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## **Martha's Vineyard Commission**

### **Land Use Planning Committee**

# **Notes of the Meeting of October 27, 2008**

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

Commissioners Present: Richard Toole (Chairman); Christina Brown; Ned Orleans; Doug Sederholm; and Pete Cabana.

MVC Staff Present: Mark London; Paul Foley; and Bill Venno.

## **1. DRI Checklist Review**

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- The following Documents were provided for discussion purposes:
  - MVC Meeting Minutes of the DRI Checklist Public Hearing on February 21, 2008.
  - Proposed Revised DRI Checklist – Changes in Bold Type.
  - Synopsis of Proposed Changes to DRI Checklist
- Paul Foley gave a brief overview of the documents including a recap of the Public Hearing and the issues and public comments. He suggested that the LUPC proceed by going through the document (with the revised DRI Checklist changes in bold type) item by item.
- Mark London added that he had the Cape Cod Commission (CCC) DRI Checklist which might include useful items.

### **Definition of Demolition**

- Presently, there is no definition of demolition in the Checklist. The definition in the draft DRI Checklist is:

*The removal or dismantling of existing construction, in whole or in part, with or without the intent to replace the construction so affected. (From State Building Code, 7<sup>th</sup> Edition, 780 CMR 9302).*
- Paul Foley said that the draft DRI Checklist refers to demolition in two places: 3.104a (demolition of historic structures) and 3.402 (demolition of structures in commercial districts).
- Apparently, some building inspectors interpret that the removal of virtually all of a structure is not a demolition if it is replaced with a new structure of the same size.
- A concern about our draft definition is that it is so broad that it could require referral even of small renovation projects involving removal of part of an existing building.
- Christina Brown suggested not having a definition of demolition, leaving this up to building inspectors.
- Several Commissioners felt it was desirable to have a clear definition of demolition to avoid situations where virtually the whole building is demolished and a small portion is kept and incorporated into what is effectively a new building.
- The CCC definition is:

*Any act of pulling down, destroying, removing, dismantling or razing a structure or commencing the work of total or substantial destruction with the intent of completing the same.*
- Mark London said that there are two somewhat different issues:

- For many impacts, such as traffic or wastewater, demolition of floor space and its replacement with equivalent floor space has no impact, so it makes sense to look only at the net increase in floor space.
- However, when it comes to preserving historic structures and community character, as well as scenic values, there is a concern about removing existing structures, whether or not they are designated historic.
- Christina Brown suggested that 3.401a could read “the demolition in whole or in part of a historic structure” and take it out of definitions all together. She felt that if the MVC uses one that is narrower than the town, we could have conflicts with building inspectors.
- Mark London said that presently, some towns have relatively little protection for historic structures, in that much or even most of the historic areas identified by the Island Plan Built Environment work group are not historic districts. Thus, the restriction on demolition of structures in commercial districts provides some measure of review over the demolition of older buildings in town centers.
- Ned Orleans said he is concerned about residential districts as well, since the demolition of older homes and their replacement by mega mansions is changing the character of the town and Island. Several Commissioners said that changing this would be a significant expansion of the Checklist, that goes beyond the scope of what we were intending to do with these revisions. Christina Brown said then we would have to open the Public Hearing up again because that would be a new item.
- Doug said that in cases like the Navigator, there is a legitimate concern about the visual impact in a very public place; there are certainly cases where these changes have impact because they are in town centers or historic settings. In the case of the Navigator, the replacement may well be an improvement, but that it could have been a beloved building that was demolished without any review by any board.
- Christina Brown asked if the Navigator was a demolition or was it a replacement. Everyone said that it was both.
- Mark London suggested saying “in whole or in *substantial* part”, and giving some definition for substantial. Paul Foley said that some towns use 25% removal, some use 50%. Mark suggested using “50% of floor space or 50% of any publicly visible facades”, in that replacement of the main façade of a building could have a major impact, even if there is no change in floor space.
- Christina Brown said she doesn’t think there is a lot of threat. We are looking at neighborhoods and character in the Island Plan. That may be the time to look at what is historic. She is concerned about relations with building inspectors. She doesn’t think there will be another Navigator soon.
- Paul Foley said the reason why we need a definition is to be consistent.
- Doug Sederholm, Pete Cabana, Ned Orleans, and Richard Toole agreed that the DRI Checklist needs a definition of demolition, but the draft definition is too broad.
- Bill Veno suggested that we look at non-conforming use. The intent of a non-conforming use is that it is not supposed to be there. If it is substantially demolished, should it be replaced?
- Ned Orleans suggested using the word “substantial” in the definition, then defining that in a recommendation to building inspectors. Christina Brown said then we might as well include the definition in the Checklist, saying substantial more than 50%. Bill Veno suggested the wording should be “more than half the structure”.
- Ned Orleans said that if you take a building and replace it with a building the exact size, we still care because of the appearance of the original and the replacement buildings.
- Mark London suggested that we say that any new commercial building over 2,000 s.f. be sent, regardless of whether it is replacing a building or not.

