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Minutes of the Commission Meeting Held on August 7, 2008 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 Breckenridge (A – Oak Bluffs)	P 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)
P Mimi Davisson (E – Oak Bluffs)	- Paul Strauss (County Comm. Rep.)
P Mark Morris (A – Edgartown)	P Richard Toole (E – Oak Bluffs)
P Chris Murphy (A – Chilmark)	P Andrew Woodruff (E – West Tisbury)
P Katherine Newman (A – Aquinnah)	

Staff: Mark London (Executive Director), Bill Veno (Senior Analyst), Paul Foley (DRI Coordinator), Bill Wilcox (Water Resource Planner), Christine Flynn (Affordable Housing), Jo-Ann Taylor (Coastal Planner/DCPC Coordinator)

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

1. PAUL STRAUSS

Doug Sederholm said it's been a pleasure to work with Paul Strauss and thanked him for what he's done. Paul has served on the Oak Bluff's Conservation Commission, the Martha's Vineyard Commission, the Duke's County Commission, and the Charter Study Committee.

Christina Brown thanked Paul Strauss's family for their patience and time and presented him with a fancy cake to give to his family.

2. DCPC NOMINATION – WEST TISBURY SPECIAL WAYS

Commissioners present: J. Athearn, J. Breckenridge, C. Brown, P. Cabana, M. Davisson, M. Morris, C. Murphy, K. Newman, N. Orleans, J. Powell, D. Sederholm, L. Sibley, R. Toole, A. Woodruff

Jo-Ann Taylor explained that two ways are being nominated as special ways: Chicama Path and Stoney Hill Path.

- The Commission's task is to decide whether to accept the nomination for consideration.
- If the Commission accepts the nomination, there will be a building moratorium within twenty feet of the centerline of the way and it must hold a public hearing within sixty days.
- If the Commission rejects the nomination, the ways can't be nominated again for a year unless two-thirds of the Commission votes to re-examine the issue.

Ann Bassett, from the By-ways Committee in West Tisbury, explained that they're not looking to change anything. There are changes due in the neighborhood. The By-ways Committee wants to make sure that the public maintains rights to the paths and the paths aren't going to change.

- She thanked the Commission for the guidance provided by Bill Venio.
- People use the paths for taking walks.
- Some construction will be taking place in the neighborhood.
- Essentially the paths act as lot lines for a number of lots. They are ancient paths.

J.C. Murphy asked what the moratorium means. **Doug Sederholm** explained that no building can occur within twenty feet of the centerline of the two paths during the moratorium; the moratorium can last up to a year as the Town adopts regulations, and the regulations are approved by the Commission and Town.

Chris Murphy moved, and it was duly seconded, that the nomination for consideration be accepted, because the Commission has been requested by West Tisbury Selectmen and it is part of the Commission's policy to encourage the public use and protection of ancient ways. A roll call vote was taken. In favor: J. Athearn, J. Breckenridge, C. Brown, P. Cabana, M. Davisson, M. Morris, C. Murphy, K. Newman, N. Orleans, J. Powell, D. Sederholm, Sibley, R. Toole, A. Woodruff. Opposed: None. Abstentions: None. The motion passed.

A public hearing will be held September 18th at 7:30 p.m.

3. FIELD CLUB: DRI NO. 551 - RECONSIDERATION

Commissioners present: J. Breckenridge, C. Brown, P. Cabana, M. Davisson, M. Morris, C. Murphy, K. Newman, N. Orleans, D. Sederholm, L. Sibley, R. Toole, A. Woodruff

Jim Athearn recused himself.

Christina Brown said she is a member of the Affordable Housing Committee. She consulted the Ethics Commission as to whether that her membership might be a conflict and was advised that it was not.

Mark Morris said the Commission should reconsider the vote. LUPC had unanimously voted to recommend the modification. At the Commission meeting, two Commissioners changed their minds and there were no Affordable Housing Committee members at the meeting to explain their recommendation.

