



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 November 8, 2012  
In the Stone Building  
33 New York Avenue, Oak Bluffs, MA**

**IN ATTENDANCE**

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

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|------------------------------------|---------------------------------|
| - John Breckenridge (E-Oak Bluffs) | P Chris Murphy (E-Chilmark)     |
| P Christina Brown (E-Edgartown)    | P Katherine Newman (E-Aquinnah) |
| - Peter Cabana (E-Tisbury)         | P Ned Orleans (A-Tisbury)       |
| - Tim Carroll (A-Chilmark)         | P Camille Rose (A-Aquinnah)     |
| - Martin Crane (A-Governor)        | P Doug Sederholm (E-Chilmark)   |
| P Erik Hammarlund (E-West Tisbury) | - Linda Sibley (E-West Tisbury) |
| P Fred Hancock (A-Oak Bluffs)      | P Brian Smith (A-West Tisbury)  |
| P Leonard Jason (A-County)         | P Holly Stephenson (E-Tisbury)  |
| - James Joyce (A-Edgartown)        |                                 |

Staff: Mark London (Executive Director), Christine Flynn (Economic Development and Affordable Housing Planner)

**Chairman Chris Murphy** called the meeting to order at 7:10 p.m.

**1. NEW BUSINESS**

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Commissioners Present: C. Brown, E. Hammarlund, F. Hancock, L. Jason, C. Murphy, K. Newman, N. Orleans, C. Rose, D. Sederholm, B. Smith, H. Stephenson

**1.1 Reports from Committees and/or Staff**

**Chris Murphy** announced that there is a new Governor Appointee. Replacing Martin Crane is W. Karl McLaurin.

**Fred Hancock** said there will be a Compliance Committee meeting on Tuesday, November 13, 2012 at 8:30 a.m.

**1.2 Executive Director's Report**

**Mark London** said there will be a public meeting about federal offshore wind energy development on Wednesday, November 14, 2012 from 5:00 to 7:00 p.m. at the Katherine Cornell Theater in Vineyard Haven. It will be hosted by officials from the Bureau of Ocean Energy Management (BOEM). The meeting will provide an overview of the Environmental Assessment released by BOEM on October 31, 2012, will solicit public comment on this assessment, and will discuss the next steps in the environmental and leasing processes. The Environmental Assessment

analyzes potential environmental effects associated with renewable energy leasing and data gathering in the designated Wind Energy Area in federal waters off the coast of Massachusetts. The Environmental Assessment is available on the BOEM website or can be consulted in the MVC offices. **Doug Sederholm** added that this is part of their “Smart from the Start” process.

## **2. DRI CHECKLIST REVIEW – PUBLIC HEARING**

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*Commissioners Present: C. Brown, E. Hammarlund, F. Hancock, L. Jason, C. Murphy, K. Newman, N. Orleans, C. Rose, D. Sederholm, B. Smith, H. Stephenson*

**Doug Sederholm**, Public Hearing Officer opened the Public Hearing at 7:15 p.m.

- The DRI Checklist per the statute is the MVC’s Standards and Criteria for Developments of Regional Impact (DRI). The DRI Checklist is the list of thresholds that delineate which development applications towns must refer to the MVC for possible DRI review prior to towns approving or denying the applications.
- The MVC reviews the DRI Checklist every two years. In 2011, The MVC undertook an in-depth review of the DRI Checklist, to deal with issues that have come up since adoption of the current Checklist, to respond to public suggestions, to increase clarity and to better align the Checklist with recommendations of the Island Plan by increasing protection of significant resources while easing procedures for development proposals without significant regional impacts.
- There were public meetings where the town boards and the public were invited to propose changes. The Land Use Planning Committee (LUPC) held meetings to discuss possible changes and has created a draft of the proposed revised DRI Checklist.

### **2.1 Summary of Main Changes**

**Doug Sederholm** presented the following summary of some of the main proposed changes.

- Modifications – It is proposed to clarify that construction within a subdivision does not need to be referred back to the MVC unless the project triggers a Checklist threshold or the original decision specifically calls for referral.
- Division of Land – It is proposed to lower the threshold for referral of subdivisions in rural areas from 10 lots to 6 lots with MVC concurrence to ensure review of projects more likely to affect large areas of habitat or other natural resources. It is also proposed to limit referrals of division of Designated Habitat only to proposals affecting more than two acres or 20% of the parcel size. In addition, there is a trigger calling for referrals of Form A (Approval Not Required) divisions located in the Island Road DCPC or Coastal DCPC with MVC concurrence.
- Change of Use and Increase in Intensity of Use – It is proposed to clarify that rather than requiring referrals for all changes of use, only changes of use need to be referred to the MVC if the use involves changing to a higher intensity use, when the new use itself triggers a Checklist threshold or if it results in the loss of housing units. It is also proposed that increases in intensity of use need only be referred if the resulting project itself triggers a DRI Checklist threshold.
- Formula Retail, Downtown Waterfronts, Containers – It is proposed that thresholds be added with MVC concurrence for chain stores and restaurants, for storage containers and

trailers along roadsides or in place for more than six months as well as for developments located in downtown waterfronts that do not provide public access.

