

PO BOX 1447, OAK BLUFFS, MASSACHUSETTS, 02557, 508-693-3453
FAX 508-693-7894 INFO@MVCOMMISSION.ORG WWW.MVCOMMISSION.ORG

Minutes of the Commission Meeting Held on September 23, 2010 In the Stone Building 33 New York Avenue, Oak Bluffs, MA

IN ATTENDANCE

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

P Bill Bennett (A – Chilmark)	P Katherine Newman (E – Aquinnah)
P John Breckenridge (E – Oak Bluffs)	P Ned Orleans (A – Tisbury)
P Christina Brown (E – Edgartown)	- Camille Rose (A – Aquinnah)
- Peter Cabana (E – Tisbury)	P Doug Sederholm (E – Chilmark)
- Martin Crane (A – Governor)	P Linda Sibley (E – West Tisbury)
- Fred Hancock (A – Oak Bluffs)	P Brian Smith (A – West Tisbury)
P Chris Murphy (E – Chilmark)	P Holly Stephenson (E – Tisbury)
P Jim Joyce (A – Edgartown)	- Andrew Woodruff (E – West Tisbury)
P Lenny Jason (A – County)	

Staff: Mark London (Executive Director), Jo-Ann Taylor (DCPC Coordinator), Bill Veno (Senior Planner), Paul Foley (DRI Coordinator)

Christina Brown called the meeting to order at 7:00 p.m.

1. COMMITTEE REPORTS

1.1 Planning and Economic Development Committee

Katherine Newman provided the PED Committee Report.

- The next meeting is October 13, 2010, 12:00 p.m. at the West Tisbury Town Hall.
- The committee is reviewing MVC policies in relation to the Island Plan.
- The current policies being worked on are for agriculture and landscaping.
- Anyone who is interested or would like to help can attend the meeting.

Christina Brown added that several Commissioners have said that the MVC's Affordable Housing Policy, adopted in 1998, needs updating in regards to both the economic and housing patterns of the Island. A working group of PED will be contacting Commissioners for input on revising the policy.

1.2 Land Use Planning Committee

Christina Brown reminded everyone that LUPC meets Mondays at 5:30 p.m., agendas are posted, and although the meetings are not public hearings, the public is welcome to attend.

1.3 Compliance Committee Report

Chris Murphy said that a draft Compliance Policy was distributed to the Commission; he hoped it would be addressed during the meeting.

1.4 Finance Committee Report

John Breckenridge reported that the Finance Committee was just appointed and has not met yet. There will be an open meeting to address the initial draft budget for FY 2012.

Christina Brown explained that the Finance Committee is comprised of appointed members from each town and the County.

2. EXECUTIVE DIRECTOR'S REPORT

2.1 Community Development Block Grants

Mark London reported that DHCD had proposed a policy change for Community Development Block Grants. The new policy would require communities to show physical improvements to neighborhoods that were predominantly low income. The new policy would have effectively cut out Martha's Vineyard from eligibility to block grants due to the difficulty in proving a neighborhood is low income and the majority of projects are not physical improvements. The Commission's Affordable Housing and Economic Development Planner, Christine Flynn, worked with towns and other people and were successful in getting that portion of the policy removed. Island towns will still be eligible to receive block grants.

Christina Brown explained that the block grants have been used to fund rehabilitation of existing houses whose owners earn 80% or less than the area median income with a maximum of \$30,000 per house. Last year, the grants were also used to supplement existing day care facilities.

2.2 Wind Energy Plan for Dukes County Working Group

Mark London reported that the Wind Energy Plan Working Group, made up of representatives from each town, the County, and the Tribe, will meet on Saturday, September 25th from 8:30 a.m. to 12:30 p.m. at the Howes House to work on resolving potential issues related to wind energy on land, and offshore in state and federal waters. Background material will be available on the Island Plan website. The aim is to complete the plan by the end of the year. The Working Group meetings are open to the public.

3. DCPC SPECIAL WAYS WEST TISBURY – PUBLIC HEARING

Commissioners present: B. Bennett, J. Breckenridge, C. Brown, L. Jason, J. Joyce, C. Murphy, K. Newman, N. Orleans, D. Sederholm, L. Sibley, B. Smith, H. Stephenson.

