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Minutes of the Commission Meeting Held on January 17, 2019 In the Stone Building 33 New York Avenue, Oak Bluffs, MA

IN ATTENDANCE

Commissioners: (P= Present; A= Appointed; E= Elected)

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| - Gail Barmakian (A-Oak Bluffs) | - Michael Kim (A-Governor; non-voting) |
| P Trip Barnes (E-Tisbury) | P Joan Malkin (A-Chilmark) |
| - Leon Brathwaite (A-County) | P Katherine Newman (A-Aquinnah) |
| P Christina Brown (E-Edgartown) | P Ben Robinson (A-Tisbury) |
| - Peter Connell (A-Governor; non-voting) | P Doug Sederholm (E-West Tisbury) |
| P Robert Doyle (E-Chilmark) | - Linda Sibley (E-West Tisbury) |
| - Josh Goldstein (E-Tisbury) | P Ernie Thomas (A-West Tisbury) |
| P Fred Hancock (E-Oak Bluffs) | P Richard Toole (E-Oak Bluffs) |
| P James Joyce (A-Edgartown) | P James Vercruysse (E-Aquinnah) |

Staff: Adam Turner (Executive Director), Bill Veno (Senior Planner), Paul Foley (DRI Planner), Christine Flynn (Economic Development and Affordable Housing Planner), Dan Doyle (Regional Planner), Curtis Schroeder (Administrator).

Chairman Doug Sederholm called the meeting to order at 7:00 p.m.

1. EXECUTIVE DIRECTOR REPORT

Commissioners Present: T. Barnes, C. Brown, R. Doyle, F. Hancock, J. Joyce, J. Malkin, K. Newman, B. Robinson, D. Sederholm, E. Thomas, R. Toole, J. Vercruysse.

Adam Turner presented the following:

- He welcomed the new MVC Chairman, Doug Sederholm, and thanked the prior Chairman, James Vercruysse.
- Airport Master Plan:
 - Many of these projects will be potential DRIs, so there can be no prejudice.
 - Commissioners can ask about the parking and why an improvement is needed, but please provide those questions to Adam Turner or staff.
 - The map of the airport with the nine distinct improvements was reviewed. The plans include improvements to the runway and to the facilities which include:
 - Runway 6/24 Side Safety Areas and Primary Surface Obstruction.
 - Rehabilitate Runway 15/33 and Regrade Side Safety Areas.
 - Construct Concrete Fuel Pad at Fuel Farm.
 - Expand and Renovate Existing Terminal Building.
 - Remove Existing Taxiway E and Construct New Taxiway E.
 - Pave Transient Turf Tie Down Area.
 - Southeast Ramp Expansion.
 - Southwest Ramp Expansion.

- Construct New Aircraft Hangars.
- The location of the parking was reviewed.

Trip Barnes said it is not new. There will be major changes before this plan goes forward.

- The Statistical Report has been finished. It has been vetted, and if there are any comments please provide them to Adam Turner.
 - **Fred Hancock** asked what the planned distribution is for the report.
 - **Adam Turner** said there is funding for 1,000 copies. They will be given to all Towns and Town Administrators, libraries and schools, and then the rest of the distribution will be determined. It will also be available on the MVC website.
 - **Doug Sederholm** asked what the timing is for availability.
 - **Adam Turner** said February 15, 2019.
- Short Term Rental Tax:
 - The bill was passed two days before the end of 2018.
 - Any rental for less than 31 days is subject to the tax.
 - Any rental for 14 days or less in a calendar year is not taxed.
 - The bill targets Airbnb.
 - There are only a few places in the State with short term rentals other than Boston and that includes the Cape and Islands.
 - The Towns are not responsible for registrations, those will be done by the State. The Towns are responsible for inspections.
 - There are three parts to the law:
 - The State taxes 5.7% on anything that qualifies as a short term rental. The Towns can tax as much as 6%.
 - The Cape and Islands Water Protection Trust is an additional 2.75%, tax but Towns need to have 208 plans first, so the Island will not opt into that yet.
 - There is a Community Impact Fee for professionally managed properties, and that fee has to be used for housing.
 - **Christine Flynn** reviewed the tax tables:
 - After 2009 the Commonwealth allowed municipalities to increase the room occupancy tax up to 6%.
 - For the Island the local option room occupancy tax revenue (hotels and regular B&B) for FY 2013 was \$1,525,328 and for FY 2018 it was \$1,969,004.
 - The Towns can apply the local option rate to short term rentals in addition to the State tax rate. The total tax rate for each Town was reviewed; Aquinnah 9.7%, Chilmark 9.7%, Edgartown 9.7%, Gosnold 5.7%, Oak Bluffs 11.7%, Tisbury 11.7%, West Tisbury 5.7%.
 - The Cape and Island Water Protection Trust Fund tax and the Community Impact Fee have not been adopted by the Towns.
 - There are 1,200 hotel rooms island wide.
 - **Adam Turner** added that the State now receives 9.7% for hotel rooms.
 - The total estimated seasonal units are 10,621, and the estimated short term rental units are 5,310. The estimated short term rental tax revenue to the Towns is \$6,799,200. This is assuming that half of the seasonal units are rented as short

