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**Minutes of the Commission Meeting
Held on September 17, 2009
In the Stone Building
33 New York Avenue, Oak Bluffs, MA**

IN ATTENDANCE

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

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

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

The meeting was called to order at 7:40 p.m.

1. IGREJA EVANGELICA ASSEMBLIA DE DEUS: DRI 619-M – MODIFICATION REVIEW

Commissioners present: J. Athearn, B. Bennett, J. Breckenridge, C. Brown, P. Cabana, C. Gatting, C. Murphy, K. Newman, N. Orleans, J. Powell, C. Rose, D. Sederholm, L. Sibley, H. Stephenson

For the Applicant: Carlos Rivera and Darci F. Peres

Paul Foley gave the staff report and explained the modification requests.

- According to the landscape plan, the fence was to be set back four feet from the abutter's property line with twenty inkberry and switchgrass plants to be planted between the fence and the property line. It turns out that there are several trees along the proposed alignment of the fence. The applicants would like to move the fence to the property line so the trees and planting are inside the fence.
- The applicants would like to paint the fence green.
- The applicants, on the advice of Carlos Montoya, would like to change the proposed six red oaks to pin oaks because they're more easily transplantable in the fall.

Linda Sibley gave the LUPC report.

- The issue of painting the fence green was not discussed.
- The issue of changing red oaks to pin oaks was raised but not discussed in depth.
- LUPC recommended, as noted in LUPC notes, that the fence be moved to the outside of the property to save the trees. The applicant should offer to the neighbor, if the neighbor wished, within five years, the purchase of an equivalent number of shrubs as were in the original decision. The applicant would only need to purchase, not plant the shrubs. LUPC agree to recommend the modification to the full Commission.

The applicants explained the reasons for the requests.

- They don't know whether the neighbor would allow the Church to maintain the vegetation if it was on the other side of the fence.
- They are comfortable with the option that, within five years, the neighbor could request that the Church purchase shrubs.
- Carlos Montoya recommended changing to red oaks.
- Members of the Church like the green stained fences in Edgartown.

Kerry Scott, Oak Bluffs selectman, commented that the neighborhood has been so beleaguered that the court has actually said the neighborhood be residential only. She recognized that the Church is there and is welcome, but it is important to recognize those neighbors and all that they have been through. It is important that the Church be as unobtrusive as possible; this decision supports that goal.

Linda Sibley moved, and it was duly seconded, that the changes aren't sufficiently substantial to require a public hearing. In favor: 14. Opposed: 0. Abstentions: 0. The motion passed.

Linda Sibley moved, and it was duly seconded, that the Commission allow the changes as described by staff, including the offer to plant shrubs within five years and the dark green fence. A roll call vote was taken: In favor: J. Athearn, B. Bennett, J. Breckenridge, C. Brown, P. Cabana, C. Gating, C. Murphy, K. Newman, N. Orleans, J. Powell, C. Rose, D. Sederholm, L. Sibley, H. Stephenson. Opposed: None. Abstentions: None. The motion passed.

Christina Brown thanked the applicants for working so carefully to be part of the neighborhood and town.

2. MASSACHUSETTS OCEAN PLAN – MVC TESTIMONY

Commissioners present: J. Athearn, B. Bennett, J. Breckenridge, C. Brown, P. Cabana, C. Gating, C. Murphy, K. Newman, N. Orleans, J. Powell, C. Rose, D. Sederholm, L. Sibley, H. Stephenson

Christina Brown explained that on the Executive Office of Energy and Environmental Affairs will be holding a formal public hearing on Wednesday, September 23rd.

Jo-Ann Taylor explained that there will be a brief presentation by EEA staff, then testimony, but no give-and-take or response to questions. EEA staff has offered to come back and discuss

various points, responding to questions at that later date. The comment period is open through November 23rd.

2.1 Staff Report

Mark London gave the staff report.

