

THE MARTHA'S VINEYARD COMMISSION

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Minutes of the Special Meeting of September 9, 2004

Held in the Olde Stone Building,
33 New York Avenue, Oak Bluffs, MA

IN ATTENDANCE

Commissioners: James Athearn (Elected – Edgartown), John Best (Elected Tisbury), John Breckenridge (Appointed - Oak Bluffs), Christina Brown (Elected – Edgartown), Linda DeWitt (Appointed - Edgartown), Jane Greene (Appointed – Chilmark), Katherine Newman (Appointed – Aquinnah), Ned Orleans (Appointed - Tisbury), Robert Schwartz ((Appointed – West Tisbury), Doug Sederholm (Elected - Chilmark), Linda Sibley (Elected - West Tisbury), Paul Strauss (County Comm. Rep.), Richard Toole (Elected – Oak Bluffs), Andrew Woodruff (Elected – West Tisbury)

Staff: Mark London (Executive Director), Bill Veno (Senior Planner), Paul Foley (DRI Analyst)

1. TOWN OF AQUINNAH: PUBLIC HEARING – DCPC AMENDMENTS TO REGULATIONS

Commissioners present: J. Athearn, J. Best, J. Breckenridge, C. Brown, L. DeWitt, J. Greene, K. Newman, N. Orleans, R. Schwartz, D. Sederholm, L. Sibley, P. Strauss, R. Toole, A. Woodruff

Proponents: Peter Temple, Camille Rose – Aquinnah Planning Board

1.1 Staff Notes

Jo-Ann Taylor explained the amendments to the regulations of the Town of Aquinnah District were approved at town meeting in May 2004. The Commission is being asked to decide whether the amendments conform to the guidelines for development specified in the Commission's designation of the district. The goals of the district are to protect the scenic character of the district from undue visual impact and to promote and maintain its rural character and culture.

The amendments are:

- Section 4.3-6 Enforcement to be added to Section 4.3 Clearing, Cutting and Vegetation.
- Section 6.4 Special Permits to be amended with the sentence: *A Special Permit shall only be issued to the owner of property that is in compliance with section 4.3 of the By-Law.* This amendment had been previously approved by the Attorney General.
- Section 2.9 Electrical Generators to be added.

Jo-Ann Taylor reviewed staff notes; no correspondence was received on the proposed amendments.

1.2 Proponents' Presentation and Commission Questions

Peter Temple explained that the town approved the proposed amendment creating a schedule of fines as recommended by town counsel and the Attorney General.

- No change is proposed for the by-laws. He said that town counsel and the town had difficulty enforcing fines against the by-laws because they didn't have a clear fine schedule. Town counsel, working with the Attorney General, wrote out as clearly as possible the fine schedule for inclusion in the body of the by-laws.
- He said the fine schedule in Section 4.3-6 has become necessary because developers are clear-cutting for views.
- The amendment to Section 6.4 gives additional teeth to the by-laws stating that anyone in violation of a by-law will not be granted any special permits while in violation.
- Section 2.9 states that permanent generators are subject to setback requirements. He corrected the typographical error to clarify that generators are also subject to *siting* requirements. The purpose of this amendment is to state that generators are considered permanent structures and should meet setback and siting requirements of other structures.

Jane Greene suggested that the amendment read that generators of a certain size must be enclosed. She said she feels that Aquinnah is limiting alternative energy by being so restrictive.

Camille Rose responded that they are not suggesting that generators or alternative energy be outlawed; a permanent structure is defined as any combination of materials assembled in a fixed location to provide support or shelter, of any size, and should be subject to siting and set-back requirements.

James Athearn said he believed that the amendments seem to be a clarification and that 2.9 adds to the list of structures.

Camille Rose responded to a question from Christina Brown about special permits and explained that everything in Aquinnah is by special permit.

James Athearn invited members of the public to make statements. No testimony from the public was made.

James Athearn closed the public hearing.

2. TOWN OF AQUINNAH: DCPC AMENDMENTS TO REGULATIONS - DELIBERATION & DECISION

Commissioners present: J. Athearn, J. Best, J. Breckenridge, C. Brown, L. DeWitt, J. Greene, K. Newman, N. Orleans, R. Schwartz, D. Sederholm, L. Sibley, P. Strauss, R. Toole, A. Woodruff

Linda Sibley moved and it was duly seconded that the proposed amendments conform to the guidelines for development specified in the Commission's designation of the district.

