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Minutes of the Commission Meeting Held on August 2, 2012 In the Stone Building 33 New York Avenue, Oak Bluffs, MA

IN ATTENDANCE

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

P John Breckenridge (E-Oak Bluffs)

P Chris Murphy (E-Chilmark)

P Christina Brown (E-Edgartown)

P Katherine Newman (E-Aquinnah)

- Peter Cabana (E-Tisbury)

- Ned Orleans (A-Tisbury)

P Tim Carroll (A-Chilmark)

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)

- Brian Smith (A-West Tisbury)

- Leonard Jason (A-County)

P Holly Stephenson (E-Tisbury)

- James Joyce (A-Edgartown)

Staff: Bill Veno (Senior Planner), Paul Foley (DRI Planner)

Chairman Chris Murphy called the meeting to order at 7:00 p.m.

1. MINUTES

Commissioners Present: J. Breckenridge, C. Brown, T. Carroll, E. Hammarlund, F. Hancock, C. Murphy, K. Newman, C. Rose, D. Sederholm, L. Sibley, H. Stephenson.

Tim Carroll moved and it was duly seconded to approve the minutes of July 12, 2012 as written. Voice vote. In Favor: 11. Opposed: 0. Abstentions: 0. The motion passed.

2. MVTV TEMPORARY DRIVE (DRI 635-M2) MODIFICATION REVIEW

Commissioners Present: J. Breckenridge, C. Brown, T. Carroll, E. Hammarlund, F. Hancock, C. Murphy, K. Newman, C. Rose, D. Sederholm, L. Sibley, H. Stephenson.

For The Applicant: Anne Lemenager (Chairman, MVTV Board of Directors), Stephen Warriner (Executive Director, MVTV)

2.1 Applicants' Presentation

Anne Lemenager presented the following:

- MVTV is requesting a temporary curb cut to access the property on 58 Vineyard Haven Edgartown Road so that they may start construction.
- They sent a letter to the MVC on August 2, 2012 to request the temporary access.

- The Oak Bluffs Building Inspector is ready to give them their building permit now.
- The entire project is being held up as they have not had any response from the World Revival Church for the easement.
- They have time constraints and need the access very soon. The timeline they have from the contractor is eight months and their lease with the school is up next spring.
- They have been relentlessly communicating with the Church and have received no response.

2.2 Commissioners Discussion

Katharine Newman asked MVTV for a legal update. **Stephen Warriner** said they have had no contact with the Church. Their attorney has reached out to the church's attorney and has had no response.

Doug Sederholm asked if the MVC communicated with the Church's attorney. **Paul Foley** said that early last week, the MVC sent a letter to the church by email and via the USPS to the local World Revival Church as well as their Framingham, Massachusetts location.

Erik Hammarlund thought that perhaps the MVC should issue a Certificate of Non-compliance to the church as that could be quite effective. **Doug Sederholm** asked what that would actually do. **Erik Hammarlund** said it is the first step before a lawsuit.

Linda Sibley stated that she appreciates what MVTV has done to preserve as many trees as possible but thought the purpose of asking the church for the access was to preserve the streetscape. She suggested that the MVC ask its attorney to get an immediate injunction to give MVTV access now for the purpose of construction. **Doug Sederholm** noted that if worded correctly it could also be at the cost of the Church.

Camille Rose said that given the complexity of these types of lawsuits, it could get stalled. She thinks the MVC should do something tonight to permit the access. She understands that will change the streetscape.

Christina Brown agrees with Camille Rose and noted that MVTV has contractors waiting and we do not want to hold things up in court. She suggested that the Commission allow MVTV to put the road in with someone from the MVC to oversee the best preservation of the trees and to also add to the legal statements that the Church is to replace landscaping as necessitated at their expense.

John Breckenridge noted that there was a District of Critical Planning Concern (DCPC) with the Island Road District and there is a process to appeal and permit this additional access.

Christina Brown said that she believes that on any single property everyone has the right to one curb cut.

Erik Hammarlund said that he understands that there is urgency, but suddenly the Commission wants action in a fashion that we never do. If the Commission issues a Certificate of Non-compliance and then files suit the next week, it has a window for a response. He suggests delaying the suit for two weeks to see if there is a response from the church but to also give MVTV permission in advance.

