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## Minutes of the Commission Meeting Held on September 1, 2016 In the Stone Building 33 New York Avenue, Oak Bluffs, MA

### IN ATTENDANCE

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

P Tripp Barnes (E-Tisbury)	P James Joyce (A-Edgartown)
- Yvonne Boyle (A-Governor)	P Joan Malkin (A-Chilmark)
P John Breckenridge (A-Oak Bluffs)	P Katherine Newman (A-Aquinnah)
P Christina Brown (E-Edgartown)	- Ned Orleans (A-Tisbury)
- Peter Connell (A-Governor; non-voting)	P Doug Sederholm (E-West Tisbury)
P Robert Doyle (E-Chilmark)	P Abe Seiman (E-Oak Bluffs)
P Josh Goldstein (E-Tisbury)	P Linda Sibley (E-West Tisbury)
P Fred Hancock (E-Oak Bluffs)	P Ernie Thomas (A-West Tisbury)
P Leonard Jason (A-County)	P James Vercruysse (E-Aquinnah)

Staff: Adam Turner (Executive Director), Bill Veno (Senior Planner), Paul Foley (DRI Planner), Sheri Caseau (Water Resources Planner), Christine Flynn (Economic Development and Affordable Housing Planner).

**Chairman James Vercruysse** called the meeting to order at 7:00 p.m.

### 1. KANTER BEACH ANR-EDGARTOWN C.R. – 11 CONCURRENCE REVIEW

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Commissioners Present: T. Barnes, J. Breckenridge, C. Brown, R. Doyle, J. Goldstein, F. Hancock, L. Jason, J. Joyce, J. Malkin, K. Newman, D. Sederholm, A. Seiman, L. Sibley, E. Thomas, J. Vercruysse.

For the Applicant: Reid Silva

**James Vercruysse**, Chairman noted the Concurrence Review is to determine if this is a project of an intensity to warrant a public hearing as a DRI.

#### 1.1 Staff Report

**Paul Foley** presented the following.

- The site plan was reviewed.
- There are two houses on Turkeyland Cove. One lot was sold to the applicant and he also wants beach access. They have asked to subdivide the three acre lot. It is unbuildable and will remain unbuildable.
- The two houses have used the property as a private beach.
- The one lot was sold with the understanding that the property could continue to utilize the beach. The landowners would like to memorialize this agreement by dividing the beach lot into two parcels and each landowner retaining ownership of one of the resulting parcels.
- There would be no additional use resulting from the division than what currently exists.

- LUPC recommended that the proposal does not require a public hearing if the applicant submits to no further subdivision.
- The project was referred by the Edgartown Planning Board due to the division in a Coastal DCPC.

### **1.2 Applicants' Presentation**

**Reid Silva** presented the following.

- Paul Foley summarized the project well.
- There are no boathouses or docks.
- It is a 3.1 acre beach lot.
- Part of the sale agreement was that the owners could continue to use the beach but the new owner wants to own the beach. Each owner would now own one beach lot.

### **1.3 Commissioners' Questions**

**Doug Sederholm** asked if the applicants have any objection to the LUPC recommendation that it be approved with no further subdivision. **Reid Silva** said the applicant would prefer not to have a restriction. There is no further intention to divide and if they did they would have to come back to the MVC. They don't welcome the restriction but would do it.

**James Joyce** asked if the beach lot can be sold separately from the house. **Reid Silva** said it could.

**Linda Sibley** said that the Edgartown Planning Board is interested in reviewing an option where the undivided land could be conveyed to a conservation group or the MV Land Bank Commission and requests a condition of no further division of the lots. **Paul Foley** read the letter.

**Linda Sibley** noted that the MVC cannot condition unless a Public Hearing is held and does not feel the projects needs a Public Hearing.

***Linda Sibley moved and it was duly seconded to not concur and to return the project back to the Town of Edgartown.***

- **Katherine Newman** asked if the non-owner lots are large enough to subdivide.
- **Reid Silva** said they are not.
- **John Breckenridge** thanked LUPC for reviewing and that the Edgartown Planning Board did forward the project to LUPC. If the MVC does not concur it should be made clear that if the applicant wanted to subdivide it would have to come back to the MVC.
- **Doug Sederholm** wants to make it clear that the applicant is not offering now to condition no further subdivision.
- **Reid Silva** confirmed that is not an offer and noted that erosion is 6.9705.

***Roll call vote. In favor: T. Barnes, J. Breckenridge, C Brown, R. Doyle, J. Goldstein, F. Hancock, L. Jason, J. Joyce, J. Malkin, K. Newman, D. Sederholm, A. Seiman, L. Sibley, E. Thomas, J Vercruysse. Opposed: none. Abstentions: none. The motion passed.***

***Christina Brown moved and it was duly seconded that it is important for the MVC to write a letter, signed by the MVC Chairman, to the Edgartown Planning Board that acknowledges their concern and that any further division would have to come back to the MVC.***

- **Joan Malkin** asked if each beach parcel is associated with a home parcel.
- **Doug Sederholm** said they are not, they are separate and unrelated.
- **James Joyce** said there are four independent lots, two beach lots and two home lots.
- **James Breckenridge** said it is important to note that in the letter to the Edgartown Planning Board regarding the four lots.

***Voice vote. In favor: 15. Opposed: 0. Abstentions: 0. The motion passed.***

## 2. MINUTES

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*Commissioners Present:* T. Barnes, J. Breckenridge, C. Brown, R. Doyle, J. Goldstein, F. Hancock, L. Jason, J. Joyce, J. Malkin, K. Newman, D. Sederholm, A. Seiman, L. Sibley, E. Thomas, J. Vercruysse.

**Fred Hancock Moved and it was duly seconded to approve the minutes of July 21, 2016 as written. Voice vote. In favor 13. Opposed : 0. Abstentions: 2. The motion passed.**

**Fred Hancock moved and it was duly seconded to approve the minutes of August 4, 2016 as written. Voice vote. In favor: 10. Opposed: 0. Abstentions: 5. The motion passed.**

## 3. FEATHERSTONE ART BARN AND POTTERY STUDIO OAK BLUFFS DRI 664 PUBLIC HEARING

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*Fred Hancock recused himself as his wife is an employee at Featherstone and he has also sold his work at Featherstone.*

*Commissioners Present:* T. Barnes, J. Breckenridge, C. Brown, R. Doyle, J. Goldstein, L. Jason, J. Joyce, J. Malkin, K. Newman, D. Sederholm, A. Seiman, L. Sibley, E. Thomas, J. Vercruysse.

