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Minutes of the Commission Meeting Held on January 21, 2010 In the Stone Building 33 New York Avenue, Oak Bluffs, MA

IN ATTENDANCE

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

P Bill Bennett (A- Chilmark)	P Katherine Newman (E –Aquinnah)
P John Breckenridge (E – Oak Bluffs)	P Ned Orleans (A – Tisbury)
P Christina Brown (E - Edgartown)	P Jim Powell (A – West Tisbury)
P Peter Cabana (E – Tisbury)	- Camille Rose (A - Aquinnah)
- Martin Crane (A – Governor Appointee)	P Doug Sederholm (E – Chilmark)
- Fred Hancock (A – Oak Bluffs)	P Linda Sibley (E – West Tisbury)
P Chris Murphy (E – Chilmark)	- Holly Stephenson (E – Tisbury)
P Jim Joyce (A – Edgartown)	P Andrew Woodruff (E – West Tisbury)
P Lenny Jason (A – County)	

Staff: Paul Foley (DRI Coordinator); Bill Veno (Senior Planner), JoAnn Taylor (Coastal Planner/DCPC Coordinator).

Christina Brown opened the meeting at 7:30 p.m.

Christina Brown welcomed new Commissioners Fred Hancock, Jim Joyce, and Lenny Jason.

1. FISCAL YEAR FY11 BUDGET

Commissioners present: B. Bennett, J. Breckenridge, C. Brown, P. Cabana, C. Murphy, J. Joyce, L. Jason, K. Newman, N. Orleans, J. Powell, D. Sederholm, L. Sibley, A. Woodruff.

John Breckenridge, Commission Treasurer, explained that the Commission Finance Committee worked very closely with staff and the All-Island Finance Committee to prepare next year's draft budget.

- The budget shows no increase in total assessment to the towns, although changes to the equalized valuation will change the assessments to some towns.
- The Finance Committee listened carefully to comments of the All-Island Finance Committee and changed from a 90/10 to a 75/25 split pertaining to the shared cost with the employees for health care insurance.
- There is a 0% COLA for employees. There is a budget for merit increases, the MVC's equivalent of towns' grades and steps.

- The Commission Finance Committee approved the draft budget which tries to cut every conceivable corner.
- The budget reflects increased legal costs such as the co-defense of a DCPC lawsuit with Edgartown and participation in the Cape Wind court case.
- There has been a recent changing role of the Commission with a shift to less regulatory work and more planning responsibilities such as work on the Ocean Plan and other wind energy issues.

Ned Orleans moved, and it was duly seconded, to approve the budget as presented.

- **Jim Joyce** asked about Section D, which describes the shift of \$25,700 from Health and Disability Insurance to Salaries. **John Breckenridge** explained that, in the first year of the insurance allocation shift, the difference in the cost of the benefit will be shifted to employee salaries. The policy is in line with what other towns have done in shifting the share of health insurance cost. There should be long-term benefits to the budget since health care costs have been going up faster than salary increases.
- **Lenny Jason** asked about making the increase to baseline salaries permanent. **John Breckenridge** explained that the committee hadn't yet had the final discussion about making the salary adjustment permanent.
- **John Breckenridge** reiterated that the assessment to the towns has not increased. The changes to the equalized valuations will create increases for Edgartown and Aquinnah. The total budget increased 0.53%.

A voice vote was taken. In favor: 13. Opposed: 0. Abstentions: 0. The motion passed.

Lenny Jason moved, and it was duly seconded, to the make the amount of money added to salaries permanent.

- Commissioners discussed balancing the shift of the cost of health care away from the Commission and towns with retaining staff and protecting the integrity of the Commission.

A voice vote was taken. In favor: 13. Opposed: 0. Abstentions: 0. The motion passed.

2. AQUINNAH DCPC: PROPOSED AMENDMENTS TO REGULATIONS – PUBLIC HEARING

Commissioners present: Commissioners present: B. Bennett, J. Breckenridge, C. Brown, P. Cabana, C. Murphy, J. Joyce, L. Jason, K. Newman, N. Orleans, J. Powell, D. Sederholm, L. Sibley, A. Woodruff.

