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## **Minutes of the Commission Meeting Held on August 10, 2006 In the Stone Building 33 New York Avenue, Oak Bluffs, MA**

### **IN ATTENDANCE**

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

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

Staff: Mark London (Executive Director), Paul Foley (DRI Coordinator), Christine Flynn (Affordable Housing & Economic Planner), Bill Wilcox (Water Resources Planner)

### **1. EXECUTIVE DIRECTOR'S REPORT**

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#### **1.1 Island Plan Forum**

**Mark London** reported that seventy people attended the Island Plan Forum on Wednesday, August 9, 2006. The forum focused on priority goals and what the Vineyard has done well and less well in the past. The information will help generate next steps and the next on-line survey.

#### **1.2 Blinker Intersection**

Mark London reported that the Oak Bluffs Selectmen held a second meeting on the Blinker intersection, which focused on abutters and directly affected people, particularly Oak Bluffs residents.

- At the first meeting, many people said leave the intersection alone. At the second meeting more people said there was a problem with the existing four-way stop.
- The question was raised whether a temporary roundabout could be built that could be removed if it didn't work out. However, implementing a temporary roundabout raises many issues that would have to be explored.
- **Ned Orleans** asked whether the Commission would need to make a decision on the roundabout. **Mark London** reported that, up to now, the Commission staff has worked on this. It could be referred to the Commission.

### **1.3 Meeting Attendance**

**Mark London** reported that the Attorney General's Office is proposing new rules about meeting attendance which would allow a board member to participate in a decision even after missing one session of a hearing, provided he or she watched a video and looked at all the evidence submitted. It is not clear as to whether this could apply to the Commission.

**Linda Sibley** said the current policy of requiring Commissioners to attend all sessions of a public hearing to be eligible to vote on an issue was adopted on advice of counsel. She suggested that Commissioners want to be cautious to prevent creating a situation that allows Commissioners to not attend public hearings. She wants to continue being considerate of people's schedules and allow Commissioners who represent a town to review a project in his or her town.

**Paul Strauss** said the State Association of Conservation Commissions has issued an article on the same topic. They support that a commissioner could miss one and only one hearing and still participate in a decision.

**Linda Sibley** encouraged people to think about the pitfalls and benefits of the issue.

## **2. 21 KENNEBEC REALTY TRUST: DRI NO. 595 – PUBLIC HEARING**

*Commissioners present: J. Athearn, J. Best, J. Breckenridge, C. Brown, C. Condon, M. Davison, C. Murphy, K. Newman, N. Orleans, D. Pigeon, J. Powell, D. Sederholm, L. Sibley, P. Strauss, A. Woodruff*

**Christina Brown** opened the public hearing and read the hearing notice. She noted that the project is for construction of a 3-story mixed-use building of 5629 sq. feet.

### **2.1 Applicants' Presentation**

**Alan Schweikert**, a partner in 21 Kennebec Realty Trust, described the project..

- The proposal was the subject of 2 town meeting votes, 3 public hearings and 4 permits. At no time was there any interest in trying to circumvent any permitting agency.
- The history of ownership is that Dr. Rappaport owned the building and lot, then Dr. Glenn Lovejoy until 1987, then Peter Vincent and Arthur Smith. They made the building mixed use and left the parking lot on Kennebec Avenue. Then William Crapy bought the lot and building from the bank and developed some plans for the lot.
- The current project began in 2004 with Sullivan and O'Connor, architects. On May 3, 2004, the developers met with the Wastewater Commission who allowed 6 bedrooms and 2 retail spaces.
- In the summer of 2004, the developers met with the Oak Bluffs Planning Board, which referred them to the Board of Selectmen. At the October 4<sup>th</sup> meeting with the Selectmen, they developed the idea of mutual easements between the town parking lot and 21 Kennebec, allowing the Town to develop better parking and traffic flow. The Selectmen asked the Realty Trust to volunteer to go before the Oak Bluffs Historic Commission, which it agreed to do.

