

PO BOX 1447, OAK BLUFFS, MASSACHUSETTS, 02557, 508-693-3453  
FAX 508-693-7894 INFO@MVCOMMISSION.ORG WWW.MVCOMMISSION.ORG

## Minutes of the Commission Meeting Held on November 3, 2016 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)	P Ben Robinson (A-Tisbury)
- Peter Connell (A-Governor; non-voting)	P 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)
- Leonard Jason (A-County)	P James Vercruysse (E-Aquinnah)

Staff: Adam Turner (Executive Director), Bill Veno (Senior Planner), Sheri Caseau (Water Resources Planner), Priscilla Leclerc (Senior Transportation Planner), Dan Doyle (Transportation Planner).

**Chairman James Vercruysse** called the meeting to order at 7:00 p.m.

### 1. NEW BUSINESS

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

#### 1.1 Reports from Chairman, Committees and/or Staff

**James Vercruysse**, Chairman welcomed Ben Robinson to the MVC as the appointee from Tisbury. There will be a site visit on November 4, 2016 at 2:00 p.m. at Wave Lengths at 233 Upper Main Street, Edgartown to review the project. **Fred Hancock** added that the applicant is seeking a modification.

**Doug Sederholm** said the DRI Water Quality Committee will meet on November 16, 2016 at 8:00 a.m.

**Fred Hancock** noted that there is a public notice for the Mass Offshore Wind Public Information meeting to be held on November 14, 2016 at the Tisbury Senior Center from 5:00 p.m. – 7:00 p.m. There is information available on the MVC website.

- **Christina Brown** said the MVC Coastal Planner has information on the aquatic animals as it pertains to the project.
- **Bill Veno** added that the studies they have been doing to put wind farms south of the Island will be covered at the meeting. The one year study on aquatic animals will also be reviewed.

## **1.2 Executive Director Report**

**Adam Turner** presented the following.

- The first public hearing on the Edgartown Stop & Shop was held and the second meeting is on December 6, 2016.
- The applicant went over the site plan and the proposed changes to the inside of the store including the various fixtures that will be used.
- Transportation was not discussed and will be covered at the December 6, 2016 public hearing.
- Various people spoke from the Selectmen to Town personnel to neighbors.
- We want to hear their comments so they can be brought back to the MVC.
- The MVC public hearing will be held at the Old Whaling Church.
- This was a better way to do things; to listen to the Town and then deliberate together.
- This is for the Edgartown Stop & Shop only and does not include the Vineyard Haven store.
- The public hearing went very well and much information was presented about the store regarding function, noise and transportation issues.
- The information will be very useful to the MVC.
  - **Ernie Thomas** asked if the project was referred to the MVC.
  - **Adam Turner** said the project has not yet been referred, the MVC will hear it in January 2017 most likely. December 6, 2016 is the next meeting of the Planning Board.
- We are waiting for information for the MV High School Fields application.
- It will be a complex project. We have talked with the school board and are setting up a process for receiving testimony about the project.
- The public hearing will be at the High School likely in January 2017.
  - **James Vercruysse** asked what that project was referred under.
  - **Adam Turner** said it was two cross town referrals and the applicant chose to offer to a DRI review.
  - **Fred Hancock** noted the fields were a previous DRI.
- There will be a meeting on November 14, 2016 for the second round on the visions of the Housing Planning and the information is on the MVC web site. The survey has approximately 600 responses.
  - **Christina Brown** encouraged people to go to the MVC website and do the survey.
  - **Adam Turner** strongly encourages everyone including the Commissioners to take the survey.

## **2. AIRPORT FIRE STATION-WEST TISBURY DRI 668 PUBLIC HEARING**

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

*For the Applicant: Joes Sullivan (Project Manager), Myron Garfinkle (Chairman MV Airport Commission), Geoff Freeman (Asst. Airport Manager), Ann Crook (Airport Manager).*

**Fred Hancock**, Public Hearing Officer opened the Public Hearing at 7:15 p.m. and read the public hearing notice for DRI 668 Airport Fire Station. The applicant is the Martha's Vineyard Airport Commission. The location is the Martha's Vineyard Airport, 71 Airport Rd., West Tisbury, MA Map 28 Lot 100.10 and Lot 1.26. The proposal is the construction of a new 14,367 sf Aircraft Rescue Fire Fighting (ARFF) and Snow Removal Equipment (SRE) Building at the Airport. The public hearing process was reviewed.

## **2.1 Staff Report**

**Adam Turner** presented the following.

- The site plan was reviewed.
- The existing Fire Station has been torn down.
- The project to replace the fire station has been in existence for five years.
- The Airport Commission is under Federal Aviation Administration mandate to complete the project to meet minimum fire and safety standards.
- The existing and proposed footprints were shown on the site plan.
- The in and out access was reviewed on the site plan.
- It is a two story building and the floor plans were reviewed.
- There are no 24 hour resident areas but people will stay at the facility if events require it. There are living quarters but they are transient and not permanent.
- The footprint of the previous fire station was shown.
- Building elevations were reviewed and there are six bays and an administration area. The building is a little larger than the previous station.
- The site layout and utility plan were shown and it was noted again that the project must meet FAA specifications.
- Renderings of the building were shown.
- The facilities will be the same but will increase their ability with modern facilities.
- The bays will be drive through.