Linda Sibley stated that she was not sure that she would have voted for the amendments but she has no doubt that the details are consistent with the goals of DCPC.

Jane Greene said she disagreed and believed that the amendments overstep the guidelines.

John Breckenridge said he is concerned with solar panels being called structures.

Linda Sibley said the special permit process is not an indicator that the town does not want structures; this radical DCPC requires that structures be built in a way that enhances the visual aspect of the town.

A voice vote was taken. In favor: 12. Opposed: 1. Abstentions: 0. The motion passed.

3. VINEYARD HOME CENTER: DRI 339M-3 – CONCURRENCE REVIEW

Commissioners present: J. Athearn, J. Best, J. Breckenridge, C. Brown, L. DeWitt, J. Greene, K. Newman, N. Orleans, R. Schwartz, D. Sederholm, L. Sibley, P. Strauss, R. Toole, A. Woodruff

Proponents: Adam Wansiewicz (owner), Doug Hoehn (consultant)

The applicant is returning with a proposal on how to deal with traffic and delivery.

Doug Hoehn explained that he has pieced together the survey work to show both properties. He explained for the record that Adam Wansiewicz owns Vineyard Home Center business at 426 State Road, which is on property owned by Dave Dutton. He is proposing to purchase 454 State Road, the old bowling alley, currently Black Dog property. The only permit he would need is from the Zoning Board of Appeals for a Special Permit for outdoor display. No change in the use of the property is proposed.

Doug Hoehn explained that staff notes indicate that the key issues are:

- Internal circulation between the two properties could be improved.

- Truck access to 426 State Road could be improved.
- A breach of the berm might be necessary to connect the two properties.
- Should there ever be B-2 possible master plan proposal of an access road, the owner believes he is bound by the condition placed on the previous DRI approval that he may be required to redesign his parking lot and circulation to gain access to any proposed access road at the rear of the property.

Doug Hoehn explained that the applicant proposes to connect 426 State Road and 454 State Road along the present walking path. He cannot close either of the curb cuts because he owns only 454 State Road. **Doug Hoehn** proposed that if the B-2 master plan access road is built and the applicant were to gain ownership of 426 State Road, the applicant would change the traffic and parking pattern. As the two sites stand today, the applicant proposes the parking and traffic plan as presented. **Doug Hoehn** explained that the Vineyard Home Center would generate less traffic than the previously approved bowling alley.

Linda Sibley said that signage would have to deal with the new entrance and kitchen center.

James Athearn said that signage would be part of the plan.

The applicant explained that 454 State Road would have a sign at the entrance but no sign on the building.

Linda Sibley moved and it was duly seconded that this is not a substantial change and does not require a public hearing. A voice vote was taken: In favor: 12. Opposed: 0. Abstentions: 2. The motion passed.

Linda Sibley moved and it was duly seconded to approve the change in use of DRI No. 339M-3. A roll call vote was taken. In favor: J. Athearn, J. Best, J. Breckenridge, C. Brown, L. Dewitt, J. Greene, N. Orleans, R. Schwartz, D. Sederholm, L. Sibley, P. Strauss, R. Toole. Opposed: None Abstentions: K. Newman, A. Woodruff. The motion passed.

4. PRIORITIES FOR FALL AND WINTER

Commissioners present: J. Athearn, J. Best, J. Breckenridge, C. Brown, L. DeWitt, J. Greene, K. Newman, N. Orleans, R. Schwartz, D. Sederholm, L. Sibley, P. Strauss, R. Toole, A. Woodruff

4.1 Special Designation

John Best raised the issue of special designation status for Commissioners. **Doug Sederholm** said that the head attorney at the Ethics Commission believes that a Commissioner is an employee of every town and every town board; thus, a Commissioner wishing to represent anyone in front of a town board would need a special designation of "Special Municipal Employee." For Commissioners to avoid

conflict of interest, each town needs to designate all Commissioners as “Special Municipal Employees.” He disagrees with this opinion.

Christina Brown explained that Edgartown designated Commission representatives as Special Municipal Employees so that a Commissioner who was a lawyer, for instance, could represent a client in front of a town board and so that a Commissioner could serve in a second public role such as on a conservation commission.

