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Minutes of the Commission Meeting Held on October 5, 2006 In the 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) | P Deborah Pigeon (E – Oak Bluffs) |
| - Christina Brown (E - Edgartown) | - Jim Powell (A – West Tisbury) |
| - Martin Crane (A – Governor Appointee) | P Doug Sederholm (E – Chilmark) |
| P Mimi Davisson (E – Oak Bluffs) | P Linda Sibley (E – West Tisbury) |
| P Mark Morris (A – Edgartown) | - Paul Strauss (County Comm. Rep.) |
| - Chris Murphy (A – Chilmark) | - Andrew Woodruff (E – West Tisbury) |
| P Katherine Newman (A – Aquinnah) | |

Staff: Mark London (Executive Director), Bill Veno (Senior Planner) Paul Foley (DRI Coordinator), Bill Wilcox (Water Resources Planner)

The meeting was called to order at 7:40 p.m.

1. DEEP BOTTOM LOT MERGE: DRI 209M-3 - MODIFICATION

Commissioners present: J. Athearn, J. Breckenridge, M. Davisson, M. Morris, K. Newman, N. Orleans, M. Ottens-Sargent, D. Pigeon, D. Sederholm, L. Sibley

For the applicant: Chuck Clifford

John Best recused himself and left the room.

Paul Foley gave the staff report.

- The applicant is Peter Sax.
- Commissioner packets include a letter from Ron Rappaport, a letter from Chuck Clifford explaining the request, a copy of the easement, copies of the 1986 and 1992 decisions, and offers from Mr. Sax.
- This project has been approved three times by the Commission. In 1986, when it was originally approved, zoning was 60,000 sq. feet instead of 1.5 acres, which is 65,000 square feet.
- The lots were paired to lower density and this lot is slightly undersized. Build ability of this lot ran out in 2002 so new 3-acre zoning applies

- Now the applicants are asking to be allowed to add a 0.2 acre, abutting, open space easement to create a full 3-acre lot.
- There is a conservation restriction on the 0.2 acres of the easement. Adding the 0.2 acres creates a buildable lot.
- Conveyance of the 0.2 acres has been approved by the Homeowners Association and West Tisbury Planning Board.
- This lot complied with the zoning at the time of the subdivision, but this one is a little less than three acres, which doesn't meet current zoning.
- The applicant has offered denitrification and the nitrogen contribution is well below the loading limit.
- The applicant has offered to not build within 200 feet of the Edgartown West Tisbury Road and keep the buffer as a no cut zone.
- No herbicides, pesticides or fertilizers will be used.

Ned Orleans moved, and it was duly seconded, in view of the letter dated October 3rd, that the change is not substantial and does not require a public hearing.

- **Jim Athearn** said that he finds the subdivision a thorn in his side.
 - The houses are way too large and overly visible, and way too suburban and out of character with the Vineyard.
 - He will have to vote against anything that would allow another house.
- **Doug Sederholm** asked for clarification on the denitrification numbers and language.
- **Bill Wilcox** said that the denitrifying system will achieve 19 parts per million.
- **Jim Athearn** asked whether the Commission would like to seize on the opportunity to support the goals of the Commission by denying the extension of buildability on a lot on which the grandfathering has run out.
- **Katherine Newman** said that might be something to consider in the future.
- **Megan Ottens-Sargent** said that this proposal is in the spirit of the original decision; the charge is whether this is a substantial change.
- **Linda Sibley** added that the lot is not substantially different from zoning.

A voice vote was taken. In favor: 9. Opposed: 1. Abstentions: 0. The motion passed.

Paul Strauss moved, and it was duly seconded, to accept the modification consistent with the letter of October 3rd and the denitrification clarification to achieve 19 parts per million. A roll call vote was taken. In favor: J. Breckenridge, M. Davisson, M. Morris, K. Newman, N. Orleans, M. Ottens-Sargent, D. Pigeon, D. Sederholm, L. Sibley. Opposed: J. Athearn. Abstentions: None. The motion passed.

