



## OAK BLUFFS PLANNING BOARD

Meeting Minutes

FEBRUARY 13, 2020

4:00 p.m. at Oak Bluffs Fire Station, 6 Firehouse Lane, Kitchen Meeting Room

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**Members in Attendance:** Ewell Hopkins, Erik Albert (via phone), JoJo Lambert, Bill Cleary

**Members Absent:** Mark Crossland

**Staff in Attendance:** Kim Leaird (*Administrator*)

**Attendees:**

Matt Malowski	Kathryn Shertzer	Joe Sullivan	Janet Packer	Fred Hancock
Rocco Bellebuono	Zeke Vought	Antone Lima	Peter Bradford	Joan Malkin
Donald Herman	Lara Rebecca Correa	Nancy Company	Aaron Wilson	Ben Hall
Jared Meader	Silva	Chris Huntress	Amy Billings	
Jim Bishop	Maura McGroarty	Matt D'Andrea	Jason Balboni	
Terry Donahue	David DeCella (?)	Richard Smith	James Dearing	
Lou Paciello	Kris O'Brien	Richard Toole	Brian Packish	
Joe Mikos	Jessie Nairn	Joan Hughes	Ben Robinson	

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*Chairperson Hopkins opened the meeting at 4:59 pm. Quorum made with E. Hopkins, J. Lambert, B. Cleary. E. Albert participated remotely*

### **Approval of Minutes**

January 9, 2020 minutes: Member Cleary made correction to page 5 (*1.5 acre needed vs. 1 acre to qualify for Green Community Designation*). Member Cleary made a motion to approve the January 9, 2020 minutes. Member Lambert seconded. A roll call vote was taken and motion passed. All approved

### **9 Doar Street, Map 7 Parcel 159.5, Approval Not Required – Matt Viaggio**

Form A plan was approved by the Planning Board back on May 11, 2017, but the signed plan is missing. Plan reflects the following property addresses: 41 Eastville Ave., 44 Buena Vista St., 1 Doar St., 5 Doar St., and the lot in question: 9 Doar Street. Owner is Susan White, Trustee of the Eastville Avenue Nominee Trust. There had been a question about affordable housing issue with the ANR per minutes from 2017, but the Planning Board was not picking up that discussion, just signing a plan already approved. Members Lambert, Cleary and Hopkins signed.

### **Sunset Lake – Site Plan Review: Restoration of Sunset Lake and Lakeside Park (0 Lake Avenue and 25 Greenleaf Avenue (Map 8 and Lots 140, 141-1, 259) – Continued from January 9, 2020**

Representative Donna Hayes, President of Friends and Neighbors of Sunset Lake (FANS) and Amy Ball from Horsley Witten presented.

The project is a series of restorations in and around the pond and includes:

- Slumping edges of the pond.
- Addressing storm water issues along Greenleaf Ave. with restoration around the pond and watershed.
- Addressing need for a walking path in and around the pond to make the park itself more user friendly.
- Will add some park amenities and a gateway plaza.
- Walking path is pervious pavement that encircles the entirety of Sunset Lake.
- Two storm water practices that are designed to address water quality and quantity and help with some of the flooding along Greenleaf Ave.
- A bio retention area in the southwest corner and a wet swale in the southeast corner with the connection from sidewalk area that will go along Dukes County to Greenleaf Ave. to School Street.
- Restoration plantings along the edge of the pond
- Replacing some of the non-native species with native plantings which will help with water quality and habitat and generally improve the ecological area.
- Replacing a highly degraded area and turning it into a fairly ecologically good area with a lot of public amenities.

Chairperson Hopkins asked if there were any elected officials present who had questions or comments or if any members of the public had testimony in support or opposition. There was none. He then opened the floor to questions.

Jim Bishop asked if there was a plan to deal with the water coming off the hill. Donna said eventually but there is no timeline right now. Once Phase 1 is complete, they will talk with Parks and Rec department and involve Roads and Byways, and have another watershed study. It's on their radar.

Jean Malkin (ConCom) said that some of the water coming down Greenleaf is being addressed by Phase One of the plan.

Chairperson Hopkins closed the public hearing and opened to questions from the board. He asked about the extension of the sidewalk and crosswalk configuration to cross over the major road to the harbor and what connecting features they have for the bus station stop and accessibility.

Donna said walking path would extend to the bus stop. The current crosswalk comes off of Dukes County Ave. in front of the cottages and shrubs and cars are in the way – they plan to move crosswalk. Universal access will be integrated to the bus stop to pedestrian and wheelchair access across the street and around the park.

Chairperson Hopkins thanked them for their presentation. Member Cleary made a motion to approve the application without conditions, Member Lambert seconded. A roll call vote was taken and all were in favor. Motion passed 4-0.

### **Discussion with the Martha's Vineyard Commission DRI Checklist Committee**

Subcommittee chair Fred Hancock, one of the elected commissioners from OB presented "Draft 8A" for comments from the board. Also present were Joan Malkin, Richard Toole and Ben Robinson.