- Large Houses – LUPC thoroughly discussed the possibility that there be a threshold for large houses, as had been proposed by some members of the public, but recommended that the MVC not include a mandatory threshold for large residential buildings. However, LUPC recommends that the Commission indicate to town boards that it is receptive to reviewing Discretionary Referrals for large house proposals when the towns seek MVC assistance.
- Transportation – It is proposed to clarify when modifications to existing roads are to be referred as DRIs by adding the wording “widening or reconfiguration of arterial or collector roads”.
- Developments Affecting Significant Resources – It is proposed that the new section 8, largely made up of items that had been in other sections, also include the following new thresholds:
  - Demolition or significant alteration of buildings more than 100 years old outside historic districts, where towns do not have the authority to prohibit demolition.
  - Clear cutting the greater of two acres of land or more than 20 % of the property for land identified as having wildlife habitat significance, with MVC concurrence similar to the threshold for division of land.
  - Any development located in the Critical Resource Protection Areas (identified in the Island Plan to include resources such as coastline hazard zones, frost bottoms, vernal pools and the most critical rural road view sheds) with MVC concurrence.
  - Site alteration or construction on prime agricultural soils greater than two acres (there is already a similar threshold for division of prime agricultural land, but not development) with MVC concurrence.
- Renewable Energy – It is proposed to add thresholds for wind turbines as recommended in the recently adopted Wind Energy Plan for Dukes County as well as for solar panel installations greater than 50,000 square feet.
- Community Character – The issue has come up about the possibility of MVC review of new buildings significantly larger than their surrounding area. This draft Checklist references this issue in two locations, as a possible threshold (item 8.9 on page 12) and as a possible criterion for towns to consider when contemplating a Discretionary Referral (Attachment B, question q on page 20). These items are included to allow discussion with town boards and the public.

## **2.2 Testimony from Public Officials**

**Mark Wallace** and **Erik Albert** of the Oak Bluffs Planning Board said they came to listen and they have read the draft thoroughly. **Mark Wallace** suggested that the MVC indicate to the planning boards how their comments have been addressed.

**Mark Wallace** said that he is not sure how many people have read this proposed Checklist. There was a very extensive discussion on the burden it might place on the towns. In the commercial area the threshold was raised from 2,000 to 3,000 square feet, but people need a way to deal with the residential development issues and the number of units in a commercial area. **Fred Hancock** directed Mark Wallace to section 4.2 on page 9 of the Proposed Checklist

which addresses that issue. "In a mixed-use development, up to two residential units shall be excluded from the area calculation provided the residential space is permanently restricted to remain as residential and excludes short-term rentals of less than two months". **Mark Wallace** said that for a commercial district this is a restriction and there shouldn't be any restrictions.

**Doug Sederholm** said the idea is to promote year-round housing.

**Doug Sederholm** noted that a number of the Oak Bluffs Planning Board concerns were addressed such as the proposed increased threshold of new commercial construction, as well as the proposed clarification of "change of use". The main request was to eliminate all mandatory referrals of commercial projects. LUPC discussed this thoroughly and concluded that the MVC cannot simply abdicate its responsibility to review developments that have regional impact. He also noted that the Commission could keep the Public Hearing open to allow other planning boards to address this and noted that boards and members of the public could also submit written testimony.

**Mark Wallace** asked in reference to piers, is a pier different than a dock. **Erik Hammarlund** said that section 5.1 addresses this and private piers are not a DRI.

There was a discussion of the proposed change to the threshold for commercial development.

