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**Minutes of the Commission Meeting  
Held on May 8, 2014  
In the Stone Building  
33 New York Avenue, Oak Bluffs, MA**

**IN ATTENDANCE**

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

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

Staff: Bill Veno (Senior Planner), Paul Foley (DRI Planner), Priscilla Leclerc (Transportation Planner). Jo-Ann Taylor (Coastal Planner/DCPC Coordinator), Sheri Caseau (Water Resource Planner)

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

**1. MINUTES**

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Commissioners Present: T. Barnes, J. Breckenridge, J. Goldstein, E. Hammarlund, F. Hancock, J. Joyce, J. Malkin, K. Newman, B. Smith, J. Vercruysse.

**James Joyce moved and it was duly seconded to approve the minutes of April 17, 2014 with corrections as noted, indicating that line 259 language should be revised, deleting the word "controlling" and replacing with "defining residency requirements". Voice vote. In favor: 6. Opposed: 0. Abstentions: 4. The motion passed.**

**Erik Hammarlund moved and it was duly seconded to approve the minutes of May 1, 2014 with corrections as noted, line 638 should be John Breckenridge. Voice vote. In favor: 8. Opposed: 0. Abstentions: 2. The motion passed.**

**2. NEW BUSINESS**

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Commissioners Present: T. Barnes, J. Breckenridge, J. Goldstein, E. Hammarlund, F. Hancock, J. Joyce, J. Malkin, K. Newman, B. Smith, J. Vercruysse.

**Fred Hancock** noted that Stop & Shop has withdrawn their application and he thanked all of the Commissioners who spent the past ten months on the project.

### **3. AQUINNAH DCPC PUBLIC HEARING AND VOTE ON AMENDMENTS TO TOWN REGULATIONS**

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*Commissioners Present: T. Barnes, J. Breckenridge, J. Goldstein, E. Hammarlund, F. Hancock, J. Joyce, J. Malkin, K. Newman, B. Smith, J. Vercruysse.*

*For the Town: Peter Temple (Chairman, Aquinnah Planning Board)*

**Fred Hancock**, Public Hearing Officer opened the public hearing at 7:10 p.m. and read the public hearing notice. The purpose is to review conformance of the proposed amendments to the Goals and Guidelines in the Commission's Decision Designating the Town of Aquinnah District as a District of Critical Planning Concern as amended. The Town of Aquinnah is changing some of its DCPC regulations and the MVC needs to find if the proposed regulations are in conformance.

#### **3.1 Staff Report**

**Jo-Ann Taylor** presented the following.

- The Town of Aquinnah District was first designated in 1999 as a Cultural or Historic Resource District with Goals and Guidelines protecting the scenic vistas and rural character. Regulations were proposed to the Commission and to the Aquinnah voters and duly approved.
- One of the basic goals is to protect the scenic character of the District from undue visual intrusion and to promote and maintain its rural character and culture. Even moderate changes could transform the town.
- The guidelines are very expansive and the MVC gave a great vote of confidence to the Town that they could manage something this big.
- The Guidelines state; *"That appropriate exterior design, height and/or siting regulations be developed for any potential new structure proposed for construction within the District, to ensure that any and all new construction shall be consistent with the rural character of the Town of Aquinnah and shall not radically alter or interrupt the existing skyline of the Town as viewed by any public way including any public water body and including the lookout at the Gay Head Cliffs... That the appropriate administration of exterior design, height and/or siting regulations, through a procedure to include site plan review, be developed; and that the site plan review procedure include clear and objective criteria for review..."*
- The purpose tonight is to look at the proposed amendments to the regulations and for the MVC to determine if they are in conformance with the Goals and Guidelines in the MVC Designation.
- There have been amendments along the way, including the 2011 amendment requiring 200 feet of frontage.
- The proposed amendment represents a revision of the 2011 amendment requiring 200 feet of frontage. The Commission found conformance with the original amendment to add the 200-foot frontage requirements, because that amendment was in conformance with the

guideline "...to ensure that any and all new construction shall be consistent with the rural character of the Town of Aquinnah..".

- The proposed regulations were heard by the Aquinnah Planning Board on April 8, 2014. That hearing was continued until April 29, 2014 at which time there was modification of the text.
- The amendments must also be voted by two-thirds vote of the May 13, 2014 Town Meeting. The Commission should close its hearing and vote prior to May 13, 2014.
- Peter Temple will present additional information regarding the proposed amendments.
- Staff analyzed the proposed amendments, including the text proposed following the Planning Board's hearings, and did not find any reason why the proposed amendments do not conform. The proposed amendments include detailed provisions for exception to the frontage requirements, by Special Permit. Because the provisions provide for *site plan review* and provide *clear and objective criteria for review*, the proposal appears to be in conformance with the Commission's designation guideline "*That the appropriate administration of exterior design, height and/or siting regulations, through a procedure to include site plan review, be developed; and that the site plan review procedure include clear and objective criteria for review...*".
- There has been no correspondence to the MVC.