Jane Greene asked whether appointed Commissioners would need the designation **and** suggested going to the Ethics Commission for written clarification. **Mark London** said he would draft a letter and request clarification from the Ethics Commission regarding their position and whether it applies to both appointed and elected commissioners and whether all boards of selectmen need to designate all Commissioners special employees.

4.2 Planning

Following on the Community Development Plans, **Mark London** said the aim is to develop a process Island-wide planning. **Linda Sibley** said that Commissioners demonstrated that planning is a priority when they voted to request that Mark London present a process for developing a plan. **Mark London** said one way question the community should ask is, if trends continue the same way, where will Martha's Vineyard end up. If the Vineyard wants to end up somewhere different, what does the Island need to do in terms of growth, growth management, economic development, affordable housing, among other issues.

Ned Orleans said his proposal was for Mark London to draft a planning proposal for the Commission to consider. **Mark London** explained that the proposal might take a few months to put together because the direction to take in planning will be an all-encompassing one, possibly with budget implications. Analysis of existing trends is already being done and staff is gaining a clear idea of what the gaps in information are.

James Athearn wondered whether PED would be involved in planning. He said the PED meetings have been large. He suggested setting up smaller meetings.

Linda DeWitt said staff notes have become so good that she feels she can understand what's going without attending meetings. She suggested that smaller committees could be set up and **Linda Sibley** suggested that smaller PED groups would be more efficient.

James Athearn suggested as an example that a small group could develop nitrogen guidelines. **Katherine Newman** stated her support for small groups developing standards, then presenting to the full Commission for its input. **Jane Greene** said she wants local experts on committees, too.

Mark London suggested that two or three committees could be established right away, perhaps to look at water quality and affordable housing with a priority on clarifying the Commission's guidelines. There could also be a planning process oversight committee

Jane Greene suggested that the Commission go to the Island plan and look at the resources the Commission is trying to protect, and use those resources as the starting point for establishing committees.

Mark London suggested generating a list of twenty topics from which to prioritize.

Linda Sibley suggested that by using local experts on task forces/committees, might allow more committees to make more rapid progress.

Ned Orleans said that the most useful planning is that which will be implemented and the Commission should get people who are going to implement the plans involved in the planning, particularly people who are involved in local government.

Bill Veno responded to Jim Athearn's suggestion for tying in the 418 work by saying that some towns are currently more active in planning than others. 418 should be a springboard for some of this work.

Mark London said the initiatives being taken in planning are the new Tisbury Master Plan and the revision of the Edgartown Master Plan, as well as the creation of the Oak Bluffs Community Development Counsel, which is doing planning as an outgrowth of the Community Planning process. Also, West Tisbury is looking at commercial areas in town and Gosnold has requested help on their master plan.

4.3 Regulatory

Linda Sibley said the subcommittee has finished draft revisions to the DRI Regulations. A draft will be sent out for feedback from Commissioners, after feedback from counsel is received.

4.4 DRI Guidelines

Mark London said the principles and concerns used by Commissioners to evaluate projects are already implicit in the work that the Commission does. Written decisions, conditions, and other Commission work have created an unwritten jurisprudence regarding DRIs. Some work was done in the spring on landscaping, open space and lighting. Task forces could be created to draft guidelines on each topic. The Commission could work topic by topic taking a year or two to get them all done. Another option would be to produce a draft set of guidelines on all topics as soon as possible, and refine this over the coming years.

Jane Greene said the Commission doesn't want to give the impression that if a set of guidelines are followed, a DRI will automatically be approved. The Commission should avoid implying that following guidelines will necessarily lead to a successful application. **Mark London** suggested wording that would state that following guidelines does not presume approval. The Commission determines the priority in applying different guidelines, and that it reserves the right to either approve a project that doesn't meet all the guidelines or to deny a project that does, because of the special combination of circumstances pertaining to a given project or site.

Linda Sibley said it's clear that as the Commission reviews applications, particular issues guide conditions and decisions. These issues are obvious to Commissioners but may not be to applicants.

It was agreed by consensus that the committee looking at the Commission's water quality guidelines will be made up of John Best, John Breckenridge, Paul Strauss, Doug Sederholm and Megan Ottens-Sargent.

Jane Greene suggested that the Commission set higher water quality standards than required by the DEP.