For the Town: Carlos Montoya, Aquinnah Planning Board

Christina Brown explained that the Town of Aquinnah has asked the Commission to review the conformance of amendments to Aquinnah's DCPC regulations as proposed by the Planning Board and voted at a Special Town Meeting.

Carlos Montoya explained the highlights of the proposed amendments:

- The proposed amendments of the DCPC regulations cover land and water.
- All turbines will go up by Special Permit. There are two categories: private and municipal. Single-residence turbines are eligible, as are private projects in cooperation with abutters.
- Private turbines are to serve on-site needs.
- Decommissioning is addressed.
- There is a separate standard for turbines on Moshup Trail and the Cliffs DCPCs, and land within 1,000 feet of the coast.
- The by-law conforms with the DCPC goals because the goal of the bylaw is *to reduce the overall consumption of fossil fuels through energy conservation and the local generation of energy from renewable sources while minimizing any negative impact on residents and visitors and while preserving and protection the cultural and natural environment of the town as delineated in the Goals of the Town of Aquinnah District'.*

Linda Sibley spoke to the by-law's conformance to the Goals and Guidelines of the DCPC.

- The point has been made that the original Guidelines of the Town of Aquinnah District essentially precluded wind turbines because they would alter the existing skyline, prohibited under the Town of Aquinnah District DCPC guidelines.
- This hearing should be continued until such time the by-law could be heard under the Island Wind District guidelines and a public hearing should be held to change the Aquinnah District's guidelines so the regulations do conform.

Kathy Newman expressed concern about timing.

Doug Sederholm spoke to the by-law's conformance.

- He doesn't believe that the by-law conforms because it has the potential to radically alter or interrupt the skyline.
- If the Town requested, the Commission could change the Goals and Guidelines of the Wind District, in the same manner as a new DCPC nomination.
- The Island Wind District Goals and Guidelines include a provision to consider what areas are best for wind turbines and what areas are of such significance to prohibit turbines.
- Under the proposed Aquinnah regulations, discretion is left to the permit-granting body and there could be turbines at the Cliffs and on Moshup Trail, which would not be in conformance with the Town of Aquinnah District.
- The Town should consider whether there are areas that are so important that turbines should not be allowed in those areas.
- The criteria for Moshup Trail are great if the permit granting authority is going to be really hard-nosed, but the regulations are loose enough that they could allow more than what was intended.
- Aquinnah has an excellent track record of how it addresses these things case by case, but the trouble with that is it's subject to change over time.
- He's not sure that he would strip the Guidelines. They seem to have done a lot of good for the town.

- Under the Town of Aquinnah District, the Town has the ability to not allow turbines at the Cliffs and Moshup Trail. If you don't want turbines in those areas, then you should say so rather than leave it open.

Carlos Montoya said there was discussion about what the stakes were during the discussion at Town Meeting.

Jim Powell said he wants to make sure this gets done right, that all the questions have been asked as the towns come forward. He emphasized the importance of reviewing the cultural, environment, aesthetic, and tribal interests, and hearing from constituent groups in Aquinnah to make sure the language is correct and proper before moving forward.

Bill Veno reminded Commissioners that the Island Wind District Land Zone moratorium is for towers 150 feet and higher. Towers 150 feet and lower don't have to conform to the Island Wind DCPC.

Carlos Montoya clarified that private and communal towers need to be under 150 in height.

Linda Sibley suggested that the Commission immediately notice a public hearing on the subject of modifying the Guidelines for the Town of Aquinnah District, specifically the phrase in the Guidelines that prohibits radically altering or interrupting the skyline. She also suggested separating the issue from the Island Wind District.

James Pritchard, Vineyard Conservation Society, said the Society's opinion is that the inland question is different from the offshore one. Inland there are other solutions, including solar and heat pumping which are pretty much invisible. VCS wants to be part of the discussion. He noted that VCS has a particular interest in the Moshup Trail area, where they have invested millions of dollars in conserving lands. He said that they wouldn't like to presume to tell the Town of Aquinnah what to do, but "we will".

Andrew Woodruff commented that this is not just a procedural question. We must spend some time thinking about the Guidelines in developing them. Windmills up to 150 feet in height are large for private use, especially for a town with such a short tree line. He also has concerns about Moshup Trail potentially having multiple turbines. At the same time, Aquinnah has done a lot of work on the regulations. It's more than just procedural for him.