2. UPS STORE: DRI-39-M3 - POSTPONEMENT

Linda Sibley reported that the concurrence review has been postponed until October 19th because LUPC did not have enough information and a number of issues are yet to be resolved. A public hearing has been posted for October 19th, in case a hearing is required.

3. HART PLUMBING & HARDWARE: DRI 549 – POSSIBLE CONCURRENCE

Commissioners present: J. Athearn, J. Best, J. Breckenridge, M. Davisson, M. Morris, K. Newman, N. Orleans, M. Ottens-Sargent, D. Pigeon, D. Sederholm, L. Sibley

For the applicant: James Hart, owner; Dick Barbini, engineer

Paul Foley gave the staff report.

- James Hart, 56 Indian Hill Road, West Tisbury, is requesting a change of use for an approved, but not yet built, building from an office to a combination of plumbing business, hardware store and two apartments, one of which would be deed-restricted to be permanently affordable.
- The site is in the business district.
- The property is a preexisting non-conforming grandfathered lot of 20,000 sq. feet. In 2001, the Zoning Board of Appeals granted a variance with conditions allowing a mixed-use building of 1,964 sq. ft. with a side yard setback relief.
- In 2002, the project was referred to the Commission for a change in use and expansion of the upstairs. The application was withdrawn without prejudice.
- The project would need site plan review and a special permit.
- The site is near the up-Island Cronigs and other businesses; immediate neighbors are residences.
- The existing permit is for a 1,964 sq. ft. two-story building with a full basement with offices on the first floor and storage above and below.
- The proposal is for a plumbing business, hardware store, and apartments upstairs. The applicant believes that there is a need for a hardware store up-Island, which he would match with his own business, and a need for housing for employees.
- The project was referred to the Commission by Murray Frank under 3.01e and 3.01h, change of use and intensity of use and high traffic-generating businesses.
- LUPC recommended to not concur by general consensus and wanted to hear from the planning board.
- There are wastewater and nitrogen loading issues.
- It would be the first business in the business district to have Indian Hill Road as its only access
- The site was largely cleared when the foundation went in.
- The site will be required to have a vegetative buffer.
- There will be minimal exterior lighting as part of 2001 site plan review conditions.
- No energy or wastewater management was mentioned.
- There is no priority habitat.
- The site is just barely in the Tisbury Great Pond Watershed that has a limit of 1.2 kgs of nitrogen per acre per year. The proposed project is estimated to generate 9.9 kgs per acre per year.
- If the applicant hadn't proposed a change of use, he wouldn't be subject to Commission review. Seven or eight watersheds begin right near this area. The nitrogen problem might be more of an issue related to the West Tisbury Business District that could be solved with a package treatment facility.

- The site has 17 parking spaces; six plumbing employees come in first thing in the morning and then leave. Ten spots would be for the store.
- The building is 1,950 sq. feet without the basement; the estimated trip generation for that size store is 100 trips per day with 9.5 trips at the peak hour and 161 trips on a Saturday, 134 trips on a Sunday. If the basement is included, the traffic numbers double.
- A hardware store here could lessen traffic in Tisbury but could increase traffic in that neighborhood.
- Affordable housing is the employee apartments, one of which would be deed restricted.
- The applicant feels that economically using the space for offices isn't viable. A hardware store would work well with the plumbing business.
- In terms of streetscape, the building won't be visible from State Road but will have an impact on Indian Hill; however, the site is in the business district.
- Neighbors expressed concern about the size of the building.
- The store will be ADA accessible.
- West Tisbury Planning Board views the project as a DRI because of the impacts and they feel a traffic study is needed.

Doug Sederholm said the project is a mandatory DRI referral.

- He disagrees with not including residential space in the calculation of square footage.
- If this has square footage in excess of 2,000 sq. ft. it's an automatic referral. The building has an almost 2,000 square foot footprint, a full basement for storage and two apartments.
- He doesn't think the Commission should waste its time debating whether this is a discretionary referral.

Linda Sibley asked about the full attic and basement. **Dick Barbini** said the full attic is not in this proposal; the second story will be apartments; the basement will be for storage of plumbing supplies and stock of hardware. **Megan Ottens-Sargent** asked about plumbing business traffic; the applicant said there are four trucks for plumbing/heating business.