term rentals, the average rent per week is \$3,000 and a ten week rental season.

- All short term rentals require \$1,000,000 liability insurance.

Christina Brown asked for clarification that the short term rental tax will apply to a lot more units, but only if rented for 30 days or less. **Christine Flynn** said if a property is rented for 14 days or more, the short term rental tax will apply on the 15th day.

Christina Brown asked if it is 30 days for one rental or for the year. **Christine Flynn** said it is 30 days for one rental. If a property is rented to one individual for more than 30 days, the tax does not apply. If the property is rented multiple times during that 30 day or more period, the tax applies.

Christina Brown asked if the State will take care of the registry and the inspections. **Christine Flynn** said yes, the State will take care of the registry and maintain a database for all communities. The Towns will handle the inspections. **Adam Turner** added that the law gives the option to the Towns to do more if they want to.

James Joyce asked if the impact fee applies to hotels and homeowners. **Adam Turner** and **Christine Flynn** said it applies to professionally managed developments.

Doug Sederholm asked how the State and the Towns determine who is renting and for how long. **Christine Flynn** said the main target is the online platforms, like Airbnb, VRBO, etc., and the tax will be added directly to that online transaction. A property owner is obligated to register, but if the property is not advertised online, it may not be caught.

Adam Turner said the Department of Revenue does not have the answers to everything. They will start to collect taxes for rentals effective July 1, 2019 for contracts in effect as of January 1, 2019. The Department of Revenue website has information regarding the law.

Richard Toole asked if the State will request the inspections or is that up to the Towns. **Christine Flynn** said it is her understanding that it is up to the Towns.

Doug Sederholm said this will have an impact to Islanders who rent seasonally.

Richard Toole said Island residents are not in the estimated numbers. **Christine Flynn** said that is correct.

Doug Sederholm asked if there are any penalties for failing to pay the tax and register. **Christine Flynn** said there are penalties, but they have not been issued yet.

Adam Turner said the State is obligated to provide statistical data reports.

2. CLARION/SHIRETOWN CONVERSION-EDGARTOWN DRI 165-M2 MODIFICATION REVIEW

Ben Robinson recused himself.

Commissioners Present: T. Barnes, C. Brown, R. Doyle, F. Hancock, J. Joyce, J. Malkin, K. Newman, D. Sederholm, E. Thomas, R. Toole, J. Verduyse.

For the Applicant: Geoghan Coogan (Attorney), Debra Cedeno (Architecture Indigo)

2.1 Staff Report

Paul Foley presented the following:

- The location is 225-231 Upper Main Street, Edgartown (20A-90, 92 & 93).
- The proposal is to create four additional guest rooms out of the former Shiretown Meats building, resulting in a 40 guest room hotel.

- The project requires a Building Permit, Planning Board Special Permit (approved), Wastewater connection to EWWTF (approved) and Board of Health.
- DRI 165 was approved in 1984 for the construction of a 34 guest room hotel. In 2018 the conversion of the breakfast room into two more guest rooms was approved as a minor modification.
- There is an existing two bedroom apartment on the second floor used for staff housing.
- A referral for the modification to the property, a vestibule and additional parking, was received this week, but it is not part of this modification review.
- The Edgartown Wastewater Treatment Facility has approved the change because the flow for the four bedrooms is less than the previous use.
- The Edgartown Planning Board approved the change to the Special Permit with a public hearing noting it is a minor change that will not increase traffic flow and meets the parking regulations.

