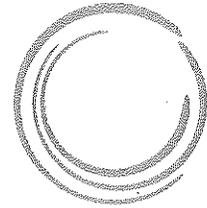


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CAPE COD
COMMISSION

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Minutes
Meeting of
Cape Cod Commission

February 16, 2012

The meeting was convened at 3:00 p.m., and the Roll Call was recorded as follows:

Town	Member	Present
Barnstable	Royden Richardson	✓
Bourne	Michael Blanton	✓
Brewster	Elizabeth Taylor	✓
Chatham	Lynne Pleffner	Absent
Dennis	Richard Roy	✓
Eastham	Joy Brookshire	✓
Falmouth	Vacant	Vacant
Harwich	Robert Bradley	✓
Mashpee	Ernest Virgilio	Absent
Orleans	Leonard Short	✓
Provincetown	Austin Knight	✓
Sandwich	Joanne O'Keefe	Absent
Truro	Peter Graham	✓
Wellfleet	Roger Putnam	(Recused)
Yarmouth	John McCormack, Jr.	✓
County Commissioner	Mary Pat Flynn	✓
Minority Representative	John Harris	✓
Native American Rep.	Mark Harding	Absent
Governor's Appointee	Herb Olsen	Absent

The meeting of the Cape Cod Commission was called to order on Thursday, February 16, 2012 at 3:00 p.m. in the Assembly of Delegates Chambers in Barnstable, MA. Roll was called and a quorum established.

Chair Peter Graham expressed the need for decorum throughout today's meeting.

■ EXECUTIVE DIRECTOR'S REPORT

Executive Director Paul Niedzwiecki said last week he appeared in front of the Cape and Islands Board of Realtors to discuss the wastewater issue on the Cape. He said it was a good meeting and it reminded him that part of what he needs to do in the future at the Commission is to do a few more informational, non-regulatory updates. He said he would like to get the wastewater presentation in front of the full Commission as soon as possible. He said he would work to get it on the agenda soon. He said that has been done in the past and part of the experience has been when there are only informational items on the agenda they don't get the attendance that they would get with other matters. He said he would impress upon Commission members the importance of some of the issues that will be brought to the full Commission within the next few months in an informational capacity.

■ MINUTES

The minutes of the January 19, 2012 Commission meeting were reviewed. Peter Graham moved to approve the minutes. Michael Blanton seconded the motion. The motion passed with a unanimous vote.

The minutes of the February 2, 2012 Commission meeting were reviewed. Peter Graham moved to approve the minutes. Michael Blanton seconded the motion. The motion passed with one abstention.

■ NEW GENERATION WIND JOINT VENTURE

Michael Blanton said as the Commission begins their deliberation for the New Generation Wind project he said he would like to address the request regarding recusal and said Mr. Putnam addressed that request regarding his recusal at the February 2, 2012 Commission meeting. Mr. Blanton said he would briefly address the request for his recusal. He said the request came from the project proponent and said the reason was because the Bourne Board of Selectmen a little over a year ago took a vote on the project and then as the Bourne representative he was asked to forward that communication to the Commission to be put on the record. Mr. Blanton said, for the record, he has maintained an equal and fair view point with regard to his analysis on this project. He said he believes his record on the subcommittee reflects that he maintained that equal fair standing as the Commission goes into deliberations today. He said it was also worth noting that the Board members that voted most of the Board members are longer present on the Board of Selectmen. He said because he believes the residents of Bourne deserve a voice he fails to see that there is any legitimate reason for him to recuse himself.

Roger Putnam said he is recusing himself from today's meeting for essentially the same reasons that he noted at the February 2, 2012 Commission meeting. He said he does not feel that the attorney is justified in her attempt to stack the panel but nonetheless, in an effort to make sure that the process maintains purity he will recuse himself again.

Chair Peter Graham said the purpose of today's meeting is for the Cape Cod Commission members to deliberate on the New Generation wind project and to consider the subcommittee's draft written decision recommending denial of the project without prejudice. He said the public hearing was closed on February 2, 2012. He said today's meeting is not a public hearing and public testimony will not be taken. He said the record was closed on February 9, 2012 at 4:30 p.m. and Commission members have all written testimony received until the closing of the record. Mr. Graham asked Commission staff to review the draft decision with the Commission.

Kristy Senatori, chief regulatory officer at the Commission, said she would review the draft subcommittee decision with the Commission taking each section up one at a time. She asked that questions and comments on each section be raised at that time through the chair. She said the Procedural History section was updated to include the final public hearing before the full Commission on February 2, 2012, the record closing on February 9, 2012 at 4:30 p.m., and today's meeting where the Commission will deliberate on the project. She said Exhibit B, the updated materials list, includes all materials submitted for the record until it closed on February 9 at 4:30 p.m. and noted that it was included in Commission member packets. She said regarding the Testimony section the minutes are not included as an appendix to the decision due to their length and as this decision would be recorded. However, she noted that all minutes are public records available for review in the Commission files. Ms. Senatori began with General Findings on page 3. She said they include findings with regard to Development of Regional Impact (DRI) approval criteria beginning with consistency with the Local Comprehensive Plan (LCP) and municipal development bylaws.

Richard Roy said he has concerns on the findings in that the Commission relied on testimony from the Bourne Town Planner with regard to turbines 1, 2, and 3 but the Commission has not relied on her written testimony for turbine #7. He said he believes that it's inconsistent and the Commission should adopt her testimony regarding Bourne's development bylaws. He said, in addition, the Commission accepted testimony for the My Generation Energy Solar project in Barnstable and said the Commission also accepted the interpretation from the Director of Growth Management in Barnstable in finding that the project was consistent with local development bylaws.

Mr. Roy said to keep the Commission's decisions consistent he moved that the Commission amend the subcommittee's draft decision and adopt the written testimony from Coreen Moore and find that turbine #7 in the proposed development is consistent with the municipal development bylaws. Elizabeth Taylor seconded the motion.

Jack McCormack said he believes that Ms. Moore also stated that the final decision lies with the Planning Board

Austin Knight said he believes that it is consistent.

Elizabeth Taylor said relative to consistency and the Planning Board, if the Town Planner says it's consistent then she would accept that testimony. She said she believes the Commission should accept Ms. Moore's testimony.

A vote called on the motion passed with a unanimous vote.

