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Minutes of the Commission Meeting Held on May 19, 2005 In the Olde Stone Building 33 New York Avenue, Oak Bluffs, MA

IN ATTENDANCE

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

P James Athearn (E – Edgartown)	P Ned Orleans (A – Tisbury)
P John Best (E – Tisbury)	P Megan Ottens-Sargent (E – Aquinnah)
P John Breckenridge (A – Oak Bluffs)	- Deborah Pigeon (E – Oak Bluffs)
P Christina Brown (E – Edgartown)	- Jim Powell (A – West Tisbury)
P Carlene Gating Condon (A – Edgartown)	P Doug Sederholm (E – Chilmark)
P Mimi Davisson (E – Oak Bluffs)	P Linda Sibley (E – West Tisbury)
P Chris Murphy (A – Chilmark)	P Paul Strauss (County Comm. Rep.)
P Katherine Newman (A – Aquinnah)	- Andrew Woodruff (E – West Tisbury)

1. COZY HEARTH COMMUNITY CORPORATION: DRI 584 – PUBLIC HEARING

For the Applicant: Bill Bennett (President, Cozy Heath Community Corporation); Chris Alley (Scofield, Barbini, Hoehn); Andy Grant (Scofield, Barbini, Hoehn)

Christina Brown opened the public hearing and read the hearing notice. The proposal is to build a project on Watcha Path, subdividing 3 lots totaling 10.9 acres, into 11 one-acre lots.

Doug Sederholm disclosed that he has done legal work for Robert Green who lives at 77 Watcha Path and is an abutter of the project. He does not at this time do legal work for Robert Green and does not believe a conflict exists.

1.1 Applicant's Presentation

Bill Bennett explained the history of the corporation and the members' desire to put together an affordable housing project like Island Co-Housing.

- In 2002, Cozy Hearth purchased three lots on Watcha Path for \$1m.
- Marcia Cini helped them work through the 40B proposal with Mass Housing.
- Edgartown Affordable Housing liked the original project but couldn't get involved because there were no Edgartown residents in the group.
- The neighbors were informed about what the plan might be and gave some feedback.
- Chris Alley helped the corporation lay out the project.
- John Abrams helped them look at re-sale restrictions, no-cut zones, and clustering.
- LUPC meetings on the project helped pinpoint issues such as: groundwater and nitrogen impact; traffic impact; impact on wildlife, open spaces and neighbors; impact on neighbors' property values

Chris Alley from outlined the septic plan:

- Originally the project had 11 conventional septic systems; the current design has three clustered septic systems with nitrogen-reducing elements.
- The recommended nitrogen loading for Oyster Pond, extrapolated from Edgartown Great Pond figures, is 1.4 kilograms per acre. Even with the nitrogen reduction, they do not meet that target.
- The nitrogen loading if the property was developed according to conventional zoning – namely 3 lots with a house and guest house on each, all occupied year-round – would have nitrogen loading of 3.2 kg per acre.
- The proposed project, with 11 year-round houses on 3 septic systems, would produce 3.3 kg per acre.

Andy Grant summarized the traffic impact study:

- The study looked at the intersection of Edgartown - West Tisbury Road with Watcha Path and Oyster Watcha Road, and the intersection of Edgartown West Tisbury Road with Barnes Road.
- He based his projections on: 1) existing conditions in the summer of 2004, 2) projected figures for future “no-build” situation in 2007 with background growth, and 3) the projected build-out of the proposed application.
- He looked at three peak periods, all in the peak season: weekday a.m. peak hour, weekday p.m. peak hour, and Saturday mid-day.
- His calculations showed that presently, the traffic from 37 residences combining at one intersection generate 400 daily one-way trips, 40 at peak hour. The trip generation rate was about 10 trips per house per day.
- At the Watcha Path / Edgartown – West Tisbury Road intersection, the a.m. weekday peak hour shows left turn wait time under acceptable levels. The p.m. peak hour and Saturday peak hour left turn wait time falls into the category of 100 seconds or more. The figures are for peak-hour peak season.
- Applying projected growth from the proposed development to Edgartown – West Tisbury Road/ Barnes Road intersection does not change significantly the wait time.
- The intersection of Watcha Path Road/Oyster Watcha/Edgartown – West Tisbury Road will need some work to improve the sight distance.
- The traffic impact on the intersection leading to the 100-second wait time will be a result of the regional background growth of areas such as the Airport Business Park, not because of the impact of the proposed 11 units.
- The traffic impact of the 11 units will be minimal.
- Watcha Path is an unpaved road requiring regular maintenance by a private road association, which appears to be very active in providing maintenance. The residents of the proposed subdivision will contribute to mitigation of the wear and tear on the road, based on the number of structures.
- As a mitigation measure, the road association could be used for organizing ride sharing. Bicycling and public transportation were other mitigation measures.

