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Minutes of the Commission Meeting Held on December 02, 2010 In the Stone Building 33 New York Avenue, Oak Bluffs, MA

IN ATTENDANCE

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

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

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

Christina Brown called the meeting to order at 6:00 p.m.

1. CHASIN SUBDIVISION DRI 625 CONTINUED PUBLIC HEARING

Commissioners present: J. Breckenridge, C. Brown, P. Cabana, F. Hancock, C. Murphy, L. Jason, K. Newman, D. Sederholm, L. Sibley, and B. Smith.

For the Applicant: Glenn Provost (Surveyor/Agent) and Richard Gallogly (Chasin's Attorney)

Linda Sibley opened this session of the public hearing and read the hearing notice on the proposal to create a Form A plan which re-divides six parcels with 69.3 acres into 10 lots including one lot for affordable housing as well as an 11th unbuildable parcel, for estate planning purposes on Chappaquiddick, located on Quamox and Jeremiah Roads, Chappaquiddick, Edgartown Map 34 Lot 39; Map 34 Lot 38; Map 47 Lots 81; 99; 101; and Lot 102 (69.3 acres total).

1.1 Staff Report

Paul Foley gave the staff report.

- The Gazarians, neighbors, have sent a land swap proposal. The applicant said they may consider it in the future, but are proceeding with the plans as presented.
- The property is currently 6 lots and the proposal is to divide it into 10 house lots including the affordable housing lot. The 11th parcel is for parking which is being given to the Land Bank.

- The applicant has agreed to prohibit further division of the lots.
- The proposal would include one house and one guest house on each lot, with the exception of Lots 3 and 6 which would not be allowed to have guest houses or swimming pools.
- Main houses are limited to a maximum of 6 bedrooms each and guest houses can have up to 2 bedrooms.
- The footprints of the buildings on Lots 2; 7; 8; 9; and 10 would be limited to 6,000 s.f. Lots 1; 4; 5; and 6 would be limited to 5,000 s.f. Lot 3 would be limited to 3,000 s.f. Porches, decks, garages, and patios are not included in the footprint.
- Site visits were held on November 17th and December 1st.
- Some key issues are:
 - Views: The scenic impact of development from Katama Bay.
 - Habitat: The area is largely within NHESP Priority and Estimated Habitat.
 - Energy and Land Use: The creation of more large houses for seasonal use on an isolated island creates demand for energy and increases traffic on the Chappy Ferry.
- Most of the property falls within NHESP Priority and Estimated Habitat. NHESP is looking for details of activity within the proposed building envelopes. The applicant has agreed to require all proposed work be reviewed by the NHESP.
- The Public Archeology Lab (PAL) has done an "Intensive Locational Survey". The Massachusetts Historical Commission wrote on January 14, 2010 that they had reviewed the technical report by PAL and noted that the survey did not locate any significant archaeological resources within the areas that were tested. They do note that if the project plans change they would need to review the changes.
- Managed lawns would be limited to less than 5,000 s.f. on Lots 1; 3; 4; 5; and 6. Lots 2; 7; 8; 9; and 10 would be limited to less than 8,000 s.f. Not including existing meadows and lawns for Lots 4; 5; and 7. All new managed lawns would be within the building envelopes.
- Only non-invasive species of plants will be allowed.
- No asphalt will be allowed.
- Fertilizers will conform to the MVC standards.
- Piers, floats, and stairs to the beach will not be allowed.
- The applicants recently sold seven abutting lots with a total of 22.1 acres to the Land Bank. The land was valued at \$6.3 million and it was sold for \$2.0 million.
- One of the proposed 11 lots would be a 3.1 acre lot that would be dedicated to affordable housing. The applicant has not designated a recipient affordable housing entity at this time. The applicant's offer is consistent with the MVC's Affordable Housing Policy. The applicant will clarify when the lot would be made available.
- In one of the covenants, the applicant will have site plan review rights over the other lots.

Katherine Newman asked if Edgartown had height restrictions. It was explained that the coastal district has a restriction of 18 ft. (flat roof) and 26 ft. (pitched roof).

