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Minutes of the Commission Meeting Held on May 3, 2018 In the Stone Building 33 New York Avenue, Oak Bluffs, MA

IN ATTENDANCE

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

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| - Gail Barmakian (A-Oak Bluffs) | - Michael Kim (A-Governor; non-voting) |
| P Trip Barnes (E-Tisbury) | P Joan Malkin (A-Chilmark) |
| P Leon Brathwaite (A-County) | P Katherine Newman (A-Aquinnah) |
| P Christina Brown (E-Edgartown) | P Ben Robinson (A-Tisbury) |
| - Peter Connell (A-Governor; non-voting) | P Doug Sederholm (E-West Tisbury) |
| P Robert Doyle (E-Chilmark) | P Linda Sibley (E-West Tisbury) |
| - Josh Goldstein (E-Tisbury) | P Ernie Thomas (A-West Tisbury) |
| P Fred Hancock (E-Oak Bluffs) | P Richard Toole (E-Oak Bluffs) |
| - James Joyce (A-Edgartown) | P James Vercruysse (E-Aquinnah) |

Staff: Adam Turner (Executive Director), Bill Veno (Senior Planner), Paul Foley (DRI Planner), Christine Flynn (Economic Development and Affordable Housing Planner), Jo-Ann Taylor (Coastal Planner, DCPC Coordinator), Dan Doyle (Regional Planner).

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

1. TOWN OF AQUINNAH DCPC PROPOSED AMENDMENTS PUBLIC HEARING AND VOTE

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

For the Applicant: Peter Temple

James Vercruysse, Public Hearing Officer, opened the Public Hearing and read the Public Hearing Notice. The proposal is to clarify Aquinnah's bylaws and to remove a special permit proceeding from the definitions section, and replace the definition of Frontage in Section 7.1. To clarify Aquinnah's bylaws by referring readers of the Minimum Frontage bylaw to the definitions section and replace Section 13.4-10A with the following: A. All lots shall have a minimum frontage of 200 feet on a public or private way (see definition in Section 7.1). To give Aquinnah more flexibility to resolve unique frontage issues, and add two new sections, 13.4-10 G and H.

1.1 Staff Report

Jo-Ann Taylor presented the following:

- The purpose of the hearing is to review the conformance of the proposed regulations to the Goals and Guidelines in the Commission's Decision Designating the Town of Aquinnah as a District of Critical Planning Concern as amended.
- The Planning Board would like to make amendments to the regulations.
- The Town of Aquinnah was first designated in 1999 and amendments have been made since.

- The Goals of the Town of Aquinnah District are to protect the scenic character of the District from undue visual intrusion, and to promote and maintain its rural character and culture.
- Two of the proposed amendments have to do with the definition of frontage, and the third is to provide leeway to the Planning Board on decisions regarding lots with pre-existing frontage. The 200 ft frontage bylaw was adopted on May 10, 2011.
- The proposal appears to conform to the Commission Guidelines.
- No correspondence has been received.
- References include Chapter 831 of the Acts of 1977 as amended, and the Decision of the Martha's Vineyard Commission designating the Town of Aquinnah District as a District of Critical Planning Concern, 1999, as amended.
- After the closing of the public hearing, an affirmative nomination would be that the three proposed changes conform to the Goals and Guidelines of the Town of Aquinnah DCPC District.

1.2 Applicants' Presentation

Peter Temple presented the following:

- As Jo-Ann Taylor stated, the Aquinnah Planning Board does not see why these amendments would not be approved.
 - **James Vercruysse** asked what brought this about, and how would the amendments affect operations.
 - **Peter Temple** said frontage bylaws are complex. The definition change removes some language, and clarifies that it is part of the bylaw.
- In 2011, Aquinnah put the frontage requirement into the DCPC regulations in order to eliminate grandfathering. Frontage wasn't an issue in Aquinnah because of the Tribal Lands and only having one road at the time; access was more of a concern. A frontage bylaw was added in the late 1980s, and people were using driveways and ancient ways as frontage. The Planning Board does not have control over Form A subdivisions, and people were not using Form Cs to create frontage. There were a lot of unsafe roads without turn-outs.
- Grandfathering was eliminated by putting the frontage requirements into the DCPC, but the Planning Board needed a way to allow for variances for exceptions, and there were a lot of pre-existing nonconforming lots.
- People were concerned they would lose their developments rights on certain lots, so the Planning Board did extensive research on the remaining undeveloped lots in town to make sure that they would not be made undevelopable by the changes made in 2011. At the time, the Planning Board did not look at lots that were already developed.
- There was an issue with a property owner with a four acre lot using a Form A to create two two-acre lots. There was an unforeseen loophole, and there was no provision to allow for a variance. The proposed amendments are to allow the Planning Board to do that.

1.3 Commissioners' Questions

Linda Sibley said the entire Town of Aquinnah is a DCPC, and she wanted to make it clear that these amendments would apply to the entire Town.

