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Martha's Vineyard Commission

Land Use Planning Committee

Notes of the Meeting of June 8, 2009

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

Commissioners Present: Linda Sibley (Chair); John Breckenridge; Christina Brown; Chris Murphy.
MVC Staff Present: Paul Foley; Bill Wilcox, Bill Veno, Chris Flynn

1. Oak Bluffs Harbor Gas (DRI 621) Post-Public Hearing Review

Applicant: Michael Dutton (Town Administrator)

New Correspondence:

- The commissioners were presented with all of the Correspondence that had been received since the public hearing on the previous Thursday and the close of the written record at 5:00 Monday. The letters were:
 - Town of Oak Bluffs Offers
 - Raymond Gallison Jr., Esquire
 - Captain Kenneth J. Gallison, U.S.C.G. (Second Letter)
 - David Pothier – Chairman Harbor Advisory Committee
 - David Pothier - Cars Unlimited
 - Raymond Gallison Jr., Esquire (Second Letter)
 - Anne S. DeBettencourt
 - Raymond Gallison Jr., Esquire (Request for Party Status)
 - Barbara Gallison
 - Anne S. Debettencourt (Request for Party Status)
- Note: Another letter came in before the deadline but was inadvertently sent to staff's junk mail. Therefore, a letter from Patricia Wallace is also part of the record but was not distributed to LUPC.
- Previous letters that were distributed at the public hearing included:
 - Dave Grunden – Oak Bluffs Shellfish Constable
 - Captain Kenneth J. Gallison, U.S.C.G.
 - Raymond Gallison Sr.

Review of Applicant Offers:

- The Applicant submitted a list of offers that included an offer that they would not operate the proposed facility if they are assured in writing and in fact that a private sector service is providing adequate fuel supply. The bulk of the offers was a definition of "providing adequate fuel supply" in the form of a list of prerequisites for the commercial operators to meet.

- Commissioner Murphy said he would like a clarification on when the harbor opening is? Also, the prerequisite that says that the Town will not operate the facility if a private sector service is providing adequate fuel supply should clarify to identify to whose satisfaction. It should be somebody at the town.
- Commissioner Breckenridge suggested it should be to the satisfaction of the Board of Selectmen.
- Chairman Sibley said she found the third offer on the sheet awkward.
- Commissioner Breckenridge said that this relates to private sector service.
- Commissioner Murphy agreed noting that it is probably in there because you are not supposed to go jumping on someone else's boat.
- Commissioner Brown asked if Church's had been offering water previously since one of the prerequisites the Town is now saying would be required for them to not go into the gas business is that the commercial operators must offer water.
- Michael Dutton said that Church's Pier has water but they only offered it to boats that asked for it when they were fueling. It has been a touchy subject.
- Chairman Sibley said it appears that they are asking some demands on the private retailers that aren't currently offered.
- Michael Dutton said that the Town has water available and pump out available. In all likelihood Church's will not be able to do pump out.
- Commissioner Brown said it appears that the Town, in its "offers" is making an impossible list of requirements for the commercial operators.
- Michael Dutton said that was not the case because the offer says the commercial operator should do pump out if possible.
- Commissioner Brown asked if prerequisites number 8, 9, and 10 are different from what the Town was willing to do.
- Michael Dutton said the Town proposal has space for two small or one large boat and at least 25 feet buffer around the pumps. That is an issue on Church's. They were cited for violation several times last year.
- Chairman Sibley asked if the State regulation requiring a 25 foot buffer changes would the Town change the prerequisite in the "offer". In particular is the Town prerequisite for the commercial operator to accept cash, local checks, and credit cards a normal procedure.
- Commissioner Breckenridge noted that in this economic environment there are a lot of places no longer accepting checks.
- Michael Dutton said he had talked to the Harbor Master about that and he suggested that we should put it in. He doesn't think he was making it a hardship on the commercial retailers it just seemed to be a standard practice.
- Commissioner Breckenridge asked if there is a reason to address it.
- Commissioner Murphy said it's a service to the community.
- Chairman Sibley said she couldn't see anyone coming to the harbor without a credit card or check.
- Commissioner Murphy countered that the locals might.
- Chairman Sibley said she thought it seems like a tad intrusive. We can assume that the licensing process for boats would make it easy to track them down.

