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**Minutes of the Commission Meeting
Held on October 24, 2013
In the Stone Building
33 New York Avenue, Oak Bluffs, MA**

IN ATTENDANCE

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

P Trip Barnes (E-Tisbury)	P Joan Malkin (A-Chilmark)
P John Breckenridge (E-Oak Bluffs)	- W. Karl McLaurin (A-Governor)
P Christina Brown (E-Edgartown)	- K. Newman (A-Aquinnah)
P Madeline Fisher (E-Edgartown)	- Ned Orleans (A-Tisbury)
P Josh Goldstein (E-Tisbury)	- Camille Rose (E-Aquinnah)
P Erik Hammarlund (E-West Tisbury)	P Doug Sederholm (E-Chilmark)
P Fred Hancock (A-Oak Bluffs)	- Linda Sibley (E-West Tisbury)
P Leonard Jason (A-County)	P Brian Smith (A-West Tisbury)
P James Joyce (A-Edgartown)	

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

Chairman Fred Hancock called the meeting to order at 7:00 p.m.

**1. NOVA VIDA/ALLIANCE CHURCH EXPANSION – OAK BLUFFS (DRI-603-M3)
CONTINUED PUBLIC HEARING**

Commissioners Present: T Barnes, J. Breckenridge, C. Brown, M. Fisher, J. Goldstein, E. Hammarlund, F. Hancock, L. Jason, J. Joyce, J. Malkin, D. Sederholm, B. Smith.

Fred Hancock Public Hearing Office opened the public hearing and continued the hearing until November 21, 2013 without taking any testimony. He noted that the November 21 hearing is scheduled to be held at the Tisbury Senior Center.

2. NEW BUSINESS

Commissioners Present: T Barnes, J. Breckenridge, C. Brown, M. Fisher, J. Goldstein, E. Hammarlund, F. Hancock, L. Jason, J. Joyce, J. Malkin, D. Sederholm, B. Smith.

2.1 Reports from Committees and/or Staff

Fred Hancock noted that the next presentation of the Creative Economy Series will be held on October 31, 2013 at 11:30 a.m. at the Harbor View Hotel. The speaker will be the Executive Director of the Creative Economy Office for the Commonwealth.

Brian Smith said the Finance Committee will meet on November 7, 2013 at 6:00 p.m. to discuss the FY2015 budget. The meeting will be held at the Tisbury Senior Center.

3. FULLER LANDSCAPING CONTAINERS (DRI-644) PUBLIC HEARING

Commissioners Present: T Barnes, J. Breckenridge, C. Brown, M. Fisher, J. Goldstein, E. Hammarlund, F. Hancock, L. Jason, J. Joyce, J. Malkin, D. Sederholm, B. Smith.

For the Applicant: Jesse Fuller, Dan Larkosh

Brian Smith, Public Hearing Officer opened the Public Hearing at 7:05 p.m. and read the public hearing notice. The location is 93 Fisher Road, West Tisbury Map 21 Lot 12.2 (1.01 acres). The proposal is to locate eight storage containers (20'Lx8'Wx8.5'H) on a property in the West Tisbury Light Industrial Zone for storage of landscape equipment and materials.

Eric Hammarlund recused himself from the public hearing.

3.1 Staff Report

Paul Foley presented the following:

- The packet of information contains a letter from Constance Breese and John Pavlik, the 2011 West Tisbury Planning Board Special Permit and the site plan.
- The proposal is to locate eight storage containers (20'Lx8'Wx8.5'H) on a property in the West Tisbury Light Industrial Zone for storage of landscape equipment and materials.
- This is a new trigger on the DRI Checklist and the MVC may want to make it a concurrence review in the future.
- The site plan was reviewed.
- The one-acre parcel was part of a three-acre lot that was subdivided in 2006 into three one-acre parcels. That division of land should have been referred to the MVC but was not. On one of the lots, the Bizarro waste haulers carved out a storage area that originally had a 100 foot vegetative buffer. In 2007 the MVC reviewed a proposal for truck parking on the middle lot. In 2010 The MVC approved a proposal on the middle lot (DRI 618-M) for a 9,600 s.f. building to house a party rental business that has yet to be developed. In 2012, the MVC remanded to the Town a proposal on the Bizarro/ABC lot to expand their storage area into the vegetative buffer. This lot was sold and cleared and turned into landscape storage.
- Project Summary:
 - To locate eight storage containers (20'Lx8'Wx8.5'H) on a property in the West Tisbury Light Industrial Zone for storage of landscape equipment and materials.
 - The Applicant plans to store irrigation equipment, lawn mowers, tools and hydro-seed supplies in the containers.
 - The Applicant has three years remaining on his five-year lease of the property.
 - This is primarily a seasonal business. The Applicant has 3-4 crews in the summer, 6-8 seasonal employees, and 2-3 year-round employees. He has an office at his house in Oak Bluffs.
 - There is no electricity or water hookup to the property at this time.
 - A six foot high stockade fence along Dr. Fisher Road has been installed. The West Tisbury Planning Board has asked that the fence be extended along the northern property border to screen it from approach along Dr. Fisher Road.
- Trip generation is estimated at 60 trips per ITE standards.

