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Minutes of the Commission Meeting Held on February 21, 2008 In the Stone Building 33 New York Avenue, Oak Bluffs, MA

IN ATTENDANCE

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

P James Athearn (E – Edgartown)	- 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)	- Paul Strauss (County Comm. Rep.)
- 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), Paul Foley (DRI Analyst/Planner)

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

1. EXECUTIVE DIRECTOR'S REPORT

Mark London announced the Annual Citizen Trainers Conference on Saturday, March 15th. People interested in attending should contact Bill Veno.

2. LEGISLATION TO ESTABLISH A PERMISSIVE TRUST FUND FOR RETIREMENT LIABILITY

Commissioners present: J. Athearn, J. Breckenridge, C. Brown, P. Cabana, M. Davisson, C. Murphy, K. Newman, J. Powell, D. Sederholm, S. Shea, L. Sibley, R. Toole

Jeff Wooden explained that the Commission has paid for retirees health benefits on a pay-as-you-go basis. GASB has developed new legislation that the liability should be accrued and accounted for on the balance sheet.

- Members of Dukes County Retirement have been asked to co-sponsor a bill creating a trust into which members could pay their liability.
- Paying liability into a joint trust could allow a higher rate of return on the money held for liability.

- Co-sponsoring legislation doesn't require that the Commission pay into the trust. The legislation would only be to establish a permissive trust for a post retirement health care benefit liability.
- There is no downside to co-sponsoring the legislation.
- The legislation would be filed before July 1, 2008.
- The next step would be to talk to Dick Dion, the Commission's CPA. The Commission's current liability is about \$103,000.

There was a discussion of health insurance payments.

- **Jim Athearn** asked about the Commission's health benefit contribution rate of 90% which is greater than most towns' contribution rate. He asked whether any movement has been made toward bringing the contribution rate in line with the towns'.
- **Jim Wooden** said if the health benefit were lowered, salaries would have to be increased, so there would be no cost saving.
- **Mark London** said they had looked into hiring new employees at a lower contribution rate, but found it isn't possible to have employees with different health care benefit rates. However, there may be some movement at the state level to allow different rates. He's unsure whether retiree benefit rates could be lowered if employee benefit rates were lowered.

Chris Murphy moved, and it was duly seconded, to co-sponsor legislation to establish a permissive trust fund for the post-retirement health care liability which will be open to all units in the retirement systems. In favor: 12. Opposed: 0. Abstentions: 0. The motion passed.

3. CORNERSTONE: DRI 566M – DELIBERATION & DECISION

Commissioners present: J. Athearn, J. Breckenridge, C. Brown, P. Cabana, M. Davisson, C. Murphy, K. Newman, J. Powell, D. Sederholm, S. Shea, L. Sibley, R. Toole

For the applicant: Michael Rickard, owner; Geoghan Coogan, attorney

Richard Toole gave the LUPC report.

- LUPC discussed the driveway and curbcuts. Chris Murphy, who had had concerns with the driveway configuration, concurred with the testimony that there really isn't a better way to do the driveway.
- LUPC voted to recommend to the Commission to accept the proposal with offers.

Chris Murphy reminded Commissioners that there was an offer to upgrade the planting along the entrances to both lots over a period of three years. Mark O'Donald of MV Electric supported the offer. 3.1a should read that the applicant agrees to landscape the frontage on both lots over the next three years.

Commissioners discussed the benefits & detriments of the project.

- The septic plan is outside of the Tashmo watershed as it is understood to be today.
- The project is appropriately sited as in-fill in a commercial area.
- The fact that it adds a curb cut could be a possible detriment.
- A possible plus could be that the applicant has agreed to add landscaping.

- The significant upgrade and improvements will raise the standard for the area. The applicant has testified that it's in their vested interest to make the site attractive.
- Providing an apartment for employees is a benefit.
- That the project is consistent with regional town planning objectives is a plus. A local business is putting down even firmer roots and hiring local people.
- The project conforms to local zoning.

