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**Minutes of the Commission Meeting  
Held on December 17, 2015  
In the Stone Building  
33 New York Avenue, Oak Bluffs, MA**

**IN ATTENDANCE**

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

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

Staff: Adam Turner (Executive Director), Bill Veno (Senior Planner), Paul Foley (DRI Planner), Christine Flynn (Economic Development and Affordable Housing Planner), Jo-Ann Taylor (Coastal Planner, DCPC Coordinator).

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

**Adam Turner** reported that review of written decision for the DeBettencourt/High Point Lane Garage DRI has been removed from tonight's agenda. It will be reviewed at the January 7, 2016 MVC meeting.

**1. MVC COUNSEL PRESENTATION**

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Commissioners Present: T. Barnes, J. Breckenridge, C. Brown, R. Doyle, J. Goldstein, F. Hancock, L. Jason, J. Joyce, J. Malkin, K. Newman, A. Seiman, L. Sibley, E. Thomas, J. Vercruysse.

**Adam Turner** introduced the MVC Counsel, Johanna Schneider and Brian Hurley.

**Johanna Schneider** said she started working on MVC matters in 1999 and is glad to be back working with the MVC as well as the Cape Cod Commission. She met with Adam Turner a couple of months ago and reviewed some helpful topics to go over at tonight's meeting such as open meeting law and decision making. Brian Hurley has been actively involved in MVC litigation over the last several years.

Open Meeting Law

- The MVC is a public body and meetings need to be noticed to the public.
- A quorum of Commissioners is inclusive of the Open Meeting Law.

- It is important to keep in mind that deliberation under the law includes any written and oral communication, which also includes emails.
  - **Adam Turner** asked about information that is allowable for emails. He stated that he always assumed all are open to the public. Is that true? **Johanna Schneider** said to operate under the presumption that almost everything is fair game.
  - **Brian Hurley** added that the first thing to recognize is if the email is a public record or is it otherwise discoverable.
- An exemption of the Open Meeting Law is Executive Session.
  - During an Executive Session records and minutes have to be kept and votes have to be done by roll call.
  - Only the topic at hand can be discussed during the Executive Session.
  - The Attorney General has made it clear that there are only ten specific categories that allow you to go into Executive Session.
  - Even attorney/client issues are not necessarily Executive Sessions.
  - You can hold onto minutes for Executive Session for a while but not in perpetuity.
- Remote participation is allowable under Open Meeting Law but the entire body would need to be in agreement.
  - Concrete reasons are needed for remote participation such as personal illness, military service and geographic distance.
  - There has to be an audio component for remote participation, you cannot text.
  - A quorum has to be present at the physical meeting for someone to participate remotely.
  - All parties have to be audible.
  - If you are going to vote as a body and someone is participating remotely the vote has to be done by roll call.

**Fred Hancock** noted that the MVC reviewed remote participation and had decided not to do it.

**John Breckenridge** asked if information on remote participation is available in memo form. **Johanna Schneider** said it is not but she could if it is wanted. **Adam Turner** noted that he has seen prepared information from the Attorney General's office.

#### Conduct of Public Hearing and Deliberation.

- You want to do the right thing and have a fair hearing, including the appearance of fairness.
- The favorable standard of judicial review for DRIs is De Novo.
- You want to avoid handing someone a procedural issue.
- You should present general policy positions as opposed to project specific opinions.
- During a public hearing, it is not okay for Commissioners comments to express a view on a particular DRI until you have heard all of the information.
  - **Joan Malkin** noted that before closing a public hearing, the MVC has asked the Commissioners for their concerns. It is very helpful to understand what your fellow Commissioners concerns are.

- Remind yourself to add some prefatory language. You are not supposed to make a decision on Benefits and Detriments until all of the information and evidence has been presented. Be aware of how you are framing your questions.
- It is the evidence presented at the hearing that is the basis for the decision. If you have personal knowledge of facts that would have a bearing on the public hearing being heard you should put it in the record.
- Personal local knowledge is fine to bring up but do it in an open fashion to be part of the record.
- Try to avoid making public statements about a DRI that is in front of the MVC. It is better not to talk about things that are pending before the Commission.

There was discussion about comments and opinions.

- **Ernie Thomas** said if you attend public meetings such as a Board of Selectmen meeting, sometimes they may start asking you questions about your opinion on certain Commission items. **Johanna Schneider** said it is best to say it is an issue before the MVC and the decision will be based on the evidence. **Brian Hurley** added that the Board of Selectmen meetings are not judicatory where a DRI review is quasi judicatory. **Johanna Schneider** said you can listen at the Board of Selectmen meeting but it should not affect your decision.
- **Adam Turner** said the MVC is a public body and the record has to be public.
- **Johanna Schneider** said everybody should be making their decision based on the same information.
- **Linda Sibley** noted that the first hearing she chaired someone stood up and said this applicant is a snake in the grass and you cannot believe anything that they say and she ruled them out of order. She has also heard comments that an applicant is a saint. Either way, the Commission shouldn't be convinced by the comments.
- **Johanna Schneider** said the character of the applicant is not relevant. The MVC is evaluating the project based on the merits.
- **Linda Sibley** noted that often the MVC hears that a person is a good steward of the land but that person may not always own it.
- **Brian Hurley** said the MVC needs to focus on the project and not the applicant but you can't always control what people say.

