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## Decision of the Martha's Vineyard Commission

### DRI 674 – Santander Bank Historic Roof Tiles

#### 1. SUMMARY

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- Referring Board:** Building Inspector, Town of Tisbury, MA
- Subject:** Development of Regional Impact # 674
- Project:** The Applicant removed certain ceramic roof tiles from the building located at 75 Main Street in Tisbury and replaced them with asphalt tiles (the "Project"). DRI approval was required for the replacement of the tiles.
- Owner:** Santander Bank
- Applicant:** Santander Bank; Sean Murphy (Lawyer)
- Applicant Address:** C/O Sean Murphy of Murphy, McCarron and Vukota. Main Street, Edgartown.
- Project Location:** 75 Main Street, Tisbury, Map 7-D, Lot 7.
- Description:** The Applicant removed certain ceramic roof tiles from the building located at 75 Main Street in Tisbury and replaced them with asphalt tiles. Pursuant to Section 8.2ii of the Development of Regional Impact ("DRI") Checklist, DRI approval was required for the replacement of the tiles. A building permit for the work was erroneously issued and the work was performed prior to DRI review/approval. Subsequently, the Applicant came before the Martha's Vineyard Commission (the "Commission") for DRI approval of the completed roof tile replacement project.
- Decision:** The Commission voted to deny the application on June 1, 2017 and further to require the Applicant to replace the asphalt shingles with ceramic tiles consistent with the historic character of the building.
- Written Decision:** This written decision was approved by a vote of the Commission on June 22, 2017.

## **2. FACTS**

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The exhibits listed below including the referral, the notice of public hearing, the staff report, images, correspondence and other related documents are incorporated into the record herein by reference. The full record of the application is kept on the premises of the Commission.

### **2.1 Referral**

The Project was referred to the Commission on October 18, 2016 by the Building Inspector of the Town of Tisbury, MA for action pursuant to Chapter 831 of the Acts of 1977, as amended (the Act) and the Commission's Standards and Criteria Administrative Checklist for Developments of Regional Impact, DRI Checklist 8.2ii (Exterior Alteration of a building over 100 years old); a Concurrence Review. On February 2, 2017 the Commission voted that a Public Hearing Review as a DRI was necessary and the Project was reviewed as such by the Commission.

### **2.2 Hearings**

Notice: Public notice of a public hearing on the Application was published in the Martha's Vineyard Times on April 20, 2017.

Hearings: The Commission held a Concurrence Review on the referral that was conducted by the Commission pursuant to the Act and M.G.L. Chapter 30A, Section 2, as modified by Chapter 831 on Thursday February 2, 2017. The Commission voted on February 2, 2017 that the Project rose to the level of requiring a public hearing review as a Development of Regional Impact. The Commission scheduled a public hearing on the Application on May 8, 2017 that was continued without taking testimony to May 18, 2017. The Commission held a public hearing on the Application that was conducted by the Commission pursuant to the Act and M.G.L. Chapter 30A, Section 2, as modified by Chapter 831 on Thursday May 18, 2017 with the written record being left open until Thursday June 1, 2017 and the hearing closed on that date. The MVC voted to waive the need for a post-Public Hearing Land Use Planning Committee (LUPC) review and go directly to Deliberation and Decision on June 1, 2017.

### **2.3 The Plan**

The following document submitted by the Applicant and contained in the Commission project file constitutes "the Plan."

- P1 The Applicant provided a letter with cost estimates to replace the roof with historic style Ludowici clay tiles prepared by CP Rankin Inc. (Roof Management & Contracting) on October 12, 2016 consisting of six (6) 8.5" by 11" pages with cost estimate and product details for Ludowici Spanish 13 1/4" Barrel tiles and Ludowici Roman Pan and Cover Tiles.

