

Edgartown Planning Board Minutes

Tuesday, October 22, 2019

A regular meeting of the Edgartown Planning Board was scheduled for Tuesday, October 22, 2019, at 5:30 PM at the West Tisbury Public Library Community Room, 1042 State Road, West Tisbury.

PRESENT: Fred Mascolo (Chair), Michael McCourt, Lucy Morrison,

ABSENT: Glen Searle, Scott Morgan, James Cisek (Alternate)

CALL TO ORDER

The meeting was called to order at 5:38 PM, and a quorum (Mccourt, Morrison, Mascolo) was declared.

Mr. Mascolo welcomed all in attendance, and invited board members and staff to introduce themselves.

Present: Tisbury Planning Board: Mr. Dan Seidman(chair), Mr. Ben Robinson; Edgartown Planning Board: Ms. Lucy Morrison, Mr. Mike McCourt; Oak Bluffs Planning Board: Ewell Hopkins, Kim Baird; Chilmark Planning Board: Peter Cook; MV Commission: Bill Veno, Christine Flynn; Chilmark / Edgartown Building Commissioner Lenny Jason.

Mr. Mascolo: The MV Commission is a very powerful entity; decisions of the Commission have been appealed and upheld by state courts; my fear is that town planning boards might devolve into ‘referral boards’, with no authority to regulate local developments. I’m curious as to how other boards feel, and to get feedback from the commission as to their points of view. My feeling is that the changes to the DRI appear to usurp the power of local elected boards. My hope is that between all boards and the commission, we can agree on common points of concern.

Mr. Mascolo opened the floor for comments from the general public.

Mr. Jack Krowski (Edgartown Resident) spoke briefly about the formation of the MV Commission.

Mr. Jason: the MV Commission was the first regional planning agency with the power.

There was some dialogue related to the history of regional planning on Martha’s Vineyard and Cape Cod.

Mr. Mascolo invited town representatives to comment on the proposed changes to the DRI Checklist.

Mr. Seidman spoke about his concerns related to Section 4.1 - reducing number of units from 10 to 5. Mr. Seidman cited Tisbury’s recent bylaw change to allow multi-family development by Special Permit, and a recent proposal to develop multi-unit housing which proceeded well in Tisbury. Mr. Seidman: I believe that the DRI changes adds another layer of review that may not in many cases be necessary. Why should an applicant go through a multi-month process, when the local review looks at the same aspects of the project, and seems to be equally adequate? I just don’t understand the ‘grab’ for a project that doesn’t seem to have a regional impact. Our recent project - six units, or three duplexes – doesn’t add up to a regional impact that I can see.

Mr. Ben Robinson: It’s good to pay attention to whether a referral is with concurrence or is mandatory. Prior to Tisbury’s zoning change, we might have taken up this matter; with the changes to the local zoning regulations, we likely would not have concurred.

There was some discussion related to the process of referral in the case of an application where the MV Commission might choose not to concur.

Mr. Ewell Hopkins: I feel as though there isn’t a level of conversation happening that might allow for greater local control to allow local review, with review on the part of the Commission being only necessary in significant cases. Often times applicants see the referral as the creation of a new review process.

We’re concerned that this DRI process demonstrates that planners and the commissioners aren’t working together to create a single collaborative process. If there are twelve points of scrutiny to address, and it’s clear that the town doesn’t have the authority to address the last three, then we’re on the same page - referral makes sense. But that conversation isn’t happening. There’s a lot of concern on the commission, and we at the town level don’t know what that concern is. However, if the town’s review process and authority adequately covers all aspects of a project, then the referral doesn’t seem necessary.

We recognize that there seems to be a lot of concern on the part of the commission about the local permit review process. What is behind the changes? Why does the commission feel they need to review more and more projects?

We don't feel that the changes to the DRI checklist are the issue, but rather that the DRI checklist has to be changed at all. We had this process three years ago, and we said at that time that we need to improve communication, in order to improve the process for all concerned. Two and a half years later, we have a more restrictive DRI Checklist, because we are not working together.

Mr. Mascolo noted a recent referral of a large project that had been reviewed by the commission; the project was considered to be very favorable by the Town, but a negative recommendation was given by the LUPC. So, I agree with you on the disconnect that seems to be at the heart of the matter.

Mr. McCourt: I agree that there is a disconnect between the local boards and the MV Commission. We need more communication between Boards and the Commission. In my ten years, there seemed to be a big division between the town and the Commission. I always viewed the MV Commission as a tool that could be used to better review development proposals. I believed that the situation seemed to improve with the new executive director, but these new DRI changes don't seem to reflect that.

