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**Minutes of the Commission Meeting  
Held on April 4, 2013  
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)
P John Breckenridge (E-Oak Bluffs)	P W. Karl McLaurin (A-Governor)
P Christina Brown (E-Edgartown)	P Jim Miller (A-Aquinnah)
P Tim Carroll (A-Chilmark)	- Ned Orleans (A-Tisbury)
- Madeline Fisher (E-Edgartown)	P Camille Rose (E-Aquinnah)
P Josh Goldstein (E-Tisbury)	P Doug Sederholm (E-Chilmark)
P Erik Hammarlund (E-West Tisbury)	P Linda Sibley (E-West Tisbury)
P Fred Hancock (A-Oak Bluffs)	P Brian Smith (A-West Tisbury)
P Leonard Jason (A-Edgartown)	

Staff: Mark London (Executive Director), Bill Veno (Senior Planner), Paul Foley (DRI Planner), Jo-Ann Taylor (Coastal Planner, DCPC Coordinator)

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

**1. MINUTES**

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Commissioners Present: T. Barnes, J. Breckenridge, C. Brown, T. Carroll, J. Goldstein, E. Hammarlund, F. Hancock, L. Jason, J. Joyce, W. K. McLaurin, J. Miller, C. Rose, D. Sederholm, L. Sibley, B. Smith.

**James Joyce moved and it was duly seconded to approve the minutes of March 14, 2013 as written. In favor: 12. Opposed: 0. Abstentions: 3. The motion passed.**

**Erik Hammarlund moved and it was duly seconded to approve the minutes of March 21, 2013 as written. In favor: 10. Opposed: 0. Abstentions: 5. The motion passed.**

**2. OAK BLUFFS COASTAL DISTRICT DCPC REGULATIONS – PUBLIC HEARING**

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Commissioners Present: T. Barnes, J. Breckenridge, C. Brown, T. Carroll, J. Goldstein, E. Hammarlund, F. Hancock, L. Jason, J. Joyce, W. K. McLaurin, J. Miller, C. Rose, D. Sederholm, L. Sibley, B. Smith

*For the Applicant: Jo-Ann Taylor (Coastal Planner, DCPC Coordinator), John Bradford (Town of Oak Bluffs Planning Board)*

**Fred Hancock** presented an introduction about Districts of Critical Planning Concern (DCPC). DCPCs as another way to protect the characteristics of the Island. They allow towns to develop regulations in conformance with the goals and guidelines of the DCPC, which are adopted at town meetings and then enforced by the towns.

**Fred Hancock**, Public Hearing Officer opened the public hearing at 7:05 p.m. and read the public hearing notice. The purpose of the hearing is to hear testimony and receive evidence as to whether the Commission should determine that the proposed amendments to the regulations governing the Coastal District in the Town of Oak Bluffs confirm to the guidelines for the development specified in the Commission's designation of the Coastal District.

## **2.1 Staff Report**

**Jo-Ann Taylor** presented the following:

- The Coastal District is one of the original three Island-wide DCPCs designated by the Commission in 1975, along with the Island Road District and the Special Places District.
- There are two zones: the Shore Zone and the Inland Zone.
- The Shore Zone covers from the mean low water line to 100 feet inland of a beach, marsh or bluff.
- Permitted uses in the Shore Zone include recreation, conservation and agriculture. Specially permitted uses include minor additions to existing residential structures and certain minor non-residential structures.
- The Oak Bluffs Coastal District regulations were originally adopted with MVC approval in 1976.
- The Oak Bluffs Planning Board is asking to amend uses allowed by Special Permit in the Shore Zone, replacing the current Section 9.0.XIII.1.A., 6. (a.) (i.) with the following and adding 6.(a.) (v.);
  - “6. Uses Requiring Special Permit from the Board of Appeals
    - (a.) Within the Shore Zone, The Board of Appeals may grant a Special Permit for any of the Following:
      - (i.) Alterations to buildings and additions to existing residential structures, provided that such additions or alterations shall not result in additional sewage flow or sewage capacity if said building or structure is served by onsite sewage disposal facilities
      - ...
      - (v.) A structure partially located in the shore zone shall be considered as entirely in the shore zone.”
- The proposed amendment to add new Section 6.(a.) (v.) would clarify that all of a structure partially in the Shore Zone is subject to the regulation whether or not the entire structure is within the 100-foot boundary. The new proposal that the entire structure is subject to the regulation appears to be a clarification for administrative purposes, providing the Town and developers/homeowners with a clear statement of applicability.
- The Commission may find conformance for both amendments with confidence.