- Commissioner Brown said the list of prerequisites is alright as long as it's not more prohibitive than what the town is going to do.
- Chairman Sibley noted that there is a missing word in number 7; they should add the word "basis".
- Commissioner Breckenridge said that at the public hearing one of the things that was discussed was that the lines from the Island Queen would back up to this area. He asked if that is an issue with the state Fire Marshall.
- Michael Dutton said that it's not an issue with the state Fire Marshall. He said that they would post the area with no smoking signs. As a practical matter we don't plan to be refueling late on a Sunday afternoon when the Island Queen lines are the longest.
- Commissioner Murphy said that his impression of the state Fire Marshall is that they come down once a year and look around and that's it. If no one complains then there is no problem.
- Michael Dutton said that the Fire Marshall will be looking at the 25 foot buffer.
- Commissioner Breckenridge said that the Wallace's were looking at extending 25 feet last year but because of the issue with Packer that did not happen so they have been in non-compliance ever since.

Party Status:

- Paul Foley said that two of the neighbors are requesting party status.
- Commissioner Brown asked if we made an announcement about the MVC Policy of requiring appellants to request party status.
- Paul Foley said that one of them said on the phone that they were going to appeal and he informed them at that time that they had to request party status.
- Chairman Sibley said that this may make the proposal for an early approval dead in the water.
- Commissioner Murphy said that it is his understanding that they can still go ahead with the project but that they would be doing so at their own risk.
- Chairman Sibley said she didn't they could go ahead with an appeal in the works.
- Commissioner Brown said that the lawyers can take care of that.

Concerns in the Correspondence:

- Commissioner Brown noted that since we do have letters from neighbors asking for party status we should think about our reaction to their concerns. What happens if there is a huge storm?
- Commissioner Breckenridge said that there was testimony that this was not an issue.
- Commissioner Brown said that we had conflicting testimony
- Commissioner Breckenridge said that the Fire Chief said they are required to anchor the tanks so that they cannot break loose. And he is the final word.
- Commissioner Murphy said he was not sure that they were all talking about the same thing. He said it's just not logical to move the tanks anyway because you wouldn't have much time and the last thing they would want to do in an emergency is have to move to the tanks.

- Chairman Sibley said she would think that they would want to make an offer that they would take care of the tanks in the case of a hurricane. She didn't know if they are supposed to empty it to make less dangerous or fill them to make them heavy so they won't float away.
- Commissioner Brown asked how we should address that.
- Commissioner Breckenridge noted that Staff had made a proposed condition (3) that they should have a plan stamped by an engineer and approved by the proper authority and then filed with the MVC.
- Bill Veno asked when that should be completed.
- Chairman Sibley said that they shouldn't do the project until they have a plan for an emergency.
- Commissioner Brown said maybe the condition should add a bit more that says how they would handle an impending natural storm.
- Commissioner Breckenridge asked the applicant to clarify if they would like to make the possible condition 3 an offer.
- Michael Dutton replied absolutely.
- Commissioner Brown said that the plan should include procedures for safe handling of the fuel and tanks in the event of an impending storm.
- Paul Foley asked if they want to specify what actions to take in a particular category of storm.
- Commissioner Murphy said Category 5.
- Chairman Sibley would say a major storm. They should say what they would do under various circumstances. They may have different actions for a category 1 storm than a category 3 storm, and so on.
- Michael Dutton suggested that they would have plans for a named storm.
- Chairman Sibley said she would think that they would want to address a Nor'easter as well. She added that the letters of opposition mention not just the possible threat during a storm but also fumes from boats tying up at the dock.
- Commissioner Breckenridge said that unless we are prepared to ban all sorts of traffic from a combustible engine he respectfully has to say they are not making a good case. One letter is talking about busses and cars driving by.
- Paul Foley noted that the Applicant contested one item in the Staff Report about the number of tanker truck deliveries. He said he stands by the estimate of 100 tanker truck deliveries per season.
 - The applicant originally said they would have two 1,500 gallons tanks (one for gas and one for diesel). Then they said they were looking at one 2,000 gallon tank with two 1,000 gallon compartments.
 - The commercial retailers said they sell 60,000 gallon of gasoline (not including diesel) on the harbor per season.
 - That would require a minimum of 60 refills. However, they do not wait until the tanks are empty to refill them. Therefore it is likely that there would be 70-80 deliveries of gasoline (not including diesel) per season.
 - If you add in the diesel you are looking at 100 refills a year.

