



BOX 1447, OAK BLUFFS, MASSACHUSETTS, 02557, 508-693-3453,
FAX 508-693-7894 INFO@MVCOMMISSION.ORG WWW.MVCOMMISSION.ORG

Martha's Vineyard Commission Land Use Planning Committee

Notes of the Meeting of March 7, 2011

Held in the Stone Building, New York Avenue, Oak Bluffs. 5:30 p.m.

Commissioners Present: Doug Sederholm, Chris Murphy; Christina Brown; Fred Hancock, Ned Orleans, Linda Sibley; Brian Smith; and John Breckenridge.

MVC Staff Present: Mark London; Paul Foley; Bill Veno.

Audience: Ken Barwick (Tisbury Building Inspector); John Bradford (OB PB); Mark Wallace (OBPB); Alan Wilson (Edg. PB); Bob Sparks (Edg. PB); Richard Toole; James Westervelt (OB PB); Mike McCourt (Edg. PB); Tristan Israel (Tis. Selectmen); Peter Brannen (MV Gazette); Ben Hall (6:00 pm); Kerry Scott (6:20 pm).

1. DRI CHECKLIST

Documents referred to during the meeting

- DRI Checklist Review 2011: History of DRI Checklist Triggers
- DRI Checklist – Commercial Triggers

General Discussion:

- Paul Foley began by going over the two documents prepared for the meeting.
 - The first is the current DRI Checklist with the year that each trigger was first promulgated noted in the margins.
 - The second document was a memo listing the DRI Checklist triggers related to commercial activities noting when they were promulgated, how they might have changed, their frequency of use, and other relevant information. The basic threshold for referral of commercial projects was originally 3000 square feet, was dropped to 100 square feet in 1989, and then was raised to the current 2000 square feet in 1991.
- Doug Sederholm then noted that the purpose of the days LUPC was to discuss the DRI Checklist as it relates to development in commercial areas, and opened the floor for public comment.

Public Comments:

- Tristan Israel said that there was a project in Tisbury last year that was for a restaurant that was in a location on a major road that he felt could have made the proposal regional. He wondered why the MVC decided that the proposal was not significant and sent it back to the Town, and then looked at smaller projects. The Commission should have consistent criteria as to what is reviewed.
- Alan Wilson said he thought that the DRI trigger that makes restaurants with more than 50 seats come for DRI Review is onerous. It was pointed out that last year, the MVC made that trigger by concurrence. When a project is by concurrence it means that the MVC can look at the basics of a project before determining that it is likely to have a regional impact and therefore has to go through the full DRI process.
- John Bradford, Chairman of the Oak Bluffs Planning Board, presented a letter from the Oak Bluffs and Edgartown Planning Boards.