Dick Barbini said the owner has approval for the exterior of the building. In the approved building, one of the offices would be used by Hart Plumbing.

- The septic system has been approved; is in the ground, and has denitrification.
- The original septic was approved for offices and apartments.
- The new space configuration has not been approved by the town.

Kathy Newman asked about calculating square footage. **Linda Sibley** said there is language defining square footage that exempts attic and basement space used exclusively for storage so that space isn't counted for calculating square footage; the language does not explicitly exempt residences.

Doug Sederholm said the Commission should clarify the issue of whether residential space is calculated but not in the context of a pending application.

- He is not suggesting that he's against the project, but given the way the checklist is written, this is not a discretionary referral.

- The apartments shouldn't be considered residential; he is delighted that one of the apartments is deed-restricted but the apartments are being built to make money.

Kathy Newman said the conundrum is that the proposal is for deed-restricted affordable housing and housing for employees which is something the Commission has asked people to do so it may be more complicated than a straightforward referral.

Dick Barbini said that if this definitely means a referral, the applicant would make the 2nd floor attic storage space until the checklist is clarified. He was under the impression that this wasn't necessarily a referral.

Linda Sibley has a different problem, which is with the definition of storage. A stockroom and a storage area are different.

Dick Barbini said the project wasn't automatically referred last time.

Linda Sibley said the project is 50 feet away from an obvious mandatory referral, and that doesn't include attic and basement. It has as much impact as a 2000 square foot building.

Dick Barbini said the way he looks at it, everything has been covered. The site plan has been reviewed, landscaping has been approved, and denitrification is in place. He's not sure of the benefit of a DRI review.

Abutters said that they have never objected to the business, but they object to maxxing out the small lot and including a lot of parking spaces. If the project were something that fits the site, there probably wouldn't be an objection. The property is very small and has a setback relief. It's a huge building for such a small piece of land in that area.

Jim Athearn said that regardless of legal niceties, this project sounds like a good project with some housing, some retail, and some trade. At the same time it definitely rises to the level of significant impact, whether it's over or under 2,000 square feet. It would be hard to let it go without looking at it.

Mark London said that if Commissioners feel there is legal ambiguity, it's in the applicant's best interest to make sure that everything's been done properly.

Paul Foley confirmed that hardware stores are on the list of high traffic generating businesses.

Linda Sibley asked for clarification from Jim Athearn about his statement that a hardware store in that location would require a review. **Jim Athearn** said a review would have to do with increased intensity of use. **Megan Ottens-Sargent** said that if the upstairs were storage and not apartments, the hardware store could have more impact because it could have more available space.

John Breckenridge said Dick Barbini has made a good argument that the applicant has already done what the Commission would condition a project for. Intensity of use is a good argument for review, but he wondered what a review would change.

Mark Morris asked whether Daniels and Rogers Plumbing had been on Indian Hill Road. John Abrams had the site as storage for wood. Daniels and Rogers wasn't on Indian Hill.

Doug Sederholm said he wouldn't care if the referral were mandatory or discretionary. It's a much more attractive proposal with apartments but the hardware store makes intensity of use an issue.

Mimi Davisson is concerned with the traffic pattern. She wondered if there were alternate access possibilities, even in the future.

Paul Foley said the West Tisbury Planning Board might want to do a charette to see if there's a way to make the area more workable.

There was a discussion of the process.

- **Linda Sibley** clarified that this is not a public hearing.
- **Mark London** clarified that if the Commission believes that the project was properly referred based on change of use and high traffic, it should concur with the referral and a hearing will be scheduled.
- **Dick Barbini** clarified that if the Commission were to vote to concur with the referral of the hardware store, the existing approved office proposal can go forward without any Commission review. If the hardware proposal were voted to be a DRI, the already approved project would not become a DRI.
- **Kathy Newman** commented that there is an interesting dilemma. If the owner decided to go back to previously approved project.
- **Mark London** said the applicants seem to be wary of the DRI process, but the Commission might have a very receptive view of the project

Mark Morris asked about the difference in traffic for office space or hardware. **Linda Sibley** said traffic numbers indicate that a hardware store generates more traffic than offices.