Ernie Thomas asked if someone bought a property and wanted to demolish and rebuild the house to the footprint, would they need to apply for a variance. **Peter Temple** said no, it would be a Special Permit.

Leon Brathwaite asked if there were any other four acre lots. **Peter Temple** said yes, and there are six acre lots as well. People were clearly concerned about lots with no roads. Aquinnah currently requires by Special Permit, that the frontage road run on the property line; but there are so many wetlands in Aquinnah, that it can be difficult to site 200 feet of road without hitting a wetland. The Planning Board

would now have the ability, by Special Permit, to allow the frontage road to run through the property for those special cases.

Ben Robinson asked if there were any guidelines for the construction of roads. **Peter Temple** said there are, and the Town has standards for width, grade, and clearing of property.

Ben Robinson asked if the Town of Aquinnah held public meetings at the Planning Board level. **Peter Temple** the bylaw is on the warrant for Town Meeting. A public hearing about the proposed amendments was held six weeks ago.

Fred Hancock clarified that the Town is asking to amend the DCPC regulations, and the role of the MVC is to determine if the changes conform to the Goals and Guidelines of the DCPC. The changes still need to be adopted at Town Meeting.

Adam Turner said the MVC needs to concur that their proposal conforms to what the MVC accepted.

James Vercruysse, Public Hearing Officer, closed the Public Hearing.

Fred Hancock moved and it was duly seconded that the proposal conforms to the original Goals and Guidelines of the Martha's Vineyard Commission original DCPC. Roll call vote. In favor: T. Barnes, L. Brathwaite, C. Brown, R. Doyle, F. Hancock, J. Malkin, K. Newman, B. Robinson, D. Sederholm, L. Sibley, R. Toole, J. Vercruysse. Opposed: none. Abstentions: E. Thomas. The motion passed.

Linda Sibley asked if the MVC has ever determined that an amendment doesn't conform. **Jo-Ann Taylor** said yes.

Peter Temple announced that he will be stepping down as Chairman of the Aquinnah Planning Board after Town Meeting 2019. Next year will be twenty years since the Aquinnah DCPC was formed. He has promised the newer members of the Planning Board that they will do a thorough review to simplify the bylaws and processes, and to assure what the Town values will be preserved.

2. FLAT POINT FARM-WEST TISBURY DRI 34-M3 PUBLIC HEARING

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

For the Applicant: Reid Silva (Agent), Eric Peters (Attorney)

James Vercruysse, Public Hearing Officer, opened the Public Hearing and read the Public Hearing Notice. The applicant is Flat Point Farm, Priscilla Fischer Trust; Trustees Tim Madigan, Eleanor Neubert, Jean O'Reilly and Arnold Fischer Jr. The location is Road to Great Neck, West Tisbury Map 35 Lot 3.1. The proposal is a Form B Preliminary Estate Plan that proposes to create four new lots for building, reconfigures four existing building lots, creates and/or reconfigures five lots around existing buildings and places an additional 35 acres (total 74 acres) into conservation on a farm on Tisbury Great Pond. Total of 13 buildable lots.

2.1 Staff Report

Paul Foley presented the following:

- The applicant is Flat Point Farm, Priscilla Fischer Trust; Trustees Tim Madigan, Eleanor Neubert, Jean O'Reilly and Arnold Fischer Jr.; Reid Silva (Agent) and Eric Peters (Attorney).
- The location is Road to Great Neck, West Tisbury Map 35 Lot 3.1.
- The proposal is a Form B Preliminary Estate Plan that proposes to create four new lots for building, reconfigures four existing building lots, creates and/or reconfigures five lots around existing buildings and places an additional 35 acres (total 60.5) into conservation on a farm on Tisbury Great Pond. Total of 13 buildable lots.

