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**Minutes of the Commission Meeting
Held on April 28, 2011
In the Stone Building
33 New York Avenue, Oak Bluffs, MA**

IN ATTENDANCE

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

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

Staff: Mark London (Executive Director), Paul Foley (DRI Planner)

Acting Chairman Doug Sederholm called the meeting to order at 7:00 p.m.

1. FLAT POINT FARM (DRI-39-M2) MODIFICATION TO DECISION

Commissioners Present: B. Bennett, J. Breckenridge, C. Brown, E. Hammarlund, L. Jason, J. Joyce, K. Newman, N. Orleans, C. Rose, D. Sederholm, L. Sibley, B. Smith, H. Stephenson.

Doug Sederholm noted that the MVC received a letter from Reid Silvapointing out, with regard to section 6.3 of the decision, that some language needs clarification.

- This was a nine acre site that was subdivided for estate planning purposes.
- The MVC approved it, but section 6.3 states that the length of validity of the decision is for the applicant to have two years to start construction. That is somewhat misleading since this is for subdividing the property.
- The Applicant has asked for clarification that section 6.3 was for creating the subdivision, that the requirements of the permitting process have been fulfilled, and that the decision is valid.

Linda Sibley moved and it was duly seconded that we confirm that the phrase substantial construction refers to the completeness of the division process, the decision is valid and the requirement of the permit has been fulfilled. Roll call vote: In favor: B. Bennett, J. Breckenridge, C. Brown, E. Hammarlund, L. Jason,

K. Newman, N. Orleans, C. Rose, D. Sederholm, L. Sibley, B. Smith, H. Stephenson. Opposed: none. Abstentions: none. The motion passed.

2. OCEAN CLUB – CONTINUATION OF PUBLIC HEARING

Commissioners Present: B. Bennett, J. Breckenridge, C. Brown, E. Hammarlund, L. Jason, J. Joyce, K. Newman, N. Orleans, C. Rose, D. Sederholm, L. Sibley, B. Smith, H. Stephenson.

Doug Sederholm, Public Hearing Officer called the continued Public Hearing to order at 7:15 p.m. and immediately continued the Public Hearing to May 5, 2011 without taking any testimony. This is to give the Applicant additional time to have the Applicant's acoustical consultant submit the required materials. Also, the MVC received a communication from the Town of Oak Bluffs indicating that the Board of Selectmen has asked to continue the Public Hearing past May 5, 2011. We will clarify whether the Commission will take testimony on May 5, 2011 or at the subsequent meeting.

3. NEW BUSINESS

Commissioners Present: B. Bennett, J. Breckenridge, C. Brown, E. Hammarlund, L. Jason, J. Joyce, K. Newman, N. Orleans, C. Rose, D. Sederholm, L. Sibley, B. Smith, H. Stephenson.

3.1 Executive Director's Report

Mark London gave the report.

- The Joint Affordable Housing Group (JAHG) is proposing to carry out an update of the Martha's Vineyard Affordable Housing Needs Assessment.
 - The JAHG is made up of town affordable housing committees and a number of non-profits. It meets periodically to informally coordinate their efforts as well as to identify needs and how they can be dealt with.
 - The JAHG members have concluded that the Housing Needs Assessment prepared ten years ago, with a modest update five years ago, should be redone to reflect the significant changes in the housing situation.
 - A Housing Needs Assessment is useful as it is often attached to grant applications and is also used for strategizing on where to focus priorities.
 - No single entity has the ability to fund the entire cost, which would likely be \$25-30,000. The JAHG felt that while the MVC and each entity could provide a lot of information, it would be desirable to have the study done by an independent consultant with the experience of having done similar studies in other places. The JAHG thought it would be desirable that the MVC and all towns participate financially and oversee the process.
 - MVC staff could provide a lot of background information and the MVC could contribute about \$6000 from the DHCD District Local Technical Assistance Grant. The cost goes well beyond the Commission's budget for consultants.
- Also funded through the MVC's share of the District Local Technical Assistance program are two studies on possible town sharing services, namely the possibility of greater collaboration between the Oak Bluffs and Tisbury police departments and the possibility of

greater collaboration between, or a merger of, the two solid waste districts. The studies will be posted on the MVC website.

- One of the recommendations of the Island Plan was to set up an arts and culture collaborative to help foster support for the arts on the Island and development of cultural tourism. It appears to be moving forward; there have been several meetings and a focus group.

3.2 Committee Reports

Doug Sederholm gave an update on the Federal Bureau of Ocean Energy Management, Regulation and Enforcement:

- They have scheduled a meeting of the Massachusetts Task Force on May 2, 2011 in New Bedford. Members of the Martha's Vineyard contingent will be there, including him and Mark London.
- The purpose is to discuss the next steps in development of the Area of Mutual Interest (AMI), south of Massachusetts and Rhode Island.
- They have two unsolicited requests to lease, and are asking for additional expressions of interest.
- There have been eleven expressions of interest from developers of wind energy in the area south of Martha's Vineyard and Nantucket.