Doug Sederholm moved, and it was duly seconded, to concur with the referral by the West Tisbury Planning Board on the basis of both Sections 3.301e and 3.301h so that the Commission will review as a DRI the proposed project for a plumbing/heating business, hardware store and two apartments.

- He clarified that the intensity of use referral is for the hardware store.

A voice vote was taken. In favor: 10. Opposed: 0. Abstentions: 1. The motion passed.

LUPC will outline the scope of the traffic study.

4. EXECUTIVE DIRECTOR'S REPORT

4.1 State Ethics Commission

Mark London reported that the State Ethics Commission would be doing a presentation on the Conflict of Interest Law on October 12th at 3:30 at the Chilmark Town Hall.

4.2 Island Plan

Mark London reported on the Island Plan.

- At 5:00 there was Island Plan Steering Committee kick-off of the first five work group cores.
- There are ten topic areas. The first five are Energy and Waste, Housing, Livelihood and Commerce, Natural Environment, and Water Resources. The second set of five that will begin work next year are Built Environment, Culture and History, Governance, Health and Education, and Transportation.
- There are almost 200 people in the Network of Planning Advisors. Each work group has a core of seven to ten people. The work group cores were developed with a view towards gathering diverse points of view.
- The mandates of the Work Groups are to have an outline of their work by mid-November. They are to identify their goals and objectives and strategies and to look at best practices elsewhere.
- All meetings of the Work Groups and Cores are open.
- For each of the Work Group Cores, there is a member of the Steering Committee who serves as a liaison and will be the chair for the first month or two.
- The Steering Committee has a two-fold mandate. Overall it's responsible for the process and the content. It coordinates the work of the work groups. It also looks at "big issues" and big ideas and overarching multidisciplinary topics.
- The first "big issue" is identifying the big global and regional issues that will have an impact on the Vineyard such as changing tourism, oil prices, etc. The second issue is the general issue of sustainability. The third issue is development on various levels. The other three big issues are: the next economy, regional versus Island-wide versus town for delivering services, and Vineyard identity and character.
- Steering Committee members were given the option to attach themselves to a Work Group Core; Commissioners are extended the same invitation.

Mark London said he believed the changing nature of neighborhoods study was to be either under the auspices of the Island Plan or through the Commission. The Steering Committee was going to be asked if they wanted to take it on.

Ned Orleans said he thought that it was intended that the number of Commissioners attached to sub-committees would be limited, so the result won't be a Commission plan. **Linda Sibley** said it was a decision of the Steering Committee to not limit the number of Commissioners.

Jim Athearn added that it seemed appropriate to have experts on the committees. Commissioners would be required ultimately to adopt the plan as its regional plan so it made sense to have Commissioners and staff close to the process.

Mark London said Commissioners don't have to be on Work Group Cores; they can keep track of what is going on by joining the Work Groups. There is also a lot of reading from the website Commissioners can do, including information from a variety of surveys done over two years that are giving remarkably similar results.

Mimi Davisson asked if Mark London is feeling satisfied with what's happening. Mark London said its taken time to get going, but now the work has moved away from process and they've

begun working on content. They have set up an extremely interesting structure by which the work can feed into the community and get a large amount of feedback.

Ned Orleans said one of the logistics that still needs to be worked out is notifying members and the general public of the time and location of core group meeting.

Megan Ottens-Sargent wondered whether there should be two extended schedules, one that's Commission-specific and one that Commission-related.

Linda Sibley commented that the Katharine Cornell Theatre can handle a large capacity of people but doesn't have parking. Possibly meetings should be at another location.

Linda Sibley commented that the reason the Steering Committee felt comfortable saying Commissioners can join Core groups is because the process has taken on enough of a life of its own and Commissioners won't overwhelm or dominate any group. **Mark London** added that Commissioners are the people who were elected by the Vineyard community, or appointed by boards of selectmen, to do planning, so it makes sense for them to be involved in this planning process.