2.2 Land Use Planning Committee Report

Richard Toole, Land Use Planning Chairman, said the LUPC recommended that this is a minor modification not requiring a public hearing.

James Joyce moved and it was duly seconded that the modification does not require a public hearing. Voice vote. In favor: 11. Opposed: 0. Abstentions: 0. The motion passed.

Christina Brown moved and it was duly seconded to approve the modifications as presented by the applicant. Roll call vote. In favor: T. Barnes, C. Brown, R. Doyle, F. Hancock, J. Joyce, J. Malkin, K. Newman, D. Sederholm, E. Thomas, R. Toole, J. Vercruysse., Opposed: none. Abstentions: none. The motion passed.

Ben Robinson rejoined the meeting.

3. REVIEW AND APPROVAL OF THE MVC FY2020 BUDGET

Commissioners Present: T. Barnes, C. Brown, R. Doyle, F. Hancock, J. Joyce, J. Malkin, K. Newman, B. Robinson, D. Sederholm, E. Thomas, R. Toole, J. Vercruysse.

Adam Turner presented the following:

- This year includes a housing reimbursement from the tenant for the purchased residence.
- The costs to medical and dental coverage are increasing. For FY 2020, the MVC estimates a 7.5% increase to its medical and dental coverage.
- Town assessments have increased 2.8%.
- Salaries will decrease in FY 2020, and they will reflect a COLA increase of 1.8% and a step increase averaging 2.0%. Jo-Ann Taylor will be retiring.
- The budget is based on the contract the MVC has with MassDOT, a grant from the District Local Technical Assistance (DLTA) Fund allocation.
- There are several fiscal years within the budget because not all of the grants are on the same schedule, i.e. the DOT fiscal year is October to October.
- Staff decided to take all of the large grants out of the equation and just use the MassDOT and DLTA for the budget.
- All of the towns share the cost of planning per their relative equalized valuation. A lot of the towns went down, but Edgartown went up.

Fred Hancock moved and it was duly seconded to approve the Fiscal Year 2020 budget. Voice vote. In favor: 12. Opposed: 0. Abstentions: 0. The motion passed.

4. DRI FEE SCHEDULE

Commissioners Present: T. Barnes, C. Brown, R. Doyle, F. Hancock, J. Joyce, J. Malkin, K. Newman, B. Robinson, D. Sederholm, E. Thomas, R. Toole, J. Verduyck.

4.1 Staff Report

Paul Foley presented the following:

- He attended the meeting of the Executive Committee on November 1, 2018 to discuss the fee schedule.
- The current DRI Fee Schedule became effective on June 20, 2002.
- The core Consumer Price Index (CPI) was used to compare prices between 2002 and 2018, because it removes the more volatile categories such as food and energy. The CPI rate increased 34.71% between 2002 and 2018.
- Rounding up the Core CPI to 35% between 2002 and 2018, \$100 in 2002 has approximately the equivalent purchasing power as \$135 in 2018.
- Several Commissioners suggested and thought that it would be too much to raise the base fees in one step and suggested phasing. They also asked for comparable fees in the towns and Cape Cod Commission.
 - Oak Bluffs:
 - Building Fees are 0.65% of the cost of construction.
 - The Oak Bluffs fee schedule contains a matrix for the BVD based on use and construction type.
 - The Building Permit fee for a 2,500 sf wooden house with basement would be \$2,074.
 - The MVC would not look at a project as small as a single family residence. However, the cost is comparable to our total DRI fee for many reviews of Developments of Regional Impact (DRI).
 - Chilmark:
 - A Chilmark Building Permit costs \$1,000 for a house between 2,500 sf and 5,000 sf.
 - The fee goes up \$1,000 per 1,000 sf after that, i.e. a 10,000 sf house is \$6,000.
 - Minor alterations to a single family home or commercial project with no change in square footage have a fee of \$150. Additional fees are charged by square foot if enlarging.
 - Filing fees for subdivisions of more than 6 lots are a \$900 general fee plus \$350/lot; i.e. a 10 lot subdivision would be \$4,400. The MVC DRI fee for a 10 lot subdivision is about \$4,000 and the Cape Cod Commission DRI fee for a 10 lot subdivision is \$14,625.
 - The Cape Cod Commission (CCC):
 - The CCC threshold for DRI Review begins at 10,000 sf and there are actually review far fewer DRIs than the MVC.
 - For non-residential developments, the DRI fee is \$0.55 per square foot; i.e. a 10,000 sf commercial building base fee would be \$5,500 and the DRI fee at the MVC would be \$6,500.
 - The DRI fee for a major modification is dependent on the number of issue areas that have to reviewed, (i.e. water resources, traffic, transportation, etc.).
 - The CCC also charges \$2,195 per request for extension. Additionally the CCC makes applicants apply 6 months before expiration for an extension and holds a public hearing for extension reviews.

