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Minutes of the Commission Meeting Held on July 13, 2017 In the Stone Building 33 New York Avenue, Oak Bluffs, MA

IN ATTENDANCE

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

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)	- 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)	P James Vercruysse (E-Aquinnah)

Staff: Adam Turner (Executive Director), Paul Foley (DRI Coordinator).

Chairman James Vercruysse called the meeting to order at 7:00 p.m.

1. MINUTES

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

Josh Goldstein moved and it was duly seconded to approve the minutes of May 4, 2017 as amended.

- Christina Brown noted to change the word "building" to "property" on line 133.
- Christina Brown and Adam Turner suggested revising the language on line 167 to "classified as being in a compromised watershed of the Tisbury Great Pond," and on line 313 to revise to "West Tisbury Zoning Board of Appeals."

Voice vote. In favor: 14. Opposed: 0. Abstentions: 0. The motion passed.

Joan Malkin moved and it was duly seconded to approve the minutes of June 15, 2017 as written.

Voice vote. In favor: 11. Opposed: 0. Abstentions: 3. The motion passed.

Joan Malkin moved and it was duly seconded to approve the minutes of June 22, 2017 as corrected.

- Christina Brown noted to insert "Town" Boards on line 165.
- Christina Brown noted a typo on line 366 "lot."
- Fred Hancock noted that line 486 should be asphalt shingles, not tiles.
- Fred Hancock said the language should be "deny asphalt shingle roof" on line 506.
- Joan Malkin noted that the word should be "improve" not "approve" on line 522.

Voice vote. In Favor: 13. Opposed: 0. Abstentions: 1. The motion passed.

2. WINTERTIDE EXPANSION-TISBURY C.R. 7-2017 CONCURRENCE REVIEW

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

For the Applicant: Maurice O'Connor (Architect), John Lolley (Engineer)

Doug Sederholm disclosed that his son works for Mr. Lolley and his law partner has represented the applicant in prior matters, but not currently. He felt that neither of these should exclude him from participating, but wanted them stated on record.

2.1 Staff Report

Paul Foley presented the following:

- The applicant is Larkin B. Reeves, Trustee c/o Sawyer Realty Group and John Lolley.
- The location is 13 Beach Street Extension, Vineyard Haven, MA Map 9C Lot 1.
- The proposal is to construct a second and third level addition above the existing one story commercial structure in the Commercial Management area of the Waterfront Commercial District for a single family residential unit.
- Permits required: Special Permit - Planning Board, Special Permit - ZBA (only one application to Planning Board required), Board of Health and Wastewater Advisory.
- The main building was built in approximately 1925. The one story addition was built in approximately 1971. The Wintertide/Anderson building came before the MVC as DRI 504 in 2003 with a proposal to add six artist studio workrooms to the third floor, which was approved with conditions. The project was not done. The property returned to the MVC in 2005 as DRI 504-M2 with a proposal to convert the existing storage attic that was approved for six artist studios in 2003 to a single two-bedroom apartment. The project was remanded to the Town, but was not built. The approved DRIs were not acted upon and have expired, therefore the property is not currently a DRI.
- The existing one story commercial structure on Beach Road Extension is behind and attached to the Wintertide/Tropical Building, which fronts on Five Corners. Total footprint of both buildings is 5,788 sf, and total existing gross square footage is 8,788 sf. The proposal would add a 1,324 sf second floor and a 900 sf third floor (2,224 total added sf). The footprint would remain the same.
- The existing one story section has two commercial units, which would remain the same.
- The existing buildings have sprinkler systems. The proposed new residential unit would as well.
- The property is connected to the sewer.
- The main building has a restaurant, retail spaces and offices.

Doug Sederholm asked what the height of the building would be. **Paul Foley** said the zoning is 28 feet measured from the flood zone. **Maurice O'Connor** said the height of the proposed addition is 33-34 feet from the sidewalk. The adjacent building is 31 feet.

Paul Foley said the residential part of the building is the only portion that needs to be raised above the flood plain, unless the renovation cost were to exceed 50% of the assessed value of the building. The applicant has said the costs of the renovation would not meet that threshold. At the LUPC meeting, there was a discussion about bringing the entire building to meet the flood proofing standards.

2.2 Land Use Planning Committee (LUPC) Staff Report

Fred Hancock spoke for the LUPC in Linda Sibley's absence. The LUPC voted to not concur, and to recommend to the full Commission that the proposal does not require a public hearing as a DRI.

Josh Goldstein said the project came before the Sewer Advisory Board for additional flow and it was enthusiastically granted, as they were happy that an additional residence would be added in town.

