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Martha's Vineyard Commission

Land Use Planning Committee

Draft Notes of the Meeting of June 28, 2010

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

Commissioners Present: Linda Sibley; Christina Brown; Ned Orleans; Chris Murphy; John Breckenridge; Pete Cabana; Kathy Newman

MVC Staff Present: Paul Foley; Mark London; Bill Wilcox; Chris Flynn; Mike Mauro

Audience:

1. CR 1 – 2010 Little House Cafe

Little House Café: Jenik Munafo; Merrick Carreiro; Geoghan Coogan (attorney); Chris Alley (engineer);

Audience: Jeff Kristol (Zoning Board of Appeals and Selectman); Paul Munafo

Summary:

- ***The LUPC recommends to the full Commission to vote this proposal a non-concurrence provided that the applicants submit offers by Thursday that adequately mitigate the nitrogen issue within a ten year timetable.***

Staff Report:

Paul Foley presented the Staff Report and a slide show of the property.

- The proposal is to convert a existing building (1,118 sf) from a retail use (antique store) to a 31-seat restaurant.
- The restaurant would be year-round with offerings from around the globe operating approximately 6:00 am to 6:00 or 7:00 pm.
- They would have items pre-packaged to go like Louis' and Biga.
- There would be counter service with tables. No waitresses at this time.
- They would have a light breakfast menu and a more varied lunch including ethnic foods and meals to go. Dinner would be like lunch with two specials.
- They do not have plans to apply for beer and wine at this time.
- The applicants proposed a 33-seat (subsequently lowered to 31 because of BOH septic limitations) restaurant and inquired of the building inspector whether their proposal would need to be referred to the MVC as a DRI. They were told that a restaurant is a "permitted use in B-2 zoning" and would not be referred to the MV Commission.
- Apparently the Building Inspector had the 50-seat threshold for a restaurant in the B-1 in his mind (DRI Trigger 3.2d) whereas the proposal is in B-2 which requires any food service establishment be referred.
- The applicants apparently checked a number of times whether they were being referred.
- They then went to the Board of Health for pre-approval in early February 2010 and again were not referred to the MVC. After the Board of Health issued their approval the applicants made an offer to purchase the property with the contingency that they be granted the necessary permits to open a food service establishment.

- Once the Building Permit was issued they proceeded to purchase the property. However, once they bought the property and applied to the ZBA for a decrease in the amount of required parking they were referred to the MVC for a DRI concurrence review. The small building has been a residence, a travel agency, and most recently an antiques store.
- **The key issues are:**
 - **Wastewater:** The proposal is on a very small parcel in a severely nitrogen sensitive watershed (Tashmoo) in a business district that does not currently have sewer.
 - Traffic: The site is located on one of the busiest stretches of road on the island.
 - **Parking:** Are 12-13 parking spaces enough for a 31-seat restaurant with takeout?

Bill Wilcox presented the **wastewater** section of the staff report.

- The "Cliff Notes" version is that they are in the Tashmoo watershed which is an Impaired watershed in the MVC Policy. The nitrogen limit the MVC uses for Tashmoo is 5.6 kilos per acre.
- The applicants have only about a ¼ acre so it is virtually impossible for them to meet the nitrogen loading limits. The policy says that they either have to meet the load limit or install basic reduction and offset any remaining nitrogen.
- The MVC sometimes considers past water use of a site as being "grandfathered" but in this case the past water use was extremely low.
- The Upper State Road area is a good candidate for an area that could be sewered. We need to figure out how and when that might happen. The Island Plan identifies the area as an opportunity area for growth.
- The Mass Estuaries report for this watershed will be completed in the next few years. Bill thinks that our current loading limits are in the ball park.
- We might consider instead of making them put in a treatment system allowing them to create an escrow account that would go into some kind of onsite nitrogen reduction in a few years. If the town makes the sewer available the fund would go towards that or if it doesn't maybe the fund would go to a composting toilet or other acceptable treatment.

