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## **Martha's Vineyard Commission**

### **Land Use Planning Committee**

# **Notes of the Meeting of May 18, 2009**

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

*Commissioners Present: Linda Sibley (Chair); Christina Brown; John Breckenridge; Ned Orleans; Chris Murphy; and Peter Cabana*

*MVC Staff Present: Paul Foley; Mark London; Bill Wilcox, Chris Flynn,*

### **1. O.B. Harbor Gas Station (DRI 621) Pre-Public Hearing Review**

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Applicant: Todd Alexander and Michael Dutton

#### **Staff Report:**

- The town of Oak Bluffs is proposing to install two 1500 gallon gas tanks at the Harbor Master's Shack in order to provide a fueling station for recreational and commercial boats.
- The two 1500 gallon tanks would be double walled and are each 18' long and about 5' 6" high. The Tanks could be partly buried (2' 3" deep) with a 3'-4' fence around them.
- The tanks would be located between the harbor sidewalk and the parking.
- The fueling would take place on the existing floating dock just north of the Harbor Master Shack.
- The Town says that the project could become permanent if the issues with the commercial retailers are not resolved.
- There would be no fueling when the cruise ship tenders are in the harbor.
- The proposed fuel station would be managed and operated by the Oak Bluffs Harbor Master Staff.
- The Town is hoping to have this facility up and running by July 4<sup>th</sup> weekend.

#### **Commissioner Statement:**

- John Breckenridge made a statement noting that he is on the Oak Bluffs Conservation Commission and the Oak Bluffs Harbor Management Committee which is an advisory committee to the Board of Selectmen. He said that his position on these boards as well as the MVC do not constitute a conflict of interest. The project will be before the Conservation Commission which has a public hearing scheduled for the project on May 26. The Harbor Management Committee has already passed a letter of recommendation of the project to the Selectmen.

#### **Applicant Presentation:**

- Todd Alexander, the Oak Bluffs harbor Master, clarified that there are still a couple of options for which type and make of gas tanks they will purchase. They will either have two 1500 gallon tanks or one 2,000 gallon tank with two separate 1000 gallon sections for gas and diesel.
- He said neither of the two commercial operations was ever run efficiently. The Town would like to run a facility that combines the pump out system at the same place as the gas.
- Michael Dutton, Oak Bluffs Town Administrator, said the only reason they are going this route is that it looks like there will be no fuel in the harbor this year. If the harbor had a functioning private enterprise they would not be here asking for this.

- Todd Alexander said it could make money for the town and also provide a better service. The issues that the commercial operators have now put them in a situation where they just want to get back at each other. The leasing and sub-leasing is totally convoluted.
- Chairman Sibley noted that when you have a monopoly you do not have much motivation to please.
- Commissioner Breckenridge added that regardless of who is providing the gas there is an economic multiplier to having gas available in the harbor.
- Todd Alexander said that not having gas is not an option. Even it is not run well. The reservation numbers are down already. They can get gas at Packers in Vineyard Haven or Edgartown but that will draw boats away from Oak Bluffs Harbor.
- Michael Dutton added that the Town generates about \$900,000 a year in revenue from the harbor. Their estimate is that if they lose the ability to service boats, people would choose not to come and the Town could lose about \$100,000.
- Todd noted that only two or three years ago they used to have two fuel docks and now there are none. People are amazed.

### **Commissioner Questions:**

- Chairman Sibley asked Commissioners if they had questions or requests for more information.
- Commissioner Cabana asked if they would be able to make a decision on which tanks and equipment they would be using by the public hearing? Todd said yes he thinks so. He said he would submit a document with all of the different sized tanks.
- Commissioner Brown said it would be nice if they could add a scale figure to the images.
- Bill Wilcox asked if Dave Grunden's going to have to relocate his up-wellers for the shell fish. It was suggested that they should get a letter from Dave Grunden.
- Chairman Sibley asked who has the primary responsibility for ensuring that this is not a danger.
- Todd Alexander explained that the State gave the Town a spill trailer that is kept at the Highway Department and that a number of people in his office were trained.
- Bill Wilcox said that it would be good if there is some sort of absorbent material for spills handy.
- Todd said that they have pads (shaped like hot dogs) for that. He added that he thinks the most opposition is going to be residents that live down there who will be worried that they will be smelling gas.
- Mark London asked that since there is a Special Permit required from the Planning Board if they can make the project subject to a limited time to be reviewed again to see if there are any problems.
- Commissioner Brown said that the Planning Board can grant a temporary permit.
- Chairman Sibley said that there is nothing that stops the Planning Board or Conservation Commission from having a meeting before we vote. They cannot make a decision before we vote. She added that the MVC will try to make this public hearing process as efficient as possible.
- Commissioner Breckenridge asked if the Conservation Commission and Planning Board can actually take a vote that is contingent on the MVC Vote.
- Chairman Sibley said no. They can vote to come to the MVC to testify at the MVC public hearing but they cannot vote on the project.
- Michael Dutton, going back to the dangers of spill recovery, said they have had two private enterprises doing this in the past. He feels more comfortable with the town doing it. Todd said that his staff has been trained for spills whereas the private operators were not. He added that it was actually his staff that discovered the geyser.

