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Minutes of the Commission Meeting Held on March 22, 2012 In the Stone Building 33 New York Avenue, Oak Bluffs, MA

IN ATTENDANCE

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

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

Staff: Mark London (Executive Director), Bill Veno (Senior Planner), Paul Foley (DRI Planner), Jo-Ann Taylor (Coastal Planner DCPC Coordinator)

Chairman Chris Murphy called the meeting to order at 7:10 p.m.

1. MEETING MINUTES

Commissioners Present: B. Bennett, C. Brown, P. Cabana, E. Hammarlund, F. Hancock, J. Joyce, C. Murphy, K. Newman, C. Rose, D. Sederholm, L. Sibley, B. Smith.

Minutes of March 8, 2012

Fred Hancock moved and it was duly seconded to approve the minutes of March 8, 2012 as written. Voice vote. In favor: 10. Opposed: 0. Abstentions: 2. The motion passed.

2. REQUEST FROM M.V. MUSEUM FOR LETTER OF SUPPORT TO MA. CULTURAL COUNCIL

Commissioners Present: B. Bennett, C. Brown, P. Cabana, E. Hammarlund, F. Hancock, J. Joyce, C. Murphy, K. Newman, C. Rose, D. Sederholm, L. Sibley, B. Smith.

The Martha's Vineyard Museum has asked the MVC for a letter of support to be sent to the Massachusetts Cultural Council. The Commission agreed to have the Executive Director write such a letter but it will be limited in scope as the project still has to be reviewed by the MVC as a DRI.

3. AQUINNAH – DCPC – CONFORMANCE OF PROPOSED AMENDMENTS TO REGULATIONS – PUBLIC HEARING

Commissioners Present: B. Bennett, C. Brown, P. Cabana, E. Hammarlund, F. Hancock, J. Joyce, C. Murphy, K. Newman, C. Rose, D. Sederholm, L. Sibley, B. Smith.

For the Town of Aquinnah: Peter Temple (Chairman of the Aquinnah Planning Board Committee), Sarah Thulin (Member of the Aquinnah Planning Board Committee)

Chris Murphy, Hearing Officer opened the Public Hearing at 7:15 p.m. and read the public hearing notice. The purpose of the hearing is to review the conformance of the proposed regulations to the Goals and Guidelines in the Commission's Decisions designating the Town of Aquinnah District, Coastal District, Moshup Trail District and the Gay Head Cliff Area District. He said that he intends to hold the public record open until April 2, 2012, 5:00 p.m.

2.1 Staff Report

Jo-Ann Taylor gave the Staff Report:

- The Aquinnah zoning by-laws were set up to be user friendly. The first part includes the basics of the underlying zoning standards, with reference to specific District of Critical Planning Concerns (DCPC) standards. The intention is for the user to find the right standard in the first part, including Articles 1-7 and in the Town of Aquinnah District Article 13. Articles 10-15 include the DCPCs themselves, including The Town of Aquinnah District in Article 13. The Town of Aquinnah District (Article 13) is akin to a permitting umbrella with the underlying zoning and other DCPCs intact within. This setup simplifies use, but complicates amendment.
- The conformance hearing is to find conformance where these amendments reference the districts; The Town of Aquinnah District, Coastal District, Moshup Trail District and the Gay Head Cliff Area District.
- The major points of amendment are to introduce grandfathering provisions to the DCPCs, to introduce zoning determination for small scale projects to not require Special Permits and to vary dimensional and other requirements for municipal lots.
- In the past where grandfathering has been introduced the grandfathering is specific to the designation of that DCPC and the time frame. For the proposal, there is no datelisted, so clarification of when grandfathering starts is needed.
- The Commission hears and considers proposed amendments to regulations in the same manner as the original regulations. After a public hearing, the Commission votes on whether or not the proposed regulations conform or do not conform to the Guidelines for Development specified in the Commissions' Designations of the districts.
- The Commission's conformance public hearing and vote are requisite for the amended regulations to become effective after two thirds vote at the Aquinnah Town Meeting on May 10, 2012. The Planning Board's public hearing was scheduled for March 20, 2012.
- After notice and a public hearing, the MVC may permit a town to adopt regulations which are less restrictive than the Guidelines if the Commission finds that such regulations will carry out the purpose of the Act and intent of the Guidelines for the District(s); The Town of Aquinnah District, Coastal District, Gay Head Cliff Area District.

Doug Sederholm asked if this has to be approved tonight. **Jo-Ann Taylor** replied that a vote is needed by April 5, 2012 so that Aquinnah can go to Town Meeting. She also noted that the MVC will not be discussing the proposed amendments to the Island Road District regulations, which were not included in the Public Hearing notice.