Richard Toole moved, and it was duly seconded to approve the project with conditions.

Chris Murphy, responding to Mimi Davisson's question about LUPC's conclusion that a single curb cut was not feasible, said that the only way the applicant could conceive of the entry working for trucks and parking is this plan. Every other plan covered too much space with parking so LUPC reluctantly agreed that this was the best use of the land.

John Breckenridge reminded Commissioners that during a Morgan Woods discussion, it was agreed that future decisions from the Commission would include a clause whereby the Commission would issue a certificate of compliance to the Town confirming that applicable conditions had been met. If that was the Commission's intent, it should include that clause with this project.

Commissioners discussed the intent and agreed that for this project staff will ensure that the applicant is complying with conditions 1, 3.1, and 3.3, to confirm that the project has been built as presented.

John Breckenridge moved, and it was duly seconded, to include the condition that the Commission shall issue a certificate of compliance to the Town confirming that applicable conditions have been met.

- **Kathy Newman** wondered if the language should be a pro forma attachment rather than a specific condition of this project.
- **Mark London** it is possible and appropriate to include as a condition that a certificate of compliance needs to be issued before the Town can issue an occupancy permit. Staff has some time before the building is built to figure out the precise procedure.
- **Paul Foley** suggested that the wording refer to the specific conditions that are to be met prior to occupancy.
- **Christina Brown** reminded the applicant that if the project is not built within two years, the approval lapses.
- **Christina Brown** would like to add under Section 3.1 that the plant species will be primarily local and indigenous. Commissioners agreed that the applicants had said plant species would be local and the wording can be added to their offer.
- **Jim Athearn** reminded applicants that they agreed to transplant the beech trees. They should specify in the landscape plan that they agreed, if a transplanted tree dies, to replace it with another tree.

A voice vote was taken on the motion to include a condition requiring a certificate of compliance. In favor: 10. Opposed: 0. Abstentions: 2. The motion passed.

A roll call vote was taken on the motion to approve the proposal, with offers and conditions. In favor: J. Athearn, J. Breckenridge, C. Brown, P. Cabana, C. Murphy, J. Powell, D. Sederholm, L. Sibley, R. Toole. Opposed: None. Abstentions: M. Davisson, K. Newman, S. Shea. The motion passed.

The applicant asked whether the Commission would want to be informed of changes to the plan approved by the building inspector. Commissioners confirmed that the applicant should inform staff of changes made to the plan as submitted.

4. REVISED DRI CHECKLIST – PUBLIC HEARING

Commissioners present: J. Athearn, J. Breckenridge, C. Brown, P. Cabana, M. Davisson, C. Murphy, K. Newman, J. Powell, D. Sederholm, S. Shea, L. Sibley, R. Toole

Doug Sederholm read the public hearing notice. The purpose of the hearing is to hear public comments on the proposed revisions to the DRI Checklist. Any subsequent revisions would be sent to town boards for input, after which the Commission would vote on the final draft of revisions. He reminded Commissioners that any Commission-approved changes have to be approved by the Secretary of Energy and Environmental Affairs.

4.1. Staff Report

Paul Foley reported on the revisions.

- Five previously mandatory referrals have been changed to discretionary reviews.
- Eleven new definitions have been added. Commissioners may want to review the definition of demolition.
- Some triggers have new numbers.
- Attachments A & B, the high-traffic-generating checklist and the factors to determine a discretionary referral, have been switched and re-written.
- The biggest change is to 3.102B, that if a project has been denied or approved but not built or withdrawn, its DRI status lapses.
- A list of revisions includes:
 - 3.102B: dropped
 - 3.104B: added . . . *topographical alteration of land*
 - 3.104C: added . . . *topographical alteration of land*
 - 3.201: changed to a concurrence review
 - 3.202: moved in Subdivision of Land section
 - 3.203: changed from . . . *eight years* . . . to . . . *since January 1, 1974*
 - 3.204: changed from . . . *division of 15 acres or more in eight years* . . . to . . . *division of 10 acres or more since 1974*. Glenn Prevost suggested that the change should read . . . *division of 10 to 29.9 acres*
 - 3.301A: *Commercial* has been added
 - 3.301B: added mixed use square footage clarification
 - 3.301C : now a concurrence
 - 3.301F: added . . . *of part or all of the building* . . .
 - 3.301J: revision of very high traffic generating businesses list. based on number of trips

