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Minutes of the Commission Meeting Held on January 18, 2007 In the Stone Building 33 New York Avenue, Oak Bluffs, MA

IN ATTENDANCE

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

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|---|--------------------------------------|
| P James Athearn (E – Edgartown) | P Ned Orleans (A – Tisbury) |
| P John Breckenridge (A – Oak Bluffs) | P Jim Powell (A – West Tisbury) |
| P Christina Brown (E - Edgartown) | P Doug Sederholm (E – Chilmark) |
| P Peter Cabana (A – Tisbury) | P Susan Shea (A – Aquinnah) |
| - Martin Crane (A – Governor Appointee) | P Linda Sibley (E – West Tisbury) |
| P Mimi Davisson (E – Oak Bluffs) | P Paul Strauss (County Comm. Rep.) |
| P Mark Morris (A – Edgartown) | P Richard Toole (E – Oak Bluffs) |
| P Chris Murphy (A – Chilmark) | - Andrew Woodruff (E – West Tisbury) |
| P Katherine Newman (A – Aquinnah) | |

Staff: Mark London (Executive Director), Bill Veno (Senior Planner) Bill Wilcox (Water Planner), Christine Flynn (Affordable Housing & Economic Planner), Jim Miller (Traffic Analyst)

The meeting was called to order at 7:36 p.m.

1. ADOPTION OF BUDGET 2007-2008

Jeff Wooden outlined the '07-'08 budget.

- There is a new format which was generated from suggestions of the all-Island Finance Committee
- The Island Plan budget of \$120,000 and the operating budget are presented separately; the consolidated budget of \$1,229,213 is also included in the handout.
- Assessments went up 2.4% for each town.
- Footnotes are included for specific line items that varied more than 20%.
- The Island Plan is separated out because it is a short-term project; the operating budget is shown separately so it can be compared from year to year.
- The current value of the reserve fund is about \$111,000.

There was a discussion of legal fees.

- **John Breckenridge** said one of the big variables can be legal fees and asked the current status of legal bills and whether a budget of \$75,000 is reasonable.
- **Jeff Wooden** and **Mark London** clarified that the Tisbury Fuel Services case is still before the courts. The Commission won the Tisbury Fuel Service case in lower court, it was appealed, the trial has taken place, and we are awaiting a judgment.
- The legal bill balance is currently \$66,000 with payments of \$10,000 a month.
- The two Robinson cases are settled.

- **Linda Sibley** wondered whether not projecting out for additional new legal expenses is prudent.
- **Mark London** and **Jeff Wooden** explained that the budget for new legal expenses has been increased from \$50,000 from \$75,000 for FY08. If the budget were exhausted, the reserve would be used.
- **Jim Powell** asked how we make sure that the law firm spending is kept under control.
- **Doug Sederholm** explained that the same counsel has been representing the Commission for a very long time. Counsel would let staff know if there were to be significant legal bills and they allow the Commission to carry the balance. They don't charge the same as private clients and they don't charge interest. The Commission has a different legislative framework from within which the towns are working. The Commission has to defend itself when it's sued.

Chris Murphy said he had been hoping to see the six-month expenditures for 2007 to use as a comparison for setting the 2008 budget. **Jeff Wooden** suggested a separate explanatory handout.

Chris Murphy said there should be some explanation of the line items so the budget makes sense and to help Commissioners defend the budget in their towns. **Mark London** said explanations were included for variations of more than 20%. **Doug Sederholm** said that every line could have an explanation, but at some point a line has to be drawn. However, more information is better than less. **Mimi Davisson** agreed that detailed explanations would be helpful for institutional memory.

Chris Murphy suggested that in the future, Commissioners should have an opportunity to review details of the budget, without taking the time of the whole Commission. **Doug Sederholm** said the Finance Committee, made up of one representative from each town, does review the budget and all Commissioners are welcome to attend these meetings. Every line could have an explanation, but at some point a line has to be drawn. However, more information is better than less.

Mimi Davisson asked about the towns' examination of unfunded liabilities of pensions. **Jeff Wooden** said Dukes County is doing an actuarial study and the Commission is part of it.

Mimi Davisson asked whether the Commission's budget is constrained by line item totals as the towns' budgets are. **Jeff Wooden** explained that the Commission's budget is not, but from a managerial standpoint line item constraints make sense.