Commissioner Questions:

- Pete Cabana asked Bill where the existing sewer line comes nearest to this property.
- Bill Wilcox said he thinks it is a force main coming up State Road and then goes down Evelyn Way. So it is nearby but it would require a new line and town approval.
- Pete Cabana noted that it is very close establishing that it might not be that hard physically to tie in.
- John Breckenridge asked if the town was at or near capacity at the treatment facility.
- Bill said the town is way below capacity. They are at about 60% in the summer. It is a modular system so it could be enlarged physically. Additional leaching area will be required before the expansion. But the town may not have the need to expand or the desire to connect this area.
- Mark London said that we have worked with a consultant on the Wastewater Management Plan and it doesn't seem to make sense to make people install an onsite de-nitrification system when there is a likelihood that they could tie in to a public treatment facility in a few years. Several towns on the Cape have a policy whereby instead of installing an on-site system, property owners put money into an escrow account to be used to hook up into the sewer when it is installed, or to put in an on-site system if it becomes clear that there will not be a sewer. This project is a potential candidate for an escrow account. There would have to be a major public discussion about expanding the sewer. It is an area we have talked about for a while but it would be a few years before it actually happened. It is a high priority area for expansion.
- Christina Brown asked the town officials present if the town is pursuing expansion of the sewer system. Jeff Kristol answered yes.

- Linda Sibley said that the notion of setting up an escrow account makes a lot of sense. It would be a poor use of money for them to do on-site if the area is going to be connected in the not too distant future.
- John Breckenridge asked if part of the proposal is using disposable plates.
- Merrick Carreiro answered yes for the take out but not for the seated service.
- Jenik Munafo added that they thought about it but it's such a nice place to sit in and have a nice meal that it would be nice to have real plates. They plan to use post consumer recycled materials as much as they can but not for seated service.
- Christina Brown asked if it is possible to subtract that kind of offer, such as using recycled plates and saving food scraps, from the calculation of the nitrogen load for the standard restaurant.
- Bill Wilcox said that though there would likely be some reduction in nitrogen he doesn't have any way of calculating that at this time. There are no figures on the amount of nitrogen in wash water from restaurants.
- Christina noted that as compared with a residential use there wouldn't be showers which can add a lot of nitrogen.
- Bill Wilcox noted that the recycled materials would be a plus but we don't have any statistics on which to estimate the nitrogen loading savings.
- Christina Brown asked if there would be any of the seats outside.
- Merrick Carreiro said they might look at it in the future but not right now.
- Christina Brown said that since they are in a hurry and the Town made a mistake she thinks we should discuss how we look at whether to concur or not.
- Geoghan Coogan (not here as a Selectmen) asked the commission to keep two things in mind. First consider the escrow as an idea but keep in mind that this is a startup business. \$3,000 is a lot of money for a startup business. It's important to look at this not as a new restaurant but as a replacement for Louis' across the street. In effect they are really swapping out with Louis. They might be right on par with what was there already.
- Linda Sibley said it is an open question about what happens to that property (Louis) in five years.
- Geoghan Coogan said he understands that he just wanted the commissioners to keep in mind that this is of an equivalent nature as Louis.
- Kathy Newman said wouldn't it be good to have a list of things, like using recycled cups and plates, for which an applicant might get credits for nitrogen loading.
- Chris Murphy said that when he saw this pop up on the radar he was ready to go on a vacation. No one wants to be in this situation. We have to come up with some way of helping them without compromising our policy and standard review procedures. The nitrogen is the key issue. The parking isn't as crucial for me. If the lot is full I will keep driving. I don't see how we can not accept this as a DRI. We can work with them but this is so skewed in terms of meeting the nitrogen load.
- Geoghan Coogan said he understands that and agrees that the MVC has their policies. He thinks we should consider why the town is fine with how it is.
- Linda Sibley said she is a little puzzled with where the figures come from with washing plates. She went to a Girl Scout camp where they did not have running water. They had tubs and they would wash and rinse and scrape carefully. It is hard for her to see any substantial amount of nitrogen from plates if they are carefully scraped of all the extra food.
- Bill Wilcox said the only breakdown for sources of nitrogen in wastewater is for residential settings and he suspects that the extreme nitrogen load with respect to food is when an applicant has a garbage grinder. These applicants are not doing that, they are not allowed to. He would think that

it is the pots and pans that have more nitrogen than plates. If they are careful it would reduce the nitrogen to some degree, perhaps substantially.

