



PO BOX 1447, OAK BLUFFS, MASSACHUSETTS, 02557, 508-693-3453  
FAX 508-693-7894 INFO@MVCOMMISSION.ORG WWW.MVCOMMISSION.ORG

**Minutes of the Commission Meeting  
Held on June 7, 2012  
In the Stone Building  
33 New York Avenue, Oak Bluffs, MA**

**IN ATTENDANCE**

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

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

Staff: Bill Veno (Senior Planner), Paul Foley (DRI Planner), Sheri Caseau (Water Resources Planner)

**Chairman Chris Murphy** called the meeting to order at 7:00 p.m.

**1. MINUTES**

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Commissioners Present: J. Breckenridge, C. Brown, P. Cabana, E. Hammarlund, F. Hancock, L. Jason, J. Joyce, C. Murphy, K. Newman, N. Orleans, C. Rose, D. Sederholm, B. Smith, H. Stephenson.

**Fred Hancock moved and it was duly seconded to approve the minutes of May 17, 2012. Voice vote. In favor: 9. Opposed: 0. Abstentions: 5. The motion passed.**

**2. REPORTS FROM COMMISSIONERS AND STAFF**

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Commissioners Present: J. Breckenridge, C. Brown, P. Cabana, E. Hammarlund, F. Hancock, L. Jason, J. Joyce, C. Murphy, K. Newman, N. Orleans, C. Rose, D. Sederholm, B. Smith, H. Stephenson.

**2.1 Treasurer's Report**

**Brian Smith** presented the following.

- The Finance Committee started reviewing a draft revision of the Salary Policy including starting and maximum salaries for each position. It will be voted on the second or third week of July 2012.
- The Finance Committee is reviewing the financial statements versus the budget for the first ten months of the year. We are currently over budget due to unforeseen legal fees, two

retirees that were not in the budget for 2012, and the need to replace the boiler last winter. Additional billings will be coming in to help offset these additional expenses.

- The Committee will be developing a plan for going forward for legal expenses and there should be an offset.
- The Committee should have the final numbers for the Commission by the third week of July 2012.

**Chris Murphy** noted that if the Finance Committee has to take monies out of the reserve fund to cover the legal funds, he hopes that all of the towns are notified and advised that it will be recovered at a later date, possibly from assessments.

## **2.2 Other Business**

There was a discussion of rules and regulations.

- **Erik Hammarlund** suggested moving ahead with clarifying the Commission's general rules. He suggested appointing members to draft recommendations.
- **Christina Brown** noted that a few years ago a group that looked at the by-laws and that maybe a good place to start this process.
- **Brian Smith** said that he believes that one of the questions has been who can participate in discussions and voting; that has been fuzzy. But the by-laws state who can participate.
- **Fred Hancock** agreed with Erik that this needs to be done. The reconsideration of Commission votes idea should have a definite policy. Everyone should know what the rules are.
- **Katherine Newman** asked why we need to appoint a committee, why can't we set time aside at a meeting to look at it. Perhaps Erik can put together recommendations and perhaps obtain input via email from the Commissioners. This would avoid appointing a committee. **Erik Hammarlund** said he would like other input before drawing up a proposal.
- **Chris Murphy** said we have to respect the Open Meeting Law.
- **Erik Hammarlund** said he could propose recommendations and perhaps input from the Commission could be sent to staff and he would include that input. This would be a start for a discussion.

## **3. RYMES PROPANE – TISBURY (DRI-638) PUBLIC HEARING**

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*Commissioners Present: J. Breckenridge, C. Brown, P. Cabana, E. Hammarlund, F. Hancock, L. Jason, J. Joyce, C. Murphy, K. Newman, N. Orleans, C. Rose, D. Sederholm, B. Smith, H. Stephenson.*

*For the Applicant: John Rymes (Owner Rymes Propane Gas)*

**Doug Sederholm**, Hearing Officer, opened the Public Hearing at 7:15 p.m. and read the public hearing notice. The applicant is John Rymes, the location is off of High Point Lane, Map 22-A lot 6.2. The proposal is to operate a propane delivery business.

### **3.1 Staff Report**

**Paul Foley** presented the staff report:

- In the packet of information is a narrative from the applicant, a letter from the engineer, and the tank detail.
- The project location is a 20,000 square foot section of Map 22-A lot 6.2 (4.37 acres total).
- The site plan was reviewed.
- The operation would involve parking a single AMF Baird or similar portable propane tanker with a water capacity of 17,627 gallons and a (liquid) propane capacity of 14,100 gallons on a bed of recycled asphalt. The tank is equivalent to one tanker truck and is expected to be filled weekly.
- A 12,000 square foot area would be fenced in with a six foot high chain link fence. The remaining 8,000 square feet is for possible future expansion. Within the fencing, there will be approximately a 4,000 square feet transition area for storage of empty tanks awaiting installation at client locations and equipment for transporting and installing the tanks. Delivery trucks would distribute propane to clients.
- No electricity, lighting, water or sewer will be needed for this use.
- The office functions will occur off site on Upper State Road.
- The Applicant intends to use this location as a starter location to build clientele while he looks for a permanent location.
- The landlord has asked that once this temporary use leaves his property, that the DRI status of the property be rescinded.
- Key issues include:
  - Should bulk fuel storage be encouraged outside of the airport business park area?
  - Is the proposed use compatible with the surrounding neighborhood?
  - Is the proposed use compatible with the town and community's plans for the area?
  - Can the MVC look at only a small leased section of a property which triggers DRI Review rather than the entire parcel?
  - Has the Tisbury Fire Chief signed off on the safety of the operation? We did receive a letter and the operation is okay with the Town and the applicant will take protection measures.
  - In the event of a leak, are there sufficient setbacks from neighboring businesses and is there sufficient space for dispersal.
- It is not a National Heritage Endangered Species Program (NHESP) designated habitat.
- The site is a gravel pit that is used as storage and a staging area.
- No water will be consumed at this portion of the property.
- The site is outside the Zone 2 for the Tisbury public supply wells.
- A spill control and prevention plan is not needed for propane. A safety/fire plan has been filed with the Tisbury Fire Chief.
- All truck and tanks are equipped with all the latest safety devices that shut off if a leak is detected.
- The proposal does not trigger the MVC's Affordable Housing Policy because it is not a development of 2,000 square feet or greater.

