

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 June 6, 2019 In the Stone Building 33 New York Avenue, Oak Bluffs, MA

### IN ATTENDANCE

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

P Gail Barmakian (A-Oak Bluffs)	- Michael Kim (A-Governor; non-voting)
P Trip Barnes (E-Tisbury)	P Joan Malkin (A-Chilmark)
P Leon Brathwaite (A-County)	P Katherine Newman (A-Aquinnah)
P Christina Brown (E-Edgartown)	P Ben Robinson (A-Tisbury)
- Peter Connell (A-Governor; non-voting)	P Doug Sederholm (E-West Tisbury)
- Robert Doyle (E-Chilmark)	P Linda Sibley (E-West Tisbury)
P Josh Goldstein (E-Tisbury)	P Ernie Thomas (A-West Tisbury)
P Fred Hancock (E-Oak Bluffs)	P Richard Toole (E-Oak Bluffs)
P James Joyce (A-Edgartown)	P James Vercruysse (E-Aquinnah)

Staff: Adam Turner (Executive Director), Bill Venno (Senior Planner), Dan Doyle (Regional Planner).

**Chairman Doug Sederholm** called the meeting to order at 7:00 p.m.

### 1. EXECUTIVE DIRECTOR'S REPORT

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Commissioners Present: G. Barmakian, T. Barnes, L. Brathwaite, C. Brown, J. Goldstein, F. Hancock, J. Joyce, J. Malkin, K. Newman, B. Robinson, D. Sederholm, L. Sibley, E. Thomas, R. Toole, J. Vercruysse.

**Adam Turner** presented the following.

- One of the handouts is a DRI Chart that lists projects and who the lead is from the MVC staff and the schedule of the public hearings. The chart will continually be updated and provides a broad understanding of what is going on.
  - **Doug Sederholm** said the first column “lead” is the staff person in charge of the DRI as we no longer have a DRI Coordinator and Adam Turner will be assigning the projects to individual staff members.
  - **Joan Malkin** said the Yard should be listed to have to come back with the drainage plan for LUPC.
- He read from Chapter 831; “The purpose of the commission created by this act shall be to further protect the health, safety and general welfare of island residents and visitors by preserving and conserving for the enjoyment of present and future generations the unique natural, historical, ecological, scientific, and cultural values of Martha’s Vineyard which contribute to public enjoyment, inspiration and scientific study, by protecting these values from development and uses which could impair them, and by promoting the enhancement of sound local economies.” The MVC’s mission is this and how issues contribute to the fundamentals and existence of the Island. Demolition is one of those issues. Some are preserved and others are torn down. Owners want to improve and update but the MVC has the authority by the State to make a balance. We look at the economics as well. It is all interwoven. Demolition is in the DRI Checklist.

- If a building is on a local register, a national register or in a historic district it comes to the MVC. If constructed prior to 1900 the MVC decides if it needs to come before the MVC. Any site with significant archaeological potential comes to the MVC. We have to go through the process and make the decision if something is valuable. Some might be important and others may not. Any act or pulling down or destroying of a building more than 50% of the historic part then the entire structure is a DRI or 25% of a historic façade visible to a public way it comes to the MVC.
- People equate if it comes to the MVC it won't go through and that is not true.
- The list of the demolitions before the Commission was reviewed including the recent demolition of the Mill House. Harold Chapdelaine has been tremendous with the Westman project on Franklin Street in Tisbury. Some requests are perfectly reasonable but they have to come to the MVC and the Commission has to make the decision.
  - **Leon Brathwaite** asked how does the demolition get to the MVC.
  - **Adam Turner** said it is referred.
  - **Leon Brathwaite** asked who refers the project.
  - **Adam Tuner** said the building official.
  - **Leon Brathwaite** asked what if it is in a historic district.
  - **Doug Sederholm** said it is exempt as it goes through the Historic Commission.
  - **Linda Sibley** said if you look at the DRI regulations 4.1 and the DRI Checklist the second paragraph of the preamble it states an official in town or a permitting official is supposed to go to the DRI Checklist systematically for each permit so this should not be happening.
  - **Doug Sederholm** said the permit granting authority is to review the DRI Checklist.
  - **Fred Hancock** said this is the 45<sup>th</sup> Anniversary of the Commission so we have been here quite a while.