- Jenik Munafo said they have asked Lynn Irons who is a pig farmer to take their scraps.
- Merrick Carreiro added that they have prepared a list of things they came up with that might decrease nitrogen loading.
- Jenik Munafo said that a couple of months ago they would have considered a composting toilet but they looked at it and it is too much money at this point. The plumbing is 90% done and they special ordered sinks and things to fit specific spots.
- Mark London said they indicated at the staff-applicant meeting, Chris Alley said that the septic system cost about \$17,000; if they had installed a composting toilet, they would have needed a slightly smaller septic system but it would only have cost a few thousand dollars less. Even if they put money into escrow when they tie in to the sewer system in five years then fine. But if there is not a sewer then we would have to look at it again. Maybe a composting toilet would make sense at that time. If the policy were strictly applied they would have to meet their load or offset it by lowering another system somewhere else in the watershed. So they would have to find more people who would be willing to accept composting toilets.
- Chris Murphy said that the problem is we are in a situation of punishing a few local kids who are trying to do good. He doesn't love the idea of an escrow but he thinks it is up to them to come up with ideas and we say yes or no. He wouldn't have a problem with coming up with a provisional approval if they can come up with something that is going to cut nitrogen in a few months.
- Linda Sibley noted that the watershed is made up of many projects. It is inevitable that smaller projects are going to use their property more intensely than projects on larger parcels. Even if they weren't in a huge rush she would be prepared to say that we should cut some slack with a small project. There are acres of storage units behind them. We should have room to accept the different scale of projects. To the extent that she understands restaurants at all she understands that they lose money. She would be willing to accept a smaller contribution over a longer period of time.
- Geoghan Coogan said that the bottom line is the only thing they can really do is what is on this list and tie in when the sewer comes. They will use bio-friendly products. He doesn't know any other restaurants that do some of these things. Being an environmentally restaurant isn't cheap.
- Chris Murphy said that these offers are good but compared to the impact of the use of a composting toilet where the nitrogen goes out of the watershed there is no comparison. The Town of Tisbury and the Board of Health have never really embraced protecting Tashmoo from nitrogen. If we destroy these ponds we destroy why people come here. If we can solve their problem I would be happy to but we have to come up with a solution that does not damage Tashmoo.
- Geoghan Coogan said that we are starting at a point where we are essentially swapping with Louis. He thinks the real problem is the runoff going into Tashmoo Pond. Running town sewer is a big fix that is going to solve the problem with Tashmoo. This little restaurant is not going to make a huge difference.
- Bill Wilcox said he would guesstimate that the nitrogen loading from residential uses in the whole watershed is more of an issue than the commercial load.
- Linda Sibley noted that there is a rep from the Board of Health.
- Margaret, the Assistant Health Board Agent in Tisbury has been working with Jenik and Merrick but unfortunately was not involved in the septic system review. She doesn't agree that the Board of Health are not concerned with Tashmoo. They have done inspections in that area recently.
- Chris Alley said that the septic system was originally going to be for more seats but they only had room for 31 seats. If you do an escrow account he thinks that twenty years is a more realistic time

frame then five years. If you look at a ten year time frame you could reduce the annual amount. It should be able to cover the cost of on site reduction if the sewer is not available at that time.