- This would be a propane provider that could provide more on-Island competition and provide consumers more choice.
- The proposed storage tank will not be used for retail use.
- The proposed hours of operation will be Monday to Friday from 8:00 a.m. – 4:30 p.m.
- It is anticipated that there could be up to four full-time, year-round employees not including off-Island management.
- The location is a pit that is not visible from public roads.
- The site is not intended to be a publicly accessible area.
- The daily operation of the business should not impact abutters since the site is in a pit along with other construction and industrial operators. However, propane is highly flammable and explosive in the event of an unforeseen disaster which could have a negative impact on Upper State Road abutters.
- The letter that was received from the engineer states that it appears that the location of the skid and the loading and unloading operations will be in compliance with the Massachusetts codes including setbacks from property lines and other important structures.

### **3.2 Applicant's Presentation**

**John Rymes** presented the following:

- He is a propane gas and heating supplier and with ten offices in New Hampshire.
- He saw an opportunity on the Island for the need of another supplier.
- He did research and development during the winter and the Island has many similarities to northern New Hampshire.
- In this location he is hoping the Commission will let them crawl before they walk, so they can have a business plan that they can support.
- All equipment is portable. For the future, they could build a full-time permanent facility.
- They hope to use this temporary location for two years and then apply for a permanent location.
- It has been noted in the Island newspapers that storage on the Island is a problem. It doesn't make sense to have all of the propane companies in the same location. So they are looking to not have the business located within the airport.
- They want to service the community and help to improve the cost of living on the Island.
- They are a family propane company and have partnered with the Martha's Vineyard Hospital to help support breast cancer awareness week with a pink truck. They were the first in the nation to have a pink truck and the dollars raised will stay on the Island to support breast cancer awareness.

**Doug Sederholm** asked how many delivery trucks they will be starting with. **John Rymes** said one.

**Doug Sederholm** asked if they will be bringing over a truck when they need to install a tank. **John Rymes** said they will have a service truck on the Island and a Manager's truck. The ferry truck will be once a week for delivery. They are not looking to add new consumers but obtaining business from the competition.

**Doug Sederholm** asked if they will be delivering to owners' tanks as well as company owned tanks. **John Rymes** said it would be both but the owners' tanks need to meet code.

**Doug Sederholm** asked about lighting and if there would be any motion detector lighting. **John Rymes** said there is no lighting. They would not be conducting retail sales at the site. Any administrative work and paying bills would have to be done at their State Road office.

**John Breckenridge** asked about the fence height. **John Rymes** said the height is not controlled by code or the State Fire Marshall, but it is a typical height for the operation. Only the control devices are under jurisdiction and approval. The height of the fence is a standard height that they use.

**Erik Hammarlund** asked what the storage area surface is made of. **John Rymes** said it would be on gravel.

**Fred Hancock** asked if they were proposing to increase the fleet. **John Rymes** said if they have grown within two years, yes they would but they would come back to the MVC for approval for a permanent location. He also noted that the facility would have to be built for the State to inspect and each truck has to be licensed.

**Christina Brown** asked what the State Fire Marshall and codes require to be done. **John Rymes** said they are required to meet the National Fuel Gas Code. It is a very stringent set of rules that cannot be deviated from. They are set up by the National Fire Protection Agency. Smart hoses are used as well as excess fuel valves on pipes. He also stated that there is not a lot of training on the Island regarding propane. They have agreed to provide a training program for all of the Island's Fire Departments. John Schilling has agreed but he has not heard from the other departments. It includes a live burn with a simulated tank with high pressure and liquid propane burning over 200 feet in height. The last time they did a training session was for the Chief Inspector in New Hampshire with six different Fire Departments participating.

**Brian Smith** asked what their safety record is with the vehicles and the facilities. **John Rymes** said it is flawless and he has brought several letters from various New Hampshire Fire Departments regarding their record and performance. **Doug Sederholm** asked that they be submitted for the record.

### **3.3 Public Testimony**

**John Rancourt** of Island Propane said that the propane business is very safe. He hopes that this is approved. He has property down the street and would like to have propane there as well.

### **3.4 Commissioners' Discussion**

**Doug Sederholm** noted that the owner of the property wants to be able to have the DRI status rescinded upon termination of the temporary use. He did not believe that the MVC can rule on that at this time, but he is open to reviewing it later.

**Erik Hammarlund** asked if this is definitely for two years or are they just estimating the length of time. **John Rymes** said they are estimating a two year period and are hopeful it will become a permanent business. **Doug Sederholm** asked if there is a possibility that they would use this facility for more than two years and **John Rymes** replied yes.

**Doug Sederholm** noted that this is really an open ended application and asked the applicant what the term of the lease is. **John Rymes** said it is initially three years with options to renew

and the renewal period would be five years. The renewal is at the approval of the applicant as well as the landlord.

There was a discussion of the possibility of agreeing to rescind the DRI designation and approval when the operation ceases.

