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Minutes of the Commission Meeting Held on March 5, 2009 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 Bill Bennett (A- Chilmark)	P Jim Powell (A – West Tisbury)
P John Breckenridge (A – Oak Bluffs)	P Camille Rose (A - Aquinnah)
P Christina Brown (E - Edgartown)	P Doug Sederholm (E – Chilmark)
P Peter Cabana (A – Tisbury)	- Casey Sharpe (A – Oak Bluffs)
- Martin Crane (A – Governor Appointee)	P Linda Sibley (E – West Tisbury)
- Carlene Gatting (County Appointee)	P Holly Stephenson (E – Tisbury)
P Chris Murphy (A – Chilmark)	P Andrew Woodruff (E – West Tisbury)
P Katherine Newman (A –Aquinnah)	

Staff: Mark London (Executive Director), Paul Foley (DRI Analyst/Planner), Christine Flynn (Economic Development & Affordable Housing Planner)

The meeting was called to order at 7:30 p.m.

1. EXECUTIVE DIRECTOR'S REPORT

Mark London reported that:

- There was a Supreme Judicial Court decision on a subdivision along Moshup's Trail in Aquinnah which affirmed the Commission and Aquinnah's position.
- There will be a webinar next week on the proposed revisions to the Land Use Planning Act, now called the Land Use Partnership Act, which has been spearheaded by Greg Bialacki.

1. ISLAND WOOD WORKS: DRI NO. 3 11M-2: MODIFICATION REVIEW

Commissioners present: J. Athearn, B. Bennett, J. Breckenridge, C. Brown, P. Cabana, C. Murphy, K. Newman, N. Orleans, J. Powell, C. Rose, D. Sederholm, L. Sibley, H. Stephenson, A. Woodruff

Linda Sibley gave the LUPC report.

- The proposal is to create a second interior level for storage of wood.
- LUPC concluded that the proposal would not increase the impact.

- LUPC recommended that the Commission find that the proposal is not a substantial change.

Ned Orleans moved, and it was duly seconded, that the change is not sufficiently substantial to require a public hearing and the Commission should not concur with the referral. A voice vote was taken. In favor: 14. Opposed: 0. Abstentions: 0. The motion passed.

Ned Orleans moved, and it was duly seconded, to approve the proposed modifications. A roll call vote was taken. In favor: J. Athearn, B. Bennett, J. Breckenridge, C. Brown, P. Cabana, C. Murphy, K. Newman, N. Orleans, J. Powell, C. Rose, D. Sederholm, L. Sibley, H. Stephenson, A. Woodruff. Opposed: None. Abstentions: None. The motion passed.

2. BRADLEY SQUARE: 612M- WRITTEN DECISION

Commissioners present: J. Athearn, B. Bennett, J. Breckenridge, C. Brown, P. Cabana, C. Murphy, K. Newman, N. Orleans, J. Powell, C. Rose, D. Sederholm, L. Sibley, H. Stephenson, A. Woodruff

Linda Sibley moved, and it was duly seconded, to accept the written decision as presented.

Commissioners agreed to the following changes:

- Page 3: Add letter from Joseph DeBettencourt, Oak Bluffs Tree Warden, 2/5/09.
- Line 261 Change: . . . is not located within any District of Critical Planning Concern.
- Lines 268-9 Add the record of the Commissioners' votes.
- Line 421: Add: All windows in the meeting hall shall be kept closed . . .
- Lines 444, 446 and 458: Change: Oak Bluffs
- Section 3.5: Add an additional bullet: *The applicant has permission to move the building back up to 15' and reconfigure parking lot and buffer area in consequence.*
- Line 452: Change: . . . conditions in this Decision have been . . .
- The new list of conditions includes all previous conditions, except those that were specifically changed, and the new list supersedes the conditions in the original approval.

Linda Sibley moved, and it was duly seconded, to approve the written decision as corrected. A roll call vote was taken. In favor: B. Bennett, J. Breckenridge, C. Brown, P. Cabana, C. Murphy, K. Newman, N. Orleans, J. Powell, C. Rose, D. Sederholm, L. Sibley, H. Stephenson. Opposed: None. Abstentions: A. Woodruff. The motion passed.