- In January 2005, the Realty Trust had the first public hearing with the Planning Board and received relief for 10 parking spaces instead of 13, with payment to the parking mitigation fund.
- The Planning Board liked fact that the building plan was consistent with the historic streetscape, the mutual easement, and the payment to the parking mitigation fund.
- On September 20, 2005, they received a building permit with the restriction of 2000 square feet of retail space, which they understood would mean no referral to the Martha's Vineyard Commission.
- The Historical Commission asked for modification of railings, trim, and windows; also, to add to the historic skyline, the Historic Commission asked that the plan include Victorian turrets, which would exceed the height limit.
- On November 5<sup>th</sup>, the Realty Trust went before the Zoning Board of Appeals to get a variance for the turrets. When the ZBA denied the variance, the Historical Commission decided to propose a by-law giving the ZBA the power to grant special permits to exceed B-1 height limits. The by-law was approved so on April 26<sup>th</sup>; the ZBA granted a special permit to exceed the height limit by 14" and 42".
- The proposal is for a mixed-use building of 5600 square ft on a 4500 sq. ft lot, with two 888 square ft. retail spaces, two 963 sq. ft. 2-bedroom apartments on the second floor and two 963 sq. ft. 1-bedroom apartments on the third floor.
- The retail space will be handicapped accessible, the building will have cedar shingles, white trim, and asphalt roofing on the turrets.
- For the most part, the space surrounding the building will be paved but some room for plantings might be available. They will propose landscaping between the lot and the public bathrooms. If there is anywhere to put a tree, they will plant one. The building's parking area and the town lot will be repaved.

**Alan Schweikert** outlined the benefits of the project:

- The price of the units and who they'll cater to will be a benefit. The units will be priced in the upper \$300,000 range, which will make a positive impact on moderately priced units. The Realty Trust has taken the right of first refusal on all of the units.
- Over the last ten years the number of short-term seasonal rentals has diminished. There are a lot of long-term rentals. Today there are 16 year-round rentals and 29 winter rentals; there is not a dearth of short-term rentals. He would like to see the unit owners be able to do short term rentals. He doesn't think there's a need to restrict the units to long-term rentals
- The project is consistent with town plans and objectives. The Historic Commission has caused a lot of change in objectives and wants to bring back the Victorian skyline and details.
- Oak Bluffs has wanted to deal with traffic; the project's parking plan with the town helps traffic and parking. Kennebec Avenue was the commercial loop and it seems that the town wants that back. In addition, this building will help contribute to the other businesses on Kennebec.
- The use of the retail spaces is restricted by wastewater and by parking. The businesses will appeal to pedestrian traffic.

- Another benefit is the traffic impact. This will have minimum effect on the type of vehicular traffic. Other benefits are the mutual easements and payment into parking fund.
- The project is not a further burden on the schools; the units are aimed at couples and single people.
- The taxes are about \$3,000 a year on the vacant lot; taxes will increase about 6 times when the units are built.

**Alan Schweikert** says he hopes the Commission will find that the benefits outstrip the detriments if there are any.

**John Breckenridge** asked whether the parking spaces would be deeded to the condo owners. Two will go to the retail people.

**John Best** asked where they are with construction. **Alan Schweikert** said the building is weather-tight and unfinished inside.

**Alan Schweikert** confirmed that the applicants make the offer to contribute to an affordable housing program.

## **2.2. Staff Report**

**Paul Foley** summarized the staff report.

- Required permits are for wastewater, which has been granted for 470 gallons, a special permit for relief for 10 parking spaces, building permit, and a special permit granting relief from height restrictions.
- The use has been private parking.
- The Oaks Bluff Selectmen referred the project to the Commission as a discretionary referral and the Commission determined that the project triggered a mandatory review as a mixed-use building with four or more premises.
- Key issues include traffic and commercial activity on Kennebec Avenue and loss of parking.
- Surrounding bars have historically created noise, which could impact the residences.
- This is a smart-growth in-fill development, but it eliminates parking and increases the need for parking.
- The traffic configuration will flow through with the mutual easement.
- Wastewater has been approved for 470 gallons for 6 bedrooms and 2 retail units.
- Traffic analysis is that the project will create 102 daily 1-way trips. The street is a local 1-way street and most customers to the retail units would be walking. The site has 3 designated parking spaces. Vehicular trips to the stores on this site only are unlikely. LUPC waived the traffic study. Mitigation for traffic could be a crosswalk and stop sign.
- The affordable housing contribution would be \$3629, which the applicant has offered to contribute. One of the units will probably provide staff housing to one of the retail units.
- The unit prices would be affordable to people with income at 140-150% of median income.
- While the building seems quite large, it is in keeping with other buildings. Architecture has been worked out with Historical Commission.
- Town house apartments are exempt from ADA requirements.

- The Commission has received letters from the Historic Commission; one resident wrote concerned with loss of parking. Geoghan Coogan wrote on the part of the Lamppost welcoming the project but warning about noise.

**Srinivas Sattoor** reported that there are 5900 vehicles on Kennebec per day in the summer. There is a question whether traffic would be generated according to ITE estimates.