- The Homeowner Association was concerned about the assessment to commercial versus residential usage as was noted in the letter from Constance Breese.

Doug Sederholm asked for clarification on the Special Permit and if it was granted in the context of the applicant's use as a lessee before the containers. **Paul Foley** confirmed and noted the applicant is now asking to put in the containers.

Paul Foley noted the conditions of the Special Permit:

- No chemicals, fertilizers, or petroleum products shall be stored on the site.
- No household waste shall be stored or composted on the site.
- The applicant shall contract with a pest control company to control rodents should they appear on the site.
- Hours of operation shall be as follows: Trucks shall arrive at/depart from the premises no earlier than 6:00 a.m. and shall return no later than 6:00 p.m. year-round.
- In order to avoid early morning noise impacts from the trucks' backup alarms, trucks shall be turned around in the evening allowing them to leave the site without being put in reverse.
- The Board accepts the applicant's offer to construct and maintain a stockade fence approximately 15 feet from and parallel to Dr. Fisher Road as shown on the plan in order to minimize the view of the stored materials and equipment. On the outside perimeter of the stockade fence, vegetation shall be left in its native state and/or augmented with additional plantings in order to minimize visual impacts.
- The surface of the driveway and parking/storage area shall be covered with hardener.
- All trucks and related traffic shall access/exit Dr. Fisher Road via Old Stage Road. At no time shall trucks or related traffic access/exit the site using the eastern portion of Dr. Fisher Road via Old County Road.
- The applicant shall participate in the future Dr. Fisher Road Association.
- The Board of Health Agent and/or Building and Zoning Inspector may from time to time visit the site to monitor the above conditions.

3.2 Applicant's Presentation

Jesse Fuller presented the following.

- The containers are for storage of equipment, racks, shovels and tools.
- There are no plans for lighting but in the future he would like to include water and electric hookup.
- No chemical fertilizers are used or stored.

3.3 Public Testimony

Melissa Manter is a direct abutter and requested the Planning Board to have the fence go all around the property. The fill and debris is overflowing onto her property, which she has raised with Jesse Fuller. If the fence is installed and the trailers backed up to the fence, she would not have to worry about the overflow on to her property and the fence would act as a buffer.

3.4 Commissioner's Questions

Brian Smith asked the applicant if he is extending the fence. **Jesse Fuller** said it has not been extended at this time but he could consider it and is fine with doing it.

Doug Sederholm noted that Constance Breese indicated in her letter that the fence is in violation of the requirements for Dr. Fisher Road and asked if her statement regarding not being 20 feet from the center line of the road as stated for DCPC roads is accurate. **Dan Larkosh** said that was inaccurate and added that we have done more to beautify the road than anyone else in the light industrial area.

Joan Malkin asked Dan Larkosh if he had time to review the letter from Constance Breese. **Dan Larkosh** said he has reviewed the letter and there are a number of inaccuracies. He said Constance Breese cannot see the property from her house.

Christina Brown asked Dan Larkosh to speak briefly on the road association and maintenance of the road since the MVC has concern about Dr. Fisher Road because it is a DCPC. **Dan Larkosh** said he purchased the property in 1970 and there was an informal agreement to maintain the road versus a formal homeowner association. He was not happy with the Town rezoning of the adjacent land to light industrial and he bought the property so he could rent the property to users such as Jesse Fuller and not have another trash facility. He has tried to encourage the neighbors to form a formal road association especially since the road is becoming more developed.

Brian Smith, Public Hearing Officer closed the public hearing and scheduled a post public hearing LUPC for October 28, 2013.

Doug Sederholm asked if the nature of this project would allow the Commission to move directly into Deliberation and Decision.

Leonard Jason moved and it was duly seconded that the Commission forgo a LUPC post public hearing review and go straight to deliberation.

- **Christina Brown** said staff notes say National Heritage Endangered Species Program (NHESP) has not reviewed this project yet but did so previously. Is there a way to accept this project without hearing from NHESP?
- **Paul Foley** said the MVC has not talked with NHESP. The lot was cleared several years ago, so it is a non-issue.

Voice vote. In favor: 11. Opposed: 0. Abstentions: 0. The motion passed.

Doug Sederholm moved and it was duly seconded that the MVC approve the application incorporating the oral offer from the applicant to extend the stockade fence along the lot line of the leased property and Melissa Manter's property.

- **Leonard Jason** asked if the MVC should condition the formation of a road association. **Doug Sederholm** said the MVC can only state that the applicants solicit the neighbors.
- **Doug Sederholm** added to the motion to survey the location of the fence along Dr. Fisher Road to verify that it conforms with DCPC regulations.
- **Christina Brown** proposed another condition of particular and special concern to the MVC; Number 8 of the Planning Board Site Review: All trucks and related traffic shall access/exit Dr. Fisher Road via Stage Road. At no time shall trucks or related traffic access/exit the site using the eastern portion of Dr. Fisher Road via Old County Road.
- **Doug Sederholm** agreed with Christina Brown and added it to his motion.

