

MARATHA'S VINEYARD COMMISSION

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Minutes of the Special Meeting of November 20, 2003

Held in the Olde Stone Building,
33 New York Avenue, Oak Bluffs, MA

IN ATTENDANCE

Commissioners: James A. Athearn, Chairman (Elected – Edgartown), John Best (Elected – Tisbury), Christina Brown (Elected – Edgartown), Linda DeWitt (Appointed – Edgartown), Jane A. Greene (Appointed – Chilmark), Deborah Moore (Elected – Aquinnah), Katherine Newman (Appointed – Aquinnah), Megan Ottens-Sargent (Elected – Aquinnah), Doug Sederholm (Elected – Chilmark), Linda Sibley, (Elected – West Tisbury), Paul Strauss (Appointed – County), Richard Toole (Elected – Oak Bluffs), Roger Wey (Appointed – Oak Bluffs) Andrew Woodruff (Elected – West Tisbury)

Staff: Mark London (Executive Director), Jennifer Rand (DRI Coordinator)

There being a quorum present, Chairman James Athearn opened the Special Meeting at 7:30 P.M.

1. M.V. ELECTRIC (DRI No 566) – ADOPTION OF WRITTEN DECISION

Commissioners present: J. Athearn, J. Best, C. Brown, L. DeWitt, J. Greene, D. Moore, K. Newman, M. Ottens-Sargent, D. Sederholm, L. Sibley, P. Strauss, R. Toole, R. Wey, and A. Woodruff.

Christina Brown moved and it was duly seconded that the written decision of the Commission's November 6, 2003 approval of the application of M.V. Electric to erect a new commercial structure on Evelyn Way, Tisbury, be adopted as presented. Roll call vote. In favor: J. Athearn, J. Best, C. Brown, L. DeWitt, D. Moore, K. Newman, M. Ottens-Sargent, D. Sederholm, L. Sibley, P. Strauss, R. Toole, R. Wey, and A. Woodruff. Opposed: 0. Abstention: 1. The motion passed.

2. SOUTH MOUNTAIN WIND TURBINE (DRI No. 462M) – CONCURRENCE VOTE

Commissioners present for this item: J. Athearn, J. Best, C. Brown, L. DeWitt, J. Greene, D. Moore, K. Newman, M. Ottens-Sargent, D. Sederholm, L. Sibley, P. Strauss, R. Toole, R. Wey, and A. Woodruff

Present for the applicant: Bill Forest

Christina Brown noted that application was reviewed at the LUPC meeting on Monday, November 17, 2003. It had been referred to the Commission because the property had previously been a DRI, but would not have otherwise been referred. LUPC concluded that there was not a significant regional impact, and recommended that the MVC not concur.

Bill Forest noted that the proposed turbine would house three 23-foot diameter blades on a 100' tower. The tips of the blades would reach a height of 112'. The 100' tower is the minimum height in order to avoid turbulence by the surrounding trees. All components would be gray. The turbine would provide a large percentage of the electricity for South Mountain Company. He sent up a 6' balloon in October, tethered to a 112' rope, to determine visual impact. He found the balloon to be visible from a path abutting their property, from Island Co-housing and from Chicama Vineyards. The sounds would be comparable with the sounds of wind in the trees and not discernable from any residence.

Jim Athearn noted that the West Tisbury Zoning Board of Appeals had opened a hearing on the proposal. Jennifer Rand read the concluding sentence in a letter from the ZBA that said that they felt that it was an application that could be heard at the local level.

Jane A. Greene asked what locations had been included in the visual analysis. She wanted to know the height of the trees and was concerned about the visibility from up-Island. Linda Sibley said that she could think of several locations, such as the former Rainbow Farm, where it would likely be visible but at a distance where it would not be intrusive. She recalled that the "eggbeater" wind turbine at the Tisbury Landfill had been visible from Wascosim's Rock, but not in an intrusive manner. It would be visible from hilltops, but only at a great distance. Jane A. Greene said that it would be twice the height of cell towers, over which height there had been concern; she did not see why it had to be so high.

Richard Toole said that the key question is whether it has a regional impact. Linda DeWitt said that the benefits clearly outweigh the detriments.

Andrew Woodruff moved and it was duly seconded that the Commission not concur.

- Andrew Woodruff has concerns about the proliferation of wind turbines on the Island, but thinks that this is a good location.
- Richard Toole said that this might be visible but the alternatives include nuclear and coal-fired power plants. He doesn't feel that MVC should concur.
- Megan Ottens-Sargent asked how much power it would produce. Bill Forest said it would produce between 16 and 18 kwh per year, 70% of South Mountain Company's needs. It would be grid-tied, so that power would go to the grid when not being used for the shop. An average house uses 7 kwh per year.
- Megan Ottens-Sargent asked about the height. Bill Forest said that the proposed height is the minimal height needed to clear the tree line; the lowest part of the blade has to be 30 feet higher than any obstruction within 500'.
- Jane A. Greene said that she thought it would have regional impact and be highly visible.
- Deborah Moore wondered whether the public should have a chance to give input.
- Jim Athearn said that when LUPC looked at the photos, it seemed clear that it would not be very visible. The blades would be under a foot wide.