- Commissioner Murphy said that if we are going to do this permit should we set a time limit on it? The Applicant should be clear with everyone involved with what the criteria will be for them to close the operation down. He added that in the past the town has allowed truck to refuel boats, especially during the shark tournament.
- Todd said that in the past they brought diesel trucks down to fuel some of the shark tournament boats. He said that may continue during the tournament but this would be a better spot. Here they would not be running gas lines through two restaurants.
- Commissioner Murphy said it would be important if they could show that they have looked at other options.
- There was a discussion of various options such as fuel bladders. Todd said that you can do that for diesel but when you get to gas it is a different story.
- Commissioner Murphy said that it seems to him that these tanks are undersized. Two boats could drain this requiring frequent re-filling.
- Todd replied that they are still trying to figure out the right size. They don't want a truck re-fueling the tanks every morning. Every other day or every three days might be more like it. He said they could go to Packer and see how much they have sold in the past.
- Commissioner Cabana asked if they looked at the possibility of a fuel barge.
- Todd said they thought about it but where would they put it? Commissioner Cabana asked them to tell the Commission at the public hearing why they think it would not work. It would seem that that would hold more gallons.
- Chairman Sibley reiterated that the more info they supply at the public hearing the more it assures people that they have thought this through.
- **Christina Brown made a Motion that the LUPC vote to waive the need for a traffic study. Ned Orleans duly seconded the Motion.**
- Paul Foley pointed out that the proposed site is closer to the channel currents and boating lanes and asked if they had looked at how this works with the boat circulation in the harbor.
- Commissioner Brown said that they already do the septic pump outs there so it should not be an issue.
- Todd Alexander said that they have boats all day that pump out. They also have a pump out boat that goes out to them if they cannot make it to us.
- Commissioner Murphy noted that they have always had trucks fueling the other gas tanks so there should be no increase in trips.
- Chairman Sibley said that they should be clear that the two parking spots that are going to be shortened are actually staff spots.
- **LUPC voted unanimously to waive the traffic study.**
- Commissioner Breckenridge asked if the LUPC should consider recommending to the full Commission to approve the proposal.
- Staff pointed out that when LUPC make recommendations to the Full Commission for approval it comes after the public hearing in the Post Public Hearing Review.
- Chairman Sibley said she would go out on a limb and say we can probably waive the referral back to the LUPC after the Public Hearing closes.
- Commissioner Murphy asked about the DRI Fee. The Staff Report says that when a governmental agency is a DRI Applicant they may request a DRI filing fee waiver. If the Commission determines that the project is for the health, safety, and general welfare of the Town or Island the Commission may grant the fee waiver by a majority vote. He said that this could be a safety issue. If small boats have to go to other harbors or you had to bring in a barge in that could be a safety issue.

- Mark London suggested that staff could have a draft written decision ready on the evening of the public hearing.
- Todd Alexander said that they did not want to go into the gas business. This is not something that they wanted to do but have to do because of all of these legal disputes.
- Commissioner Brown said that they should spell out that they will not be doing this permanently.
- Todd said that if the private providers can get their act together and provide the service to the satisfaction of the town then they would stop providing the service. He said that he has heard that the dispute will be in the courts for a long time.
- Paul Foley asked about the cost of installation.
- Todd said that there are a few scenarios. One of the companies they are talking to would pay for the installation of the tanks and fuel lines with a guarantee that the gas would be bought from them.
- Commissioner Cabana said that they need to say that they do not intend to have three fueling stations on the harbor.
- Chairman Sibley suggested that since the other fueling has been shut down if they want to come back they will likely have to come to the MVC for review.
- Michael Dutton said that in the zoning by-laws it stipulates that if you do not reside in a house over two years it is considered abandoned. He wondered if that would also apply to the a situation like this.

## **2. Saltwater Restaurant (DRI 485-M4) Modification Review**

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Applicant: Sam Dunn, Peter Spurney (Partner and General Manager)

### **Staff Report:**

- To expand the Saltwater Restaurant by screening in the patio and extending wait service to the additional 15 seats. The restaurant would increase from 62 seats presently to 77 with the seasonal patio seating.

### **Applicant Presentation:**

- Peter Spurney said that they are open for lunch and dinner. They are looking at opening for breakfast. They may move to six days a week. Currently they are open Thursday through Sunday.

### **Discussion:**

- Commissioner Breckenridge said his recollection was that the area was supposed to be for parking and deliveries.
- Peter Spurney showed the site plan and pointed out where the patio is and where the deliveries are made. They are talking about putting a roof on the trellis and screening the existing patio in.
- Commissioner Orleans said that it sounds like they will be reducing the number of parking spaces available compared to when the Daily Grind was there.
- Chairman Sibley reminded commissioners that our issue is whether this is a significant change.
- Commissioner Breckenridge said that his inclination is that we have several operations in the Tisbury Market place. We have the Net Result and Rocco's. Our concern with Rocco's was that they were going to add seating on the second floor. Now we have a third establishment that is adding another 15 seats. We haven't had a full summer trial to see how the others worked.
- Chairman Sibley said that we have to consider whether it is adding seats. She noted that people who are using the patio for takeout have to park there anyway.

- Mark London said that in his opinion this is adding seats.
- Commissioner Breckenridge recalled that when we were reviewing the parking issue last year with saltwater they said that they would be a dinner service and we said that the parking is more available at night.
- Chairman Sibley noted that this is not just an expansion of 15 seats they are also adding breakfast.
- Commissioner Brown said that she doesn't think that changing 15 take out seats to 15 sit down seats is significant.
- **Ned Orleans made a Motion to recommend to the full Commission that this is not a substantial change. This was duly seconded by Christina Brown.**
- Commissioner Murphy noted that we just voted that a 60 seat restaurant was not a substantial change (Sai Mai Thai).
- Mark London pointed out that on this site they are not as constrained as the Thai restaurant was
- **The LUPC vote unanimously to recommend to the full Commission that this is an insignificant change.**

Adjourned 6:45