#### Conflict of Interest and Recusal.

- You need to consider if you should recuse yourself. Key questions to ask;
  - Do you hold a leadership position in the organization?
  - Is the organization broad based or is it an Ad Hoc group? An Ad Hoc group may not be a conflict.
  - Do you actively participate in the organizations decision making?
  - Does the organization or the members have a direct financial interest?
- If you feel you can consider the project objectively you should say so at the outset of the meeting.
- If you feel you are not able to be objective you should recuse yourself.
- If something hampers you to be objective then follow your instinct.

- Once you have recused yourself, you can come before the Commission to advocate or oppose a project but you need to be sure you are making your statements not as a member of the Commission. Legally you can do it as long as you clearly state you are not making the statement as a member of the Commission. It can be a little awkward for you.

#### Discussion

- **Christina Brown** asked if you need to say why you are recusing yourself. **Johanna Schneider** said you do not need to say why.
- **John Breckenridge** said there are the black/white issues such as a financial interest and also the appearance of conflict. There are many Commissioners that are appointed members. Is that a conflict? **Johanna Schneider** said the way you clear a conflict is to disclose it. The financial interest has to be direct.
- **Josh Goldstein** said what if you have land or a business nearby the proposed project but it is not an apples to apples situation, do you have to recuse yourself? **Johanna Schneider** said as an example a taxidermist may be moving next to a daycare and that may have an effect on children safety. Use your common sense when it comes to close calls. Do they interact in any meaningful way? Are you benefiting by that project? There is not a real bright line rule. Think if this is a conflict or does it have an appearance of a conflict then you want to avoid both. It has to do with the usefulness of the project.
- **Fred Hancock** said that in the past, the MVC has asked that if there is any doubt to go to counsel for direction, including the State Ethics Board.
- **Fred Hancock** said something that often comes up is that the MVC has policies and occasionally the project is in conflict to the policy. The MVC has viewed that we do not need to follow the policy, we use them as guidance, but the Commission has to give a reason why the policy would not be followed. Is that a correct procedure? **Johanna Schneider** said the policies are simply guidance. If you are going to deviate from a policy you need to explain on the record the reason for the deviation and it has to be a darn good reason. If it is going to be contentious, please come to Counsel for guidance.

#### **Brian Hurley** reviewed the following:

- There are categories of decisions; DRI, DCPC, conformance, compliance each have slightly different standards of review.
- DRIs are quasi-judiciary proceedings. De Novo standard of review is followed; was there an abuse of discretion.
- With DCPCs the law is a little bit unclear. The DCPC review is probably only under Chapter 231A. It is a highly differential standard of review. The courts will only overturn decisions regarding DCPC if they feel they were completely erroneous.
- Compliance aspect of DRI: what you have to assume is that every decision made by the MVC is judicially reviewable.
- Johanna Schneider is your go to person on the day to day stuff and he is glad to have her on his side.

#### Discussion

- **Joan Malkin** asked what if the evidence is not the same at the De Novo proceedings. **Brain Hurley** said they can present whatever evidence they want but the evidence of review is in favor of the Commission.
- **Joan Malkin** asked if the court knows what evidence was presented to the MVC. **Brian Hurley** said no. It is a De Novo review which is a clean slate.

**Fred Hancock** thanked Johanna Schneider and Brain Hurley for coming and the MVC looks forward to working with Johanna.

## **2. NORTH BLUFF SEAWALL – OAK BLUFFS DRI 659 CONTINUED PUBLIC HEARING**

*Commissioners Present: T. Barnes, J. Breckenridge, C. Brown, R. Doyle, J. Goldstein, F. Hancock, L. Jason, J. Joyce, J. Malkin, K. Newman, A. Seiman, L. Sibley, E. Thomas, J. Vercruysse.*

*For the Applicant: Carlos Pena, Bob Whritenour*

*Joan Malkin, Robert Doyle and Josh Goldstein sat in on the meeting but had not attended the first session of the hearing December 10.*

**Linda Sibley**, Public Hearing Officer opened the Continued Public Hearing at 8:00 p.m.

### **2.1 Staff Report**

**Paul Foley** presented the following.

- There is a packet of correspondence received after the first Public Hearing on December 10, 2015 including a letter received from Mark Wallace on December 17, 2015.
- CLE Engineering has provided answers to the questions that were asked at the public hearing on December 10, 2015.
- Also included is a letter from the Town of Oak Bluffs Dated August 22, 2014 to the FEMA Disaster Recovery Manager RE: Town of Oak Bluffs, North Bluff Seawall – FEMA OBCVM01 Sengekontacket Pond Dredging – FEMA.
- There has not yet been a site visit.
- The site was reviewed including the existing condition at high and low tides.
- The proposal is for a sheet metal wall with revetment and it will be four feet higher than the existing.
- The applicant submitted this week the detail for the proposed repair of the concrete wall for 1932, 1933, 1940 and 1948 and they were reviewed.
- The previous rendering was shown as well as the new rendering. There is not as much revetment shown in the new rendering so the wall detail can be seen.
- The 2015 Oak Bluffs streetscape plan was shown.
- Examples of the metal seawall in Weymouth, MA were shown at high and low tides. The Quonset steel seawall was also shown during its construction.
- New images were shown for a wall at Orient Point, NY.