The MVC is charged by its enabling legislation with reviewing the DRI Checklist every two years. Over the last year and half they have also revised wastewater and community housing policies and are currently working on energy policy. These three areas are identified as particularly important planning issues on the island so important that they be reflected in Checklist.

The DRI Checklist outlines when a project development needs to be referred to the MV Commission. They have tried to make the language more clear.

Regarding the concurrence review process – the new version makes more clear which items are and are not for concurrence. However, even a concurrence review is a mandatory referral. The Commission decides and now the checklist clearly defines if it's a mandatory review or mandatory concurrence.

Chairperson Hopkins said he sees a gaping void at town level – there should be mutual agreement between regional and local planning about the level and types of scrutiny that should be applied to applications. He said we don't have that and it would be good to identify where it should be at each. More and more of the review of applications is going to the MVC at expense of town's ability to make judgments at a local level.

Island planning boards feel they have less and less initial authority to judge what's happening in and out of their towns and believes this is because they haven't agreed what the specific criteria should be. For example, in terms of evaluating housing construction – moving from 10 to 5 arbitrarily out of context instead of saying “this is the standard...” is not ideal. Towns and the MVC should come together and agree what the criteria of scrutiny is for everything they oversee and come to consensus what is best done at a regional level and what is best done at a local level.

Member Albert said the Commission said they'd feel more comfortable if the town had a Master Plan, and now they have a Master Plan... he doesn't see Commission relinquishing authority.

Chairperson Hopkins asked if there are still deficiencies, like in the town's bylaws and they were able to incorporate them, would that give MVC reassurance if they were to be addressed.

OB commissioner Richard Toole said absolutely. Fred Hancock said maybe. Ben Robinson said for concurrence review they do look at what oversight town has and that their role is outlined in the legislation.

Fred Hancock said there are benefits to regional review: the MVC can apply conditions to an application that the Planning Board cannot. The DRI checklist is the bible for doing these things. This is what protects Commission and the town. Oak Bluff's focus is on the town. MVC's is higher focus, looking at the whole island.

Developments of regional impact are if island-wide impact. Like any board, the MVC is made up of 16 voting commissioners and as group it changes over time – including opinions. Things that are important sometimes change a bit, but can't take that authority out of their hands.

The subcommittee has made a tour of the island planning boards and will produce a final draft of the checklist after taking into consideration all island towns input. Then the Commission will have a full hearing on the final draft and vote. They may make amendments or changes at that time. Also noted that the legislation says they have to review checklist every two years – they do not necessarily have to change. But this year they have found things that need clarification.

Chairperson Hopkins said they want a process that's evident and is informing of one another so that when applicants come in front of them they don't believe they're going into parallel levels. There is a continuum of concern that an applicant will go through. The perception is that the Commission and the town each have its process and there is some overlap – and that is not acceptable. How do we better inform one another of processes so we can give continuity two levels:

1. The Commission and
2. The town.

Joan Malkin said there are a number of policies that give very clear guidance as to how the Commission will deal with applications ... those on water quality, open space, traffic, nitrogen, and healthy water – those things can be gleaned. There is an expressed provision that says if the town has an area development plan to come up with criteria for affordable housing and it addresses all of these topics and the Town works with the Commission to ensure its criteria were as specific as the MVC and has the same intent to protect what they seek to protect – if the MVC were convinced that a Town would be able to deal with those issues... She said, not saying it is easy, but it is possible. It also might not just involve the Planning Board but other town departments as well, all working together to follow an area development plan—but between all of you following your area development plan.

Fred Hancock said if you had had such a plan your trigger number would be higher, so they are asking towns to propose a number that would trigger review. To this end, “name your own square footage” tool is part of the revisions. Edgartown has an upper Main Street plan which does 89% of this but they have not yet finished.

Chairperson Hopkins opened the floor to comments.

Joe Mikos, Oak Bluffs resident, asked if there were certain areas that are automatic triggers to the Commission, such as the high school.

Joan Malkin says because the high school is an existing DRI it is an automatic referral and they look to see if [project] has a significant regional impact. If it does, then they would have a hearing and invite the public.

Peter Bradford commented that every two years the Commission seems to make the checklist [triggers] more strict, taking a “bigger bite of the apple.” Said town’s planning board had not done a great job in last ten years. Said Commission is judge and that’s arbitrary and capricious.

Fred Hancock said there are nine elected officials, six appointed by individual towns, one from Dukes County Commission and one appointed by the governor.

Ben Hall, theater owner in town – there are people who are interested in developing island theaters but there have been limitation with sewer and now what has become a bigger concern is checklist items being proposed that would make it mandatory for them to go to MVC to put a restaurant in that space. Current regulations say if you were in a B1 district proposing 50 or more seats, they looked at concurrence review, look at performance standards of property, use and decide whether to look at more carefully. New proposal is if over 80 then you have to go to Commission then town would have no way to deal with at town level. Doesn’t understand if they already have concurrence review why must they have mandatory at 80. Feels it’s just imposing policies of Commission... wanted the PB to hear some of the policies MVC has imposed that extract a very large tax from people who want to do projects.

