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**Minutes of the Commission Meeting  
Held on May 20, 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)
- Peter Cabana (E - Tisbury)	P Camille Rose (A - Aquinnah)
- Martin Crane (A - Governor Appointee)	P Doug Sederholm (E - Chilmark)
P 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)	P Andrew Woodruff (E - West Tisbury)
P Lenny Jason (A - County.)	

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

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

**1. MINUTES**

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Commissioners present: B. Bennett, J. Breckenridge, C. Brown, F. Hancock, C. Murphy, J. Joyce, L. Jason, K. Newman, N. Orleans, C. Rose, D. Sederholm, L. Sibley, H. Stephenson, A. Woodruff

**1.1 June 11, 2009**

Commissioners agreed to the following changes.

Line 122      *The detriment of additional traffic and activity will be shifting from commercial to residential abutters.*  
Line 173      *looked,*  
Line 283      Staff will double-check the vote.

***Linda Sibley moved, and it was duly seconded, to approve the minutes of June 11, 2009, as corrected. A voice vote was taken. In favor: 11. Opposed: 0. Abstentions: 3. The motion passed.***

### 1.2 December 10, 2009

***Doug Sederholm moved, and it was duly seconded, to approve the minutes of December 10, 2009, as written. In favor: 11. Opposed: 0. Abstentions: 3. The motion passed.***

### 1.3 February 18, 2010

Commissioners made the following changes.

- Commission Meeting (versus workshop)
- Line 123      *Rob McCarron's statement: delete.*
- Line 223      *Staff will check who answered Andrew Woodruff's question and change stories to storage.*
- Line 267      *Remove the colon and change the sentence to read: the requested modification, namely that –*
- Line 282      *Boards of Selectmen*
- Line 288      *work on plans, standards, and criteria*

***Linda Sibley moved, and it was duly seconded, to approve the minutes of February 18, 2010, as corrected. In favor: 12. Opposed: 0. Abstentions: 1. The motion passed.***

### 1.4 April 15, 2010

Commissioners made the following changes:

- Line 184      *the possible number of cars*
- Line 191      *Judy*

***Kathy Newman moved, and it was duly seconded to approve the minutes of April 15, 2010, as corrected. In favor: 13. Opposed: 0. Abstentions: 0. The motion passed.***

### 1.5 April 29, 2010

Staff will check attendance. Ned Orleans left after Item 3 was completed.

## **2. AFFORDABLE HOUSING**

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**Mark London** said that the next item is the first of several discussions of affordable housing with Christine Flynn giving some background information. The second will be a meeting in June to meet representatives of affordable housing groups. These are in preparation for efforts in the fall to discuss the MVC's role in affordable housing, including possible revisions to the MVC's Affordable Housing Policy.

**Christine Flynn** distributed two memos. The first is a general discussion of Affordable and Community Housing Guidelines including definitions of terms. The second outlines the Commission's DRI affordable housing policy. She described the policy and guidelines.

- When defining what is affordable, the standard is that no individual or family should be paying more than 30% of their income for housing. For rentals, that includes 30% for housing and utilities.
- The Office of Housing and Urban Development sets income guidelines for each county each year. The Area Median Income (AMI) for a family of four in Duke's County is \$82,400. Incomes are broken down by family size and percent of AMI.
- The Commonwealth defines affordable housing as serving the needs of people earning less than 80% of AMI. Many communities are challenged by the question of what to do about other housing needs besides those that are defined as "affordable". The Island Plan used the term "community" housing to refer to the Island's housing of all those earning up to 150% of AMI.
- The State Legislature adopted the special legislation for Martha's Vineyard and Nantucket to allow placing perpetual deed restrictions on properties capping the income of owners to 150% AMI. The legislature adopted legislation allowing towns to place permanent restrictions on lots offered by towns.
- The Comprehensive Permit Law provides that, in localities with less than 10% affordable housing stock, developers can supersede local zoning regulations for certain projects that include affordable housing provided they qualify for a comprehensive permit by adhering to specific regulations and guidelines. In 2002, the Superior Court upheld the MVC's authority to review 40B proposals under its DRI review process. The Martha's Vineyard Commission is the only regional body in the Commonwealth that has regulatory purview over a Comprehensive Permit as a Development of Regional Impact.
- For new construction for ownership is restricted for 30 years. Conversion of rental projects is restricted for 15 years, but the developer can be encouraged to put a longer restriction on the property.

### **3. MARTHA'S VINEYARD HOSPITAL: DRI NO. 324M2- REQUEST FOR MODIFICATION**

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*Commissioners present: B. Bennett, J. Breckenridge, C. Brown, F. Hancock, C. Murphy, J. Joyce, L. Jason, K. Newman, N. Orleans, C. Rose, D. Sederholm, L. Sibley, H. Stephenson, A. Woodruff*

**Christina Brown** explained the proposed modification.

- As part of the original decision in 2007, the Hospital agreed to provide 60 off-site parking spaces which they have done through a lease contract with the PA club.
- They are applying to change the location of the off-site parking by creating a new parking lot on Eastville Avenue.
- The question before the Commission is whether the change is significant enough to require a public hearing.