**Linda Sibley** asked when the written answers were received from CLE Engineering. **Paul Foley** said today December 17, 2015 at approximately 3:30 p.m.

**Katherine Newman** asked what the history is of the walking path. Has there always been a walking path and has it always been used. **Paul Foley** said the postcard photo from 1940 shows

the walking wall. Apparently the wall has been there since 1932. The path is still used, he has personally used it.

**Linda Sibley** noted that the walking path would be replaced by the boardwalk.

## **2.2 Applicants' Presentation**

**Linda Sibley** noted that the facts about the project should be presented at this point and then the Board of Selectmen can present their opinion during Public Official Testimony.

**Leonard Jason**, said in all due respect the Town is the applicant. **Linda Sibley** said the Board of Selectmen will be able to speak but would like to use the MVC process that has been used for public hearings.

**Carlos Pena** said that a list of questions was received from Adam Turner on Tuesday December 15, 2015 and he tried to the best of his ability to answer the questions.

**Adam Turner** said the public hearing on December 10, 2015 was long and questions were coming from everywhere so he tried to organize the questions and answers. It will be a \$5.6 million project and according to the applicant the funding will most likely not be extended. The Town will put \$6,000 to \$7,000 into their DPW budget for maintenance of the seawall. There is no environmental impact from the rusting of the enamel epoxy.

### **Review of Questions and Answers**

The questions were summarized by **Adam Turner** and **Carlos Pena** presented the responses.

### **Funding**

- How is the funding for this project currently allocated?
  - The project is funded by grants from DCR Dams & Seawall of \$3.6 million and Seaport Council of \$2.0 million for a \$5.6 million project budget. The combined state grants, not separately allocated in the budget will fund the proposed project with a 5% contingency and construction management services.
- Can the State funding deadline for substantial construction is June 30, 2016 be extended?
  - The deadline for the project substantial completion is June 30, 2016, there is little likelihood the funding would get extended.
- How much money from CPA is required for this project both initially and annually?
  - The CPA funding article for the Special Town Meeting this fall was pulled from the warrant and never voted on.

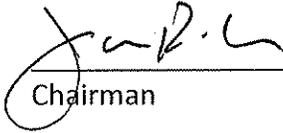
### **Maintenance**

- At the public hearing the cost of annual maintenance for the proposed metal seawall was estimated to be \$5,000-\$7,500 /year. Has the Town considered these costs for on-going maintenance?
  - Yes, the town of Oak Bluffs is committed to on-going maintenance of the seawall project. Funding will be placed in the Highway Department budget for maintenance of the seawall.
- Who will be responsible?
  - The Oak Bluffs Department of Public Works.

## Repair and Replace

- Was the repair of the existing wall considered?
  - DCR Waterways declared the existing seawall and revetment failed in their letter dated August 9, 2013 following Hurricane Sandy in October 2012. The failed concrete seawall constructed with an aggregate of beach sand and without steel reinforcement has cracked, spalled, settled, undermined and rotated and is no longer capable of providing shoreline protection for the coastal bank or Seaview Avenue Extension. The existing seawall (circa 1932) repair alternative was considered during the permitting process and not selected as economically viable or in the best interest of the Town of Oak Bluffs or found to address predicted sea level rise and increased storm intensities.
    - **Christina Brown** asked what is meant by not in the best interest of the town. **Carlos Pena** believes the proposed project is in the best interest of the town.
    - **Fred Hancock** asked what is DCR waterways. **Carlos Pena** said it is the Department of Conservation and Recreation.
- Is it possible to repair the existing wall?
  - No. Once a structure is classified in D/F condition it is no longer structurally sound, performing its intended function and is beyond economically justified repair and rehabilitation.
    - **Christina Brown** asked if it is his opinion that it is crumbling and partly falling apart pretty soon. **Carlos Pena** said it is his opinion.
    - **Fred Hancock** said what about in relation to sea level rise. **Carlos Pena** said that is why it is wanted to raise it four feet.
    - **John Breckenridge** asked if that figure came from recent studies or DCR. **Carlos Pena** said typically it is raised two feet but at the Scituate Lighthouse it was raised four feet. The fishing Pier was designed at elevation 12 so four feet seemed to make sense for this project.
- Was a replacement wall of concrete considered?
  - Yes, the construction of a steel reinforced concrete replacement seawall was the first option that was considered. Originally the new seawall was to remain at elevation 8.5' NGVD29. In 2010 the Town of Oak Bluffs Selectmen voted to raise the seawall to elevation 12'5 to address predicted sea level rise and increased storm intensities. The local permits for the replacement of an authorized seawall and revetment under state and federal regulations were obtained for the concrete alternative by 2013. Once the preliminary (permit) plans were developed into final design plans it became apparent the 15.5' high wall (Top EL-12.5 w/ Bottom of Footing EL=3.0') would require sectional construction within a dewatered steel sheet cofferdam, reinforced for coastal bank, storm events and heavy equipment surcharges. The estimated cost for the concrete seawall and boardwalk project in October 2014 was \$8,512,475. The initial post Sandy FEMA Project Worksheet (PW) dated October 17, 2013 provided an estimated funding of \$1,960,845 for the replacement of the concrete seawall along with an additional \$378,805.04 for mitigation measures for a total of \$2,339,605.04. The FEMA funding brought the total of available project funds to \$7,939,605.04 with the remaining \$572,869.96 to be raised by the Town of Oak Bluffs or other