3. IGREJA EVANGELICA: DRI NO. 619 – MODIFICATION REQUEST

Commissioners present: J. Athearn, B. Bennett, J. Breckenridge, C. Brown, P. Cabana, C. Murphy, K. Newman, N. Orleans, J. Powell, C. Rose, D. Sederholm, L. Sibley, H. Stephenson, A. Woodruff

Christina Brown explained that the applicant is requesting a minor modification after working with the building inspector.

Paul Foley explained the modifications:

- An outdoor ramp is being added.
- Outdoor mechanicals are being moved.
- The buffer shrinks by two feet.

John Breckenridge moved, and it was duly seconded, that this is a minor modification not requiring a public hearing and is actually a positive improvement. A voice vote was taken. In favor: 14. Opposed: 0. Abstentions: 0. The motion passed.

John Breckenridge moved, and it was duly seconded, to approve the modification and accept the new site plan received March 5, 2009. A roll call vote was taken. J. Athearn, B. Bennett, J. Breckenridge, C. Brown, P. Cabana, C. Murphy, K. Newman, N. Orleans, J. Powell, C. Rose, D. Sederholm, L. Sibley, H. Stephenson, A. Woodruff. Opposed: None. Abstentions: None. The motion passed.

4. DRI CHECKLIST

Commissioners present: J. Athearn, B. Bennett, J. Breckenridge, C. Brown, P. Cabana, C. Murphy, K. Newman, N. Orleans, J. Powell, C. Rose, D. Sederholm, L. Sibley, H. Stephenson, A. Woodruff

Christina Brown explained that when the Commission approved the revised Checklist, it authorized numbering and title changes. The possibility had also been raised of moving the definitions from the front to the back of the Checklist. There are no wording changes, other than those discussed at the public hearing.

Linda Sibley spoke strongly in favor of moving the definitions to the back of the document. Town Boards have been confused and have sometimes taken the definitions as the Checklist itself.

Kathy Newman said the document may be confusing because it's not formatted like a checklist.

Linda Sibley moved, and it was duly seconded, to approve the reformatting of the DRI Checklist including moving the definitions to the end.

- **Doug Sederholm** said he disagrees with moving the definitions to the end. Statutes always have the definitions at the beginning. Also, the definitions should not be identified as an attachment because they are an important part of the checklist itself.
- **Ned Orleans** said, as a user of the Checklist, it's most helpful to have the definitions as an appendix that can be read side by side with the Checklist.
- **Andrew Woodruff** said it is important to clarify which referrals are mandatory.

- Commissioners agreed that on page three to reiterate which referrals are mandatory and that adding language to that effect would not be inconsistent with discussion at the public hearing.

Linda Sibley moved, and it was duly seconded, to amend her motion to add a note on page 3, under sections A and B, clarifying which sections are mandatory and which are mandatory with concurrence. A voice vote was held on the amendment. In favor: 12. Opposed: 0. Abstentions: 2. The amendment passed.

- **Chris Murphy** said he thought that the term 'substantial' needs further clarification. However there was a consensus that we should not change the wording without holding a public hearing, and did not want to reopen this at this time.
- **Kathy Newman** suggested that the definitions could be in a different format to separate them from the Checklist.

A voice vote was taken on the original motion to accept the revised formatting of the DRI Checklist. In favor: 5. Opposed: 9. Abstentions: 0. The motion did not pass.

Doug Sederholm moved and it was duly seconded to adopt the revised formatting of the DRI Checklist, with the numbering and titles as proposed, with the clarifying note about which sections are mandatory to be added, and with the definitions remaining at the front of the document with distinguishing formatting. A voice vote was taken. In favor: 13. Opposed: 0. Abstentions: 1. The motion passed.

4. OTHER BUSINESS

Commissioners present: J. Athearn, B. Bennett, J. Breckenridge, C. Brown, P. Cabana, C. Murphy, K. Newman, N. Orleans, J. Powell, C. Rose, D. Sederholm, L. Sibley, H. Stephenson, A. Woodruff

Chris Murphy handed out a packet of information on training programs for running more efficient, shorter, and user-friendly meetings. He asked that the topic be on the agenda in the near future.

Mark London suggested that the Executive Committee meet to discuss the format of the minutes and to flesh out a proposal.

