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Minutes of the Commission Meeting Held on January 22, 2009 In the Stone Building 33 New York Avenue, Oak Bluffs, MA

IN ATTENDANCE

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

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| P James Athearn (E – Edgartown) | P Ned Orleans (A – Tisbury) |
| - Bill Bennett (A- Chilmark) | P Jim Powell (A – West Tisbury) |
| P John Breckenridge (A – Oak Bluffs) | - Camille Rose (A – Aquinnah) |
| P Christina Brown (E - Edgartown) | P Doug Sederholm (E – Chilmark) |
| - Peter Cabana (A – Tisbury) | - Casey Sharp (A – Oak Bluffs) |
| - Martin Crane (A – Governor Appointee) | P Linda Sibley (E – West Tisbury) |
| P Carlene Gatting (County Appointee) | P Holly Stephenson (E - |
| P Chris Murphy (A – Chilmark) | - Andrew Woodruff (E – West Tisbury) |
| P Katherine Newman (A –Aquinnah) | |

Staff: Mark London (Executive Director), Paul Foley (DRI Coordinator), Christine Flynn (Affordable Housing & Economic Development), Jeff Wooden

The meeting was called to order at 7:30 p.m.

1. CAPE WIND PROJECT UPDATE

Commissioners present: J. Athearn, J. Breckenridge, C. Brown, C. Gatting, C. Murphy, K. Newman, N. Orleans, J. Powell, D. Sederholm, L. Sibley, H. Stephenson

For the proponents: Tad Crawford; Dave McGlinchey, Director, Vineyard Energy Project

Dave McGlinchey, Director of Vineyard Energy Project, presented information about the Cape Wind Project.

- It looks like the Cape Wind Project will go forward. The developer will pay royalties for use of the seabed, of which 27% of which goes to the Commonwealth of Massachusetts.
- Vineyard Energy Project believes, because the impact is local, at least 27% of the Commonwealth's share should be directed to the Islands and Cape to benefit those who live with the project.
- They have been in touch with Senator O'Leary and would like support from the Commission for legislation to direct a portion of the royalties to be kept locally.

Tad Crawford added:

- The Vineyard Energy Project does not see an economic benefit from the Cape Wind Project. The electrons stay here but the money does not.
- Senator O'Leary and Tim Madden are supportive of the proposal.

- Vineyard Energy Project needs is working with O'Leary's office to craft language.
- The Island needs to build a level of support and consensus with Selectmen and other stakeholders, including Nantucket and the Cape.
- They feel the royalty money should go toward the creation of a revolving fund that would underwrite energy conservation efforts or alternative energy projects with amortization of the savings.
- They need to make sure that the talking points respond to the kinds of objections that proponents are guaranteed to get from Boston and other parts of the state.
- They need to build political support at the local and federal level.

Christina Brown added that Massachusetts has no regulatory body to deal with the money that's coming from offshore uses.

- Part of O'Leary and Madden's effort is to help the State set up a regulatory mechanism, with regulations for local mitigation versus all royalties being directed into the Massachusetts General Fund.
- The question is whether the Commission supports setting up some sort of regulatory system with guidelines and criteria that includes money coming to Cape and Islands.

Linda Sibley moved, and it was duly seconded, that in that the impacts of the Cape Wind project will most directly affect the Cape and Islands, the Martha's Vineyard Commission supports the proposal that a portion of the project royalties received by the Commonwealth of Massachusetts be distributed to the Cape and Islands to help offset these impacts, and that the Commonwealth establish a mechanism for receiving and equitably distributing all royalties.

- **Jim Powell** said it's great to take a proactive approach to take control of our regional resources. He applauds Vineyard Energy Project's efforts with O'Leary and Madden in taking that approach.
- **Carlene Gating** stated her support for the bill and applauded the Vineyard Energy Project's initiative.
- **Chris Murphy** said he would like to hear how other federal leases are handled. He wondered how money is used in other states that have federal leases such as Cape Wind's.
- **Tad Crawford** explained that a formula is used to calculate the royalties, including the amount that is distributed to the state in which the project is located.
- **Jim Powell** said he believes that it's imperative that local and regional control be involved but it may be presumptive that the Cape Wind will go forward. The Inspector General has been involved with the EIS decision and New York Attorney General has been involved with a subsidiary of Cape Wind.
- **Holly Stephenson** said it makes sense that any money distributed to the Cape and Islands would be used for energy conservation and alternative energy projects.
- Commissioners and proponents generally agreed but the first step is to support creating a mechanism for receiving and distributing funds.