- The CCC charges post decision monitoring costs if necessary and for escrow accounts.
- The staff recommendation is that the MVC raise the base fees in all categories by 30%. This is a significant jump, but it is actually less than what was charged 17 years ago comparably.
- The MVC currently has no fee for minor modification review. If a modification is voted to require a public hearing as a DRI then the MVC charges the full DRI fee.
 - **Doug Sederholm** asked for clarification that the MVC currently does not charge for modifications.
 - **Paul Foley** said that is correct, there is no fee now unless the project becomes a full DRI.
- A fee should also be considered for extensions.
- Commissioners might also consider a fee for Compliance Reviews where the project is found to not be in compliance.
- If the Commission decides to impose a non-compliance review fee, the Commission should also consider adding language to the final Decision informing the applicant of such.
- Additional Fees:
 - The Commission should define criteria for “Impact on Coastal Ponds” under additional fees in the commercial/large scale development section, but as of right now we don’t know when we would apply that.
 - The Commission should consider a charge for demolition of historic houses and Paul suggested a base fee plus any professional review that would be required.
 - The Commission might also consider what other additional fees to add, such as recording fees.
- In conclusion the suggestion is to increase the fees 30% based on the CPI and to add some additional fees to the fee schedule.

4.2 Commissioners’ Discussion

There was a discussion about exemptions:

- **Katherine Newman** asked if there were any adjustments built in for Towns and nonprofits.
- **Paul Foley** said there are not. However, the Cape Cod Commission does allow for exemptions. The MVC’s only exemptions are in the regulations for Town entities.
- **Fred Hancock** said one of the provisions of the MVC bylaws is that the applicant can petition the Commission to waive the fee for Town entities and also for nonprofits.
- **Katherine Newman** added that they have to ask for the waiver rather than the MVC offering.
- **Doug Sederholm** said not all nonprofits are created equal. The MV Hospital is technically a nonprofit.

Curtis Schroeder said recently the MVC received two projects and asked how much more the Commission would have received with the new schedule. **Paul Foley** said 30%.

Joan Malkin asked if there is a course of action to take tonight or is Paul Foley asking to receive a green light to present a complete proposal. **Paul Foley** said the proposal is included in the staff report. **Adam Turner** said that Paul Foley talked about other things, but the last page of the report is the proposal. **Ernie Thomas** said the MVC should vote on the included proposal and move forward.

Doug Sederholm said there need to be clear definitions to charge fees for noncompliance. **Paul Foley** said he thought the Compliance Committee would determine if the issue was major or minor, but perhaps the criteria should be defined. **Doug Sederholm** said he would not want to put the fee to a vote without the criteria.

Fred Hancock asked how much the MVC made in fees last year. **Curtis Schroeder** said \$30,000. **Paul Foley** said the MVC reviewed 90 projects, but only 11 were full DRIs.

There was a discussion about fees for extension requests.

- **Fred Hancock** said he thought charging for an extension request after two years was excessive.
- **Doug Sederholm** said what if it is the second or third request, and he suggested \$150 for the first and \$250 for subsequent requests.
- **Fred Hancock** said some of the requests don't take much time.
- **James Vercruyse** said everything that comes through the MVC takes staff time. The Towns are bearing the burden for this, especially for all of the staff time. It has been a long time since the fee schedule has been updated.

Robert Doyle moved and it was duly seconded to approve the fee schedule as proposed.

