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## **Minutes of the Commission Meeting Held on June 21, 2007 In the Stone Building Oak Bluffs, MA**

### **IN ATTENDANCE**

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

P James Athearn (E – Edgartown)	- Ned Orleans (A – Tisbury)
P John Breckenridge (A – Oak Bluffs)	- Jim Powell (A – West Tisbury)
P Christina Brown (E - Edgartown)	P Doug Sederholm (E – Chilmark)
P Peter Cabana (A – Tisbury)	P Susan Shea (A – Aquinnah)
P Martin Crane (A – Governor Appointee)	P Linda Sibley (E – West Tisbury)
- Mimi Davisson (E – Oak Bluffs)	P Paul Strauss (County Comm. Rep.)
P Mark Morris (A – Edgartown)	- Richard Toole (E – Oak Bluffs)
P Chris Murphy (A – Chilmark)	- Andrew Woodruff (E – West Tisbury)
P Katherine Newman (A – Aquinnah)	

Staff: Mark London (Executive Director), Paul Foley (DRI Coordinator), Jim Miller (Traffic Analyst), Christine Flynn (Affordable Housing Coordinator)

The meeting was called to order at 7:50 p.m.

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

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**Mark London** gave the Executive Director's Report.

- The Island Plan Steering Committee has released seven discussion papers including summaries of the efforts of the five active work groups. They are available through the Commission and the Island Plan website.
- The first forum, which will be on Housing, will take place on Wednesday, June 27<sup>th</sup>, at 7:30 p.m. at the Tisbury Senior Center.

### **2. OYSTER BAR & GRILLE (MAD CORP LLC): DRI NO. 596 – REQUEST TO RE-OPEN PUBLIC HEARING**

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Commissioners present: J. Athearn, J. Breckenridge, C. Brown, P Cabana, M. Crane, M. Morris, C. Murphy, K. Newman, D. Sederholm, S. Shea, L. Sibley, P. Strauss

For the applicant: Michael Gillespie, owner

**Michael Gillespie** requested that the Commission re-open the public hearing so that the applicants may submit a modified plan.

**John Breckenridge moved, and it was duly seconded, to re-open the public hearing at the applicant's request.**

- **Jim Athearn** said that it's appropriate for the applicant to request the reopening of the public hearing. He notes that the applicant has worked hard to develop the plan.
- **Christina Brown** explained the process of notices.
  - All testimony from the previous public hearing will be rolled over. If anyone wants to add new testimony, he or she may.
  - LUPC will meet and this would be an appropriate place to discuss the modified plan.

**A voice vote was taken. In favor: 12. Opposed: 0. Abstentions: 0. The motion passed.**

**Michael Gillespie** said that is considering using the second floor for housing.

**Doug Sederholm** said he looks forward to the modified proposal to get something that everybody's happy with. He noted for the record, that the session was opened and closed for administrative purposes only, that no testimony was taken, and that no discussion took place.

### **3. 44 NORTH WATER STREET: DRI NO. 604 – PUBLIC HEARING (CONT.)**

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*Commissioners present: J. Athearn, J. Breckenridge, C. Brown, P. Cabana, M. Crane, M. Morris, C. Murphy, K. Newman, S. Shea, L. Sibley, and P. Strauss*

*For the applicant: Kevin Kerr, attorney, Tim O'Connell, owner*

**Doug Sederholm** recused himself and left the meeting.

**Christina Brown** re-opened the public hearing for the division of land in the B1 commercial district. This is the first time, except for one other project, that the Commission has dealt with subdivision of land within the commercial district without a building proposal.

#### **3.1 Applicant's Presentation**

**Kevin Kerr** presented information for the applicant.

- No building on the site will be demolished without first being offered to an affordable housing agency off site.
- The Commission's formula for calculating the affordable housing mitigation contribution for commercial development is a contribution of \$7,000 for the first 8,000 sq. feet of proposed development and \$2.00 per sq. ft. of development after that. So the worst-case contribution is \$9,000 per lot.
- The applicant proposes to make an up-front contribution of \$63,000 for affordable housing at the time of the first sale. He later clarified that this would be \$9,000 for each of the lots described in the plan, for a total of \$63,000.
- The applicant's response answers some of the problems of sorting out how the affordable housing formula would work with the unknowns of future buyers and builders. It solves the Commission's problem and applicant's problem.
- Section 3 attempts to roughly equate the impact of the number of bedrooms to what currently is permitted on the site.

- The applicant currently has two lots to be subdivided into seven lots. Regardless of the number of buyers for the seven lots, the affordable housing contribution would be \$63,000.
- Although he doesn't anticipate maintaining ownership, language could be added that the affordable housing contribution could be made upon the current owner's application for a building permit.
- He clarified Section 3C. There are currently 26 bedrooms. The existing inn has 17 rooms. The existing houses have three, two, and four bedrooms each. The section that was demolished had 20 rooms. So there were 46 rooms total on the two lots. There was an existing license for 54 rooms. They would like to be able to build up to 54 rooms without coming back to the Commission.