Christina Brown asked for clarification of how far offshore are the 3000 square miles of federal waters south of Martha's Vineyard and Nantucket identified for possible development.

Doug Sederholm noted that federal waters start three miles off shore, but the area being looked at for commercial projects is more than the twelve nautical miles offshore of inhabited land.

4. TISBURY FARM MARKET TISBURY. (DRI-631) PUBLIC HEARING

Commissioners Present: B. Bennett, J. Breckenridge, C. Brown, E. Hammarlund, L. Jason, J. Joyce, K. Newman, N. Orleans, C. Rose, D. Sederholm, L. Sibley, B. Smith, H. Stephenson.

For the Applicant: Elio Silva

Doug Sederholm, the Public Hearing Officer called the Public Hearing to order at 7:30 p.m. and read the Public Hearing notice. The location is at 412 State Road, Vineyard Haven and the proposal is to combine two smaller grocery operations into a single site.

4.1 Staff Report

Paul Foley gave the Staff Report.

- The project location is 412 State Road Map 22-1 Lot 9 (1.01 acres).
- The packet of information includes the staff notes, the Land Use Planning Committee (LUPC) notes, correspondence and site plans.
- The proposal is for a 7,400-square-foot grocery store with four one-bedroom apartments on the second floor.

- Zoning is B-2 Commercial and the minimum size lot for multi-unit mixed use buildings is 20,000 square feet, with 100 foot frontage and the maximum height is 35 feet.
- Local Permits required:
 - Building Department for permits to demolish an existing building and to construct a new one and renovate an existing building.
 - Planning Board reviews parking of 20 or more spaces as a Site Plan Review.
 - Zoning Board of Appeals (ZBA) for Parking Special Permit for any offsite parking spaces (the ZBA may allow up to one-third reduction in required spaces or up to one-half of required parking spaces to be met on other properties in the B-1 District within one tenth of a mile).
 - ZBA for Outdoor Display.
 - ZBA for Special Permit for more than three apartment units.
 - Fire Inspector for Fire Notification and Suppression System.
 - Board of Health Review for review of the waste system.
- The surrounding land uses are businesses, a gravel pit, and the Tisbury Park and Ride.
- Project History:
 - The site has been the site of a previous Development of Regional Impact (DRI) review for a gas station. In 1999, the MVC denied a proposal for a gas station and auto repair shop.
 - In 2000, the MVC approved a modified plan with the gas station and the inspection station elements removed from the auto repair shop. It also modified a few conditions on lighting and hours.
 - In 2001, the MVC denied a modification to the DRI which sought to construct a retail fuel distribution facility with the previously approved auto repair shop.
 - In 2002, the MVC denied a new proposal on the property to construct a gas station with three fueling pumps.
- The proposal is to consolidate two small grocery operations into a single site. One of two buildings will be demolished and rebuilt to be larger and to renovate the other existing building to house a 7,400 square foot grocery, a 480 square foot kitchen and four apartments (3,080 square feet) on the second floor.
- The DRI was referred by the Tisbury Building Inspector.
- The Land Use Planning Committee (LUPC) met on April 11, 2011.
- A site visit was conducted on April 28, 2011.
- Key Issues:
 - How will the proposal impact traffic on State Road and the proposed Connector Road?
 - Is there sufficient parking for the proposal?
 - The site is a nitrogen impaired watershed. What measures will the Applicant take to minimize nitrogen loading?
 - How will the existing trees be impacted by parking?
 - The new building is significantly larger than the existing building. How will it fit into the streetscape and character of the area?
- In the preliminary plan, most of the trees would be retained, including those along State Road and High Point Lane. A few would be removed to enlarge the parking. The granting

of the thin strip of land along High Point Lane to the town for the Connector Road would result in the loss of several trees screening the property.