- **Chris Murphy** stated it is a question we have not dealt with before. It is a temporary use as well as a DRI issue. He believes that anything that changes in the future changes the DRI and it would require that it is brought back to the MVC. That might change how the landlord looks at the project. Before we close the hearing we need to be clear on what we are doing. The MVC's policy is that the DRI designation applies to the entire property, not just the parcel that is being rented.
- **Doug Sederholm** said we are only conditioning the area to be used and perhaps we should ask counsel about that before deliberation as they are leasing a portion of the land within the parcel.
- **Brian Smith** asked if Chris was looking for a definition of everything that happens on that property at the present time and if that changes on any part of the property the landowner would have to come back to the Commission.
- **Chris Murphy** said that the Commission's DRI practice has been that if the land is used differently, then it has to come back to the MVC as we do not have any provision for a temporary use. He just wants to be sure the Commission has considered this.
- **Doug Sederholm** suggested that perhaps the Commission's decision can state that it takes no position on the other uses of the property. Counsel needs to be consulted.
- **Erik Hammarlund** said it is important that it is presented as a temporary use, but it needs to be clear that if it cannot be a temporary use, that it is actually stated as such.
- **John Breckenridge** said we need to presume it is permanent.
- **Chris Murphy** said the Commission could perhaps permit the DRI for a specific time period, but it has never done so.
- **Doug Sederholm** stated that we will need to keep the written record open so it can be referred to counsel.
- **Peter Goodale**, the landlord said that it is a condition on the lease that it is a removable DRI. He needs to be sure it is clear, especially due to the various tenants on the property. **Doug Sederholm** replied that that is the question being discussed and will be discussed with counsel.
- **Bill Veno** said that staff has contacted counsel with regards to language for possible rescission of a DRI. We have not explored the uses of the entire property for a DRI, so it does need to be explored.

**John Rymes** said the real reason they are here is because the Town considered it a fuel storage facility and that is not being brought in for 30 or 60 days. He would like to get started with parking the trucks, which don't need a permit. He and the landowner will have to address whatever MVC's counsel has to say.

**Doug Sederholm** closed the public hearing at 8:00 p.m. and kept the written record open until June 21, 2012, and returned the gavel to the Chairman.

**Linda Sibley** joined the meeting.

## **4. WEST TISBURY LIBRARY EXPANSION – WEST TISBURY (DRI-327-M) MODIFICATION REVIEW**

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

*For the Applicant:* Beth Kramer (Director), Tucker Hubbell, Chris Alley

**Chris Murphy** reminded the Commissioners that the project is a modification to a previous DRI. The question for the Commission is to determine if it rises to the level of needing a public hearing.

### **4.1 Staff Report**

**Paul Foley** presented the staff report:

- Included in the report are letters from the applicant, from Virginia Jones and from the West Tisbury Board of Selectmen. The site plans are also included.
- The Applicant is the West Tisbury Free Library and the Town of West Tisbury.
- The project location is 1042 State Road, West Tisbury Map 32 Lot 97 Map 16 (1.6 acres). The Town recently purchased the Field Gallery and merged the two properties for a total property size of over three acres.
- The proposal is renovation and expansion of the existing West Tisbury Free Library.
- The local permits required are a Building Permit, Board of Health, Historic Commission, Conservation Commission and the Zoning Board of Appeals.
- The surrounding land uses are the Field Gallery, Alley's General Store and some rural residential.
- The property was originally reviewed and approved by the MVC when the Howes House was expanded in 1991. Although sharing the same 1.6 acre property, the MVC did not review the library when the Howes House was reviewed because the existing library had already been approved by local boards when the MVC reviewed the Howes House. In recent years the 1.6 acre library/Howes House property was merged with the 1.5 acre Field Gallery property.
- The existing library is 5,620 gross square feet.
- The proposal includes the full renovation of the existing library as well as a new addition, which will increase the total gross square footage to 13,927.
- The site to the north of the building will be significantly re-graded to allow access to natural light and ventilation from the expanded lower level.
- The library has approximately 9,000 members; approximately 50% year round and 50% seasonal.
- The library currently has about 50,000 books in their collection which will be cut to about 40,000.
- The DRI referral is from the West Tisbury Building Inspector.
- The DRI trigger is 1.2; Once a DRI always a DRI.
- At the Land Use Planning Committee (LUPC) meeting on May 14, 2012, the LUPC voted to recommend to the full Commission that based on there being no increase in the nitrogen

loading and minimal impact on traffic, that the modification is within the intention of the original DRI 327 decision and does not require a public hearing review as a DRI.

- Some potential issues include:
  - Wastewater: How will the proposal mitigate nitrogen loading to the Tisbury Great Pond.
  - Traffic/Parking: Will the parking be pervious or impervious.
  - DRI Review: Should this proposal be reviewed under 6.2 (Place of Assembly). Is the library designed to serve the residents of more than one town.
- A small portion of the rear of the property is designated as National Heritage Endangered Species Program (NHESP) habitat.
- Several new trees and bushes will be planted in the front and side yards of the library. The rear yard will have a meadow mix. All plantings would be native and not require irrigation.
- The Applicants expect to be LEED certified to at least a gold rating. Three composting toilets will be used. The building will be super insulated and have triple glazed windows.
- There will be day lighting controls to minimize the use of electric lighting. A 2,700 square foot, 33,000 KWh photovoltaic array will be mounted to the south face of the front façade and is estimated to generate 19% of the electrical needed.
- The site is 3.01 acres located in the Tisbury Great Pond Watershed, a nitrogen compromised pond within the MVC Water Quality Policy.
  - Development projects in this watershed are allowed 0.8 kilograms of loading per acres per year. The site carries an allowance of 3.41 kg/yr.
  - The estimated nitrogen load (kg/acre/yr) for the proposal is 6.93 kg/yr.
  - However, Section 3.5 of the Water Quality Policy states if there is additional development of an already developed site, the total nitrogen loading of the property shall not exceed the nitrogen loading limits in this policy. If the previously developed site already exceeds the nitrogen loading limits in this policy, the total nitrogen loading of the property shall not be increased. It will be less than the existing and meets the MVC policy.
  - The estimated nitrogen load for the existing uses is 7.06 kg/yr. Therefore, the nitrogen load for the proposed use with mitigation measures is less than the existing nitrogen load, as required in the MVC Water Quality Policy. The total nitrogen load kg/acres/yr. for the property: existing use 7.06, proposed use 6.93.
- The Board of Selectmen have written stating that the Town agrees not to use the second floor of the Howes House or add any other use to the property that would add to the nitrogen loading until such time as a system or method has been put into place on the property to offset any additional nitrogen related to such uses, such as installing composting toilets or a de-nitrification system.
- The estimated trip generation is: existing 316 daily trips, addition 467 daily trips for a total of 783 daily trips.
- A review of reported crash data from 2007 to 2009 revealed zero crashes at the intersection of Howes House/West Tisbury Library, State Road and Alley's General Store. Accident data was from MassDOT records for the latest available three year period.



