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## Minutes of the Commission Meeting Held on May 18, 2017 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 Gail Barmakian (A-Oak Bluffs)          | - Michael Kim (A-Governor)        |
| P Tripp Barnes (E-Tisbury)               | P Joan Malkin (A-Chilmark)        |
| P Christina Brown (E-Edgartown)          | P Katherine Newman (A-Aquinnah)   |
| - Peter Connell (A-Governor; non-voting) | P Ben Robinson (A-Tisbury)        |
| P Robert Doyle (E-Chilmark)              | P Doug Sederholm (E-West Tisbury) |
| P Josh Goldstein (E-Tisbury)             | P Linda Sibley (E-West Tisbury)   |
| P Fred Hancock (E-Oak Bluffs)            | P Ernie Thomas (A-West Tisbury)   |
| P Leonard Jason (A-County)               | P Richard Toole (E-Oak Bluffs)    |
| - James Joyce (A-Edgartown)              | - James Vercruysse (E-Aquinnah)   |

Staff: Adam Turner (Executive Director), Bill Veno (Senior Planner), Paul Foley (DRI Planner), Christine Flynn (Economic Development and Affordable Housing Planner), Dan Doyle (Transportation Planner).

**Acting Chairman Robert Doyle** called the meeting to order at 7:00 p.m.

### 1. WESTMAN HISTORIC DEMOLITION-TISBURY DRI 675 CONTINUED PUBLIC HEARING

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Commissioners Present: G. Barmakian, T. Barnes, C. Brown, R. Doyle, J. Goldstein, F. Hancock, L. Jason, J. Malkin, K. Newman, B. Robinson, D. Sederholm, L. Sibley, E. Thomas, R. Toole.

For the Applicant: William Westman

**Linda Sibley**, Public Hearing Officer, opened the Public Hearing that was continued from April 13, 2017.

**Paul Foley** noted the eligible Commissioners; G. Barmakian, T. Barnes, R. Doyle, J. Goldstein, F. Hancock, J. Joyce, B. Robinson, D. Sederholm, L. Sibley, E. Thomas, R. Toole.

#### 1.1 Staff Report

**Paul Foley** presented the following.

- The applicant met with the William Street Historic District Commission (WSHDC, aka Tisbury Historic District Commission) on May 3, 2017.
- The applicant made the following modifications to the plans since the first MVC public hearing and meeting with the WSHDC:
  - Lowered the ridge height on the addition to approximately 1.5 feet less than the main house.
  - Roof pitch on the reconstructed main building will be 12 over 10 (existing pitch), with 12 over 5 dormers.
  - Removed the French doors on Center Street where the bulkhead was, and replaced it with windows.

- Will re-use the original door jamb and door.
  - Reduced size of 2<sup>nd</sup> floor windows to be smaller than the 1<sup>st</sup> floor windows.
  - Will install 6 over 6 windows.
  - Will install shutters on the front of the house.
- The WSHDC, which acts as an advisory board to the Board of Selectmen for projects outside the District, submitted the following; “The Tisbury Historic Commission (THC) recommended Conditional Approval for demolition of the property...pending implementation of design changes suggested and accepted during the meeting of the THC. Final approval of the design changes and exterior details must be approved by the THC prior to the issuance of a demolition permit.”
- The WSHDC Recommended Conditions:
  - The applicant will catalog exterior trim details with photography and full scale tracings and submit to the THC prior to demolition. These details will include: window and door sill, casing, headers, soffit, fascia, rake, frieze and crown moldings, clapboard and wood shingle exposure, as these will be replicated in the new building.
  - The applicant will provide the THC with finalized plans showing roof slope and design emulating the modest (seaman’s) Greek Revival homes, that are of similar design within the William Street Historic District.
  - The applicant will reduce the size of the second floor windows to make them smaller than the first floor windows, and submit for approval by the THC.
  - The applicant will modify the addition to make it subordinate to the main house by lowering the ridge, while maintaining the same roof slope on both the main house and the addition. The use of small dormers will be considered by the THC to accommodate expanded headroom. The new design will be submitted to the THC for approval.
  - The applicant will work on redesigning the Center Street elevation to reduce the mass of the shed dormer.
  - The Franklin Street elevation of the main house will receive white painted clapboards with an exposure no greater than 3 ½ inches. The remaining elevations will receive wood shingles with an exposure not to exceed 5 inches. The applicant may leave the shingles natural or paint them white.
  - The roof will be completed with GAF Timberline or equal black, slate or gray asphalt shingles.
- Key issues include:
  - Is this house too historically significant and structurally sound to allow demolition?
  - Do the revised plans for the replacement house (May 17, 2017) fit the style and materials of the historic building and neighborhood?
- Correspondence received includes:
  - Hyung Suk Lee submitted a sketch which showed a reduced building envelope, based on his interpretation that the voluntarily demolition of a historic building surrenders the pre-existing non-conforming setbacks.
  - Jeffrey and Wendy Lott of Center Street wrote that though they support preservation in general, but understood this building could not be saved. They added that new construction should observe the existing zoning and apply the 20 foot setback on each side.

### **1.2 Commissioners’ Questions**

**Leonard Jason** asked if the applicant reduced the shed dormer. **William Westman** said that in order to abide by the building code, the walls would need to remain the same height in order to maintain the legal height for the top floor. The roof slope was changed slightly, and the window heights were reduced



to the minimum egress, to give the appearance that the addition was lower in elevation than the main house. The WSHDC preferred 6 over 6 windows and shutters on the front of the house, which was agreed to. **William Westman** stated that he needed to follow the building code, but has conceded with the WSHDC on everything they wanted and more.