Kristy Senatori, said red-line materials just distributed to Commission members, are amended findings that reflect the motion that was just made and approved. She said findings that would need to be amended are General Finding GF9 on page 6 that adopts Coreen Moore's testimony, GF10 on page 6 would need to be deleted and Conclusion #3 on page 23 would need to be amended.

Chair Peter Graham moved that the draft decision be amended by the language as described by staff. Austin Knight seconded the motion.

Michael Blanton said for clarification what the Commission is reviewing now is the language showing consistency with Bourne's zoning bylaw and said they are not necessarily looking at other aspects of compliance with the Regional Policy Plan (RPP).

Kristy Senatori said that is correct. She said it relates to consistency with the municipal development bylaws for Turbine #7.

A vote called on the motion passed with a unanimous vote.

Kristy Senatori said the remaining General Findings address consistency with Districts of Critical Planning Concern (DCPCs) and said it concludes the main General Findings. She said on page 7 findings address the Minimum Performance Standards (MPSs) of the RPP and said the first issue area is Land Use on page 7. She noted that Economic Development (ED) is the next section at the bottom of page 7 and goes on to page 8. She pointed out an oversight in the ED section in the application of ED standard for EDF8 states that MPS ED1.4 is not applicable to the proposed development. She said upon further review of the standard, staff suggests that it is applicable and that the Commission should make a determination on the project's compliance with this standard. She explained the standard and said if the Commission considers Grazing Fields Farm a working agricultural land, the Commission must determine whether the proposed development eliminates or significantly impairs the current and future function of the farm. She said it would be an appropriate time to have a discussion about this MPS.

Roy Richardson asked for a definition of the word agricultural.

Jessica Wielgus, Commission counsel, said with respect to the definition of agricultural use it is not a defined term in the Commission's RPP. She said, however, general case law with regard to agricultural use does state that the use of a home or stable to raise, train, board horses, board other horses, give riding lessons fall under the agricultural use section of Chapter 40A. She said the Commission could use that as guidance in its determination.

Elizabeth Taylor asked if this was the time to discuss whether there would be impacts on horses or does the discussion focus just on whether it's a working agricultural land.

Jessica Wielgus said the discussion is to determine whether it is a working agricultural land.

Richard Roy said he believes the testimony heard on this matter would indicate that Grazing Fields Farm is an agricultural property and a working agricultural property. He moved that the Commission find that Grazing Fields Farm is a working agricultural land. Michael Blanton seconded the motion.

A vote called on the motion passed with a unanimous vote.

Jessica Wielgus said the other piece of the standard that the Commission needs to consider is ED1.4. She said ED1.4 says a development shall not eliminate or significantly impair the current and future function of a working agricultural land. She said the question that the Commission needs to consider is whether or not the applicant has met that burden to show that the development shall not eliminate or significantly impair the current and future function of Grazing Fields Farm. She said the Commission should consider the evidence that is in the record to determine whether or not the applicant has met that burden.

Michael Blanton said they have heard testimony from the applicant who has suggested that they would turn off the wind turbines during the times that the Grazing Fields Farm organizers would be running their shows but outside of that they have heard nothing else. He said they have also heard testimony on the record from the owners and managers of Grazing Fields Farm who have concerns that this might not be adequate.

Elizabeth Taylor said she has had horses and her neighbor has horses and there is a lot of noise around. She said in Ohio she was familiar with farms that were near wind turbines and said she just doesn't think that this is something that they should assume is going to bother horses. She said when she rides her horse will jump at a leaf that wasn't there two seconds ago and said that is just the nature of the animal. She said she believes they are making a supposition if they assume that the turbines would be a detriment to Grazing Fields Farm. She said if the applicant is going to turn them off during shows she believes that would suffice.

Jessica Wielgus said, again, just to remind the members at this point that they need to consider the evidence that is in the record and whether or not the Commission feels that the evidence meets the burden of proof.

Chair Peter Graham said they have heard thoroughly from not only the people from Grazing Fields Farm and others with information of possible detrimental effects to not only the business but also the animals on that particular farm. He said the economic aspect would be the loss business from people who may be leaving Grazing Fields Farm as a result of not wanting their animals around turbines was an issue.

Joy Brookshire said not only does the business have horses for shows they also board horses that are always on the property. She said she would rather err on the side of caution than make a big mistake. She said the size of the turbine is 492 feet from the base to the tip.

Jessica Wielgus reminded Commission members that they need to confine their discussion to evidence that is in the record so testimony from individuals or parties regarding whether it will eliminate or significantly impair the current and future function of a working agricultural land. They should not speculate on that.

Chair Peter Graham mentioned to the members that they will be tag teaming as they proceed and counsel has asked them to focus their attention on what it is that they need to focus on. He asked if there was any further discussion on what is in the record regarding this MPS.

Roy Richardson said the Commission received a letter from the attorney for the applicant and it discussed the impact the project would have on the horses and they provided information on the impact or lack of stimuli on horses and other situations and wondered if the Commission has had the opportunity to analyze those claims side by side—whether staff has had a chance to evaluate that for the Commission.

Jessica Wielgus said with regard to the testimony that is in the record whether it be letters that the Commission has received from the Fletchers on Grazing Fields Farm or the letters received from the applicant, Mr. Ingersoll or anyone else that is in the record, the Commission's job is to decide how much weight the Commission is going to give to that testimony. She said that is the function of the Commission to decide what weight they will give each piece of that evidence and whether or not they believe it and whether to adopt it. She said at this point staff cannot weigh in on that.

Roy Richardson said he was not trying to give staff an additional job. He said he was just interested to know if anything had been done such as that. He said he finds it to be a rather complex issue and said he found it very difficult as an individual to make sense out of what he considered conflicting testimony. He said he felt the intentions of individuals who wanted to get information to them commendable.

Chair Peter Graham moved that the Commission find that the proposed development does not comply with MPS ED1.4 as the applicant has not met its burden to show that the development shall not eliminate or significantly impair the current and future function of Grazing Fields Farm. Michael Blanton seconded the motion.