### **2.4 Other Exhibits**

- E1. Referral to the MVC from the Tisbury Building Inspector received at the MVC on October 18, 2016.
- E2. Staff Report, by Paul Foley, MVC DRI Coordinator, with the assistance of other staff members, January 19, 2017; revised February 2, 2017; revised March 22, 2017; revised May 18, 2017; revised June 1, 2017.
- E3. Emails between MVC Staff and Tisbury Officials and Santander Bank employees, contractors and representatives:

- a. Email from Paul Foley (MVC DRI Coordinator) to Nancy Bowers (Facilities Manager at Jones Lang LaSalle an external contractor for Santander Bank North America) sent Tuesday, October 18, 2016 at 4:18 PM regarding the DRI Referral, the DRI Process and scheduling.
- b. Email from Nancy Bowers (Facilities Manager at Jones Lang LaSalle an external contractor for Santander Bank North America) to Paul Foley (MVC DRI Coordinator), Adam Turner (MVC Executive Director), Ken Barwick (Tisbury Building Inspector), John Grande (Tisbury Town Manager), Steve Jurczyk (Santander Facilities Director), Nancy A. Weinstein (Santander Senior Facilities Manager) sent Thursday October 20, 2016 7:26 AM thanking the MVC for DRI information and stating that “moving forward all communication should be directed to either Steve Jurczyk, Director of Facilities or Nancy Weinstein, Senior Facilities Manager.”
- c. Emails from Nancy A. Weinstein (Santander Senior Facilities Manager) sent Monday October 24, 2016 at 5:31 PM; Tuesday October 25, 2016 at 9:32 AM; and Tuesday October 25, 2016 at 10:52 AM to Paul Foley, Stephen Jurczyk, and Heidi Clements regarding a conference call on Tuesday October 25, 2016 at 12:30 pm to update the MVC on the roof situation at the Santander Bank in Vineyard Haven.
- d. Email from Stephen Jurczyk, Santander Director – Facilities, sent Tuesday October 25, 2016 at 4:58 PM to Paul Foley (MVC DRI Coordinator) regarding contact info and “Thanks to you and to everyone on the call today for the discussion and feedback. We will reconvene with the appropriate folks on the bank side to recap the discussion.”
- e. Email from Paul Foley (MVC DRI Coordinator) to Steve Jurczyk (Santander Facilities Director), Nancy A. Weinstein (Santander Senior Facilities Manager) and Heidi Clements sent Thursday, November 10, 2016 at 4:46 PM noting that the MVC had not heard anything from Santander since the conference call on Tuesday October 25, 2016 and informing them of the DRI meeting schedule.
- f. Email from Sean Murphy (Santander Martha’s Vineyard Attorney) to Paul Foley (MVC DRI Coordinator) and Adam Turner (MVC Executive Director) sent Thursday November 10, 2016 at 5:38 PM stating that he had “been retained by Santander Bank regarding the new roof at their Vineyard Haven location. I will be at the LUPC meeting on Monday.”
- g. Email from Paul Foley (MVC DRI Coordinator) to Sean Murphy (Santander Martha’s Vineyard Attorney), John Grande (Tisbury Town Manager), Ken Barwick (Tisbury Building Inspector) and Adam Turner (MVC Executive Director) sent Monday November 14, 2016 at 11:04 am asking if Santander had anything to submit or a proposal or a statement for the LUPC meeting.
- h. Email from Sean Murphy (Santander Martha’s Vineyard Attorney) to Paul Foley (MVC DRI Coordinator) and Adam Turner (MVC Executive Director) sent Monday November 14, 2016 at 12:10 PM stating that “Santander’s Boston counsel has been in contact with the Town of Tisbury and they are attempting to work out a solution. Both parties agree that tonight’s meeting should be continued to a further date. Please confirm that is acceptable.”
- i. Email from Paul Foley (MVC DRI Coordinator) to Sean Murphy (Santander Martha’s Vineyard Attorney), John Grande (Tisbury Town Manager), Ken Barwick (Tisbury Building

Inspector) and Adam Turner (MVC Executive Director) sent Monday November 14, 2016 at 12:22 PM confirming the Applicant could request a continuation but would confirm with town.

