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**Minutes of the Commission Meeting
Held on November 14, 2013
In the Stone Building
33 New York Avenue, Oak Bluffs, MA**

IN ATTENDANCE

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

P Tripp Barnes (E-Tisbury)	P Joan Malkin (A-Chilmark)
P John Breckenridge (E-Oak Bluffs)	- W. Karl McLaurin (A-Governor)
P Christina Brown (E-Edgartown)	- K. Newman (A-Aquinnah)
P Madeline Fisher (E-Edgartown)	- Ned Orleans (A-Tisbury)
P Josh Goldstein (E-Tisbury)	- Camille Rose (E-Aquinnah)
P Erik Hammarlund (E-West Tisbury)	P Doug Sederholm (E-Chilmark)
P Fred Hancock (A-Oak Bluffs)	P Linda Sibley (E-West Tisbury)
P Leonard Jason (A-County)	P Brian Smith (A-West Tisbury)
P James Joyce (A-Edgartown)	

Staff: Mark London (Executive Director), Paul Foley (DRI Planner), Priscilla Leclerc (Transportation Planner)

Chairman Fred Hancock called the meeting to order at 7:00 p.m.

1. MINUTES

Commissioners Present: T. Barnes, J. Breckenridge, C. Brown, M. Fisher, J. Goldstein, E. Hammarlund, F. Hancock, L. Jason, J. Joyce, J. Malkin, D. Sederholm, L. Sibley, B. Smith

Erik Hammarlund moved and it was duly seconded to approve the minutes of October 24, 2013 with corrections as noted, correcting the language on line 250 to the word "not", lines 538-539 revised to "and the applicant agreed" and line 626 add "does it take to fill the storage tanks." In favor: 12. Opposed: 0. Abstentions: 1. The motion passed.

2. NEW BUSINESS

Commissioners Present: T. Barnes, J. Breckenridge, C. Brown, M. Fisher, J. Goldstein, E. Hammarlund, F. Hancock, L. Jason, J. Joyce, J. Malkin, D. Sederholm, L. Sibley, B. Smith

Fred Hancock noted that on Saturday from 8:00 a.m. to 10:00 a.m. there will be a Citizen Planner Training Collaborative workshop devoted to the master plans. Any Commission member is welcomed to attend.

Linda Sibley excused herself from the meeting.

3. RYMES PROPANE ON EVELYN WAY-TISBURY (DRI-576-M2) DELIBERATION AND DECISION

Commissioners Present: T. Barnes, J. Breckenridge, C. Brown, M. Fisher, J. Goldstein, E. Hammarlund, F. Hancock, L. Jason, J. Joyce, J. Malkin, D. Sederholm, B. Smith

Fred Hancock noted that the LUPC meeting was on November 4, 2013 and the committee voted unanimously to recommend approval of the DRI.

Doug Sederholm moved and it was duly seconded to approve DRI 576-M2 with the offers.

3.1 Benefits and Detriments

- It is appropriate to have an industrial service facility in this area. The area is zoned for this type of application. It is off the main road and it provides a necessary service. The location is an appropriate place for this facility.
- The applicant offered to manage groundwater on the site.
- The location is an area where wastewater goes to the harbor and not the Lagoon. The wastewater plan will go to LUPC for approval.
- Night lighting is controlled as best as can be and it is code limited.
- The building will be built to stretch code and in the future solar panels may be added.
- The project will reduce the distance travelled by the propane trucks since the location is closer to the ferry.
- The project fits the character of the area.
- There may be some backup noise with the trucks that will have an impact on the abutters.
- The three-bedroom unit shall be dedicated for free staff housing meeting the MVC Affordable Housing Policy.
- The project meets Town objectives and State plans as heating is needed for homes and the project conforms to DCPC regulations.

There was a discussion about stormwater and landscaping plans.

- **John Breckenridge** noted that section 4.1 of the offers does not say the plan has to be implemented before the Certificate of Occupancy is issued.
- **Doug Sederholm** said there is not a connection between the stormwater plan and the landscaping plan, it is unclear.
- **Fred Hancock** said when there is a project implemented during the non-planting season the MVC has asked the applicant to put money into escrow.
- **Doug Sederholm** noted the applicant is not present to make an offer so that suggestion would have to be a condition.