## **2.2 Town and Public Testimony**

There was a discussion about the 100 foot line defining the Shore Zone.

- **Leonard Jason** suggested that this amendment expands the geographic boundaries of the Shore Zone and expands the geographic boundaries.
- **Jo-Ann Taylor** noted that the current regulation is not working for the Town and the Commission wants it to work for the Town.
- **John Bradford**, Chairman of the Oak Bluffs Planning Board, said that the current regulation does not work when a part of the same structure is in the Inland Zone based on where the septic is located. If you allow something that is connected to the Inland Zone it could have an adverse effect on the Shore Zone. The regulations for the Inland Zone and the Shore Zone are different. There is a greater flow for septic in the Inland Zone. The Oak Bluffs Board of Appeals had discussions on what is in the Inland Zone versus the Shore Zone and the Town needs to protect the Shore Zone.
- **Kris Chvatal** is a member of the Oak Bluffs Planning Board and Chairman of the Zoning Board. Two to three years ago the Town had a case where the structure was half in and half out of the Shore Zone in a sensitive area. The Town of Oak Bluffs wanted the structure to be considered all in the Shore Zone and the applicant sued the Town.

**Leonard Jason** said if the septic is in the Inland Zone it doesn't really matter and thought the Town of Oak Bluffs would have something in their bylaws indicating the structure in the Shore Zone is a non-conforming structure. **Kris Chvatal** said that the bylaw says the structure is half in the Shore Zone and half in the Inland Zone.

**Camille Rose** asked if the Town is missing any opportunity to upgrade septic systems with this amendment.

**Chuck Sullivan**, an architect in Oak Bluffs, stated that he has worked with the Oak Bluffs Planning Board on revising the regulations. The most important part of the amendment is the first part which changes the plumbing facilities. In the case that Kris Chvatal referred to the applicant spent \$40,000 on a new septic system and they didn't add a bathroom. The Planning Board wanted clarification of the line in the Coastal District of what was in and what was out. The amendment clarifies the definition so everyone knows where they stand.

There was a discussion about sewage.

- **Tim Carroll** noted that the first change allows for more development if the structure is on a sewer system, whereas the second change allows for less development.
- **Chuck Sullivan** said a Special Permit would still be required from the Zoning Board and approval from the Wastewater Committee.
- **John Bradford** said that if there were a two bedroom house with an elderly occupant and they wanted to put a bathroom on the first floor to accommodate their needs, they would not be able to do that with the current regulations but with the revision it would be possible.
- **Erik Hammarlund** asked if there are any issues when there is a house in the Inland Zone but the septic is old and in the Shore Zone.
- **Chuck Sullivan** said if the septic is all in the Shore Zone it would limit expansion.

**Christina Brown** asked what the Town's experience is with people wanting to expand a house within the Shore Zone. **Kris Chvatal** said there has not been any to date but he could see that happen and if the house was on town sewer it is something that would need to be rectified. The Planning Board talked about the possibility of allowing a 10 or 20% increase and decided not to go down that path. **Chuck Sullivan** also noted that the Conservation Commission would look at the footprint.

**Fred Hancock** read the goals from the DCPC Goals and Guidelines which include preventing flood damage and to maintain water quality, prevent pollution and preserve and enhance character and views. He also noted that the Oak Bluffs Coastal DCPC map shows the exclusion area not included in the DCPC.

**James Joyce** asked if the Town of Oak Bluffs has any idea on how many homes are half way in the Shore Zone and half way out. **John Bradford** said they did not and it is a rare occurrence.