It was agreed by consensus that the committee looking at the Commission's Affordable Housing policy would be made up of Christina Brown, Katherine Newman, and Jane Greene.

It was also suggested that Carol Lashnits, Philippe Jordi and Alan Gowell be invited to participate in the committee.

Christina Brown asked whether revising the DRI checklist is a priority. **Linda Sibley** said that some of the other process issues are a higher priority. **James Athearn** said that elements of the checklist need work. **Linda DeWitt** said she hopes that staff will be involved in a checklist revision.

James Athearn raised the question as to whether the Commission should have fixed LUPC members or fixed committees for projects.

Mark London explained the Cape Cod Commission delegates more responsibility by the full commission. Subcommittees follow a DRI, holding hearings and making recommendations to the full Commission. He suggested trying the small committee.

Jane Greene said she feels small subcommittees add a whole new layer to the process.

Mark London said that applicants have complained about presenting to one LUPC meeting, then presenting to another LUPC meeting with members who may have different concerns than those who were at first LUPC meeting. He suggested that the Commission try out a system whereby, say, five Commissioners be committed to a particular DRI; they would make a special effort to attend all LUPC meetings before, during and after hearings.

Jane Greene said representatives from the town a DRI is in would have to have the option of sitting on the committee. She cautioned against using Cape Cod Commission as a model for setting a course of action.

Linda DeWitt said the Vineyard Commissioners are unique because they each know a lot about each of the towns. She said she's found the LUPC meetings essential; the by-law states that anyone on the Commission can attend LUPC. She supports the way LUPC and the full Commission interact.

Linda Sibley said that there is a muddy question when a quorum of the Commission is at LUPC and then formulates a recommendation to the full Commission. She posed the question whether the Commission should stipulate votes at LUPC meetings must be less than a quorum of the entire Commission.

James Athearn said he's concerned with economy of energy and if he weren't compelled to attend LUPC, he might put energy into other committees.

Andrew Woodruff spoke in support of the possibility of members committing themselves to a particular DRI.

Jane Greene said she feels that with a new configuration of DRI "committees", the rights of towns would be taken away.

Ned Orleans asked whether the full Commission would support the findings of the smaller LUPC. He says he feels that the complaint about the process is the duplication of questions and answers at LUPC, follow-up LUPC meetings and full Commission meetings.

Linda Sibley said if the Commission were going to put more emphasis on LUPC findings, separate sub-committees would need to be developed.

Christina Brown suggested that on a simple DRI, a core committee be established which works hard to develop a report for the full Commission.

5. OTHER

Commissioners present: J. Athearn, J. Best, J. Breckenridge, C. Brown, L. DeWitt, J. Greene, K. Newman, N. Orleans, R. Schwartz, D. Sederholm, L. Sibley, P. Strauss, R. Toole, A. Woodruff

5.1 Forums

James Athearn formally thanked the committee who put on the summer forums for the Commission, specifically Linda Sibley, Linda DeWitt and Katherine Newman, Megan Ottens-Sargent, and Judy Crawford, and other commissioners, staff and those who pitched in.

Mark London said the forum committee met a week ago and that Christina Rose of MVTV is helping the Commission make a DVD version of each forum. A proceedings document of each forum will also be produced. He said that he would like a list of follow-up actions from each of the producers. The committee will meet to develop a calendar of dates for next year, starting in January.

5.2 Anniversary Celebration

Commissioners discussed having a dinner at the Ag Hall for a sort of formal but fun celebration. **James Athearn** suggested that the food be as local as possible.

Katherine Newman offered to chair the event. She said the room and location would have to be confirmed. She suggested a small planning group for a one-time meeting. **John Best** said he would help with the planning.

5.3 Personnel

Mark London had asked Jeff Wooden to develop a policy based on a few local models. He has prepared a first draft and Commissioners should have received.

Jane Greene requested that Mark London be the committee's liason.

5.4 Building Renovations

Mark London outlined the work being done on the exterior of the MVC office building.

Linda DeWitt said that last time there was a meeting she tripped and fell in the upper parking lot; the lighting needs to be improved. She also would like to see a plan for landscaping the exterior the building.

Mark London said they have been waiting on the exterior building work before doing landscaping.

Jane Greene suggested using the high school program to help do landscaping and work on the building.

