

Oak Bluffs Planning Board  
Meeting Minutes

July 28, 2016 at 6:00 p.m. in the Oak Bluffs Town Hall Lower Level Meeting Room

Members in attendance: Brian Packish (Chairman), Robert Fehl (Vice Chairman), Ewell Hopkins

Members absent: Erik Albert, Jeremiah McCarthy

Staff in attendance: MacGregor Anderson (Clerical Assistant)

Chairman Brian Packish called the meeting to order at 6:00 p.m.

**Lagoon Ridge Form C definitive subdivision plan decision deadline extension request from applicant**

Chairman Packish read the July 28 letter from Eric Peters requesting additional time to prepare their application and providing the Board with an extension to September 30 for a decision on the definitive plan. The Chairman noted that Mr. Peters was not in attendance. He then asked Mr. Anderson to give the Board an update on the deadline.

Mr. Anderson said the decision deadline was currently August 30 give or take a day. He said the deadline for posting notice of a hearing for the MV Times was on Tuesdays. He would have to provide notice for an August 18<sup>th</sup> hearing by Tuesday August 2<sup>nd</sup>, and August 25<sup>th</sup> would require notice by August 9<sup>th</sup>. This meant they were short on time. He offered to go into more detail on the situation, and the Chairman agreed.

Mr. Anderson said the letter before the Board was what Eric Peters had originally proposed in order to provide an extension. His wet ink signature on this letter to be filed with the Clerk was on hand upstairs. Town Counsel felt the Board would be better served with an agreement with the applicant, something the Planning Board could also sign, as the statute spoke of an agreement. This letter was a compromise, providing some protection to the Board immediately. The agreement mentioned in the letter would arrive by Monday at the latest. It would not have a wet ink signature from Mr. Danielson as he was not on Island, but that should be fine, and it would be something the Board could sign. Given the time constraint, counsel had suggested the Board vote to allow Chairman Packish to sign on their behalf if counsel approved the agreement. To summarize, the Board had protection with this letter, and it would be very hard for the applicant to argue a decision was due on August 30<sup>th</sup>. The Board would gain greater protection by having an agreement signed by them and Mr. Danielson, and that was coming next.

Chairman Packish thanked Mr. Anderson and recognized the extensive work he had put into this. He said they had burned a lot of administrative time and a lot of town counsel time on the project. It was expensive. He was concerned that this extension brought them to September 30 but there was nothing in the letter saying when the paperwork would be ready and submitted. This suggests that they could get their paperwork together and then a decision could be ready in 60 days. That didn't seem doable.

Chairman Packish said he believed there was a misunderstanding on the part of the applicant based on the special permit application that was filed. The nature of relief requested was to confirm previous

Planning Board decisions outlined in a list which was not included in his submission. Chairman Packish said he wanted to be clearly on the record that no Planning Board decisions had ever been made on the project. Mr. Danielson has made statements during the MVC process to the press and the MVC, and they now had a reference in this document to decisions that had been made. Chairman Packish said no decisions had been made as there had yet to be a complete application. Mr. Danielson had been told when he had come before the Board that those were hypothetical discussions to help him understand the process. However the Board decided to move forward, he felt they needed to be clear on this.

Chairman Packish said he anticipated multiple public hearings on this project with extensive public outreach and discussion. He knew the Lagoon Pond Committee had an extreme interest in the project, and there had been a considerable number of people at the MVC hearings. It appeared to him that there was a misunderstanding on the applicant's side that somehow the Board had already issued him some form of permitting. He had represented to the MVC that we were all done and ready to go and we were just waiting for them to finish. The executive director of the MVC had even asked Chairman Packish just that.

Chairman Packish said he had an extensive list of questions and conditions that need to be applied to this situation. He said he knew from his own perspective that he wasn't going to be ready to act even close to September 30<sup>th</sup>. Member Hopkins asked if that was because of public process. Chairman Packish said yes, that, and because no yield plan had been provided despite multiple requests. Mr. Anderson said it was effectively a three week notice period with submission deadlines before you could even hold a hearing.