**Fred Hancock**, Public Hearing Officer closed the public hearing at 7:30 p.m.

### **3. OAK BLUFFS COASTAL DISTRICT DCPC REGULATIONS – DELIBERATION AND DECISION**

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*Commissioners Present:* T. Barnes, J. Breckenridge, C. Brown, T. Carroll, J. Goldstein, E. Hammarlund, F. Hancock, L. Jason, J. Joyce, W. K. McLaurin, J. Miller, C. Rose, D. Sederholm, L. Sibley, B. Smith

*For the Applicant:* Jo-Ann Taylor (Coastal Planner, DCPC Coordinator), John Bradford (Town of Oak Bluffs Planning Board)

**John Breckenridge moved and it was duly seconded to approve the changes as requested and they are in conformance with the Coastal District DCPC regulations. Roll call vote. In favor: J. Breckenridge, C. Brown, J. Goldstein, E. Hammarlund, F. Hancock, J. Joyce, W.K. McLaurin, J. Miller, D. Sederholm, L. Sibley, B. Smith. Opposed: T. Carroll, L. Jason, C. Rose. Abstentions: T. Barnes. The motion passed.**

*Trip Barnes recused himself from the meeting as he is the applicant for the Barnes Evelyn Way Expansion DRI-411-M.*

### **4. BARNES EVELYN WAY EXPANSION TISBURY (DRI-411-M) WRITTEN DECISION**

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*Commissioners Present:* J. Breckenridge, C. Brown, T. Carroll, J. Goldstein, E. Hammarlund, F. Hancock, L. Jason, J. Joyce, W. K. McLaurin, J. Miller, C. Rose, D. Sederholm, L. Sibley, B. Smith.

There was a discussion about the affordable housing mitigation.

- **Christina Brown** noted that under A4 regarding affordable housing, there had been some discussion as to why the MVC Affordable Housing Policy did not kick in on this project.
- **Linda Sibley** said the MVC had also discussed the fact that although this is a new building there are no additional employees.

- **Fred Hancock** said that the Commission also discussed that there would be no additional wastewater.
- **Christina Brown** said that there was no need to increase affordable housing since there was no increase in the number of employees and felt it should be mentioned in the written decision.
- **Mark London** suggested that the key point is that there will be no employees on this property, so this doesn't trigger the need to mitigate the need for affordable housing.
- **Doug Sederholm** said there are employees in order to operate the business. The key point is there are no additional employees.
- **Linda Sibley** noted that the employees are housed in the office building so if the applicant wanted to expand the office space there are employees there that might affect affordable housing. It is rare that employers house their employees free. This is a generous offer.

***Leonard Jason moved and it was duly seconded to revise the language to line 175 and strike the word "although" and add on line 176 after the word project "because there will be no additional employees".***

- **Bill Veno** noted that affordable housing for non-residential projects is based on square footage not the number of employees. The reason the Commission stated A4 as it was to address that issue, because by providing free housing, it mitigated the square footage.

***Leonard Jason withdrew his motion.***

- **Camille Rose** asked why this project is different from the Big Sky project since it was stated for that project that there were no new employees.
- **Leonard Jason** said that the MVC policies allow making alternative contributions and that was done here.

***Erik Hammarlund moved and it was duly seconded to strike lines 175 through 177.***

- **Fred Hancock** said that the Commission needs to have the reason why the applicant is not paying for the affordable housing contribution in the written decision.

***There was no change to A4 regarding Affordable Housing.***

There was a discussion about using the word substantially.

- **Erik Hammarlund** asked if there was a vote on using the language "substantially" on line 268, "Should the applicant substantially alter the use of the premises from the proposed uses,..."
- **Doug Sederholm** said it is standard language.
- **Christina Brown** questioned who judges what is substantially and asked whether the word should be removed, but noted that it was consistent with the heading of 5.5 "Substantial Alterations".
- **Mark London** said that removing the word substantially could be problematic, since theoretically, an applicant changing the window would be a change requiring approval.

***Linda Sibley moved and it was duly seconded to approve the written decision.***

- **Paul Foley** noted the word "West" will be removed on line 288, it is the Tisbury Town Clerk.

**Roll call vote. In favor: J. Breckenridge, C. Brown, E. Hammarlund, L. Jason, J. Joyce, J. Miller, D. Sederholm, L. Sibley, B. Smith, F. Hancock. Opposed: none. Abstentions: none. The motion passed.**

*Tripp Barnes rejoined the meeting as a Commissioner. Linda Sibley, John Breckenridge and Tim Carroll excused themselves from the meeting.*

## **5. VERIZON WIRELESS/CELL TOWER WEST TISBURY (DRI-640) DELIBERATION AND DECISION**

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Commissioners Present: T. Barnes, C. Brown, J. Goldstein, E. Hammarlund, F. Hancock, L. Jason, J. Joyce, W. K. McLaurin, J. Miller, C. Rose, D. Sederholm, B. Smith.