- It should also be noted that they do not plan to buy their gas from Mr. Packer on island. That means that the gas will be coming from off-island in large tractor trailers on a daily basis in July and August.
- Commissioner Breckenridge said that if we want to limit gas trucks we have to limit food deliveries and garbage trucks.
- Paul Foley pointed out that the garbage trucks come once a week.
- Bill Veno asked what time the Harbor Master has staff down at the Shack.
- Michael Dutton said 8:00 am.
- Chairman Sibley said that if they are offering gas no earlier than 8:00 am when do they propose to refill the fuel tanks.
- Michael Dutton said they could do them at the same time.
- Chairman Sibley said that the gas that has been delivered up until now at Church's pier has been delivered to an area that is full of restaurants. If the gas isn't an issue for them why should it be an issue for this location?
- Commissioner Breckenridge said that the point is that the vapor recovery on the trucks isn't an issue.
- Commissioner Murphy said that it usually doesn't smell bad; they don't do anything to affect restaurants. The issue is the fumes building up in the bilge of boats. He noted that a boat blew up about six years ago but it's fairly self contained. If it doesn't affect the restaurants then it probably won't affect the houses.
- Chairman Sibley said she understands the fear, but it is not her experience that it is a chronic problem. She agreed that if the gas operation at Church's Pier is not a problem for the Coup Deville, and Nancy's then it shouldn't be at this location either.
- Paul Foley said that the air quality in the area is currently not good, especially in the summer.
- Commissioner Breckenridge said that we are not taking new information.
- Chairman Sibley added that comes from background traffic.
- Bill Veno asked if there was testimony how far away the harbor master shack is from the boats refueling. The regulations say 25 feet.
- Michael Dutton said that the regulations apply to boat slips, not the harbor Master Shack.
- Chairman Sibley asked if there was anything we have not addressed.
- Commissioner Murphy said that in one of the letters from Captain Gallison he cites that the Conservation Commission said during the last expansion of the Harbor Master Shack there would not be anymore development on it. He added that is not our issue.
- Paul Foley noted that one of the letters cited a concern of people smoking near the tanks and pumps and that Michael had suggested that they would make an offer to put up no smoking signs.
- Michael Dutton confirmed that they would offer to post the area that there is no smoking in the area.
- Chairman Sibley asked if the signs could make reference to the hazards. Michael said they would.
- Chairman Sibley said she thought LUPC had gone over everything. She asked if there were any other conditions LUPC wanted to add.

- Commissioner Brown asked if the town said what hours the tank refilling would take place.
- Michael Dutton said between the hours of 8 am and 9:30 am.
- Chairman Sibley asked Michael if the Town is comfortable incorporating the draft conditions:
 - The tanks and pumps shall be removed within two years of installation. The Town may apply for a permanent installation at least three months prior to the proposed start of a permanent installation.
 - The above ground tanks shall be refilled after 8 am and before the arrival of the first Island Queen (9:30 am).
 - A detailed Spill Prevention Plan and Vapor Recovery Plan (as required by State law), stamped by a professional engineer, shall be submitted to and is subject to the approval of the Oak Bluffs Fire Chief. The approved plans must be submitted to the MVC before installation of the tanks.
 - The plan should include steps for the management and prevention of small scale loss of fuel.
- Michael Dutton said yes.
- Chairman Sibley noted that the MVC would not be reviewing and approving the Spill Prevention and Vapor Recovery Plan but rather would file the plans once approved by the appropriate authority.
- Bill Veno asked if the time for refilling was realistic. What if they run out during the day? Some boats can take the full amount proposed to be in the tanks.
- Michael Dutton said that they are going to be two 1500 gallon tanks.
- Commissioner Murphy said we should make it reasonable and say they will make every effort to do the refilling within those hours.
- Commissioner Breckenridge said that we could limit the amount of gallons per boat.
- Paul Foley asked where the tanker trucks refilling the tanks would park since it is a busy and congested area during the summer.
- Michael Dutton said that the tanker truck would block the Harbor Master's parking spaces.
- **Christina Brown made a Motion to recommend to the full commission that the MVC approve this project based on the written plans, offers, and the conditions discussed (offers accepted as conditions.)**
- Chairman Sibley said that the Applicant had accepted that possible condition as offers so the motion should say "the offers as revised".
- **Chris Murphy seconded the Motion.**
- **The LUPC voted the Motion unanimously (LS, CM, CB, JB).**

Adjourned 6:37