Mr. Hopkins: I wanted to underscore that each town has a different perception as to the role of the local planning board and the Commission. In Oak Bluffs, we look at the Checklist and say that the premise of trying to modify this document is the wrong premise. We want to explore the underlying issues that seem to be driving these changes; let's determine why this discussion is being had in the first place, and let's determine the underlying causes, and let's address these concerns in the appropriate place. Instead of changing the thresholds for referral I'd like to know how we can improve our local regulations to better review development, and address island-wide concerns in the correct place.

Mr. Cook: The Chilmark Planning Board members have looked at this; we have a lot to gain from this discussion. We don't have the same volume of potential business to discuss. We generally had no problem with the changes to the DRI checklist as proposed. The clarifications seemed to make sense to us. However, we have not spent near as much time as other Planning Boards have on the matter. I'm here to listen and comment.

Mr. Lenny Jason: I agree with Ewell – to a point. When the Commission first was formed, there were minimal planning resources on the local level. The Commission was there originally to support the boards. Now it seems as though the Commission is its own entity. Mr. Jason expressed additional concerns about how or why certain thresholds were established. Mr. Jason asked for support for the changes – what regional concerns were discussed and considered when making the changes to the DRI Checklist?

Mr. Jason suggested that, in some cases, referral with concurrence should require a joint concurrence on the part of the Town and the Commission.

There was some discussion related to the thresholds for ANR divisions.

Mr. Seidman: Much of this conversation seems to reflect an 'us versus them' mentality. I don't understand how it became that – how did that happen? Why would the Commission make things harder at the town level – which just gives the Commission more to do – at the expense of the town and the applicants? When I've asked about these concerns, I've been told by Commission Staff that the changes to the DRI Checklist aren't coming from staff, but rather from the Commissioners – the Town's representatives. I don't understand why the commission would make something more restrictive – in spite of local efforts to proactively plan in accordance with long-range policies.

Mr. Seidman: In the grand scheme, the Commission is there to provide for an overview of a given project, and that's a good thing; but even a concurrence results in a delay.

Mr. Robinson: Every two years, the DRI Checklist has to be reviewed. You're speaking to one aspect of the DRI Checklist – affordable housing. I think that there are larger concerns with any given development – water, wastewater, traffic, etc. I think that if Towns want to retain 'local control', then town bylaws need to be improved in order to better reflect regional concerns.

Mr. Hopkins: I agree with that sentiment. We're discussing that criteria. If we all agree as planners that there are certain areas that we need to focus on, and if we establish those regulations locally, then referral to the

commission might be more flexible, and more useful. Right now, we're not having that process.

We, as a board, through our former chairman (now the chair of the Selectboard), sat down with the commission more than two years ago, and asked to work to improve our communication, so that we could learn what regional issues and concerns we needed to advance in our bylaws; in that way, the checklist could be more flexible; if regional concerns are adequately addressed by local bylaw, then review by the Commission becomes unnecessary.

Nothing happened, no involvement by the commissioners, and two and a half years later, we get a new checklist that is worse than the one from two years before. When we talk to the professional staff at the commission, we are told that it is out of their hands, and that the process is being driven by the commissioners.

I don't believe in exemptions – regardless of what you plan to build, you should build responsibly. Let's talk as planners about our regional concerns, and put in bylaws in at the local level.

Mr. Robinson: That is something that this group, this group of planners can think about outside of the commission. Stuff that we're doing in Tisbury related to multi-family affordable housing that allows for multi-family housing. Because we've done that, the commission doesn't have to step in.

There was some discussion related to a recent application from Edgartown that had been referred to the Commission, and the need for participation at the commission level by boards to support a project as it is reviewed.

Mr. Seidman: Should all referrals require facetime on the part of the referring board?

Mr. Robinson: It's different when boards are present. The "us and them" is a two way street.

Mr. Hopkins: Being a two-way street, I would like to see directives from the commission urging Commissioners to attend their local planning board meetings. The DRI Checklist seems to be a symptom, not a driver. We can't fix the manifestation of a dysfunction without fixing the dysfunction.

Mr. Mascolo spoke about additional concerns related to the recent subdivision proposal still before the commission. Mr. Mascolo stated that the proposal largely met the requirements established by the commission, and exceeded the requirements established by the commission, but still seems to have been recommended for denial.

Mr. Jack Krowski: I was very much against the Meetinghouse Way subdivision. The subdivision isn't for residences – it's for businesses - rentals. The houses will be empty for nine months out of the year, using energy, and not providing housing for local residents. The Commission is looking out for the whole island, and has the ability to deny where a local board doesn't have the ability to do so.