**Mark London** briefly summarized the affordable housing policy.

- The non-residential component suggests what the appropriate mitigation would be to offset the impact of new construction, based on square footage.
- The residential policy is that for every ten units created or lots created, one affordable housing unit is created.
- The dilemma here is how to achieve the affordable housing goals given that the development isn't known and how to make the affordable housing requirement simple and straightforward for conveyance.

**Kevin Kerr** said that the reason for being here is that the development is in a business district. It makes sense to apply the commercial formula.

**Christina Brown** said the goal is to make everything as clear as possible for conveyance and for future owners.

**Linda Sibley** said technically the offer reads that there could be a cluster of bars and restaurants. She's sympathetic to the notion of allowing the property to be redeveloped similar to the way it was, but she's questioning whether three small bars/restaurants would have the same impact as one.

**John Breckenridge** asked about incorporating a specific number of seats in the offer; his concern is about standing room in addition to seating space; he asked whether the same number of people on the liquor license could be in the offer. **Kevin Kerr** said administratively it would be easier for a building inspector to focus on square footage.

**Tim O'Connell** clarified that the Selectmen, Building Inspector and Board of Health deal with numbers of seats and standing.

**Kevin Kerr** clarified that fast food is a prohibited use, defined as having more than six parking spaces and a drive-through. **Christina Brown** said take-out incidental to a restaurant would always happen.

**Kevin Kerr** clarified that a 4500 sq. ft. restaurant could be built on one lot.

**Tim O'Connell** clarified that there could be only 5,000 square feet of building on each lot.

**Kevin Kerr** said cumulatively the intent is to not go above the currently licensed impact of a 4500 sq. ft. restaurant and 54 bedrooms on the seven lots, without returning to the Commission. If one lot had a house with ten bedrooms, the number of bedrooms allowed on the remaining six lots would be 44.

**Christina Brown** clarified that the offer in 3C states that construction of bedrooms totaling no more than 54 in inns, hotels, lodgings, or private homes would be allowed on the entire seven lots.

**Tim O'Connell** clarified that he is asking for 54 rooms rather than the existing 46 because that is the number of rooms approved by the Selectmen for the existing lots. He purchased property with a license for 54 rooms.

**Paul Foley** clarified that in the business district, a special permit from the Board of Appeals can permit a restaurant, including a fast-food restaurant only if pedestrian-oriented, evidenced by location of having no more than six parking spaces and having no drive-through facilities.

**Paul Foley** clarified that in the B-1 district, guest houses are permitted on lots of 15,000 sq. ft. or more. These lots are 5,000 sf, therefore they cannot have guest houses.

**Linda Sibley** said she is concerned that if someone were to buy the whole property and build residential condos, and the Commission were to accept the affordable housing offer, they could be giving up one or more real housing units.

**Mark London** suggested, if ten residential units were built on the property, the developer would contribute a residential unit, or the cash equivalent, and the applicant would get back his contribution.

**Linda Sibley** said that the site, whether two or seven lots, is a DRI and the affordable housing policy applies. **Christine Flynn** clarified that the cumulative effect of the development of the site has to be looked at, whether it's residential or commercial.

**Linda Sibley** said that the applicant, for clarity for future buyers, wants a list of circumstances under which the lots won't have to come back before the Commission.

**Kevin Kerr** suggested that if twenty units were proposed, the developer would have to come before the Commission. If ten units were built, \$63,000 would already have been contributed.

Commissioners and the applicant further discussed the number of units, offer number 4 and offer number 6.

The applicant said he would agree that a buyer/developer with 10 or more units would trigger the contribution of an affordable housing unit, plus the \$9,000.

**Chris Murphy** asked if there was any more information about the desire to use this property for a staging area for the Chappaquiddick Ferry. **Tim O'Connell** said the previous deal is off the table and they haven't heard anything further about the Ferry staging proposal.

**Christina Brown** closed the hearing and left the written record open until later in the meeting.

**Linda Sibley** said her concern is that the offers are complex and she would prefer to see the clarifications in writing.

**Mark London** clarified that the affordable housing offer of \$63,000 up front as the seven lots are sold would absolve lot owners of any further affordable housing contribution unless more than twenty housing units were built or unless more than ten units were built on one of the subdivided lots.

Commissioners took a short recess.

### **3. JAMES FERRY TENNIS & RACQUET BALL FACILITY: DRI NO. 598 – DELIBERATION & DECISION**

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*Commissioners present: J. Athearn, J. Breckenridge, C. Brown, P Cabana, M. Crane, M. Morris, C. Murphy, K. Newman, S. Shea, L. Sibley, Doug Sederholm recused himself and left the room.*

*For the applicant: James Ferry*

**Christina Brown** reported that LUPC unanimously recommended approval of the project subject to some conditions.

- Under landscaping, add the phrase *after screening for two private residences and street landscaping to open up lines of sight will be submitted to the Commission*. The final landscaping plan will come back; it will have landscaping and retaining walls, and will include screening for two private residences and street landscaping.
- The exterior lighting will be downward shielded with energy-saving bulb lighting. There will be no lighting installed on the tennis court for night playing, only security motion-sensitive lighting.

