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## Minutes of the Commission Meeting Held on February 4, 2010 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 Bill Bennett (A- Chilmark)	P Katherine Newman (E -Aquinnah)
P John Breckenridge (E - Oak Bluffs)	- Ned Orleans (A - Tisbury)
P Christina Brown (E - Edgartown)	P Jim Powell (A - West Tisbury)
P Peter Cabana (E - Tisbury)	P Camille Rose (A - Aquinnah)
- Martin Crane (A - Governor Appointee)	P Doug Sederholm (E - Chilmark)
P Fred Hancock (A - Oak Bluffs)	P Linda Sibley (E - West Tisbury)
P Chris Murphy (E - Chilmark)	P Holly Stephenson (E - Tisbury)
P Jim Joyce (A - Edgartown)	P Andrew Woodruff (E - West Tisbury)
P Lenny Jason (A - County.)	

Staff: Mark London (Executive Director), Bill Veno (Senior Planner), Jo-Ann Taylor (Coastal Planner/DCPC Coordinator), Paul Foley (DRI Coordinator)

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

### 1. COPELAND DISTRICT OF CRITICAL PLANNING CONCERN - PUBLIC HEARING

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Commissioners present: B. Bennett, J. Breckenridge, C. Brown, P. Cabana, F. Hancock, C. Murphy, J. Joyce, L. Jason, K. Newman, J. Powell, C. Rose, D. Sederholm, L. Sibley, H. Stephenson, A. Woodruff

**Christina Brown** read a letter from Michael Dutton requesting postponement of the continuation of the Copeland District public hearing. She continued the public hearing to April 15<sup>th</sup>, 2010

### 2. CROW HOLLOW: DRI 341M - CONCURRENCE REVIEW

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Commissioners present: B. Bennett, J. Breckenridge, C. Brown, P. Cabana, F. Hancock, C. Murphy, J. Joyce, L. Jason, K. Newman, J. Powell, C. Rose, D. Sederholm, L. Sibley, H. Stephenson, A. Woodruff

For the applicant: Doug Hoehn, agent/engineer

**Christina Brown** explained that the issue before the Commission is to consider whether the proposed modification is sufficiently significant to require a public hearing.

**Linda Sibley** gave the LUPC report.

- There is a condition in the original approval that says if the applicant does any further division, the project has to comply with West Tisbury's cluster by-law and affordable housing contributions.
- LUPC wanted to understand the legal issues, but did not receive the legal ruling that was requested by West Tisbury in time to review prior to the LUPC Meeting.
- At the meeting, LUPC made requests of the applicant to be more specific.
- LUPC did not get to the point of making a recommendation with regard to the need for a public hearing.
- The West Tisbury Affordable Housing Committee requested that they be allowed to have some input into the Commission's decision.
- West Tisbury Planning Board is meeting on the modification on Monday.

***Linda Sibley moved, and it was duly seconded, to defer action on the concurrence until February 18<sup>th</sup> and that LUPC hold a special meeting on Tuesday, February 16<sup>th</sup>.***

- **Linda Sibley** says she feels pressure to act on the concurrence quickly but not until the West Tisbury Town Boards have had an opportunity to meet.
- **Jim Powell** said that, as a member of the West Tisbury Planning Board and the West Tisbury Affordable Housing Committee, he supports the Motion.
  - Commissioners discussed the pending issues.
  - The modification was referred by the town. In the meantime, there has been a legal opinion which has not been reviewed yet by the town boards.
  - The issue at the town level is, because the by-law changed, whether the applicant has to provide affordable housing. The legal opinion, which the applicant doesn't agree with, is that the applicant owes 1.6 affordable lots.
  - The applicants are making an alternative proposal which the town has to review.
  - The original Commission decision tied the affordable housing decision to the town's by-laws.
  - The applicant needs a Form A decision on a previously conditioned Form C.
  - No one wants an inordinate delay.
- **Doug Hoehn** explained that the reason for making a decision quickly is that there is a sale that's been pending for two months. The closing has been put off and the buyer is running out of patience. The legal opinion took longer than expected. The Planning Board didn't have a quorum on February 1<sup>st</sup> so the applicants requested to come to LUPC.
- **Peter Cabana** said it seems like the town has had an opportunity to review it, but didn't.
- **Paul Foley** explained that LUPC did review the project on December 7th. LUPC didn't want to make a decision without a legal opinion. The opinion came in late last week at which time the Planning Board discovered that they couldn't meet on Monday.
- **Linda Sibley** said that the only precedent for accepting a monetary offer is in Edgartown where the Commission accepted a monetary offer in lieu of three lots at the request of the Edgartown Affordable Housing Committee. West Tisbury Affordable Housing Committee has to have an opportunity to review the opinion.

