



October 12, 2022

Dear Members of the Select Board and Finance Committee,

As I am sure you are aware, the MVC has been challenged with litigation this year. While we have faced appeals of our decisions over the years, the volume of appeals these last few years has increased considerably. Since 2020 we have successfully defended third party appeals in the Chappy Wireless DRI and the Edgartown Stop and Shop DRI. In addition, after initial proceedings to defend our decision in the Harbor View Hotel DRI, we were able to settle it.

In the past year, the Meeting House Way developers appealed the Commission's denial of their proposed development, putting at issue the Commission's mission to preserve Island character. The appeal involved a full-blown trial that lasted a week and required extensive preparation and expert witnesses. The final decision likely won't be made until early next year. In all, the Commission will have spent in excess of \$400,000 defending its decision (although our insurance has reimbursed \$100K of our expenses).

We also have several appeals of MVC decisions denying the demolition of historic structures. While the Commission approved Island Elderly Housing's (IEH) proposal to demolish an historic structure, IEH has appealed – essentially the conditions imposed in the approval. Another demolition under appeal is the denial of a demolition of a prominent, historic residence in West Chop.

Finally, the Commission is defending an appeal of the Commission's denial of the Lamppost's modification request to eliminate the certain workforce housing.

We do not anticipate having to mount the kind of defense in any of these cases that was appropriate in the Meeting House Way appeal, but we acknowledge that they present budget issues and, accordingly, we are planning an increase in the Commission's legal expense budget line. We anticipate having a better idea as to the magnitude of any increase within the next month or so, and we will communicate with your office as soon as we can.

Sincerely

Adam Turner  
Director

## **MVC – Items in Litigation**

### **Meeting House Way (DRI 682, 682A, and 682B), Edgartown**

This private residential development proposed 28 single-family lots and 14 townhouses situated on 54 acres in Edgartown. The Commission denied the development, concluding that it was inconsistent with the rural and natural character of this part of Edgartown, and of the Vineyard as a whole. Commission concerns focused largely on the scale of the proposed houses and the overall scope and layout of the development. The applicants appealed the denial. The case was tried over 6 days in the Edgartown District Court, and the parties are awaiting a decision from the judge.

### **Harbor View Hotel (DRI 618-M7), Edgartown**

The Harbor View Hotel filed a request for modification of certain conditions set out in a previously approved DRI. The modification, if approved, would have relocated a spa from the main hotel building to an enlarged cottage. It also would have ratified prior unauthorized construction, while maintaining overall the same number of guest rooms. The modification was approved with conditions concerning hotel uses, project phasing, and community relations, among others. The Hotel appealed the decision – essentially the conditions included as part of the approval. Initial pleadings were filed, but the parties reached a settlement after lengthy negotiations. The neighbors have filed separate proceedings objecting to the settlement.

### **Lampost Building (DRI 67-M2), Oak Bluffs**

The Commission approved the original Lampost DRI in 2017. A subsequent modification allowed for 10 apartments expressly for workforce housing. Last year the Commission was made aware that the applicant had been renting several of the workforce units on Airbnb, in violation of the Commission's earlier decision. The applicant then filed a request for modification seeking to reduce the number of workforce units from 10 to 4. The Commission denied the application, citing the ongoing need for workforce housing on the Island, and the lack of other benefits associated with the request. The applicant has appealed.

### **Island Elderly Housing (DRI 714), Oak Bluffs**

This Island Elderly Housing (IEH) after-the-fact request for approval of the demolition of an historic house and of a replacement structure comprising five age-restricted rental units. Following a special meeting of the Land Use Planning Committee to discuss the Commission's concern that significant aspects of the design were inconsistent with the character of the neighborhood, the applicant declined to submit a revised proposal. The Commission, noting the significant need for elder housing on the Island, approved the project but required that the applicant return with a final plan to reduce the massing of the proposed building and more faithfully replicate features of the original house. IEH has appealed.

### **1133 Main St. Demolition (DRI 733), Tisbury**

This historic house, referred as a demolition, was built in 1890 in the Shingle style common among resort areas such as West Chop around the turn of the century. The owners sought after-the-fact approval of the demolition and the construction of a replacement residence. The Commission denied the proposal based on the historic significance of the demolished residence and its assessment that the proposed replacement did not adequately reflect the character of the original building and its Shingle style. The Commission noted the strong opinion of the Tisbury Historical Commission recommending preservation of the house. The owners have appealed.