## 2. NEW BUSINESS

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*Commissioners Present: G. Barmakian, T. Barnes, L. Brathwaite, C. Brown, J. Goldstein, F. Hancock, J. Joyce, J. Malkin, K. Newman, B. Robinson, D. Sederholm, L. Sibley, E. Thomas, R. Toole, J. Vercauysse.*

### 2.1 Reports from Committees and/or Staff

**Doug Sederholm** said during the public hearing process we sometimes get off point. As an example during the Verizon public hearing we got beyond what the public hearing is about and we were speaking over each other. It is not helpful for the process and he hopes we can all keep that in mind.

**Katherine Newman** suggested that those running the meeting could perhaps find a way to focus on the entire group so that everyone has the opportunity to speak in turn.

**Trip Barnes** said it is very important in these meetings to speak up and clearly so everyone can hear.

**Christina Brown** said we all need to realize that the Chairman of the public hearing tries to keep notes of who puts their hands up to speak so don't get impatient. You will have an opportunity.

## 3. MEETING HOUSE PLACE SUBDIVISION-EDGARTOWN DRI 682 CONTINUED PUBLIC HEARING

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*Commissioners Present: G. Barmakian, T. Barnes, L. Brathwaite, C. Brown, J. Goldstein, F. Hancock, J. Joyce, J. Malkin, K. Newman, B. Robinson, D. Sederholm, L. Sibley, E. Thomas, R. Toole, J. Vercauysse.*

**Richard Toole**, Public Hearing Officer opened the Continued Public Hearing without taking testimony and continued the public hearing to July 11, 2019.

#### **4. WAMPANOAG GAMING FACILITY-AQUINNAH DRI 690 PUBLIC HEARING**

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*Commissioners Present: G. Barmakian, T. Barnes, L. Brathwaite, C. Brown, J. Goldstein, F. Hancock, J. Joyce, J. Malkin, K. Newman, B. Robinson, D. Sederholm, L. Sibley, E. Thomas, R. Toole, J. Verduyse.*

*For the Applicant: There were no representatives present.*

**Richard Toole**, Public Hearing Officer opened the Public Hearing and read the Public Hearing Notice for DRI 690 Aquinnah Gaming Facility, the Wampanoag Tribe of Gay Head. The location is 20 Black Brook Road, Aquinnah Map 8, Lot 7. The proposal is for a 10,000 square foot building of sprung construction with 250 gaming machines.

**Josh Goldstein** said there is no application.

##### **4.1 Staff Report**

**Adam Turner** presented the following.

- The project was referred by the Town of Aquinnah and the Town of Chilmark and the letters are in the staff report. It is a mandatory referral from Aquinnah.
- The referral triggered other DRI Checklist items.
  - New construction totaling 3,500 sf or more – Mandatory Review requiring a public hearing.
  - Change of Use – Concurrence Review.
  - Increase in Intensity of Use – Concurrence Review.
  - High Traffic Generating Use – Concurrence Review.
  - Private/Public Place of Assembly – Mandatory Review.
- The project may also trigger the following DRI Checklist items.
  - Parking for 10 vehicles or more – Concurrence Review.
  - Food establishments outside a B-1 district – Concurrence Review.
  - Clearing/Alteration of land identified being of archeological significance – Concurrence Review
- The location is Black Brook Road which is off Sate Road and a map of the location was reviewed. Parts are in the Island Road DCPC.
  - **Doug Sederholm** said the part within 200 feet of the right of way is in the DCPC.
  - **Gail Barmakian** said process wise it is a referral but there is no application so the information that was gathered is from common knowledge and facts.
- We looked at what would something of this size do to the character and nature of the Island. We tried to get out of the jurisdictional part of it and we want to start a discussion. We did not get into the gaming operation. We are looking to be clear and true to our mission and the two towns that referred the project to the MVC.
  - **Doug Sederholm** said we do not contest their right to conduct a class 2 gaming operation.
- We had a discussion with the Tribe after a month of letters sent to setup the meeting. The meeting was held on March 13, 2019. The MVC is not contesting development of the gaming operation. We seek to address the impact and issues that were discussed included traffic, drainage and housing. We decided to set up a follow up discussion to find a path forward between the Tribe and our staff and unfortunately we had no response from the Tribe. We did