For the Nominating Board: Harriet Bernstein (Chair), Rez Williams, Cynthia Aguilar, Nina Meyer, Ashley Hunter; Byways Committee, Town of West Tisbury

Christina Brown opened the public hearing and read the hearing notice. The nomination from the West Tisbury Board of Selectmen is to consider a boundary amendment for the Island Road

District in the Town of West Tisbury in order to include new Special Ways. The areas under consideration for expansion are:

- Within twenty feet of either side of the centerline of Pine Hill Road: Beginning at Old County Road at the southern point of Assessors Map 26, Lot 14.1, opposite the Sheriff's Meadow parking lot at Nat's Farm, proceeding northerly along the west boundary of said lot and continuing northerly until the northwestern point of Assessors map 21, Lot 13 where it intersects Doctor Fisher Road.
- Within twenty feet of either side of the centerline of Red Coat Hill Road/Motts Hill Road – Beginning at the Tisbury town line on the south side of the easternmost point of Assessors Map #8, Lot 24 and continuing westerly and becoming Motts Hill Road at the intersection with Ben Chase Road and proceeding southwesterly to its intersection with Merry Farm Road between Assessors Map 8, Lots 22.3 and 22.4
- Within twenty feet of the either side of the center line of Shubael Weeks Road – Beginning at the Tisbury town line at the northernmost point of Assessors' Map 8, Lot 31 and proceeding southerly to its intersection with Ben Chase Road at the southern point of Assessors Map 8, Lot 25 and continuing southerly crossing Merry Farm Road and intersecting Beaten Path near the northernmost point of Assessors Map 8, Lot 26.4

3.1 Staff Report

Jo-Ann Taylor gave an overview of the staff report.

- The Island Road District was designated in 1975, as one of three Island-wide Districts that the early MVC created from many nominations received when the Commission first opened its doors. The early Commission felt strongly that these three should be Island-wide (the Coastal District, Island Road District and Special Places District).
- There were designations in the Major Roads Zone in all six towns. At the time, the Commission found the District to meet all of the Critical Planning District Qualifications. For the Special Ways Zone, there were designations in West Tisbury, Chilmark and Aquinnah.
- Special Ways already designated in West Tisbury: Tiah's Cove Road, Watcha Path, Old Holmes Hole Road, Roger's Path, Burying Ground Road, Stoney Hill Path, Checamo Path.
- MVC accepted the Selectmen's nomination on August 12th, commencing a development moratorium.
- There are no proposed changes to the regulations.
- The Commission should close the hearing and vote on or before the October 7th MVC Meeting.
- Because the proposal is an expansion, the decision should be based on the criteria for size and shape of the district.
 - It is the critical area or critical resource which is in need of protection.
 - It is the logical planning area which should be considered in adopting a coordinated system of regulations to protect the critical resource or critical area.
 - The dimensions or landmarks which form the boundary of the district are convenient and recognizable.

- It has to meet the specific qualifications of being cultural or a historic resource district. There must be a regional need for special regulations or planning to protect the district from damage or losses by inappropriate development. The Commission shall find:
 - That present public or private regulations in a substantial part of the district cannot assure protection; and
 - That damage to the district or impediments to proper development will be a substantial loss to the region or to two or more towns.
- The MVC has a two-step approval process.
 - Acceptance of nomination for the designation of Special Ways, which was done in August.
 - A public hearing, after which a vote will be made by the Commission based on the criteria of the Critical Planning District Qualifications.
- The moratorium will end after affirmative votes from both the Commission and Town Meeting.

Chris Murphy asked if the regulations for the district are voted at the same time during Town Meeting. **Christina Brown** explained that the Selectmen and the Town have not proposed changing the regulations; if both the Commission and Town Meeting vote for the designation the current regulations would apply to the new special ways.

3.2 Presentation of Nominating Board

Harriet Bernstein stated that the ways keep the rural nature of West Tisbury; provide connections to different towns of the island; are very special.

Christina Brown read excerpts from the nomination papers.