3.5 Benefits and Detriment

- There is no impact on wastewater and ground water.
- The location is open space.
- There is no problem with night lighting.
- The noise issue has been conditioned by the Town of West Tisbury.
- The traffic issues have been addressed with the conditions of the West Tisbury Planning Board.
- The applicant has planted the area to improve the scenic values.
- The impact on the abutters has been limited by adding the fences on one side of the property as well as working on forming a road association and having a survey done of the Dr. Fisher Road frontage.
- The project is helping the taxpayers by adding taxes to the Town.
- Steps have been taken to ensure the project is in compliance with the MVC special ways DCPC and the Town has issued a permit for other uses on the site.

Roll call vote. In favor: T Barnes, J. Breckenridge, C. Brown, M. Fisher, J. Goldstein, F. Hancock, L. Jason, J. Joyce, J. Malkin, D. Sederholm, B. Smith. Opposed: none. Abstentions: none. The motion passed.

Fred Hancock informed the applicant that the decision is not final until the written decision is approved at a subsequent Commission meeting.

Eric Hammarlund rejoined the meeting.

4. VINEYARD ASSEMBLY OF GOD LIGHTING (DRI-322-M3) PUBLIC HEARING

Commissioners Present: T Barnes, J. Breckenridge, C. Brown, M. Fisher, J. Goldstein, E. Hammarlund, F. Hancock, L. Jason, J. Joyce, J. Malkin, D. Sederholm, B. Smith.

For the Applicant: Joseph Dockter (Pastor); Ed McCormick; Duane Vought

Brian Smith, Public Hearing Officer, opened the Public Hearing at 7:35 p.m. This is a continued Public Hearing to replace nine three-foot tall bollard lights in the parking lot with six twelve-foot-tall lampposts. The location is 1048 State Road, Tisbury Map 50A Lot 3 (1.57 acres).

4.1 Staff Report

Paul Foley presented the following.

- The packet of information includes the 2007 and 2013 Zoning Board of Appeals conditions, the site plan and correspondence received by the MVC.
- Project History:
 - In 1990 the MVC approved the construction of an approximately 5,000 s.f. (including basement) religious facility with conditions. The conditions included bottled water dispensers for drinking water, water tests, no chlorine containing products, some tree removal to improve sight lines at egress, provisions in case the sewage leaching impacted the neighbors, improved vegetative screening, revision to the parking layout, police detail at direction of the police chief and the granting of a bike easement. The lighting plan was to be revised and submitted for the approval of LUPC.

- The applicant did not return to the MVC LUPC until 2002 with the revised parking, landscaping and lighting plans. In 2002 the LUPC approved a revised parking plan that shifted the rear exit far forward to its present location. The plan shows areas for existing parking and for overflow parking on an area in the back also labeled as future expanded parking lot.
- In 2006 the Commission voted that a proposal to construct a 1,188 sf parsonage on the property was a minor modification not requiring a public hearing. The Commissioners decided not to concur based on the need for housing. The proposal also included planting additional indigenous shrubs between the church and State Road, additional low-level lighting to improve safety at the entrance, and a promise to turn off church lights when the building is not in use.
- In 2007 the Tisbury Zoning Board of Appeals issued a Special Permit (SP 1057) for the parsonage which included conditions with regard to no more lighting, additional vegetative screening, no more brush cutting or expansion of the parking lot, store water containment and that no further building would be allowed.
- In 2013 a neighbor appealed the lack of enforcement of several of the ZBA conditions after the Building Inspector allowed construction of a shed because it did not require a permit. The ZBA ruled (SP 2144) that the expansion of the parking lot was not allowed, 8 to 10 red cedars that died had to be replaced and the drainage had to be enforced.
- The ZBA has instructed the applicant to replace 8 to 10 red cedars that were planted but have not fared well. The ZBA also instructed the Building Inspector to enforce the condition that required no further brush cutting or expansion of the parking lot.
- The ZBA ruled on several of the issues but referred to the MVC a request by the applicant to amend the conditions with regard to no more lighting and the addition of a shed.
- The applicant was found to not be in compliance with several conditions of the 2007 ZBA Special Permit (1057) including adding to the parking lot and additional brush cutting. The existing shed and proposed lighting would not be in compliance with that Special Permit either but have been referred to the MVC for review.
- The proposal is to replace 9 of 24 three-foot-tall bollard lights with 6 twelve-foot-tall lampposts. The 6 twelve-foot-tall lampposts would be spaced out through the whole parking lot. The ZBA also referred a new shed on the property.
- The church has various activities five nights a week including prayer meetings and bible study.
- The property is located in a rural residential area.
- The existing bollard lights are not placed in locations that maximize their effectiveness.
- The shed clearly is not in keeping with the ZBA Special Permit 1057 prohibition on further building on the property.
- Several abutters have come to meetings, reviewed the DRI files and one has filed legal suits with regard to ongoing issues of compliance with the ZBA Special Permit on the property.
- Correspondence opposed to the project has been received from Barbara Babcock, Liz Davis, Janet Woodcock, and Carol Collins. Correspondence from members of the church has been received in favor of the project.

- The applicant has set up an example of the light they want to use. Night photos were reviewed of the proposed light fixture and ineffective placement of the bollards was also reviewed.

4.2 Commissioner's Discussion

Josh Goldstein asked if the applicant is in violation of any of the MVC rulings. **Paul Foley** said it was not as the parsonage was remanded back to the Town.