### **3.2 Town of Aquinnah Presentation**

**Peter Temple** presented the following:

- By themselves the by-laws are dense and hard to understand.
- He corrected one point that Aquinnah has had a 200-foot frontage requirement since 1999 and in 2011 it was moved from zoning into the town-wide DCPC, which eliminated grandfathering.
- The Town of Aquinnah appreciates the powers that the MVC has given to the Town as it gives the Town the discretion on how it approves things.
- When Aquinnah was made a town, the land was divided into lots and the people on some lots were not given rights to access and easements. The lots were landlocked and many small little roads were developed.
- In 1976, two acre zoning was adopted with no frontage requirement.
- The first frontage requirement in the 1980's was 100 feet and then it went to 200 feet in 1999.
- Many of the single-lane, little roads present safety issues and are not accessible by emergency vehicles.
- In 2011 the Town wanted to determine how to stop all of the little roads and the lots being landlocked. It is now clear that the 200-foot frontage needs amendment in order to safely develop the existing landlocked lots, if the owners are able to secure easements for access. New lots will still require the 200-foot frontage.
- He reviewed the proposed amendments.
  - The Planning Board Plan Review Committee shall have the authority to modify or vary the frontage requirements by special permit. The amendment is adding: "situated on lots with non-conforming frontage under the standard contained in Section 13.4-11(A.); and ii.) the addition of new structures, which themselves comply with all other dimensional and density criteria contained in Zoning By-

laws, and receive all other Special Permits required by the Zoning By-laws, on lots with non-conforming frontage which have been improved with at least one single family residence as of May 10, 2011.”

**Erik Hammarlund** asked if the by-law distinguishes structures as a house. **Peter Temple** said it does.

**Joan Malkin** asked if the clear and special criteria are in the Special Permit. **Peter Temple** said the Town has site and design guidelines. These would be the criteria to make the determination and are pretty specific.

**Peter Temple** continued outlining the proposed amendments.

- Before 2011 some things were approved on form A divisions that perhaps should not have been. The amendments state the Planning Board Plan Review Committee shall have the authority to modify or vary frontage requirements by Special Permit for the addition of otherwise conforming single family homes and permitted accessory structures which were granted special permits by the Planning Board Plan Review Committee before May 10, 2011 on lots where the owner has constructed or installed facilities such as a well, septic system or an access road.
- The Town has a resident home site provision that allows a one acre lot. The amendment gives the right to vary by Special Permit for a one acre affordable housing lot. “The Planning Board Plan Review Committee shall have the authority to modify or vary the frontage requirements by Special Permit for the construction of single family residences and related accessory structures on Resident Homesite Lots provided for by Section 13.12”.

**James Vercruysse** asked if the amendment would limit to 50-foot frontage to meet the State regulations. **Peter Temple** said another section of the amendment addresses the 50-foot frontage.

**Peter Temple** continued reviewing the proposed amendments.

- The Planning Board Plan Review Committee shall have the authority to modify or vary the frontage requirements by Special Permit for the construction of single family residences and related accessory structures on lots developed under the Compact Siting provisions of Section 3.3-2.
- Section F of the amendments is the catch all for everything else on an existing public or private way. A private way which is not a driveway and has at least 50 feet of frontage would be eligible for the PBPRC to vary the frontage requirements.
- Frontage was reviewed and an illustration was shown of circumstances in which the PBPRC would consider modification of the 200-foot requirement..
- The amendments would give the Town the ability to revert to the prior definition to allow a road to run on the inside of the lot but would still require 200-foot frontage. The exception is: when creating public or private ways to provide frontage to lots in existence before May 10, 2011, the way may by Special Permit from the Planning Board run along the interior boundary of the lot if not doing so would make the lot nonconforming or less nonconforming as to minimum lot size.

- The Town Clerk does not have a list of public ways and is in the process of compiling a list of the public and private ways.
- The changes do not change the character of the town.

### **3.3 Commissioners' Questions**

**Joan Malkin** asked how many lots would benefit from the exceptions. **Peter Temple** said it is small, perhaps 30 at most.

**James Joyce** said the amendments sound great and asked if they will eliminate all of the landlocked lots that the owners cannot do anything with. **Peter Temple** said the Town cannot grant access; only the owner can and the immediate abutter can do so. What the amendment will do is, where there is access, the owner can develop it on a more orderly way.

There was a discussion about if the amendments were similar to spot zoning.

- **Erik Hammarlund** said the amendments are almost spot zoning as exceptions. It seems to be putting pressure on the Town. If the Town already knows what the lots are, how is this okay?
- **Fred Hancock** said it is not necessarily a question for the Town. It is for the MVC to decide.
- **Peter Temple** said the Town is constantly doing reactionary zoning and cannot predict everything in advance. With Town Counsel advice in 2011 the Town decided to move frontage into the DCPC. The Town has been reviewing for three to four years and that has given time to determine the impact on existing lots. The amendment is only dealing with lots and/or roads that were created a long time ago and people traded or bought the lots presuming they were buildable. The 200-foot requirement remains in effect for new lots.

**James Vercruyse** was curious about the language since it says modify or vary the frontage and asked if a variance is different than a modification. **Peter Temple** said Town Counsel uses the word vary, so it was used in the amendments, that no one has the authority to vary the DCPC rules per the court.

**Katherine Newman** thanked Peter Temple for doing so much work on the amendments for the Town.

**Peter Temple** noted that the town-wide DCPC may only work because Aquinnah is a tiny town.

**Fred Hancock** complimented Peter Temple on his presentation and noted that knowing some of the history makes the amendments a lot clearer.

**Fred Hancock**, Public Hearing Officer, closed the Public Hearing at 7:50 p.m.

### **3.4 Determination of Conformance**

***Joan Malkin moved and it was duly seconded that the proposed amendments to the Aquinnah Zoning By-law be considered by the Commission as in conformance with the Goals and Guidelines of the Town of Aquinnah DCPC.***

- **James Vercruyse** said the amendment clearly defines frontage and roads for the Planning Board and Planning Board Plan Review Committee and makes it clear for a lot of people on how to proceed.