Ned Orleans pointed out that membership on the Finance Committee is open and a good forum for these types of questions.

Mark Morris moved, and it was duly seconded, to approve the budget for FY08. In favor: 14. Opposed: 0. Abstentions: 1. The motion passed.

2. INTERIM DRAFT WATER QUALITY POLICY

Bill Wilcox explained aspects of the water quality policy.

- The different watersheds are categorized based on the sensitivity of the pond to which the watershed drains.
- The “Ocean and Sound” watersheds have no nitrogen limits of concern.
- The “Quality Waters” have relatively intact eelgrass coverage and relatively high water quality. These are tidal ponds that flush well. Menemsha and Cape Pogue are Quality Waters. Katama Bay may end up in that category.
- “Compromised Waters” are coastal ponds with limited tidal action and symptoms of nitrification. They have declining eelgrass, and fish and shellfish population. Compromised watersheds tend to be turbid and often have rack or drift algae. South shore great ponds are in this category. They have the symptoms of nitrification and are not well flushed. They include Pocha Pond, and all the quasi-tidal great ponds.
- “Impaired Waters” are where eelgrass coverage has decreased in excess of 25%. Organic nitrogen is well over 0.38 parts per million. In water with over 0.38 or 0.4, eelgrass fades out. Often the current nitrogen load going into the pond exceeds the loading limit calculated using the Buzzards Bay formula. Tashmoo, Sengekontacket, Lagoon Pond, Oak Bluffs Harbor and Farm Pond are classified as impaired waters.

Peter Cabana asked about the assessment of Tashmoo. **Bill Wilcox** explained that they have enough sampling stations to show the difference between the portion of the Pond south of town landing where water quality is poor and near the inlet where the water quality is often good. Lagoon Pond shows the same differences in water quality from the area near the inlet to the portion that is farther away.

Peter Cabana asked how Bill Wilcox weights nitrogen concentration versus eelgrass coverage. **Bill Wilcox** said eelgrass coverage is from 2001 DEP statistics. Tashmoo eelgrass is down. Lagoon Pond is down 50%. Pocha Pond has never had eelgrass as far as we know. It was a freshwater pond that was breached and had scallop harvest in the 1930s. The eelgrass coverage is the lynch pin for overall habitat quality. Oxygen and rack algae closely mimic whatever the total organic nitrogen concentration is. There isn't any one element that indicates water quality. The elements are linked.

Bill Wilcox said the proposal for DRI review is for treating the nitrogen loading issues in the different pond systems according to their present water quality condition.

- For Quality Waters, the nitrogen loading from the project must meet the established nitrogen load limit. These waters flush well so load limits are pretty easy to meet.
- For Compromised Waters, the suggestion is to take the less restrictive approach of either meeting the nitrogen loading limit or implementing basic nitrogen reduction techniques by de-nitrifying wastewater for a limited number of bedrooms based on zoning, and by limiting fertilizer.
- In Impaired Waters, projects must meet the more restrictive of the two alternatives of either meeting the nitrogen loading limit or implementing nitrogen reduction techniques.
- Projects get a bit of a break in compromised waters because they are not quite as impaired or they do not exceed their nitrogen-loading limit. But in impaired watersheds there's a definitive water quality problem.

Mark London said in developing the policy, staff looked at past projects. Staff is looking at calculating nitrogen both as we have in the past and according to the proposed policy to making sure that the numbers are reasonable. If necessary, we should adjust the policy.

Mark Morris commented that data changes according to dry and wet seasons. **Bill Wilcox** said that's why the Estuaries Project requires three years of data for a pond to become part of the project. Some data is twenty years old. On some watersheds five or six years of data is available. Rainwater is definitely an issue so they don't want to have just one year of data.

Bill Wilcox reviewed the "basic nitrogen-reduction techniques".