- **Doug Sederholm** asked if that included the egregious noncompliance fees.
- **Robert Doyle** said it did.
- **Joan Malkin** said the fees should escalate in proportion to the work required, and looking at fees can't simply be postponed, but Commissioners should examine more closely what to do so the fees cover the extra cost.
- **Ernie Thomas** suggested using the proposal as presented with a review in a year's time to determine if the MVC is spending more time than being paid for, and then the fees can be adjusted in a year.
- **Katherine Newman** asked if staff keeps track of the time spent on a project.
- **Adam Turner** said a general record is kept of the time spent on a project.
- **Katherine Newman** said it would be interesting for staff to collect data for a period of time and write down the time spent on projects.
- **Doug Sederholm** suggested to perhaps focus on time spent on the bigger DRIs.
- **Katherine Newman** said the fee schedule should note exemptions.
- **Paul Foley** said the Towns know about the exemptions, as they are part of the MVC regulations.
- **Christina Brown** said the regulation should be noted on the fee schedule.
- **Katherine Newman** also suggested that the schedule could say that nonprofits may apply for an exemption.
- **Trip Barnes** said everything the MVC does has some kind of a staff report and perhaps the fees could be on those reports, so Commissioners can start to review it in six months.
- **James Joyce** said he needs clarification on staff time. Why have fees and then have to pay to talk with the staff after four hours? The staff is already being paid.
- **Paul Foley** and **Doug Sederholm** said we have not charged but it is there as a failsafe if the applicant is egregious.
- **Fred Hancock** said he has no problem increasing the fees for commercial developments and subdivisions, but agrees with James Joyce that the MVC has a staff person for project coordination and it seems the time is spent for the bigger projects and it is more justifiable to charge for that. For a minor modification we also run the potential that they won't come to the MVC with the fee. The Commission as a whole has to vote on a modification whether minor or major.
- **Adam Turner** said if the Commission has to vote then a fee should be charged.
- **Doug Sederholm** and **Robert Doyle** said they are essentially user fees to offset some of the costs.

Joan Malkin moved to make an amendment and it was duly seconded that the MVC should review the fee schedule in six months and James Joyce added to that amendment and it was duly seconded to delete the fees for staff time.

- **Joan Malkin** asked if deleting the staff time is for a DRI applicant or for someone walking off the street.

- **Paul Foley** said that provision has never been put it into place. It is there in the event someone “never goes away.” He added that pre-applications are not proposed as an additional fee.
- **Dan Doyle** said when the applicant does not provide staff with what we need it takes more time.
- **Bill Veno** said there is no definition for major and minor noncompliance.
- **Paul Foley** said the document says as determined by the Compliance Committee.

Voice vote on the amendment to review the fee schedule in six months and to delete staff time from the fees. In favor: 7. Opposed: 4. Abstentions: 1. The motion passed.

- **Trip Barnes** said he was curious to know what the fees were for the MV Museum since that project went on and on.
- **Doug Sederholm** said a better example would be Stop & Shop.

Joan Malkin moved to make an amendment and it was duly seconded that the fee for noncompliance be set at \$100.00 per infraction and revisited once major and minor is defined. Voice vote. In favor: 10. Opposed: 2. Abstentions: 0. The motion passed.

Fred Hancock moved to make an amendment and it was duly seconded to not charge for extension requests.

- **Christina Brown** said the MVC should keep a fee for extensions requests, but perhaps less than \$250.00, and suggested a \$100.00 fee.
- **Fred Hancock** suggested charging a fee for any extension request after the first request.
- **Joan Malkin** said when anything comes before the MVC, Paul Foley prepares a report and that comes with time spent on it. There should be a fee for that.
- **Christina Brown** said to leave the fee at \$250.00.

Voice vote. In favor: 2. Opposed: 10. Abstentions: 0. The motion did not pass.

Doug Sederholm said there is a motion on the floor to approve the fee schedule with the amendments; remove the per hour staff time (as listed on the fee schedule under Staff Time and Minor Modification a/o Concurrence Review, Additional Fees), change the Compliance Review fee to \$100.00 per infraction and review the fee schedule in six months.

- **Fred Hancock** asked if there is any way to determine if a development is more complicated than another.
- **Joan Malkin** said that is what the review should be about, as a fair way to review.

Voice vote. In favor: 12. Opposed: 0. Abstentions: 0. The motion passed.

Katherine Newman said items to be revisited are: to look at exemptions for nonprofits, the hours spent on a DRI, and definitions for noncompliance. **Adam Tuner** suggested to review those in six months.

5. DRI AFFORDABLE HOUSING POLICY UPDATE

Commissioners Present: T. Barnes, C. Brown, R. Doyle, F. Hancock, J. Joyce, J. Malkin, K. Newman, B. Robinson, D. Sederholm, E. Thomas, R. Toole, J. Verduyck.

