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Minutes of the Commission Meeting Held on September 19, 2013 In the Stone Building 33 New York Avenue, Oak Bluffs, MA

IN ATTENDANCE

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

P Tripp Barnes (E-Tisbury)	- Joan Malkin (A-Chilmark)
P John Breckenridge (E-Oak Bluffs)	- W. Karl McLaurin (A-Governor)
P Christina Brown (E-Edgartown)	- K. Newman (A-Aquinnah)
P Madeline Fisher (E-Edgartown)	- Ned Orleans (A-Tisbury)
P Josh Goldstein (E-Tisbury)	- Camille Rose (E-Aquinnah)
P Erik Hammarlund (E-West Tisbury)	P Doug Sederholm (E-Chilmark)
P Fred Hancock (A-Oak Bluffs)	P Linda Sibley (E-West Tisbury)
P Leonard Jason (A-Edgartown)	- Brian Smith (A-West Tisbury)
P James Joyce (A-Edgartown)	

Staff: Mark London (Executive Director), Bill Veno (Senior Planner), Paul Foley (DRI Planner), Priscilla Leclerc (Transportation Planner), Sheri Caseau (Water Resource Planner)

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

1. NOVA VIDA ALLIANCE CHURCH, OAK BLUFFS (DRI-603-M3) – CONTINUED PUBLIC HEARING

Commissioners Present: T. Barnes, J. Breckenridge, C. Brown, M. Fisher, J. Goldstein, E. Hammarlund, F. Hancock, L. Jason, J. Joyce, D. Sederholm, L. Sibley.

Fred Hancock, Acting Public Hearing Officer, opened the Public Hearing at 7:00 p.m. without taking testimony and immediately continued the Public Hearing until October 17, 2013.

2. NSTAR POLES, EDGARTOWN, OAK BLUFF, TISBURY (DRI-642) – CONTINUED PUBLIC HEARING

Commissioners Present: T. Barnes, J. Breckenridge, C. Brown, M. Fisher, J. Goldstein, E. Hammarlund, F. Hancock, L. Jason, J. Joyce, D. Sederholm, L. Sibley.

For the Applicant: Jerome McDermott, Mark Baldwin, Karen Corriveau

Eric Hammarlund recused himself from the meeting.

2.1 Staff Report

Paul Foley presented the following:

- The packet of information includes a letter from the Town of Oak Bluffs Board of Selectmen, Staff draft of NSTAR Possible Offers of September 18, 2013, emails from Jerome McDermott to Mark London, and an email from Elizabeth Buddy regarding the use of herbicides.
- NSTAR has provided information on undergrounding for Edgartown. An estimated cost for undergrounding is approximately \$1.5 million per mile for the electric portion of the work only. In order for NSTAR to give a detailed cost estimate for any project, it has a number of technical requirements and asks to the town to give a down payment of 10% of the cost.

2.2 Applicant's Presentation

Jerry McDermott presented the following.

- NSTAR would like to restart using herbicides on vegetation.
 - The herbicides that NSTAR uses are highly regulated by the EPA.
 - There will be a crew of five to six men with back packs and nozzle sprayers to apply the herbicides on certain species.
 - NSTAR does not plan to mow as a means to prevent ruining good vegetation.
 - The Cape Cod delegation asked for an extension to comment which is usually 45 days, in order to review the herbicides.
 - NSTAR will bring senior arborists in to talk with the towns about what could happen next spring to control the vegetation.
 - The herbicide is carefully applied and can be delayed until next spring.
- NSTAR has talked with the Town of Tisbury and is working with them on what they feel was aggressive tree trimming. NSTAR will partner with each town and pitch in and pay for plantings for areas of concern, but is not prepared to commit to a specific monetary value in advance.
- NSTAR has received grants for application for the current project from the Tisbury Board of Selectmen.
- The work that NSTAR does is ongoing and it agrees in principle with an ongoing committee, made up of a representative from each town and perhaps be held at the MVC, to keep communication open on a variety of issues.