- It is not in a Natural Heritage Endangered Species designated habitat.
- The landscape plan has not been submitted yet.
- With regards to open space, the Applicant is currently weighing his options between his need for parking and an existing grassy area with mature trees along State Road.
- The only exterior lighting would be downward shielded lights in the ceiling of the porch overhang.
- Charles Crevo of C3 Consulting prepared the Traffic Study.
 - The property has two curb cuts. One access is from State Road and the other is on High Point Lane.
 - It is recommended that no left turns be permitted for vehicles exiting the site onto High Point Lane as that would exacerbate traffic problems on High Point Lane.
 - The parking proposal appears to meet the demand but not the Tisbury Bylaw. The town of Tisbury calls for about 47 parking spaces, which would not be met by the proposal. The town ZBA could reduce the minimal parking requirements.
- Sight distances at the proposed market consolidation driveway at State Road are greater than 400 feet and are according to AASHTO standards.
- There were two reported vehicle crashes in 2006 (with no fatalities). There were no reported crashes at the study locations in 2007 and 2008.
- Vineyard Transportation Authority (VTA) route numbers 2 and 3 pass by the site. Route 10 terminates at the Tisbury Park & Ride facility and links to downtown and the ferry.
- The construction of the Tisbury Connector Roads would significantly enhance bicycle access to the site.
- The base year (2011) traffic movements at the intersection of State Road with High Point Lane show levels of service ranging from A to D. These locations also show the ability to accommodate an additional 10 percent to 30 percent availability.
- The 2014 Build scenarios show that the delay on High Point Lane turning left onto State Road would be about ten seconds longer with the Farm Market than without it.
- The 2014 Build scenarios show that the delay on State Road turning into High Point Lane would be somewhat greater with the Farm Market than without it.

Mark London asked why will traffic with the Connector Road be worse than today and is it due to the movement of traffic from the Look Street intersection to the Connector Road. He also asked Charlie to look at a worst case scenario if they just built High Point Lane but not the other two planned connector roads.

Charlie Crevo noted that the 2014 No-Build scenarios show that adding a connection between High Point Lane and Edgartown Road results in the level of service dropping to a Level of Service (LOS) F for the left turns coming out of High Point Lane. With the High Point Lane having two approach lanes, the right turns from High Point Lane will operate at LOS C. According to the ICU LOS, the intersection is over capacity with expectation of long periods of congestion. The problem is that high volumes on State Road delay the movements and cause congestion into the unacceptable ranges.

Paul Foley continued the staff report.

- The applicant is proposing four one-bedroom apartments. At least two will be year-round housing dedicated to staff.
- The retail grocery store will be year round and operate seven days a week. The hours of operation will be Monday to Saturday, 7:00 a.m. to 7:00 p.m. and Sunday from 8:00a.m to 5:00 p.m. In the summer, the store may extend its hours from 6:00 a.m. to 8:00 p.m.
- There are currently 28 full time and 12 part time year-round workers. The Applicant anticipates that by combining the stores, it will result in a reduction of staff to 20 full time and 8 part time employees.
- The new front building will be significantly larger in mass than the existing building. The design harmonizes with the character of the area and the Vineyard in general with shingle walls, traditional windows/doors, and porch.
- The site plans and the floor plans were reviewed.

Charlie Crevo noted that the traffic study figures are the average number of vehicles approaching the intersection at peak hour in the summer.

Linda Sibley asked why we are only looking at people coming out of the intersection onto State Road. What happens on State Road is more of a Regional Impact.

Bill Wilcox gave the Water Quality Report.

- The estimated nitrogen load for the project is based on the Policy requirements for 35 ppm effluent total nitrogen.
- Using town average water records for this type use, the average wastewater flow for supermarkets in Tisbury is 47.7 gallons per day per 1000 square feet. The proposal would generate 375.9 gallons per day of wastewater (417.6 GPD water use) including the kitchen and restrooms.
- The average wastewater flow for apartments in Tisbury is 111.5 GPD per 1000 square feet. The proposed 3,080 square feet would generate wastewater flow of 343.4 gallons per day (381.6 GPD water use).
- The nitrogen load from this use would range from 30 to 35 kg/yr. The proposed project will exceed the load limit for the lot from wastewater disposal alone.
- To address the excess the Applicant has offered the following:
 - To install composting toilets for the apartments and the public restroom. This would lower the nitrogen load from the proposal by about 18 kilos per year.
 - The project is still over the limit (smart growth limit) by about 4 to 8 Kilos. The use of a drip irrigation system to dispose of the remaining wastewater from the grocery and the apartments should reduce the remaining load by another 50%.
 - The final load would be in the range of 6.0 to 8.5 kilos of nitrogen per year. This meets the load limit for the parcel if the smart growth bonus is allowed.
 - The wastewater nitrogen concentration used in these calculations is 35 ppm as per the current MVC Policy, while the Mass Estuaries Project now uses 26.25 ppm. Use of the currently accepted concentration would lower the final load by another 25%.

Doug Sederholm noted with regards to wastewater, that the MVC guidelines were prepared three years ago and used the 35 ppm, so where did we get our numbers. **Bill Wilcox** replied that the 35 ppm is an accepted average for all types of studies.

Doug Sederholm noted that since then, data through the Mass Estuaries Project indicated that 26.25 ppm is more realistic and what is that data based on. **Bill Wilcox** said it is based on the calculated nitrogen renovation as it moves through the leaching area into the ground water and travels to the pond. There is also some de-nitrification.

Doug Sederholm stated that the guideline included a bonus for smart growth and asked Bill to explain why that is included and what the idea was. **Bill Wilcox** replied that the idea is if you can concentrate the development, including residential, in an area where you are more likely to have sewer eventually, there will be a large nitrogen reduction.