Joan Malkin requested to amend the motion to condition that funds be placed in escrow for implementation the stormwater and landscaping plans if the work cannot be completed before the Certificate of Occupancy is issued. **Doug Sederholm** agreed to amend his motion.

3.2 Decision

Doug Sederholm moved and it was duly seconded to approve DRI 576-M2 accepting the offers, and adding the condition that funds be placed in escrow for

implementation the stormwater and landscaping plans if the work cannot be completed before the Certificate of Occupancy is issued.

There was a discussion about employee salaries.

- **James Joyce** said the issue was brought up with the Stop & Shop project and asked whether the MVC should the MVC ask all applicants to supply this information.
- **Doug Sederholm** said it is not relevant to this project. The applicant is providing employee housing. This is different from the Stop & Shop situation, with its large number of additional employees, which could have significant impacts on affordable housing on the Island.
- **Joan Malkin** noted that the facility is not causing the applicant to hire more people. The staff will grow as the business grows.
- **Trip Barnes** noted that he provides free housing for employees as well, as does Carroll's Moving and Storage, in order to be able to hire and keep employees.
- **Leonard Jason** noted that the hearing is already closed.

There was a discussion about offer 7.1 - Hours of Operation and Noise.

- **John Breckenridge** asked for clarification on the language for offer 7.1 with regards to the use of the word "commercial".
- **Brian Smith** said the language was to prevent truck and other noise prior to 5:00 a.m.
- **Doug Sederholm** noted any change would have to be a condition since the applicant is not present.
- **John Breckenridge** and **Fred Hancock** suggested revising the language to non-commercial vehicle and striking the word building.
- **Joan Malkin** noted clarification of 7.1 was reviewed at LUPC.
- **Erik Hammarlund** suggested revising the language for 7.1 "As offered by the Applicant, the hours of non-emergency commercial vehicle operation shall be from 5:00 a.m. to 7:00 p.m..."
- **Fred Hancock** noted the following language for 7.2 was stricken at LUPC "or cleaning of containers".

Roll call vote. In favor: T. Barnes, J. Breckenridge, C. Brown, M. Fisher, J. Goldstein, E. Hammarlund, F. Hancock, L. Jason, J. Joyce, J. Malkin, D. Sederholm, B. Smith. Opposed: none. Abstentions: none. The motion passed.

Erik Hammarlund recused himself from the meeting.

4. FULLER LANDSCAPING CONTAINERS-WEST TISBURY (DRI-644) WRITTEN DECISION

Commissioners Present: T. Barnes, J. Breckenridge, C. Brown, M. Fisher, J. Goldstein, F. Hancock, L. Jason, J. Joyce, J. Malkin, D. Sederholm, B. Smith

There was a discussion about line 225 and the fence along Dr. Fisher Road.

- **Doug Sederholm** noted the fence mentioned on line 225 is not to screen Dr. Fisher Road. In the meeting minutes on line 111-119 there was a discussion about extending the fence along the Fuller operation and Melissa Manter's property to add a buffer and prevent overflow onto Melissa Manter's property.

- **Christina Brown** said she liked the Dr. Fisher Road reference since it is an ancient way and of particular interest to the Commission.
- **Doug Sederholm** said it would be okay to leave the language as is as long as Melissa Manter gets her fence.

Mark London noted in reference to line 259, that the MVC normally lists the conditions to be satisfied before a Certificate of Occupancy is issued. The conditions to be added are 1.1 and 1.2.

Christina Brown moved and it was duly seconded to approve the written decision as amended. Roll call vote. In favor: T. Barnes, J. Breckenridge, C. Brown, M. Fisher, J. Goldstein, F. Hancock, L. Jason, J. Joyce, J. Malkin, D. Sederholm, B. Smith. Opposed: none. Abstentions: none. The motion passed.

Linda Sibley and Erik Hammarlund rejoined the meeting.