2.2 Testimony from Public Officials

Peter Temple and **Sarah Thulin** presented the proposal.

- In order to simplify the discussion it will be helpful if we refer to the line numbers of the document, Conformance of Proposed Amended Regulations.
- April 5, 2012 is the last day to make the warrant for town meeting.
- The Commission has not received any public communication.

- There are no changes to the regulations that affect new development, the proposed amendments just deal with pre-existing non-conforming structures.
- A 200 foot frontage requirement was put into the Aquinnah DCPC.
- The Planning Board was advised by the Aquinnah Board of Selectmen that they should not approve any Special Permits for pre-existing non-conforming structures or lots with 200 feet of frontage until the Commission approved the proposed amendments. So, no permits have been issued since December 2011.
- Municipal lots need to be addressed to legitimize existing structures. They would like to issue permits that have been requested that they feel are appropriate but cannot since they do not comply.
- They want to simplify and speed up the process for applicants for small scale projects. It does not relax the guidelines. It has a tougher approval standard as you need unanimous approval of the Board. They also need to address housekeeping issues such as typos.
- They also want to eliminate the impact fee which has an escalating building permit fee. The MVC approved the by-law but it was never implemented on the advice of Counsel, as it was inappropriate in its fee structure.
- Based on how they have setup the Guidelines, if you make a change in the DCPC, you need to make a change in the summary.
- In order to have waiver capability it must be in all the DCPCs.
- They want to amend the setbacks and the following provides examples of why they need to do so;
 - Thirty feet from any lot line: this is needed more often in the Town of Aquinnah District rather than for the Cliffs District or Moshup Trail District.
 - One hundred and fifty feet from Moshup Trail; several homes plus municipal buildings apply here. As an example if a home burns down they currently cannot rebuild. The 150 feet is not in the MVC Guidelines for the District. The Aquinnah Zoning By-Law reads as follows: "accessory structures and additions to pre-existing structures shall conform in materials, scale and proportion to the principal structure. In cases where pre-existing structures are compatible with the requirements for new construction, accessory structures shall conform to the requirements for new construction. All structures shall be set back at least 150 feet from Moshup Trail."
 - One hundred fifty feet from the crest of bluffs or cliffs in the Gay Head Cliff Area DCPC; this basically deals with the shops at the cliffs. The Town has two available spaces to be built on and they can't due to the current regulation.
 - One hundred feet from wetlands, water bodies, beaches, dunes or the crest of bluffs over 15 feet high in the Coastal District, except for fishing related marine commercial structures; needed to allow hand railings on boardwalks or could have new municipal structures.

Doug Sederholm noted that additional clarification may be needed.

Chris Murphy stated that the purpose of this discussion is to see if these amendments conform to the MVC guidelines.

Mark London suggested that the Commission may want to have Counsel help us to interpret this.

Doug Sederholm noted that the Aquinnah Planning Board will still control what is being built but the amendments will allow it to be built.

Christina Brown asked if line 235, "The Planning Board Review Committee shall have the authority to modify or vary these dimensional requirements" refers only to items on number 18 of the Proposed Amended Regulations. **Peter Temple** confirmed that it did.

Chris Murphy noted that what is not mentioned is when you need public access and want a boardwalk, such as the Land Bank property, you would not be able to do so. **Peter Temple** said that the Land Bank said that their land is considered municipal.

Peter Temple noted that the Aquinnah Library is within 20 feet of the center line of Old Church Street which is a Special Way and just wanted to note that this will need to be discussed at a later time.

Erik Hammarlund said it appears that the regulations are written with broad ranging exceptions and asked why not be specific to certain needs such as the library and the boardwalk. **Peter Temple** said that in the case of the library, the amended guidelines would be for pre-existing structures but not allowed for new structures.

Fred Hancock noted that he is a little bit confused about the amendment for Special Ways and asked if you wouldn't have to amend the Special Ways District. **Peter Temple** said that is correct, but because it is not in this hearing it would be addressed at a later time.

Mark London noted that when an entity writes a regulation to meet certain objectives, it is useful to then play skeptic to see what is the worst that someone could do that might contravene the objectives. He suggested that the Town review the amendments in this way.

Peter Temple noted that on page 2 of the proposed amendments, item 3, the language regarding pre-existing, non-conforming structures and uses would be incorporated in all of the DCPCs. **Christina Brown** said that two years is usually used in local zoning for item C. **Peter Temple** said that they used five years in their zoning as a building permit could take one year to be issued in Aquinnah.