Bill Bennett concluded the presentation:

- He originally supported one house per acre, but the new cluster plan preserves 60% of the space and clusters the septic.
- He is working with the Department of Fisheries and Wildlife to look at the impact on wildlife.
- 11 acres seems a reasonable amount of land for 11 houses. Aquinnah, West Tisbury and Chilmark are going to 1-acre homesite lots.
- All but two members of the corporation live on the Island. The two who don't live on the Island want to move back or want to be near family.
- The group is made up of a broad range of people.
- 8 of the lots will have 30-year affordable housing resale restrictions: 3 lots will be at 80% Average Median Income (AMI), 1 will be at 130% AMI, and 4 at 150% AMI.
- The economics of building the 3 affordable houses for the lottery require that Cozy Hearth build not less than the other 8 units.
- His research shows that affordable housing developments do not lower the value of single-family homes in their neighborhoods.
- Cozy Hearth is about housing, not profit. Their goals are to provide affordable housing for Island working families, to maintain the quality of the neighborhood, and to preserve the character of the Island.

1.2 Staff Report

Paul Foley summarized the staff report that also includes traffic and water tables, an outline of the proposal and letters from the public:

- The 10.9-acre site is in a mostly residential neighborhood, in a wooded area, near the transfer station.
- The proposal is to divide the site into 1-acre lots in 3-acre zoning through the 40B process.
- Cozy Hearth is a non-profit corporation for affordable housing organized by a group of people who intend to live in the subdivision.
- 3 of the lots will go into the Edgartown Homesite Committee lottery.
- 8 of the lots will go to Cozy Hearth participants who may not meet the Area Mean Income (AMI) restriction. Resale will be restricted with 1 lot restricted to 130% AMI, 4 restricted to 150% AMI and 3 lots unrestricted.
- The project was referred by the Edgartown Zoning Board of Appeals for a development of 10 or more dwelling units.
- Some of the key issues are:
 - Can the intersection handle the increase in traffic?
 - Can the property accommodate the water and wastewater needs?
 - How would the change in intensity of use affect the character of the neighborhood?
 - Is this a vital habitat area?
- Cozy Hearth submitted plans to the Natural Heritage and Endangered Species Program and will do a wildlife assessment if required.

- Oyster Pond Watershed hasn't had a nitrogen-loading limit established. Figures for Edgartown and Tisbury Great Pond were used to extrapolate a nitrogen load limit of 1.4 kg per acre.
- As reported by the applicant, 3 houses with 3 guesthouses occupied year-round with standard Title 5 systems would generate a nitrogen load limit of 3.2 kg per acre. With nitrogen reduction, a similar use might generate a 1.8 kg load limit. The proposed 11 houses generate a load limit of 3.3 kg per acre.
- Watcha Path is a 14-foot wide dirt road maintained by a private association.
- The trip generation with the proposed development will be about 10 vehicles per day with an increase of 65% on the total daily volume on Watcha Path Road. Currently the intersection is operating at a Level of Service (LOS) of F, with a 50-second delay to make a left-hand turn. Theoretically, level service F intersections are not supposed to be added to, but they are on the Island or there would be virtually no additional development.
- The accident rate near Airport Road and Edgartown West Tisbury Road is high.
- The Watcha Path intersection has some sightline deficiencies. The applicants offered to work with the road association to mitigate the sightline.
- The project is an Affordable Housing proposal with 8 of the lots going to Cozy Path members with resale restrictions for 30 years.
- The Commission received extensive correspondence:
 - The Edgartown Resident Homesite Committee requested that the hearing be continued. It wants to look further at the proposal and possibly place permanent restrictions on resales.
 - Matt Poole, Edgartown Board of Health, wrote that the shared septic systems need an operation and management plan to enable the nitrogen reduction plan to be effective.
 - The Vineyard Conservation Society wrote in opposition to the proposal, citing too much density, and environmental and water impact. The reduction to 1-acre zoning sets a bad precedent.
 - Gunner and Kristen Lamb of Jennie Lane wrote in opposition, citing zoning density and impact on their privacy.
 - Jonathan Spalter wrote in opposition, citing noise, impact on the environment, zoning, traffic, and personal financial impact.
 - Karen Hannigan wrote in opposition, citing increased density, change of character, traffic, and zoning.
 - William and Betty Kennedy wrote in opposition, citing zoning, environmental impact and inappropriate use of 40B.
 - Geoff Patterson stated his opposition citing zoning, water quality, impact on the environment and open space, noise, 40B, and traffic.
 - David and Cheryl Vance stated their opposition, citing groundwater, traffic, and neighborhood character. They feel that the additional traffic will bring the road to the breaking point and they would have to pave the road.
 - Robert Green wrote in opposition stating that Watcha Path is a designated DCPC when it crosses the West Tisbury line. He cited nitrogen loading, change in rural character, and stated that only 3 affordable lots is not good planning.