## **2.2 Applicants' Presentation**

**Ann Crook, Airport Director,** said Adam Turner did a great job of explaining the project. In Aviation acronyms are used such as ARFF and Snow Removal Equipment (SRE). The building is bigger as previously it was just a fire station and the SRE equipment was outside. The proposed building gives us storage for that equipment. The project will make us compliant with the regulations and gives us a quick and safer response to the airport. We do not have dedicated fire fighters on our staff. We have cross trained personnel. We are staffed 24/7, 365 and the beds may be used in the winter when we have to plow and perhaps for someone that may be feeling ill.

**Joe Sullivan** said the architectural aspects of the project fits into the site well. It is a training facility for the fire fighters as well as an Administration building. Now there will be a turning radius for the equipment and a quick access to the airport as it is closer access to the airport.

## **2.3 Commissioners' Questions**

**Adam Turner** asked what the proposed square footage is versus the prior. **Joe Sullivan** said it is 14,674 sf and the old was a little less than 10,000 sf.

**James Joyce** asked if parking spaces will be lost by pushing the building back. **Joe Sullivan** said they are gaining a little bit about 1-2 spaces. **Geoff Freeman** added that pushing the building back gave us a safety factor and also green space.

**Katherine Newman** asked what the color and character of the exterior of the building will be. **Joe Sullivan** showed samples and it will be cedar shakes with a metal roof in ash gray and polar white for the doors. There cannot be any shine per airport regulations.

**Fred Hancock** asked with regards to the floor drains in the fire station will there be oil/water separation. **Joe Sullivan** said the runoff is captured in a storage bin and does not go out to the watershed. The waste treatment plant services it.

**Fred Hancock** asked what the time frame is for the construction. **Joe Sullivan** said the construction is 400 days and they are 60 days into it. The project is to be completed September 2017.

**Myron Garfinkle** added that this is a great fire station and everyone should have one.

**Fred Hancock**, Public Hearing Officer closed the Public Hearing.

**Linda Sibley moved and it was duly seconded to waive the post public hearing LUPC and to go to Deliberation and Decision. Voice vote. In favor: 15. Opposed: 0. Abstentions: 0. The motion passed.**

**Josh Goldstein moved and it was duly seconded to approve the application as presented in lieu of public safety.**

- **Linda Sibley** noted that Benefits and Detriments needed to be reviewed before approval.
- **Doug Sederholm** suggested that for Benefits and Detriments the MVC could say it has been set forth if everyone agrees with what has been noted.
- **Fred Hancock**, LUPC Chairman said LUPC felt based on the nature of the project that they did not feel the project needed to be reviewed and the preliminary benefits and detriments had been reviewed.
- **James Vercruyse** and **Fred Hancock** felt Benefits and Detriments need to be reviewed to meet MVC requirements for the public.

## **2.4 Benefits and Detriments**

**Adam Turner** led the review of Benefits and Detriments.

### Benefits

Wastewater and Groundwater – the proposed project is part of the airport’s wastewater system. There isn’t a great change in the impervious area of the site as compared to the existing.

Night Lighting and Noise – The proposed building replaces a facility with identical usage and purpose. The new buildings drive-through bays allow for large vehicles to enter from one side and exit the other, thereby reducing the beeping noise from trucks backing up. If anything, modern fixtures and a location closer to the runways and taxiing areas will improve on existing conditions for light and noise.

Traffic and Transportation – This facility will provide improved firefighting and snow removal capacity for the Martha’s Vineyard Airport. Use of this facility will not affect areas of public traffic and circulation. The operation of the facility is required to be consistent with standards/regulations of the Federal Aviation Administration (FAA). The FAA has mandated that the proposed facility be constructed as illustrated and identified in the plans and application and specifications.

Scenic Values – The scenic character of the airport property will be slightly enhanced as the new building provides some design diversity that the old facility did not and is a nicer looking building.

Character and Identity – The character and identity will not change as the new facility mirrors the existing in terms of function. The property will operate in much the same way it has except the building is more efficient in many areas.

Impact on services and burden on taxpayers – The proposal will ensure that the airport is functional and in compliance with the FAA. The airport facility directly contributes to the tax base and provides economic benefit to the Island in general as its operation is critical to the safety of the Island and provides an important contribution toward moving residents and visitors to and from the mainland.

- **Ann Crook** added that the project is 90% funded by an FAA grant and 5% by the Federal government. The 5% balance is by generated revenue.
- **Myron Garfinkle** said the money from the generated revenue is in the bank.

Consistency with and ability to achieve town, regional and state plan objectives – Operation of the airport is essential to the economic development of the Island as well as to transportation objectives by offering an alternative means of travel to and from the Island. As an island, it is also urgent that we have an airport to provide service in times of emergency. The fire station is a pre-requisite in terms of airport operations.