2.3 Applicants' Presentation

John Lolley presented the following:

- A question was raised regarding the building and the flood requirements. The residential area is the only category in the Massachusetts Building Code that has to be elevated, per Chapter 3 of the Building Code.
 - **Katherine Newman** asked why the Tisbury Stop & Shop would have had to be elevated.
 - **John Lolley** said the plans were to replace the building, which would cost more than 50% of the assessed value.
 - **Katherine Newman** stated that this building is in a flood zone. She asked from a practical perspective why the applicants would want to build without raising the structure, given the flooding issues of the area.
 - **John Lolley** said if the building were elevated out of the flood zone, the commercial space on the first floor would be lost. He showed on the site plan what would need to be done in order to elevate the building.
- The building is in a V Zone and would be built with concrete walls with openings for windows and doorways. It would be built above ground, and there would be no change in the footprint.
 - **Gail Barmakian** asked if there was a visual of the front. How visible would the height change of the 2-3 feet be from Five Corners?
 - **John Lolley** showed the front elevation from the water. There is another building in front, which would block the view from the water. He also showed the view from the Black Dog restaurant. The change in elevation would not be visible from Five Corners due to the other surrounding structures and trees.
 - **Katherine Newman** asked if any special provisions or forethought into the future were considered for this project, given its location on the waterfront.
 - **John Lolley** said the proposal is in compliance with the Tisbury Waterfront Commission, and is located in the commercial part of the waterfront district.

2.4 Commissioners' Questions

Christina Brown said Five Corners already floods, and will probably continue to flood even more in the future. The walls of the replacement first floor would be concrete, and she asked if that would add to the displacement of water into Five Corners, and add to the mess that is there already when it floods. **Gail Barmakian** clarified and asked if the building would exacerbate the flooding situation. **John Lolley** said no, the building would have the same footprint. **Paul Foley** added that the potential displacement of the water that would have entered the first floor would have a negligible effect on the flooding of the intersection.

Maurice O'Connor said the proposal has to comply with FEMA regulations, so the electrical systems and propane tanks would need to be raised above the flood line, which they are not currently. This would lessen the potential for fire and other hazards.

Doug Sederholm said it could potentially be more flood resistant than the current building. The applicants agreed.

Fred Hancock said the Tisbury waterfront includes areas that are restricted to maritime use only, but this area does not have that restriction. The applicants agreed.

Doug Sederholm asked what to extent the local boards have authority on the aesthetics of the building. He felt that the design looked good, but he would feel more comfortable if he knew there was local

board that could review it. **Ben Robinson** said the Tisbury Site Plan Review has already reviewed the project, and the aesthetics are good now because that dialogue has already happened. There will also be other chances for that board to review the project again.

Joan Malkin said because the building is not just a residential building, it does not have to comply with the flood regulations, since the ground floor is not residential. Do the regulations only apply to the residential portion of the building? **John Lolley** said yes, depending on whether the project is new construction or a renovation.

Joan Malkin asked if the residential apartment would be year-round tenancy. **John Lolley** said it would.

Fred Hancock asked if it would be a market rate apartment. **John Lolley** said yes.

Katherine Newman noted that the new affordable housing building next to Stop & Shop was raised, and asked again why this building would not be raised.

Joan Malkin said the Water Street apartments were new construction, not a renovation. **Paul Foley** added that it is entirely a residential building.

Fred Hancock said that the LUPC was pleased that there were local boards to review and approve the project, including the Site Plan Review, a public hearing through the Planning Board, and the Building Inspector.

Paul Foley said that Linda Sibley noted at the LUPC meeting that the key issue was aesthetics, and noted that the proposed design is better than what currently exists.

Josh Goldstein moved and it was duly seconded to not concur with the referral and send the project back to the town. Roll call vote. In favor: G. Barmakian, T. Barnes, C. Brown, R. Doyle, J. Goldstein, F. Hancock, L. Jason, J. Malkin, D. Sederholm, E. Thomas, R. Toole, J. Vercruysse. Opposed: K. Newman. Abstentions: B. Robinson. The motion passed.

3. MEDICAL MARIJUANA-WEST TISBURY DRI 618-M2 WRITTEN DECISION

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

Christina Brown said the language "and required laboratory" should be added to line 26 after cultivation operation, and also on line 149.

Fred Hancock suggested adding a sentence after line 203 about how the project provides service currently unavailable on island.

Joan Malkin suggested adding the word "largely" to read "the concerns of residential neighbors have been largely addressed" on line 225. **Doug Sederholm** said the MVC should qualify that. **Gail Barmakian** suggested the language "many of the concerns of residential neighbors have been addressed."

Joan Malkin said line 228 is not a neutral impact; it is a positive impact due to the monetary contribution to affordable housing.