- John Best thought it would be visible from Hidden Hill. That is not that far away and is oriented in that direction. He believes that seeing it from that direction, it would be seen against other trees. There would be few if any places where it would be above the tree line.
- Bill Forest said that the Mathesons at Chicama Vineyard saw the test balloon and told him that it was almost like not seeing it. John Best noted that the Mathesons' son works for South Mountain Company.
- Jane A. Greene said that she is concerned about other proposals for wind turbines in the future. Perhaps the Standards and Criteria should be modified to deal with this.
- Katherine Newman said that, at LUPC, they concluded that this project would be a reasonable project for this location, and that there should be a separate forum for discussion of wind energy and alternatives.
- Doug Sederholm said that, at this particular location, it does not have a regional impact, but non-concurrence should in no way be a precedent for proposals at other locations. The location is key.
- Jane A. Greene said that it would probably be possible to see it from the beach of the Tisbury Great Pond. She can see the fire tower. Linda Sibley pointed out that the fire tower is much taller, situated so to have a view of all parts of the State Forest.
- Jim Athearn noted that there had been a public hearing, so if the purpose of concurring would be to provide an opportunity for public comment, this has already been done.
- Roger Wey noted that this one would be reviewed by the ZBA. He asked what would the policy be for other referrals. Jim Athearn responded that the Commission would be unlikely to review such structures unless referred in conjunction with an existing DRI.
- Doug Sederholm said that if it were on the checklist, it would be automatically reviewed. If it were sent as a discretionary referral, the Commission would have to concur.
- Megan Ottens-Sargent asked whether this could be put on the checklist. Christina Brown agreed that this should be looked at when the checklist is reviewed.
- Linda Sibley noted that the West Tisbury ZBA has not closed the hearing on this so if people now become aware of the proposal, they still would have an opportunity to testify there.
- Jennifer Rand said that a resident of West Tisbury had sent a letter to the West Tisbury ZBA expressing concerns about the commercial aspect of the project, about the possibility of leasing it to a cell phone company, and liability issues.
- Christina Brown noted that guidance in deciding whether to concur with a referral is given in attachment A of the Standards and Criteria.
- John Best noted that the elevation at the site is approximately 100' above sea level, and that the fire tower would appear to be at elevation about 240'.

Roll call vote. In favor: J Athearn, J. Best, C. Brown, D. Moore; K. Newman, M. Ottens-Sargent, D. Sederholm, L. Sibley, P. Strauss, R. Toole, R. Wey, A. Woodruff. Opposed: J. Greene. Abstentions: none. The motion to not concur with the referral carried.

3. JENNEY LANE HOUSING (DRI No. 573) – RECOMMENDATIONS AND SUGGESTIONS

Christina Brown announced her intention to abstain from the discussion, and left the room.
Commissioners present for this item: J. Athearn, J. Best, L. DeWitt, J. Greene, D. Moore, K. Newman, M. Ottens-Sargent, D. Sederholm, L. Sibley, P. Strauss, R. Toole, R. Wey, and A. Woodruff

Jim Athearn noted that the Commission had drafted a letter of recommendations to the Planning Board, to be offered for their information, and not meant to be seen as anything other than helpful suggestions. He added that, in the decision, considerable flexibility had been left to the Planning Board to deal with the local issues. He invited commentary on the draft.

Linda DeWitt asked about the implications of making Fisher Road a dead end. Megan Ottens-Sargent said that it is not clear exactly what the implications are, but that it would be only one alternative to review.

Linda Sibley noted that there is some redundancy between paragraphs 2 and 3 that both speak about the taking of Fisher Road. There is a wording problem with making it a dead end. The dead end designation would only work if the road were taken and used as an access.

John Best moved and it was duly seconded that paragraph 3 be adopted.

- Paul Strauss suggested and it was agreed to clarify the difference between the recommendations and suggestions. In the second sentence, he suggested not using the word "recommend" but that the Commission "suggests" that the Town consider . . .
- Megan Ottens-Sargent suggested that the taking of Fisher Road be one of the list of items to be looked at by the committee.

John Best amended his motion to say, "examine the feasibility and merits of taking Fisher Road as a public way". Staff can revise the wording.