5. REMOTE PARTICIPATION AND MISSED MEETINGS

Commissioners Present: T. Barnes, J. Breckenridge, C. Brown, M. Fisher, J. Goldstein, E. Hammarlund, F. Hancock, L. Jason, J. Joyce, J. Malkin, D. Sederholm, L. Sibley, B. Smith

Mark London handed out excerpts of regulations related to Commissioners' making up for missed meetings and remote participation. These are two related but different issues.

- If someone misses a meeting, are they allowed to view a video or read the transcript to "rehabilitate" themselves and then sign an affidavit in order to participate under Massachusetts General Laws on Municipal Government? Counsel is still checking to see if the MVC can do this under existing legislation. The Cape Cod Commission adopted this procedure in a restrictive way, but hardly uses it.
- Can someone participate remotely in a meeting, such as by telephone or Skype? The Cape Cod Commission is part of the County which passed an Ordinance allowing remote participation for all departments. However, the Cape Cod Commission chose not to do this because they felt that this kind of communications would not be adequate, especially for quasi-judicial meetings such as DRI hearings.

5.1 Missed Meetings

Erik Hammarlund said if the Commission was to do this it should be only for something such as an extremely long DRI project review with public hearings. It should be a last resort process.

Linda Sibley is open to the notion to having someone watch the video, agreeing that the MVC state the minimum number of hearings when this process would apply. The purpose should not be to accommodate individuals but the body of the Commission as a whole.

Brian Smith asked what if your car breaks down and you cannot make the public hearing what would be the harm in watching the video in order to continue to participate.

Joan Malkin said if the process is made too easy, people may not come at all to the meetings. Watching a video does not allow for the same kind of participation as being there, as it does not allow the Commissioner to ask questions. If a Commissioner missed the last hearing, he or she

they would need to accept everything that was heard because they would not be able ask a question. She is not sure that is acceptable.

Fred Hancock said the MVC would have to write the stipulations into the regulations. The MVC is looking to accommodate what happens when the Commission loses a quorum after having three or four meetings. The purpose is to not inconvenience everyone else that has attended.

Trip Barnes said when a project is a big drawn-out deal such as Stop & Shop, why not have someone watch a video at the Commission Office and be able to ask the staff questions if needed.

Christina Brown stated that she cannot remember a DRI where the MVC has gotten into major trouble for a lack of quorum. The worst that happened is postponing a public hearing. She is reluctant to adopt a new policy that may be hard to implement in the spirit it is meant. In a meeting expressions and body language can be seen. She is not convinced the MVC has a real problem that would be fixed by this process.

Mark London noted that the Cape Cod Commission is barely using the missed meeting process and is not using the remote participation procedure due to this type of intangible issues. It could be argued that when the commissions are working in their quasi-judicial role, it is similar to a jury, and being part of the process is not the same as watching the meeting on TV.

Joan Malkin said it is important to maintain a quorum. She also feels she could significantly contribute to the Stop & Shop process, but she can no longer participate because she missed the last public hearing and is now disqualified. She does not think the process should be used to solely maintain a quorum.

Erik Hammarlund felt this process should only be used for meetings where there was testimony at a public hearing on a DRI, and for projects that have three or four meetings.

Linda Sibley thought that the possibility of losing a quorum should not be the only reason to consider the process. She agrees with Joan Malkin; people have lives and when they have a scheduling problem, it can be difficult to balance. Every time a Commissioner is lost, an important perspective and voice is lost. She would like to know why the Cape Cod Commission rarely uses the process. The process seems to be a good idea. She has seen over the years people who have put in a lot of time and then suddenly have lost their eligibility to participate. The process should be limited to those hearings that go on over a period of time. The probability of a Commissioner not being able to participate is higher the longer the hearings extend.

Doug Sederholm said he is not in love with the idea but he is okay provided the process is limited to a single session of a public hearing process. He does not think it is appropriate to be quizzing staff as the video is being watched. The Commissioner should review the evidence, review the documents, and view the video. He suggested it be for hearings that extend at least three sessions when the Commissioner has attended the first session. He thinks remote participation is a really bad idea.

Leonard Jason does not see the need for remote participation. The part about not being able to hear someone give testimony and question them is important. If the last session is missed, then it is too late for that exchange.

