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Minutes of the Commission Meeting Held on July 5, 2007 In the Stone Building 33 New York Avenue, Oak Bluffs, MA

IN ATTENDANCE

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

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|---|--------------------------------------|
| P James Athearn (E – Edgartown) | P 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) | - Susan Shea (A – Aquinnah) |
| - Martin Crane (A – Governor Appointee) | P Linda Sibley (E – West Tisbury) |
| - Mimi Davisson (E – Oak Bluffs) | P Paul Strauss (County Comm. Rep.) |
| - Mark Morris (A – Edgartown) | - Richard Toole (E – Oak Bluffs) |
| P Chris Murphy (A – Chilmark) | P Andrew Woodruff (E – West Tisbury) |
| - Katherine Newman (A – Aquinnah) | |

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

The meeting was called to order at 7:45 p.m.

1. EXECUTIVE DIRECTOR'S REPORT

1.1 Island Plan

Mark London said that the first Island Plan Forum on Housing went well. The second forum will be on Energy and Waste, and will be held on July 11th at 7:30 at the Katharine Cornell Theater.

1.2 Transportation Improvement Program

Mark London said that the Commission would need to make two amendments to the Transportation Improvement Program.

Jim Miller explained the changes:

- A heading needs to be changed from *Island-Wide Projects*, which was a placeholder, to *Lake Avenue Pedestrian Improvements*, the plan for Oak Bluffs.
- The MassHighway Sengekontacket Pond Inlet bridges will cost \$15 million, rather than the original projection of \$7 million. This is part of a federal bridge program and will not affect local funding.

Linda Sibley moved, and it was duly seconded to approve the changes as proposed. A voice vote was taken. In favor: 10. Opposed: 0. Abstentions: 0. The motion passed.

2. RUTKIEWICZ: DRI 488 – PUBLIC HEARING

Commissioners present: M. Athearn, J. Breckenridge, C. Brown, P. Cabana, C. Murphy, N. Orleans, D. Sederholm, L. Sibley, P. Strauss, A. Woodruff

For the Applicant: Nicholas Rutkiewicz, owner; Dan Perry, attorney

Christina Brown opened the public hearing and read the hearing notice on the proposal to subdivide 13.1 acres into 4 lots with houses and no guesthouses on Woody Bottom Road in West Tisbury.

- The proposal has changed over the years.
- The project includes a lawsuit about whether or not the proposal is a DRI.
- The settlement identifies the project as a DRI and the owner offers to limit the division to four lots with no further subdivision and no guesthouses.
- It's unusual for the Commission to see the project in this form as a DRI, but the history is such that it is a DRI and the Commission's attorney suggests Commissioners listen to where the project is right now and consider the settlement.

2.1 Applicant's Presentation

Daniel Perry explained that this was a parcel acquired in the mid-1990s.

- One lot was taken out as a Form A and the proposal is now a division of four lots. It is a simple subdivision.
- The referral was made by the West Tisbury Planning Board because West Tisbury wanted a condition prohibiting guesthouses which was not a provision authorized by the West Tisbury by-law at the time. The West Tisbury Planning Board made the referral to the Commission to enlist its help.
- Mr. Rutkiewicz is executor. He's agreed that they will include a covenant forsaking the right to guesthouses and to any further subdivision.
- The applicant is requesting approval with the single condition that the covenant be approved. The covenant has been negotiated extensively with town counsel and Commission counsel. Town Counsel and the Commission Counsel have approved it.

Christina Brown confirmed the Commission's counsel is satisfied with the settlement.

2.2 Public Comment

Dan Pace, owner of a lot in the Deep Bottom Subdivision, said the area is heavily forested with many animals.

- He would like to encourage the applicant to leave as many trees as possible.
- He asked if the lots would be phased in so construction wouldn't be all at the same time.
- He asked what the hours of construction would be.