James Joyce said that everyone is concerned about herbicides and asked if NSTAR had been using them previously and if not, why start now. **Jerome McDermott** said that there was a self-imposed four year moratorium, and NSTAR did use herbicides prior to that. A study was done on drinking water and septic systems and what was found to be present was pharmaceuticals and not herbicides. NSTAR would be responsible for less than 1% herbicides that are used. The greatest use of herbicides is from homeowners and town governments. The unregulated use from homeowners is the largest use.

2.3 Testimony from Public Officials

Tristan Israel, Tisbury Board of Selectmen, said that his understanding was that the selectmen did not vote on anything regarding the Edgartown-Vineyard Haven Road until the MVC makes its decision. The Town of Tisbury is working with NSTAR and they have been great in working through the issues. Setting up a committee to look at landscaping and other issues is a good idea and it should be done sooner than later. It would go a long way to have plantings along the

corridor to alleviate the situation of the new poles. A procedure at the Commission or somewhere would be good; to have a regional discussion first before action is taken. Some voluntary process might be a good idea, to work with the towns and the MVC in the least disruptive fashion. NSTAR has told the Town of Tisbury and also hopes the MVC will encourage NSTAR to help get two strands of fiber optics. He knows there are constraints with NSTAR and Comcast, but whatever NSTAR can do would be great to help with this request to benefit the Town's emergency services. NSTAR is working with the towns and the MVC to get the discussion going on undergrounding. The electrical utility helped Nantucket to bury lines with the community bearing some of the expense.

2.4 Commissioners' Questions

Mark London suggested trying to separate out the immediate mitigation for this project versus other efforts to deal with issues brought up in this process but that are not related to this project. There seems to be a consensus about the proposal made by MVC staff that there be a committee made up with representatives of NSTAR, the towns, the county, and the MVC to deal with long-term issues. In addition, he asked whether there are any specific measures that could mitigate the project that is now in front of the Commission.

There was a discussion about the installation of the poles.

- **James Joyce** asked if it has been resolved whether NSTAR had the right to install the poles without coming to the MVC.
- **Fred Hancock** said NSTAR has said that they agreed that they needed local permissions for the mid-span poles.
- **Mark London** noted that there might be a difference opinion as to whether the replacement of the existing poles needed town permissions and was therefore subject to being reviewed by the MVC, but NSTAR agreed that this was the case for the 44 mid-span poles. The Oak Bluffs Board of Selectmen approved their mid-span poles, though apparently they subsequently said that they had not been thoroughly apprised of the scope of the project. NSTAR requested that the Town of Tisbury grant permissions for the mid-span poles and that is what triggered the referral to the MVC.
- **Jerome McDermott** noted that Tristan Israel had mentioned NSTAR assisting Nantucket in undergrounding; that was National Grid and not NSTAR. He said that there were legal questions about the MVC authority over the installation of the new poles.
- **Mark London** said the MVC voted that the project was a Development of Regional Impact.
- **Madeline Fisher** asked if all of the poles have been installed.
- **Jerome McDermott** said they are all in except for the next phase which is on their own right-of-way. Then the wires need to be connected.
- **Fred Hancock** noted that on the way Up Island he noticed, there appeared to be some poles to be installed on the Edgartown Road and asked if that is the case.
- **Mark Baldwin** said NSTAR has tried to pre-spot poles that need to be replaced.

Jerome McDermott said he has asked Comcast regarding the fiber optic strands and NSTAR cannot give, sell or lease the fibers given to NSTAR by Comcast. Obtaining the requested fiber optic strands may be something NSTAR cannot do.

Fred Hancock noted that since the subject regarding fiber optics was raised, perhaps in any future cable development it might be something that would come to the Vineyard as part of that development. The MVC would like NSTAR to think about this for the future since it is on the mind of the Island community.

Christina Brown asked with the new poles installed, does that provide an additional power supply and is there any concern about a sudden power surge. **Jerome McDermott** confirmed there is additional power in the area where the poles are installed. Additional power is not yet available on the Edgartown-West Tisbury Road and the right-of-way. When the wires are connected, it will be seamless and power surges should not be experienced. The submarine cable has to be installed and connected next year and its purpose is to prevent power failures.

Fred Hancock closed the public hearing with written testimony to be received by October 3, 2013.