John Breckenridge said that he had heard about the drip system at LUPC and it was initially installed in the parking area in front with trees. In the newest rendition potentially a lot of that is being removed to hardscape. How much acreage is needed to accomplish the numbers? **Bill Wilcox** said it is his understanding that that they will use a vegetated area in back of the building for the disposal area, but he has not seen a design.

4.2 Applicant's Presentation

Elio Silva gave an overview of the project:

- He is combining the Vineyard Grocer and the Farm Market stores into a larger building. Both businesses are located on Upper State Road.
- Compared to Cronig's, Woodland Center, and the insurance building, this would not be much larger, however it may be taller.
- Parking at the two markets is not sufficient and the business is growing. The public wants to shop at one location.
- The history of the building indicates much less traffic than he is currently generating with the two separate stores.
- With regards to the nitrogen loading he will do everything he can to meet the requirements and with the move it should be a nitrogen reduction from the two current retail stores.
- By building the complete project, it will allow for affordable housing.
- The new building is in keeping with Vineyard building aesthetics.
- His goal is to have a place where people can shop and save money and be able to buy local produce and meats, supporting the local farmers.
- He wants to make it work for the community and also have a successful business.
- He has not received any negative feedback from the community.
- The focus is on public safety, energy efficiency, the environment, and community standards.
- He wants to grow a business that provides good customer service and an enjoyable shopping environment that sells healthy products.
- He wants to do it right or not do it at all.
- The parking still needs to be reviewed to meet the town requirements.

Doug Sederholm asked Elio what is his proposal for parking, right now. **Elio Silva** stated it will be what he can get approved by the town. The minimum is 31-35 parking spaces with a variance. Right now the plan is 34 parking spaces. They are aiming to save the four biggest trees on the lot, but they will lose nine trees.

Doug Sederholm asked how many trees will be lost due to the Connector Road. **Elio Silva** said the numbers do not include the Connector Road. Many of the trees are not healthy. He wanted to save more but on the recommendation of the Engineer, the right thing to do is to have a safe and functional parking lot and not obstruct views. The goal was not to take down trees but they need to satisfy the Town requirements and provide a safe environment. He received feedback from Ken Barwick (Tisbury Building Inspector) regarding this, and they may be able to get a parking reduction. If that happens they will be able to keep or plant more trees. If a different layout is used they will lose ten parking spaces. After talking with the consultant and with the size of the business, they need more than 25 parking spaces. They will save as many trees as possible.

Doug Sederholm asked if the proposal is for 34 parking spaces. **Elio Silva** confirmed it was.

Linda Sibley noted that there is a Tisbury bylaw that requires one tree for every eight parking spaces and asked if that will be met. **Elio Silva** said it would, even if new trees needed to be planted.

Linda Sibley noted that most of the trees being preserved are not on the property. **Elio Silva** reviewed the site plan showing which trees would be preserved. Five trees on State Road are staying that are under the electric lines.

Linda Sibley asked if other trees can be added since many of the existing trees may not survive 10-15 years. **Elio Silva** replied other trees will be added and a plan would be provided to the MVC with the species to be planted based on the ZBA.

John Breckenridge noted that the new plan includes moving the entrance and exit further up High Point Lane. **Elio Silva** confirmed it is 125 feet from State Road.

Doug Sederholm asked Elio to briefly explain the traffic study, the traffic that will be generated by this proposed project, and how this consolidation will affect the traffic generated by his operation since he now has two locations. **Elio Silva** stated that he will be contributing land that will allow for a third lane on High Point Lane when the connector roads are built. Employees who cover shifts and merchandise deliveries will be consolidated in one location, so it will be one trip instead of two.

John Breckenridge asked that the use of the third story be explained. **Elio Silva** replied that it may be used for office space, attic, and storage for such things as Christmas decorations. However, right now there is no set plan for its use.

Holly Stephenson asked if the third floor is accessible to the tenants of the apartments or from the outside. **Elio Silva** said it has outside access and the tenants would not have access.

4.3 Testimony from Public Officials

Henry Stephenson, of the Tisbury Planning Board said that the consensus of the Board is very positive and they like the direction that the project is going. It is very consistent with the plans the Town has for this area and also the policies of the Island Plan. The transportation issues and the design of the connector road are resolvable issues and they will need to be followed up on. He would not like to see the property clear cut to provide more parking spaces, but it can be redesigned and have a new landscape plan approved. He would also like to see the main roads of the town lined with a canopy of tall trees as it was in the past. This is an opportunity to do that and re-establish the character to the town roads. The new design that was presented today is similar to what the Town was anticipating.

