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## Minutes of the Commission Meeting Held on June 4, 2009 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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|---|--------------------------------------|
| - James Athearn (E – Edgartown)         | P Ned Orleans (A – Tisbury)          |
| P Bill Bennett (A- Chilmark)            | P Jim Powell (A – West Tisbury)      |
| P John Breckenridge (A – Oak Bluffs)    | P Camille Rose (A - Aquinnah)        |
| P Christina Brown (E - Edgartown)       | P Doug Sederholm (E – Chilmark)      |
| P Peter Cabana (A – Tisbury)            | P Casey Sharpe (A – Oak Bluffs)      |
| - Martin Crane (A – Governor Appointee) | P Linda Sibley (E – West Tisbury)    |
| P Carlene Gating (County Appointee)     | P Holly Stephenson (E – Tisbury)     |
| P Chris Murphy (A – Chilmark)           | P Andrew Woodruff (E – West Tisbury) |
| P Katherine Newman (A –Aquinnah)        |                                      |

Staff: Mark London (Executive Director), Bill Veno (Senior Planner), Paul Foley (DRI Analyst/Planner), Christine Flynn (Affordable Housing Planner), Mike Mauro (Transportation Planner)

The meeting was called to order at 7:30 p.m.

### 1. 1986 EVELYN WAY REALTY TRUST: DRI NO 576-M – DELIBERATION & DECISION

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Commissioners present: B. Bennett, J. Breckenridge, C. Brown, P. Cabana, C. Murphy, K. Newman, N. Orleans, J. Powell, D. Sederholm, L. Sibley

**Linda Sibley** reported that LUPC unanimously voted to recommend approval of the project with offers as modified at LUPC.

**Paul Foley** explained that the apartment would be dedicated to free staff housing. In the future if the applicant wants to change the designation, the applicant will return to the Commission.

**Paul Foley** explained that the applicant would like to change the language related to solar to read: *The applicant intends to install solar conduits.*

**John Breckenridge moved and, it was duly seconded, to approve the proposal with offers and conditions.**

- **Doug Sederholm** commended the applicant and LUPC for the appropriate use of the word "shall" throughout.

- **Commissioners** discussed the benefits and detriments of the proposal.
  - The project provides an essential service in a site plan that vastly improves what's there now in an area that's well-suited for industrial use and for being upgraded.
  - The applicant has worked with the Tisbury Planning Board and town with its plans for the connector system and should be applauded for getting involved in the process.
  - The project will have a positive impact on the services of the town and pays property taxes.

**A roll call vote was taken. In favor: B. Bennett, J. Breckenridge, P. Cabana, C. Murphy, K. Newman, N. Orleans, J. Powell, D. Sederholm, L. Sibley. Opposed: None. Abstentions: None. The motion passed.**

## **2. TOWN OF OAK BLUFFS HARBOR GAS STATION: DRI NO 621 – PUBLIC HEARING**

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*Commissioners present: B. Bennett, J. Breckenridge, C. Brown, P. Cabana, C. Gatting, C. Murphy, K. Newman, N. Orleans, J. Powell, C. Rose, D. Sederholm, C. Sharpe, L. Sibley, H. Stephens, A. Woodruff*

*For the applicant: Michael Dutton, Oak Bluffs Town Administrator; Todd Alexander, Harbormaster*

**Linda Sibley** opened the public hearing and read the hearing notice. The proposal is to install two 1500-gallon tanks for fuel and create a fuel facility near the harbormaster's shack to dispense fuel to boats.

**John Breckenridge** read a memo from Commission Counsel Eric Wodlinger that states that Mr. Breckenridge is on the Harbor Advisory Committee and has no pecuniary interest in the Harbor and Mr. Wodlinger sees no reason why Mr. Breckenridge cannot participate in the DRI review of the project.