- A five-page staff report was distributed to Commissioners about a week ago.
- The one-page summary has eight points.
- He attended the Boston and New Bedford hearings. He testified at both hearings to identify concerns. Jo-Ann Taylor participated in the New Bedford hearing. Bill Veno attended the Barnstable hearing.
- The eight points are as follows:
 - This plan does not include federal waters very much. This plan focuses very much on state waters. A similar plan in Rhode Island includes both state and federal waters in a more comprehensive way. More wind resources and less impacts are in federal waters.
 - Data analysis leaves out any consideration of scenic values, which has particular importance to the Cape and Islands because of the impact on the economy. The Oceans Act mentions protecting the natural beauty, though not the word scenic values. The Ocean Management Plan can be amended every five years and this could involve adding new areas for commercial wind farms. Unless scenic values are included, there are no criteria to keep wind farms from being located only a mile offshore from the most public and pristine areas.
 - There's concern about the completeness of the bird data. There seems to be an absence of migratory bird data. We have three bird experts who have reviewed the bird information and will try to identify whether it's a serious problem.
 - There is a question of how the EEA designated the two commercial wind areas. Using the criteria described by the EEA in terms of wind speed and depth, there would appear to be five to seven other areas that would be acceptable. Though only 2% of the planning area is designated for commercial development, all of this lies in Dukes County. The areas are south of Noman's and south of Cuttyhunk and will have room for 166 turbines. Adjacent federal waters could be developed which could visually create a project about twice as big as the proposed Cape Wind.
 - The definition of commercial wind is a project that has more than ten turbines. Community wind projects are 10 or less. Community projects can be anywhere in the multiuse area, that is the other coastal waters except the area off the Cape Cod National Seashore. Ten turbines per region are allowed.
 - There is concern about how town and regional planning agencies review of projects will work. It is not the Oceans Act that limits the Commission's powers. It is the enabling legislation of the Energy Facilities Siting Board, which basically overrides town, planning commissions, and other state agencies. There is a brief reference to RPAs in the Oceans Act which reaffirms that the RPAs with regulatory authority will be able to review commercial projects, but it also says decisions are subject to the right of appeal to the Energy Facilities Siting Board. Towns and the Commission may want to

ask for clarification of the role of the town and RPA in the review of commercial and any kind of project in the Ocean Plan.

- We should be working for a collaborating role for towns and the Commission in the process from start to finish, both for project design and economic benefit.
- The plan says that community and commercial wind projects should provide direct economic benefit to the town that they're in. There has been discussion at previous hearings that 'benefit' should be better defined. A royalty percentage system has been discussed.
- The Ocean Plan identifies special, sensitive, and unique areas and tries to protect them. They've done an excellent job of gathering together data. It's not so clear that the protection the Plan is providing is that good.

2.2 Commissioner Discussion

Carlene Gating asked how the State's ocean management plan could address federal waters; she wondered how the State could have jurisdiction over projects in federal waters.

Mark London said Rhode Island's plan was done in cooperation with federal agencies.

Peter Cabana said the federal government is trying to designate some areas; it's his understanding that the federal government may be considering developing adjacent waters so the same transmission system could be used.

Jo-Ann Taylor described the input heard at the New Bedford hearing.

- There was testimony that New Bedford is poised to claim host community status and their right to the community economic benefit. There are other interests that are going after the community benefit.
- There was testimony that the mitigation fund should go toward environmental monitoring.
- There was testimony that the number of ten community turbines per region probably doesn't work well when we look at the number of coastal communities.
- There has been specific testimony about the standards that will apply to protecting special and sensitive areas. The standard is a little bit more protective than the ordinary standards. Developers wouldn't be able to mitigate their way out of impacts.

Mark London added information about other hearings.

- New Bedford had lobbied hard against an earlier wind farm proposal in Buzzards Bay.
- There was apparently a deal being discussed that would allow a developer to put a wind farm in Buzzards Bay and bypass the Oceans Sanctuaries Act. The Legislature decided to adopt the Oceans Act to allow the necessary analysis and planning. New Bedford is pleased there are no proposals to put commercial wind in Buzzards Bay. Most people who spoke in New Bedford spoke about the economic benefit to the city.
- Gosnold selectmen had also been greatly concerned about having large scale wind in Buzzards Bay. With commercial wind out of Buzzards Bay and southwest of Cuttyhunk, they don't strongly object, although it could be one mile off the coast.
- Nantucket's position is that they want to be able to develop wind projects in the state waters. The whole area around Nantucket is a designated area because of the presence of long-tailed duck, which would make it more difficult to develop a wind project.

- New Bedford wants community host status because the underwater cable system from both commercial areas could connect at its existing substation.

Carlene Gattling asked how other places in the State are re-acting to the Plan.

Ned Orleans said he doesn't care if everyone in the state is ecstatic; the plan, in its current form, does a number on Martha's Vineyard and Islanders should be concerned.

Linda Sibley asked why there is an absolute exclusion on the Cape Cod National Seashore.

Jo-Ann Taylor explained that it may have to do with the act that created the Cape Cod Ocean Sanctuary, noting that each Ocean Sanctuary has separate and different legislation.