- Town of Oak Bluffs letter Dated August 22, 2014 to the Disaster Recovery Manager  
FEMA Region I, RE: Town of Oak Bluffs, North Bluff Seawall – FEMA OBCVM01  
Sengekontacket Pond Dredging – FEMA
- Letter to Oak Bluffs Town Administrator from CLE Engineering, Dated August 21, 2014,  
Re: North Bluff Seawall Oak Bluffs, MA FEMA: OBCVM01

  
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Chairman

2.10.16  
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which is indicative of the soils. In 1945 a stone revetment was placed due to the undermining.

- **Leonard Jason** asked what the sea level was when the original wall was built. **Carlos Pena** said when he was the DPW Commissioner in Marshfield the sea level had risen 8/10 of a foot since the 1920s and 1930s. Miami is now experiencing one inch per year. It is a real phenomenon.
- The wall is caving in on itself, orientations between the sections have moved and rotated and this was shown in the recent photos. The wall is also breaking in half in some sections. The concrete cannot support any longer, there is not a lot of inherent strength left in the concrete which is why it is collapsing.
- **Bob Whritenour** noted that the question is what becomes of the bluff if the seawall is not constructed. The new seawall is required to adequately protect the coastal bank and the roadway. The North Bluff is a gateway entry for the State of Massachusetts. If that seawall collapses it will endanger the road and the existing structures and that cannot be allowed to happen. We sometimes lose the enormity of the situation with the crumbling seawall.

#### Beach Nourishment

- Does the project as currently proposed negatively impact the beach as it currently exists?
  - The current project has the same footprint as the 2010 concrete seawall project and extends landward of the annual high tide line (AHTL) and does not impact the intertidal beach down to the mean low water line (MLW) as shown on the CLE plans dated October 7, 2015. The profile, height and slope of the North Bluff beach varies on a seasonal basis and is subject to attack by sea level rise and coastal erosion caused by storm events. The natural littoral process identified in the 2010 Applied Coastal study, which historically nourished and maintained the North Bluff beach has been severely diminished by the armoring of the East Chop bluff and the construction of the Harbor Inlet Jetties.
  - **Adam Turner** asked what the time frame is to get Beach Nourishment completed and what needs to be done. **Carlos Pena** said the permit process is ongoing and expected to be completed in 2016 with funding for the work from either Town and/or Coastal Zone Management (CZM) grants under their coastal program.
- What permits are required?
  - Permits have been received and the following are expected to be completed in 2016; DEP WQC, CZM, MA Historical and Army Corp of Engineers.
  - **Ernie Thomas** asked to be shown photos and clarification on the impact of the beach. **Carlos Pena** showed the photos and said at low tide there is exposed beach. The tide fluctuates and the beach is indicative of a high and low tide. **Bob Whritenour** said it is a low tide beach. **Carlos Pena** said sheeting will be driven against the concrete wall. The belly of the sheet will be against the concrete wall.
  - **James Joyce** asked if Carlos Pena thinks the beach will still be there at low tide with the proposed seawall. **Carlos Pena** confirmed it would be.

- **Leonard Jason** asked are the groins built out of stone. **Carlos Pena** said out of timber. Pay Beach would be stone and is a separate project and part of Beach Nourishment II.

### Boardwalk

- How did this concept originate?
  - The timber boardwalk concept was created in collaboration with DCR Waterways, the Town of Oak Bluffs and the project funding agencies. It was presented and shown at the 2010 MVC DRI submission for the OFBA Fish Pier in Oak Bluffs. The proposed boardwalk provides a scenic and safe ADA accessible pedestrian access along a heavily traveled road. The boardwalk as well as a harbor walk designed as part of the Town’s Streetscape project will direct pedestrians and visitors safely along the waterfront into the center of town.
    - **Ernie Thomas** asked if this was reviewed by the public. **Carlos Pena** said it was at public hearings and at Streetscape meetings.
- Is this consistent with the Towns development plans?
  - The timber boardwalk is shown on the Town of Oak Bluffs Streetscape Master Plan dated July 2015. The Master Plan includes the North Bluff boardwalk as well as a harbor walk.