- *Pine Hill Road was a major route from Old Holmes Hole Road...across Doctor Fisher Road to Lambert's Cove Road....As the section north of Doctor Fisher Road has very little traffic and virtually no through traffic out to Old County Road, the way is enjoyed by neighbors and others on foot, bike and horse, safely connecting people from the State Forest and other conservation lands and byways.*
- *Red Coat Hill Road/Motts Hill Road is part of an old cart path and trail system between State Road (the Vineyard Haven/West Tisbury Road) and Lambert's Cove Road. In the 1700's and 1800's, when the Island consisted mainly of farmland, Vineyard Haven Harbor could be seen easily from the highest point on Red Coat Hill Road....used during the Revolutionary War to oversee the harbor. On September 10, 1778, a British force of red coats led by General Grey seized this high ground during a four-day invasion, leaving a red coat on a nearby hill. The roads are important connectors to Land Bank and Nature Conservancy trails, and conservation areas in West Tisbury and Vineyard Haven....*
- *Shubael Weeks Road extended from road intersections at State Road to cranberry bogs in Tisbury along Lambert's Cover Road. Development has occurred atop the portion near State Road. The designated section includes two segments not used by vehicles.*
- *Why is this resource or area important to more than one town or to the Island as a whole? These trails are part of an historical network of interconnecting trails that link all the island trails. They are a visible part of our history and offer a hope for our future – as a safe alternative to roads monopolized by motor vehicle use and increasing volumes of traffic.*

3.4 Testimony from Public Officials

Rez Williams, of West Tisbury By-Ways Committee made two points.

- West Tisbury is the geographic center of the island; it is critical to protect these ways in order to service other areas in the future.
- Historically there have been a two-road system; one for slower traffic such as ox-carts; another for faster vehicular traffic.

Harriet Bernstein added that the paths will connect to the trails around Duarte's Pond.

3.5 Public Comment

Chris Fielder, owner of property (36.2 acres) between Pine Hill Road and Old Courthouse Road, explained that if access was restricted on Pine Hill Road she would not be able to access her property to put in cattle.

- It has been a right-of-way for over a hundred years.
- She is not currently using it for cattle, but plans to get more cattle and put them on that part of her property.
- She asked if there was an exception for agricultural use.

There was a discussion regarding if a permit would be available.

- **Jo-Ann Taylor** explained that a special permit could be granted if it was for a current use.
- **Bill Veno** explained that the Town would not prohibit a land-owner from accessing their property, however they may ask for a designated access point that minimizes the amount of vehicular use of the road. Almost all of the ways are currently used by vehicles.
- **Christina Brown** explained that at the town level there are regulations in place that would allow her to apply for a permit.

Bill Coogan, resident of 204 Pine Hill Road, expressed his appreciation to the Byways Committee for the nomination. As an abutter, he endorses it.

3.6 Commissioner Questions

There was a discussion of the coordination of paths with the Town of Tisbury.

- **Holly Stephenson** asked if there was coordination between the towns to make the ways connect and consistent.
- **Harriet Bernstein** said that they had contacted Tisbury however they do not have any designated special ways.
- **Linda Sibley** said that she has walked from Motts Hill Road, Red Coat Road to Lambert's Cove Road. The paths do connect.
- **Holly Stephenson** asked if they could talk to Tisbury regarding creating special ways.
- **Christina Brown** said that, as the appointee from Tisbury, Ned could.

Christina Brown closed the public hearing and the written record.

4. DCPC SPECIAL WAYS WEST TISBURY – DELIBERATION & DECISION

Commissioners present: B. Bennett, J. Breckenridge, C. Brown, L. Jason, J. Joyce, C. Murphy, K. Newman, N. Orleans, D. Sederholm, L. Sibley, B. Smith, H. Stephenson

Doug Sederholm moved, and it was duly seconded, to designate Pine Hill Road, Red Coat Road/Motts Hill Road, and Shubael Weeks Road as Special Ways falling under the Island DCPC and the current regulations.

- Commissioners discussed why they would designate the byways as Special Ways.
 - The trails are historically significant.
 - They provide a network of non-vehicular trails.
 - They are a historical network of trails that link to other trails.

A roll call vote was taken. In favor: B. Bennett, J. Breckenridge, C. Brown, L. Jason, J. Joyce, C. Murphy, K. Newman, N. Orleans, D. Sederholm, L. Sibley, B. Smith, H. Stephenson. Opposed: None. Abstentions: None. The motion passed.

Chris Murphy pointed out that with the designation from the Commission and possible designation from Town Meeting as a Special Way, does not mean that it is a public way.

5. WAVELENGTHS: DRI623 – PUBLIC HEARING CONTINUED

Commissioners present: B. Bennett, J. Breckenridge, C. Brown, L. Jason, J. Joyce, C. Murphy, K. Newman, N. Orleans, D. Sederholm, L. Sibley, B. Smith, H. Stephenson

Christina Brown at the applicants request continued the public hearing to October 21st at 7:15 p.m. This will allow the applicant and the town to clarify vehicular access from adjacent properties.