### **2.1 Staff Report**

**Paul Foley** disclosed that he rents an apartment directly across from this project.

**Paul Foley** gave the staff report.

- The applicant is the Town of Oak Bluffs
- The site is in the B1 Business District. Municipal uses are allowed in B-1 districts
- The following approvals will be required.
  - Boatyard and boat services require a special permit from the Planning Board.
  - The Oak Bluffs DCPC might require that the project get a special permit from the ZBA because the street fence will be over three feet tall.
  - The DEP has said Oak Bluffs will need a minor modification to its Chapter 91 license.
  - The applicant will have to go to the Mass. Dept. of Fire Safety for a spill response plan and a vapor recovery plan.
  - The applicants will need a Wetland Permit through the Conservation Commission.
- Surrounding uses are residences, harbor parking, ferry, bars and restaurants, and charter and ferry boats.

- There were two retailers of gasoline until two years ago. After an incident a few years ago, the State Fire Marshal reinstated a law that says that fuel can't be dispensed within 25 feet of occupied slips.
- There is a dispute between the owner of the fuel tanks and the owner of the fuel pumps.
- There is an issue with the availability of fuel for users of the Town marina.
- The applicant proposes to install two 1000-gallon tanks or two 1500-gallon tanks, one gas and one diesel.
- The tanks will be double-walled and 6 feet high by 18 feet long. They will be partly buried and surrounded by a four foot high picket fence. Existing lighting in the area is quite bright.
- The tanks will be located between the sidewalk and parking.
- The project could become permanent if the issues between the parties aren't resolved.
- The Applicant has said that there will be no fueling when cruise ship tenders are loading.
- The fuel dock will be managed and operated by the Oak Bluffs harbormaster staff.
- They anticipate selling 60,000 gallons of gas a year, which could mean up to 100 trips a season for refueling if 1000 gallon tanks are installed.
- The project was referred by the Oak Bluffs Conservation Commission under a number of triggers.
- Oak Bluffs may request a filing fee waiver. The Commission may grant the waiver if they determine that the project is for the health, safety, and general welfare of the town.
- Key issues are:
  - If gas isn't available, there could be an economic impact.
  - There is the possibility of impact from hazardous material spills and vapors.
  - Tanks will be stored above ground in a public area.
  - The Island Queen passenger lines back up to this location. Cruise ship tenders use the dock.
  - Floating dock is close to shipping channels. Will boats lining up for fuel impede traffic?
  - Could the more exposed location create more spills? What would be the impact of a hurricane? Is there a spill response plan and a vapor recovery plan?
  - What are traffic impacts of so many deliveries?
- The boaters will pull up to the floating dock to refuel.
- Several parking spaces may need to be moved further back to fit the tanks.
- They anticipate refueling the tanks 80 to 100 times over the course of the season.
- The Commission has an unwritten policy not to apply the affordable housing policy to projects by municipalities.
- Hours of operation are about 8:30 a.m. to 5:00 or 5:30 p.m.
- One cost estimate is \$100,000. One vendor may pay for installation if they agree to buy the fuel from him.
- The site is 30 yards from several residences.

**Paul Foley** showed a slide show of the location and site.

**Bill Wilcox** pointed out safety and spill prevention practices that would be beneficial.

- The double-walled tanks would be protected by steel and concrete bollards.

- There will be quick disconnect valves for catastrophic events.
- The town has a spill response trailer.
- The harbormaster's building has some absorbent materials.
- There is no spill plan at this point. There are many options that are available to deal with small drips and spills that are of concern.
- There are different kinds of nozzles that prevent overflow by shutting off. There is a recommendation to remove nozzle triggers.
- He's not aware that the current operator has a spill plan for small drips and spills. It's the everyday drips that are of most concern.
- Above-ground, versus buried, tanks are more visible for corrosion or leakage inspection. Buried tanks may be close to the water table which would be a concern for corrosion as the groundwater there is probably saline.
- For extreme conditions, tanks might be anchored in concrete.
- The State Fire Marshall or local chief would deal with safety. A professional engineer would have to approve the spill plan.
- A concrete vault could be possible but the initial plan is for a temporary facility.

## **2.2 Applicant's Presentation**

**Michael Dutton** thanked the Commission staff for accommodating them so quickly. The proposal is for a temporary fuel facility with an above-ground tank or tanks slightly below grade in an open gravel-lined pit.