**Linda Sibley** gave the LUPC report.

- The Hospital is hoping to come to an agreement with the Mass. Dept. of Mental Health regarding the parking area on Termahegan, but will discuss that at a future date.
- The Hospital has purchased land adjacent to the present emergency room.

- The Hospital would like to develop that land soon and get out of the lease with the PA Club.
- The Town of Oak Bluffs will not be holding a public hearing on the proposal.
- LUPC recommends that a public hearing be held on the modification because the parking lot wasn't shown on the original plans and it was not part of the original approval. The public deserves the right to have input into the proposal.

***Linda Sibley moved, and it was duly seconded, that this is a sufficiently substantial change and requires a public hearing.***

- **John Breckenridge** explained that the Emergency Room Area has recently been rezoned as part of the Health Care District which allows parking. Therefore, parking would not require a public hearing for the proposed parking lot.
- **Paul Foley** said that an abutter to the parking lot property and the Mental Health property has been in contact with the Commission.
- **Jim Jones** said that LUPC asked the Hospital to look at its as-built plans to finalize the on-site parking plan and numbers.

***A voice vote was taken. In favor: 14. Opposed: 0. Abstentions: 0. The motion passed.***

**Chris Murphy** raised the question of the multi-use road to the little red house, especially the relation between automobiles and bicycles and it's an unsafe situation. **Mark London** said that the possibility has been raised about relocating it as part of the long-term plan for shared-use paths. However, even if the SUP is moved, it would not be for many years. The Hospital committed itself to take a series of measures to make it as safe as possible. As part of the review of the proposed parking lot, we should review whether they have completed these measures. In addition, we could discuss the possibility of improved signage and pavement markings.

#### **4. HART HARDWARE: DRI NO. 549M – LANDSCAPE MODIFICATION PLAN PUBLIC HEARING (CONT.)**

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*Commissioners present: B. Bennett, J. Breckenridge, C. Brown, F. Hancock, C. Murphy, J. Joyce, L. Jason, K. Newman, N. Orleans, C. Rose, L. Sibley, H. Stephenson*

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

**Linda Sibley** re-opened the public hearing.

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

**Paul Foley** presented the staff report.

- There was an approved landscape plan. Trees that were to be preserved were cut down. The applicant has submitted a new landscape plan with fencing and plantings.
- There is a dormant easement through the back of abutting properties.
- Between 1995 and 2001, the area was developed a lot. Originally the project was approved by West Tisbury as an office building. It came to the Commission when the applicant applied for a change in use. The foundation was built in about 2002.

- The project still has to go through the West Tisbury Planning Board and Zoning Board of Appeals.
- LUPC voted unanimously that the proposal required a public hearing.
- The hearing was originally noticed for May 6<sup>th</sup> and was postponed to May 20<sup>th</sup>. The abutters were personally advised of the change in date, but not of the exact time of the hearing.
- The site is in a mixed-use business district and in the Greenlands Water Resources Protection District which requires a special permit. The immediate character of the district is residential.
- The key issue is how to mitigate the cutting of the trees.
- The original plan had several parking spots between large trees. Now that those trees are gone, there is an additional parking spot.
- The Commission has received a letter from West Tisbury Planning Board recommending, due to violations and false steps, that approvals be voided and that a single story scaled back structure should be considered.
- Letters were received from Manny & Sharon Estrella, Amy & Jeff Carignan, and Jim Hart.
- The applicant is requesting that the Commission grant a waiver of the \$940 fee for the modification application.

There was a discussion of the possibility of rescinding the decision.

- **Chris Murphy** asked whether, legally, the Commission can make the change that the West Tisbury Planning Board requested.
- **Linda Sibley** said she doesn't know whether the Commission can rescind a decision.
- **Bill Bennett** said that the hearing is on a landscape modification, not on rescinding the decision.
- **Linda Sibley** said a discussion about rescission would not take place during the public hearing which is focused on the proposed modifications and testimony from abutters, public officials, and the applicant.
- **Christina Brown** clarified that questions related to the Planning Board request could be posed during the public hearing.

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

**Jim Hart** explained the problem and the mitigation.

- He made assumptions based on the plan, not on the written decision. He marked the trees in the reserve parking area to come down when, in fact, the need for those spaces were to be reviewed at a later date. In addition, some rootballs were exposed during foundation construction and those trees were taken down to prevent their falling on the building at a later date. He understands that he should have come to the Commission for a site visit prior to that being done.
- The major impact is on the buffer between the site and the abutters. The trees that came down were tall but were not actually a good visual buffer. The mitigation is to plant 16 to 18 foot Leland Cypress which have a rapid growth and provide a good screen. The fence, which was on the existing plan, is to provide a noise barrier.
- The Leland Cypress idea came from the abutters.