Christina Brown restated that the Commission's job is to look at its Guidelines for the Town of Aquinnah District and determine if the proposed regulations for wind turbines that Aquinnah has adopted are in conformance with the Guidelines.

Bill Bennett said that the cumulative effect of lots of windmills would radically alter the skyline. He would not be willing to change the Guidelines to accommodate a lot of wind turbines. He believes it's important to stick with the Guidelines.

Kathy Newman said the Guidelines were written at a different time and we have to consider alternative energy. We can't be purist about our landscape without considering the consequences.

Linda Sibley moved, and it was duly seconded, that unfortunately the proposed regulations are not in conformance with the existing DCPC Guidelines.

Linda Sibley spoke about Aquinnah's position.

- The guidelines were largely written by the Town of Aquinnah. They did a very innovative thing in making the whole town a DCPC. They saw that their town was very important.
- The DCPC allowed them to control things that under regular zoning they couldn't control. She admires them for doing that.
- At the same time, they have to make a good argument for changing the Guidelines that they asked to have put in place.

Andrew Woodruff said the Guidelines are approved by the Commission and was under the presumption that the Town would follow through on the Guidelines.

Jim Joyce said the Guidelines and new regulations maybe don't match up, but anything that's going to happen is going to happen by special permit. The fact that they don't match up exactly doesn't concern him because Aquinnah still has control over what they want.

Lenny Jason said Aquinnah has the power to issue the special permits and decide whether a turbine radically alters the skyline.

Kathy Newman reminded Commissioners of the control that Aquinnah has maintained over its development.

Christina Brown said she believes "shall not radically alter or interrupt" is a charge to the permitting authority. The new regulations are in conformance with the Guidelines because the permitting authority has to take into account the statement in the regulations that any negative impact has to be minimized in accordance with the Goals of the Town of Aquinnah DCPC.

Chris Murphy supported posting a hearing on the Guidelines for the Town of Aquinnah DCPC, trying to adjust guidelines to meet the new regulations.

Ned Orleans moved, and it was duly seconded, to close the public hearing and vote on the conformance issue.

James Pritchard spoke on behalf of the Vineyard Conservation Society stating that the regulations don't conform to the Guidelines and that a wind turbine would radically alter the sky line.

Christina Brown closed the public hearing.

3. AQUINNAH DCPC: PROPOSED AMENDMENTS TO REGULATIONS – DELIBERATION AND DECISION

Commissioners present: Commissioners present: B. Bennett, J. Breckenridge, C. Brown, P. Cabana, C. Murphy, J. Joyce, L. Jason, K. Newman, N. Orleans, J. Powell, D. Sederholm, L. Sibley, A. Woodruff.

Linda Sibley moved, and it was duly seconded, that unfortunately the proposed regulations are not in conformance with the existing Guidelines for the Town of Aquinnah DCPC, specifically the language "that any and all new construction . . . shall not radically alter or interrupt the existing skyline of the Town as viewed

from any public way including any public water body and including the lookout at the Gay Head Cliffs...”

- **Linda Sibley** said she thought that the regulations are fine. The Guidelines were adopted four or five years ago in a different context and create a non-conformance problem for the regulations.
- **Christina Brown** explained that she feels ‘radically alter(ing) or interrupt(ing)’ is a judgment call and the regulations proposed give that judgment call to the special permit granting authority.
- **Doug Sederholm** and **Peter Cabana** said they felt Christina Brown’s point is a very clever argument but shouldn’t be relied upon.

A roll call vote was taken. In favor: B. Bennett, J. Breckenridge, P. Cabana, C. Murphy, D. Sederholm, L. Sibley, A. Woodruff. Opposed: C. Brown, L. Jason, J. Joyce, K. Newman, N. Orleans, J. Powell. Abstentions: None. The motion passed.

Christina Brown asked for a request from Aquinnah in writing for a public hearing that could be held February 18th.

4. COPELAND PLAN DISTRICT DCPC: CONSIDERATION OF RESCISSION – PUBLIC HEARING

Commissioners present: Commissioners present: B. Bennett, J. Breckenridge, C. Brown, P. Cabana, C. Murphy, J. Joyce, L. Jason, K. Newman, N. Orleans, J. Powell, D. Sederholm, L. Sibley, A. Woodruff.