- It was explained that the Approval Not Required provision doesn't get us around the obligation at the town level. If the Commission has a modification review without a hearing, the town can have a hearing and condition the project.
- **Linda Sibley** said the request is that the Commission approve the division of the 3-acre lot and a future division of the remaining 18 acres.
- **Linda Sibley** added that the Commission was asked by the West Tisbury Affordable Housing Committee not to make its decision without the Affordable Housing Committee's input.
- **Linda Sibley** suggested that, on the chance that a hearing is required, a public hearing be posted for the earliest possible date.

***A voice vote was taken. In favor: 15. Opposed: 0. Abstentions: 1. The motion passed.***

### **3. AQUINNAH DCPC: REQUEST FOR DCPC GUIDELINES MODIFICATION**

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*Commissioners present: B. Bennett, J. Breckenridge, C. Brown, P. Cabana, F. Hancock, C. Murphy, J. Joyce, L. Jason, K. Newman, J. Powell, C. Rose, D. Sederholm, L. Sibley, H. Stephenson, A. Woodruff*

**Christina Brown** explained that the Commission voted that the new wind turbine regulations didn't technically meet the DCPC guidelines.

***Linda Sibley moved, and it was duly seconded, to hold a public hearing on March 18<sup>th</sup> to accept the request for modifying the Aquinnah DCPC guidelines and, secondly, to consider whether the Aquinnah's proposed regulations are consistent with the guidelines. A voice vote was taken. In favor: 15 . Opposed: 0. Abstentions: 0. The motion passed.***

**Chris Murphy** said it might be useful to designate a subcommittee to work with Aquinnah to make sure information is clear and disseminated.

**Christina Brown** designated a committee of Andrew Woodruff, Kathy Newman, and Lenny Jason.

**Mark London** said that Commission counsel was asked whether town regulations need to conform to any DCPCs that might be affected. He said that the Commission would have to make a ruling that the regulations conform to the guidelines of all the town's DCPC guidelines. If there are several DCPCs in different areas in town, and a regulation is proposed for the whole town, that regulation needs to conform to each of the DCPCs.

**Lenny Jason** asked about the Copeland-related legal decision. **Jo-Ann Taylor** responded that Commissioners asked for a legal opinion on what happens to the Copleland regulations if the DCPC is rescinded that will be distributed to Commissioners.

#### **4. MVC COMMENTS ON THE MINERALS MANAGEMENT TASK FORCE MEETING**

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**Christina Brown** presented a draft MVC comment letter to the Minerals Management Service about its intention to put out a Request for Interest (RFI) to for companies interested in putting up wind facilities in federal waters south of Martha's Vineyard and Nantucket.

- She reported that Commission members and staff attended the second meeting of the Minerals Management Task Force at which they were given a copy of the draft request
- The draft MVC comments suggest that the State had a good beginning in its marine spatial planning. The Federal Government has put together a task force to do this for federal waters. The Commission's letter states that the federal government should make sure that its efforts to develop federal waters south of Martha's Vineyard be aligned with a marine spatial planning effort.
- It also suggests that the Commission wants to participate in the planning, even though the turbines are in federal waters.

**Mark London** said that Massachusetts' methodological framework for ocean planning is more sophisticated than Rhode Island's, but that Rhode Island has more effectively considered development in federal waters, which apparently has less impact.

Commissioners discussed the wording of the letter. They agreed that the letter should state that the Commission would like federal and state planning to be integrated.

**Jim Powell** said that Rhode Island's process has been described as seamless and less bureaucratic. Communication needs to be more proactive throughout the state.

**Camille Rose** said she would like a picture of the cumulative impact of build-out, and a definition of 'proximity to the grid'. Aquinnah would like more clarity and specifics on the three to nine mile area because it's so critical.

**Peter Cabana** will look into the projects that are being proposed in Rhode Island and federal waters.

**Mark London** said that the suggestion in the Commonwealth's Ocean Management Plan that the federal government develop the area west of Martha's Vineyard, filling in between the proposed Nomans and Cuttyhunk Wind Energy Areas have been dropped. The area identified by the MMS for commercial development is all at least nine miles to the south of the Vineyard and is only to the south.

**Christina Brown** reported that she and Mark London had an informal meeting with Derrin Babb-Brott, who suggested applying to the Clean Energy Center for planning money for the Wind Energy Siting Plan work.