- Linda DeWitt wrote explaining that she had traced the origins of Watcha Path to the 1640s. She noted the abundance of birds and wildlife.
- Greg Blaine wrote in opposition citing character, etc., including increased noise from transfer station.
- Tam Blaine wrote in opposition based on traffic, character, environment, and quality of life.
- Christopher Downing wrote in opposition, citing density, zoning and impact on Watcha Path.
- Margot Parrot wrote in favor of the proposal.
- Donald Harrington and Elizabeth Harrington both wrote in opposition to the proposal.

1.3 Town Boards

Christina Brown summarized Town Board concerns:

- The Edgartown Resident Homesite Committee is asking for more time to examine the proposal and look at placing perpetual restrictions on resale.
- The Edgartown Board of Health requested that the shared denitrification system plan be spelled out in detail.
- The Edgartown Planning Board hasn't discussed the plan and hopes to meet with the applicants for a presentation, giving Edgartown residents the opportunity to review the proposal.

Chris Murphy asked whether the Edgartown Zoning Board of Appeals act as the Planning Board for a 40B project. **Christina Brown** said that the ZBA acts as the permitting authority and is given advice by other town boards.

1.4 Public Comment

Alan Gowell spoke in support of the proposal:

- He is member of the Edgartown Affordable Housing and Resident Homesite Committees, but was not speaking on behalf of the committees because neither committee has discussed the proposal.
- He believes that Bill Bennett has paid a big price by giving up three lots to the Resident Homesite Committee.
- He asked that the Commission leave the further perpetual restrictions to other committees. The proposal is a grassroots effort that should be supported.

Letitia Osborne Zell said she is working with Bill Bennett and hopes to have one of the lots.

- She outlined housing costs on the Island and said that the income required to qualify for a mortgage of \$500,000 is \$160,000 with a monthly payment of over \$3,000.
- Ten of the Cozy Hearth Homes are for year-round families. The project will enable middle-income families to afford to live on the Vineyard.

Margot Parrot spoke in support of the project and explained her family's housing situation.

- She said 40B projects alarm neighborhoods but Cozy Hearth is a poster child for how a 40B can enhance a neighborhood and small clusters encourage community.

Suzy Zell spoke in support of the project, citing security and continuity. She added that if even one lot were to be dropped from the proposal, she would not be able to afford to stay with the project.

Gary Maynard, an Island builder, spoke in support of the project.

- This project is in the essential spirit of what 40B should be about, which is to provide housing. This project doesn't make a profit for anybody.
- The project is a bootstrap effort and is not trying to make money on grants; the applicants are just trying to pool resources.
- The impact on neighbors is unfortunate but necessary.
- The most remarkable aspect of the project is how much the group has done with so little support.

Les Moore spoke in support of the project.

- She said her experience is that low-income housing invites diversity and doesn't affect resale values.
- Owners' commitment to their property is a blessing in disguise to neighbors.

George Hern spoke in support of the project, saying it is a reasonable project and will help keep people on the Island.

John Abrams spoke in support of the project.

- He said the proposal is different from most as it did not come from housing activists, a public entity, or a town. The proposal came from a guy who saw how it might be possible to keep his business and his workers.
- Bill Bennett has seen how slowly the process goes and how many compromises he's had to make.
- He said it's now up to the Commission and Bill Bennett to figure out the best way for the project to go through.

Nat Benjamin spoke in support of the project.

- He is on the Tisbury Housing Authority but is speaking as a private citizen acutely aware of the problem of affordable housing.
- This project may be the paradigm for affordable housing on the Island.

Ben Hall, Trustee of Cliffhanger Reality Trust, said the trust wholeheartedly supports the project.

- This project is exactly the kind of community-based, self-help project for which the Commission's guidelines were developed.
- The project is not too dense; it creates a community within a lovely community.
- Once the transfer station was built, any notion of pristine groundwater was thrown out. The transfer station created more impact and forever altered the nature of the area.
- Traffic is an issue but 110 trips might be more than the actual number. The road access easement is wide enough to improve sight distance at the intersection and could have turnouts.
- There is no certainty that water is moving toward Oyster Pond.