**Leonard Jason** asked if the WSHDC had asked for the dormers to be narrower. **William Westman** said there were different ideas of how to minimize the dormers, including shed dormers and dog houses. He made every concession possible, while still keeping to the Greek revival theme.

**Linda Sibley** noted that the 6 over 6 windows were not shown on the plan, and asked if they would change the overall proportion of the windows. **William Westman** said no, they would be the same windows, but with different lengths.

**Gail Barmakian** asked if the screened porch had glass doors. **William Westman** said no, the porch would have screens, the same as what currently exists.

**Fred Hancock** asked if the porch would have screens or trellises. **William Westman** replied screens.

**Fred Hancock** asked what feature was shown on the drawings next to the screen porch. **William Westman** said that the kitchen windows were shown, and could not have the normal separation between them because of the interior design of the kitchen. He stated that the feature underneath was a walk down that would be built instead of a bulkhead, so that the basement entrance would not be visible from the street.

**Ben Robinson** said that the applicant specifies Azek trim in the plans. **William Westman** said it would be that or a comparable composite material. **Ben Robinson** stated that composite material is not environmentally sound.

### **1.3 Public Testimony**

**Dana Hodsdon** is on the board of the WSHDC, but spoke as a resident, and not a representative of the board. He stated that the applicant was asked to change the dormer on the Center Street side, as it was thought to look like a wall and be too tall. He was given examples of structures on William Street and was asked to look at examples in Edgartown. Mr. Westman came back with a photo of a house on Center Street and William Street that had a long dormer, but was built before the WSHDC was adopted. Mr. Hodsdon noted that this was one thing that Mr. Westman did not take into consideration at the time.

**Hyung Suk Lee** felt that the building should not be demolished, and that a modest addition could be built to achieve the same bedroom count. He stated that instead, the applicant has decided to demolish the entire structure, and to rebuild with an increased height. He stated that this added volume intensifies to the non-conformity of the structure. He disagreed with Paul Foley about the non-conforming setbacks remaining after the demolition of the building. He argued that any increase to the non-conformity of the structure or use would be detrimental, and if demolished, the pre-existing non-conforming status of the structure would be lost. He stated that if the Commission were to approve this demolition, the applicant should have to rebuild within the footprint mandated by existing local zoning, with 20 foot setbacks on all sides. He stated that he has restored historic buildings in the past, that it would be time consuming to restore; but it can be done, and then the applicant would be able to use the existing footprint. He wanted the MVC to be aware of these points before a decision was made.

### **1.4 Applicants' Closing Statement**

**William Westman** said on Wednesday, he went to Center Street and William Street and met with Craig Whitaker, and they went for a two hour walk through town to look at different buildings and plans. Some of the changes made to the plans were a result of that meeting. The WSHDC was looking for a

smaller dormer on the Center Street side, but he had to keep to the Mass Building Code in terms of window egress and wall height. He tried to keep what everyone wanted. He said he needed the MVC's help and wanted to make this building nice.

### **1.5 Commissioners' Discussion**

**Ben Robinson** noted that the WSHDC was talking about the width of the dormer, not the length. He said that modifying the width of the dormers would not have an effect on the building height, only the interior room layout.

**Linda Sibley** saw a conundrum. She said that the Commission has a list of things the WSHDC wants. She saw it as a 95-96% complete application, but did not have accurate representation of the windows on the addition.

**Adam Turner** said the MVC could condition the project. The applicant has stated what he intends to do.

**Linda Sibley** said the public hearing may need to be continued again.

**Ben Robinson** noted the pre-existing non-conforming condition, that the applicant has returned with something historic in design, and the WSHDC can review the project as if it was in the district.

**Linda Sibley** said that the MVC was told by counsel that the Commissioners cannot give powers to a local board outside their jurisdiction.

**Fred Hancock** said the only thing not shown on the plans were the 6 over 6 windows, and the shutters.

**Leonard Jason** asked if the basement would be finished. **William Westman** said no, that a bathroom could not be installed in the basement.

**Trip Barnes** said the MVC should close the public hearing and move on. The applicant has gone out of his way to pacify everyone and there was enough information to make a decision.

**Linda Sibley** asked if Ken Barwick could respond, and asked if it was his belief that the plans as proposed could be permitted. **Paul Foley** also asked if the applicant demolishes the building, would he lose the non-conforming pre-existing setbacks. **Ken Barwick** said that the plans could be permitted, pending town board approval; and that the applicant could possibly keep the setbacks, but would need a special permit through the ZBA.

**Linda Sibley**, Public Hearing Officer, closed the public hearing with post public hearing LUPC for May 22, 2017, 5:30 p.m.

## **2. SANTANDER ROOF TILES-TISBURY DRI 674 PUBLIC HEARING**

*Commissioners Present: G. Barmakian, T. Barnes, C. Brown, R. Doyle, J. Goldstein, F. Hancock, L. Jason, J. Malkin, K. Newman, B. Robinson, D. Sederholm, L. Sibley, E. Thomas, R. Toole.*

*For the Applicant: Sean Murphy*

**Linda Sibley**, Public Hearing Officer, opened the Public Hearing that was continued from May 4, 2017, and noted that testimony was not taken when the public hearing was originally opened.

### **2.1 Staff Report**

**Paul Foley** presented the following:

- The applicant is Santander Bank, represented by Sean Murphy.
- The location is 75 Main Street, Tisbury Map 7-D, Lot 7.
- The applicant has removed the historic clay Spanish style roof tiles that were on the building for over 100 years, and replaced them with asphalt tiles.