receive a letter about the litigation with the Town which the Tribe claims prevents them from proceeding.

- The Tribe did file a stormwater permit with EPA. We tried to get a copy but we were blocked by the Tribe.
- The MVC has a responsibility to proceed and the towns expect us to. A letter outlining the process was sent to the Tribe on May 8, 2019.
- We wrote a letter to the Tribe and they responded that they felt they could not go anywhere due to the litigation. We heard that the processes should start after the litigation is completed.
- The Tribe didn't attend the May 22, 2019 Staff/Applicant meeting and LUPC was held on June 3, 2019 and we have not heard from the Tribe regarding participation.
- He was told there would be no stopping and the Tribe would build when they wanted and the newspaper said this should be done by mid fall so he decided the MVC should move forward.
  - **Fred Hancock** said the MVC is obligated to start a public hearing within 30 days of the referral although there is some leeway.
  - **Linda Sibley** said procedurally we opened the public hearing and what happens next.
- There are regulations on how we respond for projects that are incomplete. Information was taken from the tribal web site and the newspapers. He wanted to give a flavor of what has been received.
- The lot has been cleared and a photo was shown.
  - **Katherine Newman** said she would like to erase some of this information from the MVC published information. People skim information and it might be perceived incorrectly.
  - **Gail Barmakian** said when information and facts are presented can it be said where they are from.
  - **Adam Turner** said he can attribute where they are from.
- The building will be 10,000 sf and at the March 13, 2019 meeting it was said that it will be of sprung construction of a neutral color. From a 2010 study there has been for the last six years various reports on what the plan is supposed to be. The information does say there will be about 100 employment opportunities and 130 in peak season. The annual payroll is to be in excess of \$2.5 million. All positions will be made available first to qualified tribal members. The entry/exit will not be on State Road, the building is to be completed by Fall 2019 and it will be 24 hours of operation.
- The meeting with the Tribe confirmed 100 jobs. The following is unknown; wastewater, parking, traffic impact and public safety.
- We never contested the gaming facility and that was the first thing Doug Sederholm said at the meeting.
  - **Doug Sederholm** said he wants to be very clear that what he said to the Tribe was that we do not contest their right to conduct a class 2 gaming operation. He did not get into their right or lack of right to construct a building or any other type of development and we do not contest their right to conduct a class 2 gaming operation.
- We are obliged even without a lot of information to have a public hearing first and he recommends keeping it open for a two week period.

#### 4.2 Commissioners' Discussion

There was a discussion about available information.

- **Doug Sederholm** said we have a photo of the building that was reproduced but it is apparently a depiction that is very old.
- **Adam Turner** said they have not committed to that structure.

- **Katherine Newman** said it is uncomfortable to have this on the MVC web site since this is not committed to. She would like some of this information erased from our official documentation.
- **Doug Sederholm** said other than the Tribe stating 100 jobs it has all been public information that has been published.
- **Katherine Newman** said but the photo is old and from 2010.
- **Doug Sederholm** said we could do without the photo.

There was a discussion about the litigation.