*For the Applicant:* Ann Smith (Executive Director) , Sean Murphy (Attorney), Bill Potter (Builder), Woody Mitchell (Builder)

**Linda Sibley**, Public Hearing Officer opened the Public Hearing at 7:15 p.m. and read the Public Hearing Notice. The applicant is Featherstone Center for the Arts, Inc. and the proposal is the demolition of two existing buildings and the construction of two new larger buildings and the relocation of a small existing chapel from off-site onto the Featherstone Center for the Arts campus. The Public Hearing process was explained.

### **3.1 Staff Report**

**Paul Foley** presented the following.

- The applicant is Featherstone Center for the Arts and Squash Meadow Builders.
- Zoning is R-3 Residential.
- A building Permit is required and the entire property is in the Southern Woodlands DCPC. Almost half of the property is in the Lagoon Pond DCPC. The Old Back Road Special Way runs through the site.
- Featherstone is a year round non-profit arts education facility open seven days a week.
- The 6.22 acre campus was formerly a farm and was purchased in the 1990's and has been adapted for the use of the educational non-profit with six buildings and a couple of out buildings.
- The total existing square footage of the six buildings is approximately 9,000 sf.
- The proposal includes the demolition of two existing buildings (total approximately 2,300 sf) and the construction of two new larger buildings with a total of 8,600 sf and the relocation of a small existing chapel from off site.
  - The demolition is of the existing approximately 1,500 sf Art Barn and the construction of a new 6,200 sf Art Barn with offices, classrooms, a commercial kitchen and a gallery.
  - The demolition is of the 800 sf caretakers' cottage and the construction of a new modular single story 2,400 sf pottery barn.
  - There will be the relocation of a small existing 180 sf chapel from off site.
  - The proposal includes removing a small paved parking pad in front of the existing Art Barn and adding a new four spot parking area near the new pottery gallery accessed off the Old Back Road.

- The hours of operation are 12 noon to 4:00 p.m. every day with classes often held from 9:00 a.m. to 10:00 p.m.
- Various classes are taught throughout the year with an average class size of 8-10.
- The classes and activities of the arts education center are supplemented in the summer with regular events such as Musical Monday, Flea & Fine Arts Market and Poetry Readings on Tuesdays, Jazz Thursdays and other artistic exhibitions such as dance and photography.
- The applicant has said they have decided to not host weddings on site any longer which was not part of their core mission.
- The project was referred by the Building Inspector.
- The project was referred under DRI Checklist 3.1D (development of auxiliary commercial buildings over 1,000 sf resulting in a total of over 2,000 sf) a Concurrence Review, DRI Checklist 6.1 (private facility over 2,000 sf) a mandatory review.
- LUPC waived the need for a traffic study.
- Key issues include;
  - The campus and activities have grown steadily over the years to include up to 1,100 classes a year and many regularly scheduled events and several large functions. How has the increased activity impacted traffic, nitrogen loading and the neighborhood?
  - How much will the proposed expansion increase use of the property?
  - The proposal includes the removal of at least 17 trees. Could the new buildings be sited to decrease the impact on vegetation?
- The proposal includes the removal of 17 trees. Much of the property and part of the project site is designated NHESP habitat but it has been signed off as not a “take”. The proposal stays out of the woods and the buffer zone.
- Lighting plans have not yet been submitted.
- The parcel is in the Lagoon Pond Watershed, a nitrogen sensitive water body. The applicant has proposed to install a denitrifying system that will produce nitrogen effluent of 19 mg/l or below for the Farmhouse, the new Art Barn and the new Pottery Studio buildings. The other existing buildings will remain on the existing septic system.
- The site is on Featherstone Lane which is off Barnes Road in Oak Bluffs. The project site driveway (Featherstone Lane) on Barnes Road is approximately 1,925 feet north of the Roundabout intersection at Barnes Road and Edgartown Vineyard Haven Road.
- Plans show a new four spot parking area intended for handicapped spots near the new pottery gallery accessed off the Old Back Road Special Way.
- The site lines from the existing access driveway to take a left turn are less than AASHT standards.
- A review of the MassDOT Crash Data on the section of Barnes Road in the vicinity of Featherstone Lane for the 2012-2014 three year period had one crash that was a property damage only crash in 2013 at Barnes Road and Beech Tree Landing.
- VTA bus routes 7 and 9 traverse Barnes Road and do have bicycle racks.
- The Landscape Plan was submitted and trees will be replaced with appropriate native species.
- The recommended affordable housing monetary mitigation for a 8,600 sf development is \$8,200.
- The applicant will be removing a vacant seasonal cottage that is not up to building code and is not habitable. Staff would recommend that the removal of the cottage is not displacing a year round unit and therefore does not trigger a replacement of an on-site year round affordable housing unit.
- Existing images of the site and interior space were reviewed.
- The Old Back Way Special Way site was reviewed.

- The site plan, the DCPC site and the proposed site plan were reviewed.
- The proposed Art Barn and New Pottery Studio design, floor plans and perspectives were reviewed.

### **3.2 Applicants' Presentation**

**Sean Murphy** presented the following.

- The idea is not to massively increase the number of classes and operations, but to make it more efficient.
- Since the applicant was originally before the MVC they have received a bequest so they can now complete what would have taken three to four phases.
- Featherstone is a year round arts facility.
- The outdoor activities are permitted by the Town and they use port a potties for these activities.
- The site plan was reviewed.
- The new plan is a benefit.
- The current 2,100 sf will be replaced with approximately 6,200 sf.
- The caretaker's cottage is beyond repair.
- The current 800 sf pottery studio will be replaced with a 2,400 sf studio.
- A 180 sf chapel is being donated but it is not an actual chapel.
- The rest of the structures on the campus remain the same.
- The applicant will be installing a denitrifying system for the new structures.
- The project has been redesigned to comply with the 50 foot Special Way buffer.
- If the MVC approves the next step is to go back to the Town.
- There is plenty of space for overflow parking but the parking plan is sufficient for their use.
- Even though the site lines might not technically apply there have been no accidents.
  - **Ann Smith** added that there has been no change to the site lines.