Eric Hammarlund said if the applicant needs to request a Special Permit on the property then it becomes a DRI. **Leonard Jason** said the applicant has not requested a Special Permit.

Josh Goldstein asked if the planting or lack of drainage fall under MVC jurisdiction. **Paul Foley** said it did not and the MVC did not stipulate that it had to be done. The catch basin was added but on Mrs. Babcock's property and the applicant has offered to move it.

John Breckenridge asked if parking is on the left and right sides. **Paul Foley** confirmed it is.

Joan Malkin said it would be helpful to understand what issues are before the MVC. **Paul Foley** said the issue of lighting but the ZBA also sent the shed to the MVC, but there is no Special Permit.

4.3 Applicant's Presentation

Joseph Dockter, pastor, presented the following:

- He has been at the church for four years and the neighbors have shared their concerns with him.
- The church went to the MVC and found that they are in compliance.
- The church went to the Town and Mr. Barwick said they were in compliance.
- The church built a shed for lawn care and air conditioner storage. When they submitted a request for a permit it was returned stating it was not needed.
- The Building Inspector thought the guidelines were the same as what the MVC had set and the church was able to expand brush cutting up to the land that was given to the church and the church was able to build a shed.
- The Building Inspector brought the issues to the ZBA and the church was not able to respond to that.
- There were numerous statements made about the church not being in compliance but as was just stated they appear to be in compliance.
- The church needs more than the three-foot-high bollards. The lot is dark and the lights are not effective but they are in compliance with the MVC.
- He wishes this meeting was being held at our church at night so everyone could see the lighting.
- He is here for those he pastors and to make the lot safe. He lives on the property with his wife and children but is here with concern for the parishioners.
- Using LED lighting is not as intrusive as halogen lights.
- Only half of the parking will be lit with the new lights and the rest will be with the bollards.

4.4 Commissioner's Questions

Doug Sederholm said Ms. Babcock's letter sent to the MVC states the number of cars in the parking lot when the lights are on. Does he know if this information is accurate and have there been times since August 1, 2013 when no more than 15 vehicles were present? He is not sure that more lighting is needed for 15 vehicles. **Joseph Dockter** said it is not a matter of the number of cars. One night it was so dark, he almost hit his head on something projecting from a parked vehicle. The lights are on timers and are set to go on and off only when they have meetings. They are set for weekly meetings only.

Doug Sederholm asked what is the latest time for the meetings. **Joseph Dockter** said it was around 10:00 p.m. but for the most part it is 9:00 p.m.

Erik Hammarlund asked if there are rarely more than fifteen cars at night. **Joseph Dockter** said it is not about the number of cars, it is about the darkness of the lot.

There was a discussion about the type of lights and their placement.

- **Erik Hammarlund** thought that with fifteen cars in the lot, the bollards might be enough lighting.
- **Joan Malkin** questioned the position of the lights on the plan. **Joseph Dockter** said the lights are placed to accommodate handicap parking. There are 54 spaces.
- **Joan Malkin** said if fifteen cars is the anticipated number why does the church need to light 54 spaces. **Joseph Dockter** said the rest of the parking lot is not lit.
- **John Breckenridge** shared his observations from the night visit to the church. By the shed it was very dark. He asked if the example light that was set up was set at the same height as what is being proposed. **Joseph Dockter** said the example light was set at ten feet and the proposed is for twelve feet. **John Breckenridge** said the Church's statement indicates each proposed light to cast light to a 50-foot diameter but when he stood 80 feet away from the lamppost he cast about a 20-foot shadow further back in the yard. At 10 feet high, the light spread should be controlled within the 50-foot radius but it was filling the entire area. Based on the example he saw, the lighting might be able to be accomplished with perhaps three lights. The light was not contained at all and it was almost light pollution.
- **Christina Brown** noted the MVC has great respect for churches in residential areas and asked if the applicant has looked at what other churches have done. Safety is a concern but the proposal seems to be more than needed. **Joseph Dockter** said he looked at the Jehovah Witness Hall and went to compare to see what would be appropriate with similar applications in the area. A light was selected that would be more contained.
- **Fred Hancock** said he has been a lighting designer for many years. The existing bollard layout is the worst layout to get you to your car. The bollards are completely blocked by the parked cars. If you look at the hospital, which also has bollards, the lot is well lit. You can have a safe parking lot without having the kind of lighting he is suggesting. The church just needs something designed better. By the time LED lights are added on twelve-foot poles, the light will be bouncing off the gravel and the parked cars. The lot will be looking a lot brighter than the SSA parking lot.
- **Ed McCormick**, a Trustee for the church, said the back side of the proposed light drops 90 degrees and then disperses out. The church is trying to have light come toward the

church and not onto Mrs. Babcock's property. The lighting diagram was put together to prevent lights going into Mrs. Babcock's property. With the existing bollards, the center of the parking lot is dark even if there are no cars. The church has had a few close calls; a lady fell and shins have been skinned. They are trying to do due diligence to make the lot safe. The church was told to use the bollards.