- The letter states that in their opinion “the checklist development has been a reactionary process and has grown beyond the scope of the Chapter 831 description of regional impact...”
 - The two boards propose that referral of commercial projects in commercial districts should only be “discretionary referrals”, referred by town boards or the public. They also propose that the towns should be able to make “limited referrals” to the MVC whereby the MVC only addresses specific issues the town has asked it to address.
 - The letter makes three other recommendations. The two boards suggest that the “Once a DRI always a DRI” checklist item should be eliminated. MVC Staff noted that this item had already been modified so that denials or approvals that expire without action are no longer DRI’s; it is possible that the two boards were not aware of last year’s changes to the DRI Checklist. The letter states that “technically any construction of a dwelling in an approved subdivision...has to go back for an MVC Review”. [Staff Note: This has not been the practice in that, once the subdivision is approved, there is no requirement to come back to the Commission for approval of individual houses.]
 - The letter goes on to propose that the 2,000 sf threshold for referral of commercial projects should be adjusted upwards.
 - The letter finishes with a suggestion that the term “Change of Use” should be better defined with respect to regional impact.
- Paul Foley noted that not only is “Change of Use” already defined in the DRI Checklist but it is a DRI Trigger that is by Concurrence Review and the interpretation of “Change of Use” and/or “Intensity of Use” is an issue that is generally left to the discretion of the Building Inspectors.
 - Mark Wallace said he thought that before we do anything, we should review Chapter 831 (the MVC enabling legislation) and the MVC Mission Statement. He thinks the Checklist should stick to the law and demonstrate that a project has a clear regional impact. He added that people don’t have the money to fight the town or the MVC.
 - John Bradford suggested that if the MVC changed all referrals on the DRI Checklist to Discretionary Referrals he thought that would take the politics out of it.
 - Doug Sederholm countered that making every trigger Discretionary could increase the role of local town politics in deciding what is referred. Now it is fairly clear what needs to be sent and what doesn’t. There would be no objective basis for any referral if they were all by discretion of the local boards.
 - Tristan Israel said he feels that the more triggers that are by concurrence, the more political it becomes. He thinks the triggers on the Checklist should be narrower and more explicit and be truly regional. A larger commercial project located on a major road should continue to be reviewed by the MVC.
 - John Breckenridge said he thought they were citing one example to say the Commission is subjective. He also noted that “Change of Use” and “Intensity of Use” are clearly defined in the Checklist under definitions.
 - Mark Wallace said that the definition is so broad that it could include anything.
 - Mark London said the letter suggests that the two planning boards were asking the MVC to say that there would be no commercial projects that would be mandatory referrals. Is it reasonable to say that no scale of commercial project would ever meet the threshold of clearly having a regional impact? If it is agreed that some large projects clearly have a regional impact justifying a mandatory referral in the Checklist, what should the threshold be? When do the impacts become regional: is it a certain number of square feet or a certain level of traffic impacts the regional road

network? He also suggested that a critical issue is what authority the towns have to review all aspects of these projects, and to condition or deny them if necessary?

- John Bradford said that one issue is that if no one in town wants to address an issue they will just send it to the MVC.
- Doug Sederholm asked what happens if they do not send it to the MVC.
- John Bradford said that the letter's reference to "limited referrals" is to allow the town board to ask the MVC to only address specific issues.
- Bob Sparks said that the Checklist was put in place to cover everything. Now we are looking back thinking we can control things. It's a new era where we should ask "what is regional impact?"
- Linda Sibley responded that she agrees we should better define what regional impact is. The purpose of the requirement that the MVC concur with certain referrals was to allow the Commission to send back small projects that clearly have no regional impact. This is desirable, even if this is not completely objective, which should be looked at in relation to Chapter 831's requirement for creating a Checklist. Our charge is not to abandon the Checklist, it is to create a better one. Chapter 831 orders the MVC to make a Checklist, not abandon this to the towns, and it lists some of the things the MVC must look at. The Checklist must conform with Chapter 831, and be approved by the Secretary of Energy and Environmental Affairs. She noted that the addition of Discretionary Referral was only allowed by special legislation.
- Mark Wallace suggested that maybe part of the Checklist should be that more than two towns have to agree that something is truly regional.
- Chris Murphy said that we need to find the right balance between having objective criteria and a reasonable amount of judgment or wiggle room. Could we use the Edgartown B-II Master Plan as a model, whereby the towns could make a plan with regulations and procedures in business areas; once the MVC signs off on the plan, the thresholds could be raised so the town could deal with most projects in that zone.
- Ned Orleans said that though he was not around when Chapter 831 was created, there seems to have been a concern that we needed an Island wide perspective that towns either could not or would not consider. He is not aware that situation has changed. He added that what these two boards are asking is for the MVC to abdicate its responsibility to hold an Island wide perspective with respect to commercial development.
- Fred Hancock said that Chapter 831 to him directs the MVC to look at "Island character" as part of regional impact.
- Tristan Israel asked: if someone adds a floor to their building in downtown Tisbury, how does that affect the Island? He likes the idea that the MVC work with the towns on their parameters of development, after which the MVC would only have to intervene for larger projects. However, the MVC has to make sure that it can supersede the towns when it comes to regional issues such as wastewater.
- James Westervelt said that the Cape Cod Commission has an incentive zone in Hyannis. He suggested the three Down-Island towns could do something like that.
- Mark London said that the possible change in Checklist thresholds for areas in which a town has prepared and the MVC has approved an area plan, relates to two issues:
 - Does the plan include parameters that deal adequately with regional issues?
 - Does the town have a special permit process with the power to condition all aspects of a project?
- Doug Sederholm felt that the possibility of delegation should be based on ensuring that the town has the authority to regulate all aspects of development. He wondered whether a town like Oak

Bluffs would need to make the downtown a DCPC to give itself that authority, as Aquinnah did with the whole town, and promulgated regulations. Someone said that would mean a moratorium for a year. Doug said that if they had the regulations worked out ahead of time there would be no need for a long moratorium.