Chairman Packish said essentially they would be agreeing that sometime between present and September 30, the applicant would be forthcoming with the required information, before the Board even asked for additional information, and some questions would have to go back to Town Counsel, especially the writing of the decision and conditions. There was an affordable housing component that hadn't been resolved, which the affordable housing committee wanted to get involved in. There were neighbor concerns, nitrogen concerns, buildout schedules and so many other moving parts. There would be time gaps with hearings.

Chairman Packish said they could extend this to September 30, but he knew they wouldn't be done in time. That left asking for more extensions and if they were denied, making a decision immediately. Mr. Anderson said Eric Peters seemed well aware of the likelihood of more extensions. While the extension technically benefited the Board, in fact it benefited the applicant in that without one, the Board would be forced to act in a way that was detrimental to the applicant. Member Fehl concurred.

Chairman Packish said that if they were all aware of this going in, they might as well make it November 30. Member Fehl agreed. He said he felt it might improve dialog with the applicant around the question of previous decisions. There was a lot of work to do ahead of the Special Permit application. The Board couldn't vote on this application now, they weren't even close. Mr. Anderson said Mr. Peters had come in after hearing that Mr. Danielson had sent the special permit application in. He had requested taking

it, saying it would be withdrawn. Mr. Anderson said instead he provided him with a copy of it. Mr. Anderson noted the application had not been stamped by the Clerk, so there was no clock ticking. Member Fehl asked if it had been withdrawn. Mr. Anderson said not officially. Further, he was concerned with the definitive plan that came in November. Mr. Anderson said that if they wanted to hold the hearings concurrently, perhaps the definitive plan deadline should be set to the special permit deadline. That would mean 65 days for a hearing and 90 from the hearing. However, Town Counsel might not like that approach as it was not a firm date.

Member Hopkins said conceptually he didn't have a problem with a firm date. He just wanted a reasonable amount of time. Mr. Anderson said there was a degree of protection against an August 30 constructive approval because of Mr. Peters' letter. Chairman Packish said he did not want to be up against a wall when Mr. Peters knew it wasn't a workable timeframe. He said the history of the project was an applicant who was not forthcoming with information, who did not make timely filings, and now it was in writing, with an attempt to retract, that they felt like the Board had already approved a bunch of stuff. This seemed like one more thing that will make the list of things that have already been "approved."

Chairman Packish said he would agree to November 30, and he would say to the applicant that he wanted to provide him ample time to produce a complete application. He also wanted to be clear to the applicant that there had been no decisions made on the project, nor would there be until a full and complete application was submitted. Members Hopkins and Fehl agreed that this was a good starting point.

Mr. Anderson was concerned that the Board could be giving something away in this. They had the option of scheduling the hearing at any time. Depending on how the agreement was worded it could be giving up that right. Chairman Packish said if they came up on the November 30 deadline they would have that option. Mr. Anderson said the term agreement was odd in that it was a one way street in that the applicant was granting an extension to the Board. I would be careful saying we will give you until you provide a complete application. That would remove the Board's option if something new came up, if it was taking too long, that they needed to make a decision then and there, one that might not be favorable to the applicant. This was complicated, and perhaps it should be worked out with Town Counsel and the Chair.

Chairman Packish said he felt they'd already worked it out. The applicant would grant them the extension but it would not take away their option to act. Mr. Anderson said this was his point and just wanted to be sure it was protected. Member Hopkins said the applicant shouldn't call them on this. Chairman Packish said prior to Mr. Peters becoming involved again he was seriously questioning what to do, because it wasn't workable.

Chairman Packish said at the end of the situation, it came down to what they wanted to do. Did they want to extend to September 30 and be in the same situation then? The applicant was requesting an extension, or requesting that they offer the Board an extension. Chairman Packish said the message

should be that the Board recognized that they would not be in a position to act on the Form C application by September 30 due to the necessity of public hearings, other involved boards, and the incomplete application. It wasn't as if half of this had been heard. The applicant came in, wrote a check, started a timeline and took the project to the MVC.