#### Neutral

Open space/community and habitat – The airport fire station will replace a similar facility located to the rear of the proposed site for this new facility. There is no natural habitat on the site and a small grass landscape buffer is being reconfigured with the new site layout. There will be no taking or usage of additional lands.

Impact on Abutters – There is no effect on abutters. The proposed building borders the airport parking area, taxi way and runway.

Low and Moderate Income – Not applicable.

Used efficiently or unduly burden on other facilities – The replacement of the fire station will provide increased efficiency in terms of power and other utilities used.

Conforms to Zoning – The project is in the Light Industrial (L1) zone in the Town of West Tisbury and is regulated by an airport overlay. The proposal to replace an existing building with another of the same use is consistent with this district usage requirement.

Conforms to DCPC Regulations – The project does not lie within any DCPC.

**Linda Sibley** noted that the project is appropriate in view of the alternatives and it is essential.

***Fred Hancock moved and it was duly seconded to approve the DRI as presented.***

- **Linda Sibley** said it is indisputable that this project has regional impact and it is on the MVC Checklist. This project has been more thoroughly vetted by other agencies before it came to the MVC which is a reason why the MVC can move through it expeditiously.

***Roll call vote. In favor: T. Barnes, J. Breckenridge, C. Brown, R. Doyle, J. Goldstein, F. Hancock, J. Joyce, J. Malkin, K. Newman, B. Robinson, D. Sederholm, A. Seiman, L. Sibley, E. Thomas, J. Vercruysse.***

***Opposed: none. Abstentions: none. The motion passed.***

**Joe Sullivan** noted that they are on a time constraint and asked when they would have a Written Decision. They have to provide it to the Zoning Board to get the permit and can that be provided by the morning. **Fred Hancock** said not entirely. Legally there is a 20 day appeal period and the Written Decision has to be signed and notarized. **Adam Turner** said he could provide a copy to the applicant.

### **3. PHILLIPS HARDWARE MIXED USE-OAK BLUFFS DRI 663 DELIBERATION AND DECISION.**

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*Christina Brown, James Joyce, Abe Seiman and Ben Robinson are not eligible to vote and excused themselves from the meeting.*

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

#### **3.1 Land Use Planning Committee (LUPC) Report**

**Fred Hancock**, LUPC Chairman said LUPC recommends to approve the DRI with the offers as made. The preliminary benefits and detriments were flushed out by LUPC.

#### **3.2 Review of Offers**

##### Affordable Housing

There was a discussion about the Affordable Housing Offer.

- **Fred Hancock** said the project is being presented to the MVC as a hotel and the applicant hopes to have zoning changed at the April Town Meeting so they can come back to the MVC as residential units. We felt it fair to wait for the affordable housing condition until that determination is made.
- **Linda Sibley** said the applicant wants to complete the construction and subsequently move forward on the use of the apartments.
- **James Vercruyse** asked the applicant if they can get approval on the occupancy of the retail space before the residential units.
- **Chuck Sullivan** said they can.

### Construction Phasing Plans

**Fred Hancock** noted that it was felt that the Town would have a better feel for this than the MVC.

### 3.3 Benefits and Detriments

**Bill Veno** led the review of Benefits and Detriments

#### Benefits

Wastewater and Groundwater – The project is part of the Town of Oak Bluffs wastewater system. The site is already entirely impervious surface and storm water will be diverted into the Town’s collection system.

- **Fred Hancock** noted that the applicant will try to tie the stormwater system into the sewer system as it currently drains in the street.

Night Lighting/Noise – Exterior lighting for the project will be limited to that required by building code except for the alley, which is the access for the upper floors. The alley may have additional lighting for safety and security concerns. All exterior lighting will be down shielded and security lighting on motion detectors. A final lighting plan will be approved by LUPC prior to construction of the project. The project’s mechanical equipment will be within the roofline or in an enclosed area to minimize impact on others.

- **Linda Sibley** thought the alley lighting was already required by building code and suggested revising the language.
- **Joan Malkin** asked if the code requires something for the existing alley.
- **Chuck Sullivan** said he feels there will be more than the code requires for safety since it is an alley.

Traffic and transportation – The project does not provide on-site parking for customers, workers or occupants. The Town of Oak Bluffs has a provision for not requiring parking for downtown uses and instead assesses a mitigation fee for the Town to address parking demand in alternative ways. The project reconfigures the first floor levels along the length of the building to meet ADA accessibility standards.

- **Bill Veno** noted that ADA Accessibility does not exist currently.

Scenic values – There are no natural scenic values in the setting of the project. The project’s mechanicals will be located within the roofline and not visible from public ways. Other visual issues are addressed in the Character and Identity section.

- **Katherine Newman** felt the scenic value is nice and adds to the streetscape.

Character and identity – The project will return the character and identity of its site to the Victorian flavored architecture and multi-floored, mixed-use buildings that lined downtown Circuit Avenue a century ago. The scale and architecture will complement that of the historic registered structure directly opposite on Circuit Avenue.