- j. Email from John Grande (Tisbury Town Manager) to Paul Foley (MVC DRI Coordinator), Sean Murphy (Santander Martha's Vineyard Attorney), Ken Barwick (Tisbury Building Inspector) and Adam Turner (MVC Executive Director) sent Monday November 14, 2016 at 12:27 PM confirming the continuation and asking if it "acceptable to the MVC to permit a discussion to take place between local officials and representatives of Santander Bank prior to commencing the formal hearing/meeting?"
- k. Email from Paul Foley (MVC DRI Coordinator) to Sean Murphy (Santander Martha's Vineyard Attorney), John Grande (Tisbury Town Manager), Ken Barwick (Tisbury Building Inspector) and Adam Turner (MVC Executive Director) sent Monday November 14, 2016 at 5:21 PM confirming the Applicant "may request a continuation as they revise their proposal. The Commission may accept or decline a request for a postponement. Since it sounds as if the Applicant is considering working with the Town to resolve some or all of the issues raised by the project we will re-schedule the Concurrence Review before the LUPC and full Commission for now. I will let the LUPC know tonight and see when they would like to re-schedule to. Please keep me posted on any updates to this situation".
- l. Email from John Grande (Tisbury Town Manager) to Paul Foley (MVC DRI Coordinator), sent Wednesday November 23, 2016 at 10:39 PM asking what date the hearing had been continued to.
- m. Email from Paul Foley (MVC DRI Coordinator) to John Grande (Tisbury Town Manager) sent Wednesday November 23, 2016 at 12:23 PM informing him that the MVC had tentatively scheduled the Concurrence Review on December 15, 2016 and to please keep him apprised of any progress (or digression).
- n. Email from Paul Foley (MVC DRI Coordinator) to John Grande (Tisbury Town Manager), Ken Barwick (Tisbury Building Inspector), Steve Jurczyk (Santander Facilities Director), Nancy A. Weinstein (Santander Senior Facilities Manager), Heidi Clements, Sean Murphy (Santander Martha's Vineyard Attorney), and Adam Turner (MVC Executive Director) sent Monday, January 9, 2017 at 12:45 PM asking if the Town had made any progress with Santander and noting that the MVC had postponed the Concurrence Review a couple of times at the Town's request in an effort to allow Santander and the Town time to research the situation.
- o. Email from John Grande (Tisbury Town Manager) to Paul Foley (MVC DRI Coordinator), Ken Barwick (Tisbury Building Inspector), Steve Jurczyk (Santander Facilities Director), Nancy A. Weinstein (Santander Senior Facilities Manager), Heidi Clements, Sean Murphy (Santander Martha's Vineyard Attorney), and Adam Turner (MVC Executive Director) sent Monday January 9, 2017 at 12:48 PM stating that the Town had "not received any proposals from Santander Bank. My understanding from Attorney Murphy is that the bank is not putting forward any proposal concerning the roof to the Tisbury Selectmen for consideration. They can confirm the same."
- p. Email from Paul Foley (MVC DRI Coordinator) to Sean Murphy (Santander Martha's Vineyard Attorney), John Grande (Tisbury Town Manager), Ken Barwick (Tisbury Building

Inspector), and Adam Turner (MVC Executive Director) sent Wednesday, March 22, 2017 at 6:39 PM informing the Applicant that the MVC had scheduled the public hearing for the Santander Historic Roof Tiles (DRI 674) for Thursday April 13, 2017 at 7:30 pm with attachments of the DRI Application, DRI Fee Schedule and the Public Hearing Notice.