4. MINUTES: APRIL 3, 2008

Commissioners present: J. Athearn, B. Bennett, J. Breckenridge, C. Brown, P. Cabana, C. Murphy, K. Newman, N. Orleans, J. Powell, C. Rose, D. Sederholm, L. Sibley, H. Stephenson, A. Woodruff

Doug Sederholm moved, and it was duly seconded to approve the minutes of April 2, 2008. A voice vote was taken. In favor 8. Opposed: 0. Abstentions: 6. The motion passed.

4. MUCKERHEIDE: DRI NO. 618 - DELIBERATION & DECISION

Commissioners present: J. Athearn, J. Breckenridge, C. Brown, P. Cabana, C. Murphy, J. Powell, D. Sederholm, L. Sibley, A. Woodruff

For the applicant: Don Muckerheide

4.1 LUPC Report

Linda Sibley gave the LUPC report.

- LUPC discussed the offers and voted to recommend acceptance all of the offers with some additional conditions, including that:
 - Landscaping and Lighting: A detailed landscaping and lighting plan shall be submitted to and is subject to the approval of LUPC before a Certificate of Occupancy is issued.
 - Housing: The Condominium Master Deed shall be submitted to and is subject to the approval of the LUPC before site work, demolition, and/or construction begins. (Modifies the offer which says before a Certificate of Occupancy is issued.)
 - Building Design: Exterior materials shall be natural white cedar shingles, painted wood siding, or fiber-cement siding, with traditional trim and other detailing. The final architectural design shall be submitted to and is subject to the approval of LUPC.
- Mr. Muckerheide had submitted an alternate sketch (Plan B) dated February 4th that is different from the original design (Plan A). The new design has two gables facing the street. LUPC didn't make a recommendation about the designs, but asked staff to draft a possible condition in the event that the Commission favored Plan B. In both cases, it was recommended that details be submitted for approval by LUPC.
- The applicant added a new offer that parking would be limited to residents and guests and can't be rented out.
- The applicant clarified an offer that should an owner choose to move away, the tenant shall not be allowed to sublet said unit. If it's not a primary residence, then it can only rent it as a year-round rental.
- The applicant did not offer to restrict use of the roof deck. LUPC began discussing restricting access to the roof deck after 9:00 p.m. but didn't make a recommendation or condition.
- Benefits of the project include that:
 - The project provides housing at a moderate price level.
 - The density takes advantage of the fact that the site is in the B1 and this is an appropriate place for high density development.
 - The project effectively deals with wastewater and energy.
- The detriments include that:

- This is a very large structure in a neighborhood made up of mostly single family homes.
- While the “hotel” design has been used in Oak Bluffs, it is not necessarily in compatible with the character of this neighborhood.
- There isn’t any long term assurance that the building will be occupied by year-round residents.
- This is not a business use and isn’t taking advantage of the B1 zoning
- The initial price level is restricted, but the Applicant isn’t proposing any restrictions on resale. \$300,000 to \$350,000 falls within 100 to 150% AMI for families of two to four people.

4.2 Benefits and Detriments

Commissioners discussed additional benefits and detriments.

- The project brings twelve moderate-income housing units to the pool.
- This site is within walking distance of town and nearby markets.

Christine Flynn noted that the applicant is offering \$106,000 for monetary affordable housing mitigation; the Commission may want to consider requiring that the payment be made prior to Certificate of Occupancy being issued. The income thresholds 100 to 150% AMI corresponding to the initial sales price should be characterized as community housing rather than affordable housing. In terms of economic development, the project would generate additional tax revenue for town, and would have a limited impact in terms of school, police, and fire.

Doug Sederholm said he believes that the Applicant’s intent is sincere, but he has doubts that this would provide affordable housing.

- The proposal is to build 12 condominized two-bedroom 800 sq. foot units. This is \$400 per square foot. These strike him as affordable second homes in Oak Bluffs.
- It is possible that the units would be sold to people on Martha’s Vineyard, but it is just as likely that they’ll be sold to second home buyers.
- There’s no prohibition against multiple ownership or against units being purchased by a nominal trust or an LLC. There’s reasonable prohibition related to rentals, but the units could be shared or quasi-shared.
- There are lots of loopholes around the intent of the proposal.
- The affordability aspect is not as attractive a selling point as it might seem at first blush.