Erik Hammarlund rejoined the meeting.

3. VINEYARD ASSEMBLY OF GOD (DRI-322-M2) MODIFICATION REVIEW

Commissioners Present: T. Barnes, J. Breckenridge, C. Brown, M. Fisher, J. Goldstein, E. Hammarlund, F. Hancock, L. Jason, J. Joyce, D. Sederholm, L. Sibley.

For the Applicant: Joseph Dokter (Pastor)

Fred Hancock noted that the applicant is seeking a modification for the DRI and tonight the MVC is deciding if the modification requires a public hearing.

3.1 Staff Report

Paul Foley presented the following;

- The packet of information includes: the Staff Report, a letter from the Town of Tisbury Board of Appeals, emails from Jon Cassel, Kristen Henshaw, Barbara Babcock, and letters from several abutters and Jonathan V. Snyder, an email from Benjamin S. Klein of D'Ambrosio Brown Counselors at Law, Town of Tisbury Board of Appeals Decision on Administrative Appeal Case #2144 and site plans.
- In 1990, the MVC approved the construction of an approximately 5,000 s.f. (including basement) religious facility with conditions. Some of the conditions were: some tree removal to improve sight lines at egress, revised lighting plan to LUPC, and improved vegetative screening.
- In 2006 the Commission approved a proposal to construct a 1,188 s.f. parsonage on the property as a minor modification not requiring a public hearing. The Commissioners decided not to concur based on the need for housing and a proposal to plant additional indigenous shrubs between State Road and the Church, to allow additional low-level lighting to improve safety at the entrance, and a promise to turn off church lights when the building is not in use. The Town issued a special permit for the parsonage which included conditions with regard to lighting, vegetative screening, limits on parking lot size, stormwater, and that no further building would be allowed.
- The proposal is to replace nine 3-foot bollard lights in the parking lot with six 12-foot tall lampposts. The ZBA also referred a new shed on the property. The shed was allowed by

the Building Inspector because it is allowed by right, but that was appealed by a neighbor because the 2007 Special Permit stipulated that there should be no further building.

- In 2013, the ZBA ruled that the expansion of the parking lot was not allowed, 8-10 red cedars that died had to be replaced, and the drainage had to be enforced. They referred the lighting and the shed to the MVC for DRI Modification Review.
- The church recently brush cut an area near the shed and the ZBA told them to stop cutting.
- There is a 50 foot buffer from the shed to Mrs. Babcock's property.
- A concern is that the cars block the existing bollard light. Lighting is needed at night Monday through Friday for bible study and other activities. The church does not turn on the back lights. The fence also blocks the lighting.
- The church did plant but some of the plantings did not survive and the ZBA said they need to re-plant.

There was a discussion about the church being in compliance.

- **Erik Hammarlund** asked if the church is currently in compliance and if not what are they not in compliance with for the current decision that has not been corrected.
- **Paul Foley** said the MVC did say the church could not brush cut but it was not for the area that was cut near the shed. Therefore, they are not in non-compliance. The church is in compliance with the MVC.
- **Mark London** added except for the shed if that is considered a development or a structure.
- **Paul Foley** said the shed is a structure but the zoning bylaws, due to the size of the shed and the location, said it did not require a permit.

Mark London noted that when the MVC approved the light standards ten years ago for the church, bollards were approved. In considering this issue here, there is a potential impact on other church properties on the Island where bollards were approved.

Paul Foley said LUPC voted three to two that the modification is significant enough to require a public hearing.

3.2 Applicant's Presentation

Joseph Dokter presented the following;

- In the past eighteen months the lights have not been turned on in the back where they are blocked by the fence. The lights were turned on regularly where they were not blocked.
- The issue the church has is that the current lighting is a hazardous level of lighting.
- The lights fall in a six foot diameter and it is very dark in the middle of the parking lot.
- He is concerned about safety, especially for children and young adults.
- He has looked at options for lighting and has found that LED lighting can be directed rather than flowing out into the neighbors.
- A shielded fixture with downward lighting has been selected by the church.
- LED is more expensive but will direct the lighting where it is intended to be.
- He asked an electrician about the current lighting and he agreed that it is not adequate.