For the Applicant: Carl Gehring (Gehring and Associates LLC)

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

**Doug Sederholm** presented the following:

- At the post LUPC public hearing, the applicant clarified asking for a 66-foot stealth monopole tower that would accommodate Verizon's needs only.
- Verizon is also open to a 66-foot monopine that would allow placement for another carrier. It would be a flat-top monopine with a potential additional five feet of de minimus taper which would bring the total height to 71 feet.
- The request of the West Tisbury ZBA was discussed about leaving the decision of the type and height of the pole with the West Tisbury ZBA.
- The benefits and detriments were reviewed.
- LUPC unanimously recommended approval of the project with either of the two design options at the new location B, which is outside the Coastal Zone, and with the offers as clarified.

### **5.2 Commissioners' Discussion**

**Leonard Jason** asked what the reasoning was for not giving the West Tisbury ZBA the flexibility that they wanted. **Doug Sederholm** said that LUPC did give the West Tisbury ZBA the flexibility with the two options and with the monopine there would be two carriers. In addition, there could be a hat on the monopine to make it aesthetically pleasing.

There was a discussion about the height and design of the pole.

- **James Joyce** questioned the height of the pole and the crown and asked for clarification about the design.
- **Doug Sederholm** said with the monopine with the taper, there would be no antenna structure on the top five feet, only fake branches for a total of 71 feet in height. The applicant indicated that if they use the monopine and had external arrays there could be two carriers.
- **James Joyce** asked if there can be two carriers on a monopole at 66 feet.
- **Doug Sederholm** said that his understanding was that the 66-foot stealth tower would not accommodate two carriers.
- **Paul Foley** noted that the West Tisbury ZBA did not want to be limited with the number of co-locators.

- **Christina Brown** asked if it was possible to have two effective carriers on a 66 foot monopine.
- **Carl Gehring** confirmed there could be two carriers.
- **James Joyce** asked why it is not possible with the 66 foot monopole.
- **Carl Gehring** said that Verizon would need the entire pole with a monopole. Verizon needs the top two spots for themselves. Another carrier could potentially use the space below but was not sure that would be plausible for another carrier.
- **James Joyce** questioned why not have a monopole if it would work at 71 feet.
- **Paul Foley** noted that West Tisbury zoning says you cannot go above the height regulations.
- **Mark London** noted that the Commission cannot approve a proposal that does not conform to zoning. Verizon's surveyor certified that the height of the tree canopy is 51 feet and zoning allows for 15 feet above the canopy, which is 66 feet.

There was a discussion about general planning for cell towers.

- **Erik Hammarlund** said that he was disappointed with the planning that has gone on for cell towers. There will be more towers needed. Although he supports the need for towers, he is not in favor of the proposal as he feels it was badly planned by the Town of West Tisbury, who did not clearly spell out that there would have to be a tower someplace, either in Town Hall, the DAS system, or a freestanding tower such as this. Proactively we should not wait for a project to come before the MVC and there will be more projects of this type.
- **Brian Smith** noted that if there was poor planning, it was on the part of the community and it is not the applicant's fault that the community dropped the ball. There is an overall benefit of this project to the Island.
- **Doug Sederholm** disagrees with Erik Hammarlund. Each carrier has different needs and tower locations and they will build out at their own rate. Each tower has different technology. It is not the Commission's job to plan something that technical. It is impractical and inappropriate to deny this project to send a message to the Island and would be unfair to the applicant.
- **Christina Brown** noted that ten to fifteen years ago there was an effort to plan for cell towers, suggesting that the towns and citizens take a look at what will be needed. Perhaps the Commission should do that again as a technical and educational exercise, showing the options for towers.
- **Doug Sederholm** noted that Chilmark and Aquinnah did just that and they decided what they will do.

***Leonard Jason moved and it was duly seconded to approve the project at new location B with a 66 foot tall stealth monopole or a monopine with the potential of adding five feet of diameter taper and with the West Tisbury ZBA determining the color.***

- **Leonard Jason** asked why it is necessary to include offer numbers six and eight.
- **Doug Sederholm** said they may not be necessary but they are part of the offers.
- **Leonard Jason** said if number six and eight are not necessary why include them.
- **W. Karl McLaurin** said he would like to hear the votes of the representatives of West Tisbury.