Linda Sibley said the discussion at LUPC was on the substance of the offer. The discussion at the Commission meeting was whether the modification was a substantial change. Commissioners concluded that the modification is a substantial change and requires a public hearing.

- The fact that the change is beneficial isn't the point. It is a substantial change.
- The Commission had public comment on the original decision. The Commission should have public comment on a change in the decision.
- The lots that were offered as the affordable housing offer were mitigation for the DRI and were an offer to the Commission not to the Affordable Housing Committee.
- Commissioners have to decide whether the offer still mitigates the DRI and balances the benefits and detriments of the proposal.
- The Commission's policy says cash as affordable housing mitigation should be 20% of the assessed value of the lots.
- Commissioners can't take in new information or discuss the issue without holding a public hearing. Holding a public hearing is by no means a denial of the offer.

Doug Sederholm said that given the opinions in the paper and the letters the Commission has received, it might be inferred that there should be public input.

Peter Cabana described his understanding of the LUPC discussion; they saw all positive statements in the offer. It appeared to him that there had been a genuine effort by both parties and it was a better benefit overall to affordable housing. **Doug Sederholm** asked whether LUPC discussed the question of whether it was a substantial change. **Peter Cabana** said the question for him was how many homes could be gotten for affordable housing.

Linda Sibley said there is a process for changing conditions. **Peter Cabana** said the process was followed through the recommendation of LUPC. **Linda Sibley** said the discussion should not have been whether it's a good change but should have been whether it's a substantial change.

Ned Orleans said the only issue at this meeting is whether it's a significant enough change to require a public hearing. The details of the DRI and the details of the modification are not the issue.

Janet Hathaway, Resident Homesite Chair and vice chair of the Island Housing Trust, said the delay affects their ability to buy back a former affordable housing recipient's estate.

- If the Edgartown Affordable Housing Committee had realized the concern with procedure, it would have been in front of the Commission months ago.
- The Committee was encouraged by Commissioners and it's difficult to understand why we're here today.

Sharon Purdy, Edgartown Affordable Housing Committee, said there is a time issue. The Field Club is being pressed to close on some of the lots and it needs the issue resolved so funds can be released. **Doug Sederholm** read from the original condition, which states that the lots are to be released for affordable housing only after specific phases are completed, so this delay should not pose a problem for the Field Club.

John Best explained that, as a former Commissioner, he voted on the original application for the 32-lot subdivision and the second application for the Field Club. As someone who sat through both applications, he feels that this is a significant change. A public hearing may not change anything, but a public hearing will give it the airing it deserves.

Linda Sibley asked whether Commissioners can vote on the reconsideration if they didn't vote on the original motion. **Doug Sederholm** said that only Commissioners who voted on the modification decision may vote on the reconsideration.

Ned Orleans moved, and it was duly seconded, that the Commission reconsider the decision on whether to have a public hearing. A voice vote was taken. In favor of reconsideration: 5. Opposed: 4. Abstentions: 0. The motion passed.

Doug Sederholm said that now that the Commission agreed to reconsider its decision to hold a public hearing, all Commissioners may discuss whether or not the change that is proposed is sufficiently significant to warrant a public hearing and may vote on the question.

Mimi Davison moved, and it was duly seconded, that this change is significant enough to warrant a public hearing.