- The building was built in 1905.
- The applicant was issued a Building Permit to perform the work. It was only when the historic clay tiles were being removed that citizens became aware and raised the alarm. The citizens alerted the town and the MVC that the action triggers DRI Review under Section 8.2ii of the DRI Checklist. It was then referred to the MVC for Concurrence Review for alteration of a historic building over 100 years old.
- The applicant has said that repairing the roof cost approximately \$100,000. To replace them with clay tiles would have cost \$400,000. No actual estimates by a roofer were submitted.
- According to the National Park Service Technical Preservation Paper #30 on the Preservation and Repair of Historic Clay Tile roofs "clay tile has one of the longest life expectancies among historic roofing materials – generally about 100 years and often several hundred." The article goes on to say that "clay roofing tile itself, when installed correctly, requires little or no maintenance... frequently outlasting the building structure."
- Clay Spanish tiles would cost somewhat more, but last much longer (up to hundreds of years if maintained), cost less to maintain, lower heating and cooling bills, and add value to the building.
- Staff suggested to the applicant that a few additional factors be considered: the historic clay tiles that previously graced the building were there for a very long time, possibly 110 years; but in any case, much longer than the lifetime of an average asphalt shingle. The bank may want to consider listing the structure on the National Historic Register. If the bank were listed on the National Historic Register, the replacement of the historic tiles may be eligible for up to 40% reimbursement through Federal and State Historic Tax Credits, in addition to the value of the prestige that designation brings.
- Site photos and historic photos were reviewed.
- Ken Barwick has said that some of the tiles were worn and needed replacing when he went to the site when the roof was being replaced.
- The building is visible from the ferry and a public way.
  - **Adam Turner** noted that the building is in a prominent spot on Main Street in Tisbury.
- Correspondence has been received:
  - Carole Berger of the M.V. Historic Preservation Trust Awards has written urging the Commission to use their powers to restore this significant island landmark.
  - Scott Tuttle, Hyung Suk Lee and Dana Hodsdon have written urging a public hearing review and urging restoration of the historic clay tiles.

## **2.2 Applicants' Presentation**

**Sean Murphy** presented the following.

- The roof costs were presented as follows: the asphalt tile roof work cost \$100,935; the cost for ceramic tiles would have been \$276,260, or \$388,950 for clay tile.
- He provided pictures of each of the tiles, and submitted this information for the record.
- The applicant did everything that was asked of them. They emailed Ken Barwick with the proposal, noting that they would be replacing a historic roof.
- Ken Barwick told the applicant to apply for a permit, they did so, and replaced the roof according to their specifications.
- It was obviously an error on Ken Barwick's part.
- The applicant felt they did everything asked of them, spent a lot of money, and did not feel the project should have been referred to the MVC.

## **2.3 Testimony from Public Officials**

**Harold Chapdelaine** spoke on behalf of the William Street Historic District Commission (WSHDC). The WSHDC met to discuss the asphalt roof project and was unanimous that the MVC should require the clay tile roof be replaced. It was understood as an administrative error. A member of the WSHDC reached out to the bank twice to bring attention to the condition of the deteriorating roof. Mr. Chapdelaine acknowledged Mr. Barwick's difficult position in the matter, and believed that the bank should have done more due diligence because of the age of the building. He stated that the WSHDC made themselves available to the applicants, and the bank never responded.

**Linda Sibley**, Public Hearing Officer, said that the MVC will be determining if citizens feel the roof is satisfactory as is, or if it should be replaced with clay tiles.

**Harold Chapdelaine** stated that the WSHDC believed the roof should be returned to a tile roof, and would appreciate MVC support in the process.

#### **2.4 Public Testimony**

**Tristan Israel** is a Tisbury Selectmen, but spoke as a resident. He stated that the selectmen became aware of the project through concerned citizens, and found that the building permit was still open. The weekend after the meeting where the roof was discussed, there was a large impending storm approaching the island, and the board decided not to pursue a cease and desist or ask the building inspector to take other action, so as not to risk damage to the building. The storm was the reason why the project was completed with an asphalt roof. He stated that the bank is so important to the Town and to Main Street, and he urged the MVC to return the building back to the iconic building that it has been for 100 years or more.

**Melinda Loberg** is also a member of the Board of Selectmen and stated that she agreed with Tristan Israel.

**Dana Hodsdon** sits on the WSHDC and the Site Plan Review Board, but spoke as a resident. He went into the bank twice with concerns about the exposed rafter tails, many of which are rotting, and suggested that a representative come to the WSHDC to discuss the issues. They did not. Because it is a 100 year old building, and it is so iconic, he was concerned that it may be lost. It was constructed through efforts by William Barry Owen, who has a park and two streets named after him in the Town. He did not feel that Santander Bank has worked with the community, and he would like them to stand up and replace the roof with the historic tiles.

**Hyung Suk Lee** said history is enjoyed by the community for many generations. The building should be restored, and he would like to see the MVC be involved in that.

#### **2.5 Commissioners' Discussion**

**Linda Sibley** said perhaps the cost of the roof could be amortized over 100 years versus the asphalt roof life span.

**Sean Murphy** said he did not want this issue to reflect on Mr. Barwick. He stated that Mr. Barwick is an asset to the Town of Tisbury, that he is overworked, and that this application was received during the busiest time of year.

**Trip Barnes** said he brought the roof in for the other bank building and stated that it was not nearly as expensive as the estimates received. He also noted that all of Kentucky Fried Chicken buildings have that same roof, perhaps made of fiberglass instead of clay. He suggested the applicants do more research.

**Christina Brown** asked for clarification on the rafter deterioration, and asked if the roof would be strong enough to support the heavier clay tiles. **Dana Hodsdon** said there is a slight overhang and when the



wind blows, water hits the rafter tail. He stated that the tiles would not be heavy enough to cause the roof to fail.

**Katherine Newman** asked if Santander Bank has made any offers. She also asked if Santander understood the implication to the community. **Sean Murphy** said they have not come back with an offer, and he was not sure they understand the impact to the community. They are a massive company. The local management does not have the authority for these types of issues. He will relay the information and concern to them.