- q. Email from Sean Murphy (Santander Martha's Vineyard Attorney) to Paul Foley (MVC DRI Coordinator), John Grande (Tisbury Town Manager), Ken Barwick (Tisbury Building Inspector), and Adam Turner (MVC Executive Director) sent Thursday March 23, 2017 at 11:16 AM informing the MVC that he will be away from April 11-21, 2017 and requesting that the hearing be rescheduled. Note: The Commission rescheduled the public hearing to May 4, 2017.
  - r. Email from Paul Foley (MVC DRI Coordinator) to Sean Murphy (Santander Martha's Vineyard Attorney), John Grande (Tisbury Town Manager), Ken Barwick (Tisbury Building Inspector), and Adam Turner (MVC Executive Director) sent Wednesday, April 26, 2017 at 4:34 PM informing Mr. Murphy that the public hearing would be continued from May 4, 2017 without taking testimony to May 18, 2017 due to the busy agenda on May 4, 2017.
  - s. Email from Sean Murphy (Santander Martha's Vineyard Attorney) to Paul Foley (MVC DRI Coordinator), John Grande (Tisbury Town Manager), Ken Barwick (Tisbury Building Inspector), and Adam Turner (MVC Executive Director) sent Wed April 26, 2017 at 4:40 PM acknowledging the continuation of the public hearing to May 18, 2017.
  - t. Email from Paul Foley (MVC DRI Coordinator) to Sean Murphy (Santander Martha's Vineyard Attorney) sent Tuesday, May 23, 2017 at 12:11 PM requesting the roof estimates that Mr. Murphy had cited at the public hearing on May 18, 2017.
  - u. Email from Sean Murphy (Santander Martha's Vineyard Attorney) to Paul Foley (MVC DRI Coordinator) sent Thursday May 25, 2017 at 4:06 PM with the requested roof estimates from CP Rankin Inc. roof estimates attached.
  - v. Email from Paul Foley (MVC DRI Coordinator) to Sean Murphy (Santander Martha's Vineyard Attorney) sent Tuesday, May 25, 2017 at 4:42 PM also asking for the estimate or bill for the work performed.
  - w. Email from Sean Murphy (Santander Martha's Vineyard Attorney) to Paul Foley (MVC DRI Coordinator) sent Thursday May 25, 2017 at 4:48 PM with the Building Permit Application which included the estimated cost to install the asphalt shingles.
- E4. MVC Staff slide shows dated 2017-01-19 and 2017-06-01.
- E5. Pro Forma prepared by MVC Staff comparing the short and long term costs of installing asphalt versus Spanish 13 ¼" Barrel tiles and Ludowici Roman Pan and Cover Tiles based upon the cost estimates submitted by the Applicant at the Public Hearing prepared by CP Rankin Inc. (the roofing contractor used by the Bank).
- E6. Letters from the following Island Organizations:
- a. Carole Berger of the M.V. Historic Preservation Trust Awards.
- E7. Letter from the following Citizens urged the MVC to accept the concurrence referral and review the action with a public hearing as a Development of Regional Impact:

- a. Kenneth A. Barwick, Tisbury Building and Zoning Official;
- b. Dana Hodsdon, Co-chairman of the William Street Historical District Commission and Chair of the Tisbury Site Plan Review Board;
- c. Hyung S. Lee;
- d. Scott Tuttle;

E8. The following Citizens submitted correspondence during the DRI Review urging the MVC to make the bank restore appropriate clay tiles similar to the historic style:

- a. Alison Shaw;
- b. Dan Waters;
- c. Greg Palermo;
- d. Mary Rentschler and John Fuller;
- e. Joyce Dresser;
- f. Linsey Lee;
- g. Margaret Curtin;
- h. Ken MacLean;
- i. Max Skjoldebrand;
- j. Pam Melrose;
- k. Renee Balter;
- l. Stephanie Mashek;
- m. V. Jaime Hamlin;

E9. Minutes of the Commission Meeting of February 2, 2017 – Concurrence Review.

E10. Minutes of the Commission’s Public Hearing, May 18, 2017.

E11. Minutes of the Commission Meeting of June 1, 2017 - Deliberations and Decision.

E12. Minutes of the Commission Meeting of June 22, 2017 – Approval of the Written Decision.

## **2.5 Summary of Testimony**

The Commission received the following testimony during the public hearing of May 18, 2017.

- Presentation of the Project by: **Sean Murphy (Attorney)**.
  - Prior to commencing the Project, the Applicant notified the Building Inspector of its proposal to replace the historic roof. A building permit was erroneously granted and the Project was completed. The estimated roof costs are as follows;
    - The roof work done with asphalt shingles was estimated to cost \$100,935.
    - The cost for Ludowici Spanish 13 ¼” Barrel tiles was estimated to be \$276,260;
    - The cost for Ludowici Roman Pan and Cover Tiles was estimated to be \$388,950.
    - The specifications for the tiles were submitted for the record.
  - The Applicant noted the expense already incurred in replacing the roof and stated its opinion that the Project is not a DRI that can be reviewed after a permit was issued and the work authorized was completed.
- Staff report by **Paul Foley (MVC DRI Coordinator)**.
  - The Applicant removed the historic clay Spanish style roof tiles that had been on the building for over 100 years and replaced them with asphalt tiles.