### Technical Information

- Claims were made that the existing seawall has “failed”. Is there a technical definition for what that means in this case?
  - It is rated D/F and F is failed. DCR Waterways declared the existing seawall and revetment failed in their letter date August 9, 2013 following Hurricane Sandy in October 2012.
    - **Adam Turner** said FEMA did not fail this wall so why a different evaluation. **Carlos Pena** said after Hurricane Sandy Project Worksheets were developed and based on FEMA calculations repair of the wall was \$2.2 million. In 2013 we met with FEMA and commenced designing the project because funds were in place. Then in 2014 FEMA revised the process and have stated there is nothing wrong with East Chop and the North Bluff wall that FEMA is responsible for.
    - **James Vercruysse** said there are some new photos shown tonight and asked what they are and when were they taken. **Liz Durkee** said they were taken two days ago from the Fishing Pier to show the condition of the wall.
    - **Josh Goldstein** asked if the proposed wall is high enough with the Fishing Pier and noted it was one height and has been raised. **Carlos Pena** said during Hurricane Sandy he watched waves hitting shorelines and after that the decision was made to raise the height of the wall. We are in velocity 22 zone but the wall can’t be raised to that and we need to do what is practical.
    - **Fred Hancock** asked at the highest point what the street elevation is. **Carlos Pena** said just above elevation 22.

### Lawsuits

- The Town is appealing the decision by FEMA to withdraw funding. If the Town is successful in its appeal and received the FEMA funding what would the funding be used for?
  - The FEMA funds could either be used to reduce the required funding from the state grants or for the completion of the entire length of seawall and boardwalk from the Fish Pier to the SSA Ferry Dock.
- There were several appeals relative to the bidding process. Can you briefly describe the status of those and how that might affect project timing?
  - **Bob Whritenour** said the Town of Oak Bluffs initially bid the North Bluff Seawall project in September 2015 and the Town after reviewing the bids elected to rebid the project due to insufficient project funding. The town removed a project requirement and rebid the project in October 2015. Following the opening of bids one of the bidders (MIG) filed a preliminary injunction against the project and the Court denied the request for preliminary relief by MIG. MIG has not taken any further action in this matter. There is no active lawsuit. If a lawsuit was resurrected at some future time it would not represent a threat to the project.
    - **Josh Goldstein** asked how long the bid is good for and will it be honored by the contractor. **Bon Whritenour** said the bid has been awarded. If the project goes beyond substantial completion of June 30, 2016 it will jeopardize funding.
    - **Christina Brown** asked what the timing is for approval of the project in order for you to complete the project. **Bob Whritenour** said if the Town received the approval of the MVC the project can start in January 2016 and be substantially completed by June 30, 2016.

*Linda Sibley, Public Hearing Officer noted that Josh Goldstein cannot participate unless he is rehabilitated and apologized for letting him speak and not noticing it sooner.*

- **Leonard Jason** questioned how the applicant was able to award a contract when the permits were not obtained. **Bob Whritenour** said all permits were in place at the time the contract was awarded. **Carlos Pena** added that typical language regarding permitting was in the contract.

**Abe Seiman** asked if the applicant can address why one color was selected over the other. **Carlos Pena** said the choices were gray, white, black, red and beige. The Oak Bluffs Board of Selectmen chose gray. Selectman **Walter Vail** said the gray better matched the boulders.

### **2.3 Testimony from Public Officials**

**Walter Vail**, Oak Bluffs Selectman, strongly supports approval by the MVC for the proposal. The proposal was so well presented last week and again this week by the Town's engineer Carlos Pena. He is also speaking on behalf of Oak Bluffs Selectman Kathy Burton. He read a prepared statement. The project is needed for safety of the road and increased safety of visitors and residents. We all want a beach and none exists now so it will take time. Please allow the Town to move forward. The Conservation Commission has been working hard since 2007 on replacing the North Bluff seawall. He became aware of the issue after Hurricane Sandy. He attended FEMA meetings and it was not been a smooth process. Assisted by Carlos Pena, Kevin Mooney of DCR said the seawall is rated D. The Town received FEMA approval but then the project

worksheet and the monies were revoked causing the Town to revise our plans for the seawall. In June 2015 the Conservation Commission presented new plans in a public meeting and the project then went to bid. On September 22, 2015 the plans were reviewed and the bid was awarded. He can't imagine that anyone will notice steel and epoxy enamel or that anyone coming in on the ferry would object. The proposed is better than what is currently there. There is an urgency to move forward with this project and he hopes the MVC will agree.

**Linda Sibley** asked if the Board of Selectmen took a formal vote on the material. **Walter Vail** said they did not.

**Gail Barmakian**, Oak Bluffs Selectman, said the 2010 hearing plan was very different than the current plan and feels that is the concern. The Conservation Commission has jurisdiction over the project. The Board of Selectmen was presented with the plans. The plans were ever changing due to FEMA. She expressed that it looked awful but didn't object. There was also concern that there were not enough entrances to the beach. The project in its present form had its completion date extended but now it is being presented that the project completion timeline has gone from two years to one year and now six months with a lot to be done in winter. What does substantial completion mean, 50% or 90% done? Why can't the walkway be taken out of the project to save project dollars or will that affect the funding?

**Linda Sibley** noted that one of the funding sources is based on having the walkway and is not sure if FEMA ever came to the conclusion that the wall failed.