There was a discussion of the NHESP

- **Doug Sederholm** asked whether the applicant has to file any type of notice or application with Natural Heritage Endangered Species program.
- **Paul Foley** confirmed that the site is in priority habitat area; Natural Heritage is supposed to be notified by the local board.

- **Dan Perry** said he is aware of the regulations of Natural Heritage and they will certainly comply.
- **Chris Murphy** asked whether the Commission should write a letter to West Tisbury Planning Board or Conservation Commission about reviewing or referring the lot for priority habitat.

Andrew Woodruff asked about setbacks. The plan shows the 200-foot road setbacks and zoning setbacks, which results in building envelopes and no-cut zones shown on the plan.

Jim Athearn said the West Tisbury Planning Board referred the site on the basis of prime agricultural soils and asked about the soils.

Paul Foley said that the soil is Carver loamy coarse sand, which is not prime agricultural soil. The Commission accepted the project in 1998 as a division of 15 acres or more, but later a parcel was cut off. The lawsuit was only about whether or not project was properly referred. At one point the West Tisbury Planning Board had thought it was prime agricultural soils but it is not.

Dan Perry said he believed the Commission declined to accept the referral on agricultural soils.

Jim Athearn asked if the soil information was based on Dukes County soil maps or actual samples.

Andrew Woodruff asked how plan would fit into the open space plan. **Mark London** said if Natural Heritage generally has the same requirement that the Commission does for priority habitat, namely that there be a 60- 70 % no-cut zone; the building envelopes are outlined according to zoning but there is room to shrink the building envelopes.

Chris Murphy said the applicant was before the Commission long before the open space plan was in place. Hopefully the Commission is only dealing with the issue of guesthouses and limiting further subdivision.

Andrew Woodruff asked whether Commissioners should be looking beyond the two offers

An unidentified neighbor in Deep Bottom asked about the setbacks. **Paul Foley** explained that the West Tisbury zoning requirement at the time must have been that there be 50 feet from the rear property line and 100 foot front yard setback and that is all that is shown on the plans.

Dan Perry reminded the Commission of the settlement between the parties. The premise is that the applicant gives up the argument that the project is not subject to Commission oversight and resolved the guest house issue with West Tisbury. They will have great concern if this process becomes the vehicle for further regulation of the subdivision.

Jim Athearn said Commissioners are making a decision based on further information and experience and they are making a decision for the future. He asked about what appears to be a frost bottom and asked whether it is a gravelly bottom and what the Mass Estuaries Project would say.

Doug Sederholm said the lawyers for the Town, the Commission and the applicant have reached an agreement.

- There is a serious dispute of whether the Commission has jurisdiction and whether the project qualifies for a DRI.
- The guesthouse issue is still a live issue and the Commission has more power to limit guesthouses.
- Commissioners don't have to go along with the settlement, but any decision might not be enforceable.

Alex Berry, neighbor from Willow Tree Hollow, asked about setbacks and said he would like to know how the abutting lot would be carved out. He is supporting Mr. Rutkiewicz's proposal but he wants to preserve the character of the area. He is keeping his lot wooded. He asked how further subdivision can be restricted.

Christina Brown explained that the settlement is a deed restriction. Even if the Town of West Tisbury changed it's zoning, the applicant couldn't subdivide further.

Mr. Rutkiewicz said he's not a builder. His father was a builder. He's the executor and he's trying to do the right thing for the estate.

Christina Brown closed the public hearing.

Linda Sibley moved, and it was duly seconded, to waive the referral to LUPC and move to deliberations. A voice vote was taken. In favor: 10. Opposed: 0. Abstentions: 0. The motion passed.

3. RUTKIEWICZ: DRI 488 – DELIBERATION & DECISION

Commissioners present: M. Athearn, J. Breckenridge, C. Brown, P. Cabana, C. Murphy, N. Orleans, D. Sederholm, L. Sibley, P. Strauss, A. Woodruff

Doug Sederholm outlined the issues that were raised during the public hearing:

- Phased construction,
- Hours of construction,
- Preservation of woodlands,
- Possible limitation of development through Natural Heritage.