- The Applicant was issued a Building Permit to perform the Project without having gone through DRI Review. The Commission became aware of the Project after the historic clay tiles were being removed. It was then referred to the Commission for Concurrence Review for alteration of a historic building over 100 years old, pursuant to Section 8.2ii of the DRI Checklist.
- The Applicant had previously said that repairing the roof cost \$100,000 and that replacing them with clay tiles would cost \$400,000. No actual estimate by a roofer had yet been submitted. Mr. Murphy subsequently presented cost estimates which were submitted later.
- According to the National Park Service Technical Preservation Paper #30 on the Preservation and Repair of Historic Clay Tile roofs “clay tile has one of the longest life expectancies among historic roofing materials – generally about 100 years and often several hundred”. The article goes on to say that “clay roofing tile itself, when installed correctly, requires little or no maintenance... frequently outlasting the building structure.”
- Clay Spanish tiles would cost somewhat more but last much longer (up to hundreds of years if maintained properly), cost less to maintain, lower heating and cooling bills and add value to the building.
- Staff suggested to the Applicant that a few additional factors should be considered;
  - The former historic clay tiles had been there for significantly longer than the lifetime of an average asphalt shingle.
  - The Applicant may want to consider listing the building on the National Historic Register. If the building were listed on the National Historic Register, replacing the historic tiles may be eligible for up to 40% reimbursement through Federal and State Historic Tax Credits in addition to the value of the prestige that designation brings.
- Site photos and historic photos were reviewed.
- The building is visible from the ferry and the public way.
- **Adam Turner (MVC Executive Director)** noted that the building is located in a prominent spot on Main Street in Tisbury.
- Oral testimony from Public Officials speaking for their Boards:
  - **Harold Chapdelaine**, Chairman of the William Street Historic District (WSHD) and The Tisbury Historic Commission (THC), said that the WSHE and THC discussed the Project and were unanimous that the Commission should require the historic terra cotta tile roof be restored. There was an administrative error that by-passed the Commission during the review process. They believe that more due diligence was needed on the part of the Applicant prior to commencing the Project.
- Oral testimony from Public:
  - **Tristan Israel**, Tisbury Board of Selectmen but speaking as a citizen, said that the Selectmen learned about the Project from concerned citizens and also that the Building Permit was still open. The weekend when the work was being done there was a large impending storm approaching the Island and the Board of Selectmen did not want the building flooded so they did not stop the roofing. This is an extraordinary situation with an iconic building and this is so important to our town and Main Street that they ask the Commission to return the building back to the iconic condition that has anchored Main Street for over 100 years.

- **Melinda Loberg**, also a member of the Board of Selectmen, said that she agrees with what Tristan Israel said.
- **Dana Hodsdon**, sits on the WSHD and the Tisbury Site Review Board but speaking as a citizen, said he went to the Applicant twice to discuss issues with the roof rafters and the exterior maintenance that was required because of the age of the building. He did not feel that the Applicant has worked with the community and he would like them to replace the roof.
- **Hyung Suk Lee** said that the building has been enjoyed by the community for many years and should be for many more generations and therefore the roof should be restored.

The written record was left open until June 1, 2017. The following occurred during the Commission Meeting on June 1, 2017.

- **Paul Foley (MVC DRI Coordinator)** summarized the correspondence that was submitted between May 18, 2017 and June 1, 2017. He also summarized a document that staff had prepared at the request of the Hearing Officer at the Public Hearing that is a rough Pro Forma comparing the short and long term costs of installing asphalt versus Ludowici Spanish 13 ¼" Barrel tiles and Ludowici Roman Pan and Cover Tiles based upon the estimates submitted by the Applicant at the Public Hearing and prepared by CP Rankin Inc. (the roofing contractor used by the Applicant).
- **James Vercruyse (Chairman of the MVC)** summarized the site visit. He said that the structure seemed to be in relatively good shape, but that the rafters needed attention.
- **The Commission** waived the need for a post-Public Hearing Land Use Planning Committee (LUPC) review and went directly to Deliberation and Decision.