A voice vote was taken. In favor: 11. Opposed: 0. Abstentions: 0. The motion passed.

2. PROPOSED BUDGET: FISCAL YEAR 2010

Commissioners present: J. Athearn, J. Breckenridge, C. Brown, C. Gating, C. Murphy, K. Newman, N. Orleans, J. Powell, D. Sederholm, L. Sibley, H. Stephenson

Christina Brown explained that Chapter 831 directs the Commission to adopt a budget at its regular meeting in January.

Ned Orleans, treasurer, finance committee, explained that he wanted to put the subject of the FY2010 budget in a context.

- He had conversations by phone with Larry Gomez, chair, Tisbury Finance Committee, and Al DeVito, chair, West Tisbury Finance Committee.
- He viewed Mark London's e-mail correspondence with Michael Dutton from Oak Bluffs in which Michael asked the Commission to postpone adoption of the budget.
- He believes there is some misinformation and some lack of information and some misunderstanding of information.
- The Commission is forced by legislation that created it to approve its budget in January.
- Towns work backwards from Town Meeting to set the calendar for developing their budgets. The Commission works backward from January.
- The Finance Committee started with the goal of not increasing the assessment of the towns if it could avoid it.
- Staff members made contact with towns to clarify what their salary increases will be, recognizing that it was impossible for the towns to provide any final information on increases for FY2010.
- It was the Finance Committee's position that Commission employees should be treated in no lesser a way than town employees and should have no more of an advantage.
- The Finance Committee started with the assumption of a total average of 4% salary increases, including both COLA and merit, which is less than the average of other public entities. If more information becomes available from the towns indicating that the final salary increases are less than this, the Finance Committee would recommend re-examining the salary increases.
- Commission counsel said that the Commission must adopt the budget in January as required by its legislation, but he suggested that it hold off sending out the assessment. The Commission is not a town department and the assessment can't be changed by the town. The assessment for each town is based on the Equalized Valuation.
- If, within a relatively short time, the Commission receives additional information, the budget could be changed.
- The time for towns to be involved in the Commission's budget process is when the budget is being developed. It sticks in the craw of some town Fincom members that the Commission budget is an assessment, rather than a budget item, but it's a two way street of involvement.
- The total budget is 8.8 % less than last year, with the assessment being less than a 1% increase.

Jeff Wooden outlined the proposed budget.

- Last year's bottom line was \$1,281,497. FY2010's proposal is \$1,168,885.

- For FY2010, the Island Plan has been removed because, from a financial standpoint, the line item is over in June.
- The goal was a flat, level budget.
- Towns typically apply COLA and step increases of 4 – 5% to town employees. Commission staff do not receive step increases or longevity. The proposed salary increases for Commission staff is budget as an overall average increase of 4%.
- The pension plan is a 4% increase. Health and disability is contained. The budget is based on the assumption that the Master Medical option will be dropped and everybody changed to a PPO, though the definitive decision hasn't been made yet. The health insurance reduction is \$13,000.
- There's a reduction in contractual costs.
- Capital improvements accrual is reduced by \$5,000.
- Legal line item has been reduced to \$50,000.
- On the income side, grants have been reduced by \$80,000. Less income from interest and DRI fees is anticipated.
- Spending in light of revenues is adjusted.
- The towns' share is \$803,885, about \$7,000 more than last year, or 0.9%.

Commissioners discussed percent increases for employees.

Chris Murphy reiterated that it's not possible to delay voting on the budget, as requested by some of the towns. When information is made available, it's possible for the Commission to revisit the budget. It's a bare bones budget and Commissioners can comfortably vote it tonight.