Impact on services and burden on taxpayers – The project will be tied to town water and sewer. The potential impacts to municipal services such as police and fire are likely to be minimal since the proposed project is located within a densely developed commercial/residential area. The impact on fire services should be positive in that an older building will be replaced by new construction compliant with new fire safety code. No impact on school enrollments is anticipated. The proposal will increase property value and tax revenue to the Town. The project should enhance economic activity for all.

- **Fred Hancock** noted this is also a keystone business to the Town of Oak Bluffs and improving this building is a huge benefit to the Town.
- **Linda Sibley** felt the statement “The project should enhance economic activity for all” should be moved to Consistency With and the Ability to Achieve Town, Regional and State Plan Objectives section.

Consistency with and the ability to achieve town, regional and state plan objectives – The project reinvests and adds upper floor residential accommodations within the Oak Bluffs’ downtown. The reintroduction of mixed use to the town’s primary business area and attention to historic architectural character are consistent with the objectives in the Oak Bluffs Master Plan, Oak Bluffs Downtown Streetscape Master Plan, MVC’s Island Plan and the Massachusetts Smart Growth Objectives.

Conforms to Zoning – The project is in the B-1 Business District of Oak Bluffs and is consistent with the Town’s zoning.

Conforms to DCPC Regulations – The project is not in a DCPC.

#### Detriments

Impact on Abutters – The building will enhance the streetscape façade. The proposed uses are consistent with the downtown business district. The increased height of the entire building will block existing Nantucket Sound views of the building across Circuit Avenue. While the applicant has offered to shield the building’s mechanicals, HVAC and exhaust fans from public visibility, these could be visible and audible to the upper floors of nearby properties. Abutters will have a newly constructed and safer neighboring building. Surrounding business will be temporarily impacted during demolition and construction of the new building. The applicant has taken steps to work with the Town to mitigate noise and traffic impacts during construction.

- **James Vercruyse** said there was no statement of whose view was blocked in the use of the building.
- **Linda Sibley** feels impacts on abutters is a detriment and a benefit. She feels the language “these could be visible and audible to the upper floors of nearby properties” should be removed.
- **Fred Hancock** said the view has a limited impact as there is no right to a view in this circumstance and agrees Impact on Abutters is both a detriment and a benefit.

#### Neutral

Open Space/Community and Habitat – The project includes a wider and more accommodating alley on the left (north) side of the building leading between Circuit Avenue and the Reliable parking lot. There is no existing natural habitat or proposed landscaping.

Low and Moderate Income Housing – The applicant initially wanted to make the upper stories of the building workforce apartments but is not able to do so because of the Town’s zoning. The applicant intends to pursue amending the zoning to allow the apartments, but in order to not hold up construction of the building, it is proposed with eight (8) transient hotel units that conforms to existing zoning. The workforce housing could satisfy the MVC’s affordable housing DRI policy but the hotel units do not. The applicant has asked the Commission to postpone when it will satisfy the affordable housing policy until it requests a Certificate of Occupancy for the second and third floors, before which the

applicant will return to the Commission for approval of a final plan for the upper floors and a proposed affordable housing component.

- **Joan Malkin** said it is a benefit at a minimum as when approved it will meet the MVC policy. It may turn out to be a huge benefit but at least it is a minimal financial contribution.
- **Linda Sibley** thought the language has to be revised to state that the residential section will come back to the MVC for approval and if it has to be a hotel the applicant will rent to seasonal workers.
- **Fred Hancock** said when the project comes back to the MVC it will be a full Commission approval.
- **James Vercruysse** said the MVC cannot approve something that does not meet zoning.
- **Linda Sibley** suggested deleting the language and revise it to the applicant will return to the MVC for approval.
- **Katherine Newman** said the text is good and should be included and the applicant will bring it back to the MVC.

***Fred Hancock moved and it was duly seconded to approve the project as the benefits highly outweigh any detriments. It is a great use for the Town of Oak Bluffs and the Island and we need to do more projects like this in our downtown areas. It is appropriate in view of the alternatives. Roll call vote. In favor: T. Barnes, J. Breckenridge, R. Doyle, J. Goldstein, F. Hancock, J. Malkin, K. Newman, D. Sederholm, I. Sibley, E. Thomas, J. Vercruysse. Opposed: none. Abstentions: none. The motion passed.***

**James Vercruysse**, Chairman recessed the meeting at 8:13 p.m. and reconvened at 8:15 p.m.

#### **4. OAK BLUFFS WATER DISTRICT SOLAR PANELS DRI 660 CONTINUED PUBLIC HEARING**

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*Abe Seiman recused himself. Christina Brown and James Joyce rejoined the meeting.*

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

*For the Applicant: Sean Murphy(Attorney), Steve Johnson(new England Environmental), Jon Mancini (Blue Wave).*

**Fred Hancock**, Public Hearing Officer reopened the Continued Public Hearing.

##### **4.1 Staff Report**

**Adam Turner** presented the following.

- The public hearing was continued from September 15, 2016 and new information has been received.
- The site is on Barnes Road adjacent to the State Forest and Goodale's pit.
- It is located in the Lagoon Pond watershed.
- There are wells on the property and protected open space.
- It is 9.91 areas of affected land. 5.6 acres will be cleared and stumped and 3.95 acres of the trees will be cut down and made smaller so the panels receive proper sun and light.
- Correspondence has been received since the last public hearing and it was summarized (see Documents Referred to During the Meeting). The correspondence will be available on the MVC web site.
- Several different maps have been submitted showing the areas to be stumped.
- Guidelines for drinking water protection have been received from the Bureau of Resource Protection.
- The EAA Article 97 Land Disposition Policy is included in the packet of information.

