Minutes of the Commission Meeting  
Held on September 21, 2006
In the Stone Building
33 New York Avenue, Oak Bluffs, MA

IN ATTENDANCE

Commissioners:  (P = Present; A = Appointed; E = Elected)
P  John Best (E – Tisbury) -  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)
- 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)  -  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)

The meeting was called to order at 7:43 p.m.

1.  EXECUTIVE DIRECTOR’S REPORT

Mark London gave the Executive Director’s Report:

- Several Commissioners requested an Island Plan update during the October 5th meeting. Members of the Steering Committee and others will spend about an hour updating Commissioners and the public on its work, and presenting opportunities for getting involved.
- He distributed a letter from the Tisbury Planning Board to Commissioners requesting that the Island Plan Committee look at the issue of large houses and explore an Island-wide DCPC for energy and the impact of large houses. He commented that the issue isn’t only the floor space, but also the massing, the visual impact, and other aspects that may be non-physical.

2.  21 KENNEBEC AVENUE: DRI NO. 595: DELIBERATION & DECISION


Christina Brown gave the LUPC report.

- LUPC unanimously agreed to recommend that the proposal as submitted be approved.
- LUPC also recommended that the draft conditions be accepted including accepting the following offers.
- The applicant will contribute $3629 to an Island Affordable Housing agency.
- The condo association will have purview over the terms of rentals. The applicant was clear that that the tenants’ association will have say-so over the kinds of rentals that might take place which makes good sense for the people who live there.
- The applicant will submit the landscaping and energy plan to LUPC. He will be working with the town on the landscaping plan because of the two adjoining town properties.
- The traffic and parking plan as proposed should be accepted. LUPC recommended that the Commission write to the Oak Bluffs Selectmen offering assistance by staff on developing the parking improvement program.

**Chris Murphy** asked whether parking should be noted under traffic and whether the applicant’s annual $875 payment to the parking mitigation fund should be included in the written decision. **Linda Sibley** said the payment could be included.

**Christina Brown** said the benefits of the project included that is in-fill development, pedestrian oriented, mixed use, near public transportation, and architecturally compatible with its surroundings. Additionally, the applicant will work with the town to rearrange and reorganize the way the parking area is used.

**Mimi Davisson** said she had been concerned with the safety of the sidewalk near the bathhouse, but it seems that the landscaping plan will address that.

**Paul Strauss** moved, and it was duly seconded, to approve the project with the proposed draft conditions.

There was a discussion of energy measures.

- **Christina Brown** said that the building is projected to be 28% more efficient than the Massachusetts Energy Code because of various energy-saving measures. In addition to construction techniques, the applicant also listed a number of energy saving measures including the installation of: gas appliances, front loading-dryers, fans in the cathedral ceilings, insulated interior partitions and floors, and fluorescent lightbulbs in common areas.
- **Mimi Davisson** suggested that the energy plan has already been submitted and doesn’t need to go before LUPC.
- **John Best** said he’s satisfied with the energy-saving measures in this particular case, but suggested that the Commission clarify its expectations for energy in DRI’s.

A roll call vote was taken. **In favor:** J. Athearn, J. Best, J. Breckenridge, C. Brown, M. Davisson, C. Murphy, K. Newman, N. Orleans, D. Pigeon, D. Sederholm, L. Sibley, A. Woodruff. **Opposed:** none. **Abstentions:** none. The motion passed.

3. **GIRL SCOUTS: DRI NO. 594 – WRITTEN DECISION**

**Commissioners present:** J. Athearn, J. Best, J. Breckenridge, C. Brown, C. Murphy, K. Newman, N. Orleans, D. Pigeon, L. Sibley
Doug Sederholm and Andrew Woodruff recused themselves and left the room. Mimi Davison recused herself and sat in the audience.

Page 6 Line 217: eliminate especially.

Page 7, Line 242: similar mechanisms to turn off at night

Section 5.2 eliminate.

Christina Brown moved, and it was duly seconded, to approve the written decision. A roll call vote was taken. In favor: J. Athearn, J. Breckenridge, C. Brown, C. Murphy, K. Newman, N. Orleans, D. Pigeon, L. Sibley. Opposed: None. Abstentions: J. Best. The motion passed.

4. RATTNER/WHITE HOUSES: DRI 326-M – WRITTEN LANGUAGE OF NON-CONCURRENCE


For the applicant: Diane Tillotson, attorney

Commissioners discussed a possible lack of clarity on landscaping, particularly of language as it applies to the old lot and to the new lot.