- **Erik Hammarlund** said that he is an Island-wide Commissioner from West Tisbury.
- **Brian Smith** said as a the West Tisbury selectmen’s representative he is fully in support of the project.

**Roll call vote. In favor: T. Barnes, C. Brown, J. Goldstein, F. Hancock, L. Jason, J. Joyce, J. Miller, D. Sederholm, B. Smith. Opposed: E. Hammarlund. Abstentions: none. The motion passed.**

- **Erik Hammarlund** suggested a revision to the language saying that the extra height of the monopine for the taper is approved “to the degree permitted by town zoning.”
- **Fred Hancock** noted that the vote was already taken.

**Leonard Jason moved and it was duly seconded to rescind his motion so that the motion may be modified. Roll call vote. In favor: T. Barnes, C. Barnes, E. Hammarlund, L. Jason, J. Joyce, J. Miller, D. Sederholm, F. Hancock. Opposed: B. Smith. Abstentions: J. Goldstein. The motion passed.**

### **5.3 Benefits and Detriments**

The Commissioners discussed the benefits and detriments.

- There will be better cell phone coverage which makes the area safer.
- The revised plans have minimized and mitigated the impacts on the abutters.
- Provides for communication to emergency services and the possibility of a more timely response to emergency calls.
- Uninterrupted telecommunications are vital to the community.
- The project is not located in a DCPC.
- There are no noise implications.
- Allowing two carriers assists in meeting town goals.

### **5.4 Decision**

**Leonard Jason moved and it was duly seconded to approve the applicant’s offers, eliminating offer numbers six and eight, and approving the project on new location B with a 66 foot monopole or monopine with a de minimus taper if permitted by the zoning. Roll call vote. In favor: T. Barnes, C. Brown, J. Goldstein, F. Hancock, L. Jason, J. Joyce, D. Sederholm, B. Smith. Opposed: E. Hammarlund. Abstentions: none. The motion passed.**

## **6. COMCAST/NSTAR HYBRID UNDERSEAS CABLE – TISBURY (DRI-641) WRITTEN DECISION**

*Commissioners Present:* T. Barnes, C. Brown, J. Goldstein, E. Hammarlund, F. Hancock, L. Jason, J. Joyce, W. K. McLaurin, J. Miller, C. Rose, D. Sederholm, B. Smith.

*For the Applicant:* Alan Rugman

**Erik Hammarlund** noted that the word “feet” should be after “3,000 to 3,200” on line 102.

**Fred Hancock** noted that on line 119 the language should be “a cumulative 90 days” and not “one month”.

**Doug Sederholm** noted that line 162 needs to be completed “the project should ...”.



**Mark London** clarified the revisions to page 8 of the written decision and the renumbering of Section 6, Site Alteration, Landscaping, Restoration and Monitoring.

**Erik Hammarlund moved and it was duly seconded to make 6.2 part of the offers.**

**Erik Hammarlund** noted that in section 7.1, the EFS was to be approved by the Tisbury Conservation Commission and it needs to be added as a condition.

**Fred Hancock** also stated that not only should the Tisbury Conservation Commission be added, LUPC should also be added.

**Erik Hammarlund moved and it was duly seconded to approve the written decision as amended. Roll call vote. In favor: T. Barnes, C. Brown, J. Goldstein, E. Hammarlund, F. Hancock, J. Miller, D. Sederholm, Br. Smith. Opposed: L. Jason. Abstentions: none. The motion passed.**

## **7. PARTY STATUS DISCUSSION**

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*Commissioners Present: T. Barnes, C. Brown, J. Goldstein, E. Hammarlund, F. Hancock, L. Jason, J. Joyce, W. K. McLaurin, J. Miller, C. Rose, D. Sederholm, B. Smith.*

**Fred Hancock** noted that an aggrieved party has a right to appeal the MVC decision, but first it must be determined who is an aggrieved party.