- **Linda Sibley** said the Tribe is in litigation with the Town over required Town permits and she would like clarification on what they are in litigation about with the Town.
- **Doug Sederholm** said what the Town did was file a motion for entry of judgement. What happened was the District Court ruled in favor of the Town. It was appealed to the First Circuit Court of Appeals. The First Circuit reversed and remanded to the District Court. At that point what was supposed to happen procedurally is the District Court is to enter judgement consistent with the appeals court decision. The District Court didn't do that and the Town filed a motion of entry of judgement and they proposed to the District Court that the judgement should be narrow and it should simply be that the appeals court found they could conduct a class 2 gaming facility operation. But the appeals court did not rule whether or not the Town had jurisdiction over the construction of the building or that the other development land use issue is independent of the gaming issue. And the Tribe says no we can do whatever we want basically based on the First Circuit Decision, that it was broad based and like many appellate court decisions there is enough decision for both sides to argue their point and it is up to the District Court to judge and to decide what type of judgement to enter. Once the judgement is entered then it is finally done. So they are in litigation about a motion.
- **Linda Sibley** said what do we know about the status of the permits.
- **Doug Sederholm** said they have not applied for any permits except for possibly an electrical permit.
- **Jeffrey Madison** is the Aquinnah Town Administrator and said we have no more information than you do. They did apply for an electrical permit. The Town of Aquinnah has not denied anyone a permit and would not here if properly applied for.
- **Katherine Newman** asked what a summary judgement is.
- **Doug Sederholm** said one side files a motion asking the court to decide based on uncontested facts.
- **Katherine Newman** said isn't the Indian Gaming Regulatory Act one of the pieces here and how one impacts the other.
- **Doug Sederholm** said it is.

**Gail Barmakian** said she agrees with Katherine Newman and the picture of the building should not be shown. The facts are from 2010 and she would not want to mislead anyone.

**Adam Turner** said at the meeting the Tribe did state about the 100 jobs but he can't vouch for any of the information that he has found from the various published sources.

**Christina Brown** said it is useful to have the information now that the MVC is looking at the project but each page should be documented of where it was published, the date and who wrote it so it is clear about the information.

**Doug Sederholm** said the point is we are working with virtually no official information and we are discussing what is public knowledge from the media and have inadequate information to approve anything at this time as the Tribe has decided not to participate. And they intend to proceed without requesting any permits from the Town or permission from the MVC.

**Linda Sibley** said we have a representative from the Town of Aquinnah and perhaps he can give us some information to help us understand.

#### **4.3 Testimony from Public Officials**

**Jeffrey Madison**, the Aquinnah Town Administrator said he would like to request the opportunity to follow up on his off the cuff remarks with a written statement for the record. He thanked the MVC for considering whatever we are considering. The Town of Aquinnah has no objection with the Tribe proceeding with the development of a class 2 gaming facility on their lands in the Town of Aquinnah. When he uses the word “we” and that “we are concerned about” he wants to clarify the use of that language; it could mean the Tribe of which he is a member, the Aquinnah community which he is a part of, it could mean the legal community and he is an attorney and it could mean the Aquinnah government which he is also a part of.

- **Trip Barnes** referred to a photo of the history of the people of the island and hoped that Jeffrey Madison might address that as well as they are all part of the “we”.

“We” coming from me in my remarks to you means the Aquinnah year round governmental entity. We have not received any information on what the Tribe is doing. All he knows so far is that for approximately one month from mid- March to the beginning of April trucks ran from 8:00 a.m. to 3:30 p.m. They were giant dump trucks. The four acres was striped and denuded of top soil and trees were cut down and ripped out and some were 300 years old. They went down a one lane road, Church Street and we now have a torn up road and it was done during school vacation. We are concerned that this development takes place with as sense of public safety and environmental concern to our community. They dumped thousands of yards of top soil on their property and there are huge piles now. They could have done it and handled it another way rather than going past children’s houses especially during school vacation and they could have been sensitive to the community and preserved the road. Thank God none of the children were injured during school vacation. That is an example of why we want dialogue about what they are doing. The contractor doesn’t care but we thought the Tribe cared. We hope the MVC is also concerned about these issues as well. Due to the authority that the MVC wields we hope that the MVC can assist us in making sure this development is done in a way that allows us to realistically deal with it. Something may happen and who will answer that call, the Aquinnah EMT, Fire Department, Police Department, but we don’t know. We read in the papers not to worry about it but who will take that call and handle it. Adam Turner and I have discussed this over the past months since the referral letter went out about what we are referring but we really don’t know but shouldn’t something come to the MVC? He does not want to be party to stopping my people from doing what they have every right to do as a sovereign nation but my soul is crying when he sees the actions they are taking to disregard this body and the Gay Head community.