Doug Sederholm asked if the Planning Board would rather see Elio come back with a comprehensive landscape plan to meet the parking requirement, that will meet the needs of the project and the town. **Henry Stephenson** confirmed the Planning Board would and if need be reshape the property and not skew what you are doing based on what is already there.

Fred LaPiana, Tisbury Department of Public Works, thanked Elio for his proposal and said he has been very supportive and generous in donating a ten foot section of land and moving the curb cut that will help to facilitate the Connector Road and the intersection at High Point Lane. He likes the plan and from a highway standpoint, it is consistent with the Town design.

Doug Sederholm asked if Fred would be approving the moving of the curb cut. **Fred LaPiana** said yes, he and his Board are confident it will be approved. He added that the new funding source for the Connector Road is looking at the holistic approach of the communities and the previous one did not. So the recreational issues and the housing issues are what they will be looking at, so they will be supportive of this type of venture.

Linda Sibley asked Fred if he can deal with the grade with the proposed curb cut. **Fred LaPiana** said that nothing is inconsistent with that location and it almost looks like a natural cut at that location.

4.4 Public Testimony

Donald Cronig, a resident of Vineyard Haven has known Elio for some time and noted that Elio is very community oriented. Having one location is much better than the current separate locations. The products he provides are excellent and the prices are very fair. This kind of project adds to the community and encompasses a lot of things such as the housing. He hopes the MVC will support Elio and thanked Elio for his winter store gatherings that bring a good feeling to the community during the off season.

Edivalda Santana has known Elio for several years and he has worked very hard for the benefit of the community. He is very conscious of the environment. He offers a better quality of products and he supports the Brazilian community.

Heidi Feldman and her husband Curtis Friedman have lived on Martha's Vineyard for ten years and have known Elio since his business at Five Corners. They have watched his business grow and are happy to shop at both stores, although it is difficult to get to both at the same time.

She and her husband own a farm in Vineyard Haven and are looking forward to selling to Elio. Along with our neighbors, they are very welcoming to bring a fair priced and community oriented business to Vineyard Haven.

Elio Silva wanted to point out that he had received letters from his customers in favor of the project and he asked them not to come to the meeting, as he did not want it to be overcrowded, perhaps resulting in the meeting being postponed. **Doug Sederholm** noted that the letters are part of the record and they are posted on the website.

Heidi Feldman noted that one of the letters is from a summer resident who is currently in Taiwan and she took the time to submit the letter.

4.5 Commissioners' Questions

Leonard Jason asked if someone can explain the High Point Lane and the three lanes. **Elio Silva** presented a site plan.

Leonard Jason asked High Point Lane is the connector road intended to alleviate the traffic off the Edgartown-Vineyard Haven Road. **Fred LaPiana** said that High Point Lane is one of the branches and noted that the Commission's traffic study recommended three lanes at the base of the intersection to alleviate congestion.

Leonard Jason asked if there was any thought to closing off the State Road entrance.

Fred LaPiana noted that one of the issues was the right hand turn coming out of this property.

Leonard Jason asked if it wouldn't be a better line of sight coming out of the High Point Lane for people coming from Up-Island. **Fred LaPiana** said that both areas have a good line of sight regardless of which intersection you are at. The concern with the curb cut on High Point Lane is the possibility of taking a left-hand turn which would interfere with the traffic on the road. It will be tough on a tractor trailer, but the right turn would be easy to make.

Leonard Jason felt if there is going to be a traffic problem, it is better to stack the traffic in the Applicants parking lot rather than on State Road. He suggested Fred may want to consider closing the State Road access.

Leonard Jason asked what the basement will be used for. **Elio Silva** said it is for storage.

Doug Sederholm asked if there will any active storage in the basement and **Elio Silva** said no.

Linda Sibley noted that before the MVC makes a decision, Elio will have to specify what he is doing with all of the spaces and that means noting what the maximum active use will be. **Elio Silva** said the attic and basement will be used for storage.

John Breckenridge said that Linda's point is that you previously said it might be used for office space, so there are still some ifs, ands and buts. The MVC will need a definitive definition of what it is. **Doug Sederholm** confirmed that the MVC will need to know what your maximum plan is for every square foot of space.

Doug Sederholm said that everyone wants to see the Connector Road built and assuming it takes another five to eight years to be built, how do you see the traffic operating for entering and

exiting his property in the meantime. How will it work? **Fred LaPiana** replied that the curb cut that Elio is proposing will work fine today and would allow left hand turning until the Connector Road is built. He suggests that be eliminated later as you would be crossing three lanes of traffic.

John Breckenridge said that some things have changed during our conversation today, such as parking configurations and exiting to High Point Lane. He suggests that Bill look at the amount of available space in the back and do the calculations such as the drip system, and see if it will accomplish the same goals. **Elio Silva** said the Engineer is coming to the Island and will go to the site; they have already done a preliminary site review.