Fred Hancock asked whether the sense of the Commissioners was to ask Counsel if the MVC can use the process and what steps would need to be taken. The majority of the Commissioners agreed to have Counsel look into the matter.

5.2 Remote Participation

Mark London said the MVC has the authority for remote participation as outlined under the Open Meeting Law. The Cape Cod Commission is not doing because of concern about the practicalities of how it would work in reality and how someone would really see what is going on in the meeting. DRI review is a quasi-judicial process where people's property rights are in question.

Erik Hammarlund felt the only time remote participation would be advisable is when it is limited to a Commissioner discussion among themselves, such as DRI Deliberation and Decision.

Linda Sibley agrees with Erik Hammarlund. Remote participation would be extremely awkward for the public in a public hearing. She does not think it would work well.

Leonard Jason asked why it would be okay to watch a video and not talk to people for the hearing, it not be okay to have someone live on the screen.

Joan Malkin said the technology available makes a huge difference. Audio only on a speaker phone is not enough. The MVC does not have the capacity for audio visual. The Commission is not technologically advanced enough to do it correctly.

Fred Hancock noted, from a person who does video-conferencing worldwide, a lot more is needed other than a laptop on a table.

Joan Malkin said in order to make remote participation work, the MVC probably needs more than what they can reasonably afford and implement.

Mark London noted that the MVC is about to improve their facilities at a request of MassDOT and in perhaps six months the Commission could have a discussion to see if the technology functions as would be needed.

Joan Malkin noted the MVC does not need to postpone a discussion about allowing remote participation in Commissioner discussions versus testimony at public hearings.

Erik Hammarlund asked, if the Commissioner is only taking notes, what is the difference of being in the room versus being remote.

Fred Hancock asked whether the Commissioners wish to pursue remote participation, noting that this would require a revision to the bylaws.

Brian Smith felt the MVC should delay reviewing remote participation for six months.

Linda Sibley said remote participation is appropriate for discussion but not the decision. She favors stringent requirements such as geographic distance.

Josh Goldstein said a third factor for him is the scheduling of meetings and that the schedule be adhered to. As an example, he has scheduled a trip for a week when the Commission did have a meeting scheduled, and then there was one, so he was not able to participate in a DRI review. Tonight there should not have been a meeting and there is one.

Fred Hancock said the MVC meetings are generally scheduled for the first and third Thursday of the month, but in order to get the business done sometimes the MVC has to have more meetings than the standard.

Mark London said that to allow Commissioners to make long-term plans, the Commission avoids meetings the last Thursday of the month, as well as school vacation weeks and holidays.

Leonard Jason felt if the MVC had more applications that were complete, there would be fewer meetings.

Erik Hammarlund thought perhaps the MVC should review remote participation in six months to see if the Commission wants to pursue the process.

Fred Hancock asked the Commissioners for a sense of whether the idea of remote participation should be pursued other than for DRI public hearings where testimony or evidence is given. By show of hands, the Commission was split so there isn't a mandate to proceed.

Linda Sibley moved and it was duly seconded to do a simulation test for remote participation once the Commission has equipment that allows for it. Voice vote. In favor: 6. Opposed: 6. Abstentions: 0.

Erik Hammarlund, Joan Malkin, James Joyce and Brian Smith excused themselves from the meeting.

Fred Hancock recessed the meeting at 8:25 p.m. and reconvened at 8:30 p.m.

6. NSTAR POLES EXPANSION (DRI-642) DELIBERATION AND DECISION

Commissioners Present: T. Barnes, J. Breckenridge, C. Brown, M. Fisher, J. Goldstein, F. Hancock, L. Jason, D. Sederholm, L. Sibley

Mark London clarified the evolution of the offers.

