challenging the Commission's right to have a finding. The towns have a say on the Commission via their appointed Commissioners. For Edgartown to not have participated in the hearings or provide any written comments, and then take the MVC to court is inexcusable.
Linda Sibley stated that the court proceedings take so long, it could kill the project. She finds it ironic that Fred, who voted for the project, is opposed to the motion, and she and Camille, who voted against the project, would like to see mediation to see if there is a solution.
Fred Hancock stated that the MVC should find out if the suit is viable before asking for mediation.
Leonard Jason suggested that the MVC needs to review with Counsel before mediation.
Christina Brown asked Camille to restate the motion.

**Camille Rose moved and it was duly seconded that the MVC pursue the possibility of mediation with this issue, to avoid litigation.**

Fred Hancock stated that the MVC should find out if the suit is viable before asking for mediation.

Linda Sibley thought that perhaps the MVC should have an Executive Session with Counsel to discuss legal strategy. She suggested that the motion might be rescinded.

**Camille Rose withdrew her motion.**

Chris Murphy said he would try to set up an executive session for the next meeting, January 5, 2012.

The meeting was adjourned at 10:05 p.m.

**DOCUMENTS REFERRED TO DURING THE MEETING**

- Minutes of the Commission Meeting-Draft; December 8, 2011.
- Martha's Vineyard Commission DRI #77-M3 426 State Road/Sibley Mixed Use; MVC Staff Report – 2011-12-15 – Modification Review.
- Sibley Modification Mixed Use Trip Generation Report – MVC Staff.
- Martha's Vineyard Commission DRI # 485-M7 Tisbury Marketplace Theater; Staff Report 2011-12-15.
- Island Road DCPC; Amendments to Sections 4 and 5 of the Designation; Staff Update for Public Hearing December 15, 2011.
- Correspondence from Michael Donaroma for the Edgartown Board of Selectmen regarding the Island Road DCPC Amendments.
- Correspondence from the West Tisbury Planning Board regarding the Island Road DCPC Amendments.