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Minutes of the Commission Meeting Held on January 22, 2015 In the Stone Building 33 New York Avenue, Oak Bluffs, MA

IN ATTENDANCE

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

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|------------------------------------|---------------------------------|
| P Tripp Barnes (E-Tisbury) | - James Joyce (A-Edgartown) |
| P John Breckenridge (A-Oak Bluffs) | - Joan Malkin (A-Chilmark) |
| - Christina Brown (E-Edgartown) | - W. Karl McLaurin (A-Governor) |
| P Harold Chapdelaine (A-Tisbury) | P Katherine Newman (A-Aquinnah) |
| - Robert Doyle (E-Chilmark) | P Doug Sederholm (E-Chilmark) |
| - Josh Goldstein (E-Tisbury) | P Abe Seiman (E-Oak Bluffs) |
| P Fred Hancock (E-Oak Bluffs) | P Linda Sibley (E-West Tisbury) |
| - Leonard Jason (A- County) | P Ernie Thomas (A-West Tisbury) |
| | - James Vercruysse (E-Aquinnah) |

Staff: Mark London (Executive Director), Bill Veno (Senior Planner), Jo-Ann Taylor (Coastal Planner), Sheri Caseau (Water Resource Planner), Curtis Schroeder (Administrator).

Chairman Fred Hancock called the meeting to order at 7:20 p.m.

1. FISCAL YEAR 2016 BUDGET ADOPTION

Commissioners Present: T. Barnes, J. Breckenridge, H. Chapdelaine, F. Hancock, K. Newman, D. Sederholm, A. Seiman, L. Sibley, E. Thomas.

1.1 Clerk/Treasurer Presentation

John Breckenridge, MVC Clerk/Treasurer presented the following.

- The MVC Finance Committee has been meeting for the past three months. The Committee is made up of the appointed members of the MVC.
- The Committee's purpose is to assist the MVC Administrator and the MVC Executive Director in the preparation of the budget each year.
- The MVC Finance Committee also met with the towns of West Tisbury, Edgartown, and Chilmark, and the towns of Oak Bluffs and Tisbury participated in the MVC Finance Committee preparation of the budget.
- This year the MVC Finance Committee had smooth sailing with the towns with what was presented to them in comparison to last year.
- For fiscal year 2016 the annual increase is 2.9%. Legal expenses are budgeted to be lower than last year. The town share for fiscal year 2016 is \$34,462 (3.3%) less than last year.

- The budget includes funds for the transition to a new Executive Director including funds for a search firm and some overlap between the current and future directors. \$16,500 has been budgeted for the Executive Director search process.
- Planning accounts for 65% of the Commission's budget. Regulatory accounts for 35%. This allocation is based on past analysis of the proportion of staff hours and other expenses related to the two parts of the Commission's mandate.
- The Commission's salaries are adjusted using a formula based on the average of the towns and County increases for the previous fiscal year, namely 1.66% average inflation increase (COLA) and 2.40% average merit increase equivalent to the town's average step increases.
- The budget includes an on-going effort to pre-fund Other Post-Employment Benefits (OPEB) of \$25,000, based on the Commission's policy of increasing this payment by \$5,000 a year. OPEB is the cost to the Commission for payment of a portion of retirees' medical and dental insurance coverage.
- It would be desirable to increase OPEB contributions as much as possible in order to limit future liability for the Commission and the towns. In order to gradually increase the Commission's contributions the Commission made an OPEB contribution of \$10,500 in fiscal year 2013 and agreed to increase this contribution by \$5,000 per year until it reaches the recommended contribution. To speed up reaching this level, the following protocol will be used for dealing with any future budget surpluses.
 - Any surplus at the end of the year would go first to replenish the General Reserve Fund if it less than the targeted amount, presently \$184,000 (i.e. \$160,000 plus 15%).
 - Any additional surplus would be used to increase our OPEB contribution up to the amount needed to not fall further behind for that year, i.e. increase the \$25,500 contribution up to \$84,506.