John Breckenridge noted that the right hand building has a large mass to it. There are a couple of ways to minimize the impact of a large building that goes up 35 feet. Perhaps Elio could relook at the design and see what a roof line would be like at 30 or 32 feet.

Doug Sederholm asked if there could be streetscapes so we can see what the massing of the proposed building will look like in comparison to the other buildings on the site. **Elio Silva** said that he could have that done. **Henry Stephenson** said he is not sure that the scale of the building is that bad, but it would be good to visualize it and study it. It could be a nice design and he would also be willing to look at it.

Linda Sibley noted that the buildings around the site are abnormally low and if you were redoing them today and incorporating housing, they would be higher.

Erik Hammarlund asked when all of the asphalt is put in the back, will it require cutting all the trees down. **Elio Silva** said there are no significant trees behind the back building; it is scrub.

Holly Stephenson suggested that Elio may want to look at solar panels with so much roof area. **Elio Silva** replied that it is part of his agenda. He is also looking at the cost and the orientation of the buildings to see if it is feasible.

James Joyce asked what the pitch of the roof is. **Elio Silva** said it is 12 over 10.

Erik Hammarlund and **Doug Sederholm** noted that the landscape and stormwater plans need to be brought back to the Commission and the LUPC. **Elio Silva** confirmed they would be.

4.6 Commissioners' Discussion

John Breckenridge noted that the MVC's normal process is to come back with the landscape plan to the LUPC. Issues have been brought up about massing and landscaping and how do we address that. **Christina Brown** said that the massing of this building is not a major issue and we should look at it as proposed within the business district on State Road. The angles of the roof and porch are pleasing.

Doug Sederholm noted that a 35 foot high building in a Down-Island town business district is normal.

Linda Sibley said you need a good design for parking and landscaping combined. If you gave up the old trees and planted new trees, you might have a better plan for rational parking.

Leonard Jason thought that the parking is a local issue and trusts that the Town of Tisbury will come up with the best solution. He does not think it has to come back to the MVC again.

Linda Sibley said that the MVC always reviews landscaping. We need to see the plan and she would like to see one that adds trees. Why would we not insist on a proper landscaping plan with a property of this size, when we do it for much smaller properties?

Holly Stephenson said the parking will be reviewed by the Zoning Board and asked whether any town board reviews the landscaping. **Henry Stephenson** replied that the Planning Board will review it, and appreciates that the MVC will require and sign off on a landscape plan as it will make a difference.

Kathy Newman said that Elio is anxious to do everything in a holistic way to make everyone happy. Perhaps he could make an offer that had some numbers in it about the trees and a ratio.

Leonard Jason said the Town requires one tree per eight parking spaces.

Linda Sibley replied that the offer is made in the formal landscaping plan.

Mark London asked whether it is possible to conceive of a parking plan that maintains at least the most significant trees if they are healthy. Perhaps we need a more fine-tuned approach to this.

Doug Sederholm said that some trees may be worth saving and others not, so it would be wise to have someone who knows, such as an arborist to assess them. Elio has to get past the Tisbury ZBA for parking first and then the MVC can address when we are at the appropriate time to do so.

Doug Sederholm asked Elio what is his timeframe. **Elio Silva** said he needs to have approval for the bank by May 6, 2011.

Holly Stephenson asked if the MVC can vote tonight in principle and hold the Hearing open for the final landscape and parking plans.

Brian Smith asked if there are any other outstanding issues that would cause the MVC to refuse this project in the future, which can't be dealt with at the Land Use Planning Committee (LUPC) in the future.

Doug Sederholm asked if everyone is satisfied with this understanding of the traffic issue. It will generate more traffic at a problematic intersection and it is right across the street from a project that could potentially generate a great deal of traffic. There will undoubtedly be some comparison with our decision here and the project across the street on High Point Lane.

Holly Stephenson said it appears that Elio has been cooperating with the Town and the traffic and has offered ten feet of land.

Linda Sibley did not think the MVC can quite deal with this procedurally, where we can close the Hearing tonight and vote on it. We need to have written offers.

Leonard Jason asked if the MVC has an issue with parking or do we leave it in the hands of the ZBA.

Doug Sederholm stated that if parking is adequate for the MVC, it is still contingent on ZBA approval.

Christina Brown said the ZBA will also be looking at the flow of traffic as that is their job.

Doug Sederholm noted that there is another project across the street that is in the process of doing its traffic study. We do know what the traffic studies for the other gas station proposals in the area generated, which was substantially more trips. He wants to make sure that people are comfortable with and understand the impact this project will have on traffic, such as an additional ten second wait for a left turn from High Point Lane to State Road, and there may be additional waits generated from queues on State Road.

Holly Stephenson noted that the traffic study is based on the third lane, and should be compared to a possible project if someone else purchases the property and doesn't donate the extra land. It could be an improvement because Elio is willing to work with the Town.