- The sight lines are adequate on State Road north and south of the project location. The sight distance to the north (down island) extends only 200 feet because the road curves horizontally and vertically. Sight distance north of the entrance is compromised by the presence of northbound VTA buses stopped on the shoulder of State Road immediately north of the driveway.
- The existing parking lot has 38 spaces; 20 spaces are dedicated for library use and the remaining 18 spaces are dedicated for Howes House.
- The proposed lot will have an additional 18 spaces for a total of 56 spaces. Based on the use according to ITE, a parking supply of 49 spaces would be required for the proposal.
- The West Tisbury town center is well served by public transit with four VTA bus routes. The transit stop next to the site's driveway and the stop less than 500 feet south at Town Hall are scheduled stops and bus transfer points.
- The fact that the library is located in the town center allows for the combination of trips with people walking rather than driving from one location to the next. The project will continue to accommodate bike racks.
- The following is a possible measure for limiting or mitigating the traffic impact of this proposal:
  - The library and Howes House should continue to coordinate their schedules to try to avoid simultaneous large events that would place undue demand on parking.
- The MVC has an unwritten policy not to apply its Affordable Housing Policy to municipal or religious institutions.
- The estimated \$6.5 million dollar development cost will be subsidized by the following sources:
  - Approximately \$2.98 million from state and federal grants.
  - Approximately \$1.5 million from Town funding.
  - Approximately \$1.6 million in private fund raising.
- The Town will continue to absorb future costs such as building maintenance.
- The library has four full time employees and four part time employees in addition to two part time seasonal employees. The library does not anticipate a need to increase the number of year round and seasonal employees with the expansion.
- Virginia Jones has written with concerns of the location, number of parking spaces and the location of the VTA bus stop adjacent to the access to the property. The applicant submitted a letter dated June 7, 2012 in response to her letter.

**Paul Foley** reviewed the site plan graphics and aeriels. **Doug Sederholm** asked if there is a designated walkway past Howes House to the library. **Paul Foley** said there is a walkway.

**Erik Hammarlund** asked if the new proposal addresses any non-DRI compliance. **Paul Foley** said only the parking was not in compliance with the 1991 DRI decision, but that will be taken care of by the new proposal.

**Leonard Jason** asked if there are any accident reports in the parking lot. **Paul Foley** said there were no figures for the parking lot. **Beth Kramer** clarified that the uneven surface of the existing parking lot is difficult for many patrons, particularly the elderly. The new parking area will not be dirt and that will alleviate the pot holes.

## **4.2 Applicants' Presentation**

**Beth Kramer** presented the following:

- They have been working on the project for eight years. They have received state grants from the Library Commissioners and they require that we look at this project twenty years into the future as part of the requirements.
- They have had a building committee that was appointed by the Town.
- The Town voted in April to provide their share of the funding.
- They had a task group that looked at the energy issues and they recommended composting toilets. It will be an important part of the library to have that education for the public as well as a protection for the environment due to the location of the library.
- They were unaware of the DRI until a few months ago. LUPC asked that they add a third composting toilets to meet the Water Quality Policy and they have complied.
- They are busiest in the summer, but we are not open on Sundays so that should help with traffic issues. They also coordinate programs with the Howes House to avoid parking issues. In the summer their focus is circulation and not programs.

**Chris Murphy** asked Beth Kramer to present an overview of the process they have used for this project. **Beth Kramer** presented the following:

- The building committee and the Trustees felt it was important to have public input.
- They had monthly public hearings and it has influenced the design of the building.
- They have been transparent and as open as possible.
- Any issues that arose became part of their task groups and were addressed.

**Holly Stephenson** asked for clarification on increasing the size of the building yet decreasing the collection and whether that is due to more technology based uses. **Beth Kramer** replied that they have the largest collection on the Island and it takes up valuable space. They are trying to create space for people and staff as well as a designated teen area. It is currently very hard to reach the books in the stacks as they are too high and too low. It is very overcrowded. **Doug Sederholm** confirmed that space is tight, saying he has seen meetings of the director and staff sitting on chairs among the stacks in the basement.

**James Joyce** asked if the Commission is looking at expansion and renovation of the library.

**Chris Murphy** said the Commission is looking if it arises to the need of a public hearing.

**Linda Sibley** said that she voted at LUPC that it does not need a public hearing but as a resident of West Tisbury, she asked where to go to voice concerns about the parking that Virginia Jones addressed in her letter. Given the number of elderly that are using the parking lot, she doesn't think you want one that maybe challenging. **Beth Kramer** said that the public can come to the Building Committee meetings that are on Mondays at 3:00 p.m. at the West Tisbury Town Hall or they can send her an email. They will do whatever is safest for the public.