- **Mark London** noted that up until a couple of years ago, a mixed use building with any commercial use was considered commercial, and had to be referred to the MVC if the total floor area exceeded 2000 square feet. In the last revision of the Checklist, the MVC exempted up to two housing units in a mixed-use building. With this revision, the threshold for commercial space would go up to 3000 square feet. This means that a building that had just under 3000 square feet of commercial plus two housing units, for a total floor area of perhaps 5000 square feet or more, would not have to be referred. This is a significantly relaxed threshold compared to two years ago.
- **Mark Wallace** asked what triggers a DRI for commercial development with housing units and gave various examples of adding commercial floor space and housing units to an existing development. He thinks there is a lot of politics involved in what gets referred to the MVC.
- **Erik Hammarlund** noted that section 4.1 addresses multiple residential units.
- **Leonard Jason** said that the 3000 square foot limit is for new construction. Additions to commercial property have a lower limit.
- **Erik Hammarlund** added that what was described by Mark Wallace is a total of six units which would also fall under section 4.2.
- **Mark Wallace** asked whether adding 1000 square feet to an existing 1500 square foot building in a commercial district would be a DRI.
- **Doug Sederholm** said section 3.2 increases the threshold for additions from 1000 square feet to 1500 square feet.
- **Christina Brown** also said that the purpose of the Checklist is to provide clear criteria for what gets referred to the MVC. This is looked at by the Commission with representatives from across the Island. The MVC looks at the project objectively and does not get involved with the politics.
- **Mark Wallace** agreed that the MVC does treat projects objectively, as a clean slate.

## **2.3 Public Testimony**

**Mark London** commented that the Commission had a lot of public input throughout the process and that, hopefully, the absence of large numbers of people at this hearing with complaints is a sign that the proposal is acceptable. **Doug Sederholm** also noted that LUPC had at least half a dozen meetings in 2012 and the meetings were well attended.

**Dan Martino** said that he is originally from Austin and commented that they have a tree ordinance that looks at removing historic trees in the same way as demolishing buildings, which is something the Island might want to think about.

## **2.4 Commissioners Discussion**

There was a discussion about the possibility of a threshold dealing with large houses.

- **Christina Brown** noted that a big issue that was discussed in this process was whether large houses had regional impacts and should therefore be on the Checklist.
- **Doug Sederholm** said that we struggled with how you define a large house - by size, environmental impacts or perhaps visual impacts. LUPC has recommended that large houses not be included as a mandatory threshold, but that the Commission indicate to the towns that it is receptive to accepting Discretionary Referrals if the town board feels the need for MVC support.
- **Doug Sederholm** noted that there is also an item about Community Character that could impact houses in that it refers to a new building that is significantly larger than the surrounding buildings. This consideration could be included in the DRI Checklist as a Mandatory Referral as described in section 8.9 on page 12, or as a one of the questions that town boards may refer to when considering sending a project as a Discretionary Referral as included in Attachment B, question q. These options were included to allow for feedback from town boards and the public. If a mandatory threshold, it would be useful to get feedback on whether the criterion is clear enough and would the town officials be able to perform the calculation. He also noted that this type of criterion might be something the towns could consider for their own review.
- **Mark Wallace** asked whether most discussion about large homes is in Chilmark. If the land is very expensive, do people feel obligated to build a large house?
- **Chris Murphy** said that LUPC looked at large houses very carefully. LUPC said that the Commission doesn't especially want to look at individual homes. The Commission could give it serious consideration if a proposal was referred by a town board, but this does not mean that the Commission would necessarily accept a referral.
- **Christina Brown** said that we considered large homes in our process and hopes that the towns will also think about it. Are these neighborhoods that should be protected as modest neighborhoods?
- **Doug Sederholm** said that we have had experience with this as with Mullin Way in Edgartown. At the public hearing there was considerable testimony to the effect that preserving the character of this neighborhood was a regional concern.
- **Mark London** gave an example of how the MVC might review a proposal. The Town of Oak Bluffs requested that the MVC review a proposal for a three-story "garage" in the North Bluffs. MVC staff carried out an analysis of the defining characteristics of the neighborhood, and worked with the owner to come up with a solution that met his needs

but also harmonized with the neighborhood. He suggested that MVC staff could offer technical support to the planning board to delineate neighborhoods in Oak Bluffs and what their defining characteristics are. This is could serve as a useful basis for identifying how new development could fit in and what is too large for that neighborhood.

**Doug Sederholm**, Public Hearing Officer continued the Public Hearing until November 15, 2012 at 8:00 p.m. He urged the Oak Bluffs Planning Board and other town planning boards to come to the hearing next week.

**Ned Orleans** suggested that the MVC should contact the planning boards and offer to meet with them to discuss the issues **Chris Murphy** and **Leonard Jason** agreed.

**Leonard Jason** asked when we will discuss this Checklist as a body. **Doug Sederholm** said after the hearing closes, the Commission would have Deliberation and Decision.

The meeting was adjourned at 8:05 p.m.

DOCUMENTS REFERRED TO DURING THE MEETING

- Public Meeting Federal Offshore Wind Energy Development Announcement
- Martha's Vineyard Commission Memo to Town Boards, Dated October 26, 2012, DRI Checklist – Draft Proposed Revisions
- DRI Checklist Standards and Criteria, Version 12 Draft Revisions, Dated October 26, 2012

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Chairman

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Date

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Clerk-Treasurer

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Date