**Christina Brown** asked if Santander Bank was aware of the possible designation on the National Historic Register. **Sean Murphy** said he will mention it to them.

**Linda Sibley**, Public Hearing Officer, closed the public hearing leaving the public record open until June 1, 2017 with post public hearing LUPC on June 5, 2017.

**Robert Doyle**, Acting Chairman, recessed the meeting at 7:55 p.m. and reconvened at 8:00 p.m.

### **3. MEDICAL MARIJUANA-WEST TISBURY DRI 618-M2 CONTINUED PUBLIC HEARING**

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*Commissioners Present:* G. Barmakian, T. Barnes, C. Brown, R. Doyle, J. Goldstein, F. Hancock, L. Jason, J. Malkin, K. Newman, B. Robinson, D. Sederholm, L. Sibley, E. Thomas, R. Toole.

*For the Applicant:* Geoff Rose, Jim Eddy, Mark Daniels

**Linda Sibley**, Public Hearing Officer, opened the Public Hearing that was continued from May 4, 2017.

#### **3.1 Staff Report**

**Paul Foley** presented the following:

- The revised staff report.
- The MVC sent the applicant a list of questions from the last public hearing and he has responded.
- Correspondence has also been received, as noted in the Correspondence List.
- At the last public hearing, the MVC received a letter from the Zoning Official that stated the project's cultivation area did not meet the zoning requirements. The plan was revised to shrink the cultivation area.
- An email was received from the Building Inspector that the proposal still does not conform to zoning. The plan was revised again, and assigned most of the square footage to storage. The Building Inspector has stated the current proposal conforms to zoning.
  - **Christina Brown** asked for clarification regarding the zoning; whether the cultivation area was a percentage based on the overall size of the building, or a flat rate.
  - **Paul Foley** said the zoning states the building can only have 1,000 s.f. of cultivation area regardless of the overall building size, and the plan now meets that requirement.
- Key issues were considered to be the questions submitted by the MVC to the applicant, and the applicant has provided a written response.
  - **Linda Sibley** said there was no need to repeat the questions since they were in writing.
  - **Adam Turner** said the Commissioners should make sure the answers are adequate, and to ensure that there were no follow-up questions.

#### **3.2 Review of Applicants' Response to Questions**

**Fred Hancock** asked for clarification on the exterior material. **Jim Eddy** said it would be full height Board and Batten, and provided the specifications.

**Joan Malkin** asked for information about the security cameras and associated lighting. **Paul Foley** displayed the lighting plan. **Geoff Rose** said he provided a narrative in the written response that there would be six vandal-proof cameras located around the perimeter of the building, viewing and recording 24/7, as well as cameras inside the building.

There was a discussion about the lighting plan.

- **Mark Daniels** reviewed the lighting and bollards. There was some confusion about the proposed lighting as passive infrared sensor (PIR) lighting emitting no visible light. The parking area would be lit compliant with the Town of West Tisbury Lighting Bylaw. Lighting would be emitted by wall packs (downward lighting) and the perimeter of the building would utilize passive infrared sensor (PIR) for security purposes that emit no visible light. The specifications for the bollards were included in the written response. A lighting plan was submitted that included wall packs, bollards and pole lights with a height maximum of 20 feet.
- **Joan Malkin** asked if the 20 foot poles were mandated by State requirements, and stated that lower lights and bollards would be preferable.
- **Mark Daniels** replied that the poles were not required by the State, and that they were a voluntary proposed addition.
- **Joan Malkin** asked at what time the bollards would not be on.
- **Mark Daniels** said the minimum possible number of bollards would be left on overnight.
- **Geoff Rose** said the State requires that lights be on from 11:00 p.m. to 7:00 a.m. in an industrial area.
- **Linda Sibley** asked for clarification. It was clarified that regardless of use, in an industrial area, lighting is required from 11:00 p.m. to 7:00 a.m., but the amount of light is not specified.
- **Mark Daniels** said the lighting would need to overlap somewhat to allow for continuous coverage.
- **Joan Malkin** asked for more information about the wall packs, and if they were required.
- **Mark Daniels** said the wall packs were another type of light and showed a picture.
- **Geoff Rose** said there was a security requirement to light the perimeter of the building.
- **Fred Hancock** said the Commissioners are trying to determine what is needed for code, including special regulations for registered marijuana dispensaries, what is needed for security, and what the applicant felt was necessary.
- **Geoff Rose** said security requirements state that the outside perimeter of the building must be secured, and sufficiently lit to facilitate surveillance of the building.
- **Doug Sederholm** said he was confused about the lighting and surveillance, and asked for clarification.
- **Geoff Rose** said the cameras would be infrared motion detectors which emit no visible light.
- **Doug Sederholm** read the security requirement for clear, color photographs and asked how the cameras could meet that without supplemental lighting.
- **Mark Daniels** said the cameras function up to 100 feet and do not emit light.
- **Linda Sibley** stated that the proposal includes wall packs and downward lights.
- **Fred Hancock** asked which lights would be left on at the end of the day when everybody has gone home.
- **Geoff Rose** said the bollards would be sufficient to light the parking area.
- **Leonard Jason** asked if there was more or less lighting than the previously approved project.
- **Paul Foley** said there was more lighting on the updated plan.

There was a discussion about housing.

- **Joan Malkin** noted that onsite housing was included in the proposal, and asked what impact that would have on water quality and traffic.