Doug Sederholm said in the towns there can be quite a number of people who don't get step increases because of the level they're on. The only way to look at it is to look at the total amount of the salary budget. The Commission staff total payroll increase will be 4%, about \$25,000 out of a \$1 million budget. He would urge people not to focus too much on it and he'd be disappointed if people did.

Carlene Gating said Doug's probably right, but the Commission's budget has to be totally transparent. Any misunderstandings should be cleared up. To move forward without answering questions is not useful. Counsel gave the Commission advice to approve the budget but it should be subject to sitting down with the towns and clearing up any misunderstandings.

Christina Brown said it would be useful to work with town Fincoms earlier in the process.

Ned Orleans the Commission should recognize that the assessment situation makes Fincoms upset that they don't have control over that line item. He's suggesting finding a way to make the process more collegial.

Linda Sibley said the County budget is also an assessment, but the county uses a finance advisory board consisting of representatives of the towns. That board has the final say on the budget.

Christina Brown pointed out that the operating budget is reduced by \$140,000.

Peter Hefler, Tisbury Finance Committee, commented on the process.

- He said he was sent over to request a delay in the vote.

- He applauded Carlene and Ned in mentioning the bad feelings that have developed toward the Commission's budget process.
- He added that it would be nice if someone from the Commission called the finance committees when the Commission begins its budget process.
- Finance Committees recognize that it is an assessment. They don't like what appears to be a high-handed attitude toward developing the budget. Two years ago the Tisbury Finance Committee wrote a letter asking the Commission to make a brief presentation and, to his knowledge, they never received a response.
- He asked that Commissioners meet with the finance committees in the next few weeks as the budget is finalized and that in the future the communication trail is two-way so finance committees have the chance to participate.

Doug Sederholm moved, and it was duly seconded, to adopt the budget. Ned Orleans amended the motion to read that, on the advice of counsel, assessment notices will not be sent until after February 5th so if additional input is received the budget may be amended. Doug Sederholm and Linda Sibley accepted the amendment.

- **Doug Sederholm** said he was not aware of a letter having been received from Tisbury Finance Committee. If he had been aware, he would have responded, as would have Ned Orleans. The Commission does post its finance committee meetings and has tried to answer questions that have been raised.
- **Carlene Gating** said most of the towns have questions and concerns about this budget. She believes that the All-Island Finance Committee has questions, as well. She suggested adding an amendment that the Commission approve an estimate of the budget subject to further review and comment by the towns.
- Commissioners clarified the Commission has to adopt a budget in January but, by not certifying it, the Commission may modify the budget before it certifies the amount that the Commission is assessing each town.
- **John Breckenridge** suggested that Town Administrators/Finance Committee be contacted tomorrow to inform them that the budget won't be certified for two weeks.
- **Janet Hefler** from the Martha's Vineyard Times wondered what Commissioners would say to the taxpayers to justify increases.
- **Chris Murphy** said the finance committee has discussed the issue. The committee does not want to shortchange Commission employees relative to what the towns are doing. There's not one number that will work for everyone and someone has to go first. They hope they've developed a plan that will work, and if it doesn't they have an opportunity to revisit it.
- **Doug Sederholm** said, if it turns out that salary line is out of line with what the towns are doing, he will be happy to move that the Commission amend the budget and reduce the budget. The consensus is that employees are treated as well as the towns, certainly not better, and not worse.
- **Jim Powell** said he applauds the desire of Island finance committees to strengthen their mechanism for communicating with the Commission and the Commission's desire to improve its mechanisms.

A roll call vote was taken. In favor: J. Athearn, J. Breckenridge, C. Brown, C. Gatting, C. Murphy, K. Newman, N. Orleans, J. Powell, D. Sederholm, L. Sibley, H. Stephenson. Opposed: None. Abstentions: None. The motion passed.