- He had drafted an initial set of possible offers and sent them to NSTAR. The offers were created by taking emails that Jerome McDermott of NSTAR had previously sent to the MVC, using his words. Mark asked NSTAR to confirm that this is what NSTAR was offering and Jerry said it was okay.
- Subsequently, LUPC had a discussion about the wording of the offers and especially what the proposed regional working group would discuss.
- After the LUPC meeting, Mark redrafted the wording with clarifications, though the content was essentially similar. The first offer deals with mitigation for the existing project. The second offer is NSTAR's operating procedure for ongoing work, with NSTAR dealing directly with the Towns and their DPWs. The third offer is the proposal, which NSTAR has agreed to, to have NSTAR meet towns and the MVC twice a year, to discuss issues moving forward, such as preventing a circumstance similar to what just occurred. The reworded version of the offers was sent back to NSTAR.
- Jerome McDermott replied that NSTAR was comfortable with the initial set of offers, but not the new version.

There was a discussion about the submission of offers.

- **John Breckenridge** stated that typically, the applicant submits signed offers to the MVC. What the MVC just received is a recap.

- **Mark London** said that in the email from Jerome McDermott, NSTAR approved the initial offers.

There was a discussion about undergrounding the cables.

- **Leonard Jason** thought the MVC asked NSTAR what the cost was to bury the cable.
- **Fred Hancock** said the response was received at the last NSTAR public hearing.
- **Doug Sederholm** said the cost was \$1,000,000 to \$1,500,000 per mile.
- **Leonard Jason** thought it may be appropriate for the MVC to examine the possibility of burying the cables with an independent expert.

There was a discussion about obtaining fiber optic strands.

- **Leonard Jason** asked about obtaining fiber optics and what is that status.
- **Josh Goldstein** said NSTAR testified that it was not in NSTAR's jurisdiction to offer use of the fiber optics.
- **Linda Sibley** did not think NSTAR controls the fiber optic cables. NSTAR has an agreement with Comcast and Comcast owns the cable. The MVC did not condition the use of fiber optics with Comcast.
- **Doug Sederholm** noted that when the MVC dealt with the underwater cable in the previous DRI, the MVC discussed but did not vote to condition the fiber optics.
- **Trip Barnes** said the number of fibers being laid undersea did come up in the discussions and it was noted that Comcast owns the fiber optics.
- **Leonard Jason** said he remembers Comcast saying they are not in the business of giving anything away such as the use of the fiber optics.

The discussion returned to how the offers are written.

- **Linda Sibley** said LUPC asked for clarification of the offers, and could be seen as not recognizing the MVC's legitimate role in the pole expansion issue. LUPC felt that the final decision should be written in a way that is consistent with the MVC's legal authority in the matter. She thinks the MVC should condition the third offer clarifying that NSTAR will meet at least twice a year with the Towns and the MVC.
- **Mark London** noted that the third condition deals with how NSTAR would operate in the future, rather than this project. It is clear that the MVC has authority over the 44 new poles, though NSTAR contested the MVC's authority over replacing the existing poles.
- **Doug Sederholm** said the MVC can condition the new poles and suggested that the Commission puts the condition in so NSTAR comes back and talks with the MVC.

Doug Sederholm moved and it was duly seconded to approve NSTAR's application, accept the three offers, condition offer number three, and word it in a way compatible with MVC jurisdiction over all the new poles.

- **Leonard Jason** asked if the MVC can limit the use of the poles strictly for electrical generation.
- **Doug Sederholm** doubted it but thought that might be possible for the new poles.
- **Josh Goldstein** said there is no mention about NSTAR moving the two or three poles in downtown Vineyard Haven.
- **Jay Grande** clarified that NSTAR is working closely with the Town and reminded the Commission to include the conditions noted in the Town of Tisbury's letter dated August 22, 2013 included in NSTAR's offers. He confirmed that NSTAR has agreed to move the poles to the other side of Beach Street. The Town of Tisbury left the public hearing with the understanding that the Town's conditions would be part of the MVC decision.