6. OCEAN CLUB: DRI309-M2 – CONCURRENCE REVIEW

Commissioners present: B. Bennett, C. Brown, L. Jason, J. Joyce, C. Murphy, K. Newman, N. Orleans, D. Sederholm, L. Sibley, B. Smith, H. Stephenson

For the Applicant: Michael Wallace and Mark Wallace

6.1 Staff Report

Paul Foley gave the staff report.

- The applicants are Mike Wallace and Mark Wallace.
- The project is located at 9 Oak Bluffs Avenue, Oak Bluffs, MA Map 9 Lot 43.
- The proposed plan is to expand an existing 90-seat, 3,200 square foot restaurant to incorporate the entire upstairs (+ 6,400 sf) with a maximum capacity of 500 for functions and a night club in downtown Oak Bluffs.
- The zoning is B-1 Commercial, but part of the property appears to be in B-2.
- The local permits needed are: building permit, planning board for parking, wastewater hookup to sewer.
- The surrounding land uses are the Strand movie theater, Surfside Motel, restaurants and various retail shops. The rear of the property is a parking lot. Across the street is a residential district.
- The building was built in 1930.
- The building has been the site of bars, restaurants, dance halls, game rooms, among other things in the past.

- The part of the building that the Ocean Club currently occupies was Danny Quinn's last year and Balance Restaurant for two years prior to that. The space had been a t-shirt shop before then.
- The other half of the ground floor is a car and moped rental.
- The upstairs that is proposed to be the function hall / night club was the Game Room until 2006.
- In 2007, the MVC voted not to concur with the referral of Balance Restaurant based on specific elements of a plan to place a 90 seat restaurant in half of the ground floor (3,400 sf) that would also be a 150-seat function hall in the shoulder seasons. The 2007 Balance restaurant proposal included the following commitments:
 - They proposed to provide employees with Vineyard Transit Authority (VTA) passes;
 - They said they made an arrangement with a local taxi company to provide rides to employees for a fixed rate to a park and ride parking lot;
 - They had ten spots at Budget Rental Cars for the restaurant parking in the evening.
 - They were supposed to pay into the Oak Bluffs Parking Mitigation Fund.
 - They were going to give customers with a M.V. taxi receipt with a complimentary dessert.
 - They would arrange for shuttles and/or taxis to shuttle guests for functions.
 - Concerns about noise were addressed with a vestibule in front, limited access to the rear, a promise to not dump bottles at night and to coordinate trash and recycling pickups.
- The LUPC had asked if the commitments were kept. The applicant at the time was Balance not the current applicant. The current applicant owned the building at the time.
 - There are no VTA records of bus passes being bought; passes could have been purchased by individual employees and reimbursed.
 - The ten spots controlled by Budget Rental are now owned by another company; Budget may have other spots to assign.
 - According to the Town Accountant, no payments have been made to the parking mitigation fund.
 - There have not been a lot of functions.
 - There is still an agreement with the Oak Bluffs School for parking.
 - The noise mitigation measures were installed.
- The capacity of the building based on the exits is 500; based on the square footage of the building it would be 700.
- An additional 7,200 gallons would be needed from the Waste Water Department for the expansion.
- The LUPC asked for a list of other venues in the area.
 - The current Game Room, which was previously the Atlantic Connection, still holds a liquor license for 480 people.
 - The Strand Movie Theater, which is next door to the property, has 254 seats.
 - The Island Theater, which is across the street, has 380 seats.
- The project was referred by the Oak Bluffs Board of Selectmen on August 10, 2010.
- The project was referred under sections 1.1b and 3.1f. 1.1b is a Discretionary Referral. The project was also referred under 3.1f (Increase in Intensity of Use – a concurrence review); since the project was referred as a concurrence review it does not need to be reviewed as a Discretionary Referral.