Christina Brown read the hearing notice. The Oak Bluffs Board of Selectmen has asked the MVC to consider whether the Copeland Plan DCPC is duplicative of the Cottage City Historic District in the areas where there is overlap.

Jo-Ann Taylor reviewed the history of the Copeland Plan and Copeland Plan District of Critical Planning Concern (DCPC), as outlined in staff notes.

- The Copeland Plan District was added in 1991 to provide architectural review.
- The proposal is a boundary amendment to rescind portions of the Copeland Plan District where there is overlap with the Cottage City Historic District. The Commission’s decision should be based on whether the critical resource is adequately protected without the overlap.
- Correspondence from the Cottage City Historic District was received in favor of the rescission. Three letters were received in opposition.
- Section E on the map is Copeland Plan District only.
- The Oak Bluffs Historical Commission covers all buildings all over town over 100 years old. The Historical Commission has authority over demolition delay.
- She used the maps to show the areas proposed for rescission.

Renee Balter, commissioner on the Cottage City Historic District, spoke in favor of the rescission. She has been on the Copeland Plan District Committee and the Oak Bluffs Historical Commission.

- In 1991, when the Copeland Plan DCPC was first started, it was to give protection in the downtown business district.
- In 1998 the Oak Bluffs Historical Commission was revived. At the same time the Town was looking at sewerage in the downtown area and in 2001 the town placed about 40 enormous utility boxes all over the Copeland Plan District.
- The Copeland Plan District formed a subcommittee to work with the Historical Commission. The Copeland Plan District did not respond to the construction of the utility boxes so the Historical Commission made an effort to form the Cottage City Historic District. They did surveys of residents, held a public hearing, collected evidence, and presented it to the Commonwealth to bring Cottage City Historic District for approval at town meeting.
- In April 2003 the town unanimously approved the Cottage City Historic District.
- The chart shows the difference between the Copeland Plan DCPC, the Cottage City Historic District, and the Oak Bluffs Historical Commission. The Copeland Plan reviews if the building official decides that he recommends a property to be reviewed. A Cottage City Historic District permit application has automatic review. The demolition delay by law provides automatic review process by the Historical Commission.
- They do not want to take Sunset Lake out of the Copeland Plan District. There are fifty properties that they want to take out of the Copeland Plan District.
- She thanked members of the Historical Commission.
- She doesn't know anyone more passionate than she is about saving and preserving the incredible history of Oak Bluffs.

David Wilson, chair of the Historical Commission, spoke about the history of the Cottage City Historic District. He added that Oak Bluffs doesn't need the Copeland Plan District in the areas they're proposing for rescission and it's important to get rid of the duplication. They want to keep the Copeland Plan District in Area E around Sunset Lake.

Gail Barmakian, former zoning board member and resident of Copeland Plan District, clarified that the letter to the Commission may have been submitted by the Selectmen, but was initiated by the Cottage City Historic District Commission.

Adam Wilson, zoning administrator, explained that he oversees the many different community review boards. It's become evident over the last four years that review by Copeland Plan and by Cottage City of the same application is tremendously redundant. Cottage City has done a much more efficient job of reviewing any type of exterior architectural change.

Alison Shaw spoke in favor of eliminating the overlap. Her house renovation went through an excellent process with Cottage City, but had no review with Copeland Plan.

Priscilla Silvia said she supports the change. She believes that the North Bluff regulations don't seem to have been created properly.

Gail Barmakian said she sees having the two districts in the same area as an added protection and suggested that, rather than doing away with the process, officials should fix the process. Cottage District focuses on architectural details. The Copeland Plan is more comprehensive. It looks at size and mass and addresses the issues of the park. It addresses aesthetics in the by laws.

Jo-Ann Taylor noted that the phrase “views from abutting properties shall be protected” had been adopted by the Town but hadn’t been adopted by the Commission. In August, the Commission reviewed the phrase and voted that it was in violation of the Commission Guidelines for the Copeland Plan DCPC.

Ned Orleans asked how the Copeland Plan District could not have Guidelines. **Jo-Ann Taylor** explained that the town adopted regulations that are one paragraph; the Commission does have Guidelines for the Copeland Plan District.