John Breckenridge asked how many lots could potentially be built according to Edgartown zoning verses what is being proposed. It was explained that you would deduct 10% for roads and divide the balance into 3 acre lots for 23 lots.

1.2 Applicant's Presentation

There was a discussion regarding the affordable housing lot.

- **Glenn Provost** explained that the affordable housing lot would be made available when a parcel of land is conveyed outside of the family.
- **Richard Gallogly** suggested a deadline date could also be included.
- **Christina Brown** stated that the deadline date would have to be determined before the Commission could make a decision.
- It was stated that a definition of family would be needed.
- **Richard Gallogly** defined family as children and grandchildren.
- It was also stated that the affordable housing lot be deeded as such for perpetuity.

Glenn Provost provided additional information on the proposal.

- The applicant would like to be able to maintain the current open spaces on the lots and only increase the open spaces outside the development envelopes with the 15 degree view channels. The view channels are not allowed to be cut until the house is built. They are also subject to review by the Conservation Commission within the 200 ft. buffer zone.
- Natural Heritage was consulted but wanted a lot of detailed information on the proposed work. Because the proposal is an estate plan which has too many unknown factors, the applicant decided to offer that when someone did want to build, they would have to have the proposal reviewed by Natural Heritage.

There was a discussion regarding the view channels.

- **Doug Sederholm** asked what the intended activity would be for the view channels outside of the 200 ft. buffer zone, which is regulated by the Conservation Commission, specifically if it would be clear cut, just cut above a certain height, just leave bushes, or have lawn.
- **Glenn Provost** answered that lawns are not allowed outside of the building envelopes and until the plans are made for the houses it is hard to determine what will need to be done within the view channels.
- **Doug Sederholm** asked if the applicant would be willing to have the whole view channels under the review of the Conservation Commission rather than having them come back to the MVC's LUPC for approval.
- **Glenn Provost** said that he did not think they should ask the Conservation Commission to review something outside of their jurisdiction. He also said that what the Conservation Commission allows within the 200 ft. buffer zone will help determine what happens in the rest of the view channel.
- **Doug Sederholm** said he was not totally convinced that it would provide sufficient oversight for the area outside of their jurisdiction.
- **Christina Brown** stated that the MVC cannot give another entity additional authority over something they do not have jurisdiction. She explained that the Conservation

Commission will have to approve the area they have jurisdiction over and then the whole plan for the view channel will be brought to the LUPC for review.

There was a discussion regarding the topography of Lots 9 and 10.

- **Fred Hancock** asked what the topography was like in the building envelopes of Lots 9 and 10.
- **Glenn Provost** explained that there were two knolls and a valley in between. They tried to pick a spot that would allow for a view. The envelopes are not in the deep valley, but on rises. He believes once the envelope is cleared the house would be looking over the vegetation.
- **Fred Hancock** asked what type of vegetation was there, is it scrub oak or mature trees.
- **Glenn Provost** explained that it was a scrubby area; that included the pines, but mostly scrub oak type vegetation.

John Breckenridge asked if something could be added for pervious pavers for patios. Other Commissioners thought that was irrelevant on a property of this size.

Christina Brown noted that the staff report said the footprint size restriction was for all structures, but the document provided by the applicant stated dwellings. She asked for clarification. **Glenn Provost** said that it was for dwellings and garages – other structures were not included.

Christina Brown asked if the affordable lot was to be donated. **Richard Gallogly** said it would be donated.

There was a discussion regarding energy.

- **Katherine Newman** asked if there were any offers made regarding energy.
- **Richard Gallogly** said there were none. He explained that the goal was to retain as much flexibility with the lots because there are no plans to build in the near future.
- **Mark London** said he would give a copy of the MVC Energy Policy to the applicant for consideration.
- **Linda Sibley** suggested that the requirement be to meet the future code or exceed the current code by 20%, whichever is greater.

There was a discussion regarding the footprint sizes.