- **Katherine Newman** said it has come up in cases before and the amendment helps to define what needs to be done.
- **Erik Hammarlund** said changing the roads and definitions are great but he doesn't know if he agrees with the concept.
- **Joan Malkin** felt the time for that argument was when the MVC passed the DCPC.
- **Katherine Newman** said the amendment is not for new subdivisions, it is for historical property.
- **Erik Hammarlund** noted that the DCPC was voted to stop certain development and now it is trying to state how to give leeway to develop. He is not entirely comfortable with the amendment.

**Roll call vote. In favor: T. Barnes, J. Breckenridge, J. Goldstein, F. Hancock, J. Joyce, J. Malkin, K. Newman, B. Smith, J. Vercruysse. Opposed: E. Hammarlund. Abstentions: none The motion passed.**

#### **4. MEDICAL MARIJUANA AT VINEYARD WELLNESS (DR 1-2014) DISCRETIONARY PUBLIC HAERING**

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Commissioners Present: Commissioners Present: T. Barnes, J. Breckenridge, J. Goldstein, E. Hammarlund, F. Hancock, J. Joyce, J. Malkin, K. Newman, B. Smith, J. Vercruysse.

For the Applicant: Susan Sanford (Vineyard Complementary Medicine)

**Fred Hancock**, Public Hearing Officer opened the Public Hearing at 7:55 p.m. and read the public hearing notice. The location is 489 State Road, West Tisbury Map 16 Lot 232. The Applicant is Vineyard Complementary Medicine. The proposal is to locate a Registered Marijuana Dispensary in the basement of Vineyard Complementary Medicine.

##### **4.1 Staff Report**

**Paul Foley** presented the following.

- The Staff Report includes the LUPC Notes, a letter from the Town of West Tisbury Zoning Board of Appeals, an email to the MVC from Victor Linn, an email to the MVC from Wayne Lamson of the SSA, and the proposed floor plan for the basement of Vineyard Complementary Medicine.
- There were 100 applicants in the State for dispensaries and four applicants were from the Vineyard. There are still 7 applications out of the remaining 72 applicants that could receive approval in next state approval round.
- Vineyard Complementary Medicine scored second of the applicants from Martha's Vineyard.
- The proposal is to locate a Registered Marijuana Dispensary (RMD) in the basement of Vineyard Complementary Medicine. This would be a dispensary only, similar to a pharmacy. There would be no cultivation on site. Prescriptions would come from a doctor.
- The apartment on the third floor would remain an apartment but would be for an employee.
- Some remodeling would take place including a new A.D.A. access to the bathroom, security doors and cameras, motion sensitive lighting and other changes to control access and security.

- The applicant estimates based on a year round population of approximately 16,500 and a projection that 2% of the population would be eligible that there could be about 330 year round patients on Martha's Vineyard and expects about 17 patients per day.
- Estimates for summer demand have not been established but the applicant does not feel demand will grow as the summer population does as the patient has to be a Mass resident to participate.
- The applicant estimates that initial visits might last 15-20 minutes and follow up visits 5 minutes.
- Key issues include:
  - If there is only one dispensary on the Island is this a good location for it?
  - What efforts are being made to secure the property and what impact will the location of a medical marijuana dispensary have on the neighbors?
  - What is the estimated trip generation and impact?
  - Where would the product come from? How would the product be transported to the location and are there any issues with getting the product to the location.
  - Would the Coast Guard, a branch of the Federal Government, allow the product to be shipped on the Steamship Authority?
  - Since none of the applicants to the Commonwealth from the Vineyard were issued a license in the first round of review, is this proposal ripe for review by the MVC?
- Some trimming or removal of bushes may be required to meet security regulations for full visibility.
- A landscaping plan needs to be produced to ensure that efforts meeting the state security requirements do not lead to unintended consequences.
- Additional lighting would be motion sensitive on light posts and directed away from shining light onto neighboring properties.
- The site currently has 20 parking spots for visitors (one of which is A.D.A. accessible) and 6 for employees. The applicant would add one additional A.D.A. spot.
- The letter from Victor Linn was read.
- The SSA said at this point in time marijuana is illegal in the eyes of the Federal Government so it could not be transported on the ferries.

## **4.2 Testimony from Public Officials**

**Tucker Hubbell**, Chairman of the West Tisbury Zoning Board of Appeals said the town now has a by-law that allows a dispensary via the ZBA and an applicant has the right to apply. In all of the ZBA's decisions it is stated that an applicant must meet all of the state licensure criteria as well as the Board of Health regulations. An applicant has every right to come to the ZBA. Because the structure already exists with a business housed there, the applicant presented to them to take the physical therapy business somewhere else and replace it with a medical marijuana business. The ZBA has not heard all of the details yet and referred the project to the MVC because state law refers to the county for the business. The ZBA did not find anything that referred to this issue in the DRI process other than a discretionary referral. Even though the Town can deal with the traffic and the building, the ZBA felt because it is a county issue the project needed to be referred to the MVC and to let the MVC decide if the Commission wanted to send it back to the Town.

## **4.3 Commissioners' Questions**

**James Joyce** questioned the layout and asked what is in the basement now. **Paul Foley** said the basement is currently used for the physical therapists and the physical therapist will be relocated to another site.