- The weight of the fuel holds the tank down. In the event of a catastrophic storm, the tanks could be removed.
- The facility is designed to provide an assurance that there will be fuel. The Town is concerned that there won't be fuel. The harbor is very important and generates about \$1 million revenue yearly. Fuel is a critical component to the harbor. Revenues could decrease \$100,000 if there were no fuel.
- The Town is not looking to supplant private enterprise, but the harbor is such a critical component of the Town. The residents of Oak Bluffs deserve to have town representatives push for a temporary fuel facility.
- They request that the Commission waive the application fee.
- The facility will provide a staffed fuel facility from about 8:00 a.m. to 7:00 p.m. or hours of presence in the harbormaster's shack, during the period the harbor is open, about Memorial Day through Columbus Day. They are proposing to be open from 9:00 a.m. to 4:00 p.m. off season.
- There will be two to three staff trained in how to handle fuel.
- There will also be water fill up and wastewater pump out.
- The facility will be radio and phone accessible.
- The Town has marina facility insurance. They would purchase an additional rider for the fuel facility. They also have comprehensive liability insurance.
- Truck fueling directly to boats takes place only during the shark tournament and is supervised by fire chief.
- Regarding alternatives, barge fueling is not a safe and not a permit-able operation in the harbor and is not aesthetically preferable.

- There is no other public property that would be appropriate.
- The tanks are 6'-6" high and will be dropped down below grade with 4 feet visible, much lower than the dumpster. An eighteen foot long single unit would have two tanks within it. They don't anticipate having to move parking or traffic.
- Fuel deliveries would take place after 8:a.m. and before the first Island Queen arrives.
- They don't see additional traffic impact except for one delivery per day.
- The tanks would be protected by concrete and steel bollards.
- There is at least 80 feet between the travel channel and the dock.
- There is a requirement of 25 foot clearance to the nearest slip and they exceed that.
- There will be two automatic shut-off valves.
- A fuel facility will reduce the use of portable gasoline containers.
- Ultimately the facility would reduce and discourage small craft from leaving Oak Bluffs to get fuel in Vineyard Haven. The aesthetics are attractive. In terms of leakage, they would propose a small container spill tank.
- If they have to go for a more permanent facility, they would bury the tanks, like Church's.
- During a hurricane, a plan would be in place to pump out the tanks and move them.
- The Town is not interested in being in the fuel business; it's interested in supporting the harbor with fuel. They anticipate asking for a two-year permit.

**Todd Alexander** added the following:

- In anything over a 20 knot nor'easter, there would be no fuel dispensed. The decision would be the harbormaster's.
- There is plenty of room in the channel for boats fueling and boat traffic.
- It's quite simple to anchor the tanks down.
- The average boat is 40 feet. With the addition of a piling there could be a 60-foot boat.
- 40 foot boats are using the pump out.

**Peter Forend**, Fire Chief Oak Bluffs, explained that the tanks would have to be anchored to the concrete surface below it. The tank would not have to be removed in a storm surge.

**Chris Murphy** commented that, under Chapter 831, the Commission is charged with promoting and enhancing sound local economies. He's worried that the Town is usurping local business that wouldn't be allowed back in the system. He encouraged the applicant to be very explicit in explaining what temporary means and under what conditions the facility would be made permanent.

**Michael Dutton** said he can't really comment on when the private vendor would be able to pump. It's very likely that the Board of Selectmen will begin to set parameters about what it wants to see for private fuel facility hours of operation. He understands the point about enhancing local economies, but the Town has an obligation to ensure that its harbor is being used and enhancing local businesses.

**Peter Forend** confirmed that there are fire fighters who have been trained in live fuel fire fighting.

**Michael Dutton** explained that the Town receives an annual renewal application for the private vendor and there's an inspection. The permit is registered with the Town Clerk and Fire Chief has a large say.

**Michael Dutton** explained that the project was referred by the Conservation Commission. He believes that the Conservation Commission and Planning Board would approve a permit but no town board can act without Commission review. The Harbor DCPC site plan review is the Board of Selectmen.