- Linda Sibley said that the suggestion of looking at making Fisher Road a dead end near Pine Street should note that this would be to distribute the traffic impacts of the project, to alleviate the traffic on Pine Street by distributing the traffic between Pine Street and Curtis Lane.
- John Best said that he would prefer that the suggestions be kept brief, giving the Planning Board credit for ability to determine the right answers.

Linda Sibley moved, and it was duly seconded to amend the motion, adding the explanation of the purpose of making Fisher Road a dead end.

Linda DeWitt said that unless the Commissioners feel strongly about it, it shouldn't be said.

Jim Athearn said that it would only mean passing on the suggestions heard from the public.

Vote by a show of hands. In favor: 6. Opposed: 0. Abstentions:0

Voice vote on the motion to include Paragraph 3: In favor: 11. Opposed: 0. Abstentions:0.

Paul Strauss moved and it was duly seconded to change the title to "Suggestions to the Town for Consideration." Voice vote. In favor: 11. Opposed: 0. Abstentions

Linda Sibley moved and it was duly seconded that paragraph 1 be included. Voice vote. In favor: 11. Opposed: 0. Abstentions: 0.

Doug Sederholm moved and was duly seconded to include paragraph 4, substituting "developer" for "owner" and deleting the words "provided there are no clear and direct negative impacts in the neighborhood". He withdrew the motion because this paragraph is no longer needed, since the project would have to be referred back to the Commission if the parking were to be changed.

Mark London suggested including an explanation of why the Commission came to its conclusions with respect to parking. Doug Sederholm suggested, and it was agreed that this should be discussed in the written decision.

Megan Ottens-Sargent moved and it was duly seconded that paragraph 4 be included, including a list of alternatives, and then withdrew the motion.

John Best suggested that the sentence about the vegetative peninsula, from draft paragraph 4, should be added to paragraph 6 and included. There was general agreement.

John Best suggested that paragraph 5 not be included. There was general agreement.

Jennifer Rand noted that she had received an e-mail from Bob Schwartz suggesting the residents should be encouraged to engage in trip-reducing measures such as bicycling and car-pooling, and that heavy truck traffic be limited to the hours of 10 A.M. and 4 P.M. (request to be made to the Board of Selectmen). John Best said that he is in favor of both ideas but that neither would have much impact and are better left to the town. He felt that it wasn't necessary to include them as suggestions. Katherine Newman would feel uncomfortable about recommending behavior to individuals. Linda Sibley noted that there is a requirement for a bicycle and pedestrian path, and that is a strong message.

Linda Sibley moved, and it was duly seconded, that the letter be sent as amended. Voice vote. In favor: 11. Opposed: 0. Abstentions: 0. The motion carried.

4. CHARITABLE CONTRIBUTIONS TO THE COMMISSION

James Athearn introduced the topic of the proposed blind trust and other private financing to fund Commission activities from outside the tax revenue stream.

John Best recalled that several people came to the Commission in 1998 and said that they could help raise funds for the Commission to do studies or perhaps to be used for a defense fund, but that the Commissioners were concerned that donations could be perceived as putting the Commission in conflict. It was felt that it would be better if donors were shielded from the Commissioners. The primary intention was not to shield the identity of the donors from the public, but this followed from keeping the identities shielded from the Commissioners.

Mark London summarized the financial needs of the organization with respect to planning, legal fees, and upgrading the building, noting that it is a critical time to do proactive planning, and that the towns are particularly short of funds at present.

Linda Sibley summarized a letter from Commission Counsel Eric Wodlinger that indicated other examples of blind trusts used in other situations. This would allow for financial support for the Commission in a manner that could not bias the Commission, or create the appearance of bias. In the present situation, the potential financial consequences of a vote could influence Commissioners. It may be difficult to vote by conscience entirely on the projects' merits if Commissioners are worried about the legal costs of defending decisions. The Commission could do better planning with adequate resources.

Mark London noted that the question is whether the Commission should accept private donations, either directly and/or anonymously through the blind trust.

Roger Wey suggested inviting the concerned people to come and ask questions directly.

Richard Toole said that one concern expressed was accountability, disregarding the fact that the Commissioners are elected and appointed.

Jane A. Greene said that if the Commission cannot accept gifts, maybe it should not accept grants either. The towns would have to pay the full expense of running the Commission, through their assessments.

John Best said that he was with Linda DeWitt at the meeting with the Edgartown selectmen. He read a letter from Peter Bettencourt on behalf of the Board of Selectmen, opposed to undisclosed gifts. He feels that no one wants to have to accept donations, but could say to the towns that we should either accept donations or increase the assessments. He thinks it should either be a blind trust or that funding should come from assessments. He does not want to be in the situation of accepting some donations and rejecting others.

Deborah Moore said that the Commission should have a clear analysis of the options and the dilemma, and make a presentation of it.