Doug Sederholm said he’s stunned that there have been only 15 or 20 reviews in 19 years. There must have been some interpretation that the building inspector had discretion over whether something was reviewed. He asked whether projects in Section E will be reviewed.

Renee Balter responded that she believes it’s the hope that Copeland would take a look at Section E and their Guidelines and see if they can develop more specific regulations. The first steps would be to create mandatory review and to revise the regulations, perhaps using some of the Cottage City Historic District regulations.

David Wilson explained that the only review that Copeland has that Cottage City doesn’t is Copeland’s language about shrubbery and plantings.

Doug Sederholm asked if it would be better to modify the Copeland Plan DCPC, especially the mandatory referral and perhaps put all the power into one body.

Renee Balter and **David Wilson** confirmed that they’re suggesting that it’s not worth saving Copeland except for Area E.

John Breckenridge spoke about the proposal.

- He needs a convincing argument about not taking the superpowers of the DCPC and incorporating the Cottage City District more specific language into it.
- When the Commission went through the North Bluff Review, we were constantly guided by what the DCPC was talking about, particularly aesthetic terms. The Cottage City Historic District has very specific terms about materials and shapes and sizes.
- If you take the argument that the DCPC can be a very strong umbrella, why wouldn’t you just incorporate the Cottage City DCPC regulations into the DCPC at the town level.
- The Board of Selectmen is asking us to review and make a recommendation.

David Wilson made the following comments.

- He believes the hypothetical idea of merging Cottage City regulations under the DCPC umbrella is beyond the scope of the discussion.
- Having joint meetings for a joint review is not viable.
- There’s only one place that has an aesthetic zoning review with historic intent and it hasn’t proven that it has worked.
- Copeland is essentially an inactive board.

Bill Bennett said there’s a lot of agreement that it’s an area that needs to be preserved. He wondered if the DCPC regulations would provide more robust defense if the Cottage City Historic regulations were ever challenged in court.

Linda Sibley explained that she believes the suggestion was that there be one board that administers both sets of regulations.

- She has no doubt that Cottage City Historic District Commission intended that the Selectmen were to write the Commission and ask for the Copeland Plan District DCPC boundary rescission, but that is not what the letters asks for.
- The Selectmen asked the Commission to decide whether the Copeland Plan District boundary was duplicative.
- There has to be a proper nomination to change the boundaries.

Christina Brown explained that the Commission is doing what was requested and holding a public hearing on whether the Copeland Plan DCPC is duplicative and whether we would recommend a change.

Linda Sibley said that public testimony has given good evidence that there is a tremendous amount of duplication.

Lenny Jason said he believes the proponents are missing the point that the Copeland Plan District is an open space plan and offers architectural protection.

Renee Balter said in 200,1 the building official refused to have Copeland review the problem with the utility boxes. If the Cottage City Historic District had been in place at that time, the boxes wouldn't have been allowed under the by-laws without it being reviewed. The Commonwealth has given the Cottage City Historic District all sorts of power of review and regulation.

Andrew Woodruff clarified that the purpose of the discussion is making recommendations to the selectmen. He's not quite clear on what the logistics would be for improving the existing Copeland Plan DCPC. He's not so certain that there isn't a way to meld to two review processes that would be beneficial and, if not, he'd want to be clear on that.

Doug Sederholm clarified that if Oak Bluffs wanted to change the Copeland Plan DCPC to fix it, Oak Bluffs would make a request to the Commission. It's clear that the Copeland Plan District doesn't work, but it might not take much to make it work. Some of the referral and administration issues would need to be fixed. The question is whether it's worth it and whether the Town would support a change. The Copeland Plan District does address landscaping issues and the park issues that were at the heart of Mr. Copeland's Plan.

Kathy Newman said the duplication is about who's reviewing what and wondered if the Copeland Plan District would review landscaping and the Historic Commission everything else. We also have to listen to the testimony that it hasn't worked for a long time.

Ned Orleans said the letters asks the Commission to make a recommendation on whether there is duplication. We can make a recommendation that follows what the Historic Commission would like us to do. We can recommend to leave it alone or we can recommend to find a way to meld them. The Selectmen could ask the Commission to take care of the DCPC side of melding.