Joan Malkin questioned what line 234 means. **Paul Foley** said it is the MVC standard language.

Fred Hancock said lines 311 through 314 refer to a provision from the previous DRI about the easement, but the easement was never recorded. **Doug Sederholm** said if the applicants want to change the easement, they can just do it.

Fred Hancock moved and it was duly seconded to revise the language on line 314 to "before a Certificate of Occupancy..." Voice vote. In favor; 13. Opposed: 0. Abstentions: 1. The motion passed.

Fred Hancock said the affordable housing contribution should be paid before issuance of the Certificate of Occupancy on line 355-357. **Paul Foley** said that is mentioned on line 403. **Fred Hancock** suggested adding it in both places.

Christina Brown moved and it was duly seconded to revise the language on line 357 and line 403 "approved by the MVC before issuance of the Certificate of Occupancy." Voice vote. In favor: 13. Opposed: 0. Abstentions: 1. The motion passed.

Fred Hancock noted the name needs to be revised on line 421 to James Vercruysse.

Fred Hancock moved and it was duly seconded to approve the Written Decision as amended. Roll call vote. In favor: T. Barnes, C. Brown, R. Doyle, J. Goldstein, F. Hancock, J. Malkin, K. Newman, D. Sederholm, E. Thomas, J. Vercruysse. Opposed: none. Abstentions: L. Jason. The motion passed.

4. 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, E. Thomas, R. Toole, J. Vercruysse.

Joan Malkin said that John Folino passed away, and he brought so much confidence when he presented and appeared before the MVC. The park at the airport should be named after him, and the MVC would like to note how wonderful he was.

Christina Brown agreed, especially with his manner and integrity, as well as the cost-effective and innovative buildings that he built.

Adam Turner also recognized John's accomplishments and contributions. His projects were always well presented and he built good products.

4.1 Executive Director Report

Adam Turner presented the following:

- A letter was sent to the Commissioner of the Department of Agricultural Resources regarding the use of herbicides on island. Triclopyr is basically Agent Orange, and glyphosate has been added to the State of California's list of chemicals known to cause cancer.
 - **Josh Goldstein** asked if there was a way to file a suit for this issue.
 - **Ernie Thomas** said perhaps a cease and desist could be issued.
 - **Robert Doyle** thought several towns on the Cape had filed a suit.
 - **Doug Sederholm** said the Towns would need to file suit.
 - **Fred Hancock** asked why the MVC was addressing the Commissioner of the Department of Agriculture. Does he have a list of what can be used?
 - **Adam Turner** said his office has a list, and we are trying to show what these things do, and not just try to take them off the approved list.
 - **Ben Robinson** asked what an Island-wide DCPC would do.
 - **Joan Malkin** said it probably would not affect the utility companies.
 - **Leonard Jason** asked why we can't prohibit the use using an amendment to the road side district town by town.
 - **Adam Turner** said he would look into that.
 - **Joan Malkin** said the MVC would have to file a home rule petition in all six towns.
 - **Ben Robinson** said the utility companies should not be the main concern. Rather, when homeowners use these herbicides, they don't understand the repercussions. An Island-wide DCPC would ban the sale and use. The average user wouldn't be able to use these products.

- **Christina Brown** said the Commissioner of Agriculture has a long list of chemicals and some may be okay, but these are not.
 - **Ben Robinson** said the State is long behind in their science. They are using industry science from 1984 to make these determinations.
 - **Joan Malkin** said she has a suspicion that there has been state preemption on herbicides and pesticides.
 - **Doug Sederholm** said we need to ask MVC counsel how to proceed, and also what happens once the letter is sent.
 - **Adam Turner** said we have talked to Representative Fernandez, have made calls, and it is on Elizabeth Warren's agenda. We are working with the Towns as well. It will not be easy. This office is trying to indicate what the studies show regarding these chemicals.
 - **Joan Malkin** said that Rebecca Thompson, from the grass fields, said you need to show precautions before you jump in to using various chemicals. It is not always open and shut, but we should bolster our case with a reliance on cautionary principle.
 - **Gail Barmakian** asked if a DCPC would help.
 - **Joan Malkin** said we should ask counsel if Towns and the MVC have the legal right to regulate pesticides and herbicides, or if it has been preempted at the State level.
 - **Ben Robinson** asked how the fertilizer regulations were done, and thought we might be able to do the same with this issue.
 - **Joan Malkin** said there was special regulation through the State, and the Towns were able to meet the deadlines because the plan was in place beforehand.
- West Tisbury, Aquinnah and Tisbury have adopted their Housing Production Plans.
 - Staff has met with the Airport's consultants for a second airport park, and are working with them as well as the airport manager. The airport management is very serious about getting new lands available for light industrial use. A lot of background information and maps are coming from the MVC.
 - **Trip Barnes** said the airport has had many applicants, and they have an engineering company that has not accomplished much and the development has been stagnant. The focus has been on the gas station issue.
 - The final application for Stop & Shop has been received and the plans are on the MVC website. The first LUPC meeting for the project will be scheduled in August. There will be multiple LUPC meetings for this application.
 - **Joan Malkin** asked what the timing is for this project.
 - **Adam Turner** said we have to meet with staff first to review. He met with the Edgartown Planning Board on Tuesday and gave them a set of plans to weigh in on at the same time.
 - The Chappaquiddick wireless tower will also be referred, and most likely commence in September.
 - The MVC was contacted by the State regarding Aquinnah, as they applied for and received Community Compact funding. They received \$7,500. The State asked the MVC to contribute \$5,000 to make a total of \$12,500. We met with the Town Administrator, who indicated a regional assessment project. It was accepted by the State and the MVC has contributed the \$5,000. Now the MVC has received calls from various town assessors, and will meet with them to discuss. We are already on the agenda with Tisbury and West Tisbury.
 - **Doug Sederholm** asked if this is something a town asked of the Commission, to add the money for a project sponsored by a town, and was the decision made by the Executive Director or the Executive Committee.