Offers include:

- The hours of operation are 7:00 a.m. to 7:00 p.m. for indoor activity, and 7:00 a.m. to the time as permitted by natural light on the outdoor tennis court.
- The court will not be rented out for non-tennis functions.
- Events with more than 25 people will be limited to three during the season and transportation to and from off-site parking will be provided by a jitney.
- There will be no outdoor amplified noise after 9:00 p.m.

**Mark Morris moved, and it was duly seconded, to approve the application with conditions as outlined.**

**Chris Murphy** said he had hoped that the applicant would be clearer about donations; he appreciates the feeling of the donations section but it doesn't say anything. **James Ferry** clarified that he had offered free or reduced use if the facility were built.

**John Breckenridge** clarified *substantial alterations*. The town's building inspector and the town's governing boards would determine whether an alteration is substantial enough to return to the Commission.

#### **3.1 Benefits & Detriments.**

**Christina Brown** said the project is a benefit because it's in the West Tisbury Business District.

- It's a sports and healthy living facility which is a good thing.

- It's in the business district and it could have been a more intensive land use, with higher traffic generation

**Susan Shea** said an activity in the middle of the Island is a great alternative for teenagers and it's such a great life choice of sports.

**Kathy Newman** said another benefit is that there are two affordable housing units within the project.

**Mark Morris moved, and it was duly seconded, to approve the application with offers and conditions. A roll call vote was taken. In favor: J. Athearn, J. Breckenridge, C. Brown, P Cabana, M. Crane, M. Morris, C. Murphy, K. Newman, S. Shea, L. Sibley. Opposed: None. Abstentions: None. The motion passed.**

**Linda Sibley** reminded Commissioners and staff that there was an offer of a dormant easement and the language should appear in the written decision.

#### **4. 44 NORTH WATER STREET: DRI NO. 604 – DELIBERATION & DECISION**

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*Commissioners present: J. Athearn, J. Breckenridge, C. Brown, P Cabana, M. Crane, M. Morris, C. Murphy, K. Newman, S. Shea, L. Sibley, P. Strauss*

*For the applicant: Kevin Kerr, attorney, Tim O'Connell, owner*

##### **4.1 Clarification of Offers**

**Linda Sibley** summarized the applicant's latest clarification of offers. Essentially the applicant is asking the Commission to be allowed to redevelop approximately what was previously developed in terms of rooms and usage without returning to the Commission for DRI Review.

- He has made an affordable housing offer essentially based on it being commercial, but with a contingency that if any owner creates 10 or more housing units, that owner shall be subject to the Commission's affordable housing policy.
- The creation of ten or more housing units triggers a DRI review.
- They aren't asking that they be exempt from the affordable housing policy based on the \$63,000 contribution.
- The applicant isn't going to ask for his \$9,000 back if a lot triggers the affordable housing unit contribution.

**Christina Brown** closed the written record.

##### **4.2 Deliberation & Decision**

**Jim Athearn** asked if the applicant or its successors would pay the affordable housing contribution.

**Mark London** said the Commission has clarifying language for the definition of owner and the right of ownership

**Christina Brown** said it is the Commission's intent to say that what was on the site, in terms of regional impact of noise, traffic and visual impact, is an appropriate use.

There was a discussion of the possible restaurants.

- **Christina Brown** said that a 4,500 square foot restaurant is okay, but splitting that 4500 sq. ft lot over separate lots without coming back to the Commission makes her uncomfortable.
- **Jim Athearn** suggested that town authorities could sort that out.
- **Peter Cabana** said the town wouldn't allow anything that didn't fit.
- **Linda Sibley** said the proposal would be subject to local Zoning Board of Appeals, the Historic District, and Selectmen.
- **Paul Strauss** said he has a slight level of discomfort, but it's handleable by local authorities.

**Peter Cabana moved, and it was duly seconded, to approve with offers for future development.**

- **Kathy Newman** said a benefit is that it is in the center of the business district and it's a good infill development.
- **Christina Brown** said with the conditions related to future development, the project doesn't raise concerns.
- **Kathy Newman** added that she was concerned about affordable housing, but the applicant made some generous offers.
- **Christina Brown** clarified that the June 21 affordable housing offer number 6 was replaced with the most recently submitted offer. **Kevin Kerr** clarified that the offer that buildings slated for demolition will first be offered to an affordable housing group still stands.

**A roll call vote was taken. In favor: J. Athearn, J. Breckenridge, C. Brown, P. Cabana, C. Murphy, K. Newman, S. Shea, L. Sibley, P. Strauss. Opposed: None. Abstentions: None. The motion passed.**

#### 4. OTHER

Commissioners have been invited to an event at the Harbor View, a Nantucket Soundkeeper event at Che's Lounge, and the Balance opening.

The YMCA building is laid out with red tape. It's recommended that Commissioner look at the site before the next meeting.

Cronigs Hearing has been continued at the request of a Tisbury Commissioner.

The meeting adjourned at 9:53 p.m.



Chairman



Clerk-Treasurer

11-15-07

Date

11-15-07

Date