Doug Sederholm pointed out that there might be de facto phased construction.

LUPC recommended to approve as presented in the letter from Eric Wodlinger indicating that the MVC Decision and the settlement be recorded in the Registry.

Jim Athearn asked, since Natural Heritage's involvement is unknown, whether the Commission is the only agency that can have an influence on the percentage of developed area of the lots. He wondered if the Commission should limit the developed area to a certain percent.

Doug Sederholm said if Natural Heritage decides it is priority habitat, they have the authority to regulate development, but the Commission doesn't know how they will exercise it.

Paul Strauss suggested a condition could be that the amount of open space would be as required by Natural Heritage.

Chris Murphy moved that the Commission send a letter to the West Tisbury Planning Board explaining that Natural Heritage should review the site and the Planning Board deal with construction issues, and the Commission move the project forward with the agreed upon conditions. [There was no second or vote.]

Doug Sederholm asked whether West Tisbury has authority to deal with issues raised at the public hearing.

Chris Murphy said that open space is Natural Heritage's issue. West Tisbury does have requirements regarding hours of construction and phased construction.

Linda Sibley said if the project were referred today, the Commission would be looking at the environmental issues.

- She has faith in Natural Heritage. Natural Heritage did weigh in on a project that was similar to this.
- She's comfortable with the project as long as the Commission is sure that Natural Heritage is being notified.
- She pointed out that construction impacts would be somewhat less than what they might otherwise be because the property connects to the Edgartown West Tisbury Road.

The applicant clarified that he has no objection to a condition that he will file a notice with Natural Heritage.

Doug Sederholm moved, and it was duly seconded, to approve the application with the offers set forth in the covenant and the offer to file the appropriate notice with the Natural Heritage Endangered Species Program and that the Commission will send a letter to West Tisbury Planning Board advising them of the Commission's concerns about phased construction and preserving as many trees as possible.

Jim Athearn said the subdivision next door is a prime example of an abomination. He hopes that when West Tisbury instituted 3-acre zoning, they weren't envisioning the extensive development that's taken place. It's now 2007 and he would encourage denial of the subdivision because it puts more houses on this land. He doesn't want to be part of a process that continues to chop land into three-acre lots.

Andrew Woodruff said West Tisbury by-laws do allow clustering so there are alternatives.

A roll call vote was taken. In favor: J. Breckenridge, C. Brown, P. Cabana, C. Murphy, N. Orleans, D. Sederholm, L. Sibley, P. Strauss. Opposed: J. Athearn, A. Woodruff. The motion passed.

There was a discussion of three-acre zoning and clustering.

- **Chris Murphy** asked whether the zoning board is the place to raise Jim Athearn's issue of three-acre zoning. How can the Commission impose restrictions more stringent than zoning?
- **Jim Athearn** said the Commission can be more restrictive and it negotiates conditions according to Chapter 831 principles. Being more restrictive than zoning is allowable. He believes the Commission has to speed up the process because ground is being lost.

- **Christina Brown** said zoning doesn't require clustering, but the Commission can.
- **Doug Sederholm** said the Commission has the power under Chapter 831. The question is whether the Island has the political will to do it.
- **Chris Murphy** asked whether the place to have the discussion is at Town Meeting to get local support rather than have the Commission impose something.
- **Linda Sibley** said Herring Creek Farm is a good example of local zoning being rejected. Edgartown had 3-acre zoning but people didn't want 3-acre zoning in that area. If today's Commission were looking at this subdivision, today we would condition it.
- **Paul Strauss** said another view is that the Commission has some obligation to assume leadership and get ahead of the curve. If the Commission chooses not to do it on this one, there are valid reasons.

Ned Orleans said the Island Plan should give the Commission the basis for exercising leadership. There is an opportunity for those changes to come out of the Island Plan Network. The Plan should give us information that will help inform positions and actions that deal with the totality rather than one piece at a time.