- In 1976, Arnie Fischer Sr. came to the MVC to subdivide four five-acre lots (DRI 34), one for each of his children, out of the original 130(+/-) acre farm. There was also the main farm lot (Lot 3.1) and the oyster shack (Lot 3.4).
- In 2007, a 12.9 acre Form A lot (DRI 34-M) around an existing camp building built in 1969 was created by Short Cove. The lot was eventually sold to the Land Bank and is permanently protected open space. There is a Land Bank trail that runs from Tiah's Cove Road through the farm to the water.
- In 2009, the MVC approved a Form B Preliminary Estate Plan for the farm proposing two large conservation parcels (total 67.8 acres), including the four five-acre lots from 1976, five lots around existing buildings, and three one-acre youth lots. Comparatively, the current Form B has seven less acres in conservation and one off-site affordable lot, rather than the three-on site shown in 2009.
- A Form B is a preliminary plan that is not recorded by the Planning Board or developable. The 2009 plan never proceeded to a Form C Definitive Plan.
- The site plan was reviewed.
- The four existing five-acre lots created in 1976 are being truncated to a little over three-acres each, and four new three-acre lots are being created from the two-acres taken from each. An additional seven acres of land that are currently woods, resulting in a total of eight acre lots in that area.
- Proposed Lots A-E are five Form A lots around existing structures that range from 3.1 to 6.3 acres, for a total of 23.2 acres.
- As part of this plan the Land Bank would be purchasing an additional 34.95 acres of agricultural conservation land, for a total of 73.4 acres of conservation.
- The applicant is proposing to purchase or create one affordable housing lot off-site.
- The plan also includes significant relocation of the road within the farm away from the cove, and the existing and proposed house lots.
- Key issues include:
 - Nitrogen: The 2009 MVC Decision said that the property must meet the MVC Nitrogen budget in place when the final Form C plan was reviewed. Agricultural use has been grandfathered leaving capacity for 41 bedrooms with I/A systems.
 - Affordable Housing: The applicant is proposing to create one off-site affordable lot. Details on where, when and how that would be executed have not yet been submitted.
 - Road to Great Neck: Neighbors along the Road to Great Neck have expressed concern with increased traffic on this private, rural dirt road and questioned the right to expand on it.
 - The road within Flat Point Farm is being relocated and will change how and where some neighbors access their property.
- The proposed site plan and the existing site plan were reviewed.
- The proposed Form A lot site plan and the Form B lot site plan were reviewed.
- Site photos showing the Road to Great Neck, field views, existing buildings, the farm and the loop trail were shown.
- The nitrogen limit for the Tisbury Great Pond watershed is 0.8 kilograms per acre per year or 87.8 kilograms of nitrogen loading per year for the entire property (not including the 12.9 acres sold to the Land Bank).
 - Existing 21 bedrooms in six existing residences without I/A (assumed) = 42.4 kg/a/y.
 - Leaves 45.4 kg/a/y available: Capacity for 20 additional bedrooms with Tile V only; capacity for 41 additional bedrooms with Title V with I/A denitrification systems.

- The proposal increases the total number of buildable lots on the property from 9 to 13. However, the proposed project does not trigger the MVC's Affordable Housing Policy because four of the thirteen buildable lots were created in 1976 before the MVC adopted an Affordable Housing Policy; and per MVC counsel's advice in 2009, those four lots are exempt from the total count towards the MVC's Affordable Housing Policy.
- The applicant is proposing to create one off site affordable lot.
- The West Tisbury Zoning Bylaws Section 4.4-6 requires more affordable housing mitigation than the MVC policy (20% vs. 10%). By Special Permit, the Planning Board may exempt applicants from this requirement by creating lots for the use of family members, if it finds that suitable resale restrictions are in place. Since the Planning Board can grant a Special Permit to exempt proposals, the MVC does not have to meet the 20% affordable standard in zoning.
- The Town of West Tisbury Planning Board has written in their referral that they sent with this proposal: "We believe that we have worked out a good and responsive plan with the applicant." The Town of West Tisbury Affordable Housing has written stating that "the WTAHC believes there should be more than one affordable building lot." West Tisbury Town Counsel has submitted a letter that was requested by the WTAHC, and concluded that the proposal will require one lot for affordable housing by the Town zoning.
- Correspondence has been received:
 - Michael Colaneri had concerns about the proposed affordable housing mitigation.
 - Chris O'Sullivan had concerns about how the reconfigured road would affect their property.
 - Emily Fischer noted that she is in the family, and one of the lots is being created for her. She and her husband hope to continue to use the land as a working family farm.
 - Paul Karasik lives on Road to Great Neck and supported the plan, noting that the Fischers are hardworking, ethical, good neighbors who enrich the town.
 - Prudy Burt supported the plan.
 - Samantha Look lives on Road to Great Neck, and was concerned about the increased traffic on the dirt road.
 - Simon Athearn lives on Road to Great Neck and is in support of the plan and noted the excellent stewardship by the Fischers. The road is lightly used and mostly cared for by the Fischer family.
 - Sarah O'Sullivan is an abutter and generally supported the outlines of the preliminary plan, but had concerns with the proposed change to the access to their property, and how it would align with their buildings.
 - Tucker Hubell was in support and noted the family efforts toward workforce housing and stewardship.
 - Kate O'Sullivan requested that the written record be kept open so they could review the tape on MVTV and make comments, since they were unable to attend tonight's meeting.

Doug Sederholm asked if there were any buildings on the current four lots. **Paul Foley** said there are, and showed their locations on the site plan, including the oyster shack.

Ernie Thomas asked if there was already one affordable housing lot on the property. **Paul Foley** said the applicant is proposing one affordable house lot off-site.

2.2 Applicants' Presentation

Reid Silva presented the following:

- Paul Foley did a great job outlining the history of the project.