Michael Blanton referred to a letter addressed from Robinson and Cole, Attorney Giaimo who represents the Fletchers of Grazing Fields Farm. He said his letter of February 9 at the bottom of the first page states Grazing Fields Farm's established agricultural operations will be diminished not enhanced by the introduction of noisy moving industrial structures at the back drop to the scenic vista that is Grazing Fields vista and customers now enjoy. Mr. Blanton said he recalls testimony at the last Commission meeting where the attorney representing the Fletchers was very concerned that not only the noise but the structures could potentially aggravate frightened horses but that it in turn would be a business detriment for Grazing Fields Farm in their year round ongoing operations.

A vote called on the motion passed with 8 votes in favor, 3 opposed and 1 abstained.

Kristy Senatori referred to materials being distributed to Commission members and said it reflects draft language that would be an amendment to draft decision memorializing the two votes just taken by the Commission; that the Commission finds that the Grazing Fields Farm is a working agricultural land and that the Commission finds that proposed development does not comply with MPS ED1.4 as the applicant has not met the burden to show that the development shall not eliminate or significantly impair the current and future functioning of Grazing Fields Farm.

Chair Peter Graham moved that the draft decision be amended by the language as described by staff. Jack McCormack seconded the motion. A vote called on the motion passed with 9 votes in favor, 2 opposed and 1 abstained.

Kristy Senatori asked if there were any questions or comments regarding the remaining Economic Development section.

Richard Roy said under the Economic Development section MPS ED4.1 Demonstrated Need and Public Benefit he believes the decision of the subcommittee is contrary to the decision the Commission made on the My Generation Energy Solar project and is inconsistent. He said therefore he moves that the Commission amend the subcommittee's draft decision and find that the proposed development is in response to existing regional demand and improves the availability, reliability, quality and cost of services and as such complies with MPS ED4.1. Michael Blanton seconded the motion.

Michael Blanton said as a member of the subcommittee he remembers deliberating with regard to this particular issue and said during their deliberations what they would have liked to have seen was maybe an abundance of energy produced beyond what this project is capable of. He said the definition of the standard is clear and in order to meet the standard the project needs to produce electricity; it does not state how much but it does do that so he believes this is an appropriate direction for the Commission go in to look at the standard and revise their position on it.

Chair Peter Graham said he would like to comment on development infrastructure and/or capital facilities shall be in response to existing regional demand and shall improve the availability, reliability, quality and cost of services. He said the testimony that he heard and the arguments that were made several times to the subcommittee did not satisfy him in terms of a direct cause and effect relationship proving the demonstrated need and public benefit. He said the regional demand issue was not demonstrated in terms of the output of this particular power plant and the demand of the region. He said regarding the region itself, and said he is talking about Cape Cod, the subcommittee split on this particular issue about demand and whether or not there was a proven need. He said the applicant put up numerous charts and had numerous experts but definitive proof that this particular project itself didn't meet that demand.

Roy Richardson said in terms of meeting local demand some of this energy will be sent to the grid and will be shared among a lot of different people. He said it would have an impact in the situation of when there are brown outs and loss of electricity it would be able to weigh in at that point to produce a supply that would help those things from happening. He said all the energy does not go directly to the grid some goes to the local substations which can be used locally and said it does that substantially. He said he believes they need to take a look at the total picture in that the state has made clean energy, wind energy a priority. He said the state has already let us know that every area is going to provide its share, at least the areas where there is wind, and said he believes there is an opportunity here in terms of trying to make sure that if

we have to have wind in this area that we have it in a manner in which we can live with it and be beneficial. He said he believes the evidence that he heard during the subcommittee doesn't support the chairs position on that. He said he would oppose that.

Austin Knight said he would tend to agree with Mr. Richardson. He said the fact that multiple turbines are going to generate electricity is proof enough. He said there are other parts of it also and said the fact that was brought to them that there would less fossil fuel being used and other things that are involved in that and not just the generation. He said there were factors that were talked about such as uranium and what's not being used that also helps in the future. He said it's not just limited to what is being generated; it's what it is saving us also. He said he believes it goes both ways what's being generated and also what it's saving us.

Michael Blanton said one of the difficulties the subcommittee had was with regard to a word that has come up several times here but doesn't appear in the standard and that is the word significant. He said that is one of the issues he believes the subcommittee had. He said many of them wanted to see something more significant that what is being offered here but that is not what the standard calls for. He said the standard calls for the generation and meeting the demand. He said this project does contribute and does generate but whether it does it significantly is a matter for discussion that is probably outside the realm of this particular project. He said he would suggest that the project does meet the standard.

A vote called on the motion to amend the subcommittee's finding.

Roy Richardson asked that the motion be repeated.

Jessica Wielgus said the motion is to modify the draft decision and find that it is in compliance with ED4.1.

A vote called on the motion passed with 7 votes in favor, 4 opposed and 1 abstained.

Kristy Senatori referred to material being distributed to Commission members and said it reflects revised language in the draft decision on the vote just taken and approved by the Commission. She said two documents provided by the applicant have been added to the list and the revised language modifies Economic Development Finding EDF1 on page 8. She said it addresses current demand and availability, reliability, quality, and cost and finds that the project complies with MPS ED4.1. She then reviewed the revised language for current demand and availability, reliability, quality, and cost. She said the revised language would replace EDF2 through EDF7.

Chair Peter Graham moved that the draft decision be amended with the language as described by staff. Michael Blanton seconded the motion.

Austin Knight said for the record he would note an error in the reading of the date of July 20, 2011 and said it appears in writing as July 22, 2011. He asked for clarification on that.

Kristy Senatori apologized and said July 22, 2011 is the correct date.

A vote called on the motion passed with 7 votes in favor, 4 opposed and 1 abstained.

Kristy Senatori said she would move onto to water resources, hazardous materials and waste beginning on pages 9 through 15 of the draft decision. She said one of the 4,000 gallon tanks that the applicant previously proposed not to install as part of their offset has been installed and is no longer being proposed as an offset. She said the applicant is proposing not to install one 4,000 gallon tank as part of their proposal for offsets. She said MPS WM1.3 allows development to exceed the household quantity limits up to, but not exceeding the amount that the development permanently eliminates at another facility, project, or site within the same Wellhead Protection Area and provided adequate documentation of the volume eliminated is approved by the Commission. She said in materials received to date the applicant has now committed to delivering a restrictive covenant ensuring the permanent removal of the hazardous materials if the offset is accepted by the Commission. She said as of the close of the record there is no draft restrictive covenant in the record. She said the Commission will need to make a determination at this time and consider whether this is adequate documentation.