- John Breckenridge asked what the low ball cost of de-nitrification is.
- Chris Alley said that if they were going to retrofit it would be about \$20,000 which would not include the annual maintenance fees.
- John Breckenridge noted that would be more expensive with a less satisfactory solution.
- Chris Alley said that in Oak Bluffs the physical connection is under \$10,000.
- Linda Sibley asked if it is mandatory for businesses to tie in to the sewer.
- The Assistant Health Board Agent said that they are not required to tie in unless their septic fails.
- John Breckenridge noted that we are perhaps looking at a creative solution with regards to a future sewer. He suggested that the applicants should come up with an escrow offer that stretches out the payments over ten years. We are not trying to make a penalty we are looking for a solution that the applicants can afford and will get the job done. If that were an offer he would be much more comfortable voting not to concur. He doesn't want to set a precedent that we are letting people off the hook for creating nitrogen.
- Pete Cabana said that if we are trying to protect Tashmoo we should help them with a more creative solution. The issue is Tashmoo.
- Christina Brown added that she would be more likely to move it along if there were a clear and creative offer to address the situation over time. Maybe it starts smaller and grows over time as the restaurant gets established. Bearing in mind that the Mass. Estuaries Project is not done with and our numbers could change over time. So the mitigation would have to meet the numbers at that time. The other idea is that maybe they could buy nitrogen credits.
- Kathy Newman said that clearly nitrogen is a big issue but there are other issues.
- John Breckenridge mused that a de-nitrification offer staggered over time could be that in year one and two \$1,000 per year, years 3-8 \$2,000 per year and years 9-10 \$2,500 per year which equals \$15,000 total. He added that it's just an idea looking for a solution.
- Linda Sibley suggested they should add something about tying in when the sewer comes available. She noted that there are also traffic and parking issues. Did the ZBA look at this at all yet?
- Jeff Kristol said that the ZBA sent it to the MVC as soon as they got it without really looking it over. Their preliminary impression was that they felt the traffic was something the town could deal with.
- Chris Murphy noted that there doesn't seem to be a problem with backing up onto State Road because they have a one-way system.
- Mike Mauro said that his question would be for the take-out part of the business. He looked at a few different uses for the site. He tried to narrow it down and came up with a preliminary estimate that the proposal would add 90-100 daily trips. That would not be a problem for State Road. The issue would be parking. The circulation is good.
- Paul Foley added that there are 12 parking spaces on their property and one noted on the plan that is on an abutting property. From the looks of it they would de facto have an additional 4-6 spaces on nights and weekends across Surveyors Lane where Sam Sherman's people park. Sam has said it is fine but technically they have to get the permission from the owner of the land.
- Merrick Carreiro said that she thinks they can get a letter from the owner, Sandy Ray, to that effect.
- Jenik Munafo said that they are also going to have employees parking at the park and ride. They have discussed buying employees VTA passes.
- Chris Murphy asked what it would take to add a small addition to put in a compost toilet. He has no faith in Tisbury ever putting a sewer in there until he actually sees them do it. The nitrogen loading issue is the critical thing that is going to make Tashmoo go anaerobic.

- Paul Munafo said that he is not sure what the setbacks are and what it would take.
- Merrick Carreiro said that they can only expand in one direction. They have an SBA backed loan and are accountable to a lot of people. When she heard about this she talked to Bill Wilcox and looked into a urine separator toilet but they are not available in this country yet. They can not afford a composting toilet at this time.
- Paul Munafo asked where we are going with this.
- Linda Sibley explained that we will want a well thought out solution on Thursday.
- Geoghan Coogan asked what could be done with 1.4 kilograms per acre per year that this property is allotted. Does that render this property useless?
- Bill Wilcox said that an average residence on this lot would be expected to produce about 6.5 kilograms per acre per year.
- Ned Orleans asked if we are talking about polices or guidelines. Guidelines are more flexible.
- Mark London cautioned that we have to remember that we have applied this policy consistently to every applicant that has been through here for many years. To the extent that the Town has delayed the approval process, the Commission should make every effort to deal with this expeditiously, but he'd be concerned about not applying the water quality standards in a consistent way. What has changed in this area is that there is new information, such as the recently released Wastewater Management Study, which indicates that this is an area that is more likely to be connected to a sewer than we thought a few years ago. So we can look at potential alternatives to delay the application of the policy in this area and spread the costs out over time, as long we ultimately and effectively de-nitrify the wastewater.
- Linda Sibley said that we have seen other projects in this area but they were much bigger. She agreed with what Geoghan had said about the difference with where the solution to the problem is and what can you can do with this property.
- Bill Wilcox reiterated that a residence produces over 6 kilograms of nitrogen a year so if this property wanted to do a residence was sent here they would need a major de-nitrification system.
- Chris Murphy said to the applicants that their job is to do the best job they can do. Our job is to look at the bigger picture. We don't have perfect knowledge but we have to do what we have to do. If it costs you more money that's the way it is. Cronig's expanded and it cost him a lot of money. Whatever happens we have to do this as a partnership.
- Geoghan Coogan said that the point is that we have a really small parcel that they are trying to turn into a business. He doesn't think the intention of the MVC policy is to restrict business but to fix Tashmoo. Let's see what we can do to help fix Tashmoo in the long run. To just say this is our policy and that is it, he doesn't think that works either.
- Kathy Newman: It's a small business and they were instructed to do X and then half way through they have to do y. if they came to us in the beginning.
- Christina Brown asked the LUPC what they thought of a ten year escrow plan.
- Kathy Newman said she thought that is a good idea.
- John Breckenridge said he would want to see the language in that offer.
- Kathy Newman said that just in terms of coming to the meeting it would be important to say to the full commission that they would have been glad to do this stuff if they had known in the beginning but now they are half way there.
- Merrick Carreiro noted that they are more than three-quarters the way there.
- Linda Sibley noted that technically we don't have all the possible offers. She asked the LUPC is they are even in a position to decide tonight on whether we recommend to not concur. Are we in position to even discuss it?