Anne Lemenager noted that MVTV was here six weeks ago and things have come to a halt.

Doug Sederholm asked why it was only last week that the MVC wrote to the Church, why wasn't it a month ago.

Linda Sibley noted that once the temporary access is done it will be difficult to enforce the original access. Why can't our attorney be in court next Monday to ask for immediate action?

Doug Sederholm said it is doable, but we would have to show irreparable harm if action is not taken.

Erik Hammarlund said he would like to try and see what our attorney can do.

Chris Murphy said that we could also ask the Oak Bluffs Building Inspector to pull the Certificate of Occupancy for the Church. He suggested that the Commissioners talk about the best way to do it if a temporary road would need to be cut through.

Linda Sibley said she has viewed the site and it will have an effect on the streetscape.

Chris Murphy said that if the Commissioners are comfortable with the location of the proposal, we need a motion to approve and then a separate motion for any further action.

Erik Hammarlund asked if MVTV can live with a one week delay. **Anne Lemenager** said that they prefer this not drag out. They did not anticipate this to be the political ping pong ball that it is. They are going to be their neighbors and they need to be compatible with the people they will be working with over the long term. How anything is worked out is of particular concern. Yes, they can wait one week.

Erik Hammarlund moved to approve the proposal as submitted but no cutting until August 10, 2012.

- **Doug Sederholm** disagrees and thinks it is the main church in Framingham that may be causing the issue.
- **Christina Brown** clarified that it would be the MVC that takes on the World Revival Church and not MVTV. There are three issues for argument; the Island Road District, the scenic roadside, and traffic by having multiple curb cuts on a busy road.
- **Camille Rose** asked if the descriptive word "temporary" could be added to the proposal. **Chris Murphy** noted that it is already there.
- **Erik Hammarlund** said he is thinking of withdrawing his motion as perhaps it should be re-worded to approve pending the MVC Executive Committee having discussed it with counsel.
- **Christina Brown** asked if the MVC is meeting next week. **Chris Murphy** said no, but if the Commissioners are willing to meet, if necessary, we could come back to discuss.
- **Katherine Newman** asked if the letter that the MVC sent to the Church was a demand or a suggestion. **Paul Foley** read the letter dated July 26, 2012.
- **Erik Hammarlund** suggested that the MVC meets next week. **Chris Murphy** asked why he was suggesting that and whether he was withdrawing your motion.

Erik Hammarlund withdrew his motion and it was duly seconded by Camille Rose.

Chris Murphy noted that the Compliance Committee should move forward.

Doug Sederholm moved and it was duly seconded authorizing the Chairman of the Compliance Committee to take whatever steps are necessary including a

Certificate of Non-compliance, notifying the Oak Bluffs Building Inspector to pull the Certificate of Occupancy and to contact the MVC counsel to take action as necessary.

- **Fred Hancock** asked why not vote that they are not in compliance.

Doug Sederholm moved and it was duly seconded to find the World Revival Church to be non-compliant with the approval decision due to the failure of providing the easement. Voice vote. In favor: 11. Opposed: 0. Abstentions: 0. The motion passed.

- **Doug Sederholm** said that we should authorize the Chairman of the Compliance Committee to have the Certificate of Non-compliance recorded with our counsel, putting the maximum amount of pressure to have the Church comply and to urge the Oak Bluffs Building Inspector to rescind the Certificate Of Occupancy if the World Revival Church does not show good faith to comply.
- **Christina Brown** said that she prefers that the Church get the easement signed now.
- **Doug Sederholm** said that he hates to burden the local congregation due to the failure of the main organization.
- **Linda Sibley** said that the Commission should allow the Chairman of the Compliance Committee to have the ability to do two actions; pull the Certificate of Occupancy and direct legal action by our counsel if necessary.
- **Erik Hammarlund** said the Commission is voting there is non-compliance but how much time we give them depends on the response by their counsel. The Commission should leave the discretion of when the action will occur to the Chairman of the Compliance Committee and Commission counsel.
- **Chris Murphy** suggested having compliance by Tuesday, August 7, 2012 at 5:00 p.m.