- For residential projects, the maximum number of bedrooms that's permitted on a property is based on four bedrooms for each primary house and two for each guesthouse allowed on the property according to existing zoning. But in no case no more than four bedrooms per acre.
- The number of bedrooms is increased for affordable housing projects (80% of the AMI). An increase of 50% of the number of bedrooms allowed is suggested.
- The logic is to avoid clamping down too severely on affordable housing projects because they tend to have more density and can quickly exceed the nitrogen-loading limit. The excess is balanced by the margin of safety that comes from the fact that the allocation for open space will not be used.
- The calculation methodology is based on nitrogen loading per bedroom. The nitrogen load is based on 167 gallons per house per day for wastewater. The numbers are calculated from the average of a large number of water meter readings from Oak Bluffs, supported by Tisbury and Edgartown numbers, averaged across both seasonal and large and small houses.
- The four-bedroom number is derived from Title 5 and 10,000 square feet minimum.
- Running the numbers for 167 gallons per day with a denitrifying system, results in 1.1 kgs. of nitrogen per bedroom.
- Commercial projects would be reviewed at 60% of the Title 5 design flow.
- Maintained landscape would be limited to 4000 square feet; only slow-release fertilizers could be used; impervious surfaces would be limited to 25% or less of the lot area; and stormwater should be directed into natural or vegetative swales.
- The Commission could also consider increasing the nitrogen limit by up to 50% for in-town, smart-growth projects.

Susan Shea asked whether four bedrooms are based on a particular sized lot. **Bill Wilcox** explained it's based on what zoning would allow.

Mark Morris said a lot of houses are hooking up to the sewer plant. **Bill Wilcox** said any project that is sewered eliminates the nitrogen issue. For the watershed as a whole, any project that gets sewered should improve the quality of the watershed.

Peter Cabana said zoning determines the number of bedrooms; he asked whether it is the specific purpose of the policy to come up with zoning requirements. **Doug Sederholm** said the policy states that the nitrogen load limit would be, but in no case more than the equivalent nitrogen zoning of four bedrooms per acre.

Linda Sibley said that the Commission wouldn't be reviewing anything that would be creating a straightforward substandard lot; Cozy Hearth was allowed because it was a 40B project, not just because it was an affordable housing project. **Doug Sederholm** said it's possible but unlikely that the Commission would review a pre-existing sub-standard lot; the Commission would still have the four bedroom per acre limit.

Bill Wilcox said the policy is more concerned with the weight of nitrogen. The weight of nitrogen per acre is the present basis for protecting the water quality of coastal ponds.

There was further discussion of affordable housing.

- **Jim Athearn** asked about the increase of 50% for affordable housing, wondering whether Commissioners would have to choose between affordable housing and the environment.
- **Bill Wilcox** said they're suggesting that the Commission should give affordable housing a break on the nitrogen loading limits. There is a built in margin of error in the calculation because it includes open space that will not be built on, and the amount of nitrogen in some watersheds will be further reduced by wastewater treatment elsewhere in the watershed.
- **Doug Sederholm** said it's a policy compromise to allow an affordable housing go over the limit in a limited way.
- **Mark Morris** asked whether this raised legal issues.
- **Linda Sibley** noted that 40B is a state law that discriminates. The policy holds affordable housing to a higher standard than basic 40B.
- **Doug Sederholm** said the Commission has a unique regulatory tool in weighing benefits and detriments. The Commission has held affordable housing projects to a very high standard. Often, the only way to have affordable housing is to have higher density. He believes the Commission is going to have to look at each project.
- **Paul Strauss** asked whether giving an affordable housing project a defined break mean that the maximum nitrogen allowed per acre in the remainder of the watershed would be reduced.
- **Bill Wilcox** said this wasn't necessary as there are buffers in calculating the nitrogen load for the whole watershed and in distributing the load limit through the watershed. The nitrogen load distribution builds in a cushion because the nitrogen load is also allocated to open space, which doesn't produce nitrogen.
- **Mark London** said that the policy is suggesting giving away a little bit of the buffer to affordable housing projects.

Jim Powell asked about the possibility of additional limits within a 2000-foot setback from impaired waters. **Bill Wilcox** noted that anything within two thousand feet of a pond shore is within about five years of reaching the pond; however, eventually, all the nitrogen ends up in the pond, so the policy doesn't take into account how far the project is from the pond. Once the nitrogen is in the water table there can be a small decrease in nitrogen. In the Mass Estuaries Project they are using 26.25 parts per million for effluent, not 35, to take into account reduction in nitrogen in the leaching field and over time as wastewater travels to a pond.

Bill Wilcox said there are many ways to calculate the nitrogen-load limit. The acid rain nitrogen could be taken out of the total limit for the pond and the remainder distributed to every acre in the watershed. A more conservative number is the result, but there is still a buffer for open space.