- The MVC asked him to research the Article 97 issue and he has asked MVC counsel, Brian Hurley, about the issue. Adam Turner read the statement from counsel. There is case law that goes either way and there is no judicial means to obtain a complete determination. It is a fact and circumstantial determination. There are decisions on both sides in support. The MVC attorney says we have no opinion on this. The Court may take a broad or narrow opinion.
  - **Christina Brown** asked if the MVC attorney gave Adam Turner any indication if the MVC would run into any liability.
  - **Doug Sederholm** said he would not worry about it if the MVC followed their usual procedure. It is up to the applicant if it falls under Article 97. It would be foolish for the MVC to approve or disapprove under Article 97.

#### **4.2 Applicants' Presentation**

**Sean Murphy** presented the following.

- The public hearing was continued due to outstanding questions. There are still some questions about the nitrogen calculations, public issues have been raised about the forests and there are questions with regards to Article 97.
- Sheri Caseau has worked on the nitrogen calculations. According to the current MVC policy the nitrogen load for Lagoon Pond watershed is 3.4 kg/acre/yr. The nitrogen budget for the 56.25 acre property is 191.25 kg/yr. Clearing the 10.37 acres and installing the panels would result in an additional 33.77 kg/yr added to the Lagoon Pond watershed each year until regrowth of vegetation uptakes the ammonium and returns the pattern of nitrogen cycling to the pre-clearing pattern. Our expert put the expected load at 2.2 kg/yr for three years.
- He agrees with Doug Sederholm regarding Article 97. It is not in the Commission's purview to determine it is in Article 97. An approval by the MVC with or without Article 97 doesn't allow the applicant to build anything. The project still needs building permits and Planning Board approval.
- 5.96 acres are being cleared and stumped and the soil disturbed where the solar panels will be located. 3.9 acres of trees will be cut to not be taller than eight feet in height.
- It is the disturbing of the soil and the understory that is the issue which has not been done before.
- Steve Johnson was asked by Blue Wave to look at the site and give an assessment of the habitat.

**Steve Johnson** presented the following.

- The proposed solar site is completely wooded with a dense understory of native shrubs and is relatively flat with very little change in elevation.
- The forest canopy within the site is dominated by White Oak.
- The maximum age for tree stems on site was 103 years according to Jack Edward's letter dated August 30, 2016 however the vast majority of the trees present appeared to be much smaller in diameter and therefore younger.
- The majority of the proposed site for the five acre solar array is composed of native hardwood forest and understory, dominated by oak species, primarily White Oak.
- Both the review of past land use data and our field assessment suggest that the proposed solar site has not been cleared for agricultural purposes.
- The site is largely fragmented from nearby native oak forest by an active gravel operation, development, roads and pine plantations.
- The oldest trees on site were just over 100 years in age and the estimated age of the oak root systems is not more than 200 years.
- In our opinion it is unlikely that the forest found on site is ancient forest.

- It has also been noted that oak stools and undisturbed forest soils are unlikely to provide additional ecological functions beyond those offered by nature forests with similar species composition but lacking these two features.
- The proposed site is part of the contiguous forest and is tied to the State Forest on the south.
- Pine and non-native red pine has been planted and this site is isolated from the State Forest and not truly contiguous with the forest system.
- The oak stool is significantly smaller than those on the State Forest. We have done some of the same evidence as David Foster and are not disputing that but functionality of the planted sites really don't disturb the ancient soils.
- The cut area will be re-planted with native species.

#### **4.3 Commissioners' Questions**

**Katherine Newman** asked if ecological functionality could be defined. **Steve Johnson** said in the broad sense it is the role or a certain parameter of an ecosystem, what role it plays in supporting the entire ecosystem. Soils support a certain plant life as well as a slope aspect.

**Katherine Newman** asked if you take away almost 6 acres of trees would it have almost no impact on the surrounding forest? **Steve Johnson** said to some extent that is true. In the long run it doesn't change the forest. We are concerned about the role of the soils in this case. It helps with water quality and native species immediately retained on the site will help with that. Functionality also includes what kind of vegetation it will be able to grow.

**Trip Barnes** asked if there is any consideration of raising sheep under the solar arrays. **Sean Murphy** said there is not.

**Fred Hancock** asked if this is a common occurrence where people cut forests for putting in solar arrays. **Steve Johnson** said it is. About 50% of solar projects that he has dealt with are in forest lands and also in agricultural areas.