**Katherine Newman** said she thought the referral is jumping the gun and wondered what the advantage is of reviewing the referral now since the applicant has not received a license.

**Susan Sanford** said she did not know what the outcome of the review will do with regards to the state application. There were off-Island applicants looking at applying for a dispensary on Martha's Vineyard. So as a property owner and looking toward the Special Permit process she wanted to get whatever is needed in order and also in the event that it is needed to team up with an off Island applicant. Moving forward as a property owner she wanted to be prepared when it is known what is happening at the state level.

There was a discussion about cultivation of the product.

- **Fred Hancock** questioned the cultivation of the product and asked if it would be on site.
- **Tucker Hubbell** said originally there was some sense that it would be cultivated on site but that may no longer be the case.
- **Josh Goldstein** asked how the applicant trumps the Coast Guard and the Federal laws to get the product from point A to B.
- **Susan Sanford** said the movement of the product is up to the state and the state will decide where we can cultivate and it is allowed to cultivate in a separate location from the dispensary. The applicant is allowed to decide how to cultivate or transport.
- **Joan Malkin** asked if the state law completely pre-empts the licensee from any cultivation. Does the Town have any authority about where it is cultivated?
- **Tucker Hubbell** said the Town does not have any authority about cultivation and what is before the ZBA is just the dispensary.
- **James Vercruysse** asked if the applicant would be in charge of the cultivation and is that part of her business plan.
- **Susan Sanford** confirmed it is part of her plan but at a different site. The discussion before the MVC is just about the dispensary in her existing building.
- **James Vercruysse** noted that where the product is cultivated seems would be more of an issue for the MVC to review.
- **Joan Malkin** questioned if it would be an issue for the MVC to review if it was just a regular farm to open.

**James Vercruysse** asked if there are any state regulations with regards to the proximity of the dispensary to schools. **Susan Sanford** said there are and her location meets those regulations.

**John Breckenridge** asked for more information on how the estimated number of patients was determined. Susan Sanford said a dispensary is highly regulated by the state. Currently there is an average of two staff in the lower level of the building and with the expected patient level it will be a wash with what is happening right now. Two agents must be on the premises at all times. It is expected there would be three patients per hour that would be medical marijuana card holders. The standard across the country is 2% of the population for patient volume and that was used for the anticipated volume for the dispensary. The closest dispensary to the Island is in Portsmouth Rhode Island and it opened a year ago. The current number of patients is 675 or 34 per day and we cut that number in half.

**John Breckenridge** asked when a prescription is written, is it done by a doctor. **Susan Sanford** said patients receive a card from the state. The State allows a patient to have a sixty day supply and the maximum limit is ten ounces. According to the Green Leaf dispensary in Rhode Island, patients on average get a ten day to two week supply per visit.

**Brian Smith** noted that people who come to the Island for vacation would probably not use the dispensary as they would already have their supply with them.

**Trip Barnes** thought the politics about dispensaries is ridiculous and he lives across the street from the applicant and is all for the project.

**Brian Smith** asked if the patients would be scheduled. **Susan Sanford** said if there was a huge influx, the dispensary has the right to schedule. On average a visit is ten to fifteen minutes.

**Joan Malkin** asked if the project was approved by the Town and there was a change in use such as prescription drugs, would the dispensary have to come back to the Town for that. **Tucker Hubbell** said these are not prescriptions and the state has been careful not to call them as such. Prescriptions are run under federal law and a dispensary is under state law. A doctor will give a patient a card. A dispensary cannot sell anything but medical marijuana and medically infused marijuana.

**Fred Hancock** reminded the Commission the referral is only about opening a dispensary and not granting a license for it.

**Katherine Newman** asked if it is helpful to the Town to bring the project as a referral to the MVC. **Tucker Hubbell** said the Town felt they could deal with the project and the ZBA was mixed. The vote was four to one to refer. If it was any other business, the Town would not have referred it. The ZBA felt it had an obligation to give the MVC a chance to look at the project. The biggest issue for the Town is the traffic and the parking. With the by-law, it is an allowed use in the district.

**Brian Smith** noted the allowed use was voted on last year at Town Meeting. **Tucker Hubbell** confirmed it was and it was voted because it was important to have something on the books as noted by Town counsel. The vote did not mean that everyone was in favor of a dispensary but that the Town was comfortable in dealing with the issue.

**Susan Sanford** noted that she would rather see the project go back to the Town and the licensee has to re-apply every year to the state for the license.

**Fred Hancock** asked if it is a one-time permit with the Town and what conditions could the Town put on the permit. **Susan Sanford** said over the first couple of years, the dispensary could report back to the MVC. **Tucker Hubbell** noted that the state will be closely watching all of the dispensary businesses but the ZBA would have to refer to Town counsel on any imposed conditions.