3. CAFÉ MOXIE: – CONCURRENCE REVIEW

Commissioners present: J. Athearn, J. Breckenridge, C. Brown, C. Gatting, C. Murphy, K. Newman, N. Orleans, J. Powell, D. Sederholm, L. Sibley, H. Stephenson

For the applicant: Peter Breese, architect; Michael Ryan, owner

Ken Barwick explained that he referred the project as a concurrence item. He described some aspects of the project

- The basement floor area will be active area.
- The zoning department issued a foundation permit for public safety reasons to stabilize the existing building and the north wall of the Bunch of Grapes.
- The zoning department required a minimum setback be met between the two buildings for structural stability and to capture the additional area being designed for the second and third floor.
- The residential component will offer an alternative revenue source and housing.
- The applicant lost a little over 1100 sq. ft. in the fire. They are increasing active floor area in the basement and adding residential floor space.
- The actual square footage figures of expansion, commercial use and residential use do not trigger a referral, but he felt that the transition change of use and increase of use from a 49-seat restaurant to a 49-seat restaurant with two one-bedroom units certainly warranted Commission consideration.

Christina Brown explained that the Commissioners need to decide whether or not to concur with the referral and whether the project requires a DRI review as a development of regional impact.

- Ordinarily, LUPC reviews the project and makes a recommendation, but LUPC was unable to meet because of the weather and a holiday.
- It's not 2,000 sq. ft. of commercial space, so does not automatically trigger a review. However, the commercial space is slightly bigger than what burned down.

Linda Sibley thanked Mr. Barwick for referring projects to the Commission. She noted that that applicant is not, as some applicants have done to avoid DRI review, building storage space that they might later convert to active space.

Ken Barwick explained that there will be a Sewage Advisory Committee review because of the increase in water use. There will be a Special Permit Review and the project will require a full public hearing through the Zoning Board of Appeals.

Michael Ryan, 50% owner of Café Moxie, said the residential units will be restricted to year-round.

Jim Athearn moved, and it was duly seconded, that the Commission not concur with the referral.

Peter Breese, architect, explained the project.

- The number one concern is to get the building reopened by July to take advantage of the summer season for the restaurant.
- They goal is to build the shell and complete the interior of the first floor for the summer, then to proceed to finish out the second floor.
- The design has to accommodate the fact that Center Street climbs over six feet.
- The first floor restaurant level goes well below grade.
- The issue is to get through the special permitting process and get it done.
- The kitchen is in the basement, the restaurant is on the first floor, and apartments are on second and third floors.

Paul Foley gave the staff report.

- The original building was one story with an unfinished basement.
- The proposal is to build a three-story, mixed-use building of 3,020 sq. ft.
- The new building requires a Special Permit from the Zoning Board of Appeals.
- The first floor will be a 49-seat restaurant with wine cellar and kitchen in the basement.
- The second floor apartment will be 736 sq. ft; the third floor will be 634 sq. ft. with a balcony.
- Key issues are whether the design fits in with the streetscape and whether the project can be built in time for the summer season.
- The property is 0.03 acres.
- There will possibly be a lit sign in front and at the entry to the apartments in back and at the front egress.
- There may be a slight increase in noise from the deck. Noise from the restaurant should be decreased because of modern construction.
- They will have a space for trash, propane and a buried grease trap.
- They will be tied into the sewer.
- Parking isn't required.
- There could be a slight increase in trip generation due to apartments.
- The plan excludes short term rentals and avoids mandatory DRI referral.
- The economic impact is on the owners if they can't open for the 2009 summer season and to the district if there's still construction going on in the summer.
- The "somewhat different" description comes from the exterior design. Most of the buildings on the street are 2½ stories.
- The Commission received a couple of letters.
- The exterior will be white cedar shingles with off-white trim.

Kathy Newman asked about architectural review and whether the Commission is the only forum for architectural review for the project. **Ken Barwick** explained that there is no architectural review board in the downtown business district, but the Zoning Board of Appeals will look at the building from top to bottom.

Henry Stephenson explained that, by the time the building gets to the Zoning Board of Appeals, a lot of work will have been done so it won't be the time to review design. It would be

better to review architectural design before the project comes before the Zoning Board of Appeals.