- The Form B is for getting feedback from Town Boards and the MVC to see if the plan is on the right track, and to receive input and comments. It is not meant to be a fully definitive plan, and there are still details that need to be worked out.
- The Fischers spent time evaluating the 2009 Form B, and decided to reconfigure the estate differently.
- Since the original Form B in 2009, the “trophy lot” (12.9 acres) has been sold to the Land Bank; and they also bought an APR on 25.4 acres down by the water.
- Currently, there are the four larger family lots, the oyster shack lot, and the farm itself.
- The major planning changes would be to create four vacant residential lots for the kids, which would be clustered to some degree and to have roads with minimal impact.
- The road was moved so it would go around the main house lot. The existing and proposed roads was shown on the site plan. The proposal pulls the road away from the existing main house, and through an area that is currently wooded. This would be a benefit because it protects the view of the field.
- The O’Sullivan lot was shown with the current road. The existing road crosses a corner of their property, and the proposed road takes it away from their land. Exactly where their access would be reconfigured is still in the draft stages. What is shown on the plans was an estimate of what would be most effective and acceptable, but may change.

2.3 Commissioners’ Questions

Linda Sibley asked where the garage was that the O’Sullivan’s mentioned in their letters. The current road brings them to their garage. **Eric Peters** showed it on the site plan. The current road runs through and within the O’Sullivan property. There is a fork in the road that enters the property in the northeast corner, where there is a garage, house and small guest house. Under State law since 2004, the applicants have the right to reasonably relocate an easement. The access will be brought to the O’Sullivan property. There are a variety of options to address their concerns. The proposal moves the road away from the pond, which is also in agreement with the Planning Board. From his inspection of the garage, it looks like it has been used for storage, and not for cars in a long time.

Ernie Thomas asked if the road goes through the center of the plan and around the O’Sullivan property. **Eric Peters** showed the new lots and the new Form C road, which would provide access to their lot.

Ben Robinson asked if they would use the new access to get to their original access. **Eric Peters** said they could use the new road to go back to the old road, or they could go left. They could get to either side of the garage. The applicants are happy to discuss this issue further with them; there are several options.

Doug Sederholm said if the applicant was abandoning the easement across the O’Sullivan property. **Eric Peters** said yes, the applicants will release their rights on the O’Sullivan and Anne Fischer’s property, and expect them to release their rights to the current road, and move it all to the new road. There was a discussion about options if the neighbors don’t agree to release their rights.

Doug Sederholm asked if there was any impairment of the utilities with the change of the easement. **Eric Peters** said no, and the applicants are happy to have more discussions with them.

James Vercruysse asked if the utility easement followed the existing road. **Eric Peters** showed where the overhead lines were located on the plan. The overhead lines will be replaced, and buried underneath the new road. **James Vercruysse** commented that that was an improvement.

Fred Hancock asked if the applicant had discussions with the Land Bank about the relocation of the road. **Eric Peters** said there is a contract with the Land Bank for them to purchase a piece of land on the northeast side. The plans for the road have been discussed with them, but he was unsure if it is explicitly

stated in the contract. The trail easement allows the applicant to relocate the loop trail, and there have been preliminary discussions about that as well.

Linda Sibley asked where the three affordable lots were, and if that would now be part of the Land Bank property. **Eric Peters** said yes. The previous Form B was never implemented, so technically it was abandoned. The applicants removed the potential for trophy homes and the existing shack. The Planning Board felt it was better to have an affordable housing lot off-site.

Joan Malkin asked for clarification on the affordable housing component. The MVC requirement depends on the number of lots, and some of the lots are being created with a Form A rather than a Form C. Which lots qualify for the MVC Affordable Housing Policy? **Reid Silva** reviewed the pre-existing structures and the pre-existing lots on the property. The Form A would be creating lots around the existing structures that existed prior to the subdivision control law; and adjust the lot lines on the lots that already exist. The land remaining after the Form A would be a large parcel, to be subdivided into four lots by a Form C.

Doug Sederholm asked what the sizes of the lots are. **Reid Silva** said they will be three acre lots. **Paul Foley** read the lot sizes on the plan, and said the zoning is three acre minimum.

Joan Malkin asked if this would be the end of any subdivision for this property. **Reid Silva** said there would be two lots over six acres, the oyster shack lot and the Farm building.

Doug Sederholm asked if the applicants were proposing a no further subdivision clause. **Reid Silva** said no, but any further subdivision is not anticipated at this point.

Linda Sibley said guest houses cannot be built in West Tisbury on lots with less than four and a half acres. **Reid Silva** agreed, and said guest houses were an important component of the applicant's conversation with the Planning Board. The four existing lots would lose the ability to have a guest house, in exchange for four new lots that would also not be able to have guest houses.

2.4 Public Testimony

Samantha Look is a neighbor on the other side of Pear Tree Cove. She understands that the Fischers want to provide lots for their family, and thought that this was a well thought out plan, but she had concerns about the Road to Great Neck. It is a little road. Although this is a thoughtful plan, it could significantly increase the amount of traffic on the road. The intent to use the lots for family has been stated, but the plan needs to support whatever could happen in the future with the lots; for instance, if they were sold and became seasonal homes. The Land Bank preliminary plans indicate an expansion of the trail head, which would extend the use of a private road to the public. How would the road stay safe for children, bikes, horses and traffic? She would like some sort of condition imposed before this is approved by the Town, so that the road would work for everyone.