- Pete Cabana thought it is a good idea not to concur. They have heard our concerns and possible solutions and now they have to think about offers.
- **Pete Cabana made a Motion to recommend to the full Commission to not concur if the applicants come in with a satisfactory set of offers that can adequately mitigate the nitrogen issue in addition to the ideas they have presented tonight. John Breckenridge duly seconded the Motion.**
- Merrick Carreiro added that what would be better for them would be the urine separator toilets, but they don't exist here yet.
- Geoghan Coogan reiterated the motion to make sure everyone was clear on what it was.
- Ned Orleans said it seems to him that the motion needs to include the reason why we are doing what we are doing. It is because the town of Tisbury screwed up. We can't simply say here's what we are going to do, because it is different than what we have done before.
- John Breckenridge addressed Ned's comment. We had a recent applicant who said that they would do their best not to make noise. We will do our best is not good enough. We need to hear that you will do what is necessary.
- Geoghan Coogan noted that it doesn't behoove the applicant to throw the town under the bus.
- Ned Orleans said it would be the LUPC saying it to the full Commission.
- Linda Sibley said that if we did put that language into the motion she would vote against it. We are doing this because it is such a small project they cannot be expected to solve the problem.
- Chris Murphy pointed out that conditioning non-concurrences are a poor way to do business. They don't work and we should avoid them. They would come up with better more enforceable conditions at a public hearing.
- Linda Sibley said that we have a past non-concurrence that we said if you do this you come and now they are doing that and the town is not sending them.
- Mark London suggested that whatever we decide tonight, we should go ahead and advertise a public hearing for the 15th in case the full Commission votes to go to a public hearing.
- Merrick Carreiro asked if it were a problem that they have continued working on the project.
- Linda Sibley said they can keep going no matter what we vote but you cannot open the doors.
- Geoghan Coogan said he sees Chris's point but there is only so much they can realistically do. If you hold hearings for a few months there is only so much that we are going to come up with above and beyond what they are going to come up with on Thursday. They could be gone in five years, it's a restaurant. They need to get open. They will give the MVC a list on Thursday, but they are limited in what they can do.
- Linda Sibley said that the issue is enforceability. Chris Murphy added "and process".
- There was a discussion of whether the ZBA can incorporate the offers made to the MVC even if they are only looking at parking.
- Linda Sibley reiterated that Motion on the floor is to recommend non-concurrence provided that we get offers that adequately mitigate the nitrogen issue within a ten year timetable.
- Geoghan Coogan noted that in Oak Bluffs there are deed restrictions with the local Board of Health. That way your ultimate vote is tied into the Board of Health.
- **The Motion passed 6 to zero with one abstention (CM).**

Adjourned 7:12