- **Geoff Rose** said the hours of operation would determine the number of trips regarding transportation. Employees would leave for work at 7:00 a.m. and return between 5:00 and 6:00 p.m. six days a week.
- **Fred Hancock** said he was confused about the dormitory style housing, and asked where it would be located on the site.
- **Geoff Rose** said it was not on the plan, but that it would be located within the building. When he spoke with Christine Flynn it was explained that housing for workers could be offered as a potential alternative. Composting toilets would be installed.
- **Fred Hancock** said if part of the application was that the applicant would provide dormitory housing, it was not on the plan, and more information was needed.
- **Joan Malkin** said it needed to be put on the plan as it may add another bathroom.
- **Gail Barmakian** asked if the lighting requirements would be affected by people living on site, and if the DPH would require approval for people residing at the facility.
- **Joan Malkin** said the housing also raises issues for water quality, especially with the need for cooking facilities.

**Linda Sibley** said that the written answers were confusing and needed to be clarified.

### **3.3 Transportation Report**

**Dan Doyle** presented the following.

- The baseline report from peak hour April 2017 showed 75 vehicle trips, 35 of which were trucks.
- There was an estimated 20% increase in vehicle trips based on the proposal.
- There were 14 total trips based on 7 patient visits in the PM peak hour.
- Dr. Fisher Road is an unpaved road.
- The West Tisbury scenic road designation only applies to Dr. Fisher Road east of Pine Hill Road to Old County Road.
- There would not be a notable backup at that intersection given the traffic volume.
- The applicant made some comprehensive offers to discourage site access via Old County Road and the residential stretch of Dr. Fisher Road:
  - Post directions on the website to access Dr. Fisher Road via Old Stage Road only.
  - Email/text or call patients before appointments.
  - A written reminder to patients after a dispensary visit.
  - Contact internet mapping services to advise them of the business location.
  - Place signage at the entrance to Dr. Fisher Road/ Old County Road, i.e. "No Thru Road" (subject to necessary approvals).
- At very low speeds, heavy trucks typically contribute to deterioration of unpaved roads, not small vehicle trips (even at high volumes). However, once speeds above 10 and 15 mph are reached, even lighter vehicles contribute in a meaningful way to the deterioration of the road, especially following precipitation events.
- Many motor vehicle operators likely to be averse to poor road conditions are the primary customer profile for the medical marijuana facility: aging population and patients with chronic pain conditions. Can patients with a chronic pain condition navigate such a road?
- Dr. Fisher Road has not been designated a Special Way.
- Dr. Fisher Road is a DCPC and is conditioned to remain open to public use. People do use it for recreational uses which would create conflicts.

**Fred Hancock** asked if the DCPC is the entirety of the road. **Dan Doyle** replied yes.

**Joan Malkin** said asked how the road maintenance was proportioned, since Dr. Fisher is a private road. **Dan Doyle** said that there was a funding mechanism for proportionate sharing of costs for road maintenance in place.

**Gail Barmakian** asked about the impact on the intersections. **Dan Doyle** said staff looked at the intersection only at Old Stage Road and State Road at peak hour.

**Gail Barmakian** asked if there were any regulations preventing Dr. Fisher Road from being paved. **Dan Doyle** replied no, that he was not aware of any restrictions against paving.

**Doug Sederholm** noted that Pine Hill Road dead ends at Dr. Fisher Road, and asked where it ends on the other side. **Bill Veno** said the road ends across the street from the Nat's Farm Meadow Trail parking lot. It turns into a walking trail and is not drivable.

**Christina Brown** stated that on a site visit to Dr. Fisher Road from Old County Road at 3:00 p.m., she encountered no traffic. She asked how the traffic impact was gauged, and asked if traffic counts were performed. **Dan Doyle** said traffic counts were not done. Given the details of the proposal, he assessed that there would be a minimal traffic impact to residential portion of the road.

### **3.4 Testimony from Public Officials**

**Matt D'Andrea** is the Superintendent of Public Schools. He stated that there was an article in the Beacon that found that medical marijuana facilities cannot be prohibited from also operating as commercial marijuana businesses. He added that commercial marijuana businesses cannot be prohibited in zoning districts that allow medical marijuana facilities. He researched the General Laws of the Commonwealth and found confirmation that once a medical marijuana facility opens, a recreational facility has the possibility to open on that site or in the area. As Superintendent of Schools, he felt the need to speak against the project, and believed that allowing medical, and especially recreational, marijuana goes against what students are taught. He was also concerned about the proximity of the proposed location to the West Tisbury School.

- **Paul Foley** showed the site plan.
- **Dan Larkosh** said the property was 2,400 feet from the school as the crow flies.
- **Geoff Rose** said the State law required the facility to be at least 500 feet away from a school.
- **Linda Sibley** suggested that the MVC staff check with counsel to see if the provision allowing a medical marijuana facility to transition to a recreational facility would apply to the MVC's jurisdiction.
- **Paul Foley** suggested that the Commissioners condition the decision so that the facility cannot be allowed to become a recreational facility.
- **Josh Goldstein** asked how close the 505 State Road location was to the Charter School.
- **Geoff Rose** said it was 3/10 of a mile.
- **Joan Malkin** and **Doug Sederholm** asked about the publication information for the article.
- **Matt D'Andrea** said the article was titled "Locals Advised to Act Now on Marijuana Law" and was published in the April 2017 Beacon. He also referenced the Session Law Acts of 2016, Chapter 334, section 3.a.1 and section 4.c.4.

### **3.5 Commissioners' Questions**

**Gail Barmakian** asked if the applicant would be grandfathered if West Tisbury zones for recreational marijuana facilities in the future.

**Linda Sibley** said per the State regulations, if one is allowed the other cannot be denied.

**Geoff Rose** said the whole law is under review. He stated it was possible that the law would change dramatically soon.



**Linda Sibley** said the MVC will ask counsel to check on the legal questions, and ask whether the changes would apply to municipalities and/or the MVC jurisdiction.