**Joan Hughes**, Chairman of the Conservation Commission, said there are a lot of different issues here tonight. We became very concerned in 2006 and 2007 with just the state of the seawall and beaches, the whole infrastructure of the Town of Oak Bluffs. The Conservation Commission has a layman appreciation of the science. In 2008 the seawall caved in at Pay Beach. To develop a project the Conservation Commission needed the best science that we could possibly get and we put out a RFQ and the result was that we got Carlos Pena. Through Carlos we worked with a great number of engineers and we rely on the advice of experts. We had to learn how to be a credible agency and present ourselves and what permits were required. A local Conservation Commission can only put sand on the beach to the High Tide Mark and that is what we have done. CPC money has just been put into Beach Nourishment and the Conservation Commission is getting there and we have put a rush on it and want to get into the next round of grants to do this. This costs lots of money and people say why can't the town pay for it. It just can't be done with the town's budget. We have to find how to get funding and the Conservation Commission has asked diligently for a long time. Climate change has an impact. We want a good open area for tourists to come into. There was a boardwalk originally and getting people from point A to the harbor was part of the project with DCR. We are now working on the appearance of the seawall and are working on what is the best possible solution. It is constantly evolving and every town and state on the eastern seaboard is facing this. We have to find the solution and make it attractive and the Conservation Commission has worked a long time on this project.

**Brian Packish**, Chairman of the Oak Bluffs Planning Board and the Oak Bluffs Streetscape Committee, asked if anyone has asked for an extension for the funding since the project was referred or during the four months before the project was referred and is there a document to support that. With regards to the maintenance budget is everything accounted for such as wall and vegetation maintenance and do we have a statement from the DPW that they can perform

this type of work. With an inferior project for the current seawall we got 75 years so with today's advancements we could get a longer life span. The viability of a cement wall is happening all over the world so it is probably not that hard to do, such as the Scituate example that was discussed. It is clear it is a chase of funding. Compare a 40 year life span with steel versus an 80 year lifespan with cement. The value is built into the cement. We all know that something needs to happen. It is a discussion of what people want and the level of confidence they have with how it is being done. No matter what we have to dredge Little Beach and the sand has to be put somewhere so to portray a sacrificial beach as an additional expense is not necessarily so as it has to happen anyway. How did the boardwalk originate, in the 250 page document that was presented the only reference is a future Seaview boardwalk. It is not an accurate portrayal with regards to the Oak Bluffs Streetscape Plan. The lampposts and lighting are vague at best and we have not seen anything regarding them. The North Bluff seawall was inspected in 2013 and it was said then that it was in very poor condition. We have heard a lot about FEMA but we have not seen all of the information and the responses and it would be interesting to see FEMA's perspective as that is a driver of how we got to a different project. In the letter from the Oak Bluffs Selectmen there is a lot of reference to the potential failure of the seawall and that it has failed but if you go to the other side of the SSA the wall is in the same condition and we don't hear about that. If there is potential failure does that mean we then won't be able to have the Oak Bluffs fireworks next year? He read the minutes from the June 2014 Conservation Commission meeting that noted that the town was building a cement wall and also noted that MVC Commissioner John Breckenridge had attended that meeting. Sometime in the time since that meeting funding has been lost. To say this has been going on forever and that the Planning Board is a last minute referral is not the case. The Planning Board has not received the information that it asked for just as the public has not received it either. To be kind, the information is all over the place. The project in its current form has been planned in a very short time. The MVC has not received the requested information just as the Planning Board has also not received it. We need to get people in a place of reassurance that they will get a project that they are in agreement with.

- **Katherine Newman** asked if he was speaking personally or for the Oak Bluffs Planning Board.
- **Brian Packish** said he is speaking for the Planning Board, Streetscape Committee and personally.

## **2.4 Public Testimony**

**Linda Sibley** made a request that the public please not repeat what was stated at the last public hearing or what was put in writing and asked that the public please try to not be repetitive as there is a lot of information to get through this evening.

**Steve Auerbach** is a resident of Oak Bluffs and on the Oak Bluffs Finance Committee and said that one of the assertions that Brian Packish made is that the present seawall has been there for 75 years and the same could also be done now but that is not a valid point. We are talking about climate change and addressing what is taking place all over the world. To compare sea level rise over the last 100 years to now is not a valid comparison. Brian Packish also stated he has not succeeded in getting all of the paperwork and the information so you can judge that for yourselves. An important question is whether you believe in science and if the town should be proactive in dealing with these hard questions. Despite other doubts he may have such as the

completion timeline he feels this is a scientifically sound project. Aesthetically the proposed project doesn't bother him and it should be approved.

**Kerry Scott** said the 2010 Seaview Waterfront Committee was a visionary committee and feels it went by the wayside. What we have been doing in Oak Bluffs is a wrong thing. The Conservation Commission is the wrong board for this project. The Board of Selectmen and the Planning Board should be spearheading this project. It should be the elected officials with the best interests of the town's people. Kevin Mooney from DCR is not an engineer and even though the FEMA representative was not a professional, neither was the person from DCR. The Pay Beach wall is a very different wall. Kevin Mooney said the wall was coming down and if the wall wasn't taken down the beach would be closed for one year. The wall was taken down and there still is no wall. The MVC was sent a picture by Ewell Hopkins of three miles of a metal seawall in New Jersey that wrecked the beach for the public and she said she would be happy to provide the link again for that wall. The photos were shown of the post Hurricane Sandy rusted steel wall in New Jersey and she noted that the wall failed. She read the letter from Carlos Pena to Bob Whritenour (dated August 21, 2014) that is part of the written record noting that in the letter Carlos Pena is quoting FEMA's position that the seawall can be repaired. We are hearing two very broadly different opinions, FEMA versus DCR. She would like to support the project and if she could she would. She showed a photo from an article of how it is done on Cape Cod to protect the shoreline and it is done with vegetation which is very different than the failed steel seawall in New Jersey. She asked and suggested if it would be possible for the MVC to review the letters from FEMA or to consult with an independent engineer.