**Ann Smith** presented the following.

- We discovered the Special Way as part of the last review and learned of the 50 foot buffer zone so we re-designed the project to stay out of that buffer zone.
- We are adding classroom and office space.
- We interviewed our constituents and teachers and they all said they wanted better classroom space.
- The existing barn is an original horse barn and we have used the stalls, etc. The space is not comfortable in the winter.
- We want to give our students a better art experience.

### **3.3 Commissioners' Questions**

**Linda Sibley** noted that the abutting properties are described as residential and the Land Bank and asked if that can be shown on an aerial view. **Ann Smith** showed the area on a site photo and noted that the Landbank rents to the farmers at \$1.00 /yr. The old Webbs Campground is now the Southern Woodlands. The property is surrounded by the Landbank and with two private residences on either side. Behind the campus is Woodside Village and Schoolhouse Village.

There was a discussion about classroom size and capacity.

- **Doug Sederholm** noted that the net square footage is adding 1,500 sf so the arts center will have a greater capacity than before.
- **Ann Smith** said the classroom space will be larger but the teachers do not want to teach larger classes. The intent is not to increase.

- **Doug Sederholm** summarized that the facility will have greater capacity and more classrooms and will have larger capacity in those classrooms.
- **Ann Smith** said that is correct but reiterated that the teachers do not want to grow class size. Teachers often have other jobs and are time limited.

There was a discussion about the construction plan.

- **John Breckenridge** asked if the applicant had submitted a demolition and construction plan for all of the vehicles and the activity especially with the concern of the Special Way.
- **Paul Foley** and **Ann Smith** said it has not been submitted.
- **John Breckenridge** suggested that perhaps that could be an offer and he would like to see that in writing. He also suggested that the construction should perhaps come through Featherstone Lane and not use the Special Way.
- **Sean Murphy** said the applicant will make that an offer.
- **Linda Sibley** noted that sometimes the contractors are not sitting at the hearing and don't get the promises made.
- **Bill Potter** said all the way down to the demolition of the caretaker cottage some will be done by hand and we will be conscious of it. The only exception is to get rid of the asphalt and we would need to use the Special Way for that. We would also put up cones across the Special Way.

**Joan Malkin** asked why there are four parking spaces at the new Pottery Barn. **Ann Smith** said a drop area is needed.

**Christina Brown** said she would like to see a visual of the Special Way for clarity and does it transect the property. **Ann Smith** showed the Special Way on the site plan. On one side it goes to the Landbank and on the other side is a real Landbank trail and there are horse farms on the other side and it is used as a trail. It is not a road used by Featherstone.

**James Vercruyse** asked if there are hazardous waste contracts for the pottery studio and the other facilities. **Ann Smith** said there are.

**Josh Goldstein** said he is thrilled to see a denitrifying system being put in and why not use the bequest for housing. **Ann Smith** said the center is not in the landlord business and are holding true to our mission.

**John Breckenridge** said handicap parking was talked about and maybe parking needs to be looked at in another way and incorporate that into the offers.

### **3.3 Wastewater Report**

**Sheri Caseau** presented the following.

- The project is in the Lagoon Pond Watershed and the MVC Policy allows a load of 3.4 kg/acre/yr.
- For the 6.22 acres the total limit is 21.15 kg/yr.
- Existing average water usage (for years without flower garden) = 101,000 gallons/yr.
  - Roof runoff .52 kg/yr
  - Impervious runoff 1.10 kg/yr
  - Pervious runoff 1.36 kg/yr
  - Total 2.98 kg/yr
  - Nitrogen load from current water use 13.38 kg/yr
  - Total Current Load 16.36 kg/yr
- With the proposed denitrification system the nitrogen load will be reduced by approximately 25%.

- The current water use with no denitrification could be 152,397 gallons/yr and would still be under the MVC allowable nitrogen limit.
- The MVC Lagoon Pond Watershed loading limit used for this project is 3.4 kg/acre/yr and is the more restrictive of the limits. The MVC limit amounts to a groundwater concentration of about 1.1 ppm this is arrived at by a conversion calculation in the DEP model.
- Two water meters will be installed.
- The denitrifying system will reduce the nitrogen load of the proposed project by approximately 25 %.
- The applicant has agreed to submit water use records and if water usage exceeds 152,397 gallons/yr they will install denitrification on the septic system that services the Studio, The Children's Studio, The Pebble and the Pottery Studio buildings. If this is put in the total load will be 7.26 kg/yr for the other buildings.

**Doug Sederholm** asked what they are basing current water records on. **Sheri Caseau** said they have current records but will put in two water meters.

**Doug Sederholm** asked if the current amount is with the flower bed watering. **Sheri Caseau** said the calculations are without the flower garden.

**Doug Sederholm** said the recommendation is to reduce the nitrogen in the current watershed by 50% (for Lagoon Pond). **Sheri Caseau** confirmed that is correct for Lagoon Pond.

### **3.4 Commissioners' Discussion**

**John Breckenridge** said some minor refinements are needed for their potential offers which can be worked through at LUPC and some discussions are needed of the nitrogen load.

**Adam Turner** asked if the applicant is willing to make an offer of restricting use of the Special Way. **Sean Murphy** said yes.

**Adam Turner** said the applicant is trying to improve the economics of the buildings and the facility and with regards to the character they do a great job.

**John Breckenridge** noted that for the wastewater calculations they were based on the kitchen as a teaching kitchen and not a commercial kitchen and that needs to be in the plan. **Sean Murphy** said it is in the proposal.

**John Breckenridge** asked if it is in the offers to add a second denitrification system if needed. **Ann Smith** said we don't want a well and if decided we would come back to the MVC.

**Josh Goldstein** asked what the cost is to denitrify the entire property. **Stacy Snuck** from Schofield, Barbini & Hoehn said it is about \$25,000 and also noted that most of the usage will go through the new system.