3.3 Commissioners' Questions

James Joyce asked what hours and days would the lights be used. **Joseph Dokter** said the use would be weekly on Monday, Wednesday, Thursday, and Friday, twice a month on Tuesday

and no evenings on Saturday and Sunday. The times the events are held is from 6:30 p.m. to 9:30 p.m.

Doug Sederholm asked how the church ensures the lights are off. **Joseph Dokter** said the lights are on timers and are on from the start of the event until 10:00 p.m. each night that an event is held.

John Breckenridge asked if there is an example of this light fixture on the Island. **Joseph Dokter** said it is a new fixture and he was not able to locate any on the Island but he has the specification sheets for review.

Linda Sibley noted that this fixture is different from the MVC policy but from how it is described it might be a good idea. However, how does the MVC approve it without more consideration? She would like to do site visits where the MVC required bollards to find out if this same problem exists in these applications or is the church's issue a function of the way their bollards are located. Perhaps the MVC needs to go off Island to see if this suggested fixture works. Can this fixture be set up to spill light to the center of the parking lot but not outward?

Linda Sibley moved and it was duly seconded that the modification rises to the level requiring a public hearing. Voice vote. In favor: 8. Opposed: 3. Abstentions: 0. The motion passed.

Linda Sibley asked if staff could do some research on the suggested lights.

Trip Barnes asked the applicant if they would be willing to obtain one of the lights, install it, and the MVC could see how it works.

Erik Hammarlund said this modification is one time when a lighting engineer would be helpful. If light is above cars downward facing the light will reflect off of the cars.

Fred Hancock said a public hearing will be scheduled.

Joseph Dokter said he will look into obtaining a light for testing and will be in touch with Paul Foley to schedule it.

Joseph Dokter questioned if the shed would be dealt with separately or with the lighting. **Erik Hammarlund** said the church needs to seek retroactive approval for the shed. **Fred Hancock** said the shed would be a modification of the DRI that will be dealt with at the same public hearing as the lighting.

4. FERTILIZER REGULATIONS INITIATIVE

Commissioners Present: T. Barnes, J. Breckenridge, C. Brown, M. Fisher, J. Goldstein, E. Hammarlund, F. Hancock, L. Jason, J. Joyce, D. Sederholm, L. Sibley.

4.1 Fertilizer Regulations Presentation

Bill Venno presented the following;

- Last spring, the MVC was informed that the window of opportunity is closing for the towns to address lawn fertilizer, which contributes 5-15% of nitrogen loading in the ponds.

- It is a matter of time before the state and federal governments require action on water quality, and this is way for the Island to address excess nitrogen that doesn't involve infrastructure but a change in behavior.
- A few years ago Nantucket wanted to address this issue created regulations with their Board of Health. After Nantucket adopted its bylaw last year, the state legislature acted to prohibit towns from creating their own regulations. However, they created an exception for the Cape and Islands for local regulation adopted before the end of this year under the auspices of their Regional Planning Authorities' regulatory authority. This means having to adopt regulations through a District of Critical Planning Concern (DCPC).
- The town Board of Health outlined a process whereby the MVC would designate the DCPC and develop Best Management Practices and the Boards of Health would establish the regulations and how they would be enforced.
- A working group has been created to determine what the proper application levels are for lawn fertilizer for the Island.
- The premise is the Boards of Health would adopt the regulations by year end. The six Boards of Health have worked on unified regulations in the past for medical marijuana.
- A working group was set up with Board of Health members, landscapers, MVC Commissioners, a selectman, and members of the Conservation Commissions. Michael Loberg and Bill Veno are Co-Chairman. At the first meeting it was determined that retailers should also participate.
- A very aggressive schedule was established by the working group and there will be draft regulations and a joint hearing by the Boards of Health and the MVC by the beginning of November 2013.
- The Cape Cod Commission is also working on developing regulations.
- We are working on getting legal clarification about the process. We are looking at having them adopted by Board of Health this year and having them ratified at Town Meetings in the spring.
- A problem is that the state provided for the possibility of creating regulations if the state law is not good enough, but draft state law has not been published yet.