- The LUPC voted unanimously on September 20, 2010 to recommend to the full Commission that the proposed project be heard by the full Commission, have a Public Hearing as a DRI.
- Some key issues are:
 - Traffic and parking: Can downtown Oak Bluffs accommodate the parking needs of a function hall/night club with a capacity of 500 or more?
 - Wastewater: What flow will the Oak Bluffs Wastewater Commission allow?
 - A.D.A.: How will the second floor be made handicapped accessible?
- There is no vegetation, possibly some planter boxes. It is a downtown site with no land;.
- The previous restaurant on the ground floor (3,200 sf) was approved to hookup to the Town sewer with the flow of a 150-seat restaurant.
- There is an agreement with Island Transport to provide transportation for functions and weddings.
- The Oak Bluffs Planning Board said that Balance restaurant required 35 parking spaces based on a 150-seat restaurant but were given credit for 18 spaces due to the preexisting retail. Therefore they either had to provide 17 spaces or to pay into the Oak Bluffs parking Mitigation Fund \$1450 a year.
- The zoning regulations of Oak Bluffs require a parking spot for every four seats. It is not clear how many parking spots will be required for standing capacity of 500.
- The restaurant/night club is an appropriate land use within the B-1 Business District.
- It is an existing building that was built for public assembly.
- Any work that is done to the building has to be brought up to code, which would be monitored by the Town Building Inspector.
- The property abuts the Surfside Hotel; they have concerns about late night noise impacting their guests.
- The property also abuts the Strand movie theater owned by the Halls. They are concerned with the noise asks that some type of acoustic wall treatment would be used to mitigate the noise.
- We received the following correspondence.
 - Fred Hancock [MVC Commissioner who could not attend the meeting] sent a letter stating that he feels it is an increase of intensity of use that could have a significant impact on traffic and therefore should be reviewed by the Commission as a DRI.
 - Duncan Ross, Chairman of the Oak Bluffs Selectmen, sent an email on his personal behalf. He is in favor of the project. If the Commission decides it would be better for the Town of OB to hold a public hearing, he would be in favor of doing so.
 - Ron DiOrio sent an email. He feels it would be good project Oak Bluffs and hopes the Commission concurs.
 - Attorney Kimlee representing the Youngs of the Surfside Motel sent a letter stating various reasons why the project should be referred. They do not feel the applicants have addressed the issues of the arrival of guests, parking, noise, and waste water. Diesel buses that would be providing transportation would be creating fumes in the neighborhood.
 - Scott Dario, Island Transport Inc., sent a letter stating that he has an agreement with the applicant to provide transportation for functions.

Katherine Newman asked for clarification regarding the referral. **Paul Foley** explained that the Oak Bluffs Selectmen referred the proposal, but two of the Selectmen have expressed support for the project.

There was a discussion regarding the Balance DRI

- **Chris Murphy** made a clarification that Balance was not the applicant for the DRI, but the agent for the owner of the condominium. Everything that was approved applies to the property.
- **Linda Sibley** explained that it was a non-concurrence because of the representation of commitments. Some of the commitments were apparently not fulfilled.
- **Chris Murphy** said that the non-concurrence was conditional and the conditions should be enforced.
- **Paul Foley** agreed that the owners are accountable, but were not the ones making the presentation to the Commission.

Lenny Jason asked what the decision was for Dreamland. **Paul Foley** answered that it was approved to add a third floor for mixed use, namely offices & hotel rooms.

Christina Brown asked the applicant if the stated purpose of the project was correct. **Mark Wallace** said it was.

6.2 LUPC Report

Linda Sibley gave the LUPC report.

- The LUPC voted unanimously, five to zero, to recommend that the proposed project be heard as a DRI.
- The major concerns were:
 - Parking
 - Traffic from assembling up to 500 people at the same time.
 - Noise issues for the abutting hotel where people are trying to sleep and the abutting movie theater where the sound quality is critical.

6.3 Public Testimony

Christina Brown explained that it was not a public hearing but said she would allow comments from the public with regards to whether this should be a Development of Regional Impact that needed a hearing by the Commission.

Attorney Michelle Kimlee representing the Youngs stated that it would be a huge increase in use.

- The current use is for 90 seats and the proposal would increase it to 500,
- There would be an increase in traffic, noise, and wastewater.
- She strongly recommended that the proposal be considered a DRI and move forward with a public hearing.

Michael Wallace stated that he agreed with a public hearing, however felt the Town could handle the process; he understands there is an impact on the town but does not see the regional impact.

Linda Sibley explained the regional impact.

- The traffic is a regional concern. If there is an issue with traffic on any major Island road it is considered a regional impact. The Steamship Authority traffic would be affected.
- The MVC Act states that if it serves a regional audience it constitutes a regional impact. Unless the venue will only serve people from Oak Bluffs and inconvenience people from Oak Bluffs then it serves a regional audience.

Mark Wallace stated that he feels the Town process could handle it.

- He is on the Oak Bluffs Planning Board.
- The referral was discretionary and forced by a lawsuit.
- Balance would have promised anything to get their project approved.
- He lives the next block over and did not notice any impact to the block with Balance there, but could hear the air hockey tables all night when the arcade was there.
- Feels the neighbors have enjoyed having nothing at the premises, but that will not continue.

