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Martha's Vineyard Commission

Land Use Planning Committee

Draft Notes of the Meeting of October 1, 2007

Held in the Stone Building, New York Avenue, Oak Bluffs. 5:30 P.M.

Commissioners Present: John Breckenridge; Christina Brown; Chris Murphy, Ned Orleans; Pete Cabana; Linda Sibley and Richard Toole.

MVC Staff Present: Mark London, Paul Foley.

1. DRI Checklist Review

Commissioners were looking at a draft document of the Standards and Criteria: Administrative Checklist for Developments of Regional Impact (DRI Checklist) that showed changes that had been agreed upon so far by the LUPC in bold type. Chairman Brown said let's start at the beginning with the changes in bold type.

- **2.25: Background**

- On Thursday February 15, 2007 the Martha's Vineyard Commission considered some of the recurring interpretation issues that needed to be clarified while continuing with the full revision of the DRI Checklist.
- Staff was asked by LUPC to place the three interpretations that the full commission adopted into the Draft DRI Checklist.
- The three issues were:
 - 1. Mixed-Use Developments re: Section 3.301 (Should the MVC count residential square footage in the calculation of square footage?).
 - 2. "...create or accommodate..." re: Section 3.401
 - 3. Square Footage re: Section 3.601: Should the MVC give applicant's credit for their existing square footage when they plan to demolish or otherwise replace an existing building?
- On the first matter the MVC voted that under sections 3.301a and 3.301b (Commercial Business and Industrial Development), in a mixed-use development, residential space should be excluded from the area calculation provided the residential space is permanently restricted to remain as residential excluding short term rentals of less than two months.
- On the second matter the MVC voted that Section 3.401b (Other Development), refers to a project becoming a DRI, either by building a project larger than the threshold (e.g. a 12-room hotel) or by expanding an existing development beyond the threshold (e.g. adding 4 rooms to an 8-room hotel). However, it does not apply to a property that is already a DRI (e.g. adding 5 rooms to a 20 room hotel previously approved as a DRI). Note that, in the latter case, the project will be referred to the Commission under section 3.102a, "Once a DRI, always a DRI" which is a concurrence item.
- On the third matter the MVC voted that under section 3.601 (Private and Public Facilities and Places of Assembly) the 2000 square-foot threshold shall apply to the gross increase in floor area. In other words, we will not give credit for the existing square footage.
- Staff placed the third item regarding square footage thresholds in the Definitions Section as 2.25.

- **2.25 Square Footage Thresholds: The 2000 square-foot threshold shall apply to the gross increase in floor area. In other words, The MVC will not give credit for existing square footage in the event that a building is demolished or removed.**
 - Some questions were whether the definition applies to a pre-existing non-conforming use or very small additions to a building, and whether we actually use this phrase in the Checklist.
 - We do not use the phrase square footage thresholds in the document so it probably does not belong in the definitions Section.
 - We could save the sentence temporarily and see where we want to put it.
 - A commissioner thought that it should say we will not give credit for a building that is being demolished. Take out the word building.
 - Another thought it would be appropriate if we included it as an asterisk footnote everywhere it applies.
 - LUPC decided to take it out of definitions and put it where it applies.

- **3.101**
 - **Currently 3.101a reads** "A municipal agency..." and was proposed in the Draft to read "A municipal **land regulatory** agency..."
 - A commissioner felt that "land regulatory" is a huge change. It is a big change from what we have now. Discretionary Referrals do not require a permit now. Because we have to concur it is reasonable to allow some of those other boards to refer items of importance.
 - It has always said municipal agency. Is there any good reason to add land regulatory? It gives a lot of leeway.
 - A commissioner used as an example if the Selectmen of a Town are railroading a casino in they will get what they want unless there is a board that can challenge it.
 - It was noted that Chapter 831 allows for a citizen's petition for a DCPC not a DRI.

- **3.102b**
 - **LUPC Dropped 3.102b from the checklist.**
 - **Currently 3.102 reads** "Any development, with the concurrence of the Martha's Vineyard Commission, which: a) is on property which has been, in part or in whole, the subject of a previous DRI application and which was denied, or is an amendment or modification to a previously approved DRI Application; ("once a DRI always a DRI"); or b) is a new proposal on a site upon which there is a previously approved DRI application for a different proposal.
 - A commissioner asked what we did with 3.102b noting that it seemed completely backwards.
 - A board thought that the once always trigger was punitive.
 - Mark thought we had worded it to eliminate the DRI's that were denied and those that were approved but not executed.
 - Say they sell the land that had a subdivision on the land that we approved but was not executed. Say someone now wants to build an 1800 sf business that would not trigger the checklist.
 - We could unless this has expired or been withdrawn.