**Doug Sederholm** presented the issue of party status.

- At the advice of the MVC's prior counsel, Eric Wodlinger, an interim policy was adopted for the Martha's Vineyard Hospital DRI. It is his understanding that the interim policy continued though it may not have been formalized. The statement related to the Hospital DRI said that the Commission will be revising its DRI regulations on who qualifies for party status and the interim policy was not a precedent for those revisions. He read the interim policy.
- Martin Tomassian requested party status, apparently because the Gallisons, who he is representing, understood that the interim policy was in effect.
- Doug Sederholm agrees with the MVC's current counsel that "the question of who has standing to appeal the Commission's decision must be decided by a judge". However, he does not think it is fair to pull the rug out from the Gallisons in this particular situation.
- He is suggesting that the Commission make a decision under the interim policy, though not necessarily suggesting that the MVC grant party status.

**Fred Hancock** asked if it is proper to make such a decision before the MVC deliberates. **Doug Sederholm** said that the statement said that a decision should be made before the close of the written record, so in this case, he thinks that it is appropriate that the decision be made before the MVC deliberates.

**Doug Sederholm moved and it was duly seconded to make a decision based on the interim policy.**

- **Christina Brown** asked Doug Sederholm what decision he thinks should be made on the Gallison's request and whether granting it would preclude anyone else.

- **Doug Sederholm** stated that the court would have to decide; however the only one who has asked for it is the Gallisons.
- **Christina Brown** asked if the MVC does not grant, does that preclude the Gallison's from appealing the MVC decision.
- **Doug Sederholm** said that the Gallisons could appeal but might not be given party status by the court.
- **James Joyce** asked if the MVC interim policy and guidelines are different.
- **Doug Sederholm** stated that the interim policy is saying this is what the MVC will do until a policy is adopted.
- **Mark London** noted that the interim policy was for the Hospital and it is not clear whether it was adopted for anything other than the Hospital project.
- **Erik Hammarlund** felt it is a bad idea for the MVC to make this call, but given the interim policy the Commission needs to take a vote.
- **Fred Hancock** noted that the motion on the floor is to decide if the MVC use the interim policy to determine whether or not to give the Gallisons party status.
- **Josh Goldstein** asked for clarification regarding the Hospital decision.
- **Doug Sederholm** said the hospital was a hot potato and there was a lot of interest in the project and it was needed to be determined if there were grounds to object in court.
- **James Joyce** suggested that the Commission should determine whether the interim policy was adopted.

**Voice vote. In favor: 8. Opposed: 4. Abstentions: 0. the motion passed.**

**Fred Hancock** noted that the MVC now needs to make a motion to grant the Gallisons party status.

**Doug Sederholm** noted that the draft interim policy states that the applicant must state why the requestor is substantially affected and if so, that it is to a greater degree than the general public.

**Erik Hammarlund moved and it was duly seconded to approve party status for the Gallisons as they requested.**

- **Christina Brown** felt that the Gallisons should have the right to appeal as direct abutters.

**Voice vote. In favor: 11. Opposed: 0. Abstentions: 1. The motion passed.**

**Doug Sederholm** suggested that it be put on the MVC agenda to address a future policy for party status.

## **8. OAK BLUFFS HARBOR FUEL FACILITY (DRI-621-M) DELIBERATION AND DECISION**

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*Commissioners Present:* T. Barnes, C. Brown, J. Goldstein, E. Hammarlund, F. Hancock, L. Jason, J. Joyce, W. K. McLaurin, J. Miller, C. Rose, D. Sederholm, B. Smith.

*For the Applicant:* Todd Alexander (Harbor Master), Mike Santoro (Oak Bluffs Board of Selectmen)

### **8.1 Land Use Planning Committee Report**

**Doug Sederholm** presented the following:

- The offers were reviewed at the LUPC meeting.
- It was voted unanimously to recommend to the full Commission to approve the proposal with the offers as submitted and clarified.
- A main consideration was offer 5.5.5 “tank refueling shall take place during morning hours after 7:00 a.m. and before 10:00 a.m. twice a week...”
- Benefits and detriments were discussed:
  - Fuel is not currently available and is needed.
  - It will be a new state-of-the-art facility with modern safeguards for spills and fumes.
  - It could be an asset to the Town and could add to the Town coffers.

## **8.2 Commissioners’ Questions**

**Christina Brown** said it could be an asset to the Town if their projections are right but thought that the Town making money should not be listed as a benefit. **Doug Sederholm** said it is an asset but not a benefit.

**Brian Smith** asked for clarification, is the MVC voting on a modification and if the Commission does not approve can the Town build the above ground tank that was previously approved. **Paul Foley** said the above ground tank approval is still in effect.