- John Best said he believed that the Conservation Commission’s Order of Conditions for the existing site should be applied to the new site.
- Dianne Tillotson said there were only 4 conditions that applied to the approval of the new house, so only those four were included in the non-concurrence:
  - use of pesticides
  - run-off to Lily Pond
  - construction debris, and
  - staking out the limit of work on the site before any work starts.
  - ‘Construction commitments’ were also added.

Murray Frank said that he hasn’t had time to review the document carefully; he feels he is now being confronted with clarification and weakening of intent. Linda Sibley said the Commission couldn’t take testimony from the Planning Board at this time. Revisions to the written decision of non-concurrence are an attempt by staff to codify what was agreed to.

Andrew Woodruff said that the document appears to be written by the owner’s lawyer and not by Commission staff. Mark London clarified that these are not conditions and this is not a decision with conditions from the Commission. This is the owners’ explanation of what they intend to do. He asked whether the document says what Commissioners believed they agreed to.

Mimi Davison said she found Section 1.1: Landscaping very complex and would like to suggest a rewording. Chris Murphy said the language is clear enough if it is read enough times.

Christina Brown said her understanding of Section 1.2: Landscaping was that the owners’ agent said the landscaping plan for Lot 2.1 would be submitted to the Planning Board for site
plan review. She thought the owner’s agent was saying that if the Planning Board puts
requirements on the landscaping plan, they would go along with them.

Mark London said he recollected that they would submit the landscape plan for site plan
review. The West Tisbury Planning Board was encouraged to give it a rigorous review and they
would adhere to the site plan review.

John Breckenridge said the West Tisbury Planning Board doesn’t have authority to place
binding conditions, but the Commission gave them the capability to put binding conditions.
Christina Brown said that the owner offered to be bound by conditions. Mark London said
that in discussion with the lawyer, the applicant didn’t feel that she said that; the two projects
have to go to site plan review; the Planning Board can refer it back to the Commission if it doesn’t
get a satisfactory response.

Chris Murphy said he thought that they had voted to not to accept the referral while giving a
little more teeth to the West Tisbury town government. He thinks that the wording and subject to
the approval of should be put back in.

Commissioners discussed the details of what was agreed to.

Christina Brown said the owners’ agent said she understood the Planning Board, through site
plan review, can place binding conditions on the project but can’t deny the project. It was the
intention of the Commission and of the applicant that, through site plan review, the planning
board and owner would work out the details and the owner would be bound by conditions of site
plan review.

Referencing Section 1.3, Linda Sibley suggested that or in accordance with applicable law and
regulations may allow the owners to clear-cut in front of the house. If the intent is that the owner
will only cut view channels, it should say that.

Doug Sederholm said the language in Section 1.3 is a gaping loophole.

Mark London said the landscaping on the seaward side of the newly located house would be
subject to review by the West Tisbury Planning Board.

Diane Tillotson confirmed that the scope of site plan review is not clearly outlined in Chapter
40A.

• The owner intended to submit the landscaping plan to the Planning Board for site plan
  review.
• They did not contemplate that the Planning Board would deny the project in site plan
  review, but they would work with the Planning Board to come up with conditions. They
  anticipate that there will be a give and take discussion between the applicant and the
  Planning Board; the Board will impose conditions, and the owners will abide by them.
• With the language, she was trying to get away from the idea that the Planning Board will
decree conditions or say no to the project or the landscape plan. The use can’t be
denied.

Mark London said this has to be looked at as land use; if the landscaping plan is subject to
Planning Board approval, not just to the present owner’s stated intention, then there is some
control on the view from the water and the cutting of trees.
Chris Murphy moved, and it was duly seconded, to amend the language of the non-concurrence as follows:

Page 3, Line 105 . . . submitted to and subject to the approval of . . .
Page 3, Line 115 . . . invasive species. . .
Page 3, Line 116 the plans shall be submitted and are subject to the approval of

Diane Tillotson said the Conservation Commission has approved the first lot’s landscaping plan. If it is changed, it has to go back for approval. It’s the owners’ intent to submit the landscaping plan as part of site plan review but it’s already an approved plan. She’s concerned that the approved landscape plan could conflict with the site plan review.

Linda Sibley said she wants clarification of the landscape plan on the relocated house lot. Diane Tillotson said the applicant doesn’t intend to landscape the entire lot. The bulk of landscaping will be around the housing envelope and along the entranceway.

Andrew Woodruff said he understood that they would leave as many trees as possible. John Breckenridge said there would be some trees cut in the moving process.

Mark London suggested: the proposed cutting for view channels shall be submitted to the West Tisbury Planning Board as part of the site plan review and is subject to the approval of the Planning Board.

Kathy Newman asked about reviewing language. Linda Sibley clarified that they are editing language to reflect what Commissioners believe they voted on.