### **2.3 Town Boards**

**Priscilla Silvia** said that the applicants came twice voluntarily to the Oak Bluffs Historical Commission. The Commission felt the building should have the turrets and towers to avoid a box shape; the Historic Commission supported the applicants by proposing the by-law through town meeting.

**Renee Balter**, chairman of the Historical Commission, urged the Martha's Vineyard Commission to support this application because it is a step in the right direction and has a lot of integrity. The benefits far outweigh the detriments.

- Oak Bluffs has lost a lot of the Victorian buildings. Right next door to this building was a large Victorian hotel.
- Oak Bluffs has about 4500 acres in town; 11 acres in Oak Bluffs are B1 zone. The Historical Commission is trying to get and keep as much as possible in the B1 commercial zone. This project is important adding to a vibrant downtown community and having year-round downtown residents is terrific. Also downtown apartments on the sewer are terrific.
- Buildings over 100 years old that are intended for demolition come before the Historic Commission.
- The Cottage City Historic District reviews everything in its district. The Historical Commission deals with the business district.

**John Bradford**, chair of the Planning Board, described the mutual easement.

- The plan originally proposed by William Crapy had the building set back with parking along the front. The Planning Board encouraged him to work out a mutual easement to deal with parking.
- When Alan Schweikert came to them with the plan they worked out the mutual easement and the traffic mitigation contribution which will serve the town
- The idea for the traffic mitigation is to use the money for satellite parking or a shuttle. The old parking restrictions only apply to new construction. Existing buildings don't have to meet the requirements.
- If there were a change in use, the project would have to come to the Planning Board to either provide the required parking or contribute to the traffic mitigation fund. In time, there will be a substantial amount of money.
- There were public hearings on the parking.

### **2.4 Commissioner Questions**

**John Best** asked whether the applicant was given a copy of the energy policy.

**John Breckenridge** asked about the area on Kennebec that is a loading zone. **John Bradford** said that the area would remain a loading zone, unless the highway department makes a change.

**John Breckenridge** asked if there have been any provisions for special signage for the retail buildings that may be blocked by delivery truck. **John Bradford** said the building would have to adhere to signage rules.

There was a discussion of wastewater.

- **John Breckenridge** asked about the wastewater approval.
- **Alan Schweikert** said they were granted 470 gallons for 2 retail units and 6 bedrooms.
- **Christina Brown** suggested that if John Breckenridge wants to know how wastewater numbers were developed, he could contact the wastewater commissioners.
- **Mimi Davisson** asked what happens if they exceed 470 gallons.
- **Alan Schweikert** said that if a building goes over its limit, they pay more.
- **Bill Wilcox** said maybe the 470 is based on actual flow rather than design flow.
- **Doug Sederholm** asked whether flow would be individually metered. Everything will be individually metered because they are condo units.

**Alan Schweikert** said there would be a basement with utilities as well as storage units for the shops and residents.

**Chris Murphy** asked about the process for referral to the Commission. **Christina Brown** and **Linda Sibley** said that a discussion of the process wouldn't be relevant to the public hearing and should be held at another time.

There was a discussion of parking.

- **Alan Schweikert** said 2 of the 3 1/2 spaces would be assigned to the retail units. The town lot drawing is only a rendering and the developers have no control over the town spaces. Tim Doble has an easement; Alan will give him a 1/2 space to add to his easement and have a full space.
- **Chris Murphy** asked where the condo owners would park.
- **John Bradford** said parking is dealt with through the mitigation fund as a creative way to address parking in Oak Bluffs. Building owners can't provide the parking; there isn't enough space. The town has to come up with creative ways to address the parking like satellite parking or a shuttle bus. The funds will come from the annual payment into the traffic mitigation fund in lieu of providing the parking.
- **Chris Murphy** said he is concerned about putting more pressure on town outskirts as Oak Bluffs works to develop the downtown district.
- **John Bradford** said that the parking committee is working on developing a park-and-ride. Currently there's a park-and-walk from the elementary school and the committee is looking at a parking area on the bus route to alleviate the downtown congestion.
- **Chris Murphy** said the developer gets to charge for the use of three spaces and the rest of the residents take up town parking from other business users.

**There was a discussion of the** type of retail units.

- **Alan Schweikert** said he would expect mostly dry goods retail.
- **Doug Sederholm** asked, in light of parking, would it be reasonable to limit the use to not high-traffic-generating business?
- **Alan Schweikert** said he doesn't like to fiddle with economics. Given the wastewater and no designated parking, he can't see that high traffic businesses would be in the units.
- **John Bradford** said a restaurant has to be approved for a per seat flow.
- **Linda Sibley** noted that a recent project had a condition that certain high traffic businesses could not go into the site unless approved by the Commission.
- **Christina Brown** listed the highest traffic businesses based on the ITE manual: fast food restaurant, drive through bank, convenience store, and gas stations.
- **Alan Schweikert** agreed to have none of those and said he is concerned with tenants living upstairs.
- **Linda Sibley** said the restrictions that exist would dictate that a high-traffic-generating business would not want to be there.