- **Brian Smith** suggested that another type of bollard be looked at.
- **Duane Vought** a Trustee of the church said the current light was spaced and laid out by the MVC and the height was set by the MVC. They followed the MVC guidelines and have found if these lights are installed on a sidewalk they are effective but they don't have the space for sidewalks. There are handicap spaces that take up twenty-four feet and then there is the parking area where the fifteen cars will be.
- **Ed McCormick** said the church is trying to light both entrances to the church and to light the main area where the people will be walking.
- **Erik Hammarlund** asked if something has changed in the past 23 years. Were the bollards working ten years ago?
- **Leonard Jason** said he did not think the bollards ever worked. The MVC had discussions about the type of lights and it was decided to use low lights to accommodate the neighbors and now it has come back to bite the MVC.
- **Joseph Dockter** said down-facing low-intensity lighting was what was required to be installed. If they stick with the bollards and make it brighter he is not sure that will make the neighbors happy.

4.5 Public Testimony

Benjamin Klein of D'Ambrosio Brown LLP, Counselors at Law is representing Barbara Babcock. She has submitted written testimony and he has submitted written testimony on her behalf. She has a number of issues with the lighting. The timing of the church's request is not being done at an appropriate time. Barbara Babcock is sensitive to the safety concerns of the church but does not feel this request is being done in good faith. Specific conditions of the ZBA permit states no further lighting unless stipulated by code. The Commissioners who have been out to the site to see the example of the light have seen the adverse effect. It is his understanding that the MVC discourages this type of pole lighting. The church has a historical bad record with compliance of the conditions imposed on them. It doesn't seem fair that the church be rewarded due to their poor past performance. It appears that only two of the six lights are actually in the parking lot. Barbara Babcock urges the MVC to not approve the request and thanks the Commission for their consideration.

Jonathan Cassel is a direct abutter. The lighting is pretty bright and the church does not need any lighting that far back. He has been on his property since 1999. In the past, the property was used as a truck rendezvous; he doesn't want to see that again and the lights would welcome that. The church has agreed to the conditions but they have not carried through on them. If the request is approved he would hope someone would follow up on the compliance. It is a very large parking lot and he doesn't see why so much of it needs to be lit if it is not used.

Pam McCormick is a member of the church and a Trustee. When Paul Foley and Benjamin Klein presented information and said the conditions have not been met it seemed bias. The church is in compliance with what the MVC requested and that is what is at issue here. He attended the

church for six years and came from off Island. Their pastor is responsible for what is happening now and the last four years only, not what the prior pastors did. In winter it is dark at 4:30 p.m. and it is a concern for them and their children. He brought the lighting issue to the pastor and was there when a lady fell. When cars are backing up you can't see if a child is there. His concern is for safety and it is his number one priority. It is not a safe parking lot.

Ken Bilzerian lives across from the church. Come the spring you will see right through the parking lot. This request is overwhelming to a rural and residential area. He doesn't think they are thinking of the neighbors that live there.

Jaime Harper is a member of the church. As she has gotten older, her vision is not as good and especially at night. It is extremely dark and she has almost fallen. The parking lot needs to be safe for them to go to worship. The church is only asking to have lights for a couple of hours at night. Why is it such a big deal and being so insensitive to what the church is asking for? Everyone should come out at night and see how hard it is to get to your car. There are also animals to contend with as well. When she heard about the meeting she thought it was extremely important to be here.

Kristen Henshaw is a direct abutter and thanked the MVC for agreeing to a public hearing. She owns a small farm on State Road and as an abutter asks that the MVC deny the request. The church has shown no concern to comply with the MVC conditions. The MVC wisely laid down many conditions. The conditions were clear and the church said they would comply but they have not and the Town of Tisbury has not enforced them. It took ten and a half years for the church to be in compliance with the water issues and that was done due to the neighbors request to the Board of Health. The church was to plant trees and shrubs to minimize the impact and that was not done until it was brought to their attention and they have planted two red cedars. There should be four handicap parking spaces next to the building but now they are near her property on a grassy area. The trash from the church seems to show up on her property. As an abutter she urges the MVC to deny the request.

Janet Woodcock is a resident of the neighborhood and is concerned about the excessive lights in a rural area. She went to look at the low lights and agrees with Mr. Hancock. It is an unusual layout for the parking lot and the issue could be corrected with proper lighting design.

Lee Greggs is a member of the church. At night she has had to feel her way to the car and has helped elderly ladies. It was always told to him that there is nothing the church can do about the lighting and the bollards are the only lights the church can have. He is sensitive to the neighbors and doesn't like bright lights either, but is sure the neighbors wouldn't want to get to their cars in the dark either.

4.6 Applicants' Closing Remarks

Joseph Dockter said there has been a lot said tonight. As the pastor, he just wants to be sure the church is meeting all the expectations. The church's desire is to make it safe. The church does not want to make an issue for the neighbors. He thinks it is a reasonable expectation to ask to have lights. There is a bamboo forest on both sides of the property and a lot of greenery near the shed area and the neighbors. He thanks the MVC for considering the church's request.

Doug Sederholm asked if it is possible to see the sample light again at night.

There was a discussion about the possibility of additional parking.

- **James Joyce** said there was something said about creating a new parking lot and asked if that can be done.
- **Paul Foley** said the church was talking about dirt being spread over the grass for parking.
- **Duane Vought** said that is the overflow parking that was approved by the MVC and the Town said the church cannot go beyond that.
- **Erik Hammarlund** clarified the Town is entitled to forbid things that the MVC allows.