**Joan Malkin** asked if he thought there is no detriment to ecological functionality when compromising ancient soils with replanted areas of native species. **Fred Hancock** added if he thought it was practical to regrow these species under the array. **Steve Johnson** said they can be replanted.

**Josh Goldstein** asked what Steve Johnson's credentials were. **Steve Johnson** said he has a PhD in Biology from UMASS and has been working as an ecologist for 20 years as a rare species biologist. He doesn't look at projects as just a biologist.

There was a discussion about taxes.

- **Adam Turner** said the Town of Oak Bluffs estimated the Personal Property tax at \$235,574 over 20 years and asked how that was arrived at. Is Personal Property Tax applicable to this project and how has this agreement been finalized with the Town.
- **Jon Mancini** said we have not negotiated the pilot agreement with the Town; payment in lieu of taxes. Typically we pay personal property taxes as well as land taxes.
- **Joan Malkin** asked if they are typically not responsible to pay these taxes but they would.
- **Jon Mancini** said they have to pay taxes but a levelized system is easiest.
- **Lexi Barlow** said we find it easier to come to a negotiated agreement and develop a model for estimated taxes.

**Trip Barnes** asked again if grazing sheep would be applicable. **Jon Mancini** said they have looked at it but in this instance it would be more difficult.

**Doug Sederholm** wanted to be sure that it was noted that Mr. Foster disagrees with Mr. Johnson and that Mr. Jonson was aware of that. He gets the sense that this is an overwhelming commercial project

and the Water Department gets some benefit from it. How much is going to the developer and how much to the Water Department? **Jon Mancini** said we are responsible for developing the project and not its operation. Depending on the value of the net meter credits it is undetermined how much is made.

**Fred Hancock** asked how much of the array is to be used by the Water District and could it be done just to serve the Water District. **Jon Mancini** said the Water District uses 25% of the planned facility. If designed for just the Water District it would be a difficult project to build.

**Linda Sibley** asked if the Water District's electric need grows do they have a guaranteed rate to buy it as the same discount as they have now. **Jon Mancini** said that is correct. It is at a reduced rate as negotiated by Sun Edison and the Water District.

**Joan Malkin** asked if the Water District would be restricted to their own use. **Joan Mancini** said yes.

**Ernie Thomas** said the property is owned by the Water District but the array is owned by the developer and they lease the land to Sun Edison and then the Water District buys the electricity. **Jon Mancini** said that is correct.

**Josh Goldstein** noted there are two ways the project can be done. Put the money out front and buy the panels and maintain the project or have a company do the engineering such as Blue Wave and Sun Edison and then buy the energy from them and lease the land to them.

**Jon Mancini** said the project helps the applicant to hedge their electricity costs for 20 years. It is energy that is responsible and renewable and it is grown on the Island.

**Katherine Newman** asked how Blue Wave and Sun Edison interact. **Jon Mancini** said they are a team. They responded to the RFP and Blue Wave is the front end.

**Fred Hancock** asked if the agreement is between the Water District and Sun Edison. **Jon Mancini** said that is correct. Our partnership is with Sun Edison and our responsibility ends when the permits are obtained.

**Doug Sederholm** asked who receives the tax credits. **Jon Mancini** said typically Sun Edison. The investment tax credit is 30% on the cost of the project.

**Katherine Newman** said Blue Wave is the front guy for the business yet you don't know what Sun Edison will make on the project. **Jon Mancini** said our responsibility is the permitting and we get a fee for that. He can't speak on Sun Edison's business.

**Fred Hancock** asked what the rate is for the Water District. **Kevin Johnson** said the Water District has a purchase agreement for 9.75 cent/kw with a 2% escalator for 20 years.

#### **4.4 Testimony from Public Officials**

**Gail Barmakian** is not speaking on behalf of the Town. She noted that a pilot program in lieu of taxes is not a personal property tax. This is a new thing for solar panels going on property otherwise exempt. There is a dispute if the Town can assess personal property taxes and the Town is still looking into it and she wanted to clarify that. There is still a question if this property is exempt and if put to a commercial use if it could be taxed.

- **Fred Hancock** asked if this is something that the Town could condition on Town approval.
- **Gail Barmakian** said she is not in a position to answer that.

**Linda Sibley** noted that the MVC is charged to weigh the Benefits and Detriments and we are not weighing the Benefits to the commercial enterprise but to weigh them for the public. How much can be weighed towards the Island's benefit. We don't care what the applicant or developers really make on the project.

**Kevin Johnson**, Oak Bluffs Water District Superintendent said the project has a great benefit to the Town by providing solar and the Town to share in purchasing solar electricity. In no way shape or form will it harm our ground water. It is in Zone 2. The DEP has given their blessing on the project and it is a safe project. It is a benefit to save on our electric costs in the future and will allow us to put that money into our infrastructure development. It is not a detriment to our community to use the developer to make this project happen. We need to focus on how much benefit we will gain and not how much profit the developer will make.