Jim Athearn said Chris Murphy wrote an excellent essay on excessive island development.

4. DAILY GRIND: DRI 485M3 – MODIFICATION REVIEW

Commissioners present: M. Athearn, J. Breckenridge, C. Brown, P. Cabana, C. Murphy, N. Orleans, D. Sederholm, L. Sibley, P. Strauss, A. Woodruff

For the applicant: Sam Dunn, owner

Christina Brown gave the LUPC report.

- The applicant is requesting a modification of a DRI. The restaurant was Soda Pops and is now the Daily Grind.
- The proposal is to add a 500-square-foot addition to accommodate sit down meals and to do landscaping in the parking area.
- The plan has been cleared by the Tisbury sewer and water commissions.
- The applicant will have to go back to the Conservation Commission and Planning Board because of its location in the Waterfront District and proximity to the Lagoon.
- LUPC recommended that this is a minor modification to the building, is the consistent with the original approval and does not require a public hearing.

Sam Dunn said he is the contract owner.

- The business has failed the second time around. He feels it can't succeed unless it's a full service restaurant open in the evening.
- He's hoping to make it a better-looking place and take advantage of parking and easy access in the evening.
- Wastewater issues are dealt with.
- They have approval for 44 seats. The change is the restaurant would wash dishes and serve people at their tables.

- The restaurant may serve breakfast and will be open for lunch and dinner. They will be moving business into the evening. There are currently no restrictions on the hours of operation.

Chris Murphy said the Commission should be clear that this is growth.

Sam Dunn said the outside seating has to be either a common area for the Marketplace where people could bring take-out or it has to be exclusive to the restaurant as a sit-down area.

Sam Dunn said at the LUPC meeting he agreed to dedicate a space for loading and deliveries in front of the building.

John Breckenridge moved, and it was duly seconded, that this is not a significant change and does not require a public hearing. A voice vote was taken. In favor: 10. Opposed: 0. Abstentions: 0. The motion passed.

Linda Sibley moved to approve the modification including the 500 square feet addition based on the assurance that the modification is as specified in the application and the addition of the loading zone parking space. A roll call vote was taken. In favor: J. Athearn, J. Breckenridge, C. Brown, P. Cabana, C. Murphy, N. Orleans, D. Sederholm, L. Sibley, P. Strauss, A. Woodruff. Opposed: None. Abstentions: None. The motion passed.

5. DRAFT DRI ENERGY POLICY

Kate Warner asked Commissioners to fill out an energy survey.

Kate Warner explained the make-up of the Energy Guideline subcommittee that worked to develop a policy for DRI applicants. She outlined the report.

- James Hansen, a NASA climatologist, argues that a two-degree-Fahrenheit rise in temperature will make a significant difference in climate and there is only a ten-year window within which to change direction.
- She suggested keeping the Energy Policy as a framework, but the Commission will have to decide how to apply them to a range of applications.
- The policy asks people for increased energy efficiency and shows how they might achieve that.
- Buildings represent 50% of energy use nationwide. On the Vineyard, because of generating electricity off-Island, buildings represent 65% of energy use because of the cost of getting energy to the Island. It's very difficult to determine how much each building type uses.
- The long-term goal is that buildings should consume 50% less than equivalent buildings. Each 5 years, you ratchet the number down so, by 2030, there are buildings with net zero energy use.
- Buildings should be designed and constructed to meet Energy Star standards or exceed the Massachusetts Building Code by 20%. Energy Star standards are about 15% better than Massachusetts Building Code. It's not a hard benchmark to meet, but the subcommittee felt that it is worthwhile as other benchmarks may be developed.