Linda Sibley said she shares Doug Sederholm’s concern but it’s important to distinguish between the Commission’s affordable housing policy and the overall benefits and detriments.

- The one overriding proposed benefit is that it will be year-round community housing, not that it will be strictly affordable.
- There are a number of suppositions that aren’t locked in and she understands the reasons for his not locking them in.
- Banning short-term rentals limits speculative purchase.
- The benefits are not certain. The project is based on a belief that by restricting short-term rentals, he’ll get year-round residents.

- It is a noble experiment. In the weighing of the overall benefits, if the benefit isn't certain, can it outweigh the detriments?

John Breckenridge said he would be more comfortable if there were a permanently affordable unit at the 80% or 100% level. The monetary contribution is based on the current assessed value, not the developed value, and is about 1/3 of the cost of a unit.

Chris Murphy said the problem is that the applicant hasn't submitted an accurate finished plan with supporting documents.

- At the LUPC meeting, Mr. Muckerheide agreed to address the multiple owner loopholes in the condo document, saying that he doesn't want multiple owners.
- However, there are so many loose ends that it's hard to make sense of the whole thing.

Andrew Woodruff said he's struggling with the long-term benefits of housing and he's weighing the possibility of the units falling out of moderate income levels. Maybe these units will sell above AMI at \$350,000.

- He doesn't believe that there's only one way to create affordable housing.
- Some neighbors' letters aren't opposed to the project but are concerned with massing and size.

James Athearn said, in terms of benefits and detriments, the applicant has the right to build market rate or luxury rate housing, but he's offering to try a new community-housing model and also make the Commission's recommended affordable housing contribution. It's okay to accept the benefits as they are. Density creates more units in town with transportation.

Peter Cabana said he has a difficult time weighing the benefits and detriments. The benefits are that the units would go to year-round residents, but there is no guarantee that will happen. However, it may be worth making the experiment.

Doug Sederholm said he's going to look at it as housing that might well be in the second home pool. The applicant has the right to develop the property. The question is whether the benefits are greater than the detriments, even if it's moderately priced second-home housing.

Peter Cabana said one of the benefits might be that it's affordable and provides housing which could be year-round.

Andrew Woodruff said the density and massing, visual impact, and defining characteristics are issues. He doesn't imagine that the building would meet the Commission's standards of massing and size because he believes the building changes the character of Dukes County Avenue.

John Breckenridge said the Commission has wrestled with scale and mass in other projects.

- The area is zoned for 35 feet height, but that's the maximum limit. The typical building heights in this neighborhood are more modest. The applicant has said that the "hotel" design is typical of Oak Bluffs, but those larger buildings were built in areas close to the shore.
- He believes the Commission needs to be cautious of having a building that's larger than the neighborhood around it. He thinks that this building may dwarf the neighborhood like the Seaview Avenue Condos dwarfs the area around it.

Paul Foley showed slides of the December 2008 proposal in comparison to the original Bradley I building. The February design is a sketch by the Applicant in order to make the design fit in better; it has essentially the same footprint, but is treated as two gable-roofed volumes.

Mark London said the gabled design would look somewhat like two buildings, similar to the Pik-Nik building, that were right next to each other.

- It would look more like two 2½-story buildings rather than a single 3-story building, though it would have a similar floor area and could have the same number of units.
- The suggested condition drafted by staff would ensure that the central portion was set back and the dormers to minimize the visual impact. The dormers would be set back about four feet from the front and back, and about a foot on the sides.
- This would slightly reduce the amount of full-height floor space on the third floor.

Doug Sederholm said he thinks the proposal is way too big for the neighborhood it's in. The alternative marginally improves it on the Dukes County Avenue side. The footprint is 62 feet by 64 feet. It's large given the neighborhood and the surrounding uses.

- He believes strongly that Mr. Muckerheide has the right to develop his land but he doesn't think he should develop it in a way that's out of character for the neighborhood.
- If the Commission were to deny the project, he wants the Commission to give the applicant guidance about what it would accept. He doesn't want the applicant to think he's opposed to the density.
- He's concerned about size and massing, the affordability, and that this has been a moving target
- He would rather have a more appropriate plan for the neighborhood.