Christina Brown said her memory is that it would be more accurate to say landscape is subject to conditions but not necessarily subject to approval.

Chris Murphy said if the town were to turn down the project, the owners have legal remedies. Doug Sederholm said obviously they have legal recourse, but Christina Brown’s suggestion captures the idea of a give and take with the Planning Board having the ultimate power to condition without disapproving.

Commissioners discussed the language of the written decision and the process of site plan review. Commissioners discussed clarification of the language in Line 112-115, particularly in terms of protecting the view from the water. Commissioners agreed that the no-cut zone is anything forward of the 25-foot construction/house zone. The chair of the Commission will approve the final language.

Andrew Woodruff mentioned side views of the new house from the water. The landscape plan for that area is subject to Conservation Commission review and is within the Coastal Zone District.

John Breckenridge suggested, in reference to Lines 112-114, that the applicant has an interest in seeing the water and reasonable uplimbing or clearing would be appropriate.

John Best asked whether the Rattner/Whites intent to not install a pool on either lot should be included. Diane Tillotson said she doesn’t have a problem saying the owners will not install a pool for either lot without going before the Commission.

Christina Brown thanked the owners’ agent for clarifying 4.1 and providing clear language.
Mark London said the numbering would be corrected.

Murray Frank asked for confirmation on Line 120 that there will be no grading on either lot that increases run-off to Lily Pond.

The written decision of non-concurrence will be filed with the registry along with the deed.

Doug Sederholm moved, and it was duly seconded, to approve the written decision of non-concurrence, with agreed-upon changes. A roll call vote was taken. In favor: J. Athearn, J. Best, J. Breckenridge, C. Brown, M. Davisson, C. Murphy, K. Newman, D. Pigeon, D. Sederholm, L. Sibley, A. Woodruff. Opposed: None. Abstentions: None. The motion passed.

There was a discussion of the procedure followed with this project.

- Andrew Woodruff stated that he was very uncomfortable with how the meeting of September 14th proceeded as deliberations began. He felt Commissioners didn’t ask enough questions of the owner and her agent as to what their intention was and then he felt they got into inappropriate discussion after the hearing had closed. The Chair did a great job but it seems that the Commission should do a better job of clarifying findings of facts before closing a hearing.
- Linda Sibley clarified that the discussion wasn’t a public hearing. The discussion was centered on whether the Commission would accept the referral and hold a public hearing. The Commission took in a lot more detail about the project then we needed.
- Andrew Woodruff said he’s talking about what Commissioners needed for information.
- Linda Sibley said the difficult thing is that the Commission doesn’t have this kind of difficult concurrence review very often; it was very complex and unique.
- Christina Brown said that almost by definition a discretionary referral is complex and there isn’t a standard procedure.
- Andrew Woodruff said, particularly when the issues are complex, clarification and clarity is important.
- Christina Brown said it would be nice if there were another process called short review process that the Commission could hold if there were one or two issues the Commission had concern about but felt regulation by the town was better/appropriate.
- Chris Murphy said LUPC could make recommendation for non-concurrence with recommendations.

There was a discussion of the fees for DRI review.

- Jim Athearn said there are always vague things the Commission has to consider when a discretionary referral comes in. In the review of the Girl Scout Camp application, one of the implications of calling it a DRI was the cost of the application. He wondered what criteria might be used to exempt an organization from a fee, such as gross income or expected cost of the project.
- Linda Sibley said that in some ways the fee is proportional to the size of the project. The question would be how the fee policy interacts with a particular non-profit, particularly one that doesn’t generate income. Also to be considered is staff time and complexity.
- Jim Athearn suggested developing criteria for reducing the fee.
• **Linda Sibley** said currently, there is only an exemption for government projects. Not for profits’ fee could be based on income and size of project.

• **Christina Brown** said sometimes a project crosses over to DRI lite requiring little staff time. The whole fee schedule should be looked at.

• **Jim Athearn** asked whether the Chair would entertain a motion to reduce by half the Girl Scouts’ application fee.

• **Mark London** said that a clear and coherent clause for non-profits could be developed and applied to reduce the fee retroactively.

• **Mimi Davisson** volunteered to be the facilitator of a committee that looks at criteria for ‘DRI lite’.