### **3. FINDINGS**

#### **3.1 Project Description**

- The bank building was built in 1905 by William Barry Owen on the site of the old harness factory. The building was designed by architect J. Williams Beal of Boston.
- It is made of fieldstone in the shape of a Greek cross.
- In October 2016 the Applicant removed the Spanish-style barrel roof tiles that had been on the building for over 100 years and replaced them with asphalt tiles.
- The Applicant was erroneously issued a Building Permit to perform the work, as the Project should have been referred to the Commission under Section 8.2ii of the DRI Checklist for DRI Concurrence Review before any action was taken.
- The Commission notes that the Building Permit process was not completed in that the installation of the asphalt shingles was not reviewed and accepted by the Building Inspector.
- According to the DRI Referral, the Project also requires a Special Permit from the Tisbury Planning Board per Zoning By-Laws Section 05.13.01. This zoning relief has not yet been obtained. Application for this permit would have also required referral to the MVC for DRI Concurrence Review.

#### **3.2 Statutory Authority**

The purpose of the Commission, as set forth in Section 1 of the Act, is to "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 would impair them, and by promoting the enhancement of sound local economies."

The Commission has reviewed the proposal as a Development of Regional Impact, using the procedures and criteria that the Commission normally uses in evaluating the benefits and detriments of such a proposal. The Commission has considered the Application and the information presented at the public hearing, including listening to all the testimony presented and reviewing all documents and correspondence submitted during the hearing and review period.

### **3.3 Benefits and Detriments**

Based on the record and testimony presented therein, the Commission finds the following pursuant to Sections 14 and 15 the Act.

#### **A. THE COMMISSION FINDS THAT THE PROBABLE DETRIMENTS OF THE PROPOSED DEVELOPMENT WOULD EXCEED THE PROBABLE BENEFITS, AS EVALUATED IN LIGHT OF THE CONSIDERATIONS SET FORTH IN SECTION 14(a) OF THE ACT.**

##### **A1 The Commission finds that the proposed development at this location is not appropriate in view of the available alternatives (Section 15(a) of the Act.)**

The Commission finds that given the historic character of the building and its prominent location at 75 Main Street in Vineyard Haven, the October 2016 replacement of the historic roof tiles with asphalt shingles is not appropriate in view of the available alternatives. A requirement to replace the recently installed asphalt shingles with terra cotta or clay tiles with a similar look and material to the historic tiles previously on the roof would be appropriate.

##### **A2 The Commission finds that the proposed development would have a neutral impact upon the environment relative to other alternatives (Section 15(b) of the Act).**

With respect to Wastewater and Groundwater, the Commission finds that the Project has no impact.

With respect to Open Space, Natural Community and Habitat, the Commission finds that the Project has no impact.

With respect to Night Lighting and Noise, the Commission finds that the Project has no impact.

##### **A3 The Commission finds that the proposed development would have a negative overall effect upon other persons and property (Section 15(c) of the Act).**

With respect to Traffic and Transportation, the Commission finds that the Project has no impact.

With respect to Scenic Values, Character, and Identity, the Commission finds that the Project has a major negative impact. Specifically, the Commission finds that the asphalt shingles installed on this prominent historic building without Commission approval in October 2016 have a negative impact and are detrimental to scenic values, character and the identity of Martha's Vineyard. The restoration of appropriate terra cotta or clay tiles with a similar look and material to the historic tiles would have a beneficial impact.

With respect to the Impact on Abutters, the Commission finds that Project has a significant negative impact. The Commission finds that the asphalt shingles installed on this prominent historic building without Commission approval in October 2016 have a negative impact and are detrimental to the abutters who have lost the aesthetic benefit of the visually pleasing, historic appearance of this iconic building and its contributions to the character of Main Street. The Commission finds that the replacement of the new roof shingles with tiles similar to the historic tiles would have a beneficial impact.