Brian Smith Public Hearing Officer closed the public hearing and scheduled a post public hearing LUPC meeting for November 4, 2013.

The Commissioners asked the church to have the example light turned on tonight so they can view it after the meeting.

5. TISBURY WHARF DREDGING (DRI-576-M2) - PUBLIC HEARING

Commissioners Present: T. Barnes, J. Breckenridge, C. Brown, M. Fisher, J. Goldstein, E. Hammarlund, F. Hancock, L. Jason, J. Joyce, J. Malkin, D. Sederholm, B. Smith.

For the Applicant: Ralph M. Packer

Brian Smith Public Hearing Officer opened the public hearing at 8:50 p.m. and read the public hearing notice. The applicant is the Tisbury Wharf Company, Ralph Packer. The location is off of 158 Beach Road, Tisbury Map 9-C Lot 13. The proposal is to dredge approximately 5,600 cubic yards of material from Vineyard Haven Harbor.

5.1 Staff Report

Paul Foley presented the following.

- The packet of information includes a narrative from the applicant and letters from the Tisbury Conservation Commission and the Division of Fisheries and Wildlife (NHESP).
- The site plan was reviewed.
- Permits are required from the Tisbury Conservation Commission for Wetlands Act Regulations and Tisbury Wetlands Bylaw Regulations, 401 Water Quality Certificate, NHESP of the Massachusetts Division of Fisheries and Wildlife for review under Wetlands Protection Act (WPA) and Massachusetts Endangered Species Act (MESA), Massachusetts Division of Marine Fisheries for review under the Wetlands Protection Act (WPA), a permit from the Army Corp of Engineers, Massachusetts Department of Environmental Protection under Chapter 91 and the applicant may need a Harbor Use Permit from the Tisbury Board of Selectmen.
- The largely clay spoils would be deposited at a site next to the capped Tisbury landfill on town land between November and early January.
- The dredging will be done mechanically from a barge using a crane or excavator. The material will be placed on the barge with timber containment walls. Most of the dewatering will take place on the barge. When full, the material will be taken to Packer's marine terminal.
- The purpose is to restore the depth to sixteen feet so ships do not lay on the bottom at low tide. According to Mr. Packer this area was last dredged in the 1930's to sixteen feet.

- Currently several small cruise ships as well as private vessels use the affected docks. The whaler Charles W. Morgan is scheduled to make a visit to Vineyard Haven in June 2014 and tie up at Pier 44.
- The applicant has had the proposed dredging area tested. One of six samples had a reportable concentration sample (RCS). Three additional samples were collected with none above RCS-1 suggesting the hot spot was localized.
- NHESP of the Massachusetts Division of Fisheries and Wildlife has determined that the project as currently proposed will not result in a prohibited take of state listed rare species. According to the Division of Marine Fisheries the project site lies within mapped shellfish habitat for bay scallop, blue mussel, razor clam, soft shell clam and winter flounder. Marine Fisheries recommends a time of year restriction prohibiting dredging from January 15 to May 31.
- LUPC voted that the project did not require a traffic study.

5.2 Applicant's Presentation

Ralph Packer presented the following;

- The site plan was reviewed.
- He is not asking for public funds for this project. He will be using his equipment.
- He would not attempt the job if any contaminants were found.
- The purpose for dredging is to accommodate larger vessels rather than extending the dock.
- The dredging will be to a depth of 16 to 17 feet.
- The Tisbury Wharf makes it possible for Tall Ships to come to the dock for three days as their guest.
- There have been many green accidents lately due to the insufficient dredging and vessels have sat on the bottom.
- This project is becoming more important and many captains have asked how much water is there so they can be sure there is water under their keel.
- The project will be moving approximately 5,600 cubic yards at a slow time of year in January.
- Three years ago, a group of children were taken to Mystic Seaport and they saw the Charles W. Morgan. The Tisbury Wharf Company invited the Charles W. Morgan to visit the Island and it has been a two-year process. The Vice President of Mystic Seaport checked out the dock and accepted the invitation for the third week of June 2014.

5.3 Commissioners' Questions

Doug Sederholm asked how many truck loads will there be. **Ralph Packer** said two trailer dumps.

Joan Malkin said the dewatering has been talked about but she also read that a berm may be built to do some of the dewatering on land and asked for clarification. **Ralph Packer** said two barges, one filled and one empty, will be used perhaps in a twelve-hour period. If there is a problem and they don't drain quickly he will build a berm on his property near the fuel storage tanks. It would be a residual drain back into the harbor.

James Joyce asked what the current depth of the harbor is now. **Ralph Packer** said it starts at sixteen feet and next to the dock it is twelve feet.

There was a discussion about the testing.