Chairman Packish struggled to understand how the applicant had been out of the MVC for a month, had gone into the MVC knowing what the Board needed and the Board's process, and the application was still incomplete. Member Hopkins suggested it was intentional. It was evident to Chairman Packish, based on the track record, that the information would not be in and the Board would not be in a position to act by September 30. It wasn't clear that they would be ready by November 30. But those odds were higher. Mr. Peters' letter referenced the most efficient use of Board time, and Chairman Packish didn't want to use Board time with multiple extensions. Mr. Anderson noted that every extension added risk of a clerical error, and the Board concurred.

Chairman Packish asked that Mr. Anderson request a timeline from Mr. Peters on expected document submissions. The open-endedness of people being unavailable, people being on vacation...the Board was the one under the time constraint, although the applicant was as well in a sense.

Member Fehl said he had not attended the MVC hearings, but he wondered if what the applicant thought were the Board's previous decisions were ever voiced. Chairman Packish said there had been a lot voiced, as he'd had lots of calls from the MVC based on representations made to them from the applicant. The applicant was quoted in newspapers saying essentially that the Board hadn't been clear and it was difficult to work with them. Member Fehl suggested the process would get more difficult.

Member Fehl made a motion to request that the deadline extension be moved to November 30 from September 30 to give the Board time to do what they needed to do and the applicant time to complete his tasks. Member Hopkins seconded. The Board voted 3-0 to request the deadline extension to November 30. Mr. Anderson confirmed that he would write the request and the Chairman would review it. Mr. Anderson noted they did not know how the applicant would respond, but the letter bought them some breathing room. He said he'd been trying not to use too much of Town Counsel's time, but he could speak with him if needed.

### **Conservation Commission Memorandum regarding Shoreline Planning**

Chairman Packish said the memorandum was in response to some questions he'd asked at the Selectmen's meeting. He had told Liz Durkee of ConCom that this wasn't going to be a discussion; he just wanted to be sure the Members were aware of it.

As an aside, Chairman Packish said ConCom had taken an interest in the new phase of Streetscape. At the beginning of the project they had noted it was in the flood plain and made requests related to that. The Streetscape Committee had taken those requests into account and he looked forward to continuing that discussion.

Back to the memo, Chairman Packish also noted that Ms. Durkee had published the color maps related to the memo. Member Hopkins said that had been in response to his request. The Chairman said the memo was an interesting response to his comments. He had not been speaking on behalf of the Planning Board at that meeting, but felt it generated a discussion so it worked out. He said he must have asked the right questions because Terry Appenzeller had called him a jerk. Member Hopkins said yes, and it was on tape. Chairman Packish said he was glad it was on tape, and didn't know what was more debatable, armoring the coast or whether or not he was a jerk.

### **Accessory Apartment Affordable Housing by-law discussion**

Chairman Packish said he and Member Hopkins attended Falmouth's meeting on the topic. He appreciated the Falmouth planners inviting them after Member Hopkins work there, and felt it was a great experience. They went out after the meeting and had a very productive discussion on other planning topics, and Falmouth would likely be visiting Oak Bluffs in the future.

Chairman Packish said Falmouth had an accessory apartment by-law that Member Hopkins would forward to Mr. Anderson for distribution. It essentially said you could have an accessory apartment by right, of a certain size, for occupancy over six months. You can do this using the same number of bedrooms you have now. There was no increase in bedrooms on the lot. He noted their lot coverage was only 20% while people here went crazy when limited to a third. They told the Board of Health that all of their regulations still applied so there was no extra work for them. Nothing changed for the ZBA or with permitting. All the old laws applied, but you could reconfigure your house to have a second kitchen.

Member Hopkins said Falmouth had an affordability component to the old by-law which was removed for this version. They wanted to cover the whole range of housing. Chairman Packish said they felt it covered affordable housing, but the deed restriction deterred people. They shrunk the square footage allowed, which by nature would improve affordability.