- Line 201 of the guidelines encourages applicants to check how they're doing in meeting energy requirements by using RES-Check or COM-Check to calculate the energy efficiency of new buildings. Their websites demonstrate how builders can take small steps to increase energy efficiency.
- A focus can be on making buildings more energy efficient through good insulation and windows.
- Building an energy-efficient house does cost more, but, in addition to cost savings on energy, money is saved because heating and cooling equipment can be smaller.
- Solar hot water should be a consideration for the YMCA, particularly for showering in the summer months. Solar hot water shouldn't be on a building with low hot-water use.
- Geothermal is best if used in combination with a renewable energy source to power the circulation pump.
- 20% offsite mitigation is a possibility.
- She's working with Aspen Building Inspector and has run workshops for contractors and builders on energy efficiency.
- The Vineyard Energy Project received a grant from e-foundation. They're proposing use a computer model to take a few types of houses, see how they perform, compare the costs and benefits of various energy improvements, looking at construction and operating cost differences.

Ned Orleans said the guidelines would be something to give to and review with applicants. The Commission can affirmatively evaluate each proposal with the criteria in mind.

Kate Warner added that as buildings are made tighter, they need to be ventilated.

- There can be mold and mildew issues. She cautioned against making a building a little bit better energy-wise but creating condensation, moisture, rot, and mildew problems.
- She recommended requiring buildings to have the blower door test which shows how tight the building is and where the leaks are.
- Beating the Massachusetts Code is a good start.

Peter Cabana, chairman of the Energy DRI subcommittee, spoke about a number of issues.

- Contractors could be offered incentives for energy efficiency.
- If someone were to pay, say, \$1500 for something extra. At the cost of \$15 a month, the savings could be \$30 a month.
- Applicants could do a five-year estimate of savings.
- There has been reluctance by the YMCA to pursue some of the energy efficiencies, partly because of their limited funding.

Kate Warner said the guidelines have been presented at town planning board meetings but they haven't gone very far. Making building more expensive is an issue.

- Smaller equipment is better and there are cost savings over time.
- It's stupid to build inferior affordable housing and saddle people with high energy costs.

Andrew Woodruff said it seems ominous for the Commission to be implementing Energy Guidelines and wondered what the Vineyard Energy Project's vision is.

Kate Warner said energy has to be addressed on the building code level.

- The Island Plan's Energy Work Group has big ideas.
- The building code is a low-hanging fruit because only new construction is impacted. It's the easiest way to cut our energy use.
- The building code is a State issue and it's not clear that the DCPC process could enact a more efficient code.
- If there were ever a time to consider a more efficient code, this is it. The State has adopted a revised code, but it doesn't address energy issues.

John Breckenridge asked whether 20% is enough. **Kate Warner** said requiring a blower door test and mechanical ventilation is good; 20% is a reasonable stretch; a lot of builders are on a simplistic level; the State Energy Code isn't given the highest regard in the permitting process.

Paul Strauss said the Island Plan Energy Work Group has been discussing a higher energy saving based on the year 2030 estimates. **Kate Warner** said the guidelines are based on the same idea and Energy Star isn't the place to stop.

Jim Athearn asked about planting grasses to lock up the carbon sequestration. **Kate Warner** said replacing fossil fuel is the big issue.

Mark London said Commissioners should submit comments and staff would work on finalizing the policy.

Peter Cabana thanked the committee members, especially Kate Warner.

6. MIDDLE LINE ROAD COMMUNITY HOUSING PROGRAM: DRI NO. 597 – WRITTEN DECISION

Commissioners present: M. Athearn, J. Breckenridge, C. Brown, P. Cabana, C. Murphy, N. Orleans, D. Sederholm, L. Sibley, P. Strauss, A. Woodruff

Christina Brown moved, and it was duly seconded, to accept the written decision with the changes to be discussed.

Commissioners agreed by consensus to the following changes:

- Line 25 Add: *the applicant has submitted a 'Form B' subdivision plan to the Planning Board*
- Line 117 *each group of three buildings– one duplex and two single family homes.*
- Line 125 *at least four units will be leased to families earning no more than 100 % and remaining earning no ore than 150%*
- Line 187 *'Form C' definitive subdivision plan*
- Line 191-193 Delete *impact on abutters – period after Chilmark.*
- Section A4. Delete *however to end.*

Riggs Parker clarified that sponsoring a new town meeting warrant article for \$60,000 for energy improvements was more of an idea than an offer.