Christina Brown offered that a future conversation could be held between the Oak Bluffs Planning Board and the Commission to discuss what should be referred. It is a general topic that should be discussed with every town.

6.4 Commissioner's Questions

Bill Bennett asked if the Town would be required to hold public hearings if the Commission did not concur. **Mark Wallace** said that there would be public meetings with the Planning Board and Selectmen. **Bill Bennett** said that it seems that the abutters would make sure the issues were addressed.

Linda Sibley discussed two aspects of the proposal.

- She stated that she does not believe the Town has the power to place conditions on the proposal to the extent that the MVC can. There are certain powers that the Commission has that the Towns do not have. For example, the Town cannot require the applicant to install anything for noise mitigation; they can send the police over if they are being too noisy. Also, besides the parking mitigation fee, there is nothing else the Town can require of the applicant to address the traffic issue.
- The issue of the potential legal action against the town was not relevant. When the Compliance Committee discussed this project, it felt that this project was a required referral. The Committee made the Building/Zoning Inspector aware of that determination.

Holly Stephenson asked for clarification of conditions. Why were there conditions on Balance if the Commission voted not to concur and are they enforceable? What is the enforcement of conditions on a DRI approval?

Mark London explained his understanding of the opinion of legal counsel regarding a project that was voted a non-concurrence.

- For Balance, the list was not of "conditions" but was part of the applicant's project description. The Commission decided not to concur on the basis of that complete project description. If there are changes to the project it is the responsibility of the building inspector to send it back to the Commission.

- In a vote of non-concurrence, the Commission could go beyond the applicant's project description and add the equivalent of conditions by saying in its vote and letter to the town that it does not concur with the DRI referral "as proposed but also provided..."
- More discussion is needed with Counsel to understand what happens if the building inspector does not send a project that doesn't comply with project description, back to the Commission.

Holly Stephenson felt that there should be a public hearing if conditions are to be placed on a proposal.

Ned Orleans asked if a town has to legally pay attention to the complete description on a non-concurrence. **Chris Murphy** answered that the towns are supposed to pay attention, but the only recourse for the Commission would be to sue the town, which would not be a good scenario.

Linda Sibley moved, and it was duly seconded, that the Commission agrees that it is a sufficient increase of use and has regional issues that need to be addressed, the proposal should be called a DRI and a public hearing should be held.

- **Lenny Jason** stated that he was still trying to figure out how the Game Room ended up in the space when it was approved as office space.
- **Christina Brown** said the history of the building could be explored further during a public hearing.

A voice vote was taken. In favor: 9. Opposed: 1. Abstentions: 1. The motion passed.

Chris Murphy stated that he would like Commissioners and the applicant to know that at the next Commission meeting he intends to make a motion to reconsider the January 11, 2007 decision to non-concur based on the information the staff has provided regarding the letter of non-concurrence and its use; it is too soon to make the motion tonight; he feels the Commission made a mistake.

Lenny Jason asked if they could reconsider a three-year-old decision. **Chris Murphy** said yes. **Christina Brown** said the Commission would need more information about rescissions and non-compliance of nonoccurrence decisions.

Mark Wallace compared Balance Restaurant to the closure of Oak Bluffs during the hurricane. He said when Oak Bluffs was closed because of the hurricane it was with good intentions, later to be found out that it was a mistake. Balance made all kinds of promises with good intentions, there were no impacts on the area, and people lost millions of dollars.

7. 45 BEACH ROAD/PIZZA: DRI626 – DELIBERATION & DECISION

Commissioners present: B. Bennett, J. Breckenridge, C. Brown, L. Jason, J. Joyce, C. Murphy, K. Newman, N. Orleans, D. Sederholm, L. Sibley, B. Smith, H. Stephenson

Paul Foley provided a review of the project.

- The project is located at 45 Beach Road, Tisbury.
- The proposed plan is to locate a new pizza and sandwich shop in a renovated building located at 40 Beach Road with a Century 21 Office and parking for Budget Rental Car and Blue Canoe Restaurant.

- There will be no seating, just counter service.
- There will be no delivery.
- They do not plan to seek beer and wine permits.
- The project will be connected to the town sewer. They will have two fryolators and a grease trap.
- The applicant will sign a ten-year lease subject to permitting.
- Hours of operation are estimated to be 10 am to 10 pm in summer and 11 am to 9 pm winter. There would be 3-4 employees in summer and 2-3 in winter.
- There will be ten adjacent parking spaces.
- The existing/proposed parking lot circulation plan currently shows an entrance / exit at the site driveway as well as an entrance / exit roughly 70'-feet west of the site driveway.
- Existing conditions show a 20'-foot Right of Way.