Doug Sederholm said the question is if there is anyone on the Commission that needs any other information in order to go forward and make a decision by next Thursday. We could have a LUPC meeting on Monday and vote on Thursday at the MVC meeting. The consensus is that we can move forward.

Elio Silva commented that the main issue with a comparison of the two projects is the size of the lots and the traffic generated. He has time constraints that were not determined by him.

Doug Sederholm closed the Public Hearing and left the written record open until May 2, 2011 at noon for written offers and written comments from the public.

Doug Sederholm recessed the meeting for ten minutes.

5. NEW BUSINESS CONTINUED

Doug Sederholm noted that Bill Bennett sent an email to the MVC Chairman and asked that the MVC discuss it. Chris Murphy responded directly to Bill Bennett and suggested that the two questions be discussed now.

LUPC's Role in Approving the Scope of Traffic Studies

The first question dealt with LUPC's determination of the scope of the Ocean Club traffic study and the possibility that the full Commission change that determination.

Linda Sibley addressed the question.

- LUPC generally makes recommendations to the full Commission. However, there are two circumstances when the LUPC has the authority to make a decision on its own, namely:
 - Approving the scope of a traffic study, as specified in the Commission's regulations, and
 - When the authority has been delegated to LUPC in a DRI decision, such as reviewing a landscaping or lighting plan.
- It is not her position that a decision by the LUPC is unassailable by the broader Commission; but when a board has delegated a particular decision to a sub-committee she thinks it is good policy to avoid second guessing it.

- As a matter of process the LUPC spends 30 to 60 minutes reviewing the traffic scope with staff and the applicant, and then deciding what the traffic scope should be. If the full Commission wanted to overrule something like that, then the same amount of time should be spent doing so.
- If we don't want to delegate to LUPC and honor its decision, then we should change our policy because if we were to deviate from our voted regulations, then anyone who disagrees with a decision would have a basis for appeal to the court because we were not following our regulations.

Doug Sederholm said that as a matter of process, it would be rare that the Commission would be in a position to reconsider the LUPC decision on a traffic study. An applicant should not normally proceed to a public hearing until the traffic study has been completed. He thinks that it would be a bad precedent for the Commission to change LUPC's decision on the traffic scope, but he thinks the Commission could do it.

There was a discussion of the quorum required to make a decision.

- **Bill Bennett** asked what quorum is required at LUPC.
- **Doug Sederholm** said there is no specific quorum.
- **Bill Bennett** replied that theoretically, one person at LUPC could make a decision that is unassailable. The decision of LUPC can be considered and voted on by the full Commission in any circumstance.
- **Linda Sibley** noted that in this particular case she believes there was a quorum of the Commissioners at LUPC.
- **Bill Bennett** said that he does not have a problem with that decision, but was concerned that one active LUPC member could have the ability to make decision that the entire Commission has to follow.
- **Doug Sederholm** agreed that it would not be desirable to have such a decision made by a tiny group, but there were nine people at LUPC when it made a decision about the Ocean Club Traffic Study. The applicants had made a passionate plea that they didn't need to have a traffic study.
- **Leonard Jason** noted that twenty years ago so did Sam Sherman and the LUPC listened to Sam and Sam brought his argument to the full Commission on that same building and waived the traffic study.
- **Linda Sibley** noted that LUPC usually does not take action when there are only two or three people. But it is possible, so maybe LUPC should have a quorum. If the applicant wants to challenge it, it should be on the agenda.
- **Doug Sederholm** said that perhaps the Commission might consider, at a later time, requiring that LUPC set a quorum when it is making a decision about traffic studies and landscaping.

Linda Sibley stated that there is a voted regulation of how we handle DRIs.

Christina Brown asked what the process should be. The regulations could be clarified as to the possibility of revisiting an LUPC decision.

Ned Orleans noted that any Commissioner can be part of the LUPC meeting. If we are going to require a quorum, then in fairness to the applicant, we should appoint a number of Commissioners LUPC to be able to vote, so we don't end up with the embarrassing position of the applicant ready to go and there are not enough Commissioners.

Leonard Jason said that we use to have assigned sub committees. He thinks the applicant should have the right if they don't want a traffic study to bring it to the entire Commission, but the applicant would run the risk of delay.

Doug Sederholm said this is a complex issue with arguments on both sides.

Erik Hammarlund said he imagines that the Commission would rarely overturn the decision of LUPC. We should first see whether there is a consensus as to whether there should be a process for appealing an LUPC decision. If so, then we could change the regulation.

Doug Sederholm stated that when the Chairman returns, he might decide to revisit this issue.

Linda Sibley said she thinks the reason the Commission voted to delegate the approval of the traffic scope to LUPC so the process could move along.

