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## Minutes of the Commission Meeting Held on April 1, 2010 In the Stone Building 33 New York Avenue, Oak Bluffs, MA

### IN ATTENDANCE

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

P Bill Bennett (A- Chilmark)	P Katherine Newman (E -Aquinnah)
P John Breckenridge (E- Oak Bluffs)	P Ned Orleans (A - Tisbury)
P Christina Brown (E - Edgartown)	- Jim Powell (A - West Tisbury)
P Peter Cabana (E - Tisbury)	- Camille Rose (A - Aquinnah)
- Martin Crane (A - Governor)	P Doug Sederholm (E - Chilmark)
- Fred Hancock (A - Oak Bluffs)	P Linda Sibley (E - West Tisbury)
P Chris Murphy (E - Chilmark)	P Holly Stephenson (E - Tisbury)
P Jim Joyce (A - Edgartown)	- Andrew Woodruff (E - West Tisbury)
P Lenny Jason (A - County.)	

Staff: Mark London (Executive Director), Bill Veno (Senior Planner), Paul Foley (DRI Coordinator), Christine Flynn (Affordable Housing & Economic Development)

**Christina Brown** opened the meeting at 7:10 p.m.

### 1. AQUINNAH DCPC

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Commissioners present: B. Bennett, J. Breckenridge, C. Brown, P. Cabana, C. Murphy, J. Joyce, L. Jason, K. Newman, N. Orleans, D. Sederholm, L. Sibley, H. Stephenson

**Christina Brown** read a letter from the Aquinnah Planning Board requesting a postponement on the public hearing on modifications to the regulations of the Aquinnah DCPC. The public hearing will be postponed indefinitely and will be re-noticed when the public hearing is scheduled.

### 2. HART HARDWARE: DRI 549-M - LANDSCAPE MODIFICATION

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Commissioners present: B. Bennett, J. Breckenridge, C. Brown, F. Hancock, J. Joyce, L. Jason, K. Newman, N. Orleans, J. Powell, C. Rose, L. Sibley, and A. Woodruff

For the applicant: Jim Hart, Geoghan Coogan

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

**Christina Brown** explained that the Commissioners' decision is whether the modification to the condition for approval is significantly different enough from the original decision in terms of regional impact to require a public hearing.

**Paul Foley** described the requested modification.

- A landscaping plan was approved with specific trees and a parking plan.
- The project was not started during the period of the original approval and was re-approved through February 2011.
- Last fall the applicant's landscaper removed eight or nine trees that were supposed to be retained.
- Mr. Hart is coming back with a revised landscape plan with a stockade fence and new trees.
- LUPC recommended that the modification go to a public hearing.
- West Tisbury Planning Board and the Estrellas, abutters, wrote that they feel the way to rectify the situation is to scale the project back.

**Jim Hart** explained the circumstances by which trees were cut, some by his mistake and some by landscaper error.

**Linda Sibley** explained that LUPC voted unanimously to require a public hearing because the modification would substantially change the view from Indian Hill Road, a scenic public road, and the public should have the opportunity to comment on the mitigation.

**Bill Bennett** said the new trees will replace the cut trees and a public hearing doesn't appear necessary.

**Chris Murphy** said the order of conditions was dramatically ignored. The neighbors, abutters, and community have the right to see and comment on what is being planned.

**Peter Cabana** said that the Town thinks it's such a change that the Planning Board would like to reduce the size of the structure. Input is warranted and deserved.

**Kathy Newman** said the Commission made a decision. If an applicant doesn't meet the conditions, it's fair to ask the applicant to come back and discuss it.

**Linda Sibley** said the LUPC was concerned that the changes would have an impact on the public. The proposed hedge of Leland Cypress may be a better shield with the neighbors but the project without the mature oaks is different, particularly affecting the public's view.

**Jim Joyce** asked whether the Commission can make other changes at a public hearing, such as modifying the building design. **Christina Brown** said it would be most out of precedent to do that; ordinarily the public hearing is on what the applicant is requesting. The West Tisbury Planning Board can make additional conditions itself.

**Paul Foley** explained that there is a cease and desist order on the project from the town building inspector based on the Commission-approved landscape plan.

**John Breckenridge** added that Commissioners have a mutual interest in moving the project along and not having an undeveloped site. The modification will give the site a different look and the public should have an opportunity to comment.

**Holly Stephenson** commented that the oaks can't come back and the cypress will provide a shield, so a public hearing won't add to the project.