Linda DeWitt said that if the three trustees are known, it is not blind. Jane A. Greene said that the trustees must be public but the donors should not be. Linda DeWitt reported that the Selectmen said that they were adamant that a public agency should not accept secret funds. As a new commissioner, she had not heard of the blind trust. The Selectmen said that there were only twenty people on the Island that make major donations, so it wouldn't be secret. There were questions as to why the Commission's lawyer drew up the trust documents. She believes in transparent government and is on the fence on this.

Jim Athearn said that when the question came up a few years ago about how donations could be made, the Commission asked its Counsel, who continued to work on the issue as the idea emerged to create a blind trust.

Linda Sibley said that the fact that the trustees are known doesn't mean that the Commission would know who was the donor or be influenced by it. She read the MVC Trust's draft Contributor Statement of Confidentiality. She said that it would be better not to know who donated so there is no possibility of public perception that the Commissioners had been influenced. She believes that the donors should be anonymous.

Mark London said that one concern that had been raised is that a developer could make a donation and, notwithstanding his or her commitment not to make this public under pains of perjury, could then inform Commissioners of the donation. His response is that it would be illegal, and that the Commissioners have the integrity to recognize such improprieties. He also noted that some concerns had been raised about any private donations to the Commission, even if the names of donors were known, but that donations are often made to municipalities that also make land use decisions.

Jim Athearn commented on the Edgartown Selectmen's suggestion that there would be no secret, noting that he doubted that the Commission's decisions would be influenced by rumors regarding donations or any issues.

Andrew Woodruff said that the integrity of the Commission is great. The Commissioners deal with friends and neighbors and sometimes say yes and sometimes no. He thinks it would be better to have both options for donating, because people might not contribute if they could not remain anonymous.

Deborah Moore thinks there should be more public input. She would be reluctant to vote for a proposal if there was strong public opposition.

Jim Athearn noted that there would be no public input tonight. David Wessling asked whether there would be input from town officials. Jim Athearn said there would be none received tonight but comments are invited in writing and could be the subject of a public session.

John Best said that he is not concerned about donations taxing his integrity. In order to make unbiased decisions, the Commission has to put aside all kinds of considerations, including the offers made to fund various community activities. He would still be able to make a decision based on the merits of the project. Never the less, he suggests that there should be a public forum about this, in order to air the issues and put various concerns to rest.

Jane A. Greene suggested inviting the Boards of Selectmen of all the towns to a discussion, not just Edgartown.

Linda Sibley noted that in previous projects, there had been gifts offered that had no direct relation to the project. The Commission has ignored these issues, but should think about ruling them out of order. There are also people who financially threaten the Commission.

Roger Wey suggested holding a Public Hearing on the question and invite Eric Wodlinger as well as anyone who has concerns about the issue. Christina Brown agreed that the Commission is a public body and should be listening.

Richard Toole said that people could take "pot shots" at the Commission, criticizing without proposing viable solutions. The Commission should come up with a budget of what the Commission needs and what the assessments would be if the towns funded those needs without private contributions.

Andrew Woodruff said that the Commissioners from each town should encourage representatives of the town boards to attend.

Megan Ottens-Sargent asked for clarification of how much funding used to come from the Commonwealth.

Linda Sibley said that there may be some misunderstanding about the MVC budget at town meeting. It is an assessment, not a debatable line item. The Commission has been very conservative in asking for assessments, and she thinks that in the past the Commission has not asked for enough. She would like to know what the maximum assessments could be under chapter 831.

John Best suggested that the meeting be held when there is no conflict with any Board of Selectmen meetings.

5. LUPC REPORT

Christina Brown said that LUPC had prepared a draft of modest revisions to the DRI Checklist (Standards and Criteria), making more items by concurrence, allowing the Commission to decide whether projects should be reviewed as DRIs or not. This draft is being sent to Towns for comment and there will be a public hearing on December 18. In the new year, the Commission will be going back to the town boards to discuss more significant revisions.

Jennifer Rand noted the following meetings and site visits

- December 1, 8 a.m. Yoga studio on Cournoyer Road, West Tisbury
- December 8 – may meet, not determined yet
- December 15 – probable meeting.

6. MINUTES OF PREVIOUS MEETING

Deferred.

7. NOMINATING COMMITTEE

Jim Athearn appointed the following people to constitute a nominating committee for Commission officers: John Best, Linda DeWitt, Katherine Newman, Andrew Woodruff, Paul Strauss, Richard Toole, Doug Sederholm. John Best will chair. They should present a recommended slate of officers at the December 4 meeting.

The Meeting adjourned at 10:15 p.m.

James A. Athearn
Chairman

Jan. 15, 2004
Date

June A. Heese
Clerk-Treasurer

1/15/04
Date