#### **4.5 Public Testimony**

**Tim Boland** noted that there are a lot of conservation biologists looking at this. It is the wrong place to do solar and questions the expertise of the applicants biologist to promote this project. He noted part of the Applied Marine Ecology Lab comment "In fact, the replacement of existing trees and understory vegetation with appropriate grasses will contribute to the conversion of atmospheric nitrogen improving the overall underlying groundwater quality". However, grasses do not work as well as a forest. David Foster's rebuttal is important. He is renowned worldwide. Fragmentation is huge with this project. With disturbance you will have a tremendous invasion. Grasses do not take well under solar panels. It is difficult to establish herbaceous plants on this Island. Russian Olive kills the native plants when around. When you remove the understory you are disrupting the soil. He urges the MVC to speak with Glenn Motsken and he will tell you it is important to retain this ancient land.

**Brendan O'Neill** is the Executive Director of the Vineyard Conservation Society. Voters approved by ballot vote Article 97. It was authorized by the State to put brakes on what we are talking about tonight. To Adam's comment they were super clear to the clarity of the restricted language. This DRI fits the description of lands subject to the protections of Article 97 as it requires legislative action before any change of use of open space lands as is proposed with this project. If legislative action is required and we think it is the project is a detriment to Martha's Vineyard. These Article 97 conversions are happening all over the Commonwealth. It will be a real land use planning challenge going forward. Article 97 is a legislative remedy intended to stem the loss of open space held by public, state city or town through change of use or conversion to inconsistent uses. Article 97 also authorized the use of eminent domain taking to acquire interests in land for open space protection. That is what the Town did in this case. The Order of Taking clearly states the residents of the Town of Oak Bluffs identified the proposed use of the property to be taken and the public use to be served specifically being the protection of the town water supply. The Commonwealth is showing leadership in this Green Energy Management. SRECS credits are the incentive. Massachusetts and other states require a mix of the energy portfolio with renewable sources. The electrical producers can then by having the needed credits have renewable sources in their portfolio. We can't pursue these green power gods by the detriment of our forests and the disregard for Article 97. The future that is coming is solar energy on capped landfills and other open space but not on wells. It is the right idea but in the wrong location. We ask the Town to work with sources to responsibly site these endeavors.

**Gregory Palermo** said how stumping and replanting is being described is an outrageous claim. You will disturb the soil and invite in weeds and invasive plants. The expert's argument is ridiculous. This is a serious disturbance of ancient soils and forest and he hopes everyone will see that.

**Gail Barmakian** said benefits have been quantified by money, but how do you put a money value on the forest. She is just throwing that question and thought out there.

#### **4.6 Commissioners' Discussion**

**Adam Turner** clarified the MVC attorney's opinion. The MVC's attorney couldn't give us an answer if this was an Article 97 case and there were arguments on both sides.

**James Joyce** asked how many rate payers there are. **Kevin Johnson** said 4,219.

There was a discussion about Article 97.

- **James Joyce** said he understands that the MVC is not supposed to touch Article 97 and it seems silly that it is up to the applicant to determine that.
- **Fred Hancock** said anyone can sue in court if it is an Article 97 matter.
- **Doug Sederholm** said it is almost like a fox in a hen house. The governmental body making the call determines if it is Article 97. It doesn't mean the MVC can't look at it to see if it has impact here.

**Linda Sibley** said the question Gail Barmakian posed is incredibly important and goes to the heart of the MVC creation. She read the Chapter 831 section on Benefits and Detriments.

**Trip Barnes** said he spent about three years working in the State Forest in the 1970's and has been accused of killing all the red pine as you are supposed to take the stump out. Do you think the area in question is in the same type of area as the rest of the State Forest. **Steve Johnson** said the vegetation within the proposed solar array is very similar and is all native species.

**Joan Malkin** said fragmentation was mentioned and is that soil disturbance or plant related. **Tim Boland** said it is a disturbance mechanism of soil and plants. Habitat and invasive species are the two main drivers.

#### **4.7 Applicant's Closing Statement**

**Jon Mancini** said Blue Wave has negotiated over two dozen pilot agreements in the Commonwealth using the income valuation method. It establishes levelized payment over 20 years.

- **Fred Hancock** asked when that takes place in the process.
- **Jon Mancini** said once we know there is a project and then can assess the size of the project we can have discussions with the Town Assessor.

**Joan Malkin** asked what the useful life of the array is. **Jon Mancini** said the equipment is warranted for 20 – 25 years .The lease is 20 years with two five year options.

**Jon Mancini** said there were SREC credits in the Massachusetts market and they have sunsetted. So there are no SRECs.

**Sean Murphy** said this project is a benefit. The energy will be produced here and does not have to come over from the mainland. The applicant has received NHESP approval and DEP approved under the Drinking Water Program. The Oak Bluffs Water District approved the project and there is no effect on their drinking water. Everyone loves solar and the issue is the cutting of the vegetation/trees and the disturbance of the soils. 5.96 acres is about 10% of the land owned by the Water District but is one tenth of 1% of the Water District and the State Forest land. It is a very small portion of the area and we ask the MVC to look at the science and not the emotion with tis project.