Doug Sederholm moved, and it was duly seconded, to approve the application with the applicant's offers for the reason that the only area of concern is traffic and parking and the former and proposed uses are virtually the same.

- **Linda Sibley** stated that the written decision should include all of the factors, offers, and conditions. She explained that the Compliance Committee has learned that relying on the testimony from the public hearing is not necessarily enough.
- **Christina Brown** stated that in this case the offers were part of the application.
- **Chris Murphy** stated that the applicant is an agent for the owner of the property. The application is for the entire property with everything listed on it; the application is not just for the pizza, but includes parking for various entities and the real estate office. If there is any change in the entire plan it will have to come back to the Commission; ground-water run-off and catch basin have not been addressed. The Commission should make sure the whole property is the way it should be.
- **Linda Sibley** noted that the parking and traffic were a wash because of the way the entire property was going to be used now. **Kathy Newman** asked if the parking could be phrased so that it does not only refer to the ten parking spaces for the pizza shop. **Linda Sibley** stated that all of the parking spaces were testified to in the public hearing and application. **Doug Sederholm** said it should be worded that the ten spaces are for the pizza shop, three spaces on the side are for the real estate office, twenty spaces in the back are for staging for rental cars, and the 14 remaining spaces are for parking for a restaurant and marina across the street; it is based on that representation that the plan is approved.
- **Christina Brown** said that if someone wanted to rent space in the building for a restaurant they would have to come to the Commission because there would be no parking spaces available for a restaurant.
- **Mark London** suggested listing the uses of the spaces as the generic use and not listing formal names.
- **Chris Murphy** stated that the run-off had not been addressed. **Paul Foley** said they had installed French drains. **Chris Murphy** said they were only around the building not the rest of the property. **Doug Sederholm** stated that the property was pervious because the rest was gravel. **John Breckenridge** asked Lenny Jason what the regulation was regarding run-off and who regulated it. **Lenny Jason** explained that the

water should remain on the property and not run-off into the adjacent properties; it is regulated in the town building codes. **John Breckenridge** stated that the issue is handled at the town level unless the town asks for help in reinforcing it. **Linda Sibley** stated that the run-off was addressed during the public hearing. There was testimony regarding the pervious gravel parking lot and French drains which should be recorded in the record; she added that the landscaping was beautiful and it should be kept like that and that should also be part of the record.

- **Chris Murphy** stated that the landscaping was only reviewed around the pizza portion of the building and not the rest of the property. **Doug Sederholm** said that the rest of the property is a parking lot and there is no landscaping.
- **Doug Sederholm** agreed with Chris Murphy's point, namely that the Commission was considering the whole property and in this case they have addressed that. The written decision will include the generic uses of the property, the pervious parking lot, and the existence of landscaping.
- **Kathy Newman** asked about the lighting and signage. **Liz Wielder** clarified that there would be no change to the lighting, the sign would be added to the two-post sign holder and the two current signs would be made smaller, the sign would have to go to a site review board.

A roll call vote was taken. In favor:, J. Breckenridge, C. Brown, L. Jason, C. Murphy, K. Newman, N. Orleans, D. Sederholm, L. Sibley, B. Smith Opposed: None. Abstentions: None. The motion passed.

8. DRI 619 – IGREJA EVANGELICA ASSEMBLEIA DE DEUS SEMEAR CHURCH

Paul Foley said he received a letter from the Igreja Evangelica Assembleia de Deus Semear Church being renovated located next to the Oak Bluffs Library requesting to change the front façade from cedar shingles to white clapboard.

Linda Sibley moved, and it was duly seconded that the request was a minor modification, not requiring a public hearing. A voice vote was taken. In favor: 12. Opposed: 0. Abstentions: 0. the motion passed

Linda Sibley moved, and it was duly seconded to approve the request to change the front façade of the Igreja Evangelica Assembleia de Deus Semear Church from cedar shingles to white clapboard. A roll call vote was taken. In favor:, B. Bennett, J. Breckenridge, C. Brown, L. Jason, J. Joyce, C. Murphy, K. Newman, N. Orleans, D. Sederholm, L. Sibley, B. Smith, H. Stephenson Opposed: None. Abstentions: None. The motion passed.