- The Tisbury Planning Board is very much in favor of the project. The Board wouldn't mind if the building were bigger, particularly if the apartments were bigger and the upper floors were pulled forward, to be consistent with the rest of the street.
- He is encouraged by the most recent version.
- The Planning Board would like to continue the conversation with the architects and move it along so it gets done for the summer.

Michael Ryan explained that they wanted to bring back the original design and the old look of the front of the restaurant. They've tried to incorporate the original 1890 look into the design but they didn't want it to loom over Main Street.

Doug Sederholm reiterated that the motion is that the Commission not concur and the project doesn't have sufficient regional impact to get the Commission involved. He said he cares about the aesthetics, but he believes the fine-tuning can be pursued through further conversations and the Zoning Board of Appeals.

Holly Stephenson said she thinks a certain solidity of the frontage should match the rest of the town.

- Additionally the parking is a regional issue.
- She wonders about the concept of referring a project but at the same time stating the project shouldn't be reviewed because it will take too much time.
- She is in favor of approving the project but she hopes that the Zoning Board of Appeals will look at parking.
- She hopes that the bench will be put back.

Chris Murphy said the parking issue is one issue that does have regional impact. The Commission has required other projects to deal with parking.

Ken Barwick said the Zoning Board of Appeals may require that the applicants provide one parking space per dwelling unit within one tenth of a mile of the site.

Linda Sibley said, if the Commission does not concur, it's important to specify why the Commission is not going to review the project.

- The conversion of the basement from storage to an active use isn't an attempt to circumvent DRI review.
- The increase in intensity of use is not sufficiently significant to warrant review and the Zoning Board of Appeals can deal with the parking issue in a mixed-use building.
- If they were to put a radically modern building, it would have regional impact. In this case, the Commission can say that the architecture is sufficiently in keeping with the street and the applicant has expressed willingness to work with Planning Board members.
- The building was strangely an anomaly to begin so the plan is consistent with what it was.
- It's striking that the top roof gable runs in the opposite way as everything else.

Jim Athearn commented about cars and parking. These apartments are being planned for the next fifty years when people won't need cars. If there were a hundred such apartments in town, imagine how much more economically healthy the town would be.

Carlene Gating said an argument could be made that this is a Development of Regional Impact. People walk by it regularly and the intensity of use is increasing. Additionally, when town officials ask that the Commission review a project, she takes that seriously.

Henry Stephenson said that it's important that the project be moved along and he's modified his view somewhat because the applicant has made some adjustments to their original design. The plan is evolving.

John Breckenridge said it's important to note the architect is a member of the downtown business district. The architect's designs have been consistent with the downtown district and the architect and applicant have expressed a willingness to work with the Planning Board.

A roll call vote was taken. In favor: J. Athearn, J. Breckenridge, C. Brown, C. Gating, K. Newman, N. Orleans, J. Powell, D. Sederholm, L. Sibley, H. Stephenson. Opposed: None. Abstentions: C. Murphy. The motion passed.

4. MINUTES

Commissioners present: J. Athearn, J. Breckenridge, C. Brown, C. Murphy, K. Newman, N. Orleans, J. Powell, L. Sibley, H. Stephenson

4.1 Minutes of December 18, 2008

John Breckenridge moved, and it was duly seconded to approve the minutes of December 18, 2008, as written.

- **Ned Orleans** referenced Line 157. He never questioned the premise of going to a public hearing. He indicated his discomfort with organizations who have legal counsel who gives advice and it's accepted without question and without discussing it.
- Commissioners agreed by consensus to delete Line 156 – 163.

A voice vote was taken. In favor: 8. Opposed: 0. Abstentions: 1. The motion passed.

4.2 Minutes of February 21, 2008; March 6, 2008; May 1, 2008; September 18, 2008

Chris Murphy moved, and it was duly seconded, to accept the minutes of February 21st, March 6th, May 1st, and September 18th, as presented and corrected. A voice vote was taken. In favor: 8. Opposed: 0. Abstentions: 1. The motion passed.

The meeting adjourned at 10:00 p.m.


Chairman

5/21/09
Date


Clerk-Treasurer

5/21/09
Date