**A4 The Commission finds that the proposed development would have no impact upon the supply of needed low and moderate income housing for Island residents (Section 15(d) of the Act).**

**A5 The Commission finds that the proposed development will have no impact on the provision of municipal services or burden on taxpayers in making provision therefore (Section 15(e) of the Act).**

**A6 The Commission finds that the development will not unduly burden existing public facilities (other than municipal) or those that are to be developed within the succeeding five years. (Section 15(f) of the Act).**

**A7 The Commission finds that the development does interfere with the ability of the municipality to achieve some of the objectives set forth in the municipal general plan. (Section 15(g) of the Act).** The Commission notes that Section C1.03 in the introduction to the Tisbury Zoning Bylaw states: "The time worn phrase 'to provide for the public health, safety and general welfare' still has meaning. So too does the rule of 'consistent with the intent and purposes' - for we will never have a rule for every circumstance. In addition to the specifics of a law (Bylaw, rule or regulation), there must be consideration given to the overall 'intent and purposes' message. In all of this, recognition must be given to property rights and to the question of 'the greater public interest'. Making it work taking us where we want to go, and getting the job done in the most equitable way is something we can all contribute to; there is no substitute for public participation..." The Commission finds that the installation of the asphalt shingles in October 2016 was not in the greater public interest and that having failed to timely come before the Commission for DRI review, the installation of the asphalt shingles deprived the public of participation in the review of this historic building.

**A8 The Commission finds that the development contravenes some land development objectives and policies developed by regional or state agencies. (Section 15(h) of the Act).**

Preserving historic character is one of the core missions of the Martha's Vineyard Commission. Furthermore, The Island Plan makes reference to preserving character throughout the document. The Commission notes that the stated Comprehensive Goal of the Island Plan (P. 16) is to "Make Martha's Vineyard a more sustainable, resilient, diverse, balanced, stable, and self-sufficient

community, preserving the Island's unique natural, rural, and historical character and creating a better future for Vineyarders and the Island itself."

In Section 4: Built Environment the first goal of Section 4.1: Historic Resources states that "Most important for keeping the authentic, unique character of Martha's Vineyard is preserving historic buildings and other historic resources from destruction or inappropriate alteration." The Commission finds that the asphalt shingles installed in October 2016 are an inappropriate alteration that significantly and negatively impacts the historic character of Main Street Vineyard Haven and the island character as a whole.

**B. THE COMMISSION FINDS THAT THE PROPOSED DEVELOPMENT WOULD NOT BE CONSISTENT WITH THE LAND DEVELOPMENT OBJECTIVES OF THE COMMISSION, AS EVALUATED IN LIGHT OF THE CONSIDERATIONS SET FORTH IN SECTION 14(b) OF THE ACT.**

Replacement of the original roof with the newly installed asphalt shingles, in particular without prior DRI review, does not advance the Commission's land development objectives, as outlined in the Martha's Vineyard Commission Regional Policy Plan adopted by the Commission in June 1991 and the Island Plan adopted by the Commission in December 2010. The Regional Island Plan, in part, charges the Commission with maintaining Island character and protecting and public spaces with cultural value to the community, including historic buildings. Having failed to timely come before the Commission for DRI review, the Applicant's original project deprived the Commission of the opportunity and ability to perform its statutory obligations and advance its land development objectives set forth in the Regional Island Plan. Moreover, the new roof, itself, by virtue of its materials, is inconsistent with the Commission's objectives of maintaining Island character and protecting public spaces with cultural value to the community, including historic buildings

**C. THE COMMISSION FINDS THAT THE PROPOSED DEVELOPMENT IS NOT CONSISTENT WITH MUNICIPAL DEVELOPMENT ORDINANCES AND BY-LAWS, TO THE BEST OF THE COMMISSION'S KNOWLEDGE.**

The Commission finds that the development is subject to Special Permit review under Zoning By-Law Section 05.13.01 and that the Project proceeded without this permission.

