

**COPELAND PLAN DISTRICT, TOWN OF OAK BLUFFS, RESCISSION**  
Public Hearing continuation February 4, 2010 (continued from January 21, 2010  
Jo-Ann Taylor, DCPC Coordinator (Updated February 1, 2010)

## **1. PROCEDURAL UPDATES**

The Public Hearing was continued from January 21, specifically for the record. At her discretion, the Hearing Officer has agreed to allow new oral testimony from those who were not present on January 21 and new testimony from those who spoke in January.

Commission Counsel prepared a draft response (January 26) to the question regarding what would happen to the town regulations if the MVC voted rescission. Mark London would like to further review the letter before releasing it.

Oak Bluffs Counsel has been asked a number of questions by the Town, responses presumably to be presented at the continuation of the hearing:

*At the January 26 Board of Selectmen meeting, the Selectmen agreed to send the following questions relative to the Cottage City Historic District's initiative to rescind the Copeland District of Critical Planning Concern to Ron Rappaport for his opinion:*

*What powers would the Town of Oak Bluffs lose over development of property in the Copeland DCPC if the DCPC was rescinded?*

*What in the Copeland DCPC is NOT duplicative of the Cottage City Historic District regulations?*

*Which agency has stronger legal powers in the event of a legal challenge—more legal "teeth"?*

*How important was the Copeland DCPC in the Abdelnour/Moujabber case?*

*Are projects and improvements to town-owned property and parks in the Copeland DCPC subject to review?*

*As a footnote, I'm aware that the Commission has asked Eric Wodlinger for an opinion on the first question, but since we voted to send it to Ron, it's included here (note by Kerry Scott).*

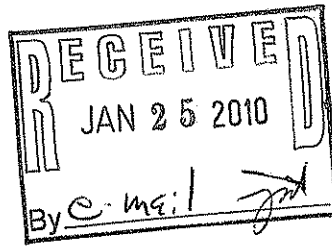
## **2. CORRESPONDENCE**

New correspondence has been received as follows:

- Renee Balter in favor of rescission
- James Westervelt in favor of rescission
- Ronald Mechur in opposition to rescission

January 25, 2010

Joanne Taylor, DCPC Coordinator  
MV Commission  
New York Avenue  
Oak Bluffs, MA 02557



Joanne

I want to thank you and the MVC for providing an opportunity to explore the idea of dissolving the Copeland DCPC in the areas that overlap with the Cottage City Historic District.

Unfortunately, I will not be here for the continued hearing on February 4. I would therefore like to give you some information in response to some of the questions that the commissioners had at the hearing last week and to also respond to some of the issues raised in the correspondence that was submitted. If you have any questions, call me at 508-696-7643 or email: [rebalter@yahoo.com](mailto:rebalter@yahoo.com)

Before I do that, I would like to constructively suggest that at the continued hearing, when commissioners have questions, that someone from the CCHD or Town be permitted to answer (if they can) the question immediately rather than waiting until much later. I think it might help to clarify some of the hard-to-understand issues and facts

1. In researching the Copeland DCPC, on the issue of landscaping review, I discovered that the Planning Board recommended the review of landscaping for the DCPC bylaw in their letter to Chuck Clifford in 1991. However, this recommendation was not included in the bylaw that was voted in by the Town. There is no review of landscaping in the Copeland DCPC.
2. The Commissioners seemed to be unclear about what the Town wanted them to do.  
In Michael Dutton's letter to the MVC, he says that the letter from the CCHD (included in your packet) clearly defines the issues. In the CCHD letter, that commission is asking if there is a need for the Copeland DCPC within the CCHD boundaries. The implication is that the Copeland should be dissolved in the area where the CCHD has jurisdiction. Also a recommendation that the Copeland DCPC remain in the area (Section E) of the DCPC around Sunset Lake and the Highlands that are not currently part of the CCHD.
3. On the issue of reviewing the area of the waterfront, it clearly states at the beginning of the Copeland DCPC bylaw that ONLY PRIVATE PROPERTIES WILL BE REVIEWED. This excludes the waterside of Sea View Ave AND ALL THE PARKS.
4. The ONLY item that is currently reviewed by the Copeland DCPC and not the CCHD is driveways, sidewalks and terraces. Since homeowners do not have to have a permit to do this kind of work, it is not likely to be reviewed by anyone. The CCHD has been looking at this issue and is currently working on some kind of a solution for having driveways reviewed. It may be an issue for the Highway

Department and curb cuts.