Richard Roy said he does not believe that the applicant has met their burden to make sure that no tank is installed and moved that the Commission find that the applicant has not met its burden to show adequate documentation for the 4,000 gallon tank's permanent elimination. Joy Brookshire seconded the motion.

Elizabeth Taylor said she had a question regarding one of the letters from the applicant and questioned whether it had been subsequently corrected by staff. She said the letter indicated that staff had initially told the applicant that that would count; that they would get credit for not putting in tanks that were not there and then the Commission turned around and changed their mind on that. She asked if staff had ever spoken to that issue because now we have the tank and said she is amazed that the Town has allowed for a 4,000 gallon tank to be installed in a Zone II. She asked for clarification as to whether staff initially said okay and then the Commission turned around to say that would not be something that they would get credit for.

Paul Niedzwiecki said the particular language in the standard was read to be somewhat ambiguous as to whether something had to be installed or whether if it had a permit pulled already could the potential be used as a credit. He said there were discussions up front and none of them went one way or the other in the staff report and remained fairly neutral on that and left that decision, because of the nature of the language, up to the discretion of the subcommittee.

Elizabeth Taylor said does that tell us that maybe the Commission needs to tighten up the language.

Paul Niedzwiecki said it certainly does.

Chair Peter Graham asked staff to repeat the motion.

Jessica Wielgus said the motion is for the Commission to find that the applicant has not met its burden to show adequate documentation of the single 4,000 gallon tank's permanent elimination.

Roy Richardson questioned whether they were talking about the tank in the ground as an offset and he doesn't understand what the issue is.

Jessica Wielgus said staff indicated that the tank that is already in the ground is no longer being offered as an offset. She said the issue that the Commission is considering right now, that is part of the standard, is in addition to accepting an offset the Commission has to find whether adequate documentation of an offset has been given. She said the Commission has evidence in the record an offer of a restrictive covenant and as indicated by staff that has not been given to the Commission. She said the issue that is being discussed is whether the Commission finds that there is adequate documentation of the removal of the tank for an offset.

David Peterson said very early on in this process they had an early meeting with Commission staff and said the Executive Director was there as well. He said they discussed many issues and said one of them was hazardous materials. He said they talked about how they were in the process of pulling permits for tanks, that they would have permits for the tanks and said it was agreed at that meeting based on the language in the RPP, and said the Executive Director agreed with them as well, that at the point they were at it made no sense to spend money and waste money to install the tank just to take it out. He said he agrees with the Executive Director that there was nothing in writing; there was nothing promised at that meeting but they were given very clear indications that there was an agreement, meeting of the minds if you will, that it was just wasted money and a wasted exercise for them to physically spend the money to install a tank that had been purchased in 2009 was clearly part of their Cape Cod Aggregates plan as part of their operation so they did not install the tank. He said they could have very easily installed the tank. He said after they received the draft decision, it only took them two weeks to install the tank so at the time it would have been very easy for them to spend the money and install the tank. He said they were trying to go based on their good-faith meeting early in the process and said it was his understanding of that meeting that the staff and the Executive Director agreed that it was just a waste of money. He said it was very clear that this process was going to be a lengthy one and expensive one. He said no one was trying to circumvent the system and as such at that open and honest meeting with a good dialogue it was agreed at that meeting that it made no sense to spend that money. He said that is why that tank was never installed. He said the reason they have pulled that tank as part of the mitigation is because based on the draft decision and based on the volume of hazardous material that they need to mitigate they installed the tank. He said they feel that the two permits that they had were identical and feel that the second permit that they have offered as mitigation is not theoretical and said it's very real. He said it represents 4,000 gallons of hazardous materials that will be taken away for what they think should be about 1500 gallons hazardous materials.

Paul Niedzwiecki said to follow up on Mr. Peterson's comments there was a discussion on this particular standard and noted, again, some ambiguity on that. He said Ms. Taylor pointed out also that the Commission is in a position on this one, given the way the MPS was drafted, of having to consider where there was a permit pulled for an oil tank that in order

to get a credit offset for that that they would actually have to install it and then to uninstall it. He said that is a problem with the MPS as it reads. He said nothing that staff does or says in a staff report can bind the Commission from making its own determination on some of the MPSs and in this case some of the MPSs were voted against staff recommendations. He said it's up for the Commission's determination based on that standard and the issue in front of the Commission, though, is whether there is adequate documentation for a permitted offset. He said that is really the issue that needs be clarified.

Austin Knight said because it was offered at a public hearing in a statement that becomes written is that not adequate enough for the offset. He said originally there were two tanks and then they put one in and there is one left and 4,000 gallons to determine as an offset. He said the other way that had been offered in public testimony before the Commission previously and asked if that is not adequate enough or does it have to be in some sort of writing. He said part of it is already in the record.

Jessica Wielgus said this goes to the question of the water resources section and said she would suggest that if the members are going to discuss the underlying offset that they might want to have a discussion about that as well. She said as the draft decision is written right now the subcommittee recommended that the offset not be accepted. She said the question before the Commission now is whether or not the Commission has adequate documentation of volume eliminated and said the subcommittee had taken the position that it did not eliminate a volume. She said the Commission needs to look at that as well.

Joy Brookshire questioned on-site mitigation offset and off-site. She said she thought part of the discussion of this was that Cape Cod Aggregates is part of the original project and therefore this wasn't an "other" site and said it was part of the on-site project area.

Jessica Wielgus said that is correct; that is part of the standard. She said just for edification the standard that the Commission is looking at is WM1.3 and said development and redevelopment within a Wellhead Protection Area that involves the use, treatment, storage and disposal of hazardous materials or hazardous wastes may be allowed to exceed the quantity limits of WM1.1 up to, but not exceeding, the amount that the development or redevelopment permanently eliminates at another facility, project or site within the same Wellhead Protection Area and provided adequate documentation of the volume eliminated is approved by the Commission. She said as it relates to the documentation the Commission has taken the position that elimination should be permanent elimination so the fact that the Commission does not have a restrictive covenant before us for the Commission to consider goes to the question of whether the Commission would be able to find permanent elimination.