Linda Sibley asked whether massing can be reduced without reducing the density. The project can be dense but maybe not this dense because it results in inappropriate massing.

John Breckenridge said that density is related to lot coverage. The proposed footprint is appropriate for the lot. It's the height that sets this building apart from the rest of the neighborhood.

James Athearn said that the lot coverage does seem to be in balance.

- In terms of the large buildings, Oak Bluffs is unique in that it hasn't developed a commercial strip outside of town. Commercial development is limited to 11 or 12 acres. It would be wasteful of the footprint not to be massive. It may be the biggest house on the street, but it's not out of character for Oak Bluffs.
- The use of the commercially zoned area should be maximized. For him, the height isn't so much part of the visual impact when he's viewing a building from a street, rather than an open view.

Andrew Woodruff said smart growth would support the concept of a large building in town, but smart growth doesn't mean it's necessarily the best thing long term for the Island. It changes the character of the Island. This proposal concerns him in terms of setting a precedent, suggesting that other sites in this district should be fully developed. This is a business and commercial district, where there is little commercial activity. If this proposal were mixed use, he'd look at it differently.

Chris Murphy said he's still having trouble with the moving target aspect of this project.

- The Commission should be open to someone like Mr. Muckerheide who's representing himself.
- He's looking for a way to say the Commission agrees in principle, but the applicant should do the final planning and come back.

Christina Brown said that LUPC's suggestion that the applicant bring the final building design and condominium documents to the satisfaction of LUPC before the building permit or the construction begins were an effort to work with a local person who is representing himself.

John Breckenridge suggested discussing of which proposal is on the table.

Donald Muckerheide said that he was concerned that the February plan would not meet the building make with respect the fire separation between egress points, and said that he wants to stick with the mansard proposal (Plan A).

Paul Foley explained that the building height of the mansard design is 34 feet, i.e. about 11 feet per story.

Linda Sibley said she is moved by Jim Athearn's statement that Commissioners can't be opposed to sprawl and opposed to intensity of use at the same time. Commissioners, however, can say they're in favor of in-town development and still in favor of consistency of massing and style with the neighborhood.

- She can endorse the concept of the density but not the particular mass and building style in the design of December 2008. It's okay to have significant density and to have the density exceed the typical density of the neighborhood. However, the large building and the mansard style are not consistent with the neighborhood.
- The Commission has been advised that it can tell an applicant that it supports the concept but not the plan.
- If Plan B isn't on the table any longer, there's a problem because she thinks that the massing and height of Plan A is not acceptable

Jim Athearn said he respects the idea of standard architecture in a community, but it has been pointed out that the building styles are quite varied. It could be said that the West Tisbury Town Hall with its size and mansard roof sticks out like a sore thumb, but the people of West Tisbury have chosen to preserve and renovate it.

Andrew Woodruff said if the setbacks were further back he'd be more inclined to agree with Jim Athearn.

- The December plan was definitely an improvement over the previous plan.
- A lot of concerns have been raised through the process.
- He appreciates the effort to redesign it a little bit with Plan B, to make it comfortable.
- At this point, the benefits don't seem to outweigh the detriments, based on the massing and scale.

Doug Sederholm said the December plan is dramatically better than the original proposal. The benefits of this proposal don't outweigh the detriments, but the applicant is getting a lot closer.

Mark London recapped the procedural possibilities.

- Commissioners could approve the project with current or additional conditions.
- Commissioners could deny it, and then could give the applicant comments about what their concerns were and how they could be dealt with. In this case, the property would have a DRI designation. However, once the Secretary of Energy and Environmental Affairs approves the new DRI Checklist, previously denied DRI would no longer automatically have to return for MVC approval.
- If the applicant thought the project might be about to be denied, he could ask the Commission to not make a decision on this proposal, and could either ask the Commission to consider a revised plan which would mean reopening the hearing, or he could withdraw without prejudice and submit a new application for a revised project.
- If the applicant were to withdraw and wished to return soon, the Commission might have to vote to accept the new application if it was very similar to the previous proposal.

Commissioners took a short recess. The Applicant left the meeting.