Bill Veno said he attended the hearing on the Cape.

- All the points that have been prepared by MVC staff were reiterated by people from the Cape.
- They included mention of the Tribe and historic resources, as well as the possibility that permitting of wind turbines could be hindered if the Tribe were to object.
- Several people commented on the Migratory Bird Treaty and that it isn't even mentioned in the Plan.

Jim Powell said he would like to discuss town and RPA review.

- Any appeal of town or RPA decisions should be structured in such a way that legitimate local and regional concerns are respected. He asked that the statement be firmed up so that the initiatives of RPAs can be respected prior to any actions at the Energy Facilities Siting Board.
- The Energy Facilities Siting Board was created before Chapter 831. When the Islands Trust Bill came before the Island, Islanders were concerned about the Island being run by the federal government. The final result was Chapter 831 through which the federal government set the precedent for local decision-making as the best way to preserve the interests of Martha's Vineyard.
- At that time there was a conflict between the Commission and the Energy Facilities Siting Board, but it wasn't addressed at that time.
- He proposes that it's important for Commissioners today to take the initiative so that the Commission has the firm ground to stand on and take the offensive, rather than having the Energy Facilities Siting Board declare itself the authority when any project comes before the Commission.
- He believes that, because of the language in Chapter 831, the standard should be that any appeal to a Commission decision be through the courts, not through the Energy Facilities Siting Board. We're here to protect the long-term interests of Martha's Vineyard.

Jim Athearn agreed with Jim Powell. There may be a safety valve of the RPA having the final say, rather than the Energy Siting Facilities Siting Board.

Jim Powell said it would behoove the Commission to make sure that the process goes through the Commission before going through the Energy Facilities Siting Board.

Doug Sederholm said first the Commission should find out if the Energy Facilities Siting Board will have the authority to review projects that produce less than 100 megawatts. If they're not

going to have the power to review projects of less than 100 megawatts, that should give the Commission the final say on community wind projects. But it won't give the Commission final say on commercial wind.

- The Commission could propose that it does the regulations so that they're consistent with the Oceans Management Plan and appeals to the Energy Facilities Siting Board should only be on the question of whether a Commission decision was arbitrary and capricious. The standard of board review would be fairly high. It puts the scope of their review in a box.

Mark London said that Eric Wodlinger had said one option could be that the Commission propose that if a decision denies a project in State waters, the applicant can appeal the decision to the Facilities Siting Board but only on the record before the Commission. In order to override the denial, the Siting Board must find that the decision was arbitrary and capricious and not based on substantial evidence in the record considered in light of the criteria for the review of DRIs as outlined in Chapter 831.

Doug Sederholm said, as a political reality, it's going to be hard to get around adopting the standards in the Ocean Plan. We have to get enough into the Ocean Plan that it addresses our concerns.

Linda Sibley said the elephant in the room is the State and their control. She said home rule is incredibly important and we have to have some say. But she's afraid that people advocating home rule are going to be viewed as opposed to commercial wind. The vast majority of people deeply believe in the development of alternative energy. One sentence in staff comments addresses that we want development of renewable energy and we are eager to host some of that renewable energy. They're asking us to host it all, and on their terms. How do we say that we don't just want the power to say no?

Chris Murphy said the answer is simply to include the part on energy that's in the draft Island Plan. It talks long and hard about energy.

Linda Sibley suggested that there has to be a packet that forcefully communicates that we are in favor of wind resources being used for the benefit of our community and state. We just want some control over how it's done.

Christina Brown asked if it's general agreement that in our comments we want to make a recommendation, although not a detailed procedure, for Commission involvement.

Doug Sederholm said the comments should include that we want the scope of review by the Energy Facilities Siting Board to be tightly defined and narrowed, with a high standard of review.

Mark London said one of the possible approaches that has been discussed for the proposed land-based wind act was that, as long as the MVC adopted wind siting standards that didn't effectively prohibit wind turbines on the Island, MVC decisions would not be able to be appealed to the Energy Facilities Siting Board.

Mark London said the review for community wind isn't quite clear. The Plan says that to be built, community wind must get support from the board of selectmen and the RPA.

Doug Sederholm clarified that we want to determine whether the Energy Facilities Siting Board has review over community wind. Can an applicant appeal to the EFSB?

Peter Cabana suggested that specificity in the size of what constitutes commercial wind would be helpful.

John Breckenridge said there are legal issues, but quite a bit of the leg we're standing on is under the data analysis of scenic values. As part of our comments, somehow we have to be able to quantify scenic values and a narrowing of how scenic values are defined and how they might affect the approval or review.