Member Fehl asked if this covered detached units. Chairman Packish said no, it has to be part of your home, it can't be detached in any way, and there can't even be a breezeway to a garage. Member Fehl asked what the response was to this. Member Hopkins said the feedback was positive. He said the Chair did a good job simplifying things for the audience. He said we are simply allowing people to add a stove and some privacy by right. If you want to convert your house so two different groups can live there you can. You do have to sign some affidavits. Member Fehl noted this wasn't for weekly rentals. Member Hopkins said you agreed to never rent out the primary residence in those affidavits. Member Fehl said that would change things in Oak Bluffs.

Chairman Packish encouraged the Board to read this by-law so they could discuss it again. He felt Oak Bluffs needed to be encouraging people to build quality livable units which would also provide an increase in tax base. He said the level of input at the Falmouth meeting was of very high quality. Some people were concerned the by-law would increase the burden on infrastructure, which he personally didn't think was the case. Chairman Packish said they had been able to contribute by mentioning

parking, as it was the only outside indicator of the proposed new apartments. They had taken every step to preserve the character of the neighborhood, but parking language just said “in a manner consistent with the neighborhood. “ This could cause a big increase in the number of cars in a driveway and fencing might be needed.

Member Fehl asked if these were all hooked up to sewer. Chairman Packish said a lot of them would be but not all. The Board of Health provided input on that at the meeting in Falmouth.

Member Hopkins said the work the Falmouth Planning Board had done on this was endorsed by the Cape Cod Young Professionals, The Chamber of Commerce, The Cape Cod Technology Council, The Cape and Island Realtors, Homebuilders and Remodelers Association of Cape Cod, The Cape Cod Economic Development Council, and Cape Cod Community College. The Falmouth Planning Board wanted public input so they reached out to get this support. They are big on public outreach, contacting all boards in town on these hearings, so that when it gets to Town Meeting everyone feels like they have had input. They even did a public access TV spot on it. They know the natural reaction is resistance, so they do everything they can to explain and encourage involvement. Chairman Packish said a member of the community here has offered to do such videos for the Planning Board.

Chairman Packish said he thought they should keep this discussion alive. He would personally like to see Oak Bluffs by-law revamped, and ultimately identify three significant zoning issues they could address before the upcoming April Town Meeting.

#### **Minutes review and approval: 4/21/16, 7/28/16**

Member Fehl made a motion to accept the minutes as written. Member Hopkins seconded. The Board voted 3-0 to approve the minutes.

#### **Master Plan update**

Chairman Packish hoped to have an opportunity to speak with Member McCarthy soon to catch him up. He had spoken with the Town Administrator on a general level regarding funding for this to keep him in the loop.

#### **Town Hall update**

Chairman Packish spoke with the Town Administrator for an hour on the subject, reiterating the Board’s position and sharing his frustration that Walter Vail was attempting to circumvent the agreement between Chairman Packish, Member Fehl, Gail Barmakian and Mr. Vail on next steps. Chairman Packish said there was clearly a power struggle as to who was going to put things on the Selectmen’s agenda, and he felt it was unfortunate that town hall was being used as a catalyst for that, as it was already a volatile enough subject. Mr. Whritenour would discuss this with his people and get back to them. It was left at the Selectmen’s meeting that they would discuss the Building Committee at the next meeting. Chairman Packish had asked the Selectmen to come up with a clear position on whether the Planning Board would be managing the process or not. The Board had put a tremendous amount of time and resources into this and those were limited. He did not want to play cat and mouse.

Member Fehl asked if this was going on the August 9 Selectmen's agenda as it was scheduled to be the non-resident taxpayers meeting that day. Chairman Packish said that was up for debate, as Gail Barmakian didn't think there should be additional agenda items, while Greg Coogan thought they could come in half an hour early to discuss other items.

### **Board Member Updates**

There were no updates. The meeting was adjourned at 6:40 p.m.

#### Documents used in this meeting:

Agenda

Sign-In Sheet

Letter from Eric Peters dated August 4 2016 requesting extension

Elizabeth Durkee's memorandum to Planning Board dated July 15, 2016 regarding shoreline planning  
4/21/16 and 7/28/16 minutes