**Chris Murphy moved, and it was duly seconded, that the modification is a substantial change requiring a public hearing. In favor: 8. Opposed: 2. Abstentions: 1. The motion passed.**

### **3. MINUTES**

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Commissioners present: B. Bennett, J. Breckenridge, C. Brown, P. Cabana, C. Murphy, J. Joyce, L. Jason, K. Newman, N. Orleans, D. Sederholm, L. Sibley, H. Stephenson

There was a discussion of the minutes.

- **Chris Murphy** said that short action minutes received directly after the meeting are the most helpful. It is not helpful to have minutes three or four months after the meeting.
- Commissioners discussed the benefits and detriments of short action minutes.
- **Mark London** said that we have fallen behind for several reasons and were in the process of catching up. Staff will make every effort to have all the past minutes to the Commissioners in time for adoption at the next meeting. He felt that it should be possible to keep on time after that, and suggested reviewing the situation in a few months.
- **Peter Cabana** suggested approving minutes at the beginning of the meeting.

#### **3.1 January 21, 2010**

Commissioners agreed to the following changes. *See one page hand-out for corrections to: Lines 40 -41, Lines 46 – 51, Line 49 should read "There has been a shift to . . .", Lines 58 – 60, and correct Commissioner status.*

**John Breckenridge moved, and it was duly seconded, to approve the minutes of January 21, 2010, as modified. A voice vote was taken. In favor: 12. Opposed: 0. Abstentions: 0. The motion passed.**

#### **3.2 December 17, 2009**

Commissioners agreed to the following changes:

- Line 123 *It's likely that the geographic and physical dimensions. . .*
- Line 125 *delete want*
- Line 192 *150 foot boundary*

**Doug Sederholm moved, and it was duly seconded, to approve the minutes of December 17, 2009, with corrections. A voice vote was taken. In favor: 11. Opposed: 0. Abstentions: 1. The motion passed.**

#### **3.3 November 5, 2009**

Commissioners agreed to the following changes:

- Line 62 *He reviewed the criteria*
- Line 96/201/202 *thermal depolymerization*
- Line 167 *are*
- Line 171 *for appropriate development of wind offshore*

- Line 346                      *impose a DCPC on a town*
- Line 357/358                *to accept for consideration the nomination of*

**Doug Sederholm moved, and it was duly seconded, to approve the minutes of November 5, 2009, with the modifications. A voice vote was taken. In favor: 11. Opposed: 0. Abstentions: 1. The motion passed.**

### **3.4 January 7, 2010**

Commissioners agreed to the following change.

- Page 3                      *add vote on the motion to condition.*

**Linda Sibley moved, and it was duly seconded, to approve the minutes of January 7, 2010, with the correction. In favor: 11. Opposed: 0. Abstentions: 1. The motion passed.**

## **4. RICKARD BREAD RETAIL: DRI-311-M3 – PUBLIC HEARING**

*Commissioners present: B. Bennett, J. Breckenridge, C. Brown, P. Cabana, C. Murphy, J. Joyce, L. Jason, K. Newman, N. Orleans, D. Sederholm, L. Sibley, H. Stephenson*

*For the applicant: Catherine and Michael Rickard, owners; Geoghan Coogan, lawyer*

**Linda Sibley** opened the public hearing and read the hearing notice on the proposal to provide a 200-square-foot retail section that offers beverages and pastries.

### **4.1 Staff Report**

**Paul Foley** gave the staff report.

- The original decision said businesses on site would be restricted to wholesale.
- The applicants are looking for 200-square-feet of retail to sell some of their goods right out of the factory. They had wanted to do sandwiches, but they are not applying to do sandwiches now.
- They are not providing public restrooms so adding retail won't add to wastewater flow.
- He summarized the traffic report.
  - The one key issue is the access road. It's a private, single-lane road with a 30 feet right-of-way.
  - There have been zero accidents.
  - The project begins 320 feet from State Road.
  - Trip generation is based on the ITE specialty retail center based on 3200 sq. feet. The applicants also submitted retail sales figures. They've been getting 20 to 30 vehicles during the working week, 60 to 80 on the weekend, and 100 to 140 to 200 vehicles a day during holidays. There are 14,000 to 16,000 vehicles per day in the summer on State Road.
  - Site lines are adequate.
  - The parking is not marked. There is parking for at least 12 vehicles for customers.
  - Mitigation would be to monitor daily transactions to be able to analyze the possibility of future changes, such as adding sandwiches. They could also improve Cook Road if

it turns out that there is a need. It is suggested that a parabolic mirror be added. Also, the applicants could add signage indicating that they are not Vineyard Grocers.