**Tucker Hubbell** said that they recently had the architects design a parking lot with diagonal parking and it was three to four spaces less. They have created a parking lot that has fewer spaces than what the state based its grant on due to the rural nature of the town and they accepted that. They don't meet the West Tisbury Town by-law; technically they should have 44 spaces, but the ZBA waived the requirement and it became official in 2005 that they can have 38 spaces. There will be two drive lanes, one in and one out of the property, and another 15 feet to pull out of the parking space that is not in a drive lane. They hate to lose another three or four spaces but would go for that if they thought the design was unsafe, but he does not think it is.

**Leonard Jason** asked if they could designate parking spaces at the Town Hall for library staff. **Tucker Hubbell** said he did not think the Town Hall would accept that and he is not sure that is a viable option. He could find out.

**Holly Stephenson** asked what the Town plans to with the Field Gallery and whether it was bought to increase the nitrogen load parameters. **Beth Kramer** said it was bought to preserve it as open space. There is a restriction on it and the Field Gallery will stay as is.

#### **4.3 Water Resource Report**

**Sheri Caseau** presented the following:

- She looked at the actual uses of the Howes House and compared it to the Down-Island senior centers uses and found that it is very similar.
- The nitrogen load is still high, much higher than the Commission's nitrogen-loading limit policy. However, the policy provides that an addition to an existing use over the limit is acceptable provided it doesn't exceed the existing nitrogen-loading.

**Chris Murphy** said the last time the Commission discussed nitrogen loading, the Commission's nitrogen numbers were questioned and he asked for a brief summation of where those numbers come from. **Shari Caseau** said that nitrogen limit policy is in place to protect the health of the Great Ponds. Excess nitrogen causes phytoplankton and algal blooms, which cloud waters so eelgrass can't photosynthesize. When the eelgrass dies off, it removes the habitat for shellfish and finfish. It smothers and uses up the oxygen. MEP study results across the Cape and Vineyard show 70% to 85% of nitrogen in coastal ponds is from wastewater, which communities can affect. This is what the Commission's policy addresses. The rest of the nitrogen comes from fertilizers, animals and atmospheric deposition. Atmospheric deposition is difficult to address.

**Leonard Jason** asked what the nitrate reading of Tisbury Great Pond is. **Sheri Caseau** said the results of Tisbury Great Pond study will be presented to the State by June 30. Studies for other ponds have shown nitrogen numbers very close to or lower than the Commission's interim water policy estimates.

**Leonard Jason** asked about the nitrate readings of the Tiasquamor Mill Brook. **Sheri Caseau** said she can get those numbers.

**Leonard Jason** asked what the nitrate reading of the ocean is. **Shari Caseau** said that number is available, but that nitrogen loading in the ocean is not a problem because the ocean is so vast. Opening the Great Ponds flushes nitrogen out to the ocean.

**Leonard Jason** stated that his previous questioning of the Commission's nitrogen loading number was based on Chris Alley's statement that he needed a 27-acre lot to build a three-bedroom home to meet the Commission's nitrogen loading policy. If that is accurate, maybe the Commission should be looking at the policy. **Chris Murphy** said it is being looked at.

**Brian Smith** asked if Shari believes the project will reduce the nitrogen loading. **Sheri Caseau** said there should be a slight reduction with the composting toilets and the pervious pavers will help.

**Doug Sederholm** asked if it was the Howes House that contributes and not necessarily the library. Since the proposal has three composting toilets, to significantly reduce the nitrogen from this site they would have to retrofit the Howes House with composting toilets.

**Chris Murphy** asked if the Applicant had anything else to add.

**Chris Alley** said that with the nitrogen calculations that he originally did with Sheri, the hybrid parking lot proposal with an impartial impervious surface was not known. So now there will be pervious pavers so the numbers will be better. **Beth Kramer** stated that they did look at installing all composting toilets and it would be a minimum of \$80,000 and that is not in the budget. They had to cut a lot of things in the budget to be able to do the parking lot and the three composting toilets. They did their best to reach what the LUPC asked them to do and be responsible stewards.

**Tucker Hubbell** noted that there will now be a way to monitor the use with project as each building will have its own water meters.

**Erik Hammarlund** asked if this is a situation where placing the composting toilets in the Howes House, where there is greater use, rather than the library, would be better to help the nitrogen problem. **Beth Kramer** said that the Howes House is not part of the library project. **Chris Alley** noted that they are only able to deal with the library at this time. The Selectmen have agreed to forego there

**Chris Murphy** asked the Commissioners to remember that this is not a public hearing. We are deciding if it needs a public hearing.

**Brian Smith moved and it was duly seconded that the referral does not rise to the level of needing a public hearing in that it meets the MVC policy regarding nitrogen loading and it does not increase traffic.**

- **Brian Smith** based his motion because the proposal meets the Commission's nitrogen loading policy, where there are no demonstrated traffic issues and he does not see what more the Commission could accomplish by holding a public hearing.
- **Holly Stephenson** said that under the criteria of regional implications it is a huge project and a huge change.
- **Katherine Newman** said one of the reasons we review is so people have input. They appear to have done what the MVC does as they have had open public hearings.
- **James Joyce** noted that this is coming to the Commission backwards, but it has been thoroughly vetted.
- **Doug Sederholm** said there is no substantial impact on regional issues that have not been addressed; nitrogen loading, parking and traffic have all been addressed. They have listened to the LUPC and he cannot imagine how a public hearing could add anything.
- **Chris Murphy** reminded the Commissioners that a yes vote means that it does not require a hearing.