**Fred Hancock**, Public Hearing Officer, closed the public hearing at 8:30 p.m.

#### **4.4 Decision on the Discretionary DRI Referral**

***Erik Hammarlund moved and it was duly seconded to accept the referral from the Town of West Tisbury as a DRI.***

- **Joan Malkin** asked if dispensaries are regulated and if other people are applying do those applicants also get referred to the MVC. It doesn't seem right that a highly regulated business is referred to the MVC. Suppose the applicant changes her business and wants to sell marijuana related products, does the state control that and would the Town have any control over that. Is that a potential issue for the MVC to review?
- **Brian Smith** said the MVC can't assume what someone will do with their business.
- **Susan Sanford** said the state does not allow the dispensary to sell other products.
- **Brian Smith** said he did not see how the project is a regional impact when such things as water issues and character of the building are to be considered for a DRI.
- **Erik Hammarlund** said the regional impact is specific. The Island may have one dispensary on the Island and the likelihood is very small that there would be more than one. He is concerned about the regional impact with regards to the location and not necessarily the traffic. Would this location be centrally located for the Island and is it relevant to public access?
- **James Joyce** said discussing the issue is a crap shoot; it isn't even known if the applicant will receive a license and is not guaranteed anything. If the applicant were to have a business in her current location it would be regulated. There are worst items dispensed at Conroy's Apothecary.
- **John Breckenridge** felt the crux of the argument is based on the cultivation and cultivation would come back to the MVC as a DRI.
- **Erik Hammarlund** said his concern is that the MVC may be the only forum where the Island public would be able to voice themselves.
- **Katherine Newman** asked, if this project was a pharmacy, would it have a regional impact? The MVC doesn't ask a pharmacy where they get their supplies.
- **Brian Smith** said there probably wasn't a better location especially since it has access to the bus lines.
- **Trip Barnes** said he has been receiving a lot of phone calls about a dispensary. Would they all come to us for review? He felt the Town came to the MVC and asked the Commission as a planning agency. The Town showed great courage in getting going with a project such as this.
- **James Vercruysse** thinks the town boards can handle this issue. What is not known is the state requirements for cultivation. Will the towns have the ability to control those requirements of the unknown such as security, access, and lighting for a growing zone?
- **Brian Smith** said the state has regulations for growing zones.
- **James Joyce** said growing zone issues are not relevant it is not before the MVC.
- **Joan Malkin** said the MVC cannot control how the cultivation will be handled.
- **Fred Hancock** said if the MVC accepted the referral, the Commission could condition on the details of how cultivation will take place.
- **Fred Hancock** noted that a yes vote is to accept the Discretionary Referral.
- **Erik Hammarlund** noted as a West Tisbury resident, the Town did make a Discretionary Referral.
- **Trip Barnes** and **Erik Hammarlund** asked if the Town of West Tisbury wanted the MVC to accept the referral.
- **Brian Smith** reiterated that Tucker Hubbell said the Town could handle the project.

- **Tucker Hubbell** said when the MVC was discussing where the marijuana would be grown, that is a question regardless of who the applicant is. The Town would investigate and the applicant would have to provide all of the details. It is a valid question as to where the product is coming from. He felt the West Tisbury ZBA can handle all of the questions the MVC is discussing. It is a very small business.

**Roll call vote. In favor: J. Breckenridge, E. Hammarlund, F. Hancock. Opposed: T. Barnes, J. Goldstein, J. Joyce, J. Malkin, K. Newman, B. Smith, J. Vercruysse. Abstentions: none. The motion did not pass, it is denied.**

**Tucker Hubbell** confirmed with Fred Hancock that as of this Commission meeting the Town has the right to take the referral back.

## **5. OLYMPIC TRUST (DRI 24-M2) MODIFICATION REVIEW**

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Commissioners Present: Commissioners Present: T. Barnes, J. Breckenridge, J. Goldstein, E. Hammarlund, F. Hancock, J. Joyce, J. Malkin, K. Newman, B. Smith, J. Vercruysse.

For the Applicant: Sean Murphy (Attorney/Agent)

### **5.1 Staff Report**

**Paul Foley** presented the following.

- Included in the Staff Report are the LUPC Notes, a letter from Sean Murphy, the Martha's Vineyard Commission Olympic Trust Decision from April 15, 1976, a letter from George Goethals dated February 18, 1976, and the site plans.
- LUPC voted to recommend that the proposal is not significant.
- In 1976 a subdivision of a 3.1-acre lot into three lots, which was part of an earlier subdivision, was reviewed by the MVC and approved with conditions. The earlier subdivision had created four lots. This subdivision created three lots out of one of those four (Lot 4) for a total of six lots. The proposal was referred to the MVC because it was a subdivision proposing new construction within 500 feet of mean high water before the Coastal DCPC had taken effect. Several of the conditions were placed on lots of the previous four-lot subdivision or the other lot that is not before the MVC now.
- Condition 4 from the 1976 DRI 24 Decision states: "No structure shall be constructed, placed or erected on Lots Seven (7) of said plan".
- The proposal seeks to build a pool and pool cabana on the original Lot 7 (now lot 1.5).
- Condition 6 from the 1976 DRI 24 Decision was modified in DRI 24-M in 2000. That condition states: "There shall be no further development on Lot Number Six (6 – Now lot 1.4)... except for a non-residential garage, the second floor of which shall be used for storage only and shall contain no facilities or means of providing for human habitation; said garage structure to be located no closer than 438 feet inland from mean high water...)"

- The proposal seeks to build a larger garage closer than 438 feet from high water that would be connected by a breezeway to the reconstructed main house.
- The site plan and photos were reviewed.

**James Joyce** asked if there are any view easements on the property. **Paul Foley** said there are not.

## **5.2 Land Use Planning Committee Report**

**Joan Malkin** said the view will not be impaired for the abutter. LUPC did not have the benefit of the photos but the photos enhance the understanding of what is being done. LUPC voted unanimously to recommend to the full Commission to approve the modification to DRI 24.

There was a discussion about the view line.

- **John Breckenridge** asked to review the waterline.
- **Paul Foley** showed the water view.
- **John Breckenridge** noted that the view approaching the Island will be the same massing.