- **Adam Turner** said the request came from the State, and that he made the decision. There is \$100,000 in the Technical Assistance budget from the State and that money was used. This type of decision is typically made by the Executive Director, and not the Executive Committee.
- Mike Mauro has been hired as the new Transportation Program Manager. The MVC received a \$140,000 grant to install permanent count stations that will be installed directly in the road and the information would go immediately to the MVC computer system. The station locations are to be determined. **Christina Brown** suggested that the scope be broadened to encourage more Town participation in determining potential site location, rather than just the members of the Joint Transportation Committee.
- Sensors for water testing are also being developed. This would eliminate the need for daily trips to sample locations. Edgartown Great Pond is being used to test their effectiveness.

4.2 Reports from Committees and/or Staff

There was a discussion about sea level rise.

- **Katherine Newman** asked if the MVC is doing anything for a plan for water level rise.
- **Ben Robinson** said the Town of Tisbury had an intern who looked at various options, and he suggested that he could present that information to the MVC.
- **Katherine Newman** said the Maciel building is elevated and new Stop & Shop would have to be built elevated, so why are we not looking at a picture of how everything will look once elevated.
- **Ben Robinson** said that was exactly what the intern studied, and that there may not be one single way to solve this problem. There will probably be many ways.
- **Katherine Newman** said perhaps we need an overlay district in those areas to see what will be.
- **Josh Goldstein** said that perhaps she is getting hung up on the building that was just reviewed. That is not a new building, it is an addition to an existing building.
- **Gail Barmakian** asked if the should MVC leave this issue to the towns, or contemplated here. It is a good point, sea level rise is happening.
- **Christina Brown** said she would find it useful to have Ben Robinson give a presentation.

Scheduling

James Vercruysse, Chairman, said there are no other MVC meetings scheduled for July.

Adam Turner said the next MVC meeting is tentatively scheduled for August 3, 2017.

Workforce Housing Group

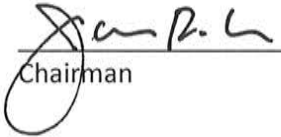
James Vercruysse said the MVC Workforce Housing group has met and a letter will be sent to all of the Towns on what we are looking for, and how the project will be administered. We looked at some properties, but have realized we are not yet ready to move forward. We also need to meet State regulations. We hope to start looking at properties in the fall.

The meeting was adjourned at 8:15 p.m.

DOCUMENTS REFERRED TO DURING THE MEETING

- Minutes of the Commission Meeting – Draft, Held on May 4, 2017
- Minutes of the Commission Meeting – Draft, Held on June 15, 2017
- Minutes of the Commission Meeting – Draft, Held on June 22, 2017
- Martha's Vineyard Commission C.R. 7-2017 Wintertide/Beach St. Ext. Addition MVC Staff Report – 2017-07-13 Concurrence Review

- Martha's Vineyard Commission Land Use Planning Committee Notes of the Meeting of July 10, 2017
- 13 Beach St Ext Plans and Elevations Dated 05-04-17
- Letter from MVC to John Lebeaux Commissioner Massachusetts Department of Agricultural Resources; regarding the MVC concerns with regards to the State permitting of dangerous herbicides to be used on Martha's Vineyard, Dated July 10, 2017
- Draft Decision of the Martha's Vineyard Commission DRI 618-Mx2 Medical Marijuana Cultivation Building


Chairman

3.15.18
Date


Clerk-Treasurer

15 MAR 2018
Date