- **Fred Hancock** asked if the applicant would consider restricting the size of a single dwelling unit.
- **Richard Gallogly** stated that the applicant is developing the property in such a way that if they utilized all potential lots there would be the same amount of square footage.
- **Fred Hancock** pointed out that the visual impact would be different, which is what is being considered when preserving the character of the Island.

1.3 Testimony From Public Officials

Michael McCourt, Edgartown Planning Board, said he was in favor of the proposal. It was well planned and being done in a conservative way.

There was a discussion of the affordable housing lot.

- **Fred Mascolo**, Edgartown Planning Board, asked for clarification on the affordable housing lot.
- **Linda Sibley** said that the testimony stated if they conveyed a lot outside of the family, the lot would then be donated. In addition a deadline date would be included so that the affordable lot would be donated even if no lots had been conveyed outside of the family.
- **Fred Mascolo** asked if that was a general practice.
- **Linda Sibley** said that it does happen.
- **Fred Mascolo** asked why the subdivision was viewed differently than other subdivisions where family was not involved.
- **Douglas Sederholm** explained that it is because it is an estate subdivision which presents the possibility that nothing may be done for 10 to 20 years.
- **Christina Brown** explained that if a developer buys and subdivides a piece of property and builds 10 summer houses, it would create the need of an affordable house to provide for the summer houses. If the houses are not sold or built, there will not be a need for affordable housing.
- **Linda Sibley** said that normally with a commercial subdivision several houses are sold first before the affordable lot is donated.
- **Fred Mascolo** asked how the property would be taxed. **Lenny Jason** explained that the lots would be taxed individually once the plan was recorded.
- **Paul Foley** noted that when the BADD Company subdivision in Edgartown was approved by the MVC in 2002 and 2004, the affordable housing lots were only due when certain phases of the project were performed. As it turned out, last year Edgartown ended up getting \$1.8 million dollars for their affordable housing committee through the MVC DRI process.

Robert Sparks asked if the applicant had considered a traffic study considering it would be additional houses on the road. **Paul Foley** said a traffic study was conducted and the report was given at the last public hearing. He explained that the key area would be the Chappy Ferry, and there would be adequate room available. There is an estimated increase of 10 trips per house on Jeremiah Road, which with three new lots is pretty minimal.

1.4 Testimony From Public

There was discussion regarding the stub road.

- **Frank Gazarian**, 33 Jeremiah Road, said he had some unresolved concerns regarding the stub road. He said the applicant has the right to use the stub road to access their property; however he owns the road and the liability. He does not want the liability of the road or to pass the liability on to a new owner if he chooses to sell his property. He submitted a proposal to resolve the issue. He asked for help from the MVC and the applicant's attorney to resolve the liability issue now.
- **Richard Gallogly** presented two options.
 - To create a road association that would be able to get an insurance policy for the road.
 - To convey the road to the Chasin's and they would assume the liability.

- **Karen Lento Gazarian** said that they presented a proposal to swap land and convey a lot they labeled G3 to the applicant and had not received a response.
- **Chris Murphy** stated that it was not the MVC's place to handle the issue.
- **Linda Sibley** explained that counsel has told the Commissioners that their authority does not extend to solving problems like access. She also explained that they can only make a decision on the application that is presented and that if the access road was changed it would not have had proper public notice.
- **Richard Gallogly** said that the Chasins are willing to work with the Gazarians in resolving the access issue after the plan is approved. He understands the modification would have to be approved by the MVC with proper notification given to the Cronig's. They would not consider anything in that area without the participation of the other neighbor Judy Cronig.
- **Frank Gazarian** said that he was pleased to hear that the Chasins would be willing to have future discussions.

1.5 Commissioner Questions

There was a discussion regarding the roads.

- **Lenny Jason** stated that the Planning Board had concerns over the roads because it was a Form A and it would not be under their jurisdiction. He asked if the Commission could ask for the road to meet Planning Board specifications, particularly the road for Lot 8.
- **Linda Sibley** said the written record could be held open and they could ask the Planning Board to given written input of what they would like to see for the road(s).
- **Christina Brown** said that planning boards do have jurisdiction on whether roads are adequate or not. She did not feel the MVC should get involved.
- **Glenn Provost** said that Lot 8 had frontage on a previously approved subdivision road.
- **Lenny Jason** asked if it would be built according to planning board specs because it was a previously approved road.
- **Richard Gallogly** said that the road will be built to the standard that the Planning Board requests.
- **Fred Mascolo**, of the Edgartown Planning Board stated that they defer to the ambulance and fire department.