Jim Athearn said Commissioners have been talking about character and identity, but there hasn't been an outcry from irate neighbors about the project

- At the last meeting two speakers had concerns about the lack of commercial space in the project and the uncertainty about the master deed/condo document contents.
- The Commission received support for the project in its original iteration, which was large in scale and mass.
- Commissioners seemed to be concerned about what it's doing to the neighborhood, but the neighbors don't seem so concerned.

Jim Powell stated his opinion.

- Not many applicants come with the type of preparation this applicant has come with.
- The applicant could have chosen different types of uses. He has chosen and is forthright in his desire to get housing that's affordable for the median income.
- The proposal puts 12 units into the housing pool. The proposal doesn't necessarily fit into the parameters that the Commission so carefully chiseled out, but not every housing opportunity has been carefully chiseled out.
- This project does still need to have considerable planning done. The applicant has moved considerably in the direction we've been leading him.
- He doesn't want to deny the project and have the applicant do something different. He's also concerned about teachers needing housing and doesn't want to lose any more people who could be retained.
- He doesn't want to deny the project but he wants to approve a building that has a plan that meets criteria for massing and design.

John Breckenridge said that the written decision could provide specific guidance to the applicant, whether the Commission approves or denies the project, outlining the benefits and detriments of the project.

- In Oak Bluffs there have been a lot of projects that have come and gone. If this project is not successful, it belongs to the town because the town is the character that the Commission is trying to protect.

- The size and the massing are not respectful of the surrounding uses.
- There are benefits and there have been intriguing discussions, but the scale and massing make him feel it's inappropriate.

Peter Cabana said he was impressed by the work that LUPC did with the applicant. It appeared that there were issues that had been addressed and a mutual understanding seemed to have been reached. That Plan B was pulled off the table makes it difficult to accept the proposal. He thought they were going to reach some mutual agreement and understanding, and the fact that they haven't doesn't sit well with him.

Linda Sibley said Plan B really brought the Commission to a point where Commissioners could approve it even without architectural drawings. Commissioners could approve something conceptually, and receive details later.

- The Commission doesn't have to vote tonight; it can ask that the applicant work on Plan B.
- Most Commissioners seem comfortable with the experiment, but there's a problem with the massive tall building.
- She is convinced that the building is going to loom. It's so tall that it's going to be seen from many neighborhoods in Oak Bluffs.
- The issue is not just the character of Duke's County Avenue, yet the applicant wants to do something that the Commission wants to support.
- She's comfortable voting for a dense project in town, but not a looming building.
- She thinks they should be encouraging dense infill, but it's critical that it's done right.

Andrew Woodruff said he appreciates everyone's efforts to work with the applicant, but these concerns have been raised multiple times.

Christina Brown said there may not have been enough opportunity for give and take. LUPC discussions were very thorough, but Plan B was on the table.

Jim Athearn said if there was knowledge that the project were about to be denied, that might provide some motivation for negotiations. He suggested that the project be referred to LUPC for further discussion.

Commissioners discussed the options for decisions.

Peter Cabana said he believed that Plan B was still on the table.

Linda Sibley said she doesn't fully understand why the applicant chose to withdraw Plan B. LUPC might be able to understand what his reasons for withdrawal were and might be able to have a discussion. It's not clear that to reduce mass, the applicant would have to reduce the number of units.

Jim Athearn moved, and it was duly seconded, to remand the proposal to LUPC for further discussion of options and consideration and hopefully a recommendation. A voice vote was taken. In favor: 5. Opposed 4. Abstentions: The motion passed.

There was a discussion of the possible wording of the condition dealing with approval of the final architectural plans.

- **Jim Athearn** asked whether Commissioners would allow the applicant to submit a finished plan to LUPC for approval, as the Commission does with landscaping plan.
- **Linda Sibley** said she thought something as major as the final plan for the building should be reviewed by the full Commission.
- **Chris Murphy** said the design could be approved with final details submitted to LUPC.
- Commissioners generally agreed that final architectural details could be approved by LUPC.

The meeting adjourned at 10:50 p.m.

Chris Murphy
Chairman

5/21/09
Date

N. Means
Clerk-Treasurer

5/21/09
Date