Elizabeth Taylor said she had another question about the language and said if they have said that they will meet the standard by not doing something how is that different from meeting an open space standard by not clearing the land. We've said we would give them credit for not doing something and yet the Commission gives credit for not clearing land for open space. She said she believes there are a lot of language issues here.

Chair Peter Graham asked Mr. Roy to restate his motion.

Richard Roy restated his motion and moved that the Commission find that the applicant has not met its burden to show adequate documentation of the 4,000 gallon tank's permanent elimination.

Austin Knight asked for clarity through counsel and said because it was stated and becomes public record is that not adequate enough to meet that point.

Jessica Wielgus said, again, there is evidence in the record of a letter whether or not the Commission wants to give that weight, to say that is adequate documentation but first the Commission needs to realize that based upon the subcommittee's draft decision that they have not accepted it as an offset.

Jack McCormack said they are talking about a tank, as he understands it, that has already been withdrawn as an offset.

Jessica Wielgus said it was originally offered. She said there were two tanks offered as offsets at the outset of this project but in between the time the subcommittee made the recommendation in the draft decision and the time of today's meeting, the applicant has installed one of the tanks and withdrawn it as a potential offset for this project. She said they do have one remaining tank that they are offering as an offset for this project. She said the subcommittee's draft decision did not accept that second offset offer.

Joy Brookshire asked when does her concern that this is not off-site mitigation come into that motion. She questioned whether they needed another motion after they vote on the present motion.

Jessica Wielgus said the subcommittee's draft decision already made that finding so unless the Commission wants to change that finding, the Commission does not need to do anything about that.

Michael Blanton asked Ms. Wielgus to clarify that one of the document's that the Commission is waiting for is a deed restriction and the Commission has not received that to date as of yet.

Jessica Wielgus said the Commission does not have that in the record. She said the Commission has a letter from the applicant's counsel indicating their willingness to submit something.

Roy Richardson said this might not be on point but it keeps occurring to him that this whole project might in itself be an offset in terms of what the Cape's continuing need is for energy especially green energy.

Chair Peter Graham asked that remarks be confined to the motion.

Roy Richardson said it may not apply directly to the motion but it's what the whole thing is all about in terms of what other needs for energy are they going to have.

Austin Knight asked if the motion could have a condition in it. He said they did not present a document currently but a letter saying that they are going to. He asked if it would be possible to have a condition that before the project can be done that has to be done. He said there may be a way of doing that.

Jessica Wielgus said that presumes that the Commission has accepted the offset. She said if the Commission is inclined to have that discussion the Commission may want to withdraw this motion and have a discussion about the water resources section.

Michael Blanton said the Commission has been working on this project now for one and a half to two years. He said he believes if that document was going to be provided it certainly had ample time to have been provided prior to tonight's meeting.

A vote called on the motion that the Commission find that the applicant has not met its burden to show adequate documentation of the 4,000 gallon tank's permanent elimination passed with 8 votes in favor, 3 opposed and 1 abstained.

Kristy Senatori continued on with the water resources section and said as was heard the 4,000 gallon tank that was previously being offered one of them is no longer being offered as an offset. She said the applicant now is proposing to not install one 4,000 gallon tank. She said materials that are being distributed to Commission members are technical amendments to the draft decision. She said they simply reflect the fact that no longer are two tanks being offered but one 4,000 gallon tank is being offered. She explained that water resources finding WRF37 refers to that first tank that is no longer being offered as an offset; amendment to water resources finding WRF38 to reflect only one 4,000 gallon tank; water resources finding WRF39 says the same thing; water resources finding WRF40 also articulates the motion that was previously made that the applicant has not provided adequate documentation of the volume eliminated; water resources finding WRF41 again refers to only one 4,000 gallon tank; and, again, amendment to water resources finding WRF42 again to reflect only one 4,000 gallon tank.

Chair Peter Graham moved that the draft decision be amended by the language as described by staff. Len Short seconded the motion. A vote called on the motion passed with 9 votes in favor and 3 opposed.

Kristy Senatori asked if there were any further comments regarding the water resources and hazardous materials and waste section. She said this section spans from page 9 through 15 in the draft decision.

Jack McCormack said he would suggest that the Commission consider the amount of hazardous waste described in the decision in that it found that all of the hazardous waste in the lubricant was a hazardous material and due to the fact that in the past the Commission has found that not all of the lubricant but only 1.5% of it was hazardous and described as vegetable oil that is suitable for human consumption. He said to further that discussion he would offer that amendment. Elizabeth Taylor seconded.

Chair Peter Graham asked Mr. McCormack to repeat what he is moving.

Jack McCormack moved that the Commission find that the total amount of hazardous material is 1.5% of the lubricant that is used rather than the total amount of the lubricant that is used.

Kristy Senatori asked for clarification. She asked if Mr. McCormack was speaking to the vegetable oil that is being used in the turbines and the 1.5% oil-based fluid.

Jack McCormack said that is correct.

Richard Roy said a point of clarification for the vegetable oil is that it's used in the transformers and said it is not used as a lubricant. He said that product is a Coopers FR3 vegetable oil based material which the Commission has found in a previous decision was not hazardous. He said the Commission said that the 1.5% which is not hazardous is a proprietary additive and it was not described so the Commission said that it would not accept that 1.5% of the total amount.

Jack McCormack said for clarification this amount in a previous decision was still less than the recognized average household total amount. He said this is not the case in this one.

Leonard Short said he was on the subcommittee that made the decision on the solar project and said he thinks in retrospect he questioned his vote on that. He said his understanding is that when something is pure it's pure. He said the moment a contaminant is put into it everything is not pure any longer. He said as a result the 1.5% additive contaminates the entire batch.

Richard Roy said submitted to the record was the material safety datasheet for this material. He said the datasheet proclaims that this material is nonhazardous. He said testing that was submitted with it substantiates that it's nonhazardous. He said there is nothing to indicate that the additive is a toxic material.

Chair Peter Graham asked Ms. Senatori to repeat the motion.

Kristy Senatori said the motion, as she understands it, would be that the Commission would amend the subcommittee's draft decision and find that 1.5% of the vegetable-based transformer fluid meets the RPP's definition of hazardous material.

A vote called on the motion passed with 8 votes in favor, 2 opposed, 2 abstained.