Voice vote on the earlier motion authorizing the Chairman of the Compliance Committee to take whatever steps are necessary including a Certificate of Non-compliance, notifying the Oak Bluffs Building Inspector to pull the Certificate of Occupancy and to contact the MVC counsel to take action as necessary. Voice vote. In favor: 11. Opposed: 0. Abstentions: 0. The motion passed.

Chris Murphy asked how many Commissioners could be available for a MVC meeting on Thursday, August 9, 2012 to resolve the issue if needed. Enough Commissioners for a quorum are available.

3. KATAMA HANGER (DRI-624) EXTENSION REQUEST

Commissioners Present: J. Breckenridge, C. Brown, T. Carroll, E. Hammarlund, F. Hancock, C. Murphy, K. Newman, C. Rose, D. Sederholm, L. Sibley, H. Stephenson.

Christina Brown moved and it was duly seconded to approve the Katama Hanger extension. Roll call vote. In favor: J. Breckenridge, T. Carroll, E. Hammarlund, F. Hancock, C. Murphy, K. Newman, C. Rose, D. Sederholm, L. Sibley, H. Stephenson, C. Brown. Opposed: none. Abstentions: none. The motion passed.

Erik Hammarlund excused himself from the meeting.

4. LEAF/MIXED USE – EDGARTOWN (DRI-637-2) CONTINUED PUBLIC HEARING

Commissioners Present: J. Breckenridge, C. Brown, T. Carroll, E. Hammarlund, F. Hancock, C. Murphy, K. Newman, C. Rose, D. Sederholm, L. Sibley, H. Stephenson.

For the Applicant: Doug Hoehn (Engineer), Chuck Sullivan (Architect)

Doug Sederholm, Public Hearing Officer opened the Public Hearing at 7:40 p.m. and noted that the public hearing was continued so the Applicant would have time to discuss the proposal with the Edgartown Planning Board and that the Edgartown Planning Board has the opportunity to comment.

4.1 Applicants' Presentation

Doug Hoehn said that they met with the Edgartown Planning Board to explain the revisions. They received mostly positive feedback.

4.2 Testimony from Public Officials

Robert Sparks of the Edgartown Planning Board said that they had a positive meeting with the Applicant. They are very pleased with the changes and revisions, especially the turning of the building so that the building is 38 feet on Main Street. They all agreed on the traffic access issues. The Planning Board is following up on another plan that would allow everyone to go straight out and it is no longer an issue for them. They are pleased with all of the revisions and there are no large issues left. One unresolved issue is the common space that is left and they asked to see that on the plan.

Doug Sederholm asked if the Planning Board is comfortable with the setback for the location.

Robert Sparks said it falls almost in the middle of the setback regulations at 31 feet so there are no objections.

Michael McCourt of the Edgartown Planning Board said the revised plan is very workable. It doesn't really matter to the project if the access road runs across the back, it might be a better plan if it goes straight out to the parking lot but Stuart Fuller may have some issues with that.

Doug Sederholm asked if the Planning Board would be okay if the MVC approved it either way so that the Applicant did not have to come back. **Michael McCourt** said yes.

Doug Hoehn said that Paul Foley should have received an email today from Georgiana Greenough regarding the access road revision. They may have to put in a retaining wall but it is not an issue. **Doug Sederholm** noted that from the Applicants' view it is less expensive to go straight out, but they could leave it up to them. He asked if the Applicant could live with it either way. **Doug Hoehn** said yes they could.

4.3 Public Testimony

Sylvia Thomas has a problem with the size of the building. It is too high. She is confused as to why there has to be so many farmers porches; it does not do anything for the building and makes it overloaded. Regardless of what happens on Upper Main Street, the town will be sorry as we have a gridlock at the Triangle. It will back it up worse to get out of Dark Woods Road. Arthur Smith hit it right on the nose. If you are going to the Post Office from Vineyard Haven you can cut

through and go out on Dark Woods Road to avoid the Triangle. It will be total gridlock. The whole business is too big. She feels sorry for the neighbors. The road in the back will be trouble. She looked at the map and it will be ten feet and all of the trees behind Mrs. Mahoney's yard will be affected and it will not do anything for her. She thinks it is taking advantage for the sake of a business. She is not sure if anything can be done with Donaroma's. She came out of the Post Office and one of his trucks came zipping out onto Dark Woods Road. She called Donaroma's about it. They do this all the time. Where the pizza place is, the cars come out and look at you as if you are stupid for driving cautiously. Another time a gentleman was there with his children on bikes and coming against traffic. It is her belief that if someone gets hurt on the bypass road the Town will get sued. It is putting too much traffic in that area.