**Doug Sederholm** asked what the budget for the project is. **Ann Smith** said \$2.7 million.

**Linda Sibley**, Public Hearing Officer suggested keeping the public hearing open for written testimony until September 9, 2016 and have Deliberation and Decision on September 22, 2016.

There was a discussion about a final decision for the project.

- **Woody Mitchell** asked if we have heard the offers and have agreed to those can't they be entered into the final decision.
- **Josh Goldstein** said why doesn't the MVC move this along.
- **Doug Sederholm** said the MVC might weigh it differently in Deliberation and Decision.
- **Sean Murphy** said they will get the offers to the MVC by noon on September 2, 2016.

- **Linda Sibley** said LUPC can meet on September 6, 2016 and the MVC can discuss the soonest possible moment for Deliberation and Decision.

**Linda Sibley**, Public Hearing Officer closed the Public Hearing and left the written record open until September 6, 2016.

**James Vercruysse**, Chairman recessed the meeting at 8:05 p.m. and reconvened at 8:10 p.m.

**Fred Hancock** rejoined the meeting.

#### **4. OAK BLUFFS WATER DISTRICT SOLAR PANELS DRI 660 PUBLIC HEARING**

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*Commissioners Present:* T. Barnes, J. Breckenridge, C. Brown, R. Doyle, J. Goldstein, F. Hancock, L. Jason, J. Joyce, J. Malkin, K. Newman, D. Sederholm, A. Seiman, L. Sibley, E. Thomas, J. Vercruysse.

*For the Applicant:* Sean Murphy, Jon Mancini, George Sourati

**Fred Hancock**, Public Hearing Officer opened the Public Hearing at 8:10 p.m. and read the Public Hearing notice. The applicant is BWC Wankinco River LLC and the project location is 4 Alwardt Way, Oak Bluffs Map 54 Lot 1 (45.5 acres) and Lot 2 (10.75 acres). The 56.25 acres properties are owned by the Oak Bluffs Water District. The revised proposal is to construct a 1.46 +/- MV Solar Farm within a cleared area of 10.37 acres between Well # 3 and Well # 4 on Oak Bluffs Water District property containing wells 3, 4 and 5. The public hearing process was reviewed.

##### **4.1 Staff Report**

**Paul Foley** presented the following.

- The project location is 4 Alwardt Way, Oak Bluffs Map 54 Lot 1 (45.5 acres) and Lot 2 (10.75 acres). The 56.25 acres properties are owned by the Oak Bluffs Water District.
- The revised proposal is to construct a 1.46 +/- MV Solar Farm within a cleared area of 10.37 acres between Well # 3 and Well # 4 on Oak Bluffs Water District property containing wells 3, 4 and 5. The solar panels would be in the Zone 2 Area of Contribution with some clearing in two Zone 1 Areas of Contribution.
- The Town of Oak Bluffs recently adopted a Zoning By-law for Solar Energy Systems (Section12). The purpose of the by-law is to “promote the use of solar energy by providing standards for the placement, design, construction, operation, monitoring modification and removal of such installations that address public safety, minimize impacts on scenic, natural and historic resources and provide adequate financial assistance for the eventual decommissioning of such installations”.
- A Special Permit from the ZBA under the new by-law, a Building Permit and a Site Plan Review are required. Massachusetts DEP has granted approval with conditions on the revised proposal. NESHP has signed off that this would not be a “take” of state listed rare species. The land appears to be mapped by Mass GIS as Article 97 Land which would require it to go through the Disposition process of the Office Energy and Environmental Affairs (EEA).
- Surrounding land uses include the State Forest, residential and abuts light industrial in the Goodale Gravel Pit.
- The District has a total of five wells and four pumping stations. According to their website the Oak Bluffs Water District is a non-profit locally controlled public water system. The District was created by Massachusetts legislature in 1991 to operate as a self-supporting unit of local government. Rates are set by the Water Commissioners to cover the cost of delivering a product which meets federal and state guidelines under the Safe Drinking Water Act. Policy is also set by the Water District Commissioners.
- Three of the five wells in Oak Bluffs are located on this property including Wells 3, 4 and 5.

- Water is tested and treated at the pump stations.
- The project is to construct a 1.46 +/- MW Solar Farm within a cleared area of 10.37 acres on Oak Bluffs Water District property containing wells 3, 4 and 5 in the Lagoon Pond Watershed.
- The output from the solar panels should be sufficient to cover the Oak Bluffs Water District electricity needs which will result in approximately 30-40% savings in their annual electricity bill (currently approximately \$100,000) over 20 years.
- Installation would be a racking system elevated 3 to 7.5 feet utilizing posts.
- The area to be cleared in the Zone 2 will be stumped, graded and seeded with a “Solar Farm Seed Mix”. The area to be cleared in Zone 1 will be cut only and not stumped. A vegetative screening plan to be planted in the woods near the edge of the bike path and subdivision access road has been submitted.
- Mass DEP approved the revised proposal with the following conditions: there will be installation of panels within the Zone 1; any surface runoff must be directed away from the wells; installation must not interfere with access to the water system; the District must work out a notification system to be aware at least 48 hours before maintenance or other work done by contractors; provide emergency contact information to all contractors; fertilizers, herbicides and other pesticides are prohibited; equipment and vehicles are to be refueled, maintained and cleaned off-site; all conditions in the Certification Form signed February 11, 2016 are in effect; change in scope or operation requires notification of DEP Drinking Water Program.
- The applicant has submitted an Operation & Maintenance Plan and an Abandonment and Decommission plan.
- The referral was by the Oak Bluffs Building Inspector.
- The DRI trigger is 9.3 Solar Farm over 50,000 sf (Concurrence Review). MVC voted that a Public Hearing Review as a DRI was necessary on February 4, 2016.
- Key issues include;
  - The property contains three public water wells and the Zone 1 and Zone 2 Areas of Contribution which are intended for public drinking water resources protection.
  - How can these operations occur without risking contamination of the water resources?
  - Does the deforesting of an old growth forest that is a designated water resource protection area and fragmenting habitat constitute an environmentally sound proposal?
  - Are there no alternative locations for this type and size of use?
  - Massachusetts Historical Commission has written on August 16, 2016 that “... Undisturbed portions of the project impact area are archaeologically sensitive” and request that an intensive locational archaeological survey be conducted for the archaeologically sensitive portions of the project.
  - The DEP approved a scaled down version of the original proposal with conditions. They note in their letter review was strictly limited to M.G.L. Chapters 40 and 111 and 310 CMR 22.00. They state that the applicant is “advised to consult your legal counsel to determine whether approval under Article 97 ... may be required for this project”. The Oak Bluffs Water District property is mapped as Article 97 land by Mass GIS Disposition of Article 97 land requires approval by the Conservation Commission, The Board of Selectmen and a 2/3 vote of the Massachusetts Legislature and the Governor.
  - The applicant has submitted a document that asserts that installing a 1.46 Megawatt Solar Facility is the equivalent of sequestering the carbon dioxide of 1,081 acres of forest. The equivalence rationale credits the energy produced with solar panels as avoided emissions if the same amount of energy were produced using the existing dirty energy practices such as coal and natural gas.
  - However:

- A tree actually absorbs carbon dioxide, ozone, methane, nitrous oxides, chlorofluorocarbons and other pollutants and produces oxygen as well as providing an ecosystem and habitat.
- You might consider solar array proposals that require clearing of forest as diverting the SREC capacity away from a potentially cleaner overall system that would exist if solar arrays were only allowed in appropriate locations such as rooftops, Brownfields, parking lots, landfills, etc. as requested by Massachusetts Environmental Organizations in a letter of April 2016.
  - How would the land be cleared, stumped and graded without risking spills and contamination from the heavy machinery required to do such work?
  - The Abandonment and Decommission Plan states that BlueWave Capital LLC will “return the site to its previous state ... which may include the following ... stabilization or re-vegetation of the site as necessary to minimize runoff”.
- 10.37 acres of a currently wooded 56.25 acre water resource protection property will be cleared. The woods are a healthy mature oak forest that has been described by the Director of the Harvard Forest as “Ancient Woodlands that have been intact for some 10-12,000 years”. Other environmental groups have weighed in on the value of these woods and the abutting State Forest. The applicant contracted a licensed forester, John A. Edwards to evaluate the woods and he made a site inspection and concluded that “Although slightly over 100 years old, these trees are not unique in age or size...”.
- The Massachusetts Historical Commission has written on August 16, 2016 that “... multiple ancient Native American archaeological sites are recorded in proximity to the project impact area. Undisturbed portions of the project impact area are archaeologically sensitive”.
- NHESP will not make an official determination pursuant to the MESA until they have received a formal filing and all required materials for review.
- A six foot high fence is proposed around the two large solar fields. The area cleared for the solar panel array within the Zone 2 Area of Contribution cleared area will be seeded with “Solar Farm Seed Mix” low growing, low maintenance fescues.
- No lighting is proposed.
- The facility will operate 24 hours a day / 7 days a week. Peak operation is during the day. The facility will not be manned but will be monitored from off site and the facility is more than 1,500 feet to the nearest house.
- The output from the solar panels should be sufficient to cover the Oak Bluffs Water District electricity needs with renewable energy which will result in an approximately 30-40% savings in the Districts annual electricity bill. Currently it is approximately \$100,000. Over 20 years the savings is over \$600,000-800,000.
- According to a Source Water Assessment and Protection (SWAP) Report done by Mass DEP for the Oak Bluffs Water District in 2003 “The wells are located in an EPA designated Sole Source Aquifer, which is defined as the sole or principal source of drinking water for a given aquifer area which is needed to supply 50% or more of the drinking water for that area and for which there are no reasonably available alternative sources should the aquifer become contaminated. Therefore, Oak Bluffs groundwater sources are in an aquifer with a high vulnerability to contamination due to its sole source status and the absence of hydro-geologic barriers (i.e. clay) that can prevent contaminant migration”.
- The DEP recommends for Zone 1 “to the extent possible to remove all non-water supply activities ... and keep any new non-water supply activities out of Zone 1”.

- Mass Drinking Water Regulations, 310 CMR 22.22(1) and 22.21(3)(B) “require activities in the Zone 1 to be limited to those activities directly related to the provision of public drinking water or that will have no significant adverse impact...”.
- In recent years with the push for renewable energy the State has revised their rules to allow some projects other than “those directly related to the provision of public drinking water” to occur on water resource protection areas.
- The soil type for most of the property is Carver loamy coarse sand (CeA). This type of soil is “excessively drained” with permeability that is “very rapid”. Parts of the site are also Riverhead Sandy Loam (RvA & RvB) which is “well drained”. The water table on the property is probably perched at an elevation of 50-60 feet. The Goodale Gravel Pit lies between this site and the Head of the Lagoon.
- The site is in the Lagoon Pond Watershed. The status of the watershed is impaired. According to current MVC Policy the nitrogen load for the Lagoon Pond Watershed is 3.4 kg/acre/yr. the nitrogen budget for the 56.25 acre property is 191.25 kg/yr. Clearing 10.37 acres will create a nitrogen load to Lagoon Pond of 33.77 kg/yr.
- Transportation is not an issue.
- The Solar Array Project is a public-private partnership between a private solar developer and the Oak Bluffs Water District. The MVC has an unwritten policy not to apply its Affordable Housing Policy to municipal or religious institutions.
- It is not anticipated that the proposed project will have a significant impact to municipal services such as police and fire.
- The development of the proposed project will generate a very small number of new temporary jobs in Construction and Professional Service Sector industries.
- The project and clearing will be slightly visible from a 600 +/- foot section of the State Forest and Bike Path.
- Abutters from the Little Pond Subdivision expressed concerns with the original plan for their view as well as their access to their neighborhood.
- Correspondence was reviewed in detail as noted in the MVC Staff Report.
- The site plan was reviewed and the acres to be cleared were reviewed on the site plan.
- The detail from the Bike Path and the section of the project looking west was reviewed on the site plan.
- A site visit was done and photos of the site were shown of the proposed cut area and solar panel area.
- The applicant’s rationale of environmental benefits was reviewed.
- The site was shown with proposed vegetative screening.
- David Foster submitted a Historic Loss of Ancient Woodlands and it was shown.