Erik Hammarlund asked if section 13.4-11 is just for the Town-wide DCPC. **Peter Temple** confirmed it is.

Erik Hammarlund questioned the language on page 2, Section 13.4-11 (Pre-existing, non-conforming Structures and Uses) and asked if the language should be revised on line 46 and 47. **Peter Temple** noted that on the smaller lots we have a lot of wetlands and they have been advised to use this language.

Peter Temple continued with his presentation:

- The Planning Board Plan Review Committee shall have the authority to modify or vary the dimensional requirements of this By-law by Special Permit for the reconstruction, extension or alteration of pre-existing non-conforming structures situated on lots containing less than the minimum frontage required by Section 13.4-10(A) and 3.7-1(A).
- If a house is existing and someone wants to expand or modify, we can vary and deal with the fact that it does not have 200 feet of frontage.
- We have been approving homes with lots with less than 200 feet of frontage and they were not contested, but we have been advised that the regulation needs to be revised.
- Our wording may create concerns with the MVC that we are giving more leeway, so we are open to tightening that language if needed.
- The wording of section 13.4-1 Zoning Determination was reviewed as well as where this section was referenced on line 48.

Jo-Ann Taylor noted that regarding Zoning Determination, last year it was proposed to the MVC, but was withdrawn and not heard by the Commission. It was voted on by the Town of Aquinnah under regular zoning, Section 6 and sent to the Attorney General and it has not yet been approved. The 200 foot frontage was approved by the MVC. **Peter Temple** noted that to be helpful, it needs to be in the DCPC.

Doug Sederholm noted that once it is in the DCPC, it does not need approval by the Attorney General, in contrast to the amendment voted to Section 6 in regular Zoning.

Bill Veno said that non-conforming uses or structures are things that you do not want to see any more of in the district, so one would have to go through more hurdles to expand them. Does the town have guidelines

for deciding to allow such expansions? **Peter Temple** gave an example; a camp style home wants to winterize and is 15 feet from the setback, it is not imposing and not detrimental to neighbors so we would approve it.

2.2 Commissioners Discussion

Doug Sederholm said his understanding of the Zoning Determination is that you would give direct notice to an abutter but would be via a public hearing. **Peter Temple** said it would be a public meeting not a hearing and notice would be posted two weeks prior and this would be for very small projects.

Doug Sederholm asked what is the Planning Board Review Committee versus the Planning Board. **Peter Temple** said the Committee is made up of the Planning Board plus one member of the Board of Selectmen and one member of the Conservation Commission and there has to be a quorum of five.

Sarah Thulin noted that the Zoning Determinations happen almost never so the issue has been very minor.

Mark London asked that any additional questions or concerns be sent to Peter Temple by Thursday, March 29, 2012.

Chris Murphy, Hearing Officer closed the Public Hearing for oral testimony at 8:35 p.m. and will keep the hearing open for written testimony until April 2, 2012, 5:00 p.m.

Chris Murphy recessed the meeting at 8:40 p.m. and reconvened at 8:45 p.m.

4. TOWN PROVISIONS – CONTINUATION OF PUBLIC HEARING

Commissioners Present: B. Bennett, C. Brown, P. Cabana, E. Hammarlund, F. Hancock, J. Joyce, C. Murphy, K. Newman, C. Rose, D. Sederholm, L. Sibley, B. Smith.

Doug Sederholm, Hearing Officer reconvened the Public Hearing at 8:45 p.m. to allow the Town Boards an opportunity to express their opinions regarding this application. Correspondence was received from the Edgartown Planning Board and a memo from Mark London, Executive Director of the MVC, Town Provisions – Relation to Town and Regional Plans and Policies. The Hearing Officer has reviewed the correspondence and does not believe that we need any further testimony and the correspondence can be addressed during deliberation. The Public Hearing was closed at 8:50 p.m.

5. NEW BUSINESS

Commissioners Present: B. Bennett, C. Brown, P. Cabana, E. Hammarlund, F. Hancock, J. Joyce, C. Murphy, K. Newman, C. Rose, D. Sederholm, L. Sibley, B. Smith.

5.1 Executive Director Report

Mark London gave the report:

- The Pre-Disaster Mitigation Planning Award will allow the Commission to enlarge the scope of the first plan and keeps the Towns eligible for grants. The award will be used to update the Pre-Disaster Mitigation Plans for the Martha's Vineyard towns and Gosnold.
- The Affordable Housing Needs Assessment was approved by all six towns and at the April 4, 2012 meeting we will finish the scope of services.
- The opinion from the Ethics Commission was reviewed. Their decision was that we should not use the Rule of Necessity as it should be the last resort. Therefore, we are using the appointed

Commissioners and the one elected Commissioner that is not a member of Vineyard Power. We have questioned if this is an imbalance as only one elected member is allowed to participate and that is not how the MVC is setup. The conclusion is that we will proceed in this case, since the application has been held up, but we will discuss again with the Ethics Commission for future issues.