5.5 DRI Application Process

Linda Sibley referred to the article about smoothing the application process. Often a great deal of time and effort and expense is gone through by an applicant before the application is submitted. In general, applicants do better if they are advised by someone who has worked with the Commission before.

Linda Sibley said she is concerned about the hospital plan in that they will have done a lot of work before coming before the Commission and will be upset if an aspect of the plan doesn't get approved. The Commission needs to reach out and have them work with staff and the Commissions concerns.

John Best stated the same concern and said some groups believe that the Commission won't deny an application if the work on an application has already been done.

Mark London said consultants to the hospital gave Commission staff a quick run through of the plan; they couldn't answer questions regarding larger issues such as choice of site.

Mark London asked staff today to draft a follow-up letter encouraging the hospital to meet with the Commission, even before the plans are done. **Ned Orleans** said he believes the letter should be sent from the head of the Commission to the CEO of the hospital, inviting the hospital to start the process of understanding.

Paul Strauss said the hospital has not yet met with the Oak Bluffs Conservation Commission.

Mark London said this is an example of the difficulty of getting approval; normally, the Commission requires a complete application and the hospital is nowhere near that stage yet. He suggested a two-stage process might be pursued in the future whereby an

applicant presents their big-picture plan, without specifics, the Commission gives an indication of approval of the particular approach, with the applicant returning at a later date with the complete application.

5.6 Grant Opportunities

Mark London said there are grant opportunities related to Emergency Preparedness and Homeland Security. The grants might largely be staff related and they might put the Commission in touch with groups in the community the Commission doesn't normally work with.

6. MINUTES

Commissioners present: J. Athearn, J. Best, J. Breckenridge, C. Brown, L. DeWitt, J. Greene, K. Newman, N. Orleans, R. Schwartz, D. Sederholm, L. Sibley, P. Strauss, R. Toole, A. Woodruff

6.1. Minutes of June 10th

Richard Toole moved and it was duly seconded that the minutes of June 10, 2004, be approved with the following corrections:

page 6, line 20 – Deborah Medders

page 6, line 29 – Rebecca Potter Schwab owns property next door

page 7, line 28 – Deborah Medders

page 8, line 27 – Gerald Sullivan said the big tree on the property is dieing

A voice vote was taken. In favor: 13 Opposed: 0. Abstentions: 1. The motion passed.

6.2 Minutes of June 17th

Richard Toole moved and it was duly seconded that the minutes of June 17th, 2004, be approved as written. A voice vote was taken: In favor 11. Opposed: 0. Abstentions: 3. The motion passed.

6.3 Minutes of July 1st

Jane Greene moved and it was duly seconded that the minutes of July 1st, 2004, be approved with the following corrections:

Page 9 – remove Jane Greene as present for presentation of concept plan.

A voice vote was taken. In favor: 14. Opposed: 0. Abstentions: 1.

6.4 Minutes of August 5th

Jane Green moved and it was duly seconded that the minutes of August 5th, 2004, be approved with the following changes and suggested corrections by staff:

Page 5, line 24 – built

Page 3, line 31 – Manter well

Page 7, line 17 – Manter well

Page 7, line 20 – data

A voice vote was taken. In favor: 13. Opposed: 0. Abstentions: 1. The motion passed.

6.5 Minutes of August 26th

Christina Brown moved and it was duly seconded that the minutes of August 26th, 2004, be approved as written. A voice vote was taken. In favor: 12. Opposed: 0. Abstentions: 2.

Christina Brown said she appreciated the minutes being thorough and useful.

7. UPCOMING MEETINGS

Commissioners present: J. Athearn, J. Best, J. Breckenridge, C. Brown, L. DeWitt, J. Greene, K. Newman, N. Orleans, R. Schwartz, D. Sederholm, L. Sibley, P. Strauss, R. Toole, A. Woodruff

Monday, September 20th 5:30 p.m., LUPC Meeting
Thursday, September 30th 7:30 p.m. Commission Meeting
Friday, October 22nd Cape & Islands Regional Planning Alliance

Christina Brown moved and it was duly seconded to move the Commission's regularly scheduled September meeting to Thursday, September 30th. A voice vote was taken. In favor: 14. Opposed: 0. Abstentions: 0.

The meeting adjourned at 11:00 p.m.

Linda B. Sibley

Chairman

ng Means

Clerk-Treasurer

02/17/05

Date

02/17/05

Date