Mr. Mascolo spoke in defense of development of vacation rentals as providing work for local businesses, including contractors, landscapers, and etc. The properties provide taxes without imposing burdens on local services, such as adding to the school population. There was some discussion related to what aspects of the project would create a burden on the town in terms of infrastructure burden, etc.

Mr. Jason: We always think of the developer that came after WE bought our lot as the bad guy. If you want the towns to work with the commission, the concurrence should be both parties deciding.

Mr. Robinson: The referral is mandated; but if a project is adequate on its face, it need not be referred to full DRI review.

Ms. Morrison: The referral can't condition something that is to be returned to the town without concurrence; in order for the commission to act or impose conditions, it MUST be taken on as a full DRI.

Mr. Hopkins: I feel that the commission process is something that we should be encouraging and supporting; things that need to be conditioned? Then they should be conditioned. I'm totally against any exemptions; if it's irresponsible to build in a certain way, then an exemption from scrutiny should not be granted.

There was some discussion related to the recent Oak Bluffs Town Hall project, the challenges of public construction projects, and when they should be referred.

There was some discussion related to how the commission could assist local towns in the adoption of local regulations that better support regional concerns.

Mr. Robinson: This was something we talked about at the Commission level – how to deal with municipal building projects. We usually don't get projects until the final plans are complete – and it's very hard to provide

any in-depth review at that stage of the game.

Mr. Hopkins: The Commission should have been involved in the review of our municipal project from the beginning. I want more scrutiny on projects – and I want more input as to when that scrutiny takes place.

Mr. Robinson: At what point should that scrutiny take place?

There was some discussion related to how the commission could engage towns in improving local regulation to better comply with regional areas of concern.

Mr. Robinson: The Meetinghouse Way project was a bellweather – it was meeting standards established by the commission, and zoning, but there was public concern about the project. That was a trigger project that started a larger conversation related to the sustainability of development on the island. We have to ask where we are, where we are going as an island. Climate change will also impact our decision and planning processes in the future.

Bill Veno: Those issues have to be addressed by local planning boards. If you want to control energy consumption, adopt energy stretch codes.

Mr. Seidman: what is regional? What is all-island?

There was some discussion related to what projects create regional impacts.

There was more review of the Commission processes related to the Meetinghouse Subdivision lot.

Mr. Hopkins: Over the last four years, Oak Bluffs has reiterated its interest in greater communication with the commission, and better regulations that allow for scrutiny of all projects. We want to know the expectations of the commission, so that we can better work with them. We want a functional relationship where expectations are clear and established, so we can regulate projects on our own, instead of having to rely on the commission to review under these criteria.

Mr. Mascolo: speaking as chairman for Edgartown, we need more feedback and communication so that we don't get into this type of a situation – where a project is denied by reasons that aren't clear to all involved. We need more two-way communication. The disconnect that has been discussed seems to be the biggest problem.

Mr. Robinson: One piece of this is that there aren't many projects that are reviewed. Most housing being developed isn't reviewed. The large-house threshold is part of our attempt to talk about that. The overall development on the island isn't being reviewed by the commission, and even single home development has an incremental impact on the commission. We need to know how the island is developed now, and how it will be developed in the future. We can be responsible without being onerous or capricious with what we do.

Ms. Morrison: where did the 6500 square foot threshold come from?

Mr. Robinson: it was a number that we need to check that against building permits before we determine that for certain. We're trying to review that. The policy that governs that DRI process hasn't been written yet.

There was some discussion related to the impact of a 6,500 square-foot threshold.

Mr. Mascolo: how much input is expected from local planning boards?

Mr. Robinson: we'll expect input from everybody. It doesn't work if it's not at least somewhat reasonable to all involved.

There was some discussion related to what authority towns could have to restrict development for regional concerns. The limitations related to municipal review of any given project were discussed.

Mr. Hopkins: Perhaps this is unique to Oak Bluffs, but we have recently looked for MORE scrutiny out of the commission for recent projects (OB Town Hall, North Bluffs shore armoring, the MVCS campus project, etc.). In our case, the Planning Board was begging for them to do more – and they did less than we wanted in those cases. Let's get on the same page as to what the criteria.

Mr. Jason raised an issue related to Section 2.1 in the business district. There was discussion related to the necessity of referring ANR plans to the commission that do not propose to create new lots.

Mr. Mascolo: The commonality for all towns might be a desire to create greater opportunities to create additional communication opportunities between towns and the Commission, and to provide opportunities to provide input on projects that are requested.

Mr. Hopkins suggested that the notes from the meeting might be distributed to all planning boards, which can then review and sign off on them, and submit them to the commission. I believe we've all said a lot, so let's put it all formally to the Commission.

Mr. Seidman: Related to Special Permits: The town has its own list of concerns, but we have our own list of concerns that we look at related to special permits and site plan review processes; in a lot of ways, we are doing the same thing as the Commission. Aren't we repeating work?