- The applicants might add one or two seasonal workers.
- There will be no external changes to the building.
- Letters in support have been received.
- The applicants might want to propose sandwiches at a later date, but they can't proceed tonight because it wasn't posted.

**Ned Orleans** thought the only potential Island-wide impact would be traffic back-up from Rickards to State Road.

**Doug Sederholm** asked if anything was heard from the three abutters.

**Paul Foley** said the original approval was restricted to wholesale. There has been limited retail at the site in the past. At the time of the MVC review, Rickards said that they would be wholesale only.

**Michael Rickard** explained that they can modify the road. There is an easement which gives them the right to expand the road. They couldn't do it unilaterally. The owners would have to do it.

#### **4.2 Testimony from Public Officials**

**Ken Barwick** explained that only the Commission reviews the access.

**Geoghan Coogan**, speaking as a Selectman, commented that business is good for the town.

#### **4.3 Public Testimony**

**Barbara Flanders** is the abutter on the left-hand side driving in.

- She thinks it's wonderful that the applicants have this business but she's concerned that it will become a restaurant.
- She wondered whether the garage doors will be open or shut.

There was a discussion of the garage doors.

- **Catherine and Michael Rickard** explained that the garage doors are open with screens during the summer, as it would otherwise be extremely hot inside.
- **Paul Foley** said that the woodworking business apparently had condition from the Town to keep doors closed.
- **Ken Barwick** said he knows that, with the woodworking business, there were issues with noise and odors.
- **Barbara Flanders** said she has a copy of the special permit for Island Woodworks, which said that machinery may not be operated with the doors open.
- **Ken Barwick** said that the special permit applied only to Island Woodworks, since it was not a use permitted as of right. The bakery is a permitted use and so the special permit conditions do not apply.

**J.P. Uranker** said that that when he worked back there, the electric business was not strictly retail. Additionally, two vehicles can get pass each other. Rickard's is a very nice place and has nice products and is something that we should encourage.

**Doug Sederholm** asked Ms. Flanders, that assuming the business is simple retail, 7 a.m. to 6 p.m., with no sandwiches, if she's concerned. **Barbara Flanders** said that when there was noise at night, employees did turn the music down; a project that is not a restaurant, not sit-down is okay.

There was a discussion of hours of operation.

- **Doug Sederholm** asked if it is part of the offer that the hours for retail will be 7 a.m. to 6 p.m. He wants to clarify the retail hours to reassure the neighbors.
- **Geoghan Coogan**, speaking for the applicants, noted that it is permitted for 24-hours operation and that the applicants have no offer to limit the hours for retail.
- **Catherine Rickard** said that she expected that it would be open during daylight hours.
- **Linda Sibley** suggested that they may want to set parameters for the hours of operation, making sure that they are reasonable and not too restrictive.
- **Catherine and Michael Rickard** said that they believe that they wouldn't be open before 5 a.m. and wouldn't stay open past 9 p.m.
- **Geoghan Coogan** said there is no offer on the hours.
- **Linda Sibley** said she doesn't know if they've ever approved a retail business without clarifying the hours and lighting.
- **Geoghan Coogan** said there is a wholesale business going on, but they won't be selling coffee at midnight.
- **Barbara Flanders** asked whether the hours could be 7 a.m. to 6 p.m.
- **Geoghan Coogan**, on behalf of the applicants, offered that that retail business would be open no earlier than 5 a.m. and no later than 10 p.m., seven days a week.

**Linda Sibley** closed the public hearing.

#### **4.4 Deliberation and Decision**

***Bill Bennett, moved, and it was duly seconded, to not return to LUPC, and to discuss and deliberate on the addition of retail to Rickard Bakery at this meeting. A voice vote was taken. In favor: 12. Opposed: 0. Abstentions: 0. The motion passed.***

**Bill Bennett** said that it's great to see a business that has grown, is supported, and has done a very professional presentation. They've done a good job with their business and he hopes they continue to do so.

**Christina Brown** commented that the benefits outweigh the detriments and the business adheres to four out of the five goals of the Island Plan.