There was a discussion of the relation with the DRI process.

- **Megan Ottens-Sargent** asked whether the Commission would be doing DRI policy updates. She worries if the Commission waits until Island Plan is done, it will put off looking at regulatory concerns.
- **Linda Sibley** said the Commission should be careful that it not seem to pre-empt the Island Plan. If the Island Plan is working on something and the Commission decides to change direction, it's a little awkward.
- **Mimi Davisson** pointed out that there's a good argument for Commissioners to participate in the Island Plan so they can relate work to the DRI checklist, etc.
- **Jim Athearn** said he groaned when he thought of three years of planning because the Island needs it now. However, they've been trying to do planning for six years already. LUPC still could do DRI checklist and a small committee could come up with a large houses interim policy.
- **Mark London** reminded Commissioners that the original intention of writing the policies was to codify existing practices, not necessarily to develop new policies, so that applicants have clear guidelines.

5. 21 KENNEBEC AVENUE: DRI NO. 595 – WRITTEN DECISION

Commissioners present: J. Athearn, J. Best, J. Breckenridge, M. Davisson, K. Newman, N. Orleans, D. Pigeon, D Sederholm, L. Sibley

Commissioners made the following changes:

Line 38 -40 The hearing was closed.

Line 95 Staff will add language about the applicant's collaboration with the town to landscape the area between the bath house and building.

Line 97 Staff will add a description of energy conservation measures.

Line 116 . . . new neighbors should be made aware that there are existing noises and odors.

Line 121 . . . a positive impact . . .

Line 198 take out "as offered by the applicant"

Katherine Newman suggested including energy conservation measures as a regular part of written decisions would be a good idea.

Mimi Davisson moved, and it was duly seconded, to accept the written decision as amended. In favor: J. Athearn, J. Best, J. Breckenridge, M. Davisson, K. Newman, N. Orleans, D. Pigeon, D. Sederholm, L. Sibley. Opposed: None. Abstentions: None. The motion passed.

6. OTHER

6.1 Meeting Times

Linda Sibley suggested that the Commission might start its meetings a little earlier.

Mark London said the meetings on the Martha's Vineyard Hospital would start earlier.

Kathy Newman pointed out that often the discussions happen late in the meeting when people are tired and less focused.

Jim Athearn suggested that during the summer it's more difficult to get to meetings earlier than 7:30 p.m.

6.2 Roundabout

John Best said he's still uneasy that Oak Bluffs has approved the roundabout and the Commission hasn't reviewed it as a DRI. A roundabout has more cost, infrastructure change, and permanency than a 4-way stop. The Commission provides an opportunity for everyone to participate in a review process. A number of issues are presented to the Commission, even though it does not officially have purview.

Mimi Davisson said she understands the point, but Commission staff has been actively involved.

Linda Sibley said just because staff is involved doesn't mean that Commission is involved; Commissioners are the elected/appointed representatives and provide the opportunity for a public forum.

John Best said no way would he discourage staff involvement. But in no way is that a substitute for public hearing process. Commissioners have the mandate to hear the public's opinion.

Mimi Davisson wondered if the Commission should be more assertive about contacting a project's sponsor to attend a forum so the public at large could have a say.

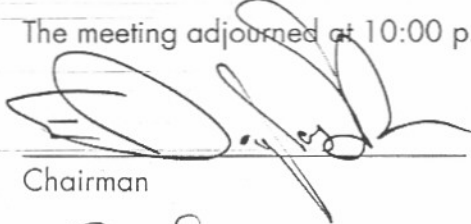
Paul Foley suggested that the roundabout might trigger a DRI referral.

Linda Sibley suggested that it doesn't strictly have to have a permit.

6.3 Miscellaneous

Ian Fein, Vineyard Gazette, asked whether the Commission would be revisiting the question of calculating square footage for the 2,000 square foot DRI review trigger. **Mark London** said that it would be addressed through the DRI Checklist.

The meeting adjourned at 10:00 p.m.



Chairman

5-31-07
Date



Clerk-Treasurer

5-31-07
Date