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Martha's Vineyard Commission

Land Use Planning Committee

Notes of the Meeting of February 23, 2009

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

Commissioners Present: Linda Sibley (Chair); John Breckenridge; Chris Murphy; Ned Orleans.
MVC Staff Present: Paul Foley; Mark London; Bill Wilcox; Mike Mauro

1. Airport Mobil Groundwater Monitoring Plan (DRI 441-M) Review

Applicant: Michael Rotondo

Staff Report:

- Paul Foley Explained that on Thursday December 18, 2008 the Martha's Vineyard Commission voted that the proposal to add a 10' by 14' foot mechanical room addition to the car wash to house a waste oil heater in order to allow the carwash to operate on days when the temperature is below freezing was not significant enough to warrant a public hearing and voted not to concur that the proposal is a Development of Regional Impact.
- However, as a previous DRI the MVC reviewed the operation to ensure compliance with conditions contained in the DRI 441 Decision of January 16, 1997 and the DRI 441-M Modification of March 19, 1998. In that review it became apparent that the owner/applicant had not satisfactorily completed the preparation of a groundwater monitoring plan. The Commissioners decided that the current proposal does not require a public hearing but their decision was based on the agreement that the Applicant would submit a completed groundwater monitoring plan for review and approval by the LUPC before a Building Permit is issued.
- Bill Wilcox reiterated that Airport Mobil was conditioned to prepare a groundwater monitoring plan originally and they never did. So when they were in here for the Car Wash Heater we used that as a hook.
- There was a lot of back and forth between Bill, Matt Poole (Edgartown Board of Health Agent), and Joe Forns (Consultant for the Applicant).
- They finally agreed on something that has re-test requirements. If they exceed 50% of the drinking water standards, they will discuss options with the Board of Health and the MVC and possibly have to retest and at 75% of the standards a retest is required within 14 days. It is better than anything we have had in the past with them.

Commissioner Questions:

- Chairman Sibley noted that the document says that there were hits in the past and asked if they were big hits?
- Bill said yes. They thought that employees had been dumping liquids near the down gradient well. It pointed out that we needed a plan for re-testing. Mark London added that the problem did not go on but the time went on before we knew whether there was a problem.
- Chairman Sibley asked if we have a problem there now.
- Bill said that currently they are not over the limits.

- **Chris Murphy made a motion to approve as presented that was duly seconded by John Breckenridge.**
- Commissioner Murphy asked Bill if he was comfortable with the next steps to be taken if needed
- Bill said it depends. We have taken care of the first steps.
- Commissioner Murphy asked what happens if Bill stops getting the reports.
- Bill said it then comes back down to the compliance issue.
- Commissioner Murphy asked if we can deal with this in a simple way. Should we incorporate some kind of requirement such as a performance bond?
- Bill said he was not sure what kind of steps we could take. He was under the impression that the MVC can't enforce fines.
- Commissioner Murphy disagreed and said that we can.
- Bill felt that this is as good as it is going to get. Besides the blip when they had the elevated levels they have been pretty good about doing there tests.
- Commissioner Orleans asked what the Edgartown Board of Health Agent is likely to do if he doesn't get the report.
- Bill said that they have some power over the Applicant in terms of inspections over cigarette sales.
- Commissioner Murphy noted that if the only solution for non-compliance is to shut down the whole business that seems over the top. We need something in between.
- Chairman Sibley said that we have required him to provide evidence of contamination. Once contamination is evidenced there are plenty of organizations that would come into play such as the Department of Environmental Protection (DEP). We have forced him to do the testing that would reveal the offense. She asked Bill if he agreed. He did.
- Commissioner Breckenridge said that if the tests were not being conducted then we might consider a performance bond. If he doesn't follow through on our requirements then we collect on the bond.
- Commissioner Orleans said that if the test is scheduled in April we should know that the test is done.
- Commissioner Murphy said that we should note in the staff notes that a performance bond was raised and note that we may come back to it later.
- Mark London asked how we can come back to it later if the Applicant has been approved for what he wants to do.
- Chairman Sibley said we can take them to court or report them to DEP.
- Commissioner Murphy asked what if we had a "when and if" clause. As long as they test they do not have a problem if they do not do the test then they have a problem. If they don't test we can take them to court.
- Chairman Sibley said she doesn't think we can add a performance bond at this point.
- Mark London noted that if they are contaminating the sole source aquifer then we have good standing for a court case.
- Commissioner Breckenridge said we should look into the performance bond issue.
- Chairman Sibley asked if we can contact Counsel and ask him if we can add a performance bond to this document. The LUPC should ask Mark to ask Counsel if that language can be added to this.
- Commissioner Murphy said that we should simply let the Applicant know that if he doesn't do the testing as agreed then we will start requiring a performance bond. The other issue is the waste oil burner.
- Bill said that the DEP already regulates the waste oil to a certain extent in terms of the time of year when it can be burned.