- Christina Brown said it appears we are using demolition as a way of reviewing historic buildings. Are we trying to substitute ourselves for the local Historic Committees?
- Doug Sederholm said that since there is such a variation from town to town we need a broad net.
- Ned Orleans suggested that we add the word "downtown" to "commercial" so that areas that are part of the downtown but not zoned as commercial would also be covered.
- Mark London suggested the item state "demolition is the removing or dismantling of more than 50% of the floor space or more than 50% of any exterior wall visible from the public way". Christina Brown thought this sounded like the MVC trying to be an historic commission.
- The LUPC decided to recommend leaving the definition of demolition as it is in the draft but add that removal of 50% of the floor area constitutes demolition. To read:

***2.16 Demolition: The removal or dismantling of an existing construction, in whole or in substantial part (at least 50% of the floor area), with or without the intent to replace the construction so affected.***

### **Other Issues**

- Definition of Development: Doug Sederholm pointed out that the last bullet in the definition of "Development" has what must be a typo. The word "water" should be "waste". All agreed.
- Definition of Farmland and Clearing of Land:
  - At the Public Hearing, Ben Hall had an issue with the selling of wood as a crop. A number of people cut trees as Christmas trees or firewood, and they do not want to be referred to the MVC for that.
  - Doug Sederholm said that if we thought that the sale of firewood is not farming then we could add a note.
  - Christina Brown said that she thinks that it is farming.
  - Mark London noted that at the Public Hearing, Jim Athearn was saying we should exempt the sale of limited amounts of wood for firewood.
  - Paul Foley said that if someone is clearing more than five acres of land don't we want to see that?
  - Christina Brown said she thinks that Ben was concerned with lots that had been cleared of 5 acres or more in the last 20 years would suddenly be subject to DRI Review. She doesn't think that is going to happen.
  - Doug Sederholm said that if one person is leasing a wood lot to someone it is one thing. If they are planting trees for harvesting then it is farming. But if it's just a woodlot that was not planted and occasionally culled for wood, it is not.
  - Bill Venio asked if woodlots ever get clear cut.
  - Mark London pointed out that there are DRI triggers elsewhere in the Checklist that catch clear cutting of more than 2 acres.
  - Christina Brown pointed out that there could be a problem if something triggers the DRI Checklist but does not need a development permit. How does it get to the MVC? The clear-cutting of the Southern Woodlands was sent as a discretionary referral. We are not going to solve that tonight.
  - Mark London said that, in the future, we might want to differentiate between horse farms and food production farming.
- Definitions in General: Bill Venio suggested that maybe we should look at and use some of the Cape Cod Commission Definitions since they have already been approved by the Secretary.
- Definition of Junkyard and Commercial Parking Lots:

- Mark London noted that Ben Hall had suggested we add a definition of “junkyard” (referred to in 3.302), and also asked what the difference is between a commercial parking lot and other parking lots as noted in 3.301h.
- Christina Brown said she thought this was to prevent lots from indiscriminately becoming paved parking lots.
- LUPC agreed not to define junkyard or take out the word “commercial”.
- DCPC: It was suggested that we add a trigger for the expansion of a special way beyond 12’ wide. However, this might be adequately covered by the wording of section 3.103, if the DCPC Guidelines already require this referral. Jo-Ann Taylor should be asked.
- Land Agency: Mark London noted that Ben Hall suggested that 3.104 b and c be changed from “local agency” to “municipal land regulatory agency”. Paul Foley pointed out that the trigger for both is now a concurrence review, so the library board could send an item. LUPC decided that its fine as it is.
- Division of Land: LUPC decided to take out “or Subdivision” in the heading to Section 3.2.
- Division of Ten or More Acres:
  - Glen Provost had suggested that we clarify that Section 3.204 goes up to 29.9 acres, since 3.205 deals with 30 or more. Mark London said that the wording be “Ten or more, but less than thirty”.
  - LUPC discussed Eric Peters question about changing 3.204 from eight years to 1974. Chris Seidel said we have a map from 1971 but not from 1974, and suggested we use 1971 because we don’t know exactly what was done in between 1971 and 1974.
  - Doug Sederholm noted that we could do research at the Registry of Deeds. The information should be available.
  - Paul Foley suggested that maybe we should create a color coded parcel map that shows when each new subdivision line was drawn divided by decade.
- Doug Sederholm asked if “which does not propose to protect” in 3.203 modifies a, b, and c or just c. Since the intention seems to modify all three, the last part of the sentence, starting with “and which does not propose to protect . . . ” should start on a new line.

### **Other Facilities or Towers - Wind Turbines**

- The draft Checklist item says:
 

*Any tower, wind turbine, or structure over 50 feet in height located within a District of Critical Planning Concern or over 100 feet in height in other areas – with the concurrence of the Martha's Vineyard Commission. However, this limit shall be 200 feet in height in a Town that has adopted a Wind Turbine and Tower Plan that has been approved by the Martha's Vineyard Commission.*
- Mark London showed a map of DCPCs. The purpose of being more restrictive on towers in DCPCs was to provide additional review along scenic roads, the coast, special places, the southern coastal ponds, and other critical areas.
- Pete Cabana said we should designate an Island-wide Renewable Energy DCPC, and look at where wind turbines should go. Ned Orleans agreed that we need an Island-wide wind tower plan.
- Paul Foley noted that at the DRI Checklist Public Hearing, Gary Harcourt had said that they did not want a height limit for the DRI trigger because then people would build smaller ones to avoid review. He thought we should either look at all of them or none.

- Mark London asked LUPC if they thought 100 feet the right height for review, since many proposals are between 100 and 150 feet.
- Christina Brown said the only reason she sees to review them is visual and therefore the trigger should be 200 feet.
- Doug Sederholm said his view is that we are in a transition period and we should be getting them all now until we have a plan in place. This is a concurrence item so we don't have to do a full review.
- Bill Veno said that some towns are looking at their regulations right now. Christina Brown said we could send this to them for their comments.
- Doug Sederholm said he wanted to move it forward. This is an interim situation.
- Ned Orleans said that Kate Warner had suggested preparing a zoning plan for wind turbines, including mapping views, and asked if we are in the process of doing that.
- Pete Cabana said it would be useful to do this for land based wind, but we will find that the capacity is limited and we will need to go offshore to get more substantial production.

The Post-Public Hearing LUPC Review of the revised DRI Checklist was adjourned at 7:10 pm.