- **Chris Murphy** said this particular subdivision project has been a dark hole. There has been little or no public input. One letter from Robin Bray and David Nash raised a lot of questions. It does seem that this is a subject that warrants public comment.
- **Linda Sibley** said she likes the idea of the money instead of the lots in most ways because it can house more people, but it is a different kind of offer. The housing policy does state that the Commission should be committed to creating mixed income developments. The Affordable Housing Committee may have a really good argument, but it shouldn't be one-sided. It's a huge difference to take money versus building lots.
- **Kathy Newman** asked about the concern about time.
- **Doug Sederholm** said he's committed to a quick process. A public hearing could be August 28th.
- **Peter Cabana** said LUPC recommended that this was not a significant change. He believes that the affordable housing people may have been at the last meeting if there had been an indication that the change might be considered significant. LUPC usually reflects the Commission as a whole; in this case it didn't.
- **Linda Sibley** said another issue is that this modification is being proposed many months after the original decision so there hasn't been recent public discussion of the issues. Commissioners can't say that the issues have been discussed. The Commission can't take public input without a public hearing.
- **Andrew Woodruff** said he sees that a \$1.8 million buyout as a regional issue and it deserves a public hearing. He means no disrespect to the Edgartown Affordable Housing Committee by voting that the modification should go to public hearing.
- **Richard Toole** said he appreciates Peter Cabana's points and pointed out that LUPC is an advisory committee. He's been impressed with the public dialogue that's gone on. The issue is not whether or not Commissioners agree with the change. It's whether Commissioners have enough information from the public to make the decision on whether to accept the modification.
- **Christina Brown** said the first decision is whether this is a substantial change. The decision can be based on the affordable housing policy
- **Jim Powell** said he has learned through this process to consider issues more broadly.

- **Kathy Newman** asked why the developers didn't come back to the Commission. If they had come directly to the Commission, it would have been less confusing.

Commissioners voted on the question of whether to hold a public hearing. In favor: 10. Opposed: 3. Abstentions: 0. The motion passed.

The public hearing will be held on August 28th. The Commission will try it's best to make its decision that night.

4. MUCKERHEIDE HOUSING: DRI NO. 615 – PUBLIC HEARING (CONT.)

Commissioners present: J. Athearn, J. Breckenridge, C. Brown, P. Cabana, C. Murphy, K. Newman, N. Orleans, D. Sederholm, L. Sibley, R. Toole, A. Woodruff

4.1 Applicant's Presentation

Donald Muckerheide presented information about the project in response to Commission questions.

- The proposal is to add seven modular housing units and to reconfigure the existing building to create two units to develop a total of nine unit housing units.
- The goal is to provide year-round housing and sell the units as condominiums.
- Schofield Barbini provided the plan and elevations and plot plan
- The modular company will generate the architectural plans when they are contracted to do the project. He doesn't want to pay for an architect to work on the design at this stage.
- He has received quotes from three modular companies based on the same information provided to the Commission. Drawings will be available when the applicant commits to a company. The company sends an approved plan to the building inspector.
- The height will be less than 35 feet according to code.
- The buildings are 14 feet wide.
- There will be a 6-foot fence around the property from the viewing side.
- He reminded commissioners that he made the fundamental offer that the project will abide by Mass Law for residential properties. He will be selling the units as residential housing, not weekly rentals, so he will be seeing a net profit of \$500,000 to \$ 800,000 less than if they were sold at market rate.

Commissioners discussed the review process.

Chris Murphy said that if Commissioners require a detailed plan and the applicant refuses to provide it, then we have to turn down the application. If the applicant is asking for approval of a concept within certain boundaries, and comes back later with a detailed plan, that would be appropriate to consider.

Doug Sederholm said if Commissioners believe the applicant's plan is incomplete without architectural plans, there are three options:

- The hearing could be continued until the plans are received;
- The Commission could deny the application on procedural grounds that the application is incomplete, or
- The Commission could approve or disapprove the application based on what we have.

Chris Murphy asked if it could be approved substantially as presented, but hold the hearing open for the final material to arrive.

Jim Athearn said he could submit a list of specifications that he'll send to the modular contractor so that we have a detailed concept. If we thought that was sufficient to understand what the building would be, he could see approving the project with the proviso that the final plans be reviewed by staff to insure that what will be built is what was approved.

Christina Brown said it's not clear that the Commission requires an architect's or engineer's stamped plans.

- What is required are plans that are clear enough so that Commissioners know what the project is going to look like. Commissioners have approved plans that are a kind of sketch plan.
- She's concerned with how it's going to look on the site. She suggested that the Oak Bluffs Site Plan Review Committee look at the proposal and give the Commission some feedback. The Commission could continue the hearing and have an intervening LUPC meeting.