- **Doug Sederholm** noted that the Town of Tisbury wants item 1 through 4 of their letter included in the offers.
- **Leonard Jason** suggested adopting the Town of Tisbury's request as part of the MVC conditions.
- **Christina Brown** asked why not the Town of Oak Bluffs requests as well.
- **Mark London** said that the town's suggestions could be put in as conditions. He noted that some of the mitigation is not in the location of the pole installation.
- **Trip Barnes** said there are lists of wants from the Town of Tisbury and the Town of Oak Bluffs and all the MVC has received from NSTAR is an email.
- **Linda Sibley** thinks some of the things requested by the Town of Tisbury and the Town of Oak Bluffs are a reach for this DRI.
- **Jay Grande** said the Town of Tisbury established their requests based on what NSTAR has discussed. Part of the exercise was for NSTAR to design a plan and give Tisbury a hard cost estimate for undergrounding on Beach Road.
- **Tristan Israel** added NSTAR agreed to also move the poles on Beach Street.
- **Linda Sibley** said the MVC has a right to condition this DRI but at LUPC, conditions were worded very carefully. She suggested the Commission send this back to LUPC and be sure that the MVC does not add any condition that is unreasonable. It was not determined if NSTAR was able to provide fiber optics and she is not sure that LUPC considered the information that was already on the table.
- **Christina Brown** agrees with Linda Sibley to include the requests from the two Towns into the conditions.
- **Mark London** said the Commission can check the testimony to see what NSTAR had said.
- **Fred Hancock** said it was the Commission's understanding that NSTAR met with the Towns and agreed to do things directly with the towns.
- **Doug Sederholm** is not sure what will be accomplished by having LUPC review again. The only things NSTAR has really committed to is item 2A in the letter from the Town of Tisbury dated August 22, 2013. The rest is a wish list. The MVC may never get a straight answer about the two fiber optic strands. He suggested the MVC get the Deliberation and Decision done tonight by accepting NSTAR's offers and adding conditions.

Doug Sederholm amended his motion and it was duly seconded to approve the proposal, accepting NSTAR's initial offers, imposing conditions 1, 2, 3, and including 2A from the Town of Tisbury's letter dated August 22, 2013.

- **Leonard Jason** said the Towns of Tisbury, West Tisbury and Oak Bluffs all asked for two fiber optic strands. These don't need to be in the new cable; apparently NSTAR has strands in other cables and this could be in any cable where NSTAR controls fibers. This would provide a benefit to the community to offset the negative impacts of the project.

Leonard Jason moved and it was duly seconded to condition two fiber optic strands for municipal use.

- **Christina Brown** would like the motion amended to dedicate two "operational" fiber optic strands.
- **Leonard Jason** agreed to amend the motion.

Voice vote. In favor: 7. Opposed: 1. Abstentions: 1. The motion on the amendment was approved.

- **Mark London** noted NSTAR was to plant vegetation as part of the mitigation and asked if the MVC wants to try to outline in more detail the type of plantings to be used.

- **Linda Sibley** said NSTAR should meet with the Towns and LUPC.
- **Doug Sederholm** said the conditions LUPC drafted are not onerous. The MVC is just asking for NSTAR to talk to the MVC so this type of situation does not happen again in the future.
- **Mark London** noted that the main benefit of the project was helping to ensure the Island's supply and distribution of electricity. The main detriment is the visual impact. Staff can flesh out the benefits and detriments in the written decision based on the testimony and Commission discussion.

Roll call vote on the motion to approve the application as amended. In favor: T. Barnes, J. Breckenridge, C. Brown, M. Fisher, J. Goldstein, F. Hancock, L. Jason, D. Sederholm, L. Sibley. Opposed: none. Abstentions: none. The motion passed.

The meeting was adjourned at 9:30 p.m.

DOCUMENTS REFERRED TO DURING THE MEETING

- Minutes of the Commission Meeting – Draft, Held on October 24, 2013
- DRI 576-M2 Offers/Conditions as Clarified at LUPC November 4, 2013 for Rymes Propane
- Martha's Vineyard Commission, Land Use Planning Committee Notes of the Meeting of November 4, 2013
- Decision of the Martha's Vineyard Commission – Draft, DRI 644 Fuller Landscaping Containers
- NSTAR Offer via emails to the Martha's Vineyard Commission, Dated October 7, 2013
- Letter to the Mark London from the Town of Oak Bluffs Board of Selectmen Dated September 19, 2013
- Letter to the Martha's Vineyard Commission from the Town of Tisbury, Jay Grande Town Administrator, Dated August 22, 2013

Chairman

Date

2-6-14

Clerk-Treasurer

Date

2-6-14