9. CALENDAR

- There will be a Wind Energy Workshop on Saturday September 25, 2010
- LUPC will meet on Monday, October 4, 2010.
- There will be a meeting regarding the Affordable Housing Trust Fund on Tuesday, October 5, 2010 in West Tisbury.
- The next Commission meeting is Thursday, October 7, 2010 at 7:00 p.m.

10. NEW BUSINESS

10.1 Compliance Procedures

Chris Murphy moved, and it was duly seconded, to adopt the Compliance Procedures as presented.

- **Christina Brown** said she would feel better if it was listed on the agenda; Commissioners would have had an opportunity to review their notes and think about it.
- **Lenny Jason** said there was no discussion on the potential fines.
- **Chris Murphy** explained that there was no intention to implement a fine system at this time, but there is a note from the attorney stating the Commission could.
- **Lenny Jason** was concerned about raising the possibility of a fine system.
- **Chris Murphy** stated that he agreed, but there were those that felt it was important to be listed as a potential.
- **Linda Sibley** explained that it is in the letter to the Commissioners and not in the actual procedures; that particular page is not being adopted.
- **Ned Orleans** stated that he has not absorbed it yet to a point where he feels comfortable to vote on it, other than the confidence he has in those who sat on the committee. He feels it should be an agenda item with an opportunity for a full Commission discussion.
- **Doug Sederholm** suggested it be on the next agenda. **Chris Murphy** agreed.
- **Christina Brown** agreed to put it on the next agenda for the meeting on October 7th.
- **Ned Orleans** suggested having it first on the agenda unless there were public hearings already scheduled. **Paul Foley** explained that the Oak Bluffs Fishing Pier Public Hearing was scheduled for 7:15 p.m. and the deliberation and decisions for Sam Dunn and Big Sky.
- **Christina Brown** said it would be put on the agenda after the public hearing before the deliberations.
- **Kathy Newman** suggested approving the Procedures as a trial to be reviewed again and refined in a couple months. **Linda Sibley** agreed with the concept but felt a couple months was not long enough. **Kathy Newman** said that it should be determined what the appropriate time was and it be known that it would be brought back for review.

There was no vote taken on the motion.

The meeting adjourned at 9:00 p.m.

Chairman

Date

Clerk-Treasurer

Date

10. NEW BUSINESS

10.1 Compliance Procedures

Chris Murphy moved, and it was duly seconded, to adopt the Compliance Procedures as presented.

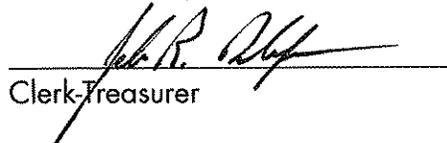
- **Christina Brown** said she would feel better if it was listed on the agenda; Commissioners would have had an opportunity to review their notes and think about it.
- **Lenny Jason** said there was no discussion on the potential fines.
- **Chris Murphy** explained that there was no intention to implement a fine system at this time, but there is a note from the attorney stating the Commission could.
- **Lenny Jason** was concerned about raising the possibility of a fine system.
- **Chris Murphy** stated that he agreed, but there were those that felt it was important to be listed as a potential.
- **Linda Sibley** explained that it is in the letter to the Commissioners and not in the actual procedures; that particular page is not being adopted.
- **Ned Orleans** stated that he has not absorbed it yet to a point where he feels comfortable to vote on it, other than the confidence he has in those who sat on the committee. He feels it should be an agenda item with an opportunity for a full Commission discussion.
- **Doug Sederholm** suggested it be on the next agenda. **Chris Murphy** agreed.
- **Christina Brown** agreed to put it on the next agenda for the meeting on October 7th.
- **Ned Orleans** suggested having it first on the agenda unless there were public hearings already scheduled. **Paul Foley** explained that the Oak Bluffs Fishing Pier Public Hearing was scheduled for 7:15 p.m. and the deliberation and decisions for Sam Dunn and Big Sky.
- **Christina Brown** said it would be put on the agenda after the public hearing before the deliberations.
- **Kathy Newman** suggested approving the Procedures as a trial to be reviewed again and refined in a couple months. **Linda Sibley** agreed with the concept but felt a couple months was not long enough. **Kathy Newman** said that it should be determined what the appropriate time was and it be known that it would be brought back for review.

There was no vote taken on the motion.

The meeting adjourned at 9:00 p.m.


Chairman

11/4/10
Date


Clerk-Treasurer

11/4/10
Date