- The wording is already awkward. What are the goals? If there is an approval they have to do it as approved, they cannot change. Therefore, if someone tries to come and use that property for something that is minor then they have to withdraw the original. This is like what happened at BADD Co.
 - Counsel has a way of wording this. We did this with the Shiretown Inn. So you have this property with a DRI. You should be able to cancel the approved DRI.
 - We can add a second sentence that says Note: This does not apply to properties on which previously approved projects have expired or withdrawn.
 - Someone was afraid that if they were denied then they would withdraw. This way they could get a Decision and then decide to withdraw and the property would not be encumbered. We should be explicit about denials, expiration, and withdrawals.
 - We should note that we did this, if we do it, at the bequest of one of the local boards.
 - Staff asked, if this were adopted, what happens to those properties that have been denied in the past and are DRI's forever. Do we retroactively release them?
- **3.104c**
 - **Currently 3.104c reads** "Any development which proposes the division or subdivision of land that is identified by any state or federal or local agency as being of rare wildlife habitat significance."
 - **3.104c is proposed to read "Habitat:** Any development which proposes the division or subdivision of land **or the topographical alteration of land** that is identified by any state or federal or local agency as being of rare wildlife habitat significance."
 - There was a question about clearing the land and cutting trees.
 - At one point we considered adding the word "clearing" as well but someone felt that "clearing" should be defined.
 - A commissioner wanted to take the word "rare" out of 3.104c. I also think this should be by Concurrence.
 - Another commissioner thought that we should add "cutting, clearing, or topographical alteration..."
 - Define cutting and clearing.
 - LUPC agreed that we are concerned about this kind of development.
 - Chairman Brown asked if 3.104b and c should both be concurrence. LUPC unanimously said yes.
- **3.105**
 - We decided to leave 3.105 as it is. Is that ok? LUPC said yes
- **3.203b**
 - LUPC extended the time frame that a property had to be actively worked as farmland to be within the past twenty five (**25**) years instead of five (5) years.
 - Someone noted that the draft document had the (25) but needed to add the word twenty.
 - Whatever date we set we have to do an inventory of the existing Farmland and that since the date we set. I almost want to say anything that was being farmed at a time when farming was once viable farm land.
 - Do we have a map that establishes where farms were?
 - I am trying to think when we have said no to a house on prime agricultural land.

- One problem is if you only have five acres you probably don't have a big farm. But if you come in with a 25 acre piece you can say this is farmable land and you must cluster this and preserve the prime agricultural soil.
- There was a project in West Tisbury that had been farmed recently and had the agricultural soils but the West Tisbury Planning Board did not send it to us.
- We should have a map of the prime agricultural soils. Do a simplified map of the soils and where the farms were.
- Why don't we go forward with the Jan 1, 1974 for now and if later we can come up with a good map we can change the date.

- **3.301**

- In the Draft DRI Checklist 3.301 is proposed to read:

Any development of commercial, storage, office and/or industrial lands or building(s), or any private educational facility that has:

a: new construction totaling 2,000 square feet or more of **commercial** floor area in one or more buildings

b: **new construction totaling 2,000 square feet or more of commercial and residential floor area in one or more buildings, with the concurrence of the Martha's Vineyard Commission; or**

(Note: under sections 3.301a and 3.301b; In a mixed-use development, residential space should be excluded from the area calculation provided the residential space is permanently restricted to remain as residential excluding short term rentals of less than two months.)

- The Note is from the DRI Interpretations that were adopted in February.
- In the note you can take out 3.301a since it is not a mixed use anymore.
- Add "mixed-use" in b.
- A commissioner did not think it needs to be a note. We can just put it into the second sentence of 3.301b.

- **3.301f**

- Currently 3.301e reads "any change of use, or increase in intensity of use (including conversion of basements, storage space or other exempt floor space to active floor space) with the concurrence of the Martha's Vineyard Commission;
- Since there is a brand new 3.301b what was 3.301e would become 3.301f.
- The Proposed Draft 3.301f (formerly 3.101e) would read "any change of use **of part or all of the building (including conversion of basements, storage space or other exempt floor space to active floor space)** with the concurrence of the Martha's Vineyard Commission; or
- We have a real problem with the definition of storage. I don't think we should exempt storage at all. Either that or we have to define storage space better particularly the difference between storage and stock space. The way it is written now is irrational. If you are on grade it is one thing. If you have a basement it doesn't get counted.
- The classic example is Granite Hardware who had massive storage space that became active space.

- Linda Sibley proposed tightening it up so that under section 3.301 we should change the language to read any development of commercial "Including non-exempt storage" and then under definitions add 3 definitions of storage.
 - Under floor area where we have a definition we should change the language to read "exempt passive storage".
 - Where you put seasonal storage does not contribute to traffic and septage. But if you are stocking things on site it should count toward your commercial square footage for traffic and septage etc...
 - Someone who has 2100 sf on grade is a DRI but someone who has 1950 sf and a basement they are not, even though they have twice as much space.
 - There was an example of a number of businesses on State Road in Tisbury that have gotten around square footage requirements by parking truck trailers in back that are used as storage and stock rooms. As long as it is on wheels it is not considered a building. They do not move and this is one way for them to expand without getting a permit or coming to us.
 - At Shirley's four of them have been dug down into the ground and have a roof over them. They were never referred to us as a DRI. They have doubled or quadrupled their capacity. There is a problem with Tisbury Zoning.
 - Linda's other suggestion is that we just do not exempt storage at all.
 - Chairman Brown said she is not sure she could explain to the world at large why a 2000 sf retail business comes to us depending on whether they store their stuff off-site or on-site. Why does it matter?
 - Linda replied "Traffic".
 - Christina offered the following example. There are 2 businesses. One has its stock on site and one off site. You are saying the person who has the stock in the basement is going to do more business then the one with stock off-site.
 - Linda replied yes and added that she thinks we should also add the storage of construction equipment in a commercial zone.
 - Commissioner Breckenridge said we should also add landscaping equipment.
 - Linda said that Shirley's is just an example which was a DRI but there are others who may not have been referred who are doing the same things. These trucks are de facto buildings. They have the affect of expanding these buildings and businesses.
 - We should be looking at this truck storage as buildings. they can be moved but don't move
 - We should do some compliance review
- Chairman Brown asked those in attendance to look at Attachment A and B.

Adjourned 7:02