#### **4.2 Applicants’ Presentation**

**Sean Murphy** presented the following.

- The solar array is in Zone 2 and there will be limited cutting in Zone 1.
- If you don’t stump and disturb the soils in Zone 1 there is no effect and it is approved by the DEP.
- It was an RFP from the Oak Bluffs Water District which is a free standing district from the Town of Oak Bluffs.
- This is the only site that they can do the solar array on.
- The District decided to do it as it reduces their carbon footprint and affords savings in their rates.
- The project also preserves 1.46 kw of power coming from the mainland.

- There is also the Oak Bluffs Special Permit Review Board and they approved the project as long as the neighbors on Little Pond Road do not see the array.
- Approval has been received from MassDEP and NHESP.
- Approvals are still needed from several Town boards as well as obtaining the Building Permit from the Town of Oak Bluffs.
- Article 97 relates to conservation land. It is not municipal open space. It was taken by the Town of Oak Bluffs for water. If Article 97 applies the applicant would have to go through the process but it is our understanding it is not Article 97.
- It is a 10.37 gross acre parcel that is affected. The parcel owned by the Water District is 56 acres and abuts 53,000 acres and sits 150 feet from a gravel pit.
- The parcel is not a pristine area. It has a road on it and a building.
- No one wants to hear about having solar in their area but yet everyone wants solar.
- There is a 150 foot range for noise and the closet house is 1,500 feet away.
- The Forester looked at the property and his findings stated that “Although slightly 100 years old, these trees are not unique in age or size...”.
- Zone 2 was shown for Martha’s Vineyard as well as for Oak Bluffs. It is the exact same zone that Goodales sits on and consists of 2,400 + acres which has EverSource, Goodales, Norton Farm and an asphalt facility in it. There are about 5,000 houses with septics and lawns as well as other businesses and numerous roads.
- Zone 2 exists throughout the whole Island.
- The fact that trees will be cut does not affect the water quality. The visual issue is being mitigated with screening.
- 7.8 acres are the Bike Paths in the area and the fire lane is about 30 feet wide.
- The project reduces EverSource transmission line, reduces costs to Oak Bluffs residents and provides solar power.

**George Sourati** presented the following.

- The 10.75 acres is the project area and of that 5 acres will be cleared and stumped. Another 5 acres of the perimeter is not being cut and the undergrowth will be kept.
- The arrays are surrounded by chain link fence and those areas have to be cleared.
- Around that area trees will be cut that are 8 – 12 feet. It is usually a 2.5 to 1 shadow effect.
- Most of the vegetation is undergrowth.
- Half of the Town of Oak Bluffs is in Zone 2. DEP requires us to limit the number of bedrooms to 10,000 sf of area per bedroom in Zone 2. If a denitrifying system is proposed then they allow you to install three bedrooms in a half acre lot.
- There are no bedrooms and nitrogen being generated except the harvesting of the woodland.
- The property is pretty level and we will slightly re-contour it for drainage with swales. There will be one in the southern part and one in the northern part of the property inside the fenced area.

#### **4.3 Commissioners’ Discussion**

**Trip Barnes** said the Oak Bluffs Water Department power bill is \$100,000 year. **Sean Murphy** added the project will save 30-40%.

**Doug Sederholm** asked what the annual budget for the Oak Bluffs Water Department is. **Kevin Johnson** said it is \$2.6 million.

**John Breckenridge** said the applicant is running under 20% of what their nitrogen capacity could be. What they would generate is acid rain. Based on the Mass Estuary study regarding circulation what is at the end of Herring Creek. **Sheri Caseau** said at the end of the pond the nitrogen is basically just sitting there.

**Abe Seiman** asked where the energy is stored. **Jon Mancini** said it will go to the grid and not stored on site.

**Joan Malkin** asked Sheri Caseau if the trees are cleared if it increases the nitrogen flow. **Sheri Caseau** said yes as trees use the nitrogen.

#### **4.4 Testimony from Public Officials**

**Kevin Johnson** is the Superintendent of the Oak Bluffs Water Department. You can see the costs of providing water escalate over the years. He wanted to see using the well fields in the State Forest as a solar array and is especially looking toward the future. It was important to look for a future plan for the Town and the community. Our goal in the Water Department is always to produce efficiently and having the solar array does that.

- **Christina Brown** asked how many customers does the Water District have and how many do you anticipate for the future.

There are 4,190 customers that are connected; commercial, residential and municipal. It is projected to be 4,600 customers.

#### **4.5 Public Testimony**

**Tim Boland** is the Executive Director of the Polly Hill Arboretum. He showed what an ancient forest looks like. The parcel being talked about is a 100 year old forest. The trees have been repeatedly cut for 300-400 years. This forest is unique in the world as the soil has never been turned over. This is the rarest ecosystem in the Commonwealth. The Zone you are talking about cutting and stumping will continue to need to be cut as they will grow up over the solar panels. In 2006 in the Island Plan this is what we talked about not doing. Your water quality will go down and that should be considered. David Foster is the preeminent Forester in the world and he is opposed.

- **John Breckenridge** said a tree absorbs nitrogen and stores it and the phosphorous in its branches and leaves. If you cut or top a tree if that is left on the ground does the nitrogen go back into the ground.
- **Tim Boland** said yes but very slowly.
- **Jon Mancini** said the cutting will be carted off and not left on the ground.
- **George Sourati** said anything outside the fence, the undergrowth and low trees, remain. The higher trees will be cut and stumped.
- **Katherine Newman** asked for clarification about the water quality going down.
- **Tim Boland** said trees capture particulates and hydrocarbons and take them away and that affects the water quality.

He has had quite a bit of experience in the State Forest in the late 1960's. When you cut a red pine down you need to take the stump out. If you do not a disease is created and it spreads. This is food for thought.

**Adam Turner** noted that you clear where you put the actual panels. The outside area is cleared just enough so there is no shadow and sun reaches the array.