2.5 Commissioners' Discussion

Ben Robinson said if the applicant were to subdivide the larger farm lot and the oyster shack parcel, frontage would need to be created. **Reid Silva** said yes, and a subdivision of those larger parcels would require a Form C, but that has never been the intent.

Linda Sibley asked if the new road would have to conform to the West Tisbury subdivision road standards under the Form C. **Reid Silva** said yes, the road as proposed meets those standards, and the Planning Board will need to approve that the road is adequate for use as part of the Form C application.

Linda Sibley asked if there was a road association in place. **Eric Peters** said no, Arnie Fischer has been taking care of the road for years.

Leon Brathwaite asked why the three on-site affordable lots were removed from the plan. **Reid Silva** said it was due to where they were located, and did they fit the plan for the family. **Leon Brathwaite** said he is a no vote just because of that issue.

Reid Silva said the 2009 was a Form B preliminary plan, and things have changed in nine years. The question before the MVC is whether the proposed development is in keeping with the character and standards for development. The property is 111 acres, 72 acres of which will be placed in conservation, and there would be 13 three-acre lots, four of which would be vacant. The density is very similar to the 2009 plan. The lots that could have potentially had guesthouses on the old plan will no longer be able to. In his opinion, the previous Form B has no standing.

Fred Hancock said the DRI status should have expired if the plan was never acted on. This should be a separate DRI, not a modification.

Eric Peters said whether it is called a modification of the first DRI in 1976 or not, in terms of the history, in 2009, a 12-acre lot was approved for unrestricted potential dwellings. The Land Bank talked to the Fischers, set up a plan to purchase that property; and the potential for large houses was removed, and conservation land was established. That was a large reason of why this plan was changed.

Arnie Fischer Jr. said he would like to address some of the affordable housing questions. Essentially, all that has ever been built on this property by the Fischer family is affordable housing. The houses are modest, and were designed to allow for island people to stay on island, and the current proposal continues with that intent. There are two young families looking for housing that will not be able to find anything on the market. The former plan is ten years old, and situations have changed. Family members have passed away and children have gotten older.

Eric Peters said Eleanor's daughter lives in the farmhouse, and Arnie's daughter lives in the guesthouse. The proposed lots will give them an opportunity for a house.

Eleanor Neubert said her dad originally carved out the five-acre lots for his kids. There are only two houses, and nothing has been added in 40 years. There will not be a huge amount of building going on in the future.

Trip Barnes commented that the proposed lots are for family, and he did not see any issues with that.

Adam Turner said this is a Public Hearing to get input and to ask questions, and the questions should be more focused on information needed to build a decision.

Eric Peters responded to a question about the Land Bank building a trail head off of the Road to Great Neck, and said the applicants were able to negotiate with the Land Bank to use the property that provides the present access. It is not intended to have the public driving down to the point. so the handicap can access, so they don't have to plan another access to the trail head.

Robert Doyle said he needs clarification on why the three affordable lots are no longer on the table.

Arnie Fischer Jr. said again that things have changed in the past nine years. In 2009, when the three lots were originally proposed, the intent was to have them transferred to family members. The O'Sullivan parcel was not part of the property when it was purchased by Arnie Fischer Sr. The other issue is the cousins, why should one family member receive a lot with restrictions, when the others do not? The intent is to keep the family on the land.

Eric Peters said the Planning Board can grant a Special Permit for an affordable lot to stay in the family, and it is part of the West Tisbury Zoning Bylaws.

Joan Malkin asked if the applicants intend to have all 13 lots stay in the family. **Arnie Fischer Jr.** said yes, that would be the ideal situation. The deal with the Land Bank will hopefully provide the funds to change the road and redo the electric, which will be rather costly.

James Vercruysse said the MVC concerns are nitrogen loading, safe roads, and whether the proposal meets the West Tisbury zoning.

Linda Sibley suggested that the written record be kept open long enough so that the O'Sullivan family can respond.

Doug Sederholm said a condition on the 2009 approval was that the applicant would have to meet the MVC nitrogen policy in effect at the time of final approval, and there will hopefully be a new policy in place and that may affect this. Currently for the Tisbury Great Pond, the policy is to meet 0.8 kg/acre/year or to use a basic nitrogen reducing techniques; the proposed policy would be 0.99 kg/acre/year. This is such a large project and a lot is grandfathered with the agriculture, so it is hard to determine how the difference in policy would affect the nitrogen mitigation.

Bill Veno asked how agriculture affects the new, proposed Water Quality Policy. **Doug Sederholm** said agriculture is not considered in the new policy, assuming the applicants are using best practices.