Linda Sibley said architectural or engineering plans aren't required. However Commissioners do need to know what the buildings are going to look like.

Jim Powell agreed. Applicants have submitted parameters without the final plan.

Mark London said the staff report does not say that that an architect or engineer must be hired now. It suggests that the present plans are incomplete and suggests that the Commission ask for "an accurate, professionally drawn set of architectural plans of the existing and proposed building including dimensions and elevations of each of the four sides." The plans are needed for the Commissioners to fully understand the proposal. Applicants are often required to submit plans or perspectives that clearly show how a building will fit into the streetscape.

Don Muckerheide said that the abutters have all signed a petition saying that they like the project.

- Dimensions are listed on the application. The buildings will look like what you see in the model in front of you.
- The concept is to help more people.
- Streetscape elevations can be deceptive. He showed an example of streetscapes provided during the Bradley Square hearing by Hutker Architects that were clearly misleading. He suggested Commissioners go to Tony's Market and look across the street.
- Commissioners discussed the fact that normally it's the applicant who provides the streetscape, but staff can work on putting something together.

Richard Toole said the Commission is trying to work with the applicant. The project is an admirable goal. But there are certain things the Commission needs to make a decision to protect the public.

Linda Sibley said Commissioners understand that there are times when applicants spend a lot of money on plans that are designed to bamboozle, not to help Commissioners perceive things accurately. Commissioners are asking for visuals that help them see accurately. She hopes staff

can help the applicant help the Commission understand what the project is going to look like. Commissioners had asked for streetscape perspectives from both sides of the street.

Don Muckerheide addressed some other issues.

- He can provide a stormwater management plan at a later date. He has a Title 5 system that won't be in use once the system is on town sewer. Any overflow from the roof run-off system pits can go into the Title 5 system and use the leaching field.
- The site has a 21E environmental assessment that was done after he retired from the automotive business.
- In response to a request to explain how the applicant will determine affordability, that there are no income level requirements to enforce. He's not targeting any particular demographic and income levels won't be certified. A target sales price of \$350,000 corresponds to an income level under 150% AMI. His offer is that this is a residential project with no short-term rentals.

Jim Athearn said it would be desirable that there were something on paper that allowed moderate income year-round residents to have first crack at purchasing the units.

Doug Sederholm asked whether it would be prohibited for five families to buy a condo and break up the year. **Don Muckerheide** said that would be prohibited because of the residential requirement.

Don Muckerheide responded to questions.

- Future resale of units won't be monitored.
- The condo fee will start at \$50
- Maintenance should be minimal.
- The condo association will be run as a business.
- Condo documents will outline requirements for residency and prohibition of short term rentals.
- He is not planning to provide a unit for 80% AMI.
- The first floor units could not be converted to commercial units. The condo documents require the units to be residential. A change would require returning to the Commission.
- The basement areas not used for utilities will be for storage for condo units.
- There will be a two to three story exterior stairway facing Dukes County Avenue, for emergency use, which is shown in drawings but is not on the model. It's too difficult to add exterior stairways to the model. The condominium rules will prevent use of exterior stairways.
- The windows will be standard six over sixes. There are windows facing a stairwell.

Linda Sibley said she understands that it's a pain to draw in windows but the difficulty in not having exact plans is in giving Commissioners a clear understanding of how the project will be built. One usually assumes the model shows what's going to be built.

Mark London said that it appears there are bedroom windows facing into a long, narrow lightwell.

Donald Muckerheide gave further information about the project.

- The 10' by 100' side-yard hard surface will be rap with some white shell for low maintenance and no nitrates. It will also be very shady so it will be hard to grow grass. The perimeter is a three foot wide mulch ground cover.
- The exterior is vinyl siding, with square corner boards and window trim.
- There won't be live work spaces. He's not sure what the extra space will be used for. It depends on what version is built. No business-related activity will take place on the property.
- He passed around pamphlets on modular units.
- The existing one story building will probably be a maintenance area, depending on the plan.
- There will be one kind of exterior.
- All boards have been notified. Police chief and fire chief have said it looks great.
- The 3 ft. perimeter will be pervious. The rest will be impervious.
- The buildings will have gutters.
- The applicant is designating a leeching system for stormwater. The roof run-off goes to the pits. The parking lot run off will go to the leeching field or Title 5 system.