Sylvia Thomas asked what the access to the basement is. **Doug Sederholm** said it is via internal stairs.

Sylvia Thomas also asked why there are so many farmers' porches. **Doug Sederholm** said the applicant will address that.

4.4 Applicants' Comments

Doug Hoehn said that they have presented everything to the MVC.

Chuck Sullivan addressed the porches. They break down the scale of the building and provide handicap access into the building. By adding the cover it makes it more comfortable in inclement weather and prevents wet surfaces. It provides a safety factor.

Doug Sederholm asked if both porches allow for handicap access. **Chuck Sullivan** said yes.

Christina Brown asked where the handicap parking spaces are located. **Chuck Sullivan** said they are in the back. The porch on the side can be accessed from the back and there is a walkway to access the front porch. You need two accessible exits from each unit. The front porch provides handicap and emergency exits.

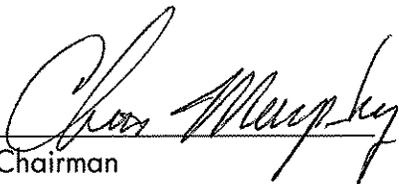
Doug Sederholm closed the Public Hearing at 7:55 p.m. and asked that the offers be submitted by 5:00 p.m. on Monday August 6, 2012.

The meeting was adjourned at 8:00 p.m.

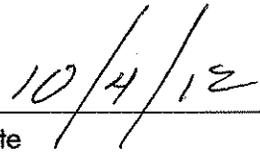
DOCUMENTS REFERRED TO DURING THE MEETING

- Minutes of the Commission Meeting – Draft - Held on July 12, 2012
- Memo to Martha's Vineyard Commission from Anne Lemenager and Stephen Warriner of MVTV, dated August 2, 2012 – Access to 58 Edgartown Vineyard Haven Road
- Site Plan for the MVTV Access Road
- Town Of Edgartown Airfield Commission Katama Airfield – Memo to Paul Received July 20, 2012, Requesting an Extension
- Edgartown Planning Board Minutes of Meeting July 24, 2012
- Email to Paul Foley Dated August 2, 2012 from Georgiana Greenough – Trolley Lot Access (Leaf Project)
- Martha's Vineyard Commission – DRI #637-2 Leaf Mixed Use – MVC Staff Report – 2012-07-12
- Correspondence to MVC from Nils and Jayne Leaf dated July 12, 2012
- Proposed Site Plan, Edgartown , MA – for Nils and Jayne Leaf

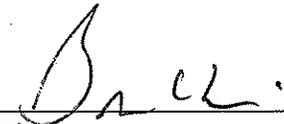
- Decision of the Martha's Vineyard Commission DRI 638- Rymes Propane – Draft
- Town of Tisbury Office of the Selectmen Memo to the Martha's Vineyard Commission c/o Chairman Chris Murphy, Regarding Rymes Propane Dated July 2, 2012
- Decision of the Martha's Vineyard Commission DRI 566-M3 – Island Fuels Expansion – Draft
- Office of Fishing and Boating Access, Memo to the Martha's Vineyard Commission, Dated June 25, 2012
- Martha's Vineyard Commission Memo to All Town Boards Date June 22, 2012 – FY 2013 Community Development Block Grant – Community Development Strategies
- Executive Office of Energy and Environmental Affairs, Office of Coastal Zone Management, Notice of Public Comment on Pending Update to Massachusetts Ocean Management Plan: Area of Concentrated Recreational Boating Activity – Environmental Monitor: July 11, 2012



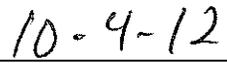
 Chairman



 Date



 Clerk-Treasurer



 Date