5. On the issue of 50' elements being allowed by Copeland, I am certain that the CCHD would allow towers that might reach this height if they were in keeping with the architecture and scale of the building being proposed. The CCHD has already approved one such tower for the Biggers house on Ocean Avenue in 2008.
6. The portion of the Copeland DCPC bylaw that requires "views from abutting properties be preserved" Was never approved by the MVC before it was voted on at Town Meeting.

7. IN RESPONSE TO CORRESPONDANCE RECEIVED BY THE MVC:

- A. Letter from Kerry Scott; at the bottom of her letter on page 1, "It's important to note that Copeland covers areas of town not in the CCHD including some beaches and parks."

Comment: While Copeland does cover the area of Section E (Sunset Lake and the Highlands) and the CCHD does not, Copeland DCPC CANNOT AND DOES NOT COVER ANY BEACHES OR PARKS (see #3 above)

- B. Letter from Gail Barmakian; in the last paragraph, "the Copeland bylaw is more comprehensive and has more teeth."

Comment: I maintain that you only have to read both bylaws to understand that the CCHD has much stricter regulations and review process in place. The CCHD came into being only because the Copeland was NOT effective in protecting the historic character of the district. See letter from Oak Bluffs Historical Commission to Massachusetts Historical Commission, August 2001. (included in your packet)

- C. Letter from B. Naparstek; paragraph 5, "the only body that chose to challenge and modify the Design was Copeland. The Historic District committee, which can sometimes be quite hardnosed, and which had more reason to object to an oversized, contemporary house with an attached garage, rolled over completely"

Comment: This statement is absolutely false. The CCHD reviewed this project thoroughly. There was a public hearing, after which, many modifications were made from the proposed project by the CCHD.

- D. Letter from Ron Mechur; page 2, paragraph 3, "For example, section 4C4 of the Copeland regulations requires "views from abutting properties shall be preserved."

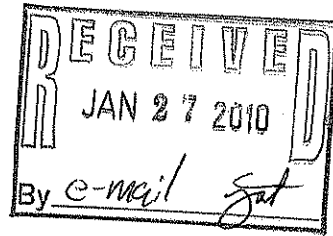
Comment: This wording was added as an amendment to the bylaw at a Town Meeting without first being approved by the MVC. It is therefore invalid.

Thanks again for all your hard work and diligence.

Renee Balter, Commissioner, Cottage City Historic District

Martha's Vineyard Commission  
New York Ave. Oak Bluffs  
January 27, 2010

Re: Copeland District DCPC



Commissioners,

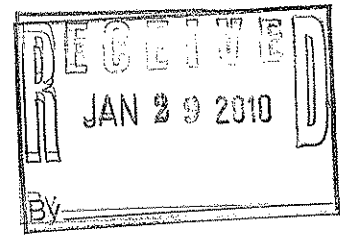
In the Cottage City Historic District there are two regulatory bodies a resident might need to appear before. One is mandatory and one is not. One, the Cottage City Historic District Commission is functioning regularly and efficiently and one, the Copeland District DCPC rarely functions at all. The question of whether the two bodies are duplicitous is obvious.

Instead of merging the two or rescinding the DCPC as suggested in the staff report, why not recommend amending the DCPC with regard to it's boundaries. An amendment to the boundary leaving out the Cottage City Historic District would allow the DCPC to still exist in an area that needs that protection. It would also allow the Town to correct the inadequacies in the present structure of the Copeland DCPC.

I will be off island and cannot attend the public hearing on 02.04.10 so this letter is respectfully submitted in support in my absence.

James Westervelt  
Cottage City Historic Commission  
Planning Board  
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Oak Bluffs

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Oak Bluffs, Massachusetts 02557-0636  
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January 29, 2010

*Ref. Continued Testimony on the Petition to Rescind the Copeland Plan Designation*

Martha's Vineyard Commission:

You have requested further information regarding regulatory powers which The Copeland Plan Review Committee has beyond those afforded to the Cottage City Historic District Commission:

**The Cottage City Historic District can not regulate solar energy systems.**

Section 7 of Chapter 40C states "when ruling on applications for certificates of appropriateness for solar energy systems...the commission *shall* consider the policy of the commonwealth to *encourage* the use of solar energy systems and to protect solar access." (emphasis added)

As a member of the Oak Bluffs Energy Committee I am in favor of renewable energy, but without proper planning, oversight and control by Copeland coupled with MVC staff assistance, there could be wholesale inappropriate panels on roofs, or expensive litigation from denied CCHD applicants, which the town would need to defend on its own without the standing of the MVC District.