Staff Opinions during Commission Discussions

The question is whether staff should voice their opinion during Commission discussions and deliberations. Bill Bennett said that although the Executive Director has a seat at the Commissioners' table, he is present to address clarifications, staff support, and remind us of our required duties.

Doug Sederholm said that everyone on the Commission, including the Executive Director, agrees that he does not have the privileges of a Commissioner. There is a distinction between input by the Executive Director during deliberation and decision and other situations such as a public hearing.

Holly Stephenson said that if you want opinions on planning issues, traffic, water quality, etc., there are only a few people on the Island that are professionals in those fields. If they have something to say that they think the Commissioners have not thought of, she wants them to tell us what we are not seeing. The staff should express its opinions on planning issues.

Doug Sederholm noted that is fine except during deliberation and decision, which is the Commissioners responsibility.

Bill Bennett said the precedent on the Cape Cod Commission is that the Executive Director does not sit among the Commissioners. He thinks it is inappropriate that we have a director or staff member that becomes part of our deliberation or decision discussions.

Erik Hammarlund said if someone could influence the discussion or his decision by giving relevant information, that is a good thing.

Brian Smith noted that a lot of this issue could go away if staff directed their questions or insight to the Chairman rather than the applicant.

Doug Sederholm said that we need to keep in mind that there is a lot of interaction between the applicant and staff before and after the public hearing, but it is a good point.

Bill Bennett said that he sat before the Commission as an applicant and it was not clear what power the Executive Director had. When the Director brought up issues, he thought as an applicant, that he had to address them and change his application. It is inappropriate to have someone in front of you as part of a board that doesn't vote.

Linda Sibley thinks it is all in the context. She thought he brought this up as part of discussion about the possibility of changing the LUPC decision about the Ocean Club. Mark made the staff presentation of the traffic scope and the arguments. This is what happens at LUPC. The staff brings us the traffic scope and explains it to us. What he was doing was trying to supply the information that would have been supplied to LUPC. She agrees that we should be careful in other contexts about staff expressing their opinions.

Bill Bennett said when someone from the Commissioners express their opinions, it has a lot more weight to the applicant. That is the issue, undue influence on policy. That is why the Cape Cod Commission does what it does.

Leonard Jason said perhaps we can learn from them, there is nothing wrong with staff remaining silent unless asked a question. It is important that they be there. Staff should be talking with the applicant prior to LUPC so the issues can be resolved.

Holly Stephenson would not like to see staff speaking only when spoken to. That is very inhibiting. They are the professionals and they have the information. **Leonard Jason** said that is why we have staff reports.

Holly Stephenson said it should be made clear to the applicant that whatever is said, whether by staff or the Commissioners, does not mean they have to change their plans. It is a factor to be taken into consideration.

Christina Brown said the Commissioners should make it clear to the applicants and take the responsibility ourselves.

Doug Sederholm said perhaps it is the responsibility of each Chairman to be sure that the applicant and the public is aware.

Ned Orleans asked Bill where he got the information that most applicants feel this way. **Bill Bennett** said it is from his personal experience and he runs into applicants all the time and they tell him this.

Bill Bennett said the issue is who dictates policy, staff or the Commissioners. He wondered whether it would be better if the Executive Director sat at the side.

Brian Smith replied that he does not think that anyone is suggesting that staff's opinions and experience are not valuable to Commissioners. I just think that if you position staff where they are not confronting the applicant, it is more comfortable.

Ned Orleans said we can agree that the message we want to get across is that no single individual at this table makes a decision that should make an applicant change his application. The decision is the decision of the full Commission.

Mark London stated that when he first started working at the MVC he sat at the side. Then he attended several Cape Cod Commission meetings and noted that the Executive Director sat next to the Chairman and they were able to discuss procedural and administrative matters. He discussed this with the MVC Chairman who said it made a lot of sense and asked him to do the same. There is a new Executive Director at the Cape Cod Commission so maybe they do it differently now.

Linda Sibley said that having chaired the Commission and LUPC, it is helpful to be able to consult with the Executive Director.

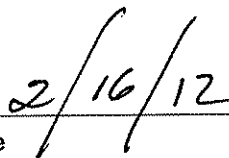
Doug Sederholm agreed with Linda and found Mark's assistance during the meeting very helpful.


The meeting was adjourned at 10:15 p.m.


DOCUMENTS REFERRED TO DURING THE MEETING

- The Martha's Vineyard Commission – DRI # 631 Tisbury Farm Market – MVC Staff Report - Updated 2011-04-27
- Transportation Impact Assessment – Tisbury Farm Market Consolidation, State Road, Tisbury Massachusetts – DRI No.631 – Prepared for Martha's Vineyard Commission by C3 Consulting Group – April 27, 2011
- DRI 631 Tisbury Farm Market Proposed Site Plans


Chairman


Date


Clerk-Treasurer


Date