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Decision of the Martha's Vineyard Commission

DRI 690 – Wampanoag Tribal Gaming Facility

1. SUMMARY

- Referring Board: Board of Selectmen, Town of Aquinnah, MA
- Project: To complete a Class II gaming facility.
- Owner: Wampanoag Tribe of Gay Head (Aquinnah)
- Applicant: Wampanoag Tribe of Gay Head (Aquinnah)
- Applicant Address: Tribal Administration Building, Community Center Road, Aquinnah, MA
- Project Location: Approximately 6 acres off Black Brook Road, Aquinnah, MA.
- Description: To complete an approximately 10,000 square foot Class II gaming facility.
- Decision: The Martha's Vineyard Commission (the Commission) voted to not approve the application for this project as a Development of Regional Impact on the grounds that the application was incomplete on July 11, 2019.
- Written Decision: This written decision was approved by a vote of the Commission on July 18, 2019.

The permit-granting authorities of the Town of Aquinnah are not authorized to approve the project for the development of a Class II gaming facility due to the information not being provided in order for the Commission to evaluate and make finding in accordance with Chapter 381 and Commission policy.

2. FACTS

The exhibits listed below including the referral, correspondence from the Commission to the Town and Wampanoag Tribe. The full record of the application is kept on the premises of the Martha's Vineyard Commission.

1. Referral from the Town of Aquinnah Board of Selectman on January 16, 2019 with clarification sent on February 13, 2019.
2. Referral letter from the Town of Chilmark Board of Selectman on February 20, 2019.
3. Letter from Adam Turner to Gary Haley (Aquinnah Board of Selectmen Chair) regarding DRI Checklist items triggered by the project, dated February 20, 2019.
4. Letter from Adam Turner to Cheryl Andrews-Maltais regarding hearing schedule and other matters, dated February 20, 2019.
5. Letter from Cheryl Andrews-Maltais to Adam Turner regarding the applicant's participation, dated February 22, 2019.
6. Letter from Adam Turner to Cheryl Andrews-Maltais regarding a meeting request, dated February 25, 2019.
7. Letter from Scott Crowell, legal representation for the Wampanoag Tribe of Gay Head (Aquinnah), to Adam Turner regarding administrative procedure and possible litigation, dated February 25, 2019.
8. Letter from Adam Turner to Scott Crowell regarding a meeting request, dated February 26, 2019.
9. Letter from Brian Hurley, legal representation for the MVC, to Scott Crowell regarding topic points for discussion, dated March 15, 2019.
10. Email from Brian Hurley to Lael Echo-Hawk, legal representation for the Wampanoag Tribe of Gay Head (Aquinnah), regarding a meeting to discuss regional impacts, dated March 27, 2019.
11. Email from Lael Echo-Hawk to Brian Hurley regarding collaboration between the parties, dated April 1, 2019.
12. Letter from Adam Turner to Cheryl-Andrews Maltais regarding hearing schedule, dated April 19, 2019.
13. Letter from Adam Turner to Cheryl-Andrews Maltais regarding hearing procedure, dated May 8, 2019.

2.1 Referral

The project was referred to the Commission on February 13, 2019 by the Board of Selectman of the Town of Aquinnah, MA for action pursuant to Chapter 831 of the Acts of 1977, as amended (the Act) and the Commission's Standards and Criteria Administrative Checklist for Developments of Regional Impact, Sections 3.10 (Development of new construction totaling 3,500 sq. ft or more).

2.2 Hearings

Notice: Public notice of a public hearing on the Application was published in the Vineyard Gazette on May 24, 2019 and May 31, 2019.

Hearings: The Commission held a public hearing on the Application that was conducted by the Commission pursuant to the Act and M.G.L. Chapter 30A, Section 2, as modified by Chapter 831 on June 6, 2019, which was continued to July 11, 2019. The hearing was closed on July 11, 2019.

2.3 The Plan

No plans nor any supporting documentation was submitted.

2.4 Summary of Testimony

The following is a summary of the principal testimony given during the public hearing:

- Staff report by MVC staff.
- Testimony from Jeffery Madison, Administrator, Town of Aquinnah.
- Testimony from Julie Vanderhoop, Selectperson, Town of Aquinnah.

3. FINDINGS

3.1 Project Description

- To construct a 10,000 square foot Class II gaming facility.

3.2 Statutory Authority

The purpose of the Commission, as set forth in Section 1 of the Act, is to “protect the health, safety and general welfare of island residents and visitors by preserving and conserving for the enjoyment of present and future generations the unique natural, historical, ecological, scientific and cultural values of Martha’s Vineyard which contribute to public enjoyment, inspiration and scientific study by protecting these values from development and uses which would impair them, and by promoting the enhancement of sound local economies.”

The Commission has reviewed the project as a Development of Regional Impact, using the procedures and criteria that the Commission normally uses in evaluating the benefits and detriments of such a proposal. The Commission has considered the Application and the information presented at the public hearing, including considering all the testimony presented and reviewing all documents and correspondence submitted during the hearing and review period.