**Gail Barmakian** is speaking as a resident of Oak Bluffs. The Water District property was taken as eminent domain by the Town of Oak Bluffs to protect the aquifer. To compare to the rest of Zone 2 in the town is out of context. The taking was for the wells and to protect the aquifer. She understands the need of the Water District but there must be a better place that is not part of the State Forest. She is interested in a number that quantifies the amount of rain water the trees soak up. She is sensitive about adding nitrogen to Lagoon Pond and thinks there are things that can take nitrogen out of the swales and perhaps that should be considered.

**Marc Rosenbaum** is from West Tisbury and has been in renewable energy development for the past 40 years. The first thing the solar committee agreed on is that you don't put it near farms and forests. There are roadways and pathways in the forest and panels could be put over that. He is a big advocate of solar power. There are places to put it and places to leave it alone.

- **Abe Seiman** asked him about wind power.
- **Marc Rosenbaum** said that is another discussion.

#### **4.6 Commissioners' Questions**

There was a discussion about the forest and the oak trees.

- **Linda Sibley** asked Tim Boland how are these trees which are the regrowth of trees from hundreds of years ago more effective as filters.
- **Tim Boland** said it is their extensive root mass that enables them to exist. Oaks in general have an extensive, deep and horizontal root mass.
- **Linda Sibley** noted that the trees re-sprout but the ones that were shown are probably 100 years old.
- **Tim Boland** said some of the trees are 60 years old and some are 100 years old.
- **Doug Sederholm** asked if Tim Boland has done an extensive amount of studies on oaks.
- **Tim Boland** said his Masters Degree was done on the species and he has studied these forests. They are not insect pollinated. They are the premier tree in North America between the fauna and the flora.

**Doug Sederholm** stated that he admires the Water District's attempt to use solar power and save money for the community. Why was the Water District created separate from the rest of the Town? Why did it happen here? The Water Commission owns some land and it is the only area it can put the array. He is just pointing that out. Why don't they talk together and do a joint venture? **Kevin Johnson** said the Water District was created because producing water is complex. If you deal from a Town perspective it is difficult to work on projects. A separate entity was created to ensure good functioning water operation for the Town. We are transparent, have audits, can borrow money and get the best rates. There is a certain expertise to running a water department.

**Marc Rosenbaum** said it seems to him with output of 1.6 million kilowatts per year the Water District will maybe use 30% of the energy and it is substantially larger than they need. The value of the electricity is about one third of a million dollars. The developer is putting money up front and they get the savings. He assumes the balance of the energy will be sold by BlueWave which is why the system is as large as it is. **Kevin Johnson** said the solar array was designed so the Town could take advantage of the savings and it could go into the community solar to save money for the community.

**Joan Malkin** asked what other sites were investigated by the Water District or in conjunction with a partner. **Sean Murphy** said he came into the project after that decision and was told this is the only land the Water District has.

**John Breckenridge** noted that energy is created and sold to the grid, not direct to Oak Bluffs. But Oak Bluffs can buy from the grid from any energy producer. **Jon Mancini** said in Massachusetts you have a virtual net metering law. You will produce credits which will be sold to the District and that is on the Island.

**Gail Barmakian** said that Kevin Johnson came to the Town and said there would be a discount and the project could also be a benefit to the Town in the future. We would have to work together on that.

**Ernie Thomas** said given the overall picture besides the historic value of the age of the trees, this is five acres of trees. What is the real percentage of impact of removing those trees? **Tim Boland** said the outcome is bad because it is connected to the State Forest. It is hard to quantify. Climate change issues

have a tremendous amount of stress on the woods. Our oak forests are also going down the tubes from other things we can't prevent. Ten acres in total means a lot. We will have a continual decline and insect and pest escalation is happening in the world and we are seeing a decline. I see it highly viable as a preserve and to keep a forest intact.

**Linda Sibley** said she is concerned about Article 97 and thinks the MVC needs clarification on that.

#### **4.7 Applicants' Closing Statement**

**Sean Murphy** said the DEP has approved the project and we have Engineer Advisory approval and the Water District approval that water quality will not be impaired.

**Leonard Jason** said that the applicant needs to clear and stump inside the area. **Sean Murphy** said the inside area will be completely cleared and the stumps removed.

**James Vercruysse** asked for clarification that the Bike Path and the road that bisects the property are paved. **Sean Murphy** said that is correct.

**James Vercruysse** said if there was an array to just offset the Water District use what would that be. **Jon Mancini** said he was not sure. **John Breckenridge** added that a developer would not want to do that. **James Vercruysse** noted it would be significantly smaller and it would have to be paid for up front.

There was a discussion about continuing the public hearing.

- **Fred Hancock** reiterated that further investigation needs to be done on Article 97 and Mass Historical Commission wants an archaeological review. With these issues the Public Hearing will need to be continued on September 22, 2016.
- **Sean Murphy** asked if there will be further Public Testimony on September 22, 2016. If so the applicant would like to bring in their Forester to answer questions.
- **Fred Hancock** said yes there would be further Public Testimony and Sheri Caseau will find out the answer to Gail Barmakian's question regarding the trees use of nitrogen.
- **Christina Brown** said the Commissioners may also have questions for the applicant.

**Trip Barnes** asked if the Town can put an array on the property can the Town sell it. **Linda Sibley** said they can't as it was taken as conservation.

**Fred Hancock**, Public Hearing Officer asked that the Commissioners have their questions to Paul Foley by September 9, 2016 and he continued the Public Hearing until September 22, 2016.

#### **5. BY-LAW AMENDMENT ON MEMBER REHABILITATION DELIBERATION AND DECISION**

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*Commissioners Present: T. Barnes, J. Breckenridge, C. Brown, R. Doyle, J. Goldstein, F. Hancock, L. Jason, J. Joyce, J. Malkin, K. Newman, D. Sederholm, A. Seiman, L. Sibley, E. Thomas, J. Vercruysse.*

**Linda Sibley moved and it was duly seconded to approve the amendment to the Member Rehabilitation Policy as written.**

- **John Breckenridge** asked if this came from counsel's advice.