**Fred Hancock** asked if the garage will be two stories. **Sean Murphy** said it would be.

## **5.3 Applicant Presentation**

**Sean Murphy** presented the following.

- When the DRI came to the MVC in 1976 there was no Coastal District.
- The property is now embedded in the Coastal District.
- Where the pool is planned to be built the developer agreed not to put any structures at the time of the review but reserved the right for recreational structures.
- From the letter from Mr. Goethals in 1976 he referred to a road but the road has never been used.
- The proposal will combine two buildable lots into one for the pool and the cabana.
- Anything in the Coastal District in Tisbury has to go for review.
- It is being suggested that the proposal has no regional impact on anything.
- The project will be reviewed by the Town of Tisbury under Special Permit for the Coastal District.

## **5.4 Commissioners' Questions**

**Fred Hancock** questioned the road, Goethal's Way. **Sean Murphy** said the concern was in the 1970's, that it would be used as access to the lot where the pool is going.

**James Joyce** asked if the neighbor who may lose his view has seen the plans. **Sean Murphy** said he has not but he does not believe the neighbor will lose the view and the neighbor will be notified by the Tisbury ZBA.

**Fred Hancock** asked if the applicant has to go to the Land Court to merge the lands. **Sean Murphy** said yes because it is registered land.

**Joan Malkin** asked if after the lot lines are eliminated, could the property be subdivided again. **Sean Murphy** said that would have to come back to the MVC.

**Josh Goldstein moved and it was duly seconded to accept the recommendation of the Land Use Planning Committee and the modification does not require a public hearing review. Voice vote. In favor: 10. Opposed: 0. Abstentions: 0. The motion passed.**

**John Breckenridge moved and it was duly seconded to approve the plans as presented and modify the existing DRI. Roll call vote. In Favor: T. Barnes, J. Breckenridge, J. Goldstein, E. Hammarlund, F. Hancock, J. Joyce, J. Malkin, K. Newman, B. Smith, J. Vercruysse. Opposed: none. Abstentions: none. The motion passed.**

## **6. CHARTER SCHOOL (DRI 423-M7) MODIFICATION REVIEW**

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Commissioners Present: T. Barnes, J. Breckenridge, J. Goldstein, E. Hammarlund, F. Hancock, J. Joyce, J. Malkin, K. Newman, B. Smith, J. Vercruysse.

For the Applicant: Bruce MacNelly (Architect), Reade Milne (Architect), Paul Karasik (Development Director)

### **6.1 Staff Report**

**Paul Foley** presented the following.

- The applicant is the Options in Education aka M.V. Public Charter School.
- The proposal is to add a 2,090 s.f. addition to the existing 13,750 s.f. school (total 15,840 s.f.).
- The Charter School was originally approved by the MVC in 1996 for a temporary facility with a limit of 90 persons and other conditions. In 1997 (423-M) the maximum occupancy was raised to 120 total people. In 1998 (423-M2) the maximum occupancy was raised to 140 total people.
- In 2005 (423-M5) the Commission remanded and allowed the school a maximum occupancy of 180 students after septic upgrade.
- The maximum student population allowed under the School's charter is 180. The school staff does not exceed 30 adults on the premises at any one time, although the actual number of staff members exceeds this due to part time appointments. The current design load for the septic system, upgraded in 2004 is 165 children and 60 adults.
- The addition would house science laboratories for the whole school which are now housed in the High School section. The addition would be built where currently there is an outdoor basketball court. The basketball court would be relocated. The building season at the MV Public Charter School is during the summer. They hope to begin this summer with a weather tight shell and then finish in summer 2015 for use in fall 2015.
- The proposal is in three nitrogen sensitive watersheds.
- A site plan showing the relocated basketball court, playgrounds, etc. has not been submitted.
- Site photos were reviewed.

### **6.2 Applicant's Presentation**

**Bruce MacNelly** presented the following.

- In the past, a Master Plan was presented to the MVC.

- The site plan was reviewed in detail.
- The proposal is not changing the population of the school, faculty or students.
- The septic has been updated for 180 children and 30 adults.
- Nothing is changing with the parking and the plan is to try to separate the two drop-off areas.
- The proposal would move the basketball court and the court is an important part of the school as the school now has a basketball team.
- This proposal is also an opportunity to get more area for language arts.
- The school is now K – 12 and the separation of the grades was shown.
- The school has received a grant for lab equipment.
- A tight shell would be built this summer and then the building would be finished out next summer and would go online in fall 2015.
- A couple of Master Plan proposals were done several years ago and the 2003 site plan was shown.
- 3-D views of the existing and the proposed were shown.

**Fred Hancock** asked if the addition is a typical science lab with sinks and is it not an additional load on the septic system. **Bruce MacNelly** said the septic is based on the number of students and the lab is not an impact on the septic. Disposal has to go into a contained system and disposed of separately. One sink will also be lost from the current lab. Heavier substances do not go into the septic.

**Fred Hancock** asked how this proposal affects the Master Plan. **Bruce MacNelly** said the school has done the Master Plans over the years and the plans do not allow for any more students or teachers. Small modifications might be done in the future for elbow room. The school cannot expand anymore in three directions.

**James Vercruyse** asked if there is money in place to move the basketball court. **Bruce MacNelly** said there is.

### **6.3 Land Use Planning Committee Report**

**Joan Malkin** said LUPC did not come out strongly in favor because with the information that LUPC, had an impact could not be determined and that has been addressed tonight. The watershed and waste disposal was not information that LUPC had.