***Doug Sederholm moved, and it was duly seconded, to add the condition, in the interest of giving the applicant leeway balanced with the impact on neighbors, that the hours of operation of the retail store be limited to 6 a.m. to 9 p.m.,***

*rather than the offered 5 a.m. to 10 p.m. A voice vote was taken. In favor: 6. Opposed: 6. Abstentions: 0. The motion did not pass..*

*Linda Sibley moved, and it was duly seconded, to approve the application for modification as offered by the applicant. A roll call vote was taken. In favor: B. Bennett, J. Breckenridge, C. Brown, P. Cabana, L. Jason, J. Joyce, C. Murphy, K. Newman, D. Sederholm, H. Stephenson. Opposed: None. Abstentions: None. The motion passed.*

Commissioners agreed that the benefits of local employment and local food production outweigh the detriments, which are possible traffic problems.

#### **4. WAVELENGTHS: DRI-623 – PUBLIC HEARING**

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*Commissioners present: B. Bennett, J. Breckenridge, C. Brown, P. Cabana, C. Murphy, J. Joyce, L. Jason, K. Newman, N. Orleans, D. Sederholm, L. Sibley, H. Stephenson*

*Applicant: Jayne Steidl and Melissa Montessori, applicants; Doug Hoehn, engineer; Chuck Sullivan, architect.*

**Linda Sibley** opened the public hearing and read the hearing notice on the proposal to remove an existing one-story building, replace it, and add a second building.

##### **4.1 Staff Report**

**Paul Foley** gave the staff report.

- The proposal is to remove an existing one-story building on Upper Main Street, replace it with a three-story 4475 sq. ft. mixed-use building, and, behind it, build a new three-story 6137 sq. ft. building with four two-bedroom residential units.
- The replacement building will have two two-story commercial spaces, with retail on the first floor and offices on the second floor. The third floor will be an apartment.
- The project was referred by the Edgartown Planning Board.
- Existing trees and plantings will be retained.
- Key issues are whether the site can handle the proposed activity, should the apartment building be set back further from the abutting property, and does the building fit in with the streetscape and neighborhood.
- The ridgeline will be 32 feet high.
- There will be energy efficient lighting, and other energy efficiencies that will make the building equivalent to a LEED certified building.
- There will be removing a cesspool and connecting to sewer.
- There is a stormwater plan that is evolving.
- The traffic study hasn't been received yet.
- The affordable housing mitigation is \$13,400, which the applicant has offered to pay. They've also offered to sell one unit at a reduced rate.
- Wavelengths has six employees and is in the B-2 district.
- Buildings are similar in scale to the neighborhood, except for the proposed corner tower.

## **4.2 Applicant's Presentation.**

**Doug Hoehn** presented information on behalf of the applicants.

- The site is 10,915 sq. feet.
- The proposal is for a mixed-use project in the B2 district in Edgartown, an in-fill project.
- The front building will continue to be a commercial building. The back unit and upstairs will be residential. They have tried to fit parking.
- The applicants have worked with the Planning Board and he has talked with them two different times with positive dialogue.
- Practically speaking the layout works, although it may not exactly meet specifications.
- The drainage plan is on the newly submitted plan and is evolving. The goal is to gutter stormwater into drywells and to grade the parking lot so run-off goes to a vegetative buffer on each side and to the rear. They have discussed channel draining on the back of the commercial areas to catch drainage that's sheeting toward the back. They'll have more information at the next meeting.
- The building currently has an on-site septic, but will tie into town after this project is built. They have preliminary approval to tie in.
- The back drainage basin will be a leeching basin with gravel in it.
- They will be refining the design.
- During the site visit, there was an error in staking the building. The staked corners were the actual building footprint in the front, but not the overhang. In the back, the stakes showed the second floor recessed section, not the full extent of the building.
- The property line is not the fence, which is about five feet off the property line. There are trees planted along the property line.
- The stakes are nine feet from the property line.

**Mark London** suggested that the building and property line should be staked and there should be a new site visit, because the building's relationship to the abutters is important.

**Doug Hoehn** said the building across the street has a five foot side setback which the Planning Board approved.

**Chuck Sullivan** reviewed the architectural plan.

- The second floor is recessed in four feet for a second means of access.
- The upstairs units have a very small porch which is an exit, not a sitting area.
- For landscaping, a couple of maple trees can be left where they are. There will be evergreens in the back of the lot.
- The material will be cedar shingles with painted white trim.
- They are doing high efficiency air exchange Dakon systems which have a different efficiency rating than ComCheck. They are 95% efficient. Just the insulation gets them 20% better than code. They want to meet LEED insulation and be as green as possible. The foam and five inches has a higher Rvalue than cellulose. The cellulose, environmentally, is a bit nicer but this project has too many size constraints to use it.
- They'll be using 2" x 6" construction.
- The tower on the front accommodates a set of stairs. The material will be white painted vertical board. It could be cedar.