**Trip Barnes** thanked Jeffrey Madison for coming to the meeting and what he said has changed his whole thinking about it. It must be difficult for him and he brought up very important points and the necessity of doing the right thing.

**Jeffrey Madison** said he believes strongly in the words he speaks and in Native American rights but it does not mean that the Sovereign ignores.

#### **4.4 Continued Commissioners’ Discussion**

**Adam Turner** said we do not have any facts other than what we have been told and to be clear we are offering it as examples of what was found on line.

**Doug Sederholm** said that he thinks we can rely on statements made by the Tribe; they are constructing a 10,000 sf sprung construction gaming facility with 250 machines.

**Christina Brown** said Jeffrey Madison's statement was tied together on how intricate the Sovereign Nation, the Town and the community are tied together.

**Jeffrey Madison** said almost 70 years ago he was born to a Gay Head family and he looks at that sometimes as pleasing and as a curse with the history associated with Gay Head and what has transpired. The Tribe was created in 1986-1987 and he respects those people and their efforts were noble and great. They would be rolling in their graves if they knew what this Tribe is doing. It is not Gay Head. People say they don't want it here but they have the right to do it but we want it done right.

**Linda Sibley** asked if there is any information on the interior. **Adam Turner** said there is not.

**Richard Toole** said does the MVC have enough information to condition. **Doug Sederholm** said no and we have to finish the public hearing. If the application is incomplete the MVC can deny and give the applicant an opportunity to come back during deliberation.

**Gail Barmakian** said she hopes the public hearing would be continued. She also asked what specifically would the Town's concerns be; safety, historical, environmental and perhaps the Town could list those and submit them. **Richard Toole** said Jeffrey Madison said he would submit in writing his remarks.

**Jeffrey Madison** confirmed that he would. The Town is not the fall guy. So far the Tribe has only done the clearing and they ignored public safety and the environment and destroyed a public road that the Town has to fix. We don't know what they will do next. Do they need a beer and wine license, we don't know.

**Richard Toole** said the MVC wants to help and we don't want to make the Town the fall guy.

**Joan Malkin** said the Commission is interested in this project and has compiled a list of questions but there has not been an applicant to respond to the list. The time for the Town to provide detail is when the applicant has provided information and the Town has something to think about.

**Katherine Newman** said the reason it was referred was for the MVC to take up the issues that need to be reviewed and perhaps that is only a summary from Jeffrey Madison. We need to state that the photo and on line information is not it. People skim over things and this could take us in the wrong direction. Everyone is waiting to hear what the court will state and we should keep the public hearing open until then.

**Trip Barnes** said let's wait and see what happens and pick up from there. It is a waste of time now.

**Doug Sederholm** said he agrees with Trip Barnes. Whatever the motion is with the Town of Aquinnah it won't be the last word and it won't make our decision.

**Richard Toole** said is the construction stopped. **Jeffrey Madison** said they do not know but there are machines there.

**Linda Sibley** said on the list of concerns public safety should be on it.

**Joan Malkin** said the impact on the Fire Department and the Police Department should be on the list of concerns.

**Linda Sibley** said are they expected to answer to fire inspections.

**Bill Veno** said there is no information to make a decision so why continue the public hearing. Anything from this part of the public hearing won't have any bearing on when the MVC does receive it. You don't have an application. What purpose would continuing the public hearing serve.