Peter Cabana said this is going to assume that projects are going to somehow denitrify wastewater; could or should the policy consider systems where effluent is used for irrigation. **Bill Wilcox** said effluent irrigation systems are worth considering for nitrogen reduction; they would have to see if this was legal within Title 5 and whether there were DEP concerns about driplines clogging.

Kathy Newman wondered if there could be something like the LEED system. The idea of increasing the nitrogen limit seems like an odd thing to do, in contrast to a balancing system of smart growth versus nitrogen, or affordable housing versus nitrogen limits. Maybe the balance should be more refined.

Linda Sibley commented that that balancing is implicit in the DRI review process.

- These are policies that provide guidance for anyone who might come before the Commission with a development. The benefits of a DRI must outweigh the detriments.
- The policy deals with some balancing with respect to affordable housing and smart growth.
- This policy is a little different because it has science in it, but it can't be strictly mathematical.
- The real balancing act comes when Commissioners look at the project overall.

Mark London made some general comments.

- With respect to discussed an overall system of trade-offs, to try to spell out how to trade off between affordable housing versus water quality would be an interesting challenge. It would be interesting to have a method by which a project could mitigate its shortfall or to use financial mitigation to offset whatever the problem is. Perhaps the Island Plan could look at developing a system such as Aspen's but it would be complex.
- It's unfortunate that the Water Quality Policy is not really simple but it is a complicated issue. He suggested that the Commission continue using this policy and methodology in the coming years. As the Commission gets more accurate data on nitrogen-loading limits, the limits in the policy will change. In the coming years, it would be useful to work with the towns in order to take a refined version of this policy and have it apply not only to DRI projects but also to projects that are not reviewed by the MVC.

Bill Wilcox noted if a project exceeds the nitrogen-loading limit, the policy also provides for it to mitigate the excess nitrogen in an off-site area by developable land into conservation, by treating someone else's wastewater, or possibly with a monetary contribution. A possibility is looking for a solution that creates a bigger bang such as taking a monetary mitigation from a number of isolated seasonal homes, to provide a district treatment plant that would treat the wastewater from a neighborhood of year-round houses, resulting in much greater nitrogen reduction.

Linda Sibley clarified for new members that the Commission is working on a number of policies that, for the most part, describe what the Commission has been doing for many years. This policy is different because there's a new and more sophisticated method for calculating wastewater. This is an excellent synthesis of what the Commission has been doing.

Linda Sibley moved, and it was duly seconded, that the Commission adopt this policy as its Interim Water Quality Policy.

- **Mark London** said the committee has suggested using the current policy with the old loading limits and the new one in parallel before formalizing the new one.
- **Linda Sibley** said the old policy isn't in writing; the whole purpose is to provide clearer guidance to applicants. The Commission is trying to simplify the DRI process.
- **Kathy Newman** suggested that the policy is a living guideline. Interim is the key word. We might have the understanding that in three months if we review a DRI and see there's a problem we can revise the policy. These are guidelines that should be communicated. It should include a statement that this provides guidelines for applicants and maximizes their chances of being approved. We know that we're looking for balance in benefits and detriments.
- **Chris Murphy** said he's not comfortable with the timing. He'd like to send the policy out to all Island engineering companies that deal with water quality for comment.

Linda Sibley withdrew her motion.

There was a discussion of getting feedback.

- **Christina Brown** suggested also sending the policy to town Boards of Health and Conservation Commissions for comment and consideration.
- **Kathy Newman** said the Commission could send it as an interim policy that has been adopted and could be revised.
- **Chris Murphy** said it's important that the Commission get it right.
- **Jim Powell** said he appreciates Chris Murphy's concern. The towns need to be involved with this process. He asked what would be the practical amount of time. Three or four weeks would be an opportunity to help educate people.
- **Doug Sederholm** said he's not opposed to wide circulation, but, in fairness to the people who worked on the policy, this is the product of an awful lot of hard work. If the Commission is going to have a review process, it should be finite and expeditious.
- **Mark Morris** asked whether the numbers were firm.
- **Mark London** said it's the best science available. If the Commission was to wait for many years, better data would be available; however, at this point is there enough data to work with.
- **Paul Strauss** agreed that this is the best science available and is something the Commission could deal with right now
- **John Breckenridge** said it needs to be repeated that the policy is providing guidelines in an interim; it is not being done in black and white fashion. The policy is trying to capture the science as it exists. To forego the opportunity to give applicants guidance would be too bad.