**Peter Bradford** is not taking a position on the proposed project but has some questions for the applicant. Is the seawall rendition after or before Beach Nourishment and is it at low tide or high tide? Is the revetment accurate in the rendering? He posed a process question for the MVC Public Hearing Officer, he noted that during another application before the MVC comments that were not part of the application were not accepted so shouldn't that be the same in this application regarding Beach Nourishment since that is not part of the project.

- **Linda Sibley**, Public Hearing Officer said the MVC would give consideration of probability if it would be there, but not as part of the project.

**Nancy Phillips** was part of the Boardwalk to the Beach Task Force and they had many meetings. She spent a lot of time with Carlos Pena and to have universal access and to combine an infrastructure with a boardwalk is wonderful. Access is an extremely important part of the project. Even back in 2007 funding was trying to be obtained and it was felt that it was important to give pedestrian access. The ramp connecting the courtyard from the bathhouse to the proposed boardwalk that is going to the harbor sidewalk is part of the town's efforts to meet universal access standards for the citizens and the visitors that come by ferry. The road is a very vital artery in our town. When looking at a \$5-6 million grant you can't let it go. The Conservation Commission has fought very hard for this project. Carlos Pena is one of the top professionals in his field and Kevin Mooney is an engineer. Please vote on the proposed project and vote positively tonight.

**John Breckenridge moved and it was duly seconded to extend the meeting 30 minutes. Voice vote. In favor: 11. Opposed: 0. Abstentions: 0. The motion passed.**

**Mark Wallace** said no one is questioning the integrity of the officials. One size doesn't fit all. Even the Price is Right has three doors to choose from. 80% of the statements made tonight were opinion made. Someone said there is no beach but we want one and that is not factual. He takes his dog to that beach every day. He lived in a small cottage in Scituate and Scituate is not remotely close or comparable to Oak Bluffs and this project. Over the last ten years the town has spent zero dollars to do anything about the seawall and the reason for the erosion is because there are holes in the wall. He is a businessman when it comes to steel or concrete especially when it became clear that the beach would be gone. We are getting rid of the beach to do the boardwalk that goes to nowhere. With regards to design the simple fact is that people want a beach. Why don't we have an exact measurement and a stake at the site to show what the project will be. The project is so opinion based it is crazy. With the powers of the MVC and perhaps Adam Turner calling the funding source and if the people want it this it could be done. Doing the project the way it is being done is negligible.

**Jordan Wallace** lives and works in Oak Bluffs and said the project has only been proposed with steel over the past year. He did not think that anyone is denying that there is climate change and sea level rise. There is a concrete wall further down the beach so we will have two different walls on the same beach. Maintenance needs to be reviewed. This is the gateway to Martha's Vineyard and people and recreational boaters will see the wall from the ocean. He thinks we are selling ourselves short as a town to go for a less expensive project.

## **2.5 Applicants' Closing Statement**

**Carlos Pena** presented the following.

- As he did last Thursday (December 10, 2015) he wants to thank everyone who came out for the hearing and wants to make reference to the document that came out this afternoon that addressed the questions and provided answers for those questions. For the record what he has talked about is his opinion and belief and he will stand by it.
- The rendering that was created today shows the 5.5 foot reveal for the face of the sheeting and you can also see that a person was placed on top of the rail which was done for scale.
- The rendering shows how the project will look with Beach Nourishment II; 2.5 feet of revetment is shown and 5.5 feet of sheeting.
- We received an email this afternoon from Barry Stringfellow at the MV Times and he asked about the bulkhead and the deterioration. In order to answer that we would need to know what grade of steel was used and if it had an improper coating or protection issue. If there was improper maintenance there will be an issue. The grounding for the lights could also pose problems, electrolysis causes corrosion. This project will not have that issue.
- Access to the beach has not changed. There has always been two accesses to the beach, at the SSA and at the harbor.
- Withdrawal of the funds was due to the application process.
- Kevin Mooney is an engineer.
- He said he has tried to clearly state the answers to the questions in the December 16, 2015 letter to the MVC.

**Leonard Jason** asked what was the length of the project in 2010 and what is it now. **Carlos Pena** said it was 720 feet in 2010 and now the steel sheeting is 500 feet but the entire project is still 720 feet.

**James Joyce** asked for Carlos Pena's opinion, if the concrete wall was put in would there be much of an impact to the beach. **Carlos Pena** said the footprint has not changed since 2010 there will still be an intertidal low tide beach. All that would be different if the steel wall is extended into the revetment. There would still be a beach there above the mean low tide and an intertidal beach.