#### **5. MVC WASTEWATER MANAGEMENT STUDY REPORT**

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**Bill Wilcox** reported on the Wastewater Management Study, a year-and-a-half long project, carried out by engineering consulting firm Wright Pierce with the help of an advisory committee of representatives from each town. Chris Seidel and Joe Alosso were very helpful.

- The goals were to look at options for managing wastewater.

- Nitrogen is the issue in saltwater ponds. Phosphorus is the issue in freshwater ponds.
- They identified the phosphorus-limited ponds and nitrogen-limited ponds.
- About 72% of the Vineyard is in the watershed of a nitrogen-sensitive water body, 22% is in ocean watershed, and 7% is in the watershed of phosphorus limited ponds.
- Low nitrogen equals higher quality eelgrass and creates better habitat for shellfish.
- Poor circulation can be a large contributor of algae growth.
- The sources of nitrogen are wastewater and run-off.
- Nitrogen can travel great distances and is not broken down if oxygen is present.
- Each household produces 12.2 lbs of nitrogen per year with 25% reduction from septic.
- Wastewater production is, on average, 210 gallons per day per residence.
- Spreadsheets were developed for each town and each pond, showing the amount of wastewater needing to be treated to bring the nitrogen down to an acceptable level.
- A summary table was developed showing each town's current wastewater treatment needs and what the future holds
- The amount of wastewater that will need to be treated almost doubles.
- Bird contribution of nitrogen is well below 10% to the nitrogen picture in Edgartown Great Pond.
- The levels in Lagoon and Sengekontacket are at times above the level that's good for eelgrass.
- The study used computer modeling and a groundwater model based on 75 to 100 test wells and topographic information.
- The study summarizes current wastewater flow at 2.7 million gallons per day, using an average per house use, taking into account seasonality. The planning horizon shows a 55% increase bringing total wastewater to 4.2 million gallons. 789,000 gallons of new wastewater will need to be treated. 1.4 million total gallons will need to be treated to bring nitrogen contribution to acceptable levels. About 300,000 gallons per day is already collected.
- The study produced a chart of treatment options with expenses. It averages \$50,000 per household when it is possible to use an existing treatment plant. Individual treatment plants are expensive and inefficient.
- About 2.6 times the existing treated flow needs to be treated. 2/3 of treatment needs are in down-Island towns: Tisbury Great Pond, Edgartown Great Pond, Oak Bluffs Harbor, and Sengekontacket.

Commissioners discussed solutions and technology.

- Flushing improvements might improve nitrogen removal. Shellfish cultivation might also.
- **Peter Cabana** suggested a shellfish gardening program.
- **Bill Wilcox** made a rough estimate that suggests that creating 70 acres of oyster beds in Edgartown Great Pond could eliminate the nitrogen from the existing excess.
- Island-wide, dealing with current excess nitrogen could be a 200 million dollar project, or more.
- Solutions might be to extend the sewer into high density areas, the purchase of open space, and changing zoning.

- If no nitrogen removal takes place, the ponds will invite detritus feeders. There is a Clean Water Act so there might be some legal requirements.
- Flushing and dredging will improve flow. Outflow can be strengthened by removing shoals on the pond side of openings.
- Commissioners discussed the balance of dredging and nitrogen removal.
- The report is available on the Commission website.
- The challenge now is to summarize the report and choices that are ahead to communicate information to towns and pond committees.

**6. OTHER**

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**6.1 Other**

**Christina Brown** welcomed Fred Hancock, appointed from Oak Bluffs.

**6.2 Drawbridge**

**Mark London** reported that there will be a drawbridge committee meeting on February 12<sup>th</sup>. There will be a formal public hearing on design options for the permanent bridge, tentatively scheduled for the first week in April. The design will incorporate a shared-use path.

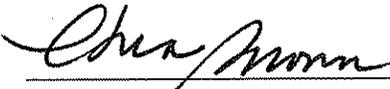
**6.3 Committees**

**Christina Brown** reported on committees:

- Linda Sibley has agreed to be the chair of the LUPC.
- Kathy Newman will chair the Planning and Economic Committee
- The Finance Committee will be meeting with West Tisbury.
- Doug Sederholm will chair the wind work group. Peter Cabana, Holly Stephenson, and Camille Rose have agreed to be on the committee.

**6.4 Meeting Start-time**

Commissioners agreed to start meetings at 7:00 p.m. and not make decisions after 10:00 p.m. The meeting adjourned at 10:00 p.m.

  
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 Chairman

5/20/10  
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 Date

  
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 Clerk-Treasurer

5/20/10  
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 Date