**D. THE COMMISSION FINDS THAT THE SITE IS NOT SUBJECT TO THE REGULATIONS OF DISTRICTS OF CRITICAL PLANNING CONCERN, AS EVALUATED IN LIGHT OF THE CONSIDERATIONS SET FORTH IN SECTION 14(d) OF THE ACT.**

The Commission finds that the property is not located in any DCPC.

In sum, after careful review of the Project and its attendant submittals and the testimony presented by the Applicant and others, the Commission has concluded that the detriments of this development in this location exceed its benefits in light of the considerations set forth in section 14(a) of the Act.

#### **4. DECISION**

The Commission deliberated about the application at a duly noticed meeting of the Commission held on June 1, 2017 and made its decision at the same meeting.

The following Commissioners, all of who participated in all hearings and deliberations on this Project, participated in the decision on June 1, 2017:

- Voting to deny the asphalt roofing material and require the roof to be re-roofed with appropriate terra cotta or clay tiles with a similar look and material to the historic tiles that graced the iconic building for generations: Gail Barmakian, Clarence A. "Trip" Barnes III; Christina Brown; Robert Doyle; Fred Hancock; Lenny Jason; Joan Malkin; Kathy Newman; Ben Robinson; Linda Sibley; Ernest Thomas; Richard Toole; and James Vercruysse.
- Voting against the Motion: Jim Joyce.
- Abstentions: None.

Based on this vote, the Commission declares the Project a DRI and requires the Applicant to remove the asphalt shingles installed in October 2016 and to replace such tiles with roofing materials consistent with the prior historic roof style.

This Written Decision is consistent with the vote of the Commission June 1, 2017 and was approved by vote of the Commission on June 22, 2017.

## **5. CONDITIONS**

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The Martha's Vineyard Commission hereby establishes the following conditions.

### **1 Roofing Material:**

- 1.1 The Applicant shall remove the asphalt tiles installed in October 2016 on the main stone bank building located at 75 Main Street in Vineyard Haven and replace them with appropriate terra cotta or clay tiles with a similar look and material to the historic tiles that were previously on the building.
- 1.2 The Applicant shall have two (2) months from the date of the adoption of this written Decision to submit a plan for the review and approval of the Commission to restore the roof with appropriate tiles similar to the historic tiles.
- 1.3 The Applicant shall have six (6) months from the date of the approval of the Commission required in Condition 1.2 to perform the work so approved.

## **6. CONCLUSION**

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### **6.1 Permitting from the Town**

The permit-granting authorities of the Town of Tisbury shall not grant the request for approval of the Special Permit or close the Building Permit for the Applicant's installation of asphalt shingles. The permit-granting authorities of the Town of Tisbury shall only grant the request for approval of a new roof based upon the conditions found herein.

### **6.2 Notice of Appellate Rights**

Any party aggrieved by a determination of the Commission may appeal to Superior Court within twenty (20) days after the Commission has sent the development Applicant written notice, by certified mail, of its Decision and has filed a copy of its Decision with the Tisbury Town Clerk.

**6.3 Length of Validity of Decision**

This Decision shall be valid indefinitely. The Applicant may request the time cited in the conditions to be extended upon written request with legitimate justification and acting in good faith if granted approval by a majority vote of the Commission.

**6.4 Signature Block**

  
James Vercruysse, Chairman

July 7, 2017  
Date

**6.5 Notarization of Decision**

Commonwealth of Massachusetts  
County of Dukes County, Mass.

On this 7<sup>th</sup> day of July, 2017, before me, Jo Ann Taylor  
Jo Ann Taylor, the undersigned Notary Public, personally  
appeared James Vercruysse, proved to me through satisfactory evidence of  
identity, which was/were driver's license to be the person(s)  
whose name(s) was/were signed on the preceding or attached document in my presence, and who  
swore or affirmed to me that the contents of the document are truthful and accurate to the best of  
his/her/their knowledge and belief.

  
Signature of Notary Public

Jo Ann Taylor  
Printed Name of Notary

My Commission Expires February 9, 2018

**6.6 Filing of Decision**

Filed at the Dukes County Registry of Deeds, Edgartown, on: July 14, 2017

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