- 3.302: subheading to be added :
- 3.302A: added . . . *junkyard* . . . The intention is a vehicular junkyard.
- 3.302F: now a concurrence review
- 3.401: added . . . *ten or more dwelling units including guesthouses* . . . Units is defined.
- 3.501: added subheading clarification . . . *any development in the water, such as new mooring basins, fill, construction of piers, armoring of coasts, and dredging* . . .
- 3.501C added . . . *the ocean within three miles of shore* . . .
- 3.502A: Commercial piers is a concurrence review
- 3.601: separated into two sections.
 - private facilities: added . . . *social and religious* . . . and . . . *accommodate more than 50 individuals as defined by the Mass State Building Code* . . .
 - public facilities of 2,000 sq. feet or more.
- 3.802 is a new item for concurrence review for wind towers.
- Commissioners and Paul Foley clarified the concurrence review for wind towers. A wind turbine under 200 feet in height in a town that's adopted a Wind Turbine Power Plan approved by the Commission is not subject to Commission review. A turbine over 200 feet in the same town is subject to concurrence review.

4.2 Public Comment

Paul Foley reported on comments received so far.

- Glen Provost suggested changing the wording to . . . *10 to 29.9 acres*.
- West Tisbury ZBA expressed concern with windtowers over 100 feet in areas without a wind turbine plan. They don't have a plan and they thought this would add unnecessarily to the approval process.
- Edgartown Planning Board proposed language . . . *construction of a way or road exceeding the width of 12 feet within the Special Way District with the concurrence of the Martha's Vineyard Commission*.

There was a discussion of the proposal to review wind towers (Section 3.802).

- **Gary Harcourt** asked about the intent. The heights don't make sense because most sites will require towers of 105 feet plus a blade. He asked whether the intent is that every wind turbine should come before the Commission. He recommends no height limit because he doesn't want heights limited by the possibility of review. Either all should be reviewed or none.
- **Linda Sibley** said an intent of the concurrence review is to be sure that a wind tower doesn't have a significant negative impact on the public view.
- **Kate Warner** said she believes the concurrence review based on height and town plans is not the right way to approach wind tower regulation. The taller the tower the better the resource. The Commission as a regional planning agency should go to the towns and say let's map where the views are that should be preserved.
- **Kathy Newman** asked about wind towers that might not be in recommended areas.