Mr. Hopkins: My ideal state would be to establish criteria for responsible development. In some cases you might need to go to the commission, in some cases not.

There was some discussion related to commercial development plans, and the need to provide updates and revisions in order to meet modern concerns.

Mr. Jason: I think that the changes to the DRI Checklist should be held until better communication procedures can be implemented, and specific criteria is presented and discussed.

Mr. Robinson: What specific changes to checklist are not satisfactory?

Mr. Hopkins: If you have to ask that question, then haven't heard me.

Mr. Robinson: What I think that you've said is that you want better communication between the towns and the Commission. But what in this revised DRI Checklist would you say "don't do"?

Mr. Hopkins: The premise of your question goes against the points that I've been trying to express for the past half hour; if you're still asking me about details of the checklist, then I've failed to express myself clearly enough.

Mr. Robinson: So what you're saying is that we should revise this checklist until we do this bigger planning project?

Mr. Hopkins: Absolutely! The Checklist should be the function of a truly level relationship between the Towns and the Commission. After that, the checklist is easy – the checklist falls out of that process. If the checklist is put out in front of that, it simply reinforces the dysfunctional relationship. I've tried to say this every way I can.

Mr. Robinson spoke about the need for his board (Tisbury) to update and revise their own zoning bylaws in order better comply with regional concerns.

Mr. Robinson: We can move forward with revision of local bylaws, in order to codify and protect regional interests; when that process is completed – when then have been enacted, and in the books, in a few years, perhaps – the Checklist might no longer be as absolute of an entity.

Mr. Hopkins: You have five members of the Oak Bluffs Planning Board that would be involved in that process. We are frustrated that we don't have the resources we need to more broadly consider regional issues and regional concerns.

There was some discussion related to a recent proposal for a battery backup project, proposed for a lot near the Oak Bluffs / Tisbury border.

Mr. Robinson: Part of the message here is that we as Planning Board members need to step up and do more. We can't expect the MV Commission to do everything for us – we have to shoulder some of that responsibility.

Mr. Jason: We need the MV Commission to tell us what we're not doing as a town – where are we failing? Where can we do better?

There was some discussion as to the role of planning board members in terms of protecting regional interests.

There was general consensus that all planning boards would welcome recommendations from the commission as to how local zoning bylaws might be better modified to protect regional interests.

Mr. Jason agreed that local regulations that do not contradict the Building Code could be adopted, with the caveat that local regulations that are too restrictive could be appealed to the state and (potentially) overturned.

There was discussion related to Tisbury's recent adoption of multi-family housing regulations. I think the commission can better serve local towns in adopting better regulations, such as multi-unit housing, nitrogen regulations, density regulations, etc.

Ms. Morrison: The affordable housing definitions got stalled by Town's Counsel. We have the same Town Counsel in five of the six towns. That's something we need to address with them.

Mr. Veno: So, Tisbury is the only town that adopted the affordable housing definitions because they have different legal counsel?

Mr. Seidman: That's correct.

Ms. Flynn: West Tisbury is currently looking at multi-unit housing definitions. So that's in process there.

Mr. Seidman: I do agree with idea of not allowing exemptions to any given rule. If the project is well designed, it doesn't matter if it's affordable or not, it should be approved.

In concluding, there was consensus that greater avenues of communication between the Towns and the MV Commission was highly desired. Town Planning Boards generally are requesting and would welcome assistance from the Commission

- (a) Establishing criteria against which all development is measured for overall impact;
- (b) Reviewing local bylaws for compliance with established criteria;
- (c) Revision of the DRI Checklist to comply with established criteria; and
- (d) Review and modification of the general process of project referral, so as to provide for (potentially) mutual concurrence and Full DRI Review at a Town's sole request.

OTHER BUSINESS

Mr. Finn requested confirmation of a public hearing to receive comments on the 25% design for the Vineyard Haven Road, as developed by the MV Commission in association with Mass DOT. The board agreed to hold the public hearing on November 12, and directed Mr. Finn to post public notice for same.

Meetings were tentatively scheduled for October 29, November 12; December 3, and December 17.

ADJOURN

There being no further business, it was MOVED by McCourt, SECONDED by Morrison
To Adjourn.

VOTED: 5, 0, 0.

The meeting was declared adjourned at 7:04 PM.

Respectfully Submitted,

Douglas Finn,
Administrative Assistant

APPROVED by vote of Planning Board at a regular meeting, held on	
_____	(Date of vote)
_____	Mascolo
_____	McCourt
_____	Morrison
_____	Morgan
_____	Searle
_____	Cisek (alternate)