**Roll call vote: In favor: J. Breckenridge, C. Brown, P. Cabana, E. Hammarlund, F. Hancock, L. Jason, J. Joyce, K. Newman, N. Orleans, C. Rose, D. Sederholm, L. Sibley, B. Smith. Opposed: none. Abstentions: H. Stephenson, C. Murphy. The motion passed.**

**Christina Brown moved and it was duly seconded that the Commission accepts the modifications to the DRI as specifically filed and proposed with the MVC.Roll call vote. In Favor: J. Breckenridge, C. Brown, P. Cabana, E. Hammarlund, F. Hancock, L. Jason, J. Joyce, K. Newman, N. Orleans, C. Rose, D. Sederholm, L. Sibley, B. Smith, H. Stephenson, C. Murphy. Opposed: none. Abstentions: none. The motion passed.**

**Erik Hammarlund, Katherine Newman, Peter Cabana, and Brian Smith** excused themselves from the meeting. **Linda Sibley** recused herself from the next agenda item and left the room.

**Chris Murphy** recessed the meeting at 9:00 p.m. and reconvened at 9:05 p.m.

## **5. OYSTER BAR REDEVELOPMENT – OAK BLUFFS (DRI-596-M) CONTINUED PUBLIC HEARING**

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*Commissioners Present:* J. Breckenridge, C. Brown, F. Hancock, L. Jason, J. Joyce, C. Murphy, N. Orleans, C. Rose, D. Sederholm, H. Stephenson.

*For the Applicant:* William Christopher (Architect)

**Doug Sederholm**, Hearing Officer opened the Continued Public Hearing at 9:05 p.m. He stated that they have had a LUPC meeting and the Applicant consulted with the Historic Commission and has modified their proposal.

### **5.1 Applicants' Presentation**

**William Christopher** presented the following:

- They have revised the modifications to the plans. The setback in the rear has been substantially modified and the footprint of the building has been reduced.
- The buildings that will be surveyed prior to and after the construction to determine if any damage was done during the construction were reviewed.
- They have re-defined the roof access and the decks and went to a simple dormered roof.
- They have addressed each of the 27 issues that were presented to them and have submitted that information for the record.

### **5.2 Commissioners' Questions**

**Doug Sederholm** asked that the roof detail be reviewed in more detail. **William Christopher** said that the roof area is now only over the access area to the stairs. The Oak Bluffs Selectmen felt it was an important feature and should not be subdued and should be more of a design such as a widow's walk. The result is 132 square feet of roof deck for each unit. The back wall of each will be eight feet tall and sound insulated to prevent noise to the Campground and the direct abutters.

**John Breckenridge** asked if the eight foot high wall is necessary. **William Christopher** said that eight feet is higher than we need but it would better mitigate the sound.

**Doug Sederholm** asked the Applicant to review the changes in the offers so that they are better understood. **William Christopher** said that two elements in the back area have been

developed. They propose a six foot high fence; four feet would be wood and the top two feet would be lattice. The rear windows will have opaque sashes on the bottom and glass on the top.

**Doug Sederholm** asked that the rear bump be explained. **William Christopher** said the rear bump is needed for two points of egress from the building and is designated for the two residential units on the second floor.

**James Joyce** asked if the middle retail unit had access to the back. **William Christopher** said that if there is one tenant then they will not need to subdivide the space, but it can be provided if needed.

**John Breckenridge** noted that the construction schedule did not have dates. **William Christopher** said that they could not state the exact dates. **Paul Foley** noted that the Selectmen's policy is no construction between May 15th to September 15th and not on the Memorial Day or Labor Day weekends.

**John Breckenridge** asked where the staging will occur for the building. **William Christopher** said the front of the building is designated as the delivery area. They will work to have early morning deliveries, off load and remove the vehicles.

**Doug Sederholm** asked that "short term rentals" in offer #7 be clarified. **James Joyce** said that a short term rental is less than 100 days.

**Ned Orleans** noted that staff needs to work with the Applicant to re-word the language of the offers. **John Breckenridge** advised the Applicant that the MVC has standard language for the lighting and that staff will work with them.

**John Breckenridge** asked about the survival of the oak tree. **William Christopher** noted that the oak tree is talked about in offer #27. They will incorporate pre-fertilization into the offer.

**Chris Murphy** noted that in offer #7 there is nothing that guarantees that it will stay as staff housing. **William Christopher** said there is no guarantee. They will offer it first and if it is not accepted it will be sold at market rate and the Bank will control the interest in the condominium association.

**Ned Orleans** said it is unfortunate that the Bank is not represented by an officer of the Bank. It is unusual that an applicant would not show up in the final stages of the review of their project. **Fred Hancock** noted that, in the end, the offers will be the Bank's offers.

**James Joyce** asked where the trash would be kept. **William Christopher** said it would be in the basement and not outside. **Fred Hancock** noted that it should be stated in the offers.

### **5.3 Testimony from Public Officials**

**Priscilla Sylvia** from the Oak Bluffs Historical Commission said they were engaged in discussions with the architect for several days. They can only rely on the MVC's cooperation since they do not have the authority to enforce policies. They are much happier with version three for the roof. They had concerns on minor details such as wooden doors and trim, wider cornice boards, wider windows and door frames and divided lights. They looked for panels on the front of the building to be wooden and for the doors on the front of the building to mimic what is there now. The Applicant has complied with their requests and concerns. They asked that the cornice brackets be saved so that they can be used on other buildings. On the second story roof line, they

asked for brackets on the cornice and an extension of the side line to break the façade. The Applicant has complied with all of this. They would like the ATM machine moved around the corner into the alley, as it is not appropriate in the front of the building. They would also like to be consulted in the color choices. They are pleased with their discussions with the architect, who has been wonderfully cooperative.