### **6.4 Commissioners' Questions**

**Fred Hancock** asked if there was any concern about the wildlife. **Paul Foley** said the proposal will not affect the wildlife. The property is now up to five acres and would not have to go for review by the state's Natural Heritage Program.

**Katherine Newman** asked if the proposal has to go before a local board and especially since 2,000 square feet is being added. **Bruce MacNelly** said no, the disposal is governed by state law and there are aspects that have to be conformed with. The project is conforming to by-laws.

**Josh Goldstein** asked if the school has room for the life safety that is needed. **Paul Karasik** confirmed there is.

There was a discussion about incremental development.

- **Joan Malkin** said LUPC also discussed that projects tend to grow incrementally and it was an observation by LUPC that if everything was presented at one time it might have an impact. This one incremental change did not seem to trigger any concerns.
- **Fred Hancock** said the school did present a Master Plan and the school was built incrementally. The plan was presented at the very beginning.
- **Bruce MacNelly** said that was done because we wanted to say our picture of the school was to grow. The purpose of the Master Plan was to get around that plan of growth.
- **John Breckenridge** noted there is a cap on the number of students imposed by the state and he calls that the Master Plan.
- **Bruce MacNelly** said the Charter from the state capped the students at 180.

**Erik Hammarlund moved and it was duly seconded that the modification does not require a public hearing. Voice vote. In favor: 10. Opposed: 0. Abstentions: 0. The motion passed.**

**Erik Hammarlund moved and it was duly seconded that the modification be approved as proposed. Roll call vote. In favor: T. Barnes, J. Breckenridge, J. Goldstein, E. Hammarlund, F. Hancock, J. Joyce, J. Malkin, K. Newman, B. Smith, J. Vercruysse. Opposed: none. Abstentions: none. The motion passed.**

## **7. UNDERSEA CABLE (DRI 641-M2) MODIFICATION REVIEW**

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Commissioners Present: T. Barnes, J. Breckenridge, J. Goldstein, E. Hammarlund, F. Hancock, J. Joyce, J. Malkin, K. Newman, B. Smith, J. Vercruysse.

For the Applicant: Les Smith

**Erik Hammarlund moved and it was duly seconded that the modification does not require a public hearing. Voice vote. In favor: 10. Opposed: 0. Abstentions: 0. The motion passed.**

**Erik Hammarlund moved and it was duly seconded to approve the modification as proposed so long as the proposal is reviewed by Federal and State authorities. Roll call vote. In favor: T. Barnes, J. Breckenridge, J. Goldstein, E. Hammarlund, F. Hancock, J. Joyce, J. Malkin, K. Newman, B. Smith, J. Vercruysse. Opposed: none. Abstentions: none. The motion passed.**

**Josh Goldstein** excused himself from the meeting.

## **8. EDGARTOWN LOFTS (DRI 4-M2) WRITTEN DECISION**

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Commissioners Present: T. Barnes, J. Breckenridge, E. Hammarlund, F. Hancock, J. Joyce, J. Malkin, K. Newman, B. Smith, J. Vercruysse.

For the Applicant: Sean Murphy

**Joan Malkin, Katherine Newman** and **Erik Hammarlund** excused themselves from the participation in this item, but remained to preserve the quorum.

**Priscilla Leclerc** said lines 119 and 130 should be changed to 2013.

**Paul Foley** noted that Christina Brown suggested that line 167 should detail the stairs to be built (the stairs will be enclosed).

**Paul Foley** noted on line 233 the word “feel” is to be changed to “fill”.

There was a discussion about the Parking Lot 1.3 under Conditions.

- **Fred Hancock** said the Commission would normally ask for the landscape to be in place at the time the Certificate of Occupancy is issued or the funds would be placed in escrow.
- **John Breckenridge** thought that would be okay to add.
- **James Joyce** noted there was some discussion about the entryway on lines 313-314.
- **Fred Hancock** thought that was part of the parking lot approval.
- **James Vercruysse** said staff wanted the entry way narrower.
- **John Breckenridge** noted there were several opinions about that.
- **Sean Murphy** said it was left out of the offers because the applicant had to discuss the width of the entryway with the other owners and when the plan goes back to LUPC it would be discussed.
- **Bill Veno** said if the other owners say no, what latitude is there to work with LUPC. The way 1.3 is written there is no way for LUPC to influence. Perhaps add language to confer with the Town Planning Board.
- **James Vercruysse** asked if the decision goes to the Town.
- **Bill Veno** said it did go to the Town Planning Board and they can make it more stringent and maybe the Planning Board can address it.
- **John Breckenridge** said the Conditions 1.3 is only talking about discussing the issue with the condominium owners. The MVC can revise it since it goes back for landscape approval.
- **Fred Hancock** noted the MVC has to approve the parking and landscape plans.
- **Sean Murphy** said the applicant plans to go to the Planning Board hearing before he comes back to the MVC so we can see what the Planning Board says.
- **John Breckenridge** suggested adding language that the applicant shall discuss with the Planning Board and other condominium owners.
- **Sean Murphy** agreed to amend the offers before final approval.

There was a discussion about Condition 5 Sale of Units.

- **Fred Hancock** said there should be a starting date for when the ten years begin.
- **Sean Murphy** said it is from the date the Certificate of Occupancy is issued.
- **Fred Hancock** said for point of clarity, it should say the units will remain rental units for ten years from the date of the Certificate of Occupancy.