- Linda Sibley wondered if the existence of the MVC might not have stopped the towns from taking the initiative of doing the planning and adopting the zoning for commercial areas. She can think of a relatively small project in Tisbury that was reviewed by the MVC because the Town didn't have the authority to review it.
- Ben Hall Jr. made the following comments.
 - The towns don't need a DCPC to enact controls. Edgartown did the B-II Master Plan without a DCPC. He cringes when he hears DCPC.
 - He suggested the MVC use performance criteria instead of just floor area for thresholds, or different thresholds for different types of use.
 - Of course a fast-food on State Road would have a regional impact. Increasing vehicle trips to arterial roads has regional impact.
 - The MVC should know the towns' zoning inside and out, know where the gaps are, and suggest possible improvements to the towns. He thinks the commercial threshold should be 3,000 square feet.
 - The only reason we don't have Cape Cod like development is that we don't have 25,000 vehicle trips a day on any road which a chain store would require to justify construction of an outlet. If the big boxes and franchises want to come we can't stop them because they can just buy an existing business.
 - One option for concurrence referrals would be to have the town boards review the project and make a non-recordable "decision" before sending it to the MVC. If the MVC agrees, it would not concur with the referral.
 - The changes to the Checklist made last time, especially making a lot more items "by concurrence" were good.
 - The intensity of use definition is too broad.
- Mark London noted that several towns in the state have regulations on "formula stores". They don't ban them outright but they limit them, especially in historic districts.
- Mark Wallace did not agree that because Edgartown has a B-II Master Plan, they have a handle on it and Oak Bluffs does not. He said that the Oak Bluffs business district has clear zoning and is already built out.
- John Breckenridge said that it would be useful to get the input of the Historic District people. The reason the Oyster Bar came to the MVC was that it was not covered by the Historic District. You can't quantify historical correctness, scale, and massing. The MVC offers a multi-faceted approach going beyond just heights and setbacks.
- Kerry Scott said she would like to go over the history of projects that did not get referred but should have been. The old Oak Bluffs Library conversion project triggered several items on the Checklist; it is a good project that could have been improved with MVC review. Oak Bluffs has the misfortune of having a history of building officials who do not send projects they are supposed to. She resents the suggestion that we should rely on local officials who not only did not do their job, but they actively try to shape projects to avoid MVC review. The ZBA is political. Every board in Oak Bluffs has been reconstituted to fit the agenda of a few Selectmen. The MVC is elected Island-wide; it doesn't owe anybody anything. She pleaded with the LUPC to not leave referrals to the discretion of appointed officials in local boards.

- Chris Murphy suggested that a criterion for turning projects over to town boards could be that it be elected.
- John Bradford noted that Selectmen can also do Special Permits.
- Linda Sibley said that one consideration about passing more projects back to towns is that the towns do not have professional planning staff, such as a professional water planner or traffic planner. The towns cannot afford to duplicate the MVC staffing.
- Mike McCourt agreed that at town boards, things can fall through the cracks. The MVC should work with the town boards.
- Christina Brown said she would like to talk more about working with the towns. It is important to keep commercial development in existing commercial centers, not create a new mall at the airport. We want to encourage development without irrevocably damaging the character and environment. The Upper Main Street Plan deals with traffic, parking, wastewater, trees, and many other issues. The MVC has encouraged the towns to have more specific plans for their business districts and has offered support in preparing them.
- Mark London suggested that we should reconstitute the all-Island planning board meetings to discuss these issues.

Adjourned 7:00 p.m.