**Pamela Melrose** of the Historic Commission said that they asked for the design to balance the buildings at each end of the Circuit Avenue.

**John Breckenridge** asked the Oak Bluffs Historical Commission if, upon completion of final architectural plans, it would agree to review the plans and make final recommendations to LUPC.

**Pamela Melrose** replied affirmatively. **John Breckenridge** asked the Applicant if they were agreeable to this process. **William Christopher** replied affirmatively.

**John Breckenridge** asked if all of these agreements are in writing. **William Christopher** said that they will include them in the final offers as well as the drawings.

#### **5.4 Public Testimony**

**Brian Kirkpatrick** said he would not like the ATM machine on the side of the building. Previously there were telephones there and they live right there. It is very loud in the evening with activity in the alley. There are apartments above the old Deon's restaurant and people come to the back to make deliveries and this design would create the same problem. There are roof decks on other buildings and there are parties. Often they have to call the police due to the noise issue.

**David Whitney** has concerns since the 150-year-old wooden homes are not sound protected. College students for a 100-day rental period could decide to party and it will be loud. He has to speak strongly against the roof decks. It is a very bad idea.

**David Howe** feels the same way about the roof decks. Originally the Campground felt the side location of the ATM machine was not appropriate in the alley. They had suggested a vestibule to house it. **Doug Sederholm** noted that it would have to be designed to meet the Historic Commission criteria.

**Priscilla Sylvia** said that they appreciate the efforts that the architect has made to replicate the façade. A vestibule would ruin that. She personally walks through the alley to visit her friend in the Campground and does not see an issue with the machine being located there.

**Joyce Tresser** of the Oak Bluffs Historic Commission said the current Edgartown National Bank office in Oak Bluffs has a vestibule that is within the outer door.

**Craig Lowe** said there should be a way to work out the ATM machine. A vestibule would be nice for noise and safety. It would be a good idea if it could be worked out with the architect and the Historic Commission. He requests that the buildings that are being surveyed be expanded and they have had success with the bank and Mr. Christopher so they should be able to work that out. The sound does echo back if the ATM Machine was on the side and there is a safety issue at night.

**John Breckenridge** asked the architect if they had a problem of adding that one additional house to the survey and **William Christopher** said that they could do that.

**Rena Greenup** said that they have talked about the roof decks endlessly, but as owners they had the experience with the noise over so many years. What would stop a person from expanding the roof deck? **Doug Sederholm** said the Building Inspector would take care of that issue.

**Mrs. Kirkpatrick** said they have lived in their house for 24 years and have put up with the noise and people sleeping on the roof of Deon's. It seems to be a place that people congregate at the end of the night. The roof decks just add to that problem.

**Jeff Ferriell** said that the current proposed use of the building and the condominium association are not in stone. Once the building is built, a change to the use could happen and that is a path already down the slippery slope. **Doug Sederholm** noted that what the applicant commits to, anyone who buys the building must adhere to. Any change would require that they come back to the MVC for approval. In the offer it needs to state what will go in the spaces.

**Holly Stephenson** asked if the Campground has rules regarding noise and could the Bank adopt those rules for the residential units. **Craig Lowe** said that they do have rules and it is quiet hours from 11:00 p.m. to 8 a.m. **William Christopher** said they could be incorporated into the proposal.

**Craig Lowe** said that they appreciate the change of use of the building from a restaurant to a bank and stated that the noise does reverberate through the alleyway. **William Christopher** noted that the Bank has gone through great distances to work with the Campground and how the people use the alleyway is a policing issue. **Doug Sederholm** noted that they are just expressing their concerns.

**Chris Murphy** said that one of the concerns raised at LUPC was the parking and asked that it be reviewed. **William Christopher** said the Bank is trying to pursue parking and will follow the zoning guidelines. They will be a willing party once a program is designed. Currently there is no off street parking for this facility. **Chris Murphy** noted that the impact of two apartments and only two cars will affect the neighbors and it is a ripple effect. It needs to be dealt with.

**James Joyce** said it would be great to have parking where you live but there is 24-hour parking in town and in various locations. If we try to have residences in the downtown area we will have parking issues.

**Doug Sederholm** reminded the Commissioners that they are getting into the area of deliberation and we need to revisit it at that time. **Leonard Jason** said for the record shouldn't we state that they will comply with zoning for the parking.

**Ray Greenup** said their house vibrated from the music that was played at the Oyster Bar. The roof decks will be worse. The apartments have one primary access and in an emergency how do they get out. **William Christopher** said it meets building code for this type of building and they will have rescue windows. **Brian Kirkpatrick** said a fire truck can't get in the alleyway so how would they get in for a rescue.

**Rena Greenup** would like to thank the architect for moving the building back. They listened and revised it.



**Walter Gallant** asked how far off the property line is the jut out and will there be a fence.

**William Christopher** said it is 18 inches with a fence on the bank's property.

**Christina Brown** said the Commission has not heard about a couple of issues from the Bank so perhaps we can leave the hearing open. Issues such as details about the Condominium Association, the ATM machine, the Campground noise rules, and the use of the retail space.

**Doug Sederholm**, Hearing Officer, recessed the Public Hearing, continued to July 12, 2012 to hear whether the ATM machine can be addressed with a vestibule that meets the Historic Commission criteria and clarifications by the Bank regarding restrictions on the sale of the residences, uses of the first floor and condo agreements to enforce them. He also commended the Applicant's architect team and how they worked with the Campground, the neighbors and the Historic Commission to make this project work.