5. **MINUTES**


5.1 Minutes of March 9, 2006

*Doug Sederholm moved, and it was duly seconded, to approve the minutes of March 9, 2006, as written. A voice vote was taken. In favor: 12. Opposed: 0. Abstentions: 0. The motion passed.*

5.2 Minutes of April 6, 2006

Commissioners agreed to the following change:


*Doug Sederholm moved and it was duly seconded to approve the minutes of April 6, 2006, as corrected. A voice vote was taken. In favor: 10. Opposed: 0. Abstentions: 2. The motion passed.*

5.3 Minutes of May 4, 2006

*Doug Sederholm moved, and it was duly seconded, to approve the minutes of May 4, 2006. A voice vote was taken. In favor: 12. Opposed: 0. Abstentions: 0. The motion passed.*

5.4 Minutes of May 18, 2006

*Doug Sederholm moved, and it was duly seconded, to approve the minutes of May 18, 2006, as written. A voice vote was taken. In favor: 8. Opposed: 0. Abstentions: 4. The motion passed.*

5.5 Minutes of June 22, 2006

Commissioners agreed to the following change:

- Page 5, Line 177: rocks

*Doug Sederholm moved, and it was duly seconded, to approve the minutes of June 22, 2006 with one correction. A voice vote was taken. In favor: 10. Opposed: 0. Abstentions: 2. The motion passed.*
5.6 Minutes of July 13, 2006

*Mimi Davisson moved, and it was duly seconded, to approve the minutes of July 13, 2006. A voice vote was taken. In favor: 7. Opposed: 0. Abstentions: 5. The motion passed.*

*Christina Brown reminded Commissioner that they had committed themselves to looking at the Fairwinds project.*

5.7 Minutes of July 20, 2006

*Mimi Davisson moved and it was duly seconded to approve the minutes of July 20th with the following change:*  
Page 9, Line 370-371 Chris Murphy requested that the original materials in the steeple be stored. 
He also observed that the current design added a large storage area adjacent to the church that is inconsistent with the building design and will detract from its historic appearance. He suggested that any equipment on the ground should go in a small building that’s compatible with the church design and located away from the church.

A voice vote was taken. In favor: 10. Opposed: 0. Abstentions: 2. The motion passed.

5.8 Minutes of August 3, 2006

*Mimi Davisson moved and it was duly seconded to approve the minutes of August 3, 2006, as written. A voice vote was taken. In favor: 10. Opposed: 0. Abstentions: 2. The motion passed.*

6. CORRESPONDENCE

A letter from the Tisbury Planning Board was distributed to Commissioners. The letter asks that the Island Plan Committee look at the issue of large houses and explore an Island-wide DCPC for energy and impact of large houses.

The Commission received a letter from the Vineyard Energy Project stating that their current grant includes time for working with the Commission to develop energy guidelines for DRI review.

7. OTHER

7.1 DRI Policies

The Transportation and Energy DRI Policies will be developed next.

7.2 Martha’s Vineyard Hospital Review

*Mark London reported that he is working on the schedule for the Martha’s Vineyard Hospital review.*

- A written version of the risk assessment will be available in mid-October.
- There will be a preliminary presentation Monday, September 24th.
- He will send out a letter with possible time frames for LUPC meetings and the public hearings. The schedule will try to accommodate the needs of the hospital planners and abutters.
Christina Brown said that there would be a set group of no more than 8 people for LUPC review of the hospital project. Counsel has suggested that LUPC recommendations be made by a vote of less than a quorum of Commissioners, though more than eight Commissioners may participate in the LUPC discussion.

Mark London reported that, to be in compliance with the open meeting law, a note has been added to the bottom of LUPC meeting notices stating that, should a quorum of Commissioners be present, the meeting would be considered a Commission meeting. This deals with Counsel’s concern about holding a Commission meeting without having given 48-hours notice as required by the Open Meeting Law. The other concern was that of the Commission having made a decision in a small group, without all eligible Commissioners participating; he noted that Commissioners are not bound by their position when LUPC makes its recommendations.

7.3 Fairwinds.

Linda Sibley reminded Commissioners that they had promised the Fairwinds project neighbors that the approval and conditioning process would be examined to see if the built project matches the intended project.

Mark London said the question is related to the general issue of how to protect the character of a traditional neighborhood.

Linda Sibley said the neighbors’ complaints were out of order in the context of the meeting where they were raised, but the Commission wanted to hear their concerns.

Mark London explained that a goal would be to understand what lessons the Commission can learn leading up to an approval and about building new projects next to a traditional neighborhood. The purpose of the meeting should be clear and neighbors should be given adequate notice.

Staff will discuss with the neighbors and the developer about scheduling a meeting.

7.4 Other

Linda Sibley said that LUPC would name a landscape subcommittee to deal with several current projects before LUPC.

The work looking at the traditional neighborhoods will try to mesh with the Island Plan and one of its subcommittees.

Meeting adjourned at 10:15 p.m.

Chairman

Clerk-Treasurer

3-15-07

Date

2-15-07

Date

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