**Trip Barnes** wanted to hear from Walter Vail on his view of the proposed project. **Walter Vail** said he supports the project entirely. The project was changed because the situation changed. From his standpoint FEMA pulled the rug out from under us. Bob Whritenour spent countless hours dealing with FEMA. We did have to scramble to change things to fit within a budget. He appreciates all of Carlos Pena's hard work on this project. The Conservation Commission has worked very hard on this project as well.

**Kathy Burton**, Oak Bluffs Selectman said she is passionate about the project. She was concerned about the sheet metal but was reassured it is a high quality. She believes the sheet metal will disappear with the boardwalk in place. With regards to having a boardwalk she said she worked on the Island Queen and has seen the need for the boardwalk rather than having people walking up the street. She hopes the MVC supports the proposed project.

There was a discussion about the visual aspect for the project.

- **Amy Billings** asked if the bluff that is falling apart in the picture would not have as much of a drop with the proposed project so therefore it will be able to be maintained better.
- **Linda Sibley** said she does not think we still have a visual that shows what it will be like.
- **Christina Brown** noted that at the last hearing (December 10, 2015) she asked for a better visual and thought it would be photo shopped. Her problem conceptually with the current rendering is that it is done in a very soft medium and looks pastel. The proposed seawall will not look pastel. A real similar metal wall was shown and it is ugly, that is not saying that the proposed wall with the rocks will be ugly. So we really need to know what it will look like. She did not think the current rendering is a useful rendering.
- **Carlos Pena** said the rendering is a detail of what the project will look like from the water.
- **Christina Brown** said it should be realistic and without the beach nourishment.
- **Carlos Pena** said the rendering is an engineered drawing.
- **Christina Brown** noted that the rendering does not come across to a lay person to get a sense of what it looks like.
- **Mike Santoro** said the attorney earlier this evening said the MVC should not form an opinion.
- **Linda Sibley** clarified that it was said that the photo that was shown was ugly but it was not suggested that the proposed would be ugly.
- **Katherine Newman** asked to see a photo that was previously shown of the wall and asked if it went up four feet what would it look like.

- **Joan Hughes** said it is actually the coastal bank and it is slumping. This is a low wall and all of the material from above is falling down onto it. She showed where the boardwalk would be and indicated how it would be replanted.
- **John Breckenridge** said the vulnerability study that was just done was at elevation 9 so the picture is three feet above that. He understands the comments being made. He would like to see something photo shopped. It would give us a real view of what the proposed seawall will look like.

***John Breckenridge moved and it was duly seconded to extend the meeting 15 minutes. Voice vote. In favor: 9. Opposed: 2. Abstentions: 0. The motion passed.***

- **Peter Bradford** asked if a rendition can be done of the section from the SSA to the Fishing Pier.
- **Doug Abdelnour** would like to see a drawing of when the bluff collapses and the road caves in.

**Linda Sibley**, Public Hearing Officer, closed the public hearing and noted that LUPC will meet on January 4, 2016 and Deliberation and Decision would be on January 7, 2016.

**Paul Foley** noted that a site visit should be scheduled. **Fred Hancock** agreed.

*Josh Goldstein excused himself from the meeting.*

#### **4. ELECTION OF OFFICERS**

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***Commissioners Present:*** T. Barnes, J. Breckenridge, C. Brown, R. Doyle, F. Hancock, L. Jason, J. Joyce, J. Malkin, K. Newman, A. Seiman, L. Sibley, E. Thomas, J. Vercruysse.

**Linda Sibley**, Chairman Nominating Committee, said the nominees are James Vercruysse as Chairman, Robert Doyle as Vice Chairman and John Breckenridge as Clerk/Treasurer. The floor was opened for nominations and none were received.

***Leonard Jason moved and it was duly seconded that the nominations be closed. Voice vote. In favor: 13. Opposed: 0. Abstentions: 0. The motion passed.***

***Leonard Jason moved and it was duly seconded that the MVC makes a unanimous vote for all of the nominated candidates. Voice vote. In favor: 13. Opposed: 0. Abstentions: 0. The motion passed.***

The meeting was adjourned at 10:40 p.m.

#### **DOCUMENTS REFERRED TO DURING THE MEETING**

- DRI 659 North Bluffs Seawall – Oak Bluffs, MA Correspondence Received after the first Public Hearing on December 10, 2015
- Letter to the MVC from Mark Wallace, Received on December 17, 2015 regarding the North Bluff Seawall
- CLE Engineering Answers to Questions for DRI 659 North Bluff Seawall, Dated December 16, 2015

- Town of Oak Bluffs letter Dated August 22, 2014 to the Disaster Recovery Manager FEMA Region I, RE: Town of Oak Bluffs, North Bluff Seawall – FEMA OBCVM01 Sengekontacket Pond Dredging – FEMA
- Letter to Oak Bluffs Town Administrator from CLE Engineering, Dated August 21, 2014, Re: North Bluff Seawall Oak Bluffs, MA FEMA: OBCVM01

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Chairman

\_\_\_\_\_  
Date

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Clerk-Treasurer

\_\_\_\_\_  
Date