**James Joyce** noted that the offers state there is no gas from December 1 to May 1 and **Leonard Jason** asked what the scallopers do during that time frame. **Todd Alexander** said that there is not a need in the harbor then. He has been there twenty years and has had no requests during that time frame.

**Erik Hammarlund** noted that the offers say the hours of operation will be 7:00 a.m. to 8:00 p.m. every day in season and asked if that is correct. **Todd Alexander** confirmed that was accurate.

**Josh Goldstein** asked how the open hours are enforced. **Fred Hancock** said the MVC asks the Town to enforce that. **Brian Smith** noted that if someone said that the hours of operation are not being respected, the MVC would ask the applicant to come for a modification.

There was a discussion about the Town providing fuel.

- **Josh Goldstein** said that he has a hard time with a proposal for the Town to take over for a private business when others could provide it and that this would put another tank in the ground.
- **Fred Hancock** said there is a difference between could provide and will provide. That is why the Town is proceeding with this project. There did not seem to be a will from the other party to spend the money and provide the fuel.
- **Brian Smith** noted that whether or not this is a good concept will go before the Town Meeting.
- **Josh Goldstein** asked if the MVC decides if the addition of another fuel tank is a good idea.
- **Brian Smith** confirmed that is the decision of the MVC.
- **Camille Rose** noted that the Town made it clear that they are not prohibiting others from providing fuel.

### **8.3 Benefits and Detriments**

The Commissioners discussed the benefits and detriments.

#### **Benefits:**

- The proposal will meet all State safety codes and there will be the installation of water/oil separators in each catch basin.
- Night lighting and noise are not increased.
- The project offers support for boating activities.
- The character is in keeping with a working harbor.
- The project will cut down on the number of trucks coming into the harbor to refuel which will have less of an impact on abutters.
- Conforms to zoning and DCPC regulations.
- It is a Town proposal and Town Meeting will decide if it will achieve the Town plans.
- It is appropriate in view of the alternatives and the applicant feels it is essential to the harbor.

#### **Detriments:**

- There is always the possibility of a spill.
- With regards to scenic values you will see the dispensers.
- Abutters feel it is an impact to have a fueling station next door and in their front yard.
- Putting private businesses out of business could be a detriment.

### **8.4 Decision**

There was a discussion about reopening the other fueling station:

- **Erik Hammarlund** asked what happens if there is another working fueling station before this project is built, does this project go forward.
- **Tripp Barnes** noted that if that situation arose it would be pretty radical and perhaps competition is good and was surprised that the other party was not at the Commission meeting tonight to make his presence known.
- **James Miller** said that is what happened in 2009 and a private party came in, so the above ground tank was never built.
- **Doug Sederholm** noted that Mark Wallace said he had two years on his lease and he did not know if it was economically viable to move forward. If another private party wanted to build a station they would have to run a gauntlet of permitting that could put them way behind this project.

***Leonard Jason moved and it was duly seconded to approve the project with the offers as written.***

- **Leonard Jason** said that he has a problem with the hours of operation especially in the off season.
- **Todd Alexander** said the hours are based on need. Currently there is no demand during the timeframe that the offers state the station would not be providing fuel.
- **James Joyce** noted that the applicant would have to come back to the MVC if they wanted to change them.

**Roll call vote. In favor: B. Smith, D. Sederholm, C. Rose, J. Miller, L. Jason, E. Hammarlund, J. Goldstein, C. Brown, T. Barnes, F. Hancock. Opposed: none. Abstentions: none. The motion passed.**

*Fred Hancock, Chairman recessed the meeting at 9:15 p.m. and reconvened at 9:20 p.m.*

## **9. OAK BLUFFS HARBOR FUEL FACILITY (DRI-621-M) WRITTEN DECISION**

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Commissioners Present: T. Barnes, C. Brown, J. Goldstein, E. Hammarlund, F. Hancock, L. Jason, J. Joyce, W. K. McLaurin, J. Miller, C. Rose, D. Sederholm, B. Smith.

For the Applicant: Todd Alexander (Harbor Master), Mike Santoro (Oak Bluffs Board of Selectmen)

**Erik Hammarlund** asked for clarification that if this project is built, the applicant will not be able to put in the above-ground tank. **Brain Smith** said that this application modifies the previous decision.