Commissioners added conditions that were discussed and agreed on during the approval.

- *The applicant will consider and report on the applicability of universal design.*
- *The applicant will consider and report on LEED level achieved before building permits are issued.*

- *The applicant will consider and report on energy paybacks.*
Line 365 & 372 Change from West Tisbury to Chilmark.
- Line 375 *The applicant shall have two years from the date of receipt to file the Form C*

Riggs Parker clarified that the Town doesn't have control over Holman Road and cannot assure perpetual public access. The easement over the land is through the Land Bank.

A roll call vote was taken on the motion to approve with the above-discussed corrections. In favor: J. Breckenridge, C. Brown, P. Cabana, C. Murphy, N. Orleans, D. Sederholm, L. Sibley, A. Woodruff. Opposed: None. Abstentions: J. Athearn. The motion passed.

7. 44 NORTH WATER STREET REALTY TRUST: DRI NO. 604 – WRITTEN DECISION

Commissioners present: M. Athearn, J. Breckenridge, C. Brown, P. Cabana, C. Murphy, N. Orleans, D. Sederholm, L. Sibley, P. Strauss, A. Woodruff

Doug Sederholm and **Andrew Woodruff** recused themselves and sat in the audience.

Christina Brown moved, and it was duly seconded, to approve the written decision.

- Commissioners discussed changing language on page one under permit-granting authorities, but agreed to keep the boilerplate language.
- Commissioners discussed the applicant's request that the length and validity of the decision be open ended because the application is for division of land.

Commissioners agreed by consensus to delete Section 6.3.

- Commissioners discussed language related to one owner's development of 10 or more dwelling units being subject to the affordable housing policy. **Mark London** suggested using 'single common ownership or control' and will consult with Eric Wodlinger on its insertion.

Commissioners agreed by consensus to adding 'single common ownership or control' as recommended by Eric Wodlinger

- **Mark London** said if one owner develops 10 or more dwelling units then it is subject to the affordable housing policy. He will check with Eric Wodlinger.

Jim Athearn moved, and it was duly seconded, to approve the written decision with the two agreed upon changes. A roll call vote was taken. In favor: J. Athearn, J. Breckenridge, C. Brown, P. Cabana, N. Orleans, L. Sibley. Opposed: None. Abstentions: None. The motion passed.

8. JAMES FERRY TENNIS & RACQUET BALL FACILITY: DRI NO. 598 – WRITTEN DECISION

Commissioners present: M. Athearn, J. Breckenridge, C. Brown, P. Cabana, C. Murphy, N. Orleans, D. Sederholm, L. Sibley, P. Strauss, A. Woodruff

Doug Sederholm and **Andrew Woodruff** recused themselves and sat in the audience.

Chris Murphy moved, and it was duly seconded, to approve with corrections.

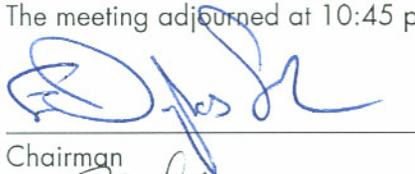
8.5 The tennis court will not be rented out for non-recreational functions.

8.3 . . . to be submitted to the West Tisbury Planning Board.

Page 1 line 23, there's nothing prohibiting him from separating the lots but that wasn't part of original discussion.

A roll call vote was taken. In favor: J. Athearn, J. Breckenridge, C. Brown, P. Cabana, C. Murphy, N. Orleans, L. Sibley. Opposed: None. Abstentions: None.

The meeting adjourned at 10:45 p.m.



Chairman

11-15-07
Date



Clerk-Treasurer

11-15-07
Date