4.2 Commissioner's Questions

Linda Sibley raised the possibility of having the MVC adopt temporary regulations.

James Joyce asked if the regulations are for the entire Island or just property near wetlands.

Bill Veno said that is still to be determined.

James Joyce asked why there is not a concern about herbicides and pesticides. **Bill Veno** said this law is just for lawn fertilizer. **Doug Sederholm** added that fertilizer is not as regulated as herbicides and pesticides and it is not a poison.

Fred Hancock noted that the Commission members of the working group could then become the DCPC committee.

Erik Hammarlund asked how the regulation would be enforced. **Doug Sederholm** said the same way the Board of Health enforces other regulations.

Leonard Jason asked who put the working group together. **Doug Sederholm** said it was the instigation of the Town Boards of Health.

Trip Barnes noted there was not a farmer on the committee. **Bill Venio** said the state law does not deal with agriculture.

John Breckenridge said that phase one should be thought of as an outreach and education process. This would be a living document that may change over time. The MVC and the working group can influence the usage of lawn fertilizer.

Mark London said there are many states and other places that have done this. Michael Loberg said the strongest part of this process is setting a community standard. He noted that Tristan Israel said the Island is different than other locales in that the Island has a much higher percentage of landscapes maintained by professional landscapers.

Leonard Jason asked if the law is a way to force the Island to have sewers. **Mark London** that DEP is working with communities to meet the requirements of the federal Clean Water Act. They have never said what they would do if communities don't comply. Bill Wilcox did an estimate a few years ago indicating it could end up costing \$300-\$400 million to install the wastewater treatment needed meet the Clean Water Act. If fertilizer regulations can reduce nitrogen levels by, say, 5% at no cost, that could save the Island \$15 to \$20 million dollars.

Christina Brown said there is some good news, new regulations are being adopted for on-site septic systems which look at the number of bedrooms for new building, going go beyond Title 5 to reduce nitrogen significantly in Sengekontacket Pond.

Linda Sibley noted that the Island is looking at the percentage of nitrogen from fertilizer and she can see retailers handing out information on the regulations to increase public awareness.

Sheri Caseau said the House Bill is aimed at phosphorus but this is the chance for Island towns to address the nitrogen issue for the Island. **Fred Hancock** added, that is why the Island wants to write our own regulation to control the nitrogen.

5. BAYSIDE/HOULAHAN (DRI-450-M) WRITTEN DECISION

Commissioners Present: T. Barnes, J. Breckenridge, C. Brown, M. Fisher, J. Goldstein, E. Hammarlund, F. Hancock, L. Jason, J. Joyce, D. Sederholm, L. Sibley.

Fred Hancock said this decision is being postponed at the request of the applicant.

6. VINEYARD HOUSE (DRI-582-M) EXTENSION

Commissioners Present: T. Barnes, J. Breckenridge, C. Brown, M. Fisher, J. Goldstein, E. Hammarlund, F. Hancock, L. Jason, J. Joyce, D. Sederholm, L. Sibley.

Fred Hancock said the Vineyard House has asked to increase their extension for a two year period from the current expiration date. They are asking for the extension in order to raise funds.

Erik Hammarlund moved and it was duly seconded to extend the Vineyard House sunset clause to September 30, 2015. Voice vote. In favor: 10. Opposed: 0. Abstentions: 1. The motion passed.

7. NEW BUSINESS

Commissioners Present: T. Barnes, J. Breckenridge, C. Brown, M. Fisher, J. Goldstein, E. Hammarlund, F. Hancock, L. Jason, J. Joyce, D. Sederholm, L. Sibley.

7.1 Reports from Chairman, Committees and/or Staff

ArtsMV

- **Mark London** noted that the Island Plan included recommendations about diversifying the economy, notably by better promoting arts and culture to increase business in the shoulder season. That led to the creation of ArtsMV which has created the Fall for the Arts program. MVC staff worked with ArtsMV to prepare a grant application to support Fall for the Arts. The Mass Cultural Council just awarded a grant to fund the program for the next two years.