- **Kate Warner** recommended approaching regulation like Samsø Island by identifying the views to be preserved. She recommends getting the mapping done so towns and wind turbine proponents can proceed more efficiently.
- **Linda Sibley** said the purpose of concurrence review is so that nothing awful happens before the towns do their mapping. There has to be some possibility of review and a concurrence review can take two weeks.
- **Kate Warner** said each town is reviewing each wind turbine and turbines are not in the domain of the Commission's review.
- **Mimi Davisson** asked for clarification on whether the wind turbine height includes the blade. She asked for the height of the golf nets for a frame of reference; they were about 120 feet.
- **Susan Shea** asked if the mapping has been done in Aquinnah.
- **Kathy Newman** believes the town hasn't been mapped, but some mapping was done by the state for a large wind tower.
- **Kathy Newman** received clarification that applicants only have to pay for a review if the Commission concurs with the referral as a DRI.
- **Mark London** clarified that most towns have regulations on wind turbines, but not a plan and mapping.
- **Peter Cabana** said he doesn't think the Commission should get into the business of deciding on wind towers in terms of height. Commissioners should be talking about power generation. The lower edge of the blade has to go 30 feet to 50 feet above the highest tree. Town regulations and the DRI checklist don't make sense in terms of wind power. Towers should be looked at for their rated capacity.
- **Doug Sederholm** suggested that Commissioners should be balancing energy needs and those things that the Commission is mandated to protect like view sheds.
- **Peter Cabana** suggested protections should be covered by town regulations and mapping.
- **Gary Harcourt** said he feels that the concurrence review is random and doesn't take into account knowledge of wind turbines, which includes understanding the relationship of height, size, blade, and power generation. He suggested that the Commission look at well-written regulations in California and Wisconsin.
- **Linda Sibley** said that because this would not fit neatly into the Commission's cost calculation of DRI review which is based on square footage, the opportunity exists to make sure the cost would not be burdensome. Review needs to focus on the fact that the Commission's concern is siting.
- **Doug Sederholm** added that the Commission has to balance the interests of renewable energy generation with the interests it needs to protect and promote, including viewsheds that are certainly very fragile.
- **Kate Warner** said if it took a year to map the wind resource, viewsheds and grid and connection, there might be a half dozen new turbines. The Commission has some time to take a leadership role. The Island has a valuable resource and a unique resource. Mapping would be a great project for the Commission.
- **Richard Toole** asked for clarification that no height limit is acceptable.

Benjamin Hall said he's attended LUPC meetings to help refine the DRI checklist.

- He would have loved if the Commission could provide a redline copy. Staff will try to put together a quasi redline copy.
- He feels that this is the most profound increase in regulation that the Commission has ever attempted. He is concerned about characterization of this revision as a tweaking or clarification, in conjunction with repeated discussion that any major re-visioning would take place after the Island Plan was completed. Given the scope of the proposed changes, he hopes that the Commission will refrain from some of the proposed changes until the Island Plan is done.
- He listed his questions:
 - Has each and every change has had an impact study?
 - Are the new proposals are clear?
 - Can the new regulations can be enforced?
 - Have related existing town regulations already been examined?
- With the proposed revisions, the Commission may be getting a slew of concurrence reviews.
- He commented on increase in intensity of use. He said it's always been difficult to enforce and difficult for people to grapple with. It needs to be looked at.
- He doesn't know the difference between a parking lot and a commercial parking lot.
- There are statutory definitions of junkyards and he urged the Commission to reference the statute.
- He urged the Commission to change *local agency* to *municipal land regulatory agency* in 3.104B
- He wondered if any local agency has any jurisdiction over designating wildlife habitat.

There was a discussion of the section dealing with agriculture.

- **Ben Hall** wondered about the definition of wood as a crop. It's not clear from the definition of farmland that it excludes wood as crop. Excluding wood as a crop will prevent imposing additional regulations on 5 or more acre lots that have been cleared for wood since 1974, even if the lot hadn't been farmed.
- **Chris Murphy** said one of the Commission's roles is to protect the Island's agricultural heritage and flagging development helps protect the agricultural uses.
- **Ben Hall** suggested that possibly thousands of acres of lands could be coming for mandatory review.
- **Jim Athearn** spoke to the interpretation of wood as a crop. The definition of farmland in section 2.20 could be changed to exclude fire wood.
- **Mark London** mentioned that the date of January 1, 1974 might be revised based on availability of information which is currently through 1971. There are not very many cases of land that was being farmed in 1971 that is not being farmed today.
- **Linda Sibley** said the purpose of choosing 1974 was that we weren't going to reach back beyond the inception of the Commission but eight years wasn't long enough.

Ben Hall continued his list of concerns.

- He expressed concern about 3.204, division of ten acres from an earlier division. He commented that it seems that the Commission is overreaching and is trying to review every

subdivision, even if it doesn't have a regional impact. He suggested that the 3.204 be a concurrence review and he recommended revisiting performance criteria that have been mentioned.

- 3.401C and 3.401D should be a concurrence review. He would ask that *premises* be changed to *unit*.