1.2 Commissioners' Questions

There was a discussion about the OPEB.

- **Doug Sederholm** asked for clarification of the OPEB part of the budget, do the employees share in the expense.
- **Curtis Schroeder** stated that OPEB is budgeted to ensure funds are available to pay the employee's share of health care and other benefits, other than pension of retired employees. The MVC pays 75% of the retiree health benefits.
- **Doug Sederholm** asked other than health care what other benefits does the MVC pay for retirees.
- **Curtis Schroeder** said there are no other benefits paid by the MVC.
- **Doug Sederholm** asked how Medicare at age 65 plays a factor with the MVC paying for health care benefits for retirees.
- **Curtis Schroeder** said if the retiree is over age 65, the retiree pays the Medicare portion. He noted that the MVC is currently paying \$20,500 into OPEB and for fiscal year 2016 the amount will be \$25,500. \$389,000 is the outstanding liability on the MVC balance sheet.
- **Doug Sederholm** asked how OPEB will be handled for the future.

- **John Breckenridge** said many towns need to take next steps as more sizeable contributions need to be paid. The MVC has taken a proactive stance.
- **Doug Sederholm** asked if once someone qualifies for a pension does the MVC make additional contributions.
- **Curtis Schroeder** said the MVC did not. The budget is for future retirees.

Doug Sederholm moved and it was duly seconded to approve the Fiscal Year 2016 MVC budget. Voice vote. In favor: 9. Opposed: 0. Abstentions: 0. The motion passed.

2. MV LAWN FERTILIZER CONTROL DCPC – CONFORMANCE OF EDGARTOWN DCPC REGULATIONS – PUBLIC HEARING AND DECISION

Commissioners Present: T. Barnes, J. Breckenridge, H. Chapdelaine, F. Hancock, K. Newman, D. Sederholm, A. Seiman, L. Sibley, E. Thomas.

For the Applicant: Matt Poole (Edgartown Board of Health)

Fred Hancock, Chairman, opened the Public Hearing at 7:30 p.m. and read the public hearing notice. The purpose of the hearing is to hear evidence as to whether the Commission should find that the regulations proposed to govern the Martha’s Vineyard Lawn Fertilizer Control District in the Town of Edgartown conform to the Commission’s Goals and Guidelines for the District.

Fred Hancock noted as an overview for the new Commissioners this public hearing is a conformance review on the Lawn Fertilizer DCPC. The Town of Edgartown changed their rules on the Town Meeting floor so it has to come back to the MVC for a finding of conformance.

2.1 Staff Report

Jo-Ann Taylor presented the following.

- At the Edgartown Town Meeting there was a motion from a citizen to amend the Lawn Fertilizer DCPC Regulations, to strike the words application of fertilizer for agricultural and horticultural use. That motion passed.
- The reason the amendment was not brought immediately for hearing by the MVC is that there is work underway by the Commonwealth to develop an agricultural component to its fertilizer standards. When the Commonwealth’s standards become available, there is potential for the towns and the MVC to then investigate an amendment of the MV Lawn Fertilizer DCPC or its regulations.
- Although it may become advisable to propose local fertilizer regulations for agriculture, it would not be prudent to do so without knowing the outcome of the Commonwealth’s development of standards for agriculture.
- Although agricultural regulations may yet be proposed for amendment to this District or its regulations, this amendment does not do that. The amendment does not propose any regulations specific to agriculture or horticulture.
- The regulations remain focused on lawn fertilizer, as intended in the Designation Decision. There is no specific directive in the Designation Decision to exempt agriculture or horticulture.
- The MVC guideline regarding exemptions read as follows; “5.3.1.d Exemptions: Regulations may include exemptions based on specialized character of particular types of

lawn or turf, or based on the proficiency of a person applying fertilizer.” For these reasons, it would appear that the MVC may appropriately find conformance.