- He urged the Commission to approve the project tonight; it is the kind of project the community needs and wants.

Gay Nelson read a letter from Connie Sanborn, Bill and Tish Zell's landlord, supporting them, and commenting that the Island is a better place with them.

Elizabeth Harrington, a direct abutter, spoke in opposition to the project.

- She mentioned the safety issues in terms of traffic and children.
- She said she understood the need for affordable housing; many residents of Watcha Path have dealt with housing issues. At this site, density is the issue. Water and septic make Watcha Path the wrong site.
- She requested that the Commission take another look at the septic.

Linda Dewitt, until May 1st an appointed member of the Commission, said she believed in compromise.

- She pointed out that several other lots on Watcha Path would be developed. She would like the Commission to participate in the planning and development of the area.

Chris Downing, president of the road association, spoke in opposition to the project.

- There are currently 19 houses; 6 are rentals. 11 houses is a substantial increase in one shot.
- The primary issue is density. The area is residential/agricultural 3-acre zoning for a reason.
- One big concern besides this development is the open lots that will be coming up for development.
- The road is narrow and it suffers for the use. He doesn't want to change the road to meet a development that is beyond the realm of the zoning.
- He urged the Commission to adjust or alter the application.

Ann Gallagher said she was asked by the director of the Vineyard Conservation Society to speak about density concerns:

- The project sets a dangerous precedent for 40B applications. It exceeds zoning limits and opens the door for 40B applicants who want to make a profit.

John Harrington spoke in opposition to the project.

- Many people have struggled to build or buy their first house.
- The Edgartown Community Development Plan outlined housing suitability criteria: development should be in a neighborhood of 10 or more existing properties, in or near a village center, town services, and schools and not in a nitrogen-sensitive area.
- He expressed the fear that the neighborhood could end up with 60 houses if the Commission doesn't stick with its own plan.

Karen Hannigan, an abutter, said this is a tough night with emotions.

- She spoke in opposition to the project in terms of density, environmental issues, and the fact that it doesn't meet planning criteria.
- She said there were other ways and better places to do the project. Using smart growth principles, the Island can secure affordable housing without sacrificing neighborhoods.

Linda Sibley clarified that the referenced report was Edgartown's Community Development Plan which the Commission helped prepare, but it is not the Commission's plan. **Ben Hall** clarified that the Edgartown Community Development Plan has not been approved or adopted by any town boards.

Robert Green said this is his second time before the Commission; the first time was for the transfer station.

- He agreed with Ben Hall on one point about the transfer station; it has not been developed and run according to conditions and criteria.
- He is concerned mainly with nitrogen loading. The proposed systems are not proven and the levels are twice the levels recommended for the pond.
- He is afraid that the ponds will be sacrificed for affordable housing. We have to study the pond and work on the nitrogen levels.

Paul Hannigan spoke in opposition to the project.

- His family did the housing shuffle for 12 years.
- The site isn't in keeping with the Community Development plan.
- He is concerned with the maintenance of the nitrogen reducing systems that are unproven.
- He urged and expected that a complete and thorough habitat study would be done.
- He was a traffic engineer and has read the traffic impact study. Although he didn't disagree with the introductory statements about affordable housing, they shouldn't be part of the traffic study or any technical statement.
- He disagreed with the traffic study that the intersections wouldn't be negatively affected by a 65% increase in traffic and questioned the accuracy of the counts because of the number of bedrooms and delivery and service vehicles.
- Mr. Hannigan presented a graphic of the particular geometry of the intersection and explained its various hazards. He said a proper safety analysis was not done.
- The obvious conclusion is that 65% will create a degradation of the road. Residents do not feel good about the traffic impact study and the precedent of 1-acre lots set by the project.
- The Martha's Vineyard Commission has full review power over 40B applications. He quoted lawyer Ron Rappaport comments on the court's decision confirming the court's upholding the Commission's power to review 40B projects to the effect that this was a good decision because otherwise, 40B projects could bust open zoning.
- He respected the Commission and expected that it will deny the project.

Steven Parece said he was opposed to the project; the reasons were already expressed. He will submit a letter from his wife.

Geoff Patterson spoke in opposition to the project mainly because of the precedent it sets. In the future, developers and lawyers will be all over the Commission.

Tam Blaine said her property abuts the transfer station.

- She knows people who own houses but can't afford to live on the Island.
- Her concerns are that the traffic at the intersection is unsafe and the land is under 3-acre zoning.

Chris Murphy asked if Doug Sederholm could address the issue of the Commission's review of 40B projects and its relationship with zoning. **Doug Sederholm** said that 40B is not inconsistent with Chapter 831, the Commission's enabling legislation, which provides the Commission with a series of criteria to weight the benefits and detriments of a project. The Commission considers whether the project meets zoning.