Richard Gallogly said that the deadline date for the affordable housing lot would be either at the time of conveyance of a lot outside of the family or at no event no later than 4 years from the date of approval.

Linda Sibley closed the public hearing.

Chris Murphy moved, and it was duly seconded to waive referral to the Land Use Planning Committee and that the Commission as a whole should enter into deliberations on the Chasin Subdivision DRI 625.

- **Katherine Newman** asked if there was an offer on the energy issue. **Richard Gallogly** said there was not.

A voice vote was taken. In favor: 10; Opposed: 0. Abstaining: 0. The motion passed.

2. CHASIN SUBDIVISION: DRI 625 DELIBERATION AND DECISION

Commissioners present: J. Breckenridge, C. Brown, P. Cabana, F. Hancock, C. Murphy, L. Jason, K. Newman, D. Sederholm, L. Sibley, and B. Smith.

For the Applicant: Glenn Provost (Surveyor/Agent) and Richard Gallogly (Chasin's Attorney)

2.1 Offers and Conditions

There was a discussion regarding energy.

- **Brian Smith** said he did not think they could discuss it because they don't know what type of technology they may have in twenty to thirty years.
- **Peter Cabana** said he was not as concerned because the regulations on the state level are getting more stringent and those regulations would have to be adhered to.
- **Linda Sibley** said that the Energy Policy and the way subdivisions are handled should be reviewed because they don't look at the individual buildings as in other projects.
- **Mark London** raised the possibility of a condition stating that if the MVC ever changes the DRI Checklist to look at houses in excess of a certain size, it would be clear that this applied to the houses in this subdivision.
- **Linda Sibley** stated that if large houses were ever added to the DRI Checklist, previously approved subdivisions would not be exempt.
- **Fred Hancock** suggested that in the absence of a condition that specifically said that structures up to a certain size were pre-approved, all structures would be subject to future regulations.
- **Katherine Newman** stated that at some point there should be a discussion regarding energy and subdivisions because they are approving things in the future without energy being addressed.
- **Peter Cabana** stated that communities are developing regulations that will be applicable to construction. He does not believe that any of the preapprovals from the MVC would preclude them from the new regulations.

Christina Brown asked the applicant if the Declaration of Common Scheme Restrictions was their offers. **Richard Gallogly** said they were offers and expected that they may become conditions to the approval. **Christina Brown** said the offers should be signed. (Mr. Gallogly later signed a copy on behalf of the Applicants for the record)

Chris Murphy recommended that Section 2.1 (l) and Section 2.2 be removed from the offers.

Linda Sibley asked for clarification on what a "managed lawn" was. **Richard Gallogly** explained that it would be anything that was cut, fertilized, and watered.

Christina Brown reviewed the offers as presented as the Common Scheme Restrictions.

Lenny Jason questioned the offer in Section 2.1 (b) that restricted the property to only residential use, in that it could preclude someone from having a chicken and the Commission

should not be making that determination. Linda Sibley said that this is what the current application is for, and felt the Commission should deal with it as proposed.

Lenny Jason moved, and it was duly seconded to reconsider the motion to waive referral to the Land Use Planning Committee and the Commission as a whole entering into deliberations on the Chasin Subdivision DRI 625.

- There was discussion regarding if the public needed to watch the Commission go through the proposal and if it should be done at LUPC or not.

Lenny Jason withdrew his motion.

Linda Sibley moved, and it was duly seconded, to approve the proposal as presented by the applicant with the Declaration of Common Scheme Restrictions except for (I), all to be re-worded as conditions to say "as offered by the applicant" and Lot 3 will be made available to an Island affordable housing organization, from the MVC approved list, as a permanently affordable lot and conveyed to on or before the conveyance of a house lot out to a non-family member, but in no event later than four years from the date of this approval.