5.1 Committee Report

Fred Hancock, Affordable Housing Policy Committee Chairman, presented the following:

- In December 2018 the MVC was given an update on the Committee’s work, and those goals have changed slightly.
- The highlighted areas on the handout are what the Committee recommends to be changed.
- This is the only page of the policy that we are currently asking to make changes on.
- We thought we would blast through the policy by now but we have not.
- We did feel that the changes that are highlighted are important to do.
- The changes include:

- The previous policy allowed the applicant to decide on the provisions, and the Committee felt it should be the Commission should make that determination to be more effective.
- Section a) added “lots and/or dwelling units (as the case may be)” for clarification.
- Section b) has been revised. Previously the provision was based on the assessed value of the property prior to the division, and the new suggestion is to change that to the appraised value post-development.
- A house ready for housing is more valuable than an unimproved lot and we are also stating that the money is to be paid at the beginning.

5.2 Commissioners’ Discussion

Trip Barnes said there should be language that says it should not be sold. **Fred Hancock** said this is the MVC policy but when we have a decision we would make that a condition of our decision that it would be in perpetuity.

Robert Doyle asked how do we establish the appraised value and who pays for that. **Joan Malkin** said an appraisal would have to be done and the applicant would pay for it. **Fred Hancock** said it would also be in the Decision. **Robert Doyle** said to be clear it should be added as a footnote in the policy.

Bill Veno asked for clarification on the second provision, is it also 100% of the lots. **Fred Hancock** said the provision for lots is 10% and provided an example; if it is a 20-lot development then two lots go to affordable housing.

Richard Toole moved and it was duly seconded to approve the changes to the Affordable Housing Policy for Residential Developments as presented. Voice vote. In favor: 12. Opposed: 0. Abstentions: 0. The motion passed.

6. MINUTES

Commissioners Present: T. Barnes, C. Brown, R. Doyle, F. Hancock, J. Joyce, J. Malkin, K. Newman, B. Robinson, D. Sederholm, E. Thomas, R. Toole, J. Vercruysse.

Ernie Thomas moved and it was duly seconded to approve the minutes of December 6, 2018 with the corrections as noted; line 265 revise the language to “it did not need to be completed before issuance of the CO,” line 195 correct spelling to Geoghan Coogan, line 304 revise the word said to asked and on line 407 remove the parenthesis. Voice vote. In favor: 12. Opposed: 0. Abstentions: 0. The motion passed.

7. NEW BUSINESS

Commissioners Present: T. Barnes, C. Brown, R. Doyle, F. Hancock, J. Joyce, J. Malkin, K. Newman, B. Robinson, D. Sederholm, E. Thomas, R. Toole, J. Vercruysse.

James Joyce asked what the MVC is doing with regards to the casino with the Tribe.

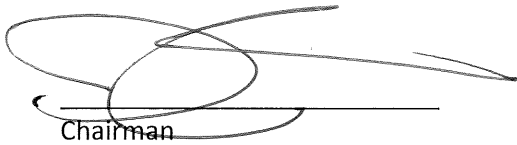
Adam Turner said the Town and the MVC are looking at options; if asked to review, legal counsel will be consulted to determine the MVC’s role.

Doug Sederholm said that currently the MVC has not received a request to review, but if the Town makes that request, the MVC will look at it proactively.

The meeting was adjourned at 8:45 p.m.

DOCUMENTS REFERRED TO DURING THE MEETING

- Minutes of the Commission Meeting – Draft, Held on December 6, 2018
- General Project Information – Airport Master Plan
- Draft Outline of MA Room Occupancy Tax Rate and Newly Adopted Short Term Rental Tax Rate - MVC January 2019
- Martha’s Vineyard Commission DRI #165-M2 Clarion Shiretown Conversion MVC Staff Report – 2019-01-17
- Letter from Edmond G. Coogan Law Office, RE: MV Edgar Inn, LLC, Modification, Dated December 12, 2018
- Shiretown Inn elevations and floor plans, Dated 9-15-18
- Martha’s Vineyard Commission Draft Budget FY2020
- DRI Fee Review 2018/2019 – Revised Memo, Dated January 17, 2019
- Affordable Housing Policy for Residential Developments – Proposed Revision



Chairman

2-7-19
Date



Clerk-Treasurer

7 FEB 2019
Date