Housing Needs Assessment

- **Mark London** said MVC staff is working the Island Housing Trust to create an action plan, following on from the Housing Needs Assessment that was completed this summer.
- **Christina Brown** added, as the MVC member of the group, she urges everyone to read the Housing Needs Assessment. There is no need to wait for a master implementation plan from the committee. The Community Preservation Committees are gearing up to take applications and some will be for housing.

Coastal Conference

- **Mark London** said next Tuesday, September 24, 2013, he will be speaking at a Cape and the Islands Coastal Conference in Hyannis. He and Jo-Ann Taylor will present to the Commission at a future meeting.

Bicycle and Pedestrian Committee

- **Bill Veno** said this committee will have an important meeting next week to review past efforts and to set its orientation for the future.

Stop & Shop Public Hearing

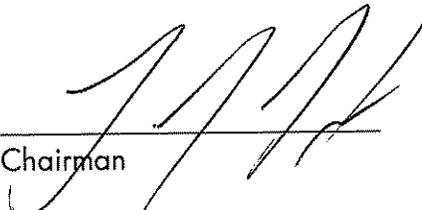
- **Fred Hancock** said the next Public Hearing is scheduled for October 3, 2013.
- There was a discussion about the importance of receiving all the requested materials in time for review before the public hearing, as well as the possibility of holding an LUPC meeting to review the transportation information.

The meeting was adjourned at 8:40 p.m.

DOCUMENTS REFERRED TO DURING THE MEETING

- Town of Oak Bluffs Board of Selectmen Letter to Mark London Dated September 19, 2013, RE; NSTAR Poles Expansion
- NSTAR Possible Offers September 18, 2013
- Email from Jerome McDermott to Mark London, Dated September 18, 2013, Re: NSTAR MVC DRI Review – Possible Offers
- Email from Jerome McDermott to Mark London and Paul Foley, Dated September 18, 2013, Fw: Proposed Municipal Overhead to Undergrounding of Edgartown
- Email from Jerome McDermott to Paul Foley, Dated September 18, 2013, RE; Sept 19th Conflict

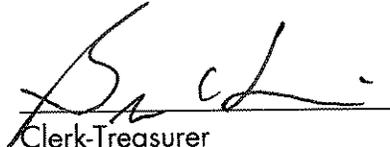
- Email from Elizabeth Buddy to Paul Foley, Dated September 17, 2013, Tisbury Selectmen Meeting NSTAR Herbicide Notice
- Martha's Vineyard Commission, DRI # 322-M3 Vineyard Assembly of God Lighting, MVC Staff Report – 2013-09-19
- Letter from the Town of Tisbury Board of Appeals, Dated July 15, 2013, Re: Vineyard Assembly of God Previous DRI
- Email from Dependable Landscape to Paul Foley, Dated September 18, 2013, Letter for John Hancock, Chairman, MV Commission Concerning Assembly of God Church
- Letter to Martha's Vineyard Commission Members from Barbara Babcock, Summer Silverman, Kristen Henshaw, Janet Woodcock and Carol Collins
- Email from Kristen Henshaw to Paul Foley, Dated September 17, 2013, RE: Public Hearing
- Email from Barbara Babcock to Paul Foley, Dated September 17, 2013, Letter to MV Commissioners
- Letter from Jonathan V. Snyder to Frederick Hancock, Dated September 17, 2013
- Email from Benjamin Klein to Paul Foley, Dated September 17, 2013, Vineyard Assembly of God – Photos of Unauthorized Shed
- Letter from Benjamin S. Klein, D'Ambrosio Brown, Counselors at Law to Paul Foley, Dated September 16, 2013, Re: Vineyard Assembly of God Request for Modification to Previous DRI
- Town of Tisbury Board of Appeals Decision on Administrative Appeal Case #2144
- Well Plan in Tisbury, Mass., Prepared for the Vineyard Assembly of God, Dated December 29, 2005
- Proposed Addition Plan for the Vineyard Assembly of God
- Layout of Proposed Lighting Changes, Vineyard Assembly of God, Dated June 18, 2013
- Letter from Vineyard House to the Martha's Vineyard Commission, Re; DRI #582



 Chairman

10-17-13

 Date



 Clerk-Treasurer

10-17-13

 Date