5.2 Meeting Schedule

Chris Murphy asked which Commissioners can attend the next meetings on March 27, 2012 and March 28, 2012. Public notice was published for March 27, 2012 but we will not have a quorum, so the proposal is to have a meeting with a quorum and continue without Public Testimony on March 28, 2012.

Christina Brown had a procedural question. After the close of a Public Hearing it goes to LUPC and then back to the full Commission. **Doug Sederholm** noted that usually it will go back to LUPC by motion, but it can skip LUPC. A vote is needed to go directly to deliberation.

Bill Bennett, Erik Hammarlund and Linda Sibley excused themselves from the meeting.

6. TISBURY FARM MARKET (DRI 631-M) WRITTEN DECISION

Commissioners Present: C. Brown, P. Cabana, F. Hancock, J. Joyce, C. Murphy, K. Newman, C. Rose, D. Sederholm, B. Smith.

6.1 Staff Report

Paul Foley gave the Staff Report:

- The plans for the written decision have been added.
- Conditions are listed in Section 5 and the additional offers are listed in Section 11.

6.2 Commissioners Discussion

Peter Cabana asked if more parking spaces weren't listed on line 279. **Chris Murphy** noted that what is listed is what the applicant offered the Commission.

Paul Foley said the new offers are in Section 11 including the offer to provide 50,000 kwh of solar powered electricity. **Brian Smith** asked if he offered or did he say he would try to provide. **Doug Sederholm** said that he would provide and Paul Foley confirmed that it is in Section 11.4.

Fred Hancock asked if what the Applicant submitted is the final site plan. **Paul Foley** showed the site plan and confirmed that it was.

Mark London noted that the Applicant would be back with a detailed parking and landscape plan.

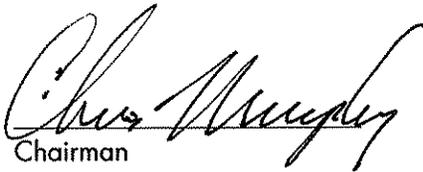
Doug Sederholm moved and it was duly seconded to approve the plan as presented. Roll call vote. In favor: D. Sederholm, B. Smith, C. Murphy, C. Brown, P. Cabana, K. Newman. Opposed: F. Hancock. Abstentions: none. The motion passed.

The meeting was adjourned at 9:00 p.m.

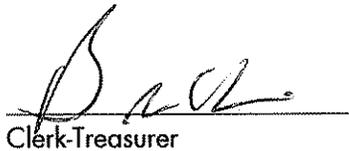
DOCUMENTS REFERRED TO DURING THE MEETING

- Minutes of the Commission Meeting-Draft; March 8, 2012

- DCPCs in the Town of Aquinnah; Town of Aquinnah District, Coastal District, Moshup Trail District, and Gay Head Cliff Area District; Public Hearing March 22, 2012 7:00 p.m. – Conformance of Proposed Amended Regulations – Staff Notes March 19, 2012
- Email Correspondence from Peter Temple , Aquinnah Planning Board
- Aquinnah Zoning By-Law – Complete Version
- Decision of the Martha’s Vineyard Commission Designating the Coastal District as a District of Critical Planning Concern – December 22, 1975, July 2, 1976 Amendment
- Decision of the Martha’s Vineyard Commission Designating Town of Aquinnah as a District of Critical Planning Concern – Amended 2000
- Decision of the Martha’s Vineyard Commission Designating Gay Head Cliffs as a District of Critical Planning Concern – May 4, 1989
- Decision of the Martha’s Vineyard Commission Designating The Moshup Trail District as a District of Critical Planning Concern – June 26, 1980
- Correspondence – Town of Edgartown, The Planning Board – RE; Town Provision Company Move to Airport (B-III) Opinion provided to the Martha’s Vineyard Commission – March 21, 2012
- Memo from Jo-Ann Taylor – RE; Pre-Disaster Mitigation Planning Award – March 21, 2012
- MVC Comments on the Ethics Commission Opinion about the MVC’s Action on the Solar Panel Application by Cronig’s and Vineyard Power – includes the response from the State Ethics Commission, March 7, 2012
- Decision of the Martha’s Vineyard Commission – DRI 631-M – Tisbury Farm Market Expansion Draft


Chairman

6/7/12
Date


Clerk-Treasurer

6-6-12
Date