2.2 Benefits and Detriments

The Commission discussed the Benefits and Detriments

- The land is being divided into ten lots instead of potentially more than twenty, three-acre lots allowed by zoning.
- There was a lot of collaboration with conservation agencies.
- The proposal protects the natural habit of the land and the shore line.
- A parking lot has been donated to the Land Bank for public use.
- The abutting lands that were previously sold at a below market rate to the Land Bank for public use was a great benefit to the public.
- The plan follows much of the Commission's Open Space Guidelines.

2.3 Decision

A roll call vote was taken on the motion to approve the application. In favor: J. Breckenridge, C. Brown, P. Cabana, F. Hancock, C. Murphy, L. Jason, K. Newman, D. Sederholm, L. Sibley, and B. Smith. Opposed: None. Abstaining: None. The motion passed.

2. WAVELENGTHS DRI 623 WRITTEN DECISION

Chris Murphy pointed out that Page 9, Line 318; Section 6.2 should not state that the dormant easement would run along the back of the property. It was agreed that it should state: The dormant easement, running to the Town, would be 14 feet wide near the back of the property.

John Breckenridge moved, and it was duly seconded, to approve the Wavelengths DRI 623 Written Decision as corrected. A roll call vote was taken. In favor: J. Breckenridge, C. Brown, P. Cabana, C. Murphy, L. Jason, K.

Newman, D. Sederholm, and L. Sibley. Opposed: None. Abstaining: None. The motion passed.

3. BIG SKY DRI 618 WRITTEN DECISION

John Breckenridge moved, and it was duly seconded, to approve the Big Sky DRI 618 Written Decision with corrections.

- **Doug Sederholm** suggested changing Page 5, Line 185, and last paragraph to read: reduce traffic on Pine Hill Road.
- **Doug Sederholm** suggested changing Page 9, Under Conclusion, Section 6.9, last paragraph, and the sections referred to as 2.1 and 2.3 need to be changed to 3.1 and 3.3.
- **Brian Smith** said that Page 5, Line 170 should state: exceed the maximum requirement by 20%.

A roll call vote was taken. In favor: J. Breckenridge, C. Brown, C. Murphy, L. Jason, D. Sederholm, and Brian Smith. Opposed: None. Abstaining: None. The motion passed.

4. OAK BLUFFS FISHING PIER - DRI 628 - WRITTEN DECISION

Chris Murphy moved, and it was duly seconded, to approve the Oak Bluffs Fishing Pier DRI 628 Written Decision as written.

- **Fred Hancock** stated that Page 7, Line 231-233, states that the Land Management Agreement allows the Town of Oak Bluffs to charge a fee if they wanted to. He pointed out that the Town testified they would not charge a fee. He suggested removing Lines 231-233.
- **Linda Sibley** said that there should be language added to say that while the Land Management Agreement allows the Town of Oak Bluffs to charge a fee, the Town of Oak Bluffs intends not too.
- **Doug Sederholm** said it was not an offer and the lines should be left as they were written.

John Breckenridge moved, and it was duly seconded, to remove the lines 231-233 on Page 7. A voice vote was taken. In favor: 8. Opposed: 0. Abstaining: 0. The motion passed.

A roll call vote was taken on the motion to approve the written decision. In favor: J. Breckenridge, C. Brown, P. Cabana, F. Hancock, C. Murphy, K. Newman, D. Sederholm, L. Sibley, and Brian Smith. Opposed: None. Abstaining: None. The motion passed.

5. MINUTES

5.1 November 18, 2010 MVC Minutes - Tabled

6. COMMITTEE REPORTS

5.1 Wind Energy Plan Work Group

Douglas Sederholm gave an update on the meeting that had taken place that afternoon concerning model wind turbine regulations.

- The model regulations will be completed by the end of December.
- Comments were sent out on behalf of the work group and the Commission concerning the RIO SAMP.
- The next meeting is Thursday, December 9th at 12:00 p.m.

5.2 Planning and Economic Development

Katherine Newman gave an update on the PED.