John Breckenridge moved, and it was duly seconded, that the Commission adopt the Interim Water Quality Policy with the understanding that it is evolving. Mimi Davisson added, and it was duly seconded, that the Commission also embark on a parallel review process with Conservation Commissions, Boards of Health, and engineering companies with the goal of receiving their feedback.

- **Mimi Davisson** suggested asking for comments by the end of February, with revisions by March.
- **Jim Athearn** said the Commission doesn't need to adopt it as the interim policy; it is the interim policy. He suggested adopting at the next meeting.
- **Linda Sibley** said it's not productive to ship it out to relevant boards without more information. The information needs to be presented. The policy may look like something radical and new when in fact, DRI projects have been held to similar standards. The Commission is just trying to make the science a step better and write it down as guidance. For many years, Bill Wilcox has been telling the Commission about nitrogen loading. It is critical that the Commission make it clear that they've been using nitrogen-loading limits for years and it is attempting to make the guidelines clearer and more up to date.
- **Susan Shea** said it is a living document, which will change as the numbers come in.
- **Doug Sederholm** said it probably would be revised significantly over the next five years.
- **Bill Wilcox** said, as the watershed areas change, numbers would change.
- **Ned Orleans** commented that all the policies are works in progress. This isn't a fixed policy or an interim policy. The Commission should be ready to revise the policy when new information becomes available.
- **Mimi Davisson** said it's clear it's an interim policy. She asked whether the distribution and presentation could be left to staff.
- **Paul Strauss** said there is a quarterly session of the All-Island Conservation Commission and suggested using the quarterly meetings of Island committees for presentations.
- **Christina Brown** said it should be called an interim policy because data from the Mass Estuaries Project will be coming in. Commissioners could go to their conservation commissions and Boards of Health to present the policy.
- **Jim Athearn** asked whether it is further implied that Commissioners will talk about the policy again.
- **Bill Wilcox** would like more conversation about the water quality goals and the way numbers are distributed throughout the watershed. He would like feedback from Commissioners.
- **Jim Athearn** said conversation about the policy could take place at another time.
- **Doug Sederholm** suggested putting it on the agenda for April or May.
- **Mark London** suggested that the committee of Commissioners who worked on the policy could be present when it's presented.
- **Linda Sibley** suggested that the cover letter could mention the Mass Estuaries Project data is imminent and more detailed information will become available on the various ponds.

Commissioners voted on the motion to approve the Interim Water Quality Policy and to distribute it to Island agencies for comment by this spring. A voice vote was taken. In favor: 15. Opposed: None. Abstentions: None. The motion passed.

3. MINUTES

3.1 January 19, 2006

Christina Brown moved, and it was duly seconded, to accept the minutes of January 19, 2006, as read.

The heading was changed to from 2005 to 2006.

A voice vote was taken. In favor: 10. Opposed: 0. Abstentions: 5. The motion passed.

3.2 February 26, 2006

John Breckenridge moved, and it was duly seconded, to accept the minutes of February 26, 2006, as read. A voice vote was taken. In favor: 9. Opposed: 0. Abstentions: 6. The motion passed.

3.3 September 21, 2006

Mimi Davisson moved, and it was duly seconded, to accept the minutes of September 21, 2006, with the following changes:

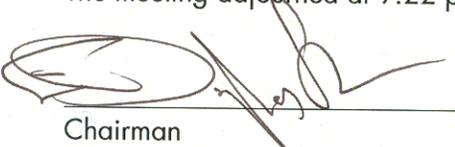
Page 3, line 124 . . . the owner's agent said

A voice vote was taken. In favor: 10. Opposed: 0. Abstentions: 5. The motion passed.

3.4 November 16, 2006

Jim Powell moved, and it was duly seconded, to approve the minutes of November 16, 2006, as written. A voice vote was taken. In favor: 12. Opposed: 0. Abstentions: 3. The motion passed.

The meeting adjourned at 9:22 p.m.


Chairman

3-8-07
Date


Clerk-Treasurer

3-8-07
Date