Adam Turner asked about the applicant's timeframe. **Reid Silva** said the Form C should be ready within three months.

Eric Peters mentioned that there is some priority habitat on the waterfront of the field that is already protected by conservation restrictions and an agricultural protection restriction, but there is not any priority habitat on the other lots.

Samantha Look said she was not against this plan, but she was still concerned about the road. Of the four lots that are there now, there are two houses, the oyster shack is tiny, and cars do come to the barn, but it is not additional traffic. She emphasized how the plan would impact the road, and it is a significant potential change. She asked that the MVC have some conversation with regards to that.

- **James Vercruysse** said the most effect will be at the Town level, as that is where road design and traffic flow would be dealt with.

James Vercruysse, Public Hearing Officer, closed the Public Hearing and left the written record open until 5:00 p.m. on May 18, 2018.

3. WATER QUALITY POLICY UPDATE 2018 PUBLIC MEETING

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

3.1 Policy Summary

Doug Sederholm presented the following:

- The policy is only for DRIs and is focused on nitrogen.
- There is excess nitrogen in 12 of the 15 ponds, and 12 of the 15 ponds are impaired.
- When there is too much nitrogen, there is less oxygen and it destroys shellfish habitat, the water becomes cloudy and affects our economy and quality of life. It needs to be controlled.
- One of the major contributors of nitrogen in the ponds is septic systems and this policy addresses that issue.
- Table A shows the Coastal Pond Data. Column four indicates the load reduction required.

- The goal is to slow the impairment of the ponds over the next few years; and as better alternatives are developed, to control nitrogen from septic systems. The policy will be revisited again in two or three years to evaluate those advances in technology.
- The proposal is to reduce the amount of nitrogen allowed for a new DRI by looking at the reduction required in that specific watershed, and applying that reduction to determine the amount allowed for the size of the project on a per acre per year basis.
- The 2006 policy was based on the Buzzards Bay model. Now there is much better data from the MEP (Massachusetts Estuary Project) reports, and it has a more accurate approach. There are now more restrictive limits for half of the ponds, and less restrictive limits for the other half. There is better technology available now than there was 12 years ago, with the possibilities of even better technology in the near future.
- The policy says the DRI must meet the adjusted nitrogen load limit for the project in its specific watershed, or it must be mitigated.
 - On-Site Nitrogen Load Reduction: the use of a denitrification test system with comprehensive testing and a monitoring program.
 - Off-Site Mitigation.
 - Monetary Mitigation.
- If the applicant can't meet the limit by one of the methods or with an I/A system, then the applicants can pay a mitigation fee.
- This policy is not going to "kibosh" all development on the Island. It is an interim policy and is a measured approach.
- The goal of the policy is to slow down the impairment of the ponds until better technology is available.

James Vercruysse said the policy also sets an example for the Towns.

Adam Turner said at the MVC meeting on March 29, John Smith showed some future possibilities for wastewater systems. The solutions are included as part of the policy. The revisions to this policy took a year, and the Committee looked at different systems on how to regulate nitrogen.

3.2 Commissioners' Questions

Ben Robinson asked if the Committee was surprised once the methodology was developed, and it was realized that some thresholds were lowered. **Doug Sederholm** said in some cases yes, such as Menemsha Pond. Half of the ponds have higher thresholds, and half are lower than before. That is the result of sampling and the MEP models. **Ben Robinson** asked if the Committee tweaked the methodology when it was realized that the thresholds went down. **Doug Sederholm** said no, the Committee took the same, coherent approach to all of the ponds.

James Vercruysse said the MVC will look at the policy again in a couple of years and as technology improves.

Ben Robinson asked if the Committee ran the policy through past DRIs to see how the end result would have been adjusted. **Doug Sederholm** said they did, and it was also presented to some people in the community. **Adam Turner** added that the legal team has also examined the policy.

3.3 Nitrogen Calculations

Adam Turner reviewed the nitrogen calculations:

- A case study used was for an imaginary 10-acre subdivision in the Sengekontacket watershed, including:
 - Three 2,000 sf four-bedroom houses with Title V systems
 - 500 sf driveway per lot

- 1,500 ft of 15 ft wide road
- 2,500 sf landscaping per lot
- Policy assumptions for residential water use = 67,700 gal/yr, of which 90% leaches
 - 46.9" rainfall/yr
 - 90% leaches from the roof
 - 65% leaches from the road
- Policy Nitrogen Concentrations:
 - Title V septic: 26.25 mg/L
 - Roof runoff: 0.38 mg/L
 - Road runoff: 0.75 mg/L
 - Landscaping: 3 pounds per 1,000 sf (20% of which leaches to groundwater)

The calculations were reviewed step by step. The total adjusted nitrogen load limit for the project was calculated to be 806.76 kg of nitrogen over 40 years. This is the amount of nitrogen allowed for the project.