- **John Breckenridge** noted that six borings were done and one hot spot was found. There are probably more hot spots out there.
- **Steve Fleming** said the original plan was designed with the DEP. Samples were collected from seven locations with several different constituents. Only one of the samples exceeded the DEP requirements. It was thought to be zinc so it was resampled and then it tested below the requirement.
- **John Breckenridge** said his concern is the material is being taken to the Tisbury landfill and it is very close to Zone 2 of the Public Drinking Supply. When you are dewatering over by the Packer tanks are the spoils sampled once again?
- **Steve Fleming** said they are not retested. What was found is less than the industrial level but a little higher than the residential level. Those spoils will be handled separately. They have lots of samples that all show below residential levels. If something doesn't look the same they would handle it separately.
- **John Breckenridge** asked who would review that.
- **Ralph Packer** said it would be a nonbiased third party.
- **Steve Fleming** said the issue that was found was minor and it met the commercial requirements. The material is mostly organic. There may be a little coal ash and that should not be an issue.
- **Erik Hammarlund** asked if the samplings are based on DEP requirements such as a statistical sampling plan.
- **Phil Roberston** said the plan has to be approved by the DEP before the testing can start and the DEP specifies what you have to sample for. It is the goal of the DEP to pull fill that is useable regardless of location.
- **Steve Fleming** said S1 spoils are suitable for residential use.

There was a discussion about the project coming to the MVC.

- **Leonard Jason** asked if a Town dredging project has to come to the MVC.
- **Steve Fleming** said only the ones that are on public property based on who does the digging.
- **Doug Sederholm** said it is a development in the water so it comes to the MVC.
- **Fred Hancock** said the Tisbury Conservation Commission referred the project to the MVC.

Ralph Packer thanked the MVC and would like to move forward with the project. The MVC is a very important part of this project in order to receive the other approvals that are needed.

Josh Goldstein said the MVC should say thank you to the applicant especially for bringing Tall Ships to the Island.

Christina Brown said this project will keep the character of the Town.

Doug Sederholm moved and it was duly seconded to waive a post public hearing LUPC and to go directly to Deliberation and Decision. Voice vote. In favor: 12. Opposed: 0. Abstentions: 0. The motion passed .

Doug Sederholm moved and it was duly seconded to approve the project .

- **John Breckenridge** said the motion should include a nonbiased third party to review the spoils.
- **Ralph Packer** agreed to add this to the offers.

5.4 Benefits and Detriments

- Wastewater concerns; the project requires DEP approval.
- There are no night light issues or noise.
- The project will not have an impact on traffic and is within a normal traffic pattern.
- Scenic value will improve in the harbor and the project will help the Island character and identity as a seafaring community.
- The project will allow more Tall Ships and improve the economy.
- The project is consistent in meeting the Town's objectives.
- The project conforms to zoning and DCPC regulation.

Roll call vote. In favor: T. Barnes, J. Breckenridge, C. Brown, M. Fisher, J. Goldstein, E. Hammarlund, F. Hancock, L. Jason, J. Joyce, J. Malkin, D. Sederholm, B. Smith. Opposed: none. Abstentions: none. The motion passed.

Fred Hancock noted there will be a written decision.

6. RYMES PROPANE ON EVELYN WAY (DRI-576-M2) – PUBLIC HEARING

Commissioners Present: T. Barnes, J. Breckenridge, C. Brown, M. Fisher, J. Goldstein, E. Hammarlund, F. Hancock, L. Jason, J. Joyce, J. Malkin, D. Sederholm, B. Smith.

For the Applicant: John Rymes (Owner)

Brian Smith Public Hearing Officer opened the public hearing at 9:27 p.m. and read the public hearing notice. The applicant is John Rymes owner of Rymes Propane Gas. The location is Evelyn Way and Marie Street, Tisbury Map 21-B Lot 2 (.082 acres). The proposal is to operate a propane delivery business.

6.1 Staff Report

Paul Foley presented the following.

- A project on the property to build a warehouse was originally referred to the MVC in January 2004 and was put on hold later that year.
- In 2009 a proposal to build a 6,240 s.f. footprint (104 x 60 feet) metal building with one office, three shop bays, and a staff apartment above the office was approved with conditions but was never built. The intended tenant was Allied Waste who was going to consolidate their operations.
- The proposal is to operate a propane delivery business with four 30,000 gallon underground storage tanks (UST) and a 1,500 s.f. office and 1,500 s.f. staff apartment.
- There will be no onsite fueling of individual tanks.
- The applicant is currently leasing a 20,000 s.f. area (100 x 200 feet) in the Goodale Pit off of High Point Lane for the operation of a single 30,000 gallon tank above ground. A 12,000 s.f. area is fenced in with a six foot high chain link fence with an approximately 4,000 square foot transition area for storage of empty tanks awaiting installation at client

locations and equipment for transporting and installing the tanks. Delivery trucks distribute propane to clients. When approved to proceed with that location the applicant said he intended it as a starter location to build clientele while he looked for a permanent location.