Chris Murphy said if a DCPC isn't working, any citizen can go to court to ask the official to do his or her job. If the law isn't being enforced, then the enforcer has to be taken to task.

Linda Sibley said she's convinced that it's duplicative and that the DCPC hasn't been enforced, which is a violation. We need to look at whether there were individual pieces under the DCPC that should be maintained and are not covered under the Historic Commission bylaw. You want to make sure that you don't want to lose those pieces. You want to look at the unintended consequences.

Pam Melrose, chair of the Oak Bluffs Historical Commission, said that she was one of the people who helped initiate the Cottage City Historic District. They did try to work with the Copeland Plan District, but they couldn't find a way to make things happen.

David Wilson made the following comments.

- There's a perception that the viewscapes aren't covered by the Historic District but they are.
- The Historic District also covers proportion and mass and scale, which were key in a successful resolution of the Moujabber project.
- The Cottage City Historic District is established under Massachusetts General Law. If the recommendation is to meld the two, the recommendation is to abolish the Historic District.
- There are weird things in Copeland. In Ocean Park houses can be 50 feet.

Jo-Ann Taylor said the 50 feet on Ocean Park is allowable because the Park is backed by the B1 and is a remnant of the old Victorian hotels. The idea is that Ocean Park buildings should be taller than business district behind it.

Adam Wilson clarified that no other permits can commence until the Copeland review has taken place.

Gail Barmakian said her understanding is that if there are two inconsistent regulations, you go by the stricter regulation.

Linda Sibley asked whether the Cottage City Historic Commission believes that the regulations of the DCPC vanish if the DCPC is rescinded. DCPC regulations adopted by towns may become zoning bylaws and may survive if the DCPC vanishes.

Susan Thomson, Oak Bluffs Historical Commission, supports the elimination of Copeland Plan DCPC in certain areas.

Andrew Woodruff asked whether Cottage City Historic District could expand to cover Section E of Copeland. **Renee Balter** responded that the process is horrendous. The original designation took two years and was very involved. The best thing that would happen would be to make Copeland work in Section E.

Renee Balter clarified that Oak Bluffs has a fabulous and very thorough Parks Commission that covers the open areas.

Lenny Jason said Copeland should review landscape because it's part of the plan.

Doug Sederholm said he would like an answer from counsel on whether DCPC regulations would survive as zoning regulations and to what extent if the DCPC is erased.

Christina Brown reiterated that Commission needs to understand more about the regulations of Copeland and the overlap with Cottage City Historic District.

Kathy Newman asked who administers the Copeland Plan District and if the Town has looked at why Copeland hasn't worked.

Adam Wilson explained that when an application comes in dealing with an exterior architectural change in the Copeland Plan District, the applicant requests a review by Copeland. Copeland has thirty days to respond. If Copeland doesn't respond within thirty days, the applicant receives a constructive allowance.

David Wilson said that, under Mass General Law, a historic district is not a zoning by-law.

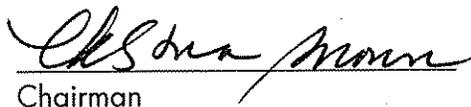
Jo-Ann Taylor explained that the Copeland Plan District regulations may not be as restrictive and rigid as the Cottage City Historic District because it was developed to meet the need at the time. The Guidelines of the Copeland Plan District would allow for more restrictive regulations if the Town wanted them. She also noted that Section E was not part of the original Copeland Plan. The Town asked and the Commission agreed to include it in the Copeland Plan District. If the Town were to ask the Commission to leave it as the only part of the Copeland Plan District, there wouldn't be any reason left for a District to protect the Copeland Plan area.

Christina Brown continued the public hearing to February 4th.

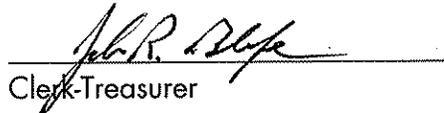
5. OTHER

The Minerals Management Service task force on wind development in federal waters meets on Wednesday, January 27th. They are preparing a request for interest from potential developers.

The meeting adjourned at 10:45 p.m.


Chairman

5/20/10
Date


Clerk-Treasurer

5/20/10
Date