**Doug Sederholm** returned the gavel to Chairman **Chris Murphy**.

*Linda Sibley returned to the meeting.*

**Chris Murphy**, noting that the time was 9:55 p.m., asked **Leonard Jason**, who had earlier in the meeting asked to raise a new item for discussion, if he wished to still raise the issue or if he preferred to wait until the next meeting. A motion to extend the meeting would be in order if he wishes to present the item tonight.

**Leonard Jason moved and it was duly seconded to extend the meeting by five minutes. Voice vote. In favor: 10. Opposed: 0. Abstentions: 0. The motion passed.**

## **6. NEW BUSINESS**

*Commissioners Present: J. Breckenridge, C. Brown, F. Hancock, L. Jason, J. Joyce, C. Murphy, N. Orleans, C. Rose, D. Sederholm, Linda Sibley, H. Stephenson.*

**Leonard Jason** said that he was told that he could make a motion to rescind a decision and wanted to know what rules the Commission has adopted regarding that. **Chris Murphy** said it is the Chair's call and if called into question by the group as a whole then it is for discussion.

**Leonard Jason** asked how the Commission addresses the question of the roundabout when 70% of our constituents voted against it. **Chris Murphy** said that the Commissioners made the decision and revisited the decision. Everyone was treated fairly.

**Leonard Jason** stated that he is putting the MVC on notice that he wants to make a motion at the next meeting to rescind the roundabout decision.

**Brian Smith** said that unless the project cannot be stopped or is already built, you can rescind according to Roberts Rules of Order. This project is not at a point where it cannot be rescinded.

**Bill Veno** said that counsel has repeatedly advised the Commission not to adopt Roberts Rules of Order. **Chris Murphy** said that as Chair, he is using Roberts Rules as a guide but not as an absolute.

**Ned Orleans** asked who is eligible to make the motion. **Brian Smith** said it could be anyone according to Roberts Rules. **Chris Murphy** said the guidelines make sense to make sure the process is fair and reasonable.

**Christina Brown** said it is her understanding that the Commission is agreeing to a working policy to rescind and Erik Hammarlund is working on a formal policy for the future. But the Commission is agreeing to the process the Chair has laid out for this issue.

**Fred Hancock moved and it was duly seconded that the meeting be extended to 10:15 p.m. Voice Vote. In Favor: 10. Opposed: 0. Abstentions: 0. The motion passed.**

**Fred Hancock** said that he can't see revisiting a project six months after it has been approved. These were non-binding resolutions at the Town Elections. It is not appropriate for the MVC to reconsider. The vote would be six months after and it sets a horrible precedent.

**Holly Stephenson** stated that the original vote was based on the testimony from those who attended the public hearing.

**Brian Smith** said that just because it hasn't been done, doesn't mean it is not appropriate. The Commission did not do a site visit and there are other issues as well that were not dealt with.

**Bill Venocautioned** the Commissioners that the last time this issue of rescission came up, counsel had some observations for how the process might best be handled. This needs to be reviewed by counsel and then everyone will be updated with that information. **Chris Murphy** agreed that he would review it with counsel and staff for the next meeting.

**James Joyce** said that he wanted to understand this; Lenny is bringing up the issue to rescind and if we have a majority vote to rescind, then what happens. **Chris Murphy** said the decision would be nullified and we would not have a decision.

**Camille Rose** said that we heard at the Finance Committee last night we have a \$30,000 legal bill on the roundabout issue and even though a lawsuit was involved, asked to see an itemization of that expense. **Chris Murphy** said she could get that information from the MVC Administrator.

**Chris Murphy** said he would see what counsel has said on the matter and report back to the members at the next meeting, and proceed from there.

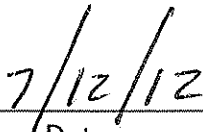
The meeting was adjourned at 10:15 p.m.


#### DOCUMENTS REFERRED TO DURING THE MEETING

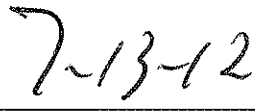
- Minutes of the Commission Meeting – Draft, Held on May 17, 2012
- Martha's Vineyard Commission – DRI #638 – Rymes Propane - MVC Staff Report -2012-06-07
- Letter from Tisbury Fire Chief John Schilling dated June 7, 2012
- Letter from Lancaster (NH) Fire Captain Steven Jones dated May 11, 2012 received June 7, 2012
- Letter from Antrim (NH) Fire Chief Mike Beauchamp dated May 10, 2012 received June 7, 2012

- Letter from Stratford Hollow (NH) Fire Chief Charles Stinson III, undated, received June 7, 2012
- Martha's Vineyard Commission – DRI #327-M West Tisbury Library Addition – MVC Staff Report – 2012-06-07
- Letter from Chris Murphy to the Commissioners Regarding the Nitrogen Loading of the West Tisbury Library, undated, received June 7, 2012
- DRI 596-M Oyster Bar packet:
  - Offers from Roche-Christopher Architecture dated June 6, 2012 (5 pages)
  - Land Use Planning Committee (LUPC) Notes of the Meeting of June 4, 2012 – Draft (3 pages)
  - Correspondence from the Town of Oak Bluffs Board of Selectmen dated June 1, 2012 (2 pages)
  - Correspondence from the Oak Bluffs Historical Commission dated June 1, 2012
  - Correspondence from Gail M. Barmakian, Oak Bluffs Selectman, dated June 1, 2012 (2 pages)
  - Correspondence from the Martha's Vineyard Camp Meeting Association dated May 17, 2012
  - Correspondence from David and Alice Howe dated June 6, 2012 (2 pages)
  - Plans and Elevations from Roche-Christopher Architecture dated 6/5/12

  
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 Chairman

  
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 Date

  
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 Clerk-Treasurer

  
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 Date