Kristy Senatori said what is being distributed to Commission members are amendments to the subcommittee's draft decision and reflects the vote just made to find that 1.5% of the vegetable-based transformer fluid meets the RPP's definition of hazardous material. She said it modifies several of the water resources findings. She said most of what is before the Commission is simply a calculation taking 100% down to 1.5% of the vegetable oil. She explained water resources finding #18 that refers to 1.5%; water resources finding #19 reflects that rather than 2,132 gallons of vegetable oil transformer fluid or 533 gallons per turbine that is now 1.5% with 32 gallons for a total of eight gallons per turbine; the same change is in water resources finding #20; water resources finding #28 there is a total of the three turbines 1, 2, and 5; water resources finding #29 is for turbine #7; water resources finding #35 is the total amount of hazardous materials and waste for the four turbines combined; water resources finding #36 again is the total for the four turbines; water resources finding #44 is 1, 2, and 5; and water resources finding #46 is turbine #7.

Chair Peter Graham moved that the draft decision be amended by the language as described by staff. Leonard Short seconded the motion. A vote called on the motion passed with 8 votes in favor, 2 opposed, and 2 abstained.

Kristy Senatori said if there were no further questions or comments on the water resources, hazardous materials and waste sections she would move on. She said the next section is solid waste on page 16. She said the next section is coastal resources and natural resources on page 17. She said transportation is on pages 17 and 18. She said energy and affordable housing is on page 19 and heritage preservation and community character spans from pages 19, 20, 21, and 22. She said this concludes the RPP compliance and said the remaining section is the probable benefits/detriments analysis of the proposed development.

Roy Richardson said he is concerned about one of the detriments and is not sure it's correct and said it's the "probable negative impacts on local Native American tribe." He said early on it interested him greatly and as a result of that Sarah

Korjeff was asked to investigate further and she did. He said her report back to them was that it was not a negative thing. He said two people have come before the Commission earlier on saying it was a sacred thing. He said then the Commission received a letter that documented the condition of this particular spot and noted that it's covered with graffiti and said he is not sure that's a negative impact and said the project might improve the area rather than take away from it.

Jessica Wielgus said for clarification for Commission members with respect to staff comments on this one piece, Sarah Korjeff, in her testimony before the subcommittee, was speaking to compliance with the MPS in respect to the Massachusetts Historical Commission. She said Ms. Korjeff did not provide testimony with regard to the probable detriments of the project.

Roy Richardson said he understands that but based on what she said he did not consider himself that this was a detriment. Mr. Richardson moved that the Commission remove "probable negative impacts on local Native American tribe" from the detriments. Elizabeth Taylor seconded the motion.

Michael Blanton said he remembers speaking to this particular matter during the subcommittee and said they had heard several pieces of testimony and have had letters submitted to the record from the Herring Pond Wampanoag Tribe who has indicated that they do feel strongly that this project could have significant detrimental impacts upon their local ceremonies, their local social gatherings and their identity and tied into activities associated with this nearby site. Mr. Blanton said he was able to see a local burial ground that is very close in proximity to this project. He said Sacrifice Rock and Looking Rock are also within close proximity. He said these are areas that have been known to be significant to that local community. He said there are members in the audience here tonight who are concerned about that very fact. He said he believes the Commission should take into account the testimony that they have given to the Commission.

Chair Peter Graham said he would underscore what Mr. Blanton has said. He said the site and what the Commission has received in testimony is key and critical to that particular probable detriment. He said he believes information and letters the Commission has received have underscored that and come from fairly reputable people in that community. He said he would not support removing the detriment.

Roy Richardson said Mr. Blanton has been to the site and asked if he had seen the area as described in letters that it had been painted over and asked Mr. Blanton if he had seen that.

Michael Blanton said he actually has not been to Sacrifice Rock within the last year so anything that has happened to it in recent times he could not testify to.

Roy Richardson said in terms of the testimony the Commission has heard he doesn't remember if there had been testimony saying it's been a place for ceremonies and that sort of thing. He said if it is, then they would certainly want to protect it.

Michael Blanton said the Commission has absolutely received testimony in the record; personal testimony at several public hearings and also letters in the record that indicate, yes absolutely, there are ceremonies that have been going on for generations and certainly contemporary ceremonies that are occurring today going on in about that area that certainly could be affected by large-scale development nearby. He said for those reasons he would not support this.

Jack McCormack said just because it's been vandalized doesn't take any validation away from the fact that it's very important to the Native American people.

Joy Brookshire asked that they consider withdrawing the motion.

Roy Richardson withdrew his motion to remove "probable negative impacts on local Native American tribe" from the detriments. Elizabeth Taylor withdrew her second.

Austin Knight said under probable benefits they have "helps meet state mandate for renewable energy" and "contribution to renewable energy". He said under probable detriments they have "dilute efforts to pursue alternative sources of renewable energy" and said it seems almost in conflict to him. He moved to remove under probable detriments "dilute efforts to pursue alternative sources of renewable energy."

Richard Roy seconded the motion.

Michael Blanton said looking at the language there he believes the detriment hinges on the term "alternative sources." He said if the site is developed for a wind turbine generation facility it automatically precludes other types of renewable energy that might be considered for that same site.

Austin Knight asked if there was anything in the record saying that no other sources could be put there or is this just general thought.

Chair Peter Graham said he doesn't think there is anything in the record stating that anything other could not be built there.

Joy Brookshire said she thought they had a diagram that showed if the wind turbine project doesn't go in that there is a possibility of putting a solar farm in that area so that if one goes in the other can't. She said maybe she is mistaken but she thought she saw an overlay.

Chair Peter Graham said there is an overlay for purposes of that project or this project that was used to demonstrate the amount of energy that could be used from an alternate source and not whether or not it was approved to be put there or not.

Michael Blanton referred to Ms. Brookshire's comment and said Bourne did contemplate and passed a Solar By-Right Overlay District and that has been the subject of discussion amongst the town as to whether or not that plan could be added to alter or consider using the land that is the subject for this particular development.

Elizabeth Taylor said the statement seems to be very strange because anytime they permit alternative energy of any sort on a project they are obviously not going to have two types at the same point on the same piece of land. She said that does not preclude putting it elsewhere on the land or anywhere else in Bourne or on the Cape. She said she finds it a very troubling statement as she doesn't think there is any way that one project dilutes possible sources of energy being put up anywhere else.