Then, project specific outputs were calculated. The amount of nitrogen from wastewater was calculated to be 726.44 kg over 40 years. The amount of nitrogen from stormwater (roof run-off) was calculated to be 9.08 kg over 40 years. The amount of nitrogen from stormwater (road run-off) was calculated to be 4.84 kg over 40 years. The amount of nitrogen contributed from landscaping was calculated to be 81.6 kg. The total nitrogen for the project was 821.96 kg over 40 years, which is 15.2 kg over the allowed limit.

The end result was a one-time monetary mitigation fee of \$4,788. (The cost to remove nitrogen is \$315 for 1 kg), if there was no other mitigation.

3.4 Commissioners' Discussion

Ernie Thomas said stormwater exists whether there is a house or not, and asked why that was included. **Adam Turner** said the nitrogen is more concentrated off a roof. **Reid Silva** added that there is a natural vegetative layer that can absorb nitrogen when there is not a structure on the site.

Fred Hancock asked if the MVC would allow applicants to buy their way out of reducing the nitrogen, or do they have to make a best effort to reduce. **Doug Sederholm** said applicants have to try to reduce their nitrogen load first, and then if not possible they would pay a mitigation fee.

Fred Hancock suggested revising the language on page 8 Monetary Mitigation on the first line to read "If it is not possible to reduce the nitrogen load of a DRI Project to meet the Adjusted Nitrogen Load Limit...." **Doug Sederholm** agreed.

Fred Hancock said the MVC has been receiving more subdivision projects where nothing is built yet, and asked if the fee could be paid after a lot is sold. **Doug Sederholm** said the applicants would pay the fee before the Certificate of Occupancy could be issued.

Fred Hancock asked for clarification and suggested the following revisions to the policy:

- C. Monetary Mitigation; revise the language to read "the funds will be paid to the Martha's Vineyard Commission and maintained in an escrow account until dispersed."
 - **Joan Malkin** agreed.
- Fred Hancock asked who decides on the disbursement of these funds.
 - **Doug Sederholm** said it states the Commission, and when the policy says the Commission, it has to be by a vote.
 - **Joan Malkin** suggested inserting "full Commission."

- **Adam Turner** said the full Commission approves the DRIs, it would make sense that the full Commission votes on the disbursement of funds.
- 3.4 DRI Projects Situated In Planned Sewer Service Areas; to revise the language for A. to read “the Adjusted Nitrogen Load Limit (for wastewater only) if all four conditions are met...”.
- 6.1 DRI Projects Must Meet Existing Regulations; when it states DCPC regulations he read it as if the DCPC regulations would be extended to new projects.
 - **Doug Sederholm** said to revise the language from “current Town and DEP regulations” to “all applicable...”
- 6.5 General Project Requirements Section C.; Fred Hancock asked if this is different than section 3.3, where the policy asks them to test their I/A systems.
 - **Ben Robinson** clarified section 3.3 deals with wastewater, and 6.5 deals with all contributing sources.
 - **Joan Malkin** suggested that perhaps the MVC approve the policy and the Committee can make the minor clarifications.
 - **Doug Sederholm** and **James Vercruysse** agreed.

Leon Brathwaite moved to approve the Water Quality Management Policy subject to wordsmithing.

Reid Silva presented the following:

- Joan Malkin shared the policy and information with him, and he appreciated the intent and hours that went into it.
- With this job as a surveyor, he is in the arena of how to best treat wastewater and development, and there needs to be a balance.
- A lot of these reports are based on inferences, comparisons, and modeling.
- James Pond is the most impaired pond on the island, and it has less development than most. Squibnocket Pond is the second most impaired pond, and there is a lot of open space in that watershed.
- If the problem is fully attributed to human activity, it needs to be known what that activity is.
- Knowing the big picture comes back to data. If the goal of this policy is to control development, it can be done through other ways, such as zoning.
- If the goal is to protect the pond, he suggested adding measures to evaluate the benefits, such as installing monitoring wells.
- The new systems John Smith is working on are great, but how are the benefits being monitored? There is no monitoring, and there is more going on than human activity.
- There has to be an equality part of it, it does not seem fair that certain applicants will be severely impacted by this policy, but not all of them. Who is supporting this environmental concern?
- He would like to know that the efforts have a beneficial return, and have some measure of how to produce a result.

Joan Malkin said when Tisbury passed their regulation, they also instated a policy for installing monitoring wells. It may be a good idea to include in the policy, and the Staff and the MVC should consider it.

Linda Sibley commented that the MVC already has the discretion to ask applicants to install monitoring wells.

Doug Sederholm said Katama Bay does not require any nitrogen reduction because it flushes so well. James Pond is not part of the MEP program, and is not studied. The new policy is less restrictive than the policy that has been in place for nine years. It is also less restrictive for Squibnocket Pond, which does

have an MEP report. He agreed with Reid Silva that more data needs to be gathered, but something needs to be done to slow the impairment in the meantime.