**Todd Alexander** explained that the Harbor Commission voted for him to go forward with researching the Town setting up a fuel facility. His first concern was the abutters. They are trying to head off the problem they saw coming last year during which there was spotty fuel service. This year, there was no fuel Memorial Day weekend and there hasn't been since.

**Doug Sederholm** asked whether the Town providing a temporary gas station might promote a solution between the private parties. **Todd Alexander** said he doesn't know, but, if the problem didn't exist, the Town wouldn't be making the proposal.

### **2.3 Public Officials**

**Peter Forend**, Fire Chief, explained that he brings the State Fire Marshall to Oak Bluffs for an inspection of the fuel facility.

### **2.4 Public Comment**

**Mark Wallace** commented on the proposal.

- Prior to the spill, they were never involved in marine fueling services. This whole thing came into their lap when they bought the gas station. The tanks were already committed to the other docks and they didn't operate them. As a result of the spill, they spent a lot of money to get fuel in the harbor.
- The Town had talked about going into the fuel business and there was talk about whether the Town was going to compete with private enterprise. They decided that that probably wouldn't be a good idea.
- When there was fear that Church's may not be able to deliver fuel, this process started appropriately.
- The good news is that this summer they will be pumping fuel.
- They are currently in Superior Court with a hold on the operation.
- His brother did meet with the Harbor Management Committee. There haven't been meetings with the neighborhood or him as the operator.
- There is a problem, but it can be solved.

**Ralph Packer** of Packer Fuel commented on the proposal.

- This happened in Edgartown, where the fuel facility didn't have a vendor. The Town of Edgartown brought in three 1,000 gallon ConVault tanks. They are very substantial and have a tremendous reputation.
- It's prohibited to use an automatic nozzle on boats.
- The only vapor recovery required is when the truck delivers the product to the tank.

- There were eleven underground tanks along Oak Bluffs Harbor at one time. It was very concerning. New tanks were put in which were permitted and endorsed by the Fire Chief, taking care of Church's Pier and Dockside.
- There was the accident that Packer's is still involved with.
- Packer Fuel will make it work this summer. They hold the lease. Packer will lift the wall so Church's Pier can function during the summer months. They won't be buying fuel from Packer. Packer's insurance company won't let them deliver to Church's. They'll document so they can keep their interests. Packer won't deny Oak Bluffs Harbor fuel.

**Bill Anderson** said he's seen oil spills and gas spills all over the area over the years.

- From Nancy's to Jim's the land is all polluted. The land under the old garage is all polluted. Now we're going to pollute a new area.
- He said that we are forgetting one factor in all of this, the human element. There's the human element that will spill gas or diesel.
- In 1978 there was a tremendous storm, and there will be bad storms again.
- Let's leave the pollution where it is and not add any more.

**Injy Lew** said she does understand the need for fuel, but this is a terrible place. There must be a better location and there should be a solution between Mr. Wallace and Mr. Packer. It would be great for the Town not to be involved in the fuel business.

**Ann Debettencourt** said the Town shouldn't be in the business of selling gasoline. Oak Bluffs needs the revenue, and she understands the need for fuel, but she'll be looking right at the facility.

**Dougie Abdelnour** of Nancy's Restaurant said this is not a major view impact. It wouldn't be a bad idea to have a back up fuel facility. People last year weren't happy with no fuel.

**Mark Wallace** confirmed that the capacity of the Church's Pier for gas and diesel is 6,000 gallons of unleaded gas and 3,000 gallons of diesel.

**Ray Gallison** said he is opposed to having a gas depot in his front yard.

**Ralph Packer** said the company would give all the support possible to Oak Bluffs if they wish to go the ConVault route. He'd like to see Oak Bluffs have fuel on the harbor. We want to move forward and be cooperative with the Town.

**Michael Dutton** added some comments.

- He confirmed that there isn't an adversarial relationship between the Town and the Wallace's. The Town is protecting its interests.
- They wouldn't purchase; they would rent tanks on a temporary basis. The cost would be installing the tanks. They have a Waterways Account, a revolving fund. A permanent solution would be funded through Town Meeting.