**Voice vote. In favor: 13. Opposed: 2. Abstentions: 0. The motion passed.**

**Adam Turner** noted that the policy allows Commissioners who missed a meeting to rehabilitate themselves by listening to a tape and still attend the last meeting and be able to participate. The current policy creates frustration and the amendment makes a better policy.

**Christina Brown** noted that the MVC did use the old policy and it did work.

## 6. NEW BUSINESS

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*Commissioners Present: T. Barnes, J. Breckenridge, C. Brown, R. Doyle, J. Goldstein, F. Hancock, L. Jason, J. Joyce, J. Malkin, K. Newman, D. Sederholm, A. Seiman, L. Sibley, E. Thomas, J. Vercruysse.*

### **6.1 Reports from Chairman, Committees and/or Staff**

#### Community Development Block Grant Program

**Adam Turner** noted that the CDBG proposed changes will adversely affect our Island. We have until September 23, 2016 to make our comments and Christine Flynn has proposed a draft letter to be sent noting the MVC concern of the proposed changes.

**Christine Flynn** presented the following.

- For the last 10 years the community has participated in the Community Block Grant Program.
- More than 70 families have received child care and 320 homes have been rehabilitated.
- Five changes have been proposed to the program.
- We were thrown out of the program in 2011 due to a technicality but over the last 18 years we have received the Block Grants.
- The economic impact of these grants has been huge to the community.
- We are asking for the MVC's endorsement of the draft letter.
- There will be three public forums to be held on 9/8, 9/9 and 9/14 in Worcester, Boston and Springfield.
- We did not receive any notification from CDBG.
- She has notified all of the towns and they are developing a letter writing campaign and asking public officials to testify at the public meetings.

**John Breckenridge** asked Christine Flynn to explain how the rehabilitation program has worked especially for the elderly. **Christine Flynn** said a recipient can receive up to \$35,000 for 15 years and if they stay in their home for those 15 years they do not have to pay it back.

**Doug Sederholm** said the proposed changes almost look like they were targeted for an area like the Island. **Christine Flynn** said it is not the first time rural communities have been targeted.

**Joan Malkin** said these programs are designed to help the needy but the first two changes are really targeted at the needy. Perhaps that is an aspect that should be considered to be put in the letter.

**Christine Flynn** said the changes are very much targeted to benefit urban areas.

**Linda Sibley** said poverty and homelessness is a regional issue.

***Linda Sibley moved and it was duly seconded that the MVC endorse and send the letter. Voice vote In favor: 15. Opposed: 0. Abstentions: 0. The motion passed.***

**Christina Brown** noted that the letter should be cc to other State Officials.

**Linda Sibley** asked if it can be clarified as to what we can do individually. **Christine Flynn** said to testify at the meetings.

#### Demolition Guidelines

**Joan Malkin** said the guidelines will help the MVC decide which projects we will look at. It initially creates a framework and a matrix so the MVC can be objective in our reviews.

#### Scheduling

**James Vercruysse** said the next MVC meeting is scheduled for September 15, 2016 and will be held at the High School.

## **6.2 Executive Director Report**

**Adam Turner** presented the following.

- He noted that the Housing Production Plan will go forward on September 19, 2016. There will be hearings in all of the Towns and it will be the first time all of the Towns come together on this issue. Topics to be discussed include what kinds of density do we want and what types of housing is needed. All of the work that has been done is on the MVC web site.
- There will be a site visit for Philips Hardware on Tuesday September 20, 2016 at 4:40 p.m. and LUPC will meet at 5:30 p.m. for the Athletic Field project.
- We are close to putting together an analysis that covers such things as the socioeconomic factors, demographics, the SSA, etc. so we can look at trends and macros. Hopefully this will be done each September and October at the MVC.

**Fred Hancock** noted that Philips Hardware wants to put apartments above the retail space and rebuild in the architectural style of old Oak Bluffs. Their application is scheduled for September 22, 2016.

The meeting was adjourned at 10:00 p.m.

### **DOCUMENTS REFERRED TO DURING THE MEETING**

- Minutes of the Commission Meeting – Draft, Held on July 21, 2016
- Minutes of the Commission Meeting – Draft, Held on August 4, 2016
- C.R. 11-2016 Kanter Beach ANR Form A Plan Memo from Reid Silva, Dated August 11, 2016
- Letter from Town of Edgartown The Planning Board, Dated July 7, 2016
- Martha's Vineyard Commission DRI 664 Featherstone Art Barn & Pottery Building MVC Staff Report – 2016-08-16
- Martha's Vineyard Commission Land Use Planning Committee Notes of the Meeting of August 15, 2016
- Featherstone Possible Offers, Dated 13 August 2016
- Featherstone Landscape Plan
- Martha's Vineyard Commission DRI 660 O.B. Water District Solar Array MVC Staff Report – 2016-09-01
- Letter from Bristol Engineering Advisors, Inc., Dated May 13, 2016, Re: Professional Opinion Proposal to Cut Trees within Zone 1 Oak Bluffs Water District
- Letter from Department of Environmental Protection, Dated August 4, 2016, Re: Oak Bluffs PWS ID: #4221000, Program: revised Solar Certification with Conditions, 4 Alwardt Way
- Letter from Division of Fisheries & Wildlife, Dated April 14 2016, RE: Applicant: Lexi Barlow, BWC Wankinco River, LLC, Project Location: 4 Alwardt Way Oak Bluffs, Project Description: Construct Solar Array, NHESP File No.: 14-33278
- Letter from the Commonwealth of Massachusetts, Massachusetts Historical Commission, Dated August 16, 2016, RE: BWC Wankinco River, LLC, Ground Mounted Solar Photovoltaic Energy Generating Facility, 4 Alwardts Way, Oak Bluffs, MA. MHC #RC.60715
- Site Plan Oak Bluffs Water District Solar Array
- MVC DRI 660 O.B. Water District Solar Farm – Correspondence List 9/1
- MVC Rehabilitation Policy Draft Amendment
- Draft Letter from James Vercruysse, MVC Chairman to Department to Department of Housing & Community Development, RE: Objections to Several FY 2017 Community Development Block Grant Proposed Policy Changes

Jan P. L.  
Chairman

10-6-16  
Date

John B. DeLuca  
Clerk-Treasurer

10/13/16  
Date