Chair Peter Graham said it came from an observation that in this particular project there is a minimal return on investment. He said it would dilute the efforts in the sense that there might be more effort put into chasing resources of renewable energy with a higher impact and a higher return on what is invested.

Roy Richardson said maybe the installation of wind power there as a source of energy that we know we are going to need might invite another source of energy there. He said it could be coal or nuclear and said it seems to him that wind there would be a positive rather than a negative.

A vote called on the motion to remove "dilute efforts to pursue alternative sources of renewable energy" from the detriments list passed with 10 votes in favor and 2 opposed.

Jack McCormack said he is sure that they all know that what the Commission is considering here, whether for or against it, is one project at this time.

Michael Blanton said under probable benefits that the benefit "helps meet state mandate for renewable energy" and "contribution to renewable energy," as Mr. Knight had pointed out, in his mind they sound so similar and they would warrant being combined into one benefit. He said he would propose that both of those benefits be combined into one benefit.

Chair Peter Graham said to make it less complex he asked Mr. Blanton to change his motion to remove one of the benefits.

Michael Blanton said he would propose that the Commission keep "helps meet state mandate for renewable energy" and moved that "contribution to renewable energy" be removed from the benefits list. Austin Knight seconded the motion.

Elizabeth Taylor said she believes they are two different things. She said the state mandate for renewable energy is a distinct position of the state and this is contributing to the grid. She said she is not sure why they would want to remove it.

Austin Knight said for clarification he doesn't believe he said to take out contribution to the grid and said what's being removed is "contribution to renewable energy" and said contributing to the grid is still in there.

Elizabeth Taylor said they are both correct statements though and they are both benefits.

A vote called on the motion to remove "contribution to renewable energy" from the benefits passed with 7 votes in favor and 5 voted opposed.

The meeting recessed at 4:40 p.m. and reconvened at 4:45 p.m.

Elizabeth Taylor said she had a question about the "possibility that this project could detract from tourism." She said a lot of the probable detriments seem really nebulous to her and she doesn't know what they are basing some of them on. She said we have issues relative to property values and they have statements from realtors.

Chair Peter Graham asked that Ms. Taylor address one item at a time.

Elizabeth Taylor said after having read everything she would question "probable diminishment of property values" as a detriment.

Elizabeth Taylor moved that "probable diminishment of property values" be removed from the detriments list. Roy Richardson seconded the motion.

Len Short said he thinks the word probable gets them off the hook. He said it does not say diminishment of property values and said it says probable. He said he doesn't think anyone is in a position to challenge whether it will or will not affect property values.

Joy Brookshire said she agrees with Mr. Short. She said they can't prove it and she doesn't want to take the chance.

Michael Blanton said he will only take a partial chance, being a decade-long realtor with limited knowledge in regard to this area, but is willing to go out on a limb and say that it wouldn't rather than would. He said it's not an easy task to do when trying to forecast probable benefits or diminishment of property value. He said he would refer to the record the Commission has with testimony from concerned citizens, concerned realtors who have spoken on behalf of those citizens, and certified appraisers who specialize in finding these types of evaluations and who have spoken to this particular detriment. He said he would defer to their expertise.

Elizabeth Taylor said what she has a problem with is if they have things weighing on both sides they are making the assumption there that the balance is on the negative side. She said that is her big issue with this one and a few of the others that they have testimony from both sides and she doesn't see that one necessarily outweighs the other and the Commission is making the decision that it does by putting it as a negative here.

Mary Pat Flynn said her question would be to the subcommittee regarding Ms. Taylor's statement regarding property values and asked if they found anything in the literature or any assessor's records that show persons who live near turbines either have taken abatements or had requested abatements based on property values related to turbines.

Michael Blanton said to address Commissioner Flynn's question, they have actually heard testimony from some Falmouth residents who have come forward and some of them realtors who have spoken specifically to their concern that there has been diminishment in value, they have had difficulty trying to market their home, and that they have spoken to the Falmouth assessor with regard to seeking abatements on property value. He said that is in the Commission's record.

Mary Pat Flynn said so the answer is that abatements have been sought but don't know of any that have been granted.

Michael Blanton said no, he doesn't know if any abatements have been sought.

Joy Brookshire said she remembers reading all of the literature that they have been given and that to mitigate the lowering of the value of property money has been paid to people trying to sell their houses so obviously there is a problem. She said they can't say it is but it is probable is a definite. She said across the county people have talked about mitigation when they have tried to sell their house.

Jack McCormack said he doesn't think that they have seen any evidence that it has a positive effect property values.

A vote called on the motion to remove "probable diminishment of property values" from the probable detriments list failed with 1 vote in favor, 10 opposed and 1 abstained.

Elizabeth Taylor said she has a problem with the "possibility that this project could detract from tourism." She said in some places it has increased tourism and said she has a real problem with the detriment side of it because it seems to be so nebulous and iffy to her. She said they are not saying we know it will happen they are saying well it might. She said that could be put on either side when talking about benefits or detriments and said she doesn't like to see things on either side that is "squishy". She said it's just nebulous and it's not something that has been really proven. She said she doesn't like to see the Commission go on record making a decision like this based on this type of thing when they just can't say it doesn't meet the RPP or it doesn't do this or it does do this.

Jessica Wielgus said the probable benefit/probable detriment test is just that. It's whether it's a probable benefit or a probable detriment.

Chair Peter Graham asked Ms. Taylor if she made a motion on that.

Ms. Taylor said she did not.

Jack McCormack said to remind everyone that this is not a score card if they have four on one side and two on the other side. He said they have to give different weights to different benefits and detriments.

Jessica Wielgus said Mr. McCormack is correct and once Commission members conclude with determining what the probable benefits and probable detriments list will be, their next task once that has been done is to weigh probable benefits versus probable detriments and make a determination whether the probable benefit outweighs the probable detriment.

Austin Knight said that is true, however, they can significantly say that some of the probable benefits are actually fact and the other is somewhat in theory so there is a weight on some of that.

Jessica Wielgus said that is correct the Commission will decide on what weight they will give to each item on each side to see where it balances.