Christine Flynn, MVC housing planner, said that in instances where the project is for affordable housing, the Commission can make an exception to the requirement of meeting zoning regulations for certain educational, recreational, and affordable housing projects.

Linda Sibley suggested that as Edgartown boards will have an advisory role to the Edgartown ZBA, it may also be helpful to have Edgartown boards advise the Commission.

Mark London asked how long Natural Heritage might take to get back to the Commission on the wildlife inventory. **Paul Foley** said the Commission will consider the habitat assessment from Natural Heritage, but should proceed with scheduling the continuation of the public hearing; Natural Heritage works at a different pace than the Commission. **Christina Brown** confirmed that if a habitat assessment must be done, it would be done.

Marcia Cini and **Bill Bennett** said they would be happy to meet with town boards.

Robert Green suggested that there be another site visit for those Commissioners unable to attend the first one, looking at both sides of the property, the pond and the neighborhood.

Karen Hannigan encouraged Commissioners to visit the site when the transfer station is open. She said that removing more trees from the area might augment the noise from the transfer station, which operates 7 days a week.

Christina Brown explained that the public hearing would be continued to June 23rd.

- The Planning Board and the Resident Homesite Committee of Edgartown have both asked for the opportunity to make more comment.
- The applicants will meet with the planning board informally; the planning board will let abutters know when.
- Natural Wildlife questions need to be answered.
- Questions were raised about traffic and the Commission's traffic analyst will decipher the traffic report.
- There will be another site visit.
- The Commission wants more information about the nitrogen loading and the proposed systems.

Doug Sederholm said that the information about wastewater system was very condensed. He would like to hear a great deal of detail about the nitrogen-loading system and would like to hear from the health agent from Edgartown.

Linda Sibley said she is interested in hearing about resale restrictions. Although three houses are affordable, the question is whether the families in moderate-restricted range meet affordability criteria.

Linda Sibley asked for a list of the members of the corporation so Commissioners could be clear as to whether there are any conflicts of interest.

2. JIM ROGERS AIRCRAFT HANGAR – DRI. NO. 586 – WRITTEN DECISION

Commissioners Present: J. Athearn, J. Best, J. Breckenridge, C. Brown, M. Davisson, C. Murphy, K. Newman, M. Ottens-Sargent, D. Sederholm, L. Sibley, P. Strauss

Commissioners agreed to following changes in language:

- Title: The project should be referred to as the "Jim Rogers Aircraft Hangar".
- Section 3, No.A2: should read "the Commission finds that the parcel is in a wooded area"
- Pg. 1, Line 10 & 18 should read "the town of Edgartown".

Christina Brown said the staff did a really good job of distilling the discussion into the written decision.

A motion was made to accept the written decision as written with the above-noted changes. A roll call vote was taken. In favor: J. Athearn, J. Best, J. Breckenridge, C. Brown, M. Davisson, C. Murphy, K. Newman, M. Ottens-Sargent, D. Sederholm, L. Sibley, P. Strauss. Opposed: None. Abstentions: None. The motion passed.

3. EDEY FOUNDATION GRANT – VOTE TO ACCEPT

Commissioners Present: J. Athearn, J. Best, J. Breckenridge, C. Brown, C.G. Condon, M. Davisson, C. Murphy, K. Newman, M. Ottens-Sargent, D. Sederholm, L. Sibley, P. Strauss

Mark London explained that the Commission received an Edey Foundation Grant for \$29,800 for outreach activities related to the planning process, including planning related forums, and water quality research.

Megan Ottens-Sargent said the grant was very well-written; it gave a synopsis of the planning process. She recollected that one aspect of the grant was educating the community about the Mass Estuaries Project.

Paul Strauss moved and it was duly seconded to accept the grant from the Edey Foundation for \$29,800. A voice vote was taken. In favor: 10. Opposed: 0. Abstentions: 2. The motion passed.

4. OTHER BUSINESS

Christina Brown asked for Commissioners availability on July 7, July 14th, and July 21strd, for the continuation of the Cozy Hearth Hearing. June 23rd is the scheduled date until further notice. [Ed. Note: After the meeting, the Hearing was continued to July 14.]

Christina Brown said LUPC would be meeting the first Monday in June, for discussion of the DRI checklist, starting with run-down of the DRI tour.

The meeting adjourned at 10:30 p.m.

Linda B Sibley
Chairman

Aug 4, 2005
Date

Nathaniel J Means
Clerk-Treasurer

Aug 4, 2005
Date