There was a discussion about the location of the dispensary and cultivation facility.

- **Doug Sederholm** said the applicant's answer to question 21 under Alternative sites and/or scenarios was yes; "Would it be possible to separate the cultivation operation and dispensary to different sites?" He had a problem understanding why people would object to a highly secure cultivation facility at the proposed location, but could see why there would be objections to a dispensary, due to traffic issues and the possibility of the dispensary converting to recreational use. He asked what the impetus was to have the cultivation and distribution at the same place, other than costs and economics.
- **Geoff Rose** said it would be easier to operate under one roof. Dispensaries that are separated typically have very large cultivation areas and very small dispensary areas.
- **Adam Turner** asked if the applicant thought it was an appropriate location for retail.
- **Geoff Rose** said the term "retail" was misleading. Retail connotes that people can come and go at their leisure. This facility would be a highly regulated environment, with patrons arriving by appointment only, as prescribed by a doctor. He thought the location was appropriate, but was listening to input from the MVC and neighbors.
- **Christina Brown** said the proposal consists of a testing lab, growing area and a dispensary. She asked if the testing lab could be in another place, or if it was required to be on site. There was the potential for three different buildings.
- **Geoff Rose** said there needed to be an independent lab on site.
- **Linda Sibley** asked if the testing lab has to be onsite with the cultivation or the dispensary.
- **Geoff Rose** said that the licensing process did not specify.
- **Linda Sibley** said the Commissioners needed to understand how the locations are defined.
- **Geoff Rose** said it was not specified in the licensure.
- **Joan Malkin** said the proposal is described as a co-located application.
- **Doug Sederholm** said the Commission should research other license-holders, to see where the lab is located in relation to the growing and dispensing areas. He stated that logically, the lab would be associated with the growing area.
- **Geoff Rose** said because he is not on the mainland with access to other labs, he is the only licensee required to have a lab on-site (other than potentially on Nantucket). Most dispensaries are able to drive their samples to a lab nearby.
- **Linda Sibley** said the Commissioners needed to look at the alternatives to the proposal by examining different locations for the different aspects of the proposal.

**Geoff Rose** addressed the lighting. The DPH and its regulations do not address or make any statement regarding lighting, only to state that the facility needs to be sufficiently lit for security surveillance. **Mark Daniels** said the requirements could be met with motion detector sensors. **Linda Sibley** said it has been noted that the deer population could trigger the cameras frequently.

### **3.6 Public Testimony**

**David Fielder** is a resident of Dr. Fisher Road and said he was still confused about the number of trips per day that would be generated by the dispensary. In the report, there was an estimated 214 trips per day. He stated that public access to the road cannot be denied, since the road is an ancient way. He questioned whether or not the increased use of 214 trips per day would effectively deny public access. He urged the Commissioners to consider whether the proposed location was appropriate.

**Chris Egan** is a resident of Dr. Fisher Road. He was not aware of the housing portion of the application. He stated that the housing proposal needed further analysis, especially regarding the nitrogen load. He

also said that the lighting would be the same, regardless of whether the application were to become only a cultivation area, and not a dispensary. He was not hearing how "well lit" was defined, and asked if the bollards would meet the approval of the State. He also added that the cameras only take black and white photos using infrared light at night, not color pictures, so more information would be needed to confirm. There was still no information on the generator for the grow facility. He stated that there were still a few big holes in the application.

- **Linda Sibley** noted that there was a written answer for the generator, but it was not shown on a plan.

**Elizabeth Fielder** said she had asked at the last meeting if any other towns allowed private businesses on private roads, and that had not been answered.

- **Paul Foley** said there are other businesses on Dr. Fisher Road already. In 2000, when the zoning changed, the Town did not mandate alternative accesses to the industrial lots.
- **Linda Sibley** said there were a lot of businesses on private roads on the Island. The businesses join the road association, and pay a proportionate share.

**Dan Larkosh** said the current light industrial owners were members of the road association and they pay in, i.e. Melissa Manter, Bizarro, and John Keene. He stated that he supports the facility 100% and he was the closest residential abutter. He asked where the generator would be located.

- **Geoff Rose** said the generator would be on the north side of the building.
- **Dan Larkosh** noted that the building would buffer the noise of the generator.
- **Joan Malkin** asked for clarification on the location.
- **Geoff Rose** showed the location on the plan.
- **Joan Malkin** asked who the neighbor was to the south.
- **Geoff Rose** said it was Bizarro. He added that the generator would function as a backup generator, and that it was 69 decibels, which would be about the same as a vacuum cleaner.
- **Dan Larkosh** showed on the site plan which lots were residential and which were industrial.
- **Josh Goldstein** said perhaps the generator should be located on the side where the parking would be, based on what Mr. Larkosh showed. The generator does not have to be attached to the building, the wiring can be underground.

**Dan Larkosh** said he did not see the logic in spread out locations when this facility could serve the whole Island in an efficient way.

**Nolan Pavlik** spoke on behalf of his parents as residents of Pine Hill Road. He stated that this operation would be something completely different from anything else in the neighborhood, and that it would have a huge regional impact. Dr. Fisher Road, especially from Pine Hill Road to Old Stage Road, was in horrendous condition, and did not appear to ever be able to support the estimated traffic increase.

**Farley Pedlar** spoke to the condition of Dr. Fisher Road. He stated that the neighbors were interested in improving the road conditions between Pine Hill Road and Old Stage Road, as well as the area referred to as "the moguls." He stated that many neighbors were concerned about this project, and the increased traffic. The road was smooth at one time, but had considerable amounts of traffic to the school. He stated that there was no way to regulate which side of the road would be used to access the dispensary. Patrons will use both sides, whichever is more convenient for them. The public access, and use by the residents, cyclists and horseback riders will be less enjoyable with the increased traffic.