**Kathy Newman** asked about the three parking spaces. **Alan Schweikert** said two go with the retail units and he hasn't decided about the third.

**Mimi Davisson** asked whether the traffic design allows a truck to unload in the back and whether there would be designated hours for unloading. **Alan Schweikert** said there should be room and there should be designated hours so people can park in the back.

**Jim Athearn** thanked Alan Schweikert for a clear presentation and asked about exterior lighting and garbage collection. **Alan Schweikert** said there are streetlights in front and building; lighting will be basic according to code in front and motion sensors in back. They will use area under the building cantilever in back for garbage storage.

**Paul Strauss** commented that the Commission has talked about in-fill development and the value of residential units above the commercial shops. This project addresses those issues very admirably. One could ask the question whether the project is appropriate on a street in Oak Bluffs already filled with commercial activity and whether it's needed. But somebody has made an investment in making the project needed and insists that the activities will not generate vehicular traffic. He asked if it would be possible to create underground parking. **Alan Schweikert** said he hadn't looked into it, but a concern would be groundwater. **Paul Strauss** said if water wasn't an issue in installing a basement, it shouldn't be an issue with underground parking.

**Renee Balter** said the main traffic problem downtown is pedestrians and crosswalks. Oak Bluffs suffers from parking problems for two months. The parking solution is the fund which could build a really good park-and-ride and parking on the bus route.

**Alan Schweikert** said he's not sure a parking basement would work. He says he's never had a problem parking; there's always something somewhere.

**John Best** asked about the design of the 4<sup>th</sup> floor. **Alan Schweikert** said there is no fourth floor or attic. There are skylights on cathedral ceilings.

There was a discussion of energy.

- **John Best** referenced the energy policy and said that the fact that they are in the middle of construction might preclude some things but not everything. He would like to see the applicants review the energy policy and come up with creative ideas of how to lessen the energy loads. Maybe the cost would be pushed up but there could be some real returns.
- **Linda Sibley** said that not a lot of money is needed to make spaces substantially more efficient while enhancing the value of the project. She said it would be silly to put in inefficient fixtures when it's so easy to add efficient ones.
- **Alan Schweikert** said he would be glad to talk with his partner about what they can do in addition to the existing design of 6" walls and thermopane windows, etc., without driving the cost of the units up.
- **Mark London** referenced the Woodland energy condition, which asks that the developer take energy-saving measures that would be reviewed by LUPC for final approval.
- **John Best** said it's imperative, given the time-frame, that the applicant start working with his partner to implement energy-saving measures.

**Mimi Davisson** asked about fire prevention. **Alan Schweikert** said he believes that it has sprinklers and the retail space meets sheetrock requirements.

**Mimi Davisson** asked whether Alan Schweikert would consider giving a right of first of refusal to the affordable housing community at market rate. **Alan Schweikert** said he's not sure of the ramifications and he would not want to diminish the value of the property.

**Doug Sederholm** asked whether Alan Schweikert has read Geoghan Coogan's letter about the noise from nightclubs and asked whether it would be wise to notify prospective buyers that they are buying in the middle of the nightclub area. **Alan Schweikert** said the building is heavily insulated and has thermopane windows and air-conditioning so windows could be closed; he has no problem telling prospective buyers about noise and activity.

There was a discussion of short-term rentals.

- **Doug Sederholm** said he is concerned that the year-round residential units stay year-round year round residential units. He has a concern that an owner might buy a unit as an investment property and rent it by the week. He wondered whether the applicants would have an objection to limit rentals to at least one month.
- **Alan Schweikert** said his statistics show there isn't a need for restrictions and he would hate to limit the buyers especially when there's no need for it.
- **Jim Athearn** suggested that, after hearing his presentation, even if this project had come before them as a hotel, it wouldn't be a bad use in a commercial district.

**Christina Brown** closed the public hearing.

**Mimi Davisson** said she is disappointed that the Commission couldn't deal with the application tonight. **Linda Sibley** said it's not the Commission's normal process to skip LUPC. She agreed that there was a potential to make a decision but it's not unusual to need additional time.