- The next meeting will be Wednesday, December 8th at 12:00 p.m. at the West Tisbury Town Hall.
- DRI Policies are being discussed and refined to fit the scope of the Island Plan.

5.3 Land Use Planning Committee

Linda Sibley gave an update on the LUPC.

- The Committee sent out letters to the towns notifying them that the DRI Checklist would be revised and invited their input.
- The Checklist will be reviewed to see if the goals of the Island Plan are being achieved with the items on the checklist, in addition to making sure things are well worded and work well.

Christina Brown said that reviewing the Checklist would provide an opportunity to review what kind of projects are of regional impact and what are not.

5.4 Finance Committee

John Breckenridge gave an update on the Finance Committee and the budget.

- The Finance Committee met three to four times over the last month.
- A preliminary draft budget is ready to be circulated to the towns for their initial feedback.
- The budget will be brought back to the Finance Committee by the end of December and will be submitted to the full Commission who must adopt it in the third week of January.
- The current preliminary budget contains a 0% COLA and a 0% increase in assessment to participating Towns.
- An independent consultant worked with the Commission regarding salary policies and salary ranges to make sure they are reasonable.

6. OLD BUSINESS

6.1 Hart Application Project West Tisbury

Mark London said that counsel has determined that the Commission does have the right to rescind a decision. The procedure to rescind a decision would be the same as approving a project with providing notice and holding a public hearing.

Paul Foley provided an update on the Hart Application Project in West Tisbury.

- There was originally another version of the project that was approved on the local level.
- When the project was changed to become mixed-use it was sent to the MVC.
- Mr. Hart may prefer a rescission of the decision in order to go ahead with the original proposal.

Linda Sibley said that counsel did not state how the process would start. It was agreed that Mark London would ask counsel for clarification on what step one would be and if there would be a requirement for reasons for a rescission.

Fred Hancock asked if steps in the Compliance Procedures had been exhausted. It was agreed that they had not.

Doug Sederholm stated that he is not involved in the Hart application in any way and would not take part in any discussions.

There was a discussion regarding what the next steps should be.

- **John Breckenridge** suggested that staff contact the applicant to present a revised landscape plan to the Commission no later than January 15, 2011.
- **Chris Murphy** said that the Commission should not be determining the amount of time it takes the applicant to complete the project, especially when it was approved without timelines. It had already been in process for six to ten years.
- **Lenny Jason** said all of the trees were removed which were in direct conflict with the conditions.
- **Linda Sibley** added to Lenny Jason's comment that destructive action was taken based on the Commission's approval and there is an obligation to fix what went wrong.
- **Katherine Newman** suggested inviting the applicant to a LUPC meeting.
- **Fred Hancock** explained that at the last LUPC meeting the applicant attended it was clear that the remedy was to provide a revised landscaping plan to the Commission.

John Breckenridge moved, and it was duly seconded to have staff contact the applicant to present a revised landscape plan to LUPC no later than January 24, 2011.

- **Katherine Newman** suggested that it should be an invitation for an update in the event a plan is not ready.
- **Fred Hancock** stated that he had a month and a half to get a plan.

A voice vote was taken. In favor: 8. Opposed: 1 (Lenny Jason). Abstaining: 0. The motion passed. Note: Doug Sederholm was not part of the discussion or vote.

The meeting adjourned at 8:30 p.m.

DOCUMENTS REFERRED TO DURING THE MEETING:

- Chasin Subdivision DRI 625 Staff Report
- Chasin Subdivision DRI 625 Land Preservation Offers
- Chasin Subdivision DRI 625 Site Plan
- Chasin Subdivision DRI 625 Letter Gazarian Land Swap Proposal
- Chasin Subdivision DRI 625 Gazarian Land Swap Proposal Map
- Wavelengths DRI 623 Written Decision Draft
- Big Sky DRI 618 Written Decision Draft
- Oak Bluffs Fishing Pier 628 Written Decision Draft

Chris Murphy
Chairman

1/20/11
Date

J.R. Deje
Clerk-Treasurer

1/20/11
Date