### **4.3 Testimony from Public Officials**

**Mike McCourt**, Edgartown Planning Board, said that aesthetically the project will look a lot better than the existing building as it goes forward. He believes there is some tweaking that needs to take place before the project goes forward, but he likes it.

**Bob Sparks**, Edgartown Planning Board, said meetings have been very productive.

- The applicants responded to parking and height and feeling about streetscape., especially in terms of mass and scale coming up Main Street.
- The tower was modified although he recognizes that it isn't exactly Edgartown.
- The Planning Board was really happy with the work the architect and engineer did across the street.
- They're anxious to see what the Commission discusses because they're anxious to add residential to B2.

**Bill Bennett** would like to hear from the Planning Board on the issues they may have with the design in relation to the Upper Main Street Plan and the special permitting process. **Doug Hoehn** said they will meet with the Planning Board again before the public hearing reconvenes.

**Mark London** said that since this will be a commercial project abutting a residential district, there might be concerns about that relationship. He had questions about the relationship between the zoning and the parking lot layout.

- Is it correct that the required setbacks is ten feet, but can be reduced to five feet based on certain criteria?
- It appears that with the parking lot layout, increasing the setback might result in losing the whole row of parking next to the hotel. However, he wondered what the justification was for reducing the required ten-foot setback at the rear of the property, other than making the building a little bit smaller.

**Chuck Sullivan** explained that there is parking between the two buildings.

**Doug Hoehn** said they will discuss the setbacks with the Planning Board.

### **4.4 Commissioner Questions**

The applicant confirmed that the commercial area will have about twelve employees. Both businesses are open year round.

The abutter has a storage bin at the back of the property. He has access through Curtis Lane.

**Christina Brown** suggested that affordable housing guidelines be discussed at the next meeting.

The public hearing is continued to May 6<sup>th</sup>. At that time, the traffic planner can present his report.

**Doug Sederholm** asked whether there are requirements for air circulation when you're constructing housing directly above a garage. **Chuck Sullivan** will look at the commercial code.

## 5. OTHER

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*Commissioners present:* B. Bennett, J. Breckenridge, C. Brown, P. Cabana, C. Murphy, J. Joyce, L. Jason, K. Newman, N. Orleans, D. Sederholm, L. Sibley, H. Stephenson

### **5.1 Wind Facilities Siting Work Group**

**Doug Sederholm** reported that there was a meeting of representatives of planning boards last week to discuss the current state of town by-laws. There is clearly a difference of opinion among the towns. There is a distinction between the way Chilmark does their permits at the moment and the approach West Tisbury and Oak Bluffs are taking in their proposed by-laws for the smaller wind turbines.

**Christina Brown** explained that some towns feel strongly that wind towers should be allowed by right and some feel that special permit is required.

**Peter Cabana** said he thinks the Commission should focus on commercial aspects of wind towers. He thinks that state-wide, there is increasing difficulty in implementing land-based municipal wind turbines. Wellfleet just got theirs killed. There is considerable opposition to any commercial land-based turbines.

The Wind Facilities Siting Work Group is meeting Thursday, April 8<sup>th</sup>, at 5:00 p.m.

### **5.2 Compliance Committee**

The Compliance Committee is meeting Tuesday, April 6<sup>th</sup>, at 8:30 a.m.

### **5.3 Executive Director's Report**

**Mark London** reported that the Island Plan was distributed to many thousands of homes. The big document is in the process of being distributed. He distributed copies to Commissioners.

### **5.4 Other**

Commissioners discussed interactions with applicants.

- When a Commissioner has a concern, he can address the process of the meeting by bringing it up to the Chairman as a point of order.
- It is common for Commissioners to ask applicants to clarify certain things, such as use or hours of operation.
- The best way to make something happen is to have the applicant offer it, rather than through a condition. It's better if what they want and what the Commissioners agree to is the same thing.

The meeting adjourned at 10:05 p.m.

Chapman  
Chairman

5/20/10  
Date

John R. Debe  
Clerk/Treasurer

5/20/10  
Date