**Doug Sederholm** asked if section A8 and A8.B should also include the Island Plan since it is consistent with that plan. **Mark London** confirmed that it should.

**Brian Smith** said that on line 158 strike the language "which is not currently being provided for adequately". **Fred Hancock** said it should not say currently being provided since that is the reason for the project. **Josh Goldstein** questioned the suggestion since diesel is currently being provided. **Erik Hammarlund** agrees with Brian Smith that the language should be removed.

**Doug Sederholm moved and it was duly seconded to remove the language as amended to line 158-159. Voice vote. In favor: 6. Opposed: 4. Abstentions: 0. The motion passed.**

**Doug Sederholm** suggested revising the language on line 177 and 178 to remove the wording after activities. It was perceived to be a guesstimate of revenue and it is not needed in the decision. **Christina Brown** objected to removing it since it has to do with the loss of revenue to the Town; the project not only provides a service it provides net income to the Town. **Josh Goldstein** said it is not necessarily a profit center but it is an amenity to Island guests.

**Doug Sederholm moved and it was duly seconded to revise the language on line 177 and 178 as amended. Voice vote. In favor: 9. Opposed: 1. Abstentions: 0. The motion passed.**

**Christina Brown** said the word unwritten should be removed from line 170.

**Fred Hancock** noted that the Island Plan is to be included in A8 and A8.B.

**Leonard Jason moved and it was duly seconded to approve the written decision as amended. Roll call vote. In favor: T. Barnes, C. Brown, J. Goldstein, E. Hammarlund, L. Jason, J. Miller, C. Rose, D. Sederholm, B. Smith, F. Hancock. Opposed: none. Abstentions: none. The motion passed.**

## **10. NEW BUSINESS**

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## 10. NEW BUSINESS

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Commissioners Present: T. Barnes, C. Brown, J. Goldstein, E. Hammarlund, F. Hancock, L. Jason, J. Joyce, W. K. McLaurin, J. Miller, C. Rose, D. Sederholm, B. Smith.

**Erik Hammarlund** noted that there is no Compliance Meeting next Tuesday April 9, 2013 and the next meeting will be scheduled as soon as possible.

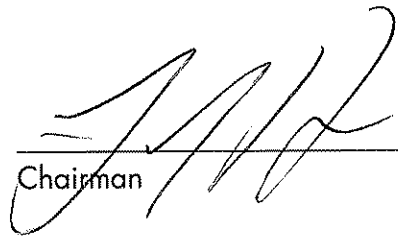
**Fred Hancock** noted that a meeting date needs to be scheduled to do the Verizon Written Decision. There was a discussion about the date.

**Christina Brown moved and it was duly seconded to move the regular meeting of the Commission, normally the third Thursday of the month, to the second Thursday in April, namely April 11, 2013. Voice vote. In favor; 10. Opposed: 0. Abstentions: 0. The motion passed.**

The meeting was adjourned at 9:45 p.m.

### DOCUMENTS REFERRED TO DURING THE MEETING

- Minutes of the Commission Meeting – Draft, Held on March 14, 2013
- Minutes of the Commission Meeting – Draft, Held on March 21, 2013
- Coastal District of Critical Planning Concern Shore Zone, Conformance of Proposed Amended Oak Bluffs Regulations, Staff Notes for Public Hearing and Vote April 4, 2013
- Decision of the Martha's Vineyard Commission, DRI 411-M – Barnes Evelyn Way Expansion – Draft
- Decision of the Martha's Vineyard Commission – Draft – DRI 641 – Comcast/NSTAR Undersea Cable
- MVC DRI-640 – Verizon Wireless Cell Tower Offers
- Martha's Vineyard Commission Land Use Planning Committee, Notes of the Meeting of March 25, 2013
- Letter to Mark London, Executive Director, Martha's Vineyard Commission – from Gareth Orsmond, Dated March 19, 2013, Re: Party Status in Public Hearings
- DRI 621-M Oak Bluffs Harbor Fuel Facility – Offers 2013-03-25 – Clarified at LUPC
- DRI 621-M Oak Bluffs Harbor Fuel Facility – Post Public Hearing Review, Dated March 25, 2013
- Decision of the Martha's Vineyard Commission – Draft – DRI 621-M Oak Bluffs Harbor Fuel Facility

  
Chairman

6-20-13  
Date

  
Clerk-Treasurer

6-20-13  
Date