Eric Peters commented on the proposed revisions.

- He is in favor of the change to the once a DRI always a DRI rule, adding the concurrence reviews and likes the definitions.
- He wondered about the addition of clearing and topographical alterations to archaeological and natural habitat sections. There are other regulations governing archaeological resources. If I want to clear anything, unless I need to go to the conservation commission, there's no requirement for a permit or review. If a person doesn't need a permit, how would the project get in front of the Commission?
- 3.2 needs to be parsed through for consistent phraseology, particularly in relation to division of land and subdivision.
- He questioned the change of the date for subdivision review in 3.204. The state zoning act gives eight years for protection. **Linda Sibley** said that eight years allowed for incremental development which the Commission did not want to encourage; the idea is to encourage planning. **Eric Peters** said he doesn't see how the change addresses incremental development and there a lot of things that could be before the Commission that might not be necessary; over thirty years, people's needs change.
- He wondered about 3.401 Guest Houses and whether this would apply to straightforward subdivisions or residential facilities and buildings. **Christina Brown** said traditionally it's been interpreted as either.

Doug Sederholm thanked Ben Hall and Eric Peters for their review and comments. They both made some very good points. Commissioners have some issues to review and consider.

There was a discussion of polyhouses.

- **Jim Athearn** asked to make a comment as a citizen. He wondered about the definition of agriculture and commercial. A nursery is defined as agricultural but wondered what is considered commercial. A polyhouse is used to raised plants. A polyhouse can be used as a hen house. Does that make it agricultural or commercial?
- **Linda Sibley** said the polyhouse regulations were intended to cover agricultural polyhouses that were intended for commercial use, not for personal use. A 6,000 sq. ft. polyhouse was not intended to be exempt if it was agriculture.
- **Christina Brown** clarified that the Commission does not exempt agriculture from review where zoning may exempt it. The intention is that agricultural uses which have a regional impact are subject to review.
- The Commission needs to clarify that agriculture is not exempt from Commission review.

Ben Hall suggested that the Commission clarify how things are measured so the building inspectors are consistent and clear in their understanding.

There was a discussion of the scope of the changes.

- **Chris Murphy** responded to Ben Hall's comments about revising the checklist before finishing the Island Plan. Commissioners agreed to do housekeeping changes and do the big changes, if needed, after the Island Plan I completed. The proposed revisions are an attempt to deal with problems and issues that people have had.
- **Ben Hall** said he hopes the Commission will take into consideration that some of the revisions imply a greater number of referrals.
- **Linda Sibley** responded that a greater number of referrals is not the intention and language refinements need to be made.
- **Doug Sederholm** added that even though the Commission weren't intending to make big changes, it's tough work because all of the possible impacts have to be considered.

Linda Sibley suggested changes and clarifications to the DRI checklist.

- Any proposal for more than one turbine on a single property would be a DRI.
- In a town which has not adopted a wind turbine and tower plan with site review provisions approved by the Commission, any wind turbine visible from a public way or public water body would be subject to review.
- Demolition definition needs to be clarified.
- *With concurrence* could be added, particularly to the subdivision of ten acres or less.

Doug Sederholm closed the public hearing. The revisions will be further discussed at LUPC and they'll make a decision on how to proceed. The written record will remain open until Friday, March 7th at 5:00 p.m.

5. DRI ENERGY AND ENVIRONMENTAL BUILDING POLICY REVIEW

Commissioners present: J. Athearn, J. Breckenridge, C. Brown, P. Cabana, M. Davisson, C. Murphy, K. Newman, J. Powell, D. Sederholm, S. Shea, L. Sibley, R. Toole

Doug Sederholm clarified that this is a discussion of a draft on which a public hearing will be held.

Peter Cabana, chair of the subcommittee made up of Kate Warner, Susan Shea, Paul Strauss, Richard Toole and Kathy Newman, commented on the draft policy.