Adam Turner said the MVC is testing the each of the ponds in six locations. Adjustments will be made to the policy based on those results. The groundwater testing is tricky, because nitrogen moves in a plume, and there need to be a huge number of wells to find it. The MVC will especially examine Chilmark pond and others that are testing poorly to find other causes that may not be human activity, or other mechanisms to solve the problem. He emphasized that the policy will be adjusted as those results are received, and it can be determined how those models are performing.

Reid Silva said he suggested the groundwater testing because that directly correlates to the human impact. If the nitrogen is coming from a septic system, it will be found in the input groundwater. Measuring the pond will not provide information about what is being contributed from the upstream supply. That is why groundwater wells were pushed in Tisbury. If septic systems are causing the biggest impact, let's confirm that, and simply monitoring the pond does not confirm that statement. For Squibnocket pond, more frequent openings and flushing would decrease the nitrogen concentration, and installing IA systems might not have as big an impact.

Adam Turner said the MVC is looking at a lot of different measures, not just septic. Strategic pond openings has been studied for Tisbury Great Pond.

Joan Malkin proposed to add language "The Commission may require an applicant to install ground water testing wells and to provide test results to the Commission as may be requested..."

Ben Robinson asked what the difference is between a groundwater testing well and a residential well. **Reid Silva** said depth.

Adam Turner said there are tests that measure the nitrogen concentration coming out of septic tanks, but there isn't a good idea of how much reaches the pond. Some is absorbed through vegetation.

Linda Sibley said she entirely agreed with what Reid Silva said, but this document is not intended to be a water policy document in a general sense. The purpose of this document is only to guide applicants and the MVC in reviewing the DRI process. What Reid is saying makes a great deal of sense for how the Island should be dealing with this problem, but it is not the intent of the policy.

Doug Sederholm said this policy only addresses DRIs and Reid Silva has made interesting points, but almost all are beyond the scope of the MVC jurisdiction and would be issues for the Towns to address. The MVC can provide planning support to the Towns to take on these issues. Groundwater monitoring is not cheap, and is not something that the MVC can do on its own, and is not part of this policy.

Katherine Newman said the policy is a standard for the MVC to follow when something comes up. If an applicant is looking for something, it is clearly defined. She commended everyone for their hard work.

Joan Malkin moved to amend the motion and Leon Brathwaite agreed and it was duly seconded. To amend to approve the policy, to improve clarity of the policy and the addition of a clause for the applicant to install groundwater monitoring wells. Voice vote. In favor: 13. Opposed: 0. Abstentions: 0. The motion passed.

4. MINUTES

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

Leon Brathwaite moved and it was duly seconded to approve the minutes of February 1, 2018 with corrections as noted by Doug Sederholm the typo on line 25 for the word "Learning," and by Fred Hancock on line 153 it should state that Fred Hancock was on the Board of Directors of the East Chop

Association and is still a member and on line 421 delete the language "no drainage" and replace with "flow." Voice vote. In favor: 13. Opposed: 0. Abstentions: 0. The motion passed.

5. NEW BUSINESS

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

5.1 Executive Director Report

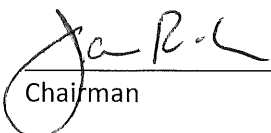
Adam Turner presented the following:

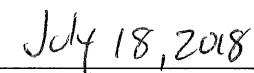
- A letter in support of Vineyard Wind was sent to the Energy Facilities Siting Board.
- He met with Senator Cyr, and he was very receptive to the Town's concerns.
- He handed out the latest version of the letter to Senator Cyr regarding the MVC's comments and recommended changes to clarify issues relating to Bill H4327 (Water Trust Bill).
- There will be an extension of the Chappy Wireless temporary tower.

The meeting was adjourned at 9:40 p.m.

DOCUMENTS REFERRED TO DURING THE MEETING

- Minutes of the Commission Meeting – Draft, Held on February 1, 2018
- Town Of Aquinnah DCPC Conformance of Proposed Amended Regulations Staff Notes, Dated May 1, 2018
- Martha's Vineyard Commission DRI #34-M3 Flat Point Farm Estate Plan MVC Staff Report – 2018-05-03
- Project Summary, Fischer Estate of Arnold - #126 Road to Great Neck, Dated February 9, 2018 from Vineyard Land Surveying and Engineering
- Flat Point Farm list of structures
- Flat Point Farm Preliminary Plan
- DRI 34-M3 Flat Point Farm Correspondence List received by 5:30 pm May 3, 2018
- Water Quality Management Policy Draft v18 – 3/19/18
- Nitrogen Calculations for Water Quality Policy
- Letter to M. Kathryn Sedor, Esq., Energy Siting Board from the Martha's Vineyard Commission, Dated May 3, 2018
- Letter to Senator Cyr from the Martha's Vineyard Commission, Dated May 1, 2018, comments and recommended changes to clarify Bill H4327


Chairman


Date

Clerk-Treasurer

Date