### **3.7 Commissioners' Discussion**

**Linda Sibley** said a lot of information has come in that staff has not had the time to review.

**Leonard Jason** asked if the project would include housing or not.



**Linda Sibley** said that was one of the many things to be reviewed.

**Leonard Jason** asked how the applicant arrived at the square footage for the cultivation area. **Geoff Rose** explained that there were four cultivation areas that totaled less than 1,000 square feet. He stated that hallways and storage areas do not count as cultivation space.

**Linda Sibley**, Public Hearing Officer, continued the public hearing to June 1, 2017 with the anticipation that the MVC may not take oral testimony. She suggested that anyone with concerns submit written testimony.

#### **4. DAMROTH SUBDIVISION-CHILMARK DRI 672 DELIBERATION AND DECISION**

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*Doug Sederholm recused himself.*

*Commissioners Present: G. Barmakian, T. Barnes, C. Brown, R. Doyle, J. Goldstein, F. Hancock, L. Jason, J. Malkin, K. Newman, B. Robinson, L. Sibley, E. Thomas, R. Toole.*

**Paul Foley** noted the eligible Commissioners; G. Barmakian, T. Barnes, R. Doyle, J. Goldstein, F. Hancock, L. Jason, B. Robinson, L. Sibley, E. Thomas, R. Toole.

##### **4.1 Land Use Planning Committee Report**

**Linda Sibley**, LUPC Chairman, said the LUPC voted to recommend the full Commission approve DRI 665 with the offers and conditions, as clarified. The conditions were as follows:

- **Trail:** The subdivision plan shall contain the note "Four (4) feet along Magee's Path and Old Field's Path reserved for public trail access." The trail easement document shall be approved by both applicant and either the Town of Chilmark or a conservation organization prior to the issuance of a building permit for any but the youth lot shown on the plan.
- **Habitat:** The applicant's plan approved in this decision was based upon compliance with the Natural Habitat and Endangered Species Program's April 3, 2107 draft reconfiguration of priority habitat. The Draft NHESP map is open for public comment until June 2017. NHESP staff have verbally told both the applicant and MVC staff that the applicant's plan is fine to proceed with. However, the applicant cannot proceed without a written certification from NHESP. Once received, the applicant shall forward a copy of such certification to the Commission to verify its consistency with the plan approved in this decision.

##### **4.2 Benefits and Detriments**

###### Benefits

**Economic Impact:** The project will have a positive impact. The housing adds tax revenue and creates construction activity. The buffer strips will also retain some habitat, which is important to the attractiveness of the Island for residents and visitors.

**Wastewater and Groundwater:** The applicant's offers to meet the DRI water protection policy will protect groundwater with a combination of enhanced wastewater removal systems and Title 5 systems.

**Open Space/Community and Habitat:** The project removes woodland habitat, but also protects strategic areas of habitat. The applicant's plan includes "no disturb" buffers of varying widths along most of the external property lines. These combine with the buffers of abutting properties to expand dedicated open space. Offers and conditions ensure that the applicant will comply with Natural Heritage and Endangered Species Program standards.

**Night Lighting and Noise:** The applicant has presented a plan that is rural in nature and will employ "dark sky" lighting provisions of the Chilmark zoning bylaws, which are largely consistent with Commission standards.

Traffic and Transportation: The small size of this development is not expected to be noticeable on Quenames Road or public roads.

Scenic Values: The proposal retains most of the scenic values and the applicant has offered to contribute easements along a rural path. The application limits housing and provides substantial buffering.

Character and Identity: The application provides year round housing opportunity on the youth lot and limits guest housing to preserve the rural nature of the property.

Impact on Abutters: The applicant has provided "no disturb buffer zones" along most of the perimeter boundaries of the project, varying in widths of 25, 50, 100 feet and more. This should lessen the impact of the development on abutters.

#### Neutral

Low and Moderate Income Housing: This project does not trigger the Commission's affordable housing policy. The town's regulations for youth lots, however, do not meet the Commission's policies for addressing affordable housing. Nevertheless, the Commission notes that the undersized youth lot is only allowed by the town to provide an affordable building lot to someone.

Use Efficiently or Unduly Burden Other Public Facilities: Not applicable.

Consistency with and Ability to Achieve Town, Regional and State Plan Objectives: Provides housing consistent with rural character and is surrounded by similar, large lot subdivisions.

Conforms to Zoning: For the issue of consistency with Chilmark's Zoning Bylaws, it appears the town practice interprets the written regulations different from the written word. The Chilmark Planning Board has indicated it is satisfied with the applicant's proposed youth lot. The Commission considers the Chilmark Planning Board to be best suited to assess whether the youth lot as proposed is consistent with the Town bylaws and guidelines as it has historically interpreted them.

Conforms to DCPC Regulations: The project is not within any applicable Districts of Critical Planning Concern.

**Linda Sibley** said the project is appropriate in light of the alternatives.

**Leonard Jason moved and it was duly seconded to approve DRI 672 with the offers and conditions as clarified. Roll call vote. In favor: G. Barmakian, T. Barnes, R. Doyle, J. Goldstein, F. Hancock, L. Jason, B. Robinson, L. Sibley, E. Thomas, R. Toole. Opposed: none. Abstentions: none. The motion passed.**

#### **5. M.V. MUSEUM-TISBURY DRI 665 WRITTEN DECISION**

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*Doug Sederholm rejoined the meeting.*

Commissioners Present: G. Barmakian, T. Barnes, C. Brown, R. Doyle, J. Goldstein, F. Hancock, L. Jason, J. Malkin, K. Newman, B. Robinson, D. Sederholm, L. Sibley, E. Thomas, R. Toole.