3.3 Benefits and Detriments

Based on the lack of record and testimony presented therein, the Commission makes no finding in respect to the following pursuant to Sections 14 and 15 the Act.

THE COMMISSION MAKES NO FINDINGS RELATIVE TO THE PROBABLE BENEFITS AND/OR PROBABLE DETRIMENTS DUE TO INFORMATION NOT BEING PROVIDED:

The Commission makes no finding that the proposed development at this location is appropriate in view of the available alternatives (Section 15(a) – (e) of the Act.) due to the lack of information and testimony provided.

With respect to Wastewater and Groundwater,
The Commission makes no finding due to the lack of information provided.

With respect to Open Space, Natural Community and Habitat,
The Commission makes no finding due to the lack of information provided.

With respect to Night Lighting and Noise,
The Commission makes no finding due to the lack of information provided.

With respect to Energy and Sustainability,
The Commission makes no finding due to the lack of information provided.

With respect to Traffic and Transportation,
The Commission makes no finding due to the lack of information provided.

With respect to Scenic Values, Character, and Identity:
The Commission makes no finding due to the lack of information provided.

With respect to the Impact on Abutters,
The Commission makes no finding due to the lack of information provided.

With respect to the provision of municipal services or burden on taxpayers,
The Commission makes no finding due to the lack of information provided.

The Commission makes no finding whether the proposed development would use efficiently and not unduly burden existing public facilities (other than municipal) or those that are to be developed within the succeeding five years. (Section 15(f) of the Act).

The Commission makes no finding whether the proposed development interferes with the ability of the municipality to achieve the objectives set forth in the municipal general plan. (Section 15(g) of the Act) due to the lack of information provided.

The Commission makes no finding whether the proposed development would not contravene land development objectives and policies developed by regional or state agencies. (Section 15(h) of the Act) due to the lack of information provided.

In sum, the Commission has concluded that lack of information and testimony does not permit the Commission to determine whether the application is consistent with the land development objectives of the commission, as evaluated in light of the considerations set forth in section 14(b) of the act.

The Commission makes no finding that the proposed development is consistent with municipal development ordinances and by-laws, to the best of the Commission's knowledge due to the lack of information provided.

The Commission makes no finding regarding whether the site is in conformance with the regulations of districts of critical planning concern, as evaluated in light of the considerations set forth in section 14(d) of the act. The Commission finds that the proposed development site is located within Aquinnah District of Critical Planning Concern (DCPC), but makes no finding due to the lack of information provided.

4. DECISION

The Martha's Vineyard Commission deliberated about the application at a duly noticed meeting of the Commission held on July 11, 2019 and made its decision at the same meeting.

The following Commissioners, all of who participated in all hearings and deliberations on this project, participated in the decision on July 11, 2019.

- Voting in favor: Trip Barnes, Leon Brathwaite, Christina Brown, Rob Doyle, Josh Goldstein, Fred Hancock, James Joyce, Joan Malkin, Kathy Newman; Ben Robinson, Doug Sederholm, Linda Sibley, Ernie Thomas, Richard Toole; and Jim Vercruysse.
- Voting against: None.
- Abstentions: None.

Based on this vote, the Commission did not approve the application for the project as a Development of Regional Impact on the grounds that the application is incomplete and that there is no basis to approve the application.

This written Decision is consistent with the vote of the Commission July 11, 2019 and was approved by vote of the Commission on July 18, 2019.

5. CONCLUSION


5.1 Permitting from the Town

The Applicant shall not, consistent with this Decision, be granted applicable development permits by appropriate Town of Aquinnah Officers and Boards until DRI approval is granted by the Commission.

5.2 Notice of Appellate Rights

Any party aggrieved by a determination of the Commission may appeal to Superior Court within twenty (20) days after the Commission has sent the development Applicant written notice, by certified mail, of its Decision and has filed a copy of its Decision with the Aquinnah Town Clerk.

5.3 Signature Block

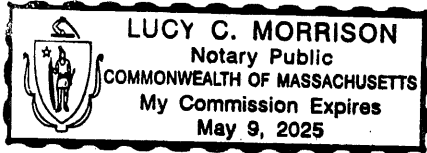

E. Douglas Sederholm, Chairman

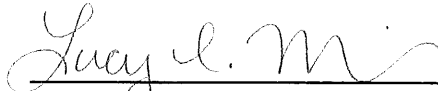
8-12-19
Date

5.4 Notarization of Decision

Commonwealth of Massachusetts
County of Dukes County, Mass.

On this 12th day of August, 2019, before me,
Lucy C. Morrison, the undersigned Notary Public, personally
appeared E. Douglas Sederholm, proved to me through satisfactory evidence of identity,
which was/were personal knowledge to be the person(s) whose name(s)
was/were signed on the preceding or attached document in my presence, and who swore or affirmed to
me that the contents of the document are truthful and accurate to the best of his/her/their knowledge and
belief.




Signature of Notary Public

Lucy C. Morrison
Printed Name of Notary
My Commission Expires May 9, 2025

5.5 Filing of Decision

Filed at the Dukes County Registry of Deeds, Edgartown, on: August 12, 2019

Deed – Book 1503, Page 186
Document Number: 00004381