**The Copeland review has the privilege to weigh the benefits and detriments, giving it the broad latitude and flexibility as applied by the MVC in its review of Developments of Regional Impact.**

It is important that Copeland not be restricted by similar specific rules and regulations governing window and door detail, for example, of the Historic District.

**The Copeland review process is working very well.**


This testimony differs from that presented to the MVC by CCHDC members. Copeland stands as the firewall defense against an inappropriate project. Copeland members have been called upon from time to time to exercise their broad authority granted to them under the Commission statute; the zoning administrator has discretionary referral authority and has been using it wisely; as such, Copeland reviews a very limited number of cases, and those when it is clear that questions of appropriateness may apply.

As such a cost effective streamlined permit process as been put in place de facto, to no ones objection, and so it stands to reason that many applications are constructively granted.

It is my sense that there is frustration on the part of Cottage City members in that they expend much time and energy on many applications, for which they are to be commended for their public service; and Copeland members do not spend nearly as much time. This is an internal matter which may need more conversation.

I hope you find this helpful in your deliberations.

Thank you for your consideration.

  
Ronald H. Mechur

features to similar features of buildings and structures in the surrounding area. In the case of new construction or additions to existing buildings or structures the commission shall consider the appropriateness of the size and shape of the building or structure both in relation to the land area upon which the building or structure is situated and to buildings and structures in the vicinity, and the commission may in appropriate cases impose dimensional and set-back requirements in addition to those required by applicable ordinance or by-law. When ruling on applications for certificates of appropriateness for solar energy systems, as defined in section one A of chapter forty A, the commission shall also consider the policy of the commonwealth to encourage the use of solar energy systems and to protect solar access. The commission shall not consider interior arrangements or architectural features not subject to public view. ✓

The commission shall not make any recommendation or requirement except for the purpose of preventing developments incongruous to the historic aspects or the architectural characteristics of the surroundings and of the historic district.

**Chapter 40C: Section 8. Review authority of commission over certain categories of buildings, structures or exterior architectural features limited; authorization.**

Section 8. (a) Any city or town may provide in the ordinance or by-law establishing a district or in any amendment thereof that the authority of the commission shall not extend to the review of one or more of the following categories of buildings or structures or exterior architectural features in the historic district, and, in this event, the buildings or structures or exterior architectural features so excluded may be constructed or altered within the historic district without review by the commission:

- (1) Temporary structures or signs, subject, however, to such conditions as to duration of use, location, lighting, removal and similar matters as the commission may reasonably specify.
  - (2) Terraces, walks, driveways, sidewalks and similar structures, or any one or more of them, provided that any such structure is substantially at grade level.
  - (3) Walls and fences, or either of them.
  - (4) Storm doors and windows, screens, window air conditioners, lighting fixtures, antennae and similar appurtenances, or any one or more of them.
  - (5) The color of paint.
  - (6) The color of materials used on roofs.
  - (7) Signs of not more than one square foot in area in connection with use of a residence for a customary home occupation or for professional purposes, provided only one such sign is displayed in connection with each residence and if illuminated is illuminated only indirectly; and one sign in connection with the nonresidential use of each building or structure which is not more than twelve square feet in area, consist of letters painted on wood without symbol or trademark and if illuminated is illuminated only indirectly; or either of them.
  - (8) The reconstruction, substantially similar in exterior design, of a building, structure or exterior architectural feature damaged or destroyed by fire, storm or other disaster, provided such reconstruction is begun within one year thereafter and carried forward with due diligence.
- (b) A commission may determine from time to time after public hearing that certain categories of exterior architectural features, colors, structures or signs, including, without limitation, any of those enumerated under paragraph (a), if the provisions of the ordinance or by-law do not limit the authority of the commission with respect thereto, may be constructed or altered without review by the commission without causing substantial derogation from the intent and purposes of this chapter.