Holly Stephenson said that a way to express being in favor of wind is to offer to be a host community, as long as that entails some rights about who comes in.

Doug Sederholm said that he assumes that Martha's Vineyard is the host community because the turbines are in the Vineyard's waters.

Jim Powell agreed, and added that Martha's Vineyard is willing to collaborate with the existing infrastructures in the most economically and environmentally sound way.

Jim Powell suggested that Section iii should include that *meaningful dialogue should begin early*.

Camille Rose said the Commission should respectfully require that whatever standards the Ocean Plan comes up with that affect Martha's Vineyard conform with the goals and purpose of the Commission's enabling legislation.

Doug Sederholm said that the region should have some input as to the number of turbines for community wind.

Jim Athearn added that Arthur Smadbeck, Edgartown Selectman, had read the Commission's memo and was emphatically in agreement that the Commonwealth should respect the Commission's power on Martha's Vineyard.

3. ISLAND WIND DCPC

Commissioners present: J. Athearn, B. Bennett, J. Breckenridge, C. Brown, P. Cabana, C. Gating, C. Murphy, K. Newman, N. Orleans, J. Powell, C. Rose, D. Sederholm, L. Sibley, H. Stephenson

Christina Brown said letters have come in from Tisbury Planning Board, Oak Bluffs Selectmen, Chilmark, and the Dukes County Commissioners, all of which ask the Commission to consider creating a DCPC to develop regulations for wind turbine development. Chilmark has made two formal nominations, one from the Selectmen and one from the Planning Board.

3.1 Public Comment

Riggs Parker, Chilmark Selectman, explained that Chilmark's nominations are made under Chapter 831 for districts for critical planning concern.

- The Planning Board follows the Dukes County Commission's letter, requesting a district for waters surrounding the Island. Chilmark Board of Selectmen's nomination includes both

land and water and it requests a nomination for wind energy of one megawatt and higher.

- The purpose is to support preserving some kind of control for the Commission and for the Island, not to discourage wind energy but to assure that the Commission's jurisdiction is not done away with and overlooked.
- Chapter 831 is a very strong law and it runs parallel to other state laws. But this law exists and hasn't been appealed or amended. The Commission should go ahead to do what you're supposed to do. Chilmark is asking the Commission to proceed with establishing a DCPC and adopt the procedures and regulations that would go along with that.
- The Commission has a parallel process which lays out some protections for the Island. By doing it now, and not waiting until someone gives the Commission a concession, the Commission is saying it's going to do its job under Chapter 831. Chilmark is giving the Commission the means to have its voice heard and make a plan, rather than being included in someone else's plan.
- He gave some background on the establishment of the Commission. The first major event from the Island's point of view was Kennedy's Island Trust Bill, which would have prohibited further development. It was draconian and Kennedy felt it was the only way to protect the Island against development. There was a substantial reaction against the federal government telling the Island what to do. Islanders worked with the state to create a substitute that would control development and the Commission was created to do that. It created roadside and coastal districts and all kinds of protection.
- Chapter 831 is a marvelous piece of legislation. What we're trying to do is get the Commission to use Chapter 831 to take the lead in saying how the Island wants wind. The Commission is charged with listening to the community.
- The Selectmen are trying to facilitate orderly, sensitive progress in this situation. The sooner the Commission acts to create a DCPC, the sooner it has laid down a marker and puts itself into a timeline to propose regulations which are subsequently adopted at town meetings. Under Chapter 831, the Commission has far greater powers than the selectmen or planning boards have.
- The Chilmark Selectmen feel that the Commission should start the clock running now.

Tristan Israel spoke for the Tisbury Board of Selectmen.

- Tisbury followed Chilmark's lead. There seems to be some extraordinary unanimity to ask the Commission to set the guidelines and look at wind on the water and the land. Regarding land, it is being proposed again that a foreign board will be the arbiter without local control. It's crucial for the land and for the water.
- The Ocean Plan is a five-year plan. At the end of five years, the Island could have more than 166 turbines. It looks like the rest of the state is NIMBY and they're shoving commercial wind down to the southern side.
- Tourism is very important, as are views and vistas. It's a multi-million dollar business.
- We have an extraordinary moment in time where we have substantial unanimity for the Commission to get going. We don't agree on anything, but we agree that the state should recognize that they should take notice of our concern.

- Nobody is saying turbines on the water are bad. But we are getting it from both sides with this and Cape Wind.