Ben said he’s right about the change. He said they actually raised the limit – anything under 80 seats does not require review.

Joe Mikos asked about process for reviewing an existing DRI – coming to ask for modification. Process is to contact MVC staff and talk about what your proposed modification is. Bill Veno said in most cases it involves a town permit which is where it is often referred. In some cases a modification may not involve a town permit then would go directly there.

[Fred Hancock said that when they schedule hearing for final checklist, they’ll let board know. Ben Robinson said that if town had comment to send it in.](#)

## **MVRHS Athletic Fields Improvements Application**

Since last meeting, the planning board has received and accepted an application from the High School on the MVRHS Athletic Fields Improvements. Chairperson Hopkins said he and the town's legal counsel had been working on framing the process. In light of February school vacation week with many people away, he set March 12 to open the public hearing to March 12.

First item of business during March 12 meeting would be to discuss referral to the Commission. Richie Smith asked for confirmation that the application was complete and was told it was.

## **Board Updates**

Bill Cleary – updated on Green Community designation for the state. Five criterion town needs to fulfill in order to get it: first was to establish as-of-right zoning. Bylaw amendment was accepted by the state and will be voted on town meeting. Warrant article has been submitted at town hall for the warrant. Bill said the first input session on February 6 was well attended. The next public outreach session is March 5.

Ewell Hopkins – Discussed some of the correspondence in the board member packets.

- MV community services has announced they are breaking ground starting next week.
- The Recovery Center at the hospital had their ribbon cutting this weekend.
- In addition to high school application they submitted a letter for peer review fees.
- There's a letter from superintendent.
- Conversation about the solar panels at the capped landfill.
- Letter of potential consultancy on high school project.
- Ewell's initial thoughts on the high school project.
- He said they had conversation about solar project at capped landfill with ConComm, BoH and Finance committee as well as wastewater.

## **Public Comments**

Brian Packish, selectman – said that in his opinion the high school project is an automatic DRI. Any added dollar added to the process will be levied to the tax payer and the Board has a fiduciary responsibility to make sure they do things as expeditiously and cost-effectively as possible. In his opinion, the town needs to do refer it as quickly as possible and responsibly represent taxpayers.

Richie Smith, assistant superintendent, addressed board on schedule and scope of review. He passed out a handout (legal opinion from the school district's attorney) that outlines process and education use pursuant to the Dover Amendment. He read aloud from page 4-5 under Statutory Limitations, and said he feels that there are limitations on the Planning Board's authority to limit the project. He asked that this letter help inform the board's review.

Peter Bradford, Affordable Housing (AH) committee, said he wanted to speak to what he perceives as a breakdown in communication. He expressed his frustration about:

- How their committee had approached the Planning Board a while ago about amending bylaw around affordable housing and response was that the Planning Board would not look at bylaws in isolation.
- The Planning Board member appointed to AH chaired a subcommittee that in fact looked at zoning in isolation and did not inform the AH committee. He stopped coming to meetings and did not tell anyone that they were working on Accessory bylaws. When the committee heard that there was such a committee, it assumed it was working on bylaws in its entirety per past communications with PB.

- At the public input session AH came unprepared [to hear it was being looked at in isolation] and when they tried to give input was told the time for public comment was over.

He said that anything that has to do with Affordable Housing should have been brought to the committee. He found the whole process very frustrating and hopes there are better conversations between the PB and AH committee in the future.

Chairperson Hopkins said he would clarify where they are with this when he attends the next affordable Housing meeting with or without Member Crossland.

Jim Bishop said he had attended Green Energy meeting with discussion of new code. He said they have a piece of property on Bellevue Ave., and the AH committee has concerns that plans won't impact nitrogen load because they will probably need to go to Title V with that property. They have a fairly comprehensive plan for the property. He also had comments on proposed code, concern about making it a requirement to make most heating change-outs into electrical units (mini splits or electrical furnaces) because believes grid can't withstand this.

Chairperson Hopkins said March 5 is the next public session on Green Community designation and these questions can be discussed in more detail then.

Zeke Vought – spoke about his letter not being listed individually under the Support for Turf Field and asked that it be unbundled.

Brian Packish – said he had received messages from chiropractor next door upset that her lot was being used by attendees. Asked that if there are more of these highly-attended meetings, that people not park there.

## **Adjourn**

Member Cleary made a motion to adjourn. Member Lambert seconded.  
Meeting was adjourned at 6:31 p.m.

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*Minutes approved March 12, 2020*

## **Documents on File**

- Agenda
- Board packet
- Sign In Sheet
- Legal opinion from the MVYPS re: Athletic Field Improvements application