- The Commissioner’s vote on conformance legitimizes the regulations and validates Edgartown’s regulations. And all towns will have valid regulations in time for the licensure and training programs. It is important at this time for Edgartown to have its regulations validated as the training program is on time and ready to begin. The effective date of enforcement for the regulations is March 1, 2015.
- The packet of information contains the Decision of the Martha’s Vineyard Commission Designating the Martha’s Vineyard Lawn Fertilizer District as a District of Critical Planning Concern, March 27, 2014 and the Town of Edgartown Board of Health Regulations, Board of Health Regulations Section 17, The Content and Application of Fertilizer for Turf on Martha’s Vineyard, Town of Edgartown. There has been no correspondence as of January 21, 2015.

2.2 Applicant’s Presentation

Matt Poole presented the following.

- The regulation that was written was focused on turf, exempting agricultural and horticultural practices. The regulations were specifically targeted to turf.
- The way the words have been assembled, it may appear that agricultural practices are regulated with regards to how fertilizer is applied to saturated and frozen soil and impervious surfaces, though the purpose was meant for lawns.

2.3 Commissioners’ Discussion

There was a discussion about agricultural and horticultural regulation.

- **Doug Sederholm** noted that the Town of Edgartown Board of Health cover memo indicates work is under way by the Commonwealth for agricultural uses but what about horticultural uses.
- **Matt Poole** said he believes the work applies to agriculture and horticulture, but primarily focused on agriculture.
- **Doug Sederholm** asked if the Commonwealth standard is absent for horticulture, the town would be able to regulate as they wanted in the future.
- **John Breckenridge** said Edgartown added the agricultural component but has no standards.
- **Fred Hancock** said that component was previously in the regulations adopted by the other five towns but Edgartown removed the agricultural and horticultural exemption from the regulation.
- **Trip Barnes** asked how the regulation is controlled.
- **Fred Hancock** said town health agents regulate.
- **Doug Sederholm** asked what the impact would be assuming it would be used to regulate practice on saturated or frozen soil. It is possible that a good farmer would not want to apply fertilizer at that time.
- **Matt Poole** agreed fertilizer most likely would not be applied at that time and is comfortable with the motion made at the Edgartown Town Meeting. He noted the motion may require those working in those areas to participate in the training and licensing classes and their participation would be helpful.

- **Trip Barnes** asked if Matt Poole thought the amendment would be a good thing.
- **Matt Poole** said the rule is focused on turf and that was the original point.

John Breckenridge noted the purpose of the DCPC was to be ahead and for the Vineyard to have our own regulations other than what was done by the Commonwealth.

Matt Poole noted that the Vineyard cannot write something that is less stringent than the Commonwealth but can write something that is more stringent.

Linda Sibley noted that she was on the committee that reviewed the DCPC and, to be clear, a hay field is not turf. **Matt Poole** said the intent of the regulations was not to look at hay fields and he does not plan to.

Linda Sibley said the purpose of the DCPC was to protect ground and surface waters. The possibility to overlook the fertilizing of fields is great.

Matt Poole noted the idea was to cap nitrogen and not exceed what was currently being done with lawns and then to improve what is being done. The state did not prohibit writing rules about agriculture.

Bill Veno noted that the MVC discussed whether to create a DCPC that was more expansive than lawn turf and it was decided not to. One of the fundamentals was that all towns would have the same regulations. But by changing the language you are saying Edgartown will now be licensing people that other towns will not be. **Matt Poole** said it will be a small number and did not see any harm in licensing farmers.

Matt Poole presented the following overview of the licensing and training programs.

- The program is affiliated with ACE MV and they began communications with us in the fall on what our needs would be.
- The course is set for March 21, 2015 from 10:00 a.m. to 4:00 p.m.
- Mary Owen from UMass Extension will instruct the class and she is one of the State's leading authorities. She will be bringing two colleagues with her.
- UMass will write the test specific to the Martha's Vineyard regulations. The test will be held a couple of days after the instructional piece to allow time for study and review. The test will be proctored by the Board of Health staff. The exam will be scored by ACE MV.
- The course fee is \$85.00 which is paid to ACE MV.
- Attendees will receive a certification certificate from UMass after successful completion of the course and receiving a passing grade on the exam.
- The applicant can go to any town and apply for their license. The license cost is \$100 for three years and is good in all six towns.
- They are working on arrangements to film the course so it can be used for follow-up courses as well as for those who may not be here until early spring or those who do not pass and need to retest.
- The six towns are very well synced on the entire program and the program provides a uniform approval.