- Key issues:
 - The property lies along a curve of one of the three spurs of the proposed Tisbury Connector Road. How will the site plan, curb cuts and landscaping complement the Connector Road?
 - Is the proposed use compatible with the existing surrounding neighborhood?
 - Has the Tisbury Fire Chief signed off on the safety of the operation? The Fire Chief is deferring to the State Fire Marshall. Has the State Fire Marshall approved?
- Currently the site is bare of vegetation.
- Current site plans show a few trees along Lyle Lane. The applicants indicated at the staff/applicant meeting that they would submit a landscaping plan for the parking area.
- Lighting is to be determined.
- A stormwater plan will need to be submitted. The parking area should be graded to disperse runoff into vegetated areas as much as possible to allow nitrogen uptake. Disperse roof runoff onto vegetated areas as much as possible.
- The applicant needs to provide the manufacturer specs for the proposed underground tanks.
- Is a spill control and prevention plan needed for the proposal?
- According to the MVC Affordable Housing Policy the recommended monetary mitigation for a new 3,000 sf commercial (mixed use) building is \$1,500.
- The applicant has offered to utilize the second floor apartment for staff housing. The applicant's offer is consistent with MVC's Affordable Housing Policy.

6.2 Applicant's Presentation

John Rymes presented the following;

- He thanks the MVC for their time and has always found the MVC to be reasonable.
- Rymes Propane has held up to their promises to the MVC over the last year.
- The company has saved the Island over \$10,000,000 and has been welcomed with open arms.
- The business has grown and he is humbled by some of their clients being here tonight.
- The proposal is using the exact structure for the office building and affordable housing apartment that the MVC already approved. However a small access door was added in the back.
- The facility will be state of the art and will have new technology.
- The tanks will be underground and they are designed to be driven over.
- Their small trucks make the deliveries to the Island and the project will not be creating any new traffic. All of his customers come from his two competitors.
- The project will lessen traffic since the facility will be closer to the HazMet ferry.
- The State Fire Marshall will not approve the project until they receive the Town approval. The Town will not approve until they receive the MVC approval.
- His engineer is Mass State licensed.

- He has been in review with the Fire Chief and the Mass State Fire Marshall. He has met with Sheri Caseau.
- The project is not oil, it is propane. There is not a spill and containment issue.

6.3 Commissioners' Questions

Tripp Barnes said he was not a direct abutter. He noted that Evelyn Way is a private road. He showed and explained the parking situation and noted that as soon as his warehouse is completed the parking and traffic issues will be alleviated.

Erik Hammarlund asked how many eighteen-wheel propane trucks it would take to fill the storage tanks. **John Rymes** said between 8 and 11, depending on the truck size. There will only be a couple of trucks per week. His competitors take a couple per day. All of the trucks will be housed at this facility or at the Goodale Pit area.

Doug Sederholm asked if Sheri Caseau still wants a stormwater runoff plan. **John Rymes** said she did not request that but he will recheck with her; the stormwater should stay on the lot.

John Breckenridge noted that normally the stormwater plan would be part of the landscaping plan. **John Rymes** noted that he wants the property to look great and it will be dressed up.

Doug Sederholm asked if this is the first underground storage facility for Rymes Propane. **John Rymes** said the proposal is all new and also has fire suppression. A similar facility was built in Nantucket within the last few years and it has worked well.

Erik Hammarlund asked what the time frame is for building this facility. **John Rymes** said he would like to do it as soon as possible. The facility could be built within a few months. Most of the construction is pre-fab. The building will take the longest to construct.

Brian Smith asked if the applicant is purchasing the land. **John Rymes** said he has a lease option to purchase.

Doug Sederholm asked if the applicant is coming back to LUPC with the landscaping plan. **John Breckenridge** said that is what is stated.

There was a discussion about approval from the State Fire Marshall.

- **Leonard Jason** asked how the MVC incorporates the State Fire Marshall's decision if the MVC approves the project.
- **Erik Hammarlund** said the MVC is not giving the applicant permission for a particular configuration of the tanks and pumps.
- **Doug Sederholm** said the MVC should only approve subject to the applicant receiving approval from the State Fire Marshall.
- **Leonard Jason** agreed with Doug Sederholm.
- **Fred Hancock** noted there would not be a Certificate of Occupancy without the State Fire Marshall approval.

John Breckenridge suggested as a way to handle the stormwater issues perhaps the applicant could make an offer that the stormwater runoff will be to the landscaped area in the buffer area and that could be part of the landscape plan.

Josh Goldstein asked if this project is following the previously approved structure is there a landscape plan with the prior approval. **John Breckenridge** said the applicant has to come back to the MVC and the Commission should add stormwater to the landscape plan.

Brian Smith Public hearing Officer closed the public hearing and scheduled the post public hearing for November 4, 2013.

The meeting was adjourned at 9:55 p.m.

DOCUMENTS REFERRED TO DURING THE MEETING

- Martha's Vineyard Commission DRI #644 Fuller Landscaping Containers, MVC Staff Report – 2013-10-23
- Martha's Vineyard Commission DRI # 32-M3 Vineyard Assembly of God Lighting, MVC Staff Report – 2013-10-23
- Layout of Proposed Lighting Changes, Vineyard Assembly of God, Dated June 18, 2013
- Letter from D'Ambrosio Brown LLP , Counselors of Law, Dated September 16, 2013, Representing Barbara Babcock, Re: Vineyard Assembly of God Request or Modification to Previous DRI
- Martha's Vineyard Commission DRI #639 Tisbury Wharf Dredge, MVC Staff Report – 2013-10-24
- Martha's Vineyard Commission DRI #576-M2 Rymes Propane Evelyn Way, MVC Staff Report – 2013-10-23

Chairman

Date

Clerk-Treasurer

Date