### **3. GOOD COMPANY: DRI NO. 551-M2 – WRITTEN DECISION**

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*Commissioners present: J. Best, J. Breckenridge, C. Condon, M. Davisson, C. Murphy, N. Orleans, D. Sederholm, L. Sibley, P. Strauss, A. Woodruff.*

*For the applicant: Sean Murphy, attorney*

**Linda Sibley** explained that the purpose of reviewing the written decision is to make sure the language in the written decision reflects the intent of the oral decision

*Commissioners agreed to the following changes:*

- *Page 1, Line 8: August 10, 2006*
- *Page 2, Line 14: Final plans show . . .*
- *Page 2, Line 14: Staff will develop language to show total square footage for above grade and lower level.*

**Mimi Davisson** clarified that the number of parking spaces should be 74 throughout the document to include the 4 spaces for staff.

- *Page 2, After Line 22: The proposed project will be connected to the Edgartown wastewater treatment facility. The houses on the remaining 25 B.A.D.D. subdivision lots, originally approved for septic systems, will also be connected to the wastewater treatment facility. The effluent from the wastewater treatment facility will go into Edgartown Great Pond Watershed whereas the effluent from the formerly-approved septic systems would have entered Katama Bay Watershed.*
- *Page 2, Line 20: Add the cost of out of season memberships.*
- *Page 2, Line 15 – 16: Add the types of tennis courts.*
- *Page 2, Line 17 – 18: Owners are automatically entitled to become members. .*

**Ned Orleans** referenced Section A1 and commented that the Commission approved the development because the benefits of it were seen to be better than the benefits of the seven houses that had been approved. **Doug Sederholm** suggested keeping the language the same.

- *Page 3, Line 32 – 33: . . . on these parcels.*
- *Page 3, Line 38 - 41: With respect to wastewater and groundwater, the Commission finds that the project will result in an overall reduction in nitrogen within all Edgartown ponds because sewerage of the project and the 25 subdivision lots will generate less nitrogen than the formerly-approved 32 septic systems. The Commission notes that residual nitrogen will be transferred from Katama Bay Watershed to the more nitrogen –sensitive Edgartown Great Pond Watershed, but the project is conditioned with the goal of producing zero net nitrogen into the Edgartown Great Pond Watershed.*
- *Page 2, Line 13 – 14: To construct a private family recreational facility to be operated for members only.*
- *Page 4, Line 7: . . . especially since the elevation of the GOOD Company will be lower than the surrounding neighborhood.*
- *Page 4, Line 21 - 22: strike The Commission notes . . .*
- *Page 4, Line 23 – 25: With respect to the impact on the existing neighborhood, the Commission finds that the project will have an impact during construction but necessarily more than if the previously approved seven houses were built. There will also be an on-*

going impact due to increased traffic. The Commission notes that the persons buying property in the immediately abutting B.A.D.D. Company subdivision will do so with notice that the Field Club will occupy the center of it.

- Page 5, Line 23: . . . and others, and the addition of conditions relating to wastewater and future traffic mitigation the Commission has concluded . . .
- Page 6, Line 16. . . designed to handle only the wastewater from the subdivision and the proposed Field Club until it reaches Road to the Plains.
- Page 6, Line 24 - 25: . . . between the Road to the Plains and the Wastewater Treatment Plant . . .
- Page 6, Line 31: If the Town has not voted . . .
- Page 6, Line 36: . . . Road to the Plains . . .
- Page 7, Line 4: . . . watershed, or . . .
- Page 7, Line 5: On-site denitrification to 20 existing residences . . .
- Page 7, Line 8: The selected option is subject to the approval of the Land Use Planning Committee/
- Page 8, Line 23: Prior to the occupancy permit the applicant shall provide a site plan showing a dormant access subject to approval by LUPC.
- Page 9, Line 9: . . . between May 15 and October 15.
- Page 9, Line 32 - 33: Strike We anticipate . . .
- Page 9, Line 35 - 37: Strike We anticipate . . .
- Page 9, Line 40 - 42: Strike We anticipate . . .
- Page 10, Line 9 - 14: Strike for functions and weddings . . .
- Page 10, Line 40 - 41: . . . surrounding the courts to improve aesthetics and to reduce noise.
- Page 11, Line 14: . . August 10, 2006.

**Doug Sederholm moved, and it was duly seconded, to adopt the written decision as amended. A roll call vote was taken. In favor: J. Best, J. Breckenridge, C. Condon, M. Davisson, C. Murphy, N. Orleans, D. Sederholm, L. Sibley, P. Strauss, A. Woodruff. Opposed: None. Abstentions: None. The motion passed.**

The meeting adjourned at 11:00 p.m.



Chairman

4-8-07

Date



Clerk-Treasurer

4-5-07

Date