**James Vercruysse moved and it was duly seconded to approve the written decision as amended. Roll call vote. In favor: T. Barnes, J. Breckenridge, F. Hancock, J. Joyce, B. Smith, J. Vercruysse. Opposed: none. Abstentions: none. The motion passed.**

*Joan Malkin, Erik Hammarlund and Katherine Newman rejoined.*

## **9. TIP AMENDMENT FOR FEDERAL FISCAL YEARS 2014-2017**

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*Commissioners Present: T. Barnes, J. Breckenridge, E. Hammarlund, F. Hancock, J. Joyce, J. Malkin, K. Newman, B. Smith, J. Vercruysse.*

**Priscilla Leclerc** presented the following.

- The TIP plan for the program was approved last summer.
- After review with the Joint Transportation Committee (JTC) there was not enough time left to utilize the funds.
- The JTC explored several TIP project options over the last few months, but time to prepare project documents for advertising and the relatively small amount of funds ruled out options that involve construction.
- It has been suggested to apply the excess funds to purchase a bus for the VTA as part of their ongoing bus replacement purchases.
- The TIP amendment is to give the Commission's approval for the reallocation of funds towards the VTA bus purchase.

**Joan Malkin** asked if the money can be put back and saved for next year. **Fred Hancock** said it cannot.

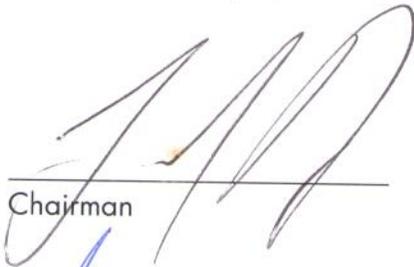
**John Breckenridge moved and it was duly seconded to approve the amendment. Voice vote. In favor: 9. Opposed: 0. Abstentions: 0. The motion passed.**

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

#### DOCUMENTS REFERRED TO DURING THE MEETING

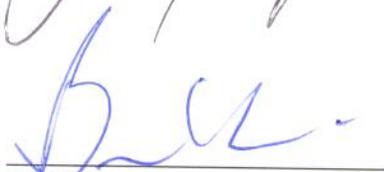
- Minutes of the Commission Meeting – Draft, Held on April 17, 2014
- Minutes of the Commission Meeting – Draft, Held on May 1, 2014
- Public Hearing May 8, 2014, Town of Aquinnah DCPC Conformance of Proposed Amended Regulations, Staff Notes Updated May 2, 2014, Chapter 831 of the Acts of 1977 as amended
- Martha's Vineyard Commission DR 1-2014 Medical Marijuana/Vineyard Comp. Med. MVC Staff Report – 2014-04-24
- Martha's Vineyard Commission Land Use Planning Committee Notes of the Meeting of April 28, 2014
- Letter to the Martha's Vineyard Commission from Town of West Tisbury Zoning Boards of Appeals, RE: Discretionary DRI Referral for RMD Application (Susan Sanford) Dated April 4, 2014
- Email to Martha's Vineyard Commission from Victor M. Linn, Dated May 2, 2014
- Email to Martha's Vineyard Commission from Wayne Lamson (Steamship Authority) Dated April 10, 2014
- Proposed Basement Floor Plan for 489 State Road, West Tisbury
- Martha's Vineyard Commission DRI # 24-M2 Olympic Trust, MVC Staff Report – 2014-05-05
- Martha's Vineyard Commission Land Use Planning Committee Notes of the Meeting of May 5, 2014
- Letter to the Martha's Vineyard Commission from Sean Murphy, RE; Island Olympic Trust DRI 24-M2, Dated May 5, 2014
- The Martha's Vineyard Commission Development of Regional Impact Decision: Re Island Olympic Trust Dated April 15, 1976

- A Letter from George W. Goethals Dated February 18, 1976 noting his concerns about an application for subdivision L.C. 12689A
- Proposed Neighborhood Plan for 453 Main Street, Vineyard Haven, Dated March 20, 2014
- Proposed Site Plan for 453 Main Street, Vineyard Haven, Dated March 20, 2014
- Martha's Vineyard Commission DRI # 423-M7 Options in Education/Charter School MVC Staff Report – 2014-05-08
- Letter to the Martha's Vineyard Commission Land Use Planning Committee from Bruce MacNelly, RE: Martha's Vineyard Public Charter School, Dated May 5, 2014
- DRI 641-M2 Undersea Cable Modification, Email to Martha's Vineyard Commission from Les Smith, Dated April 22, 2014
- Email to the Martha's Vineyard Commission from the D.C. Fisherman's Association, RE: Martha's Vineyard Submarine Cable Project, fyi, Dated May 1, 2014
- Email to Martha's Vineyard Commission from Chris Murphy, Re: Martha's Vineyard Submarine Cable Project, Dated May 1, 2014
- MV Hybrid Submarine Cable Project Falmouth/Tisbury MA Site Plan Figure 1, Exposed Cable at Boulder
- Decision of the Martha's Vineyard Commission, DRI 170-M3 – Edgartown Lofts – Draft
- Martha's Vineyard Commission Memorandum to the Commissioners from Priscilla Leclerc, Subject: Transportation Improvement Program (TIP) Amendment, FFY 2014-2017, Dated May 1, 2014



Chairman

7-17-14  
Date



Clerk-Treasurer

7-17-14  
Date