**Fred Hancock** said that for Section 4. Decision, it was important to note that the MVC approved both Phase 1 and Phase 2.

**Josh Goldstein** referred to Section 5. Conditions, 1 Transportation, 1.3: "The museum shall be responsible for improving bicycle and pedestrian access to the Museum by developing the existing 80 foot gap in the sidewalk along Lagoon Pond Road..." and asked whether it was referring to Phase 1 or Phase 2. **Bill Veno** said it was Phase 1. **Fred Hancock** said the Town would need to cooperate with this item, and the MVC did not set a specific deadline, because it was not entirely within the control of the applicant.

There was a discussion about Section 5. Conditions, 2 Landscaping.



- **Fred Hancock** said that due to the phasing of the project, he would like the landscaping plan to clarify which activities would be completed under Phase 1 and which would be done under Phase 2.
- **Adam Turner** suggested that there be two plans: one for Phase 1, and one for Phase 2.
- **Linda Sibley** said the applicant would have to come back to the MVC twice.
- **Fred Hancock** said they could provide the two final landscaping plans at the same time.

There was a discussion about Section 5. Conditions, 4 Exterior Lighting 4.2: "As offered by the Applicant, all windows facing the public way in the Fresnel Lens Pavilion shall have shades in order to minimize after hours ambient light and shall be drawn between the hours of 11:00 PM and 7:00 AM per Tisbury Zoning By-Laws."

- **Gail Barmakian** asked if this was referring to the pavilion that was all glass. It was. She asked if there was any intention to keep the lights on all night.
- **Phil Wallis** said no, that the shades were intended to be used on nights with events.
- **Fred Hancock** said the LUPC will be approving the final lighting plan.

**Doug Sederholm** questioned the language on Section 5. Conditions 3 Noise 3.2 "The Museum shall follow the current Memorandum of Understanding for the Site Rental for Outdoor Events at the Marine Hospital Site (151 Lagoon Pond Road)...." He stated that if this were to be a permanent clause, the word "current" should be removed, and that the date of the MOU (June 30) should be provided.

**Doug Sederholm moved and it was duly seconded to approve the Written Decision with corrections as noted. Roll call vote. In favor: G. Barmakian, T. Barnes, C. Brown, R. Doyle, J. Goldstein, F. Hancock, J. Malkin, K. Newman, B. Robinson, D. Sederholm, L. Sibley, E. Thomas, R. Toole. Opposed: none. Abstentions: none. The motion passed.**

## 6. NEW BUSINESS

*Commissioners Present: G. Barmakian, T. Barnes, C. Brown, R. Doyle, J. Goldstein, F. Hancock, L. Jason, J. Malkin, K. Newman, B. Robinson, D. Sederholm, L. Sibley, E. Thomas, R. Toole.*

### 6.1 Executive Director Report

**Adam Turner** presented the following:


- The MVC Staff will not be speaking with Eversource regarding their herbicide plan, because that does not seem to be the best course of action. A letter was written to the Department of Agriculture, the agency that approves herbicide plans, regarding the impact these chemicals will have on the Island and the ecosystem. The island is different from the mainland. The aquifer is very shallow, and there are a lot of protected habitats. We will be announcing our intention to take action. We don't have time to just write letters. We will be going to the Boards of Health, the Boards of Selectmen and Island Commissions and we will lead the effort.
- May 19, 2017 will be the last day for Transportation Planner, Priscilla Leclerc.
- A meeting on June 22, 2017 has been planned with a presentation on wind farming.
- The MVC, with the support of Tisbury and Oak Bluffs, will be applying for major funding from EPA grants for nitrogen barrier work.
- The purpose of the new folder system was to have all the information readily available for the meetings. **Adam** Turner apologized for the last minute submissions for the Medical Marijuana project.
  - **Gail Barmakian** suggested that the MVC impose a deadline or a policy for document submittal.

- **Linda Sibley** said that the MVC used to require submissions to be submitted three days prior to the meeting.

The meeting was adjourned at 9:30 p.m.

DOCUMENTS REFERRED TO DURING THE MEETING

- Martha's Vineyard Commission DRI 675- Westman/29 Franklin Historic Demolition MVC Staff Report – 2017-05-18
- Letter from Tisbury Historical Commission to the Town of Tisbury Board of Selectmen, Dated May 12, 2017, Re: William Westman...
- Letter from Jeffrey and Wendy Lott, Dated May 10, 2017, Re: Westman Historic Demolition (Tis. DRI 675) Continuation of Hearing, May 18, 2017
- Site plan, William Westman, Dated November 17, 2016
- New Remodeling for Van Eijk & William Westman Residence, Elevations Dated May 16, 2017
- Martha's Vineyard Commission DRI 674 – Santander Historic Roof Tiles, MVC Staff Report – 2017-05-18
- Correspondence RE: Santander Bank from John Grande (Tisbury Town Administrator), Scott Tuttle, Hyung Suk Lee, Dana Hodsdon, Martha's Vineyard Preservation Trust, Inc. (Carole Berger)
- DRI 618-M2 Medical Marijuana Dispensary on Dr. Fisher Road Correspondence List since the First Public Hearing
- Follow-up Traffic Items for Medical marijuana Proposal – 90 Dr. Fisher Road
- Responses and Revised Responses from the Applicant to questions compiled from the first public hearing and correspondence for the Medical Marijuana Dispensary, Dated May 11, 2017 and May 18, 2017
- Damroth DRI 672 Documents; Site Plan, Notes from LUPC Meeting May 1, 2017, Final Offers, Benefits and Detriments
- Draft Decision of the Martha's Vineyard Commission DRI 665 – M.V. Museum at Marine Hospital

  
Chairman

7.13.17  
Date

  
Clerk-Treasurer

7.1.2017  
Date