There was a discussion on how to proceed.

- **James Vercruyse** said is there any opinion from the MVC counsel on how to proceed.

- **Adam Turner** said there is depending on how the MVC wants to proceed. We can do everything from approving, conditioning, deny or deny without prejudice.
- **Leon Brathwaite** said but we have nothing before us and have we ever denied without prejudice before.
- **Bill Venio** said yes.
- **Fred Hancock** said you can reapply immediately.
- **Joan Malkin** suggested to do it in a different order; decide to keep the public hearing open or close it and then we can decide what to do with it.
- **Adam Turner** said he did not relish having this public hearing. It was difficult. We didn't have a path forward. We had to have some process. He still holds out hope to have a discussion with the Tribe which is why he would like to keep the public hearing open for a couple of weeks.
- **Josh Goldstein** asked that the public hearing be kept open for two weeks and set a date to revisit.
- **Richard Toole** said it appears that the consensus of the Commission is to keep the public hearing open for two weeks.
- **Fred Hancock** said if it was denied because of an incomplete application we would write a written decision on denial which would be filed in the courts. So if construction begins again this might be a way to get it to us.
- **Leon Brathwaite** said he read the article in the MV Times today and there is information to the public that the press has put there.
- **Doug Sederholm** said it is up to the Public Hearing Officer to determine if the public hearing should be continued. Right now there is no significant work being done there. Even if they do something in two weeks we could close the public hearing and waive post public hearing and go right to decision. There is no harm in doing that and by waiting it is giving them one more chance to play ball.

**Richard Toole**, Public Hearing Officer continued the Public Hearing to June 20, 2019.

## **5. VINEYARD YOUTH TENNIS-OAK BLUFFS DRI 539-M3 WRITTEN DECISION**

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*Commissioners Present: G. Barmakian, T. Barnes, L. Brathwaite, C. Brown, J. Goldstein, F. Hancock, J. Joyce, J. Malkin, K. Newman, B. Robinson, D. Sederholm, L. Sibley, E. Thomas, R. Toole, J. Vercruysse.*

There was a discussion about Section 4. Conditions, Modified Condition 2a.

- **Fred Hancock** said he thought the MVC was also approving the commercial use of this and it seems it should be mentioned. The idea was what we allowed they could now charge for (adult use) and it be part of their new financial structure.
- **Gail Barmakian** said in Oak Bluffs commercial use violates zoning but not a fee.
- **Adam Turner** suggested adding language for adult users for a fee.
- **Fred Hancock** said the use is different now that adults can use the facility for a fee.
- **Josh Goldstein** said the adult use subsidizes the youth program.
- **Bill Venio** said they have been charging for the youth use and will continue to do that but now adults will use. Do we care if they are charged a fee?
- **Adam Turner** said he will add the language adult users for a fee.

**Josh Goldstein moved and it was duly seconded to approve the Written Decision as amended. Roll call vote. In favor: g. Barmakian, T. Barnes, L. Brathwaite, C. Brown, J. Goldstein, F. Hancock, J. Joyce, J. Malkin, K. Newman, B. Robinson, L. Sibley E. Thomas, R. Toole, J. Vercruysse. Opposed: none. Abstentions: none. The motion passed.**



350 The meeting was adjourned at 8:35 p.m.

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353 DOCUMENTS REFERRED TO DURING THE MEETING

- 354 • Decision of the Martha's Vineyard DRI 539-M2 Vineyard Youth Tennis
- 355 • DRI Project Schedule
- 356 • Chapter 831 The Martha's Vineyard Commission Act
- 357 • Demolition Project List Before the Commission
- 358 • Public Hearing June 6, 2019 DRI 690 Wampanoag Tribal Gaming Facility Aquinnah Staff Report
- 359 • Zoning Map 8 Lot 7 Area Aquinnah MA

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367  Chairman


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9-19-19

Date

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371  Clerk-Treasurer

19 SEP 2019

Date