Bill Wilcox clarified the 25-year storm. The peak rainfall is 12" per hour for a one hour period. Over 24 hours, the rainfall would be 5.8".

4.2 Commissioner Questions

Jim Athearn asked when the condominium documents will be developed. **Donald Muckerheide** explained that first he will get a building permit, and then go to the bank with the approvals; then money will go to modular people for engineering; then the stamped set of Massachusetts plans are then sent to the building department.

Peter Cabana noted that this was designed by the owner, but in Massachusetts an architect is required for buildings over about 3,500 square feet. He pointed out that staff wrote that it would be advisable, for a project of this visibility and complexity, that a professional architect be involved sooner rather than later. He wants Commissioners to work with the applicant but there may be a requirement at the State level.

Paul Foley said that Jerry Weiner said that he was going to submit a memo. He can issue a building permit not for construction, but in order to get the financing.

Donald Muckerheide said for a building of this size, the permit would be a Massachusetts permit, not the Commission's opinion on the project.

Andrew Woodruff asked if there is a density limit in the B-1 district. **Paul Foley** responded that there isn't a density requirement but there are setbacks; the zoning requirement is that dwellings occupy only one-third of a lot. The lot size is 0.27 acres and the footprint is 4820 sq. feet. It's unclear whether the zoning requirement that dwellings only occupy one-third of the lot applies to the B-1 district.

Chris Murphy asked for review of on-site parking. **Donald Muckerheide** said there are nine to eleven units with 21 or 22 parking spaces on site.

Linda Sibley said she understands the issue of formal architectural drawings and that the Commission doesn't need the final legal condo association documents.

- Commissioners do, however, need to have in writing what will be in the condo association documents.
- Staff and applicant can work out the draft offers that clarify what he intends.

John Breckenridge asked how this project will help Islanders who need affordable housing.

Don Muckerheide explained that it fills a niche that doesn't exist on Martha's Vineyard -- the resident can't compete with the value of the weekly rental; there are a lot of people who can afford \$350,000 for a unit; this creates an opportunity for people who make \$80,000 to \$100,000 a year to afford a home.

Christine Flynn said that a unit costing \$325,000 would be affordable for a family at 120% AMI earning \$84,000 to \$90,000,

Linda Sibley said she agrees with Mr. Muckerheide about short term rentals.

- However, the Commission can't enforce anything to do with short term rentals. That's something that's enforced at a town level.
- She pointed out that the Commission does often require larger projects and mixed-use projects to disallow short term rentals.

Mr. Muckerheide said education about economics would be worthwhile for the Island Plan.

Jim Powell said that the Commission can encourage affordable housing projects like this.

Christine Flynn confirmed that after Bradley Square, Oak Bluffs will need 24 units to comply with the 10% of the housing stock being affordable.

4.3 Public Comment

Patrick Manning, Executive Director of Island Affordable Housing Fund.

- He asked that Mr. Muckerheide be afforded the same scrutiny that the Island Affordable Housing Fund went under for Bradley Square.
- No matter what we think of the look of the project, the Vineyard Housing Office is dedicated to providing affordable housing and, as professionals, will continue to offer its services to Mr. Muckerheide to help him with this project.
- On the environmental piece, the Commission shouldn't gloss over the prior use of the property. Seeing the accuracy of the 21E would be important in case there are any issues that need to be addressed prior to house sales.
- The Vineyard Housing Trust has been taking pride in its attention to energy efficiency. Jenney Lane is the first affordable housing units to achieve Platinum LEED status. At 150 State Road, they're trying to go to zero net energy use. Regarding Mr. Muckerheide's project, energy issues should be addressed and criteria should be clarified. The Vineyard Housing Trust could assist him with this.
- The one big issue here is that there are no affordable housing conditions. They don't see many people applying for 140-150%% AMI units.
- He appreciates that some Commissioners voted for the Bradley Square project to support the affordable housing aspect of the project. He wouldn't want the Commission to

overlook certain aspects of Mr. Muckerheide's proposal with the idea that the project is an affordable housing project. The affordable housing community does not consider this project affordable housing.