- Mark London said that we could say that this is approved but as part of the decision if he does not test he may be required to supply a performance bond subject to approval of Counsel.
- ***The Motion was refined to say that LUPC approves the revised ground water monitoring plan with the proviso that if he falls to test in the future he may become subject to future performance bonds. Seconded by Ned Orleans and voted unanimously by LUPC.***

2. Island Wood Works (DRI 311-M2) Modification Review

Applicant: Michael Ryan (Island Wood Works); Kristin Cook

Guest: Ken Barwick (Tisbury Building Inspector)

Staff Report:

- Paul Foley gave a staff report. The property was a DRI in 1989 when James Rogers applied to build the 2-unit 6400 square foot building. The MVC approved the proposal with conditions including that the building be restricted to wholesale business.
- In February 2008 Rickard Bakery came before the MVC to locate their bakery in the other half of the building. The side where Island Wood Works is located was the home of Baynes Electric.
- The proposal is to build a mezzanine level within an existing 3,200 sf building for storage of wood. The mezzanine would be approximately 1600 sf and would be used for the storage of wood for milling. The existing building ceilings are approximately 25 feet high. There would be no retail sales from the property.

Discussion:

- Mark London noted that if the new floor area is considered active space then this would be a mandatory referral because it is adding more than 1,000 sf resulting in more than 2,000 sf. The new version of the DRI Checklist exempts passive space. The old one does not.
- Chairman Sibley said that the old version was ambiguous about active and passive. We can discuss that. She would be likely to argue that this is active. However, the point here is that the project is already a DRI, so the question is whether the change of use is an increase in intensity of use that requires a public hearing.
- Commissioner Murphy asked if when this comes before the Town for a Special Permit will they review noise and dust.
- Ken Barwick said that under the Special Permit they review noise, dust, odors, anything that may have a negative impact on the surrounding neighborhood.
- Commissioner Breckenridge asked whether the new proposal would have more or less trucks.
- Michael Ryan said it should be less than it was.
- Commissioner Breckenridge noted that Baynes had a bunch of trucks. When you have a milling operation in the heat of the summer and open the windows it could be noisy.
- Michael Ryan said that actually they will not have a fork lift and will be carrying them up the stairs
- Mark London said that there are two issues. One is the change of use, the other is the new floor space.
- Commissioner Orleans asked about the surrounding land uses.
- Ken Barwick noted the many businesses on Evelyn Way such as the lighting store, BFI, MV Electric, and Trip Barnes Moving. There is residential is on the east. There is a residence on the corner of Cook Street and one next to this. The immediate residential neighbor operates a landscaping business out of his property.

- **Ned Orleans made a Motion that this does not require a public hearing which was duly seconded by Chris Murphy.**
- Chairman Sibley said that she agrees. The checklist says adding 1,000 sf resulting in more than 2,000 sf but in this case they are already over that and have been reviewed as a DRI, plus the town will be looking at the noxious stuff. I anticipate that we would say fine.
- She asked who owns the building. The building is owned by Morton Rosenberg.
- Commissioner Breckenridge said he agrees but wanted to explore the noise issue a little more. He asked what size trucks wood deliveries would arrive on.
- Michael Ryan said his operation is not that big, probably a 20 foot flat bed.
- Commissioner Murphy said that this would be a reduction of what was here before.
- Chairman Sibley said that by being able to handle this material on site he is reducing the activity and the number of trips that would be required. This is not in the retail front row. It's in a de-facto light industrial area.
- Michael Ryan said they he does not plan to have any containers.
- Chairman Sibley said that we have a motion that this is not a significant change.
- **The LUPC voted unanimously to recommend to the full Commission that this is not a significant change and does not require a public hearing review as a Development of Regional Impact.**
- **Ned Orleans made a motion to recommend to the full commission to approve the change. This was duly seconded by Chris Murphy and voted unanimously by the LUPC.**
- Chairman Sibley had one more question and asked the Applicant what becomes of the wood.
- Michael Ryan said that he mills the wood to make cabinets and staircases for his home building company.