- The committee had recommended in July that EnergyStar be the standard of the policy. He subsequently submitted that LEED should be standard for certification.
- Cape Light Compact suggested that the increased cost for LEED certification is a gain in energy savings.
- The current proposal is a revision of what was originally submitted and presents three levels of certification.
- The supply side of energy generation is not dealt with in this policy. Demand is the focus under the premise that fossil fuel consumption should be reduced and renewable energy should be promoted.
- John Abrams has reviewed the policy.
- He feels the policy has had review by technical expertise and it is a sound policy that should be adopted.
- At a future time he would like to talk about the production of energy.

Mark London explained the formulation of the policy.

- The committee questioned whether the policy should be limited solely to energy conservation, which EnergyStar addresses, or whether it should be expanded to include environmental building which LEED addresses.
- This second draft of the policy addresses both energy conservation and environmental building.
- The committee felt that EnergyStar would be an administrative burden on a very small building because of the need for third-party certification.
- On larger projects like the hospital or the YMCA, LEED would be appropriate, but requiring actual LEED certification raised concerns because it requires payment to a third party for the certification. So the proposal is to ask that proposals demonstrate *compliance with LEED requirements*, without requiring the actual \$10,000 certification. This is a similar approach to the City of Boston, which requires LEED compliance for buildings larger than 50,000 sq. ft. Here it is proposed at 6,000 sq. ft.
- The committee suggested that, for smaller projects, the applicant address the environmental building concerns similar to those in LEED certification.

Peter Cabana said he believes that eventually the Commission will be able to ask for LEED certification of buildings as contractors on the Island become LEED certified.

- Ian Bowles from the Commonwealth gave a presentation on what the state is doing. A pending energy bill might require LEED certification on all affordable housing. The state understands additional upfront costs may be required, but energy efficiency helps make housing affordable.
- The Commission can join LEED as a non-profit for \$300. He recommends joining so staff can be trained.

Mark London added there is only one entity in Massachusetts that is trained and certified to do LEED certification, which is why it's so expensive.

Doug Sederholm suggested that the language should be that all projects will have to exceed the Mass building code energy efficiency requirement by at least 20%.

Christina Brown pointed out that the policy outlines guidelines and **Mimi Davisson** suggested identifying requirements versus recommendations, and clarifying the procedure if standards can't be met.

6. OTHER

6.1 Cape Wind Public Hearing

Jim Powell announced that there is a public hearing on March 12th at 5:00 p.m. at the high school on the Cape Wind Environmental Impact Study.

7. MINUTES

Commissioners present: J. Athearn, J. Breckenridge, C. Brown, P. Cabana, M. Davisson, C. Murphy, K. Newman, J. Powell, D. Sederholm, S. Shea, L. Sibley, R. Toole

7.1 April 5, 2007

Commissioners agreed to the following changes:

Line 75 delete

Linda Sibley moved, and it was duly seconded, to approve the minutes of April 5, 2007, with revisions. In favor: 10. Opposed: 0. Abstentions: 2. The motion passed.

7.2 December 17, 2007

Linda Sibley moved, and it was duly seconded, to approve the minutes of December 17, 2007, as written. In favor: 11. Opposed: 0. Abstentions: 1. The motion passed.

7.3 January 17, 2008

Commissioners agreed to the following changes.

Heading 2008

Line 175 2008

Susan Shea moved, and it was duly seconded, to approve the minutes of January 17, 2008, with revisions. In favor: 10. Opposed: 0. Abstentions: 2. The motion passed.

7.4 January 31, 2008

Commissioners agreed to the following changes.

Heading 2008

Line 189 Levick

Line 682-683 . . .that was a discussion of the merits . . . and is an important point to consider.

Jim Powell moved, and it was duly seconded, to approve the minutes of January 31, 2008, with revisions. In favor: 10. Opposed: 0. Abstentions: 2. The motion passed.

The meeting adjourned at 10:25 p.m.


Chairman

2/5/09
Date


Clerk-Treasurer

2/5/09
Date