2.4 Public Testimony

Warren Gosson said he has worked with Matt Poole in upgrading the water on his property. He asked, based on the definition of Horticulture on page 4 of the Town of Edgartown Board of

Health Regulations, Section 17, Section 4 Definitions, does that apply to flower stands. Are they considered commercial and do the regulations therefore apply?

There was a discussion about what defines commercial use.

- **Matt Poole** said the regulation does not regulate the selling of the product.
- **Bill Veno** said the regulation is for Edgartown only.
- **Warren Gosson** said children have lemonade stands and can the children also sell the vegetables that are grown in the family's garden.
- **Matt Poole** said he has never "busted" a lemonade stand.
- **Warren Gosson** said if there is a size designated for commercial use shouldn't a size be designated for a person's garden.
- **Fred Hancock** said there are no regulations for gardens. It is about application of fertilizer to turf.
- **Matt Poole** said farmers, horticulturists and gardeners will be encouraged to bring less fertilizer to the Island and to use what is on Island.

Fred Hancock, Chairman closed the Public Hearing at 8:10 p.m.

Doug Sederholm moved and it was duly seconded that the regulation amended at the Edgartown Town Meeting conforms to the MVC Lawn Fertilizer DCPC Regulations. Roll call vote. In favor: T. Barnes, J. Breckenridge, H. Chapdelaine, F. Hancock, K. Newman, D. Sederholm, A. Seiman, L. Sibley, E. Thomas. Opposed: none. Abstentions: none. The motion passed.

3. ISLAND ROAD DCPC – CONSIDERATION OF NOMINATION SPECIAL WAYS IN WEST TISBURY

Commissioners Present: T. Barnes, J. Breckenridge, H. Chapdelaine, F. Hancock, K. Newman, D. Sederholm, A. Seiman, L. Sibley, E. Thomas.

Fred Hancock, Chairman, stated that the MVC has been asked by the West Tisbury Planning Board to accept the DCPC nomination for consideration for the Island Road District Special Ways Zone. Tonight's meeting is not a designation vote; it is only to accept the nomination for consideration. If the MVC accepts the nomination for consideration, then the MVC would schedule a Public Hearing and then subsequently vote to make or not to make the designation for those ways.

3.1 Staff Report

Jo-Ann Taylor presented the following.

- The areas proposed to be considered for designation are within twenty feet of either side of the centerline of Pine Hill Road, Red Coat Hill Road/Motts Hill Road, and Shubael Weeks Road.
- The nomination was received from the West Tisbury Planning Board on January 3, 2015.
- This nomination is for new ways to be included in the Island Road District Special Ways Zone.
- The ways are visible remnants of the Island's history prior to the advent of motor vehicles. The narrow ways are often marked by depressions, even surrounding flat land, from many

decades of use. The names of some of the ways are reminders of places, persons or even events of the past. The Town of West Tisbury needs to protect these ancient paths and byways for foot and hoof passage from one part of town to another and from one town to another. All four of these roads appear in maps from the 1800s.