**Fred Hancock**, Public Hearing Officer closed the Public Hearing.

### **5. AIRPORT FIRE STATION WEST TISBURY DRI 668 WRITTEN DECISION**

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*Ben Robinson rejoined the meeting.*

*Commissioners Present: T. Barnes, J. Breckenridge, C. Brown, R. Doyle, J. Goldstein, F. Hancock, J. Joyce, J. Malkin, K. Newman, B. Robinson, D. Sederholm, L. Sibley, E. Thomas, J. Vercruysse.*

**Fred Hancock** noted that staff will check the dates and make any necessary corrections and complete the data on lines 124 and 125 and lines 262-264 as well as correct any typos.

Linda Sibley suggested revising the language on line 196 deleting “a minimal impact” and replacing with “no impact”.

***Fred Hancock moved and it was duly seconded to approve the Written Decision as corrected with MVC Staff to proof the final document. Roll call vote. In favor: T. Barnes, J. Breckenridge, C. Brown, R. Doyle, J. Goldstein, F. Hancock, J. Joyce, J. Malkin, K. Newman, B. Robinson, D. Sederholm, L. Sibley, E. Thomas, J. Vercruyse. Opposed: none. Abstentions: none. The motion passed.***

The meeting was adjourned at 10:00p.m.

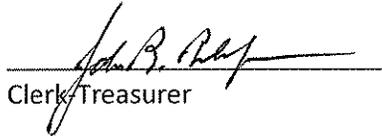
#### DOCUMENTS REFERRED TO DURING THE MEETING

- Public Hearing Notice Martha’s Vineyard Commission, November 3, 2016, Martha’s Vineyard Airport Commission
- Benefits and Detriments Airport Fire Station
- DRI 663 Phillips MVC Offer Sheet, 03 November 2016
- Phillips Hardware Staff Summary of Facts for Consideration in Benefits and Detriments, Nov 3, 2016
- Decision of the Martha’s Vineyard Commission Drat – DRI 668 – Airport Fire Station
- OB Water Solar Water DRI 660 Water Resource Staff Notes, S. Caseau, October 19, 2016
- Oak Bluffs Water District Solar Panel Correspondence;
  - Applied Marine Ecology Lab, Subject: DRI # 660 – Oak Bluffs Water District, Solar Farm, October 28, 2016
  - New England Environmental, RE; Assessment of Proposed Solar Site, 4 Alwardt Way, Oak Bluffs, Massachusetts, NEE# 040516.00, October 20, 2016
  - Bristol Engineering Advisors, Inc., Re: Professional Opinion, Potential Impact Solar Array on Nutrient Loading at Lagoon Pond, September 20, 2106
  - Town of Oak Bluffs Conservation Commission, RE: OB Water District proposed solar array, September 21, 2016
  - Blue Wave Abandonment and Decommissioning Plan
  - Oak Bluffs Water District Solar, 10/28/16, Total Estimated Savings
  - Email from Sean Murphy, Subject: OB Water, October 28, 2016
  - Mass Audubon Advocacy Department, RE; Oak Bluffs Water District Solar Farm (DRI 660), September 1, 2016
  - Oak Diversity and Ecology on the Island of Martha’s Vineyard, Tim Boland, International Oak Journal No 22. Spring 2011
  - Massachusetts Land Trust Coalition, Inc. ,Re: BWC Wankinco River LLC – application for installation of solar farm, November 1, 2016
  - Blue Wave, October 26, 2016, Reponses to MVC Questions following DRI 550 Public Hearing
  - Model Certification
  - Harvard University, Harvard Forest, November 3, 2016
  - Guideline Bureau of Resource Protection Drinking Water Program
  - Massachusetts Historical Commission, August 16, 2016 , RE: BWC Wankinco River, LLC, Ground Mounted Solar Photovoltaic Energy Generating Facility, 4 Alwardts Way, Oak Bluffs, MA. MHC # RC.60715
  - Email from Gregory Palermo, October 31, 2016, Subject: DRI 660, Oak Bluffs Water District Solar Farm, comment

- Collins and Associates, October 12, 2016, Re; Applicability of Article 97's Legislative Approval Requirement to Proposed Solar Array
- Testimony by The Trustees of Reservations Regarding Wind-Power Potential or State-Owned Lands CDR/DOER Public Listening Session June 24, 2009
- Vineyard Conservation Society, October 18, 2016 Re: DRI 660, Oak Bluffs Water District Solar Farm
- Energy and Environmental Affairs, EEA Article 97 Land Disposition Policy
- Town of Oak Bluffs Article 11 to Article 27, submitted to MVC on 10/26/2016
- Quit Claim Deed, Town of Oak Bluffs, 4 Alwardt Way, Oak Bluffs
- Order of Taking ad Award of Damages, Book 535, Page 762, 763, 764,

  
Chairman

12.21.16  
Date

  
Clerk/Treasurer

12/29/16  
Date