**Mark Wallace** said he's very happy with the discussion tonight. He's under the impression, after speaking with the harbormaster, that if Church's is up and running, this situation would be tabled. It's possible that the Town could operate Church's Pier.

**Todd Alexander** asked whether there are any obstacles, besides the legal ones that seem to have been resolved tonight, that would prevent Church's Pier from opening.

**Peter Forend**, Fire Chief, explained that the permits were received by him on June 2<sup>nd</sup>. There are a number of issues that have to be resolved on the pier before he can sign off. The State Fire Marshall is coming June 15<sup>th</sup> and there are a couple of lawyer issues that have to be resolved.

**Doug Sederholm** said that if safety and other concerns were met and Commissioners believe that the proposal has a positive regional impact, the best thing the Commission can do for Oak Bluffs is to approve the proposal which would be an incentive to work out the private matters.

**Mike Wallace** commented.

- They have met with the Harbor Committee about developing a new pier with new pumps coming off the existing tanks which would eliminate the lease issue.
- If there is a temporary solution, he would like to see conditions on the temporariness of the proposal.

**Linda Sibley** said that the applicant testified that they apparently don't really want to do this and they won't do it if there's an alternative. She asked that the applicant put in writing their definition of temporary and what temporary is if no other fuel source is available. They should also include how they would define that there is adequate fuel in the harbor.

**Holly Stephenson** asked that an estimate be included for dismantling, as well.

**Linda Sibley** closed the public hearing and left the written record open until Monday, June 8<sup>th</sup>, at 5:00 p.m.

### **3. OTHER**

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Commissioners present: B. Bennett, J. Breckenridge, C. Brown, P. Cabana, C. Gatting, C. Murphy, K. Newman, N. Orleans, J. Powell, C. Rose, D. Sederholm, C. Sharpe, L. Sibley, H. Stephens, A. Woodruff

#### **3.1 Finance Committee**

**Ned Orleans** reported that the Commission's budget as it was approved called for a 4% increase in salary for employees. During the budget process, the finance committee agreed to look at what the other entities of the Island did in terms of salaries when budgets were finalized. Commission staff's 4% increase is below the 4.6% average increase of the other ten island entities.

**Ned Orleans** also reported on the issue of medical insurance. The budget was calculated on the basis that all employees and retirees would be on the PPO plan as of July 1<sup>st</sup>. Five employees and retirees are on a Master Medical plan. The Finance Committee developed a recommendation that, starting in FY 2010, the Commission should continue to offer Master Medical to those who presently have it, paying 72% of the premiums which is equivalent to 90% of the PPO plan, with the employee paying 28%. If no one should choose to stay with Master Medical, the Commission should drop the option in FY 2011.



**Ned Orleans moved, and it was duly seconded, the Finance Committee's recommendation regarding Master Medical coverage. In favor: 13. Opposed: 2. Abstentions: 0. The motion passed.**

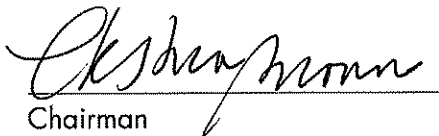
**3.2 Executive Director's Report**

**Mark London** reported that he will be attending the Massachusetts Association of Regional Planning Agencies meeting. He will try to have some discussion of the various pieces of legislation that would potentially impact the Island.

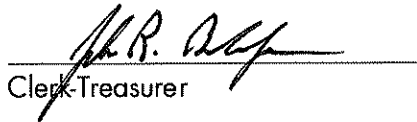
**Christina Brown** reported that Beacon Hill is considering some changes to the Commonwealth's zoning act and adopting a wind turbine siting act which could have implications for the Island.

**Peter Cabana** said this is the first time he's seen the state separate land based wind power from ocean sited wind power.

The meeting adjourned at 9:45 p.m.

  
Chairman

12/10/09  
Date

  
Clerk-Treasurer

12/10/09  
Date