- Pine Hill Road was a major route from the road presently known as Old County Road, near the West Tisbury Center, across Doctor Fisher Road to Lambert's Cove Road. Seven existing residences are strung out along 2,950 feet of Pine Hill Road and virtually no through traffic out to Old County Road. The way is enjoyed by neighbors and others on foot, bike and horse, safely connecting people from the State Forest and other conservation lands and byways.
- Red Coat Hill Road/Motts Hill Road: in the 1700's and 1800's when the Island consisted mainly of farmland, Vineyard Haven Harbor could be seen easily from the highest point on Red Coat Hill. This lookout was used during the Revolutionary War to oversee the harbor. On September 10, 1778, a British force of Red Coats led by General Grey seized this high ground during a four day invasion, leaving a red coat on a nearby hill.
- Shubael Weeks Road: Shubael Weeks was a Tisbury selectmen.
- Two of the ways extend into Tisbury and all intersect with other old ways that are only lightly travelled by vehicles.
- Each of the nominated ways shows examples of how uncontrolled or inappropriate development can alter the character or even eliminate evidence of the route.
- With increased vehicle use, the surfaces of these pre-automobile paths get widened, graded and stabilized with hardening materials to the extent they become just another serviceable dirt road.
- Additional blockage of portions of these ways would further compromise the free flow of foot and hoof passage on these ways. Their loss would be irreplaceable.
- A concern of Pine Hill Road abutters is that the currently undeveloped middle section of the road not be improved in a way that would promote through traffic between Old County Road and Doctor Fisher Road.
- Goals of the Island Road District Special Ways Zone are in the staff notes. The Goals include retaining the view of landscapes abutting these ways by preventing injurious effects that accompany development of the way as a primary vehicular route. Therefore, new vehicular access should be on a new right-of-way, thus preserving the Special Ways for alternative forms of transportation.
- Planning District Qualifications are based very closely on the original text in Chapter 831. The Qualifications set out criteria for designation including the need for designation, the size and shape of the District and Specific Qualifications for the various types of district. The qualifications were read.
- The Special Ways Zone of the Island Road District falls into the category Cultural or Historic Resource District.
- The nomination notes that these ways are visible remnants of Island history and are vulnerable to the impacts of unregulated development that could alter their character to that of any ordinary road.
- The nomination appears to present compelling statements regarding the need for and suitability of consideration for designation. An affirmative vote should include reasons for accepting the nomination.

- No correspondence has been received as of January 12, 2015.
- The vote to accept the nomination for consideration commits the MVC to a public hearing and making a decision on designation, and it institutes a development moratorium.
- If the MVC accepts the nomination on January 22, 2015, a public hearing could be held as soon as the February 19, 2015 MVC meeting and no later than March 23, 2015.
- It is the intention of the West Tisbury Planning Board to present an article for vote at the April 14, 2015 annual Town Meeting.
- Designation would help save these ways from future development and protect the character of the ways.

Bill Veno presented the following.

- In 2010, these ways were designated by the MVC but it did not go to Town Meeting due to litigation that was in another town regarding special ways. Therefore the designation was vacated.
- The maps of the special ways were reviewed in detail noting the areas that are passable as well as what is included in the nomination.

3.2 Commissioners' Discussion

Katherine Newman asked if Tisbury has designated their portion of the road and is there coordination between the towns on special ways that cross town lines. **Bill Veno** said there is not any coordination and in 2000 Tisbury proposed nominations for several roads but these roads being discussed were not designated.

Trip Barnes asked if there is a legal issue if someone crosses your property to use the ways.

Fred Hancock said the designation does not confer a right of access to these ways.

Fred Hancock said the development moratorium would only be on these routes that have been presented. **Jo-Ann Taylor** confirmed it would only be on this geographic area.

3.3 Public Testimony

Harriet Bernstein, Chairman of the West Tisbury Island Roads Special Ways Committee, said the nomination was presented to the abutters. These ways are historic veins of the town and bring character to the town. There is some controversy if they are accessible to the town; they are until someone complains. There is a precedent in favor of the Town and the Town has been advised by counsel that it is appropriate to preserve these paths for perpetuity.

Rez Williams said it is important to remember that these ways were public ways at one time and people took interest in them when they developed their lots and access was taken from the public.

Doug Sederholm moved and it was duly seconded for the MVC to accept the nomination of these three ways for consideration under the Island Road District Special Ways Zone DCPC and to incorporate the reasons as stated in the nomination.

- **Abe Seiman** asked if the MVC passes the designation does the vote go back to the voters of West Tisbury.
- **Fred Hancock** said it does go to Town Meeting in West Tisbury. The nature of the DCPC is for the town to take action when it conforms to the MVC DCPC.