Christina Brown read from the letter writing by the Tisbury Planning Board and Board of Selectmen. *Members of the board request that the MVC exercise its powers to adopt regulations and immediately promulgate DCPCs to protect our waters and lands . . .* She said that the Commission also received a letter from Michael Dutton and the Oak Bluffs Board of Selectmen asking the Commission to create a DCPC on land and sea.

Richard Toole, member of the Board of Directors of the Vineyard Conservation Society, said the board met to discuss the topic. They decided that they weren't going to endorse the DCPC idea at this point. They believe that the Commission needs to step up and protect its powers. He wanted to emphasize is that the VCS's major initiative is climate change and the cheapest energy source is the wind. The Commission needs to insure that if the Island is going to be the location for the development, there has to be direct community benefit.

3.2 Commissioner Discussion

Christina Brown explained the steps that Chapter 831 lays out when a DCPC is nominated.

- Reading from a letter from Eric Wodlinger, she explained that acceptance of the nomination would result in an immediate moratorium on any development in the area accepted for consideration and affecting all towns on the Island.
- Commission counsel recommends that we notify all board of selectmen and planning boards of the nomination before acting. He recommends that the Commission ask each of the six towns whether acceptance of the nomination and subsequent moratorium would create any problems for them.
- Counsel recommends that town boards be given 14 days to respond and that Commissioners vote on acceptance at the October 1st meeting.

Doug Sederholm moved, and it was duly seconded, to accept counsel's recommendation to notify town boards of the proposed DCPC nomination and vote on the nomination at the October 1st meeting.

- **Mark London** explained that once the District nomination is accepted for consideration, everything within the proposed District is subject to the moratorium. The area needs to be defined by geographic area, or define it as air space as the Commission did with the Aquinnah Energy DCPC nomination. The Commission could define the geographic space so it doesn't interfere with existing projects, such as the wind turbine proposed in Edgartown.
- **Tristan Israel** said Tisbury would be willing to offer its legal counsel for a second opinion.
- **Riggs Parker** suggesting asking counsel whether a DCPC could be defined in terms of megawatt power.
- **Linda Sibley** suggested that there is a correlation between height and megawatt power. She believes that bigger projects wouldn't be constructed within the next year, so a moratorium probably wouldn't affect bigger projects. She is concerned about the Ice Arena turbine.

- **Jo-Ann Taylor** noted that the Commission's authority excludes some places on the Island and the Elizabeth Islands. The Elizabeth Islands are part of the Commission for planning purposes, but not regulatory purposes. The Elizabeth Islands will be part of the RPA for consideration of community wind.
- **Mark London** said during the two-week period, the Commission will be looking for endorsement for, or lack of objection to, acceptance of the nomination.
- **Jim Powell** said it seemed that consensus had been reached by All-Island Selectmen in support of the DCPC.
- **Linda Sibley** acknowledged the need for timely acceptance, but noted that the Commission could not accept the nomination without geographic boundaries.
- **Jo-Ann Taylor** noted that it will be important to determine whether the language of the nomination includes both land and waters. She explained that the Commission has 45 days from receipt of the nomination to take a vote on consideration, then 60 days within which to hold a public hearing and take the designation vote, including developing guidelines for development.
- **Carlos Montoya**, planning board in Aquinnah, asked Christina Brown to ask Commissioners whether they believed taking a vote expeditiously before next Wednesday would be useful.
- Commissioners discussed the practicality of trying to hold a meeting before Wednesday, September 23rd, the importance of making a statement before that date, and voting on the nomination.

A voice vote was taken on the motion to accept counsel's recommendation to notify town boards of the proposed DCPC nomination and vote on the nomination at the October 1st meeting. In favor: 11. Opposed: 3. Abstentions: 0. The motion passed.

Linda Sibley moved, and it was duly seconded, that when the Commission testifies next Wednesday, the Commission will make a statement to the effect that in response to the nominations, the Commission is taking appropriate action to create a District of Planning Concern. A voice vote was taken. In favor: 14. Opposed: 0. Abstentions: 0. The motion passed.

Commissioners agreed by consensus that, if possible, the DCPC would be defined by megawatts, but if not, it should be by airspace.

Ned Orleans thanked Riggs Parker for playing the leadership role in pushing the issue and continuing all the way through.

Peter Cabana thanked representatives of the towns for coming.

The meeting adjourned at 10:27pm.

Chadman
Chairman

12/10/09
Date

John R. [Signature]
Clerk-Treasurer

12/10/09
Date