### **4.3 Public Officials**

**Susan Silva**, Vice Chair, West Tisbury Planning Board, said that the letter submitted to the Commission is from the full planning board, unanimously.

- The Planning Board feels that the landscaping plan is not enough mitigation for the project as proposed so they would like to see the building down-sized to one story.
- She believes that the Planning Board is likely to vote it down as proposed and they're asking for the Commission's support.
- The condition of no cutting of trees is from the Commission and from the Planning Board. The special permit of the planning board also says no cutting of mature trees.
- Second story traffic, lights, etc., would have been buffered by the mature trees.
- The lot is very small. It needed a lot of mitigation for a project and the mitigation is gone for this project.

**Paul Foley** explained that there are two apartments proposed for the second floor, one of which would be affordable.

### **4.4 Commissioner Questions**

**John Breckenridge** spoke about the decision based on trying to balance the rural character with the business designation and the abutters' needs. The Leland Cypress doesn't tend to be a rural landscape feature. We should discuss whether there should be just Leland Cypress or a balance of Cypress and shade trees.

**Jim Hart** noted that the landscape architect had said that shade trees don't act as buffers. He explained that the size of the lot, the building and the use meet the criteria for a buildable lot in the mixed-use district. He's not sure how the violation of the landscape plan constitutes a change of use. It was not required to be a special permit. It was a permit of right.

**Paul Foley** clarified that there was a Planning Board special permit for a project in the Greenlands Water Resource Protection District to render permeable more than 15% of the lot.

**Linda Sibley**, responding to a question from Kathy Newman, said that occasionally a project can be sent back to LUPC for discussion and resolution of some of the issues. Responding to a question from Holly Stephenson, she said she's not sure if the Planning Board can restrict a building to one story, but the height would affect the parking required; less parking means more trees.

**Lenny Jason** said the issue is scale.

**Holly Stephenson** said Leland Cypress block views but are not rural.

**Lenny Jason** said the question is whether the proposed landscaping plan offers one that is better than what was approved.

**Jim Hart** asked if there has been a history of remediation for projects that have cut trees in violation of the order of conditions and, if so, whether the building plans had been altered, as a result.

**Kathy Newman** said her concern is that if the modification is voted down, then the project becomes stuck and she would rather try to mediate the situation.

**Mark London** said a question is what the powers of the Town are in this case. The Commission could potentially approve something which the Town could subsequently deny or modify. If the Town doesn't have the authority and is asking the Commission to act on the modification, then that's a different scenario. There are regional issues and abutter issues.

**Linda Sibley** said the question is whether there is a mutually agreeable solution. She added that a town can't approve a project without Commissions approval.

**John Breckenridge** said there is a difference between shade trees and Leland Cypress. It would be a great benefit to get everybody together through LUPC and discuss options.

**Jim Hart** said he would be willing to meet with the Estrellas and the Town to discuss options.

**Ned Orleans** recommended that the chair of LUPC should choose the eight people to be part of the discussion.

**Jim Hart** said that there are thirty other owners in the business district that haven't voiced opposition and there are over a hundred owners along the road that haven't voiced concern. He understands the abutters' concerns, but can't see the regional impact concerns as the property owners of the region haven't expressed concern.

**Linda Sibley** continued the public hearing to a date uncertain. A site visit will be scheduled.

**Bill Bennett** suggested a specific penalty be established for cutting trees illegally. **Christina Brown** agreed that would be useful for the Commission and towns to have trees cutting by laws/penalties.

**Christina Brown** said that she will limit LUPC to eight Commissioners and if Commissioners would like to be part of it, they should let Christina know.

**Jim Hart** said that ten mature trees were removed. Four were removed inadvertently, four were removed because they were in the roadway cut, and two more were removed inadvertently from the parking area.

## **5. REPORTS**

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### **5.1 PED**

**Kathy Newman** reported that the Planning and Economic Development committee met.

- Jim Athearn spoke about how the Island Plan Committee could work with PED. The committees agreed they should look at the Commission's DRI policies in relation to the recommendations of the Island Plan, notably: Housing, Energy, Landscape, and Architecture were the policies to look at. We're interested in having more people to participate so there would be a point person for each of the areas.

PED will meet June 16<sup>th</sup> at noon at West Tisbury Town Hall.

**Lenny Jason** would like minutes and notices by posted mail.

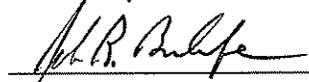
The meeting adjourned at about 9:10 p.m.

  
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Chairman

7/1/10  
\_\_\_\_\_

Date

  
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Clerk-Treasurer

7/1/10  
\_\_\_\_\_

Date