- **Harold Chapdelaine** asked for clarification on the qualifications.
- **Doug Sederholm** noted the qualifications are noted on page 4 with a continuation and also on page 5 of the DCPC Nomination from West Tisbury.

Roll call vote. In favor: T. Barnes, J. Breckenridge, H. Chapdelaine, F. Hancock, K. Newman, D. Sederholm, A. Seiman, L. Sibley, E. Thomas. Opposed: none. Abstentions: none. The motion passed.

Fred Hancock, Chairman noted a Public Hearing date of February 19, 2015.

4. MINUTES

Commissioners Present: T. Barnes, J. Breckenridge, H. Chapdelaine, F. Hancock, K. Newman, D. Sederholm, A. Seiman, L. Sibley, E. Thomas.

Linda Sibley moved and it was duly seconded to approve the minutes of January 8, 2015 as written. Voice vote. In favor: 9. Opposed: 0. Abstentions: 0. The motion passed.

5. NEW BUSINESS

Commissioners Present: T. Barnes, J. Breckenridge, H. Chapdelaine, F. Hancock, K. Newman, D. Sederholm, A. Seiman, L. Sibley, E. Thomas.

5.1 Executive Director Report

Mark London stated that by the next MVC meeting, the new website would be operational, and he would give an introduction.

5.2 Executive Director Search Committee

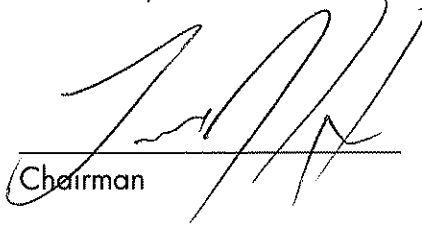
Doug Sederholm, Chairman of the Executive Director Search Committee said the committee will meet on January 27, 2015 at 5:45 p.m. to discuss formulating interview questions and scheduling for the preliminary screening by the search committee. The preliminary screening will include time to review resumes and scheduling preliminary interviews.

The meeting was adjourned at 8:45 p.m.

DOCUMENTS REFERRED TO DURING THE MEETING

- Minutes of the Commission Meeting – Draft, Held on January 8, 2015
- Martha’s Vineyard Commission Final Budget FY2016, Dated January 22, 2015
- MV Lawn Fertilizer Control District Conformance of Regulations for the Town of Edgartown, Public Hearing January 22, 2015 Staff Notes (Jo-Ann Taylor, DCPC Coordinator)
- Decision of the Martha’s Vineyard Commission, Designating the Martha’s Vineyard Lawn Fertilizer Control District as a District of Critical Planning Concern

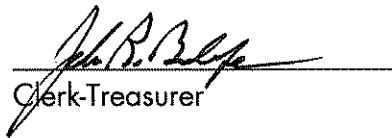
- Town of Edgartown Board of Health Regulations, Board of Health Regulation, Section 17 – The Content and Application of Fertilizer for Turf on Martha’s Vineyard, Town of Edgartown
- DCPC Nomination in the Town of West Tisbury Island Road District Special Ways Zone (For MVC to accept for consideration or not to accept the nomination for consideration), Dated January 22, 2015 – Staff Notes (Jo-Ann Taylor, DCPC Coordinator)
- Critical Planning District Qualifications
- Letter from the Town of West Tisbury Planning Board to the Martha’s Vineyard Commission DCPC, Dated December 29, 2014
- Martha’s Vineyard Commission DCPC Nomination Instructions
- West Tisbury Planning Board Minutes, December 22, 2014, 5:30 PM pg. 2
- West Tisbury Proposed Special Ways – December 2014 Map 1 of 3
- West Tisbury Proposed Special Ways – December 2014 Map 3 of 3
- Nomination Information and Need for Designation, West Tisbury Planning Board, Expansion of West Tisbury Island Road DCPC, Addition of Three Special Ways



 Chairman

3/18/15

 Date



 Clerk-Treasurer

3/18/15

 Date