- Mr. Muckerheide has been talking with David Vigneault. However, at this juncture, a letter won't be written supporting what's being considered.

Doug Sederholm said his understanding is that the 150% AMI category is not one in which there is a burning need versus 100 or 120%. **Patrick Manning** said he hasn't seen the completed John Ryan report; they don't consider 150% AMI affordable; they see 150% AMI as a detriment; they need more in the 80% and 100% AMI category, and a few at 120-150% AMI.

Doug Ruskin, board member of Habitat for Humanity, said they address only 80% AMI or lower.

- The waiting list at Dukes County Housing Authority is 85% to 100% or lower. Most are lower than 85%. The overwhelming demand is at the lower level.
- This project will increase the 40B threshold for Oak Bluffs.
- He agrees with many of Mr. Muckerheide's arguments about weekly rentals and turnover.

John Breckenridge asked about the availability of 140% AMI units. **Pat Manning** said that on Upper Circuit Avenue, a two-bedroom condo is \$350,000, and at Jenney Way the 140% AMI units are selling for \$350,000. **Commissioners** asked Christine Flynn to provide some information at next meeting on what's available and what's been sold in the last 12 months.

Linda Sibley said it is relevant to the discussion because he said the benefit of the project is that he's providing units for which he says there is a need. She's struggling with the question of whether a 140-150% AMI family can afford a market-rate house and whether they are available.

Patrick Manning said that in this economy, people make value judgments about what they can afford and resell. Some people at 140%-150%AMI make the decision to buy a market rate house, even if it is a stretch.

Chris Murphy reiterated that there is no requirement for affordability in this project.

Mimi Davisson spoke as a member of the public and resident of Oak Bluffs.

- She pointed out that this development is on a major artery. Dukes County is one of the two major thoroughfares.
- The site is across from Tony's Market. She urged Commissioners to think about traffic impacts.
- It is very important for Oak Bluffs to make some plans for this B-1 district. This is the second project. The character of the area is very much in transition.
- The building looks like a large apartment building in a city. This doesn't look like the kind of character she would like to see anywhere on the Island.
- She wondered if it could be several buildings to give it a less imposing mass.

Matt Cramer asked if the traffic study had been waived. Paul Foley said that LUPC had waived the traffic study requirement because of the previous uses of the property over the last twenty years.

Matt Cramer said he's hoping that the drawings will be available on the web site.

Bill Wilcox spoke about water-related issues.

- The 25-year return storm would be a nice goal to achieve and it's doable given the space on the property.
- He likes the idea of the mulch border. He suggested using ground cover plantings that could infiltrate run off.
- He likes the idea of using the septic system for run-off, but the applicant should check with the Board of Health about whether they would permit that. They often require that an abandoned septic be filled in or removed.

Mark London said staff will work up a set of offers and they will try to work on streetscape. However, he was not sure how much time staff would have to work on the streetscape. This is something that is normally required of an applicant.

Don Muckerheide responded to a number of questions.

- There are ground plantings in the perimeter mulch border.
- There are two options on the table. One is his concept of year-round housing. The second is a 40B equivalent project with three units selling at the 80% AMI level. It's more profitable for him to do a 40B.
- This project fits and the idea of spreading it out into separate buildings might make it cuter, but it spreads the parking out into the street.
- Anything commercial would create more traffic.

Richard Toole closed the session of the public hearing and continued the hearing to August 28, 2008.

The meeting adjourned at 10:40 p.m.



Chairman


Clerk-Treasurer

11-6-08

Date
11-6-08

Date