Elizabeth Taylor commented on the "negative effects on wildlife including birds and bats" and said she does not have an issue with that except if this project doesn't go in we'll probably see a subdivision that would wipe out the bio-core habitat which is critical habitat. She said maybe she would like to see the Commission pay more attention to habitat values and wildlife issues when the Commission does DRIs. She said every time there is a subdivision the habitat is being fragmented and soon they won't have to worry about the effects from turbines on bats and birds because there won't be any habitat. She said habitat is being destroyed faster than anything else on Cape Cod. She said putting in roads and destroying wildlife corridors should be thought about with all DRIs. She said just think about the other side of the package if this project doesn't go in and said it could be a subdivision.

John Harris asked if "contribution to renewal energy" had been deleted.

Chair Peter Graham said "dilute efforts to pursue alternative sources of renewable energy" has been deleted.

John Harris said he was referring to the probable benefits "helps meet state mandate for renewable energy" and "contribution to renewable energy."

Chair Peter Graham said "contribution to renewable energy" has been removed.

John Harris said he would suggest considering to combine both into one.

Chair Peter Graham said that has already been done.

Michael Blanton said on the probable detriments list "proximity to nearby elementary school" as a probable detriment of the project. He asked that either staff or counsel clarify the state regulations. He said he believes that the wind turbine's closeness to the elementary school is inside of the state regulations and could present a potential issue there.

Chair Peter Graham said that is not in the record.

Michael Blanton asked if there was testimony in the record in regard to concern about the proximity of the wind turbine to the elementary school. He said he is particularly concerned not only about noise effects that might intrude upon children at play but also ice throw. He said he does not have school children there but he knows people in Bourne who do.

Chair Peter Graham said they recently received quite a list of potential as well as existing parents of children there that expressed concern.

Austin Knight said what makes it challenging for him is when he looks at probable benefits he sees facts; he sees numbers that were given of things that could happen. He said under some of the probable detriments he sees probability; not a fact and said it's something that's a possibility. He said that's what makes it difficult to make a decision, which one is stronger for him because if he were to do it on fact or maybe, then he would be more in line to say the probable benefits outweigh the probable detriments. He said one is a maybe and some of it is based on emotions and the other side is mostly based on facts. He said that is the difficulty that he is having with some of that and said he is not saying that some of the detriments aren't factual. He said when he looks at the entire list on both sides and weighing it in, his opinion at times, the probable benefits do outweigh that. He said he will have to listen to some of the other Commissioners but at this point because some of it to him is a question mark and possibility on one side while the other side is actually fact, he leans toward the probable benefits but he would like to hear from other Commissioners.

Michael Blanton referred to Mr. Knight's comments and said he is right in part. He said to clarify from his view point, under probable benefits "green energy rebate program" that is a fact and said Mr. Knight is right, that is a factual proposition. He said they have also heard testimony at several public hearings from most of the impacted residents all of whom may be involved in the green energy rebate program and said every one of them categorically told the subcommittee that would not be a benefit to them. He said it has been listed as a benefit here because the applicant has forwarded that but they have not heard any positive testimony, to his recollection, that the impacted residents consider that green energy rebate program to be a benefit to them. He said just because the fact that it's a factual program, it does exist, what they need to debate here is based upon the testimony that they have heard as to whether or not it's a real benefit or whether it's a benefit that outweighs detriments on the other side. He said the same thing can be said about many of the benefits with regard to "economic stimulator" and said is that actual or is that not and said that is something for the Commission to discuss right now. He said it's listed as a benefit and said the subcommittee found it a benefit. He said he understands what Mr. Knight is saying that some of the items on the other side seem to be suppositions and said he would question whether or not the actual benefits listed on the left side are factual factors.

Chair Peter Graham said having been Chair of the subcommittee and having sat through all the public testimony, as well as the subcommittee deliberations, when it came to that part of the process it was the only time in the process that they were looking at that where they might have been able to discuss health effects. He said possible health effects of the wind turbine project; this industrial-scale wind turbine project and said there is great weight given to that. He said from his view point what he heard and what he was cautious to, although you can find someone to agree with you no matter what your position is, he said he would always error on the side human health and human well-being. He said, especially for him, it was good to have a time to air that out and said it was aired out very fully by public comment and public caring; people concerned about health effects. He said the effect on community morale is a subjective thing. He said can it be quantified and said if he took all the lists of all the people who attended all the public hearings, he could quantify that. He said overwhelmingly the people who attended outnumbered the applicant's team. He said it doesn't mean they were right particularly or the applicant. He said they had a time to air that out and said it was important to them to have that time. He said it was arduous and that is how they approached it on the subcommittee.

Jack McCormack said on the probable benefits side "tax benefits to the municipality" figures have been quoted \$120,000 a year for 25 years and said he believes there is evidence in the record that says depending on how the project is classified and if it's classified as something commercial, the turbines would be subject to depreciation over a number of years and he does not think the tax benefits for the municipality would be \$120,000 for the next 25 years.

Joy Brookshire said regarding "tax benefits to the municipality," when the Bourne town assessor was asked what the tax benefits would be to the Town of Bourne she could not agree with the \$125,000 a year. She said they know there is a contribution to the grid but there is not a contribution directly to a power plant to benefit the Town of Bourne. She said "economic stimulator" she believes it may have been in the wind development in the state of Oregon and said the first year there is a benefit as far as hiring people for jobs but that goes away once the turbines are built. She said there are two parking spaces for two people to go and maintain that turbine now. She said they have received the Wind Turbine Health

Impact Study from the DEP and the Massachusetts Department of Public Health and said she read it with a different eye. She said she thought it would be good for the proponents of wind but the more she read it she thought that it isn't so great because they say that there are probable detriments, which are on the right side of the Commission's sheet, and that best practices have to be made in order to ensure that those detriments don't become positives. She said the same thing with the Strategic Health Impact Assessment on the wind energy development in Oregon and said more study needs to be done. She referred to the school with no windows and how it would lessen the impact of noise from turbines and said kids go outside to play. She said they talked about ice throw and said the school is 900 feet from one of the turbines and the distance for ice throw should be three times the size of the blades. She said she thinks that even though probable detriments may far outweigh the probable benefits if turbines are not built, solar is becoming more popular. She said she believes the detriments are far stronger than the benefits.

Len Short said to Mr. McCormack's point about the valuation in some of the material that was in the roughly 2,000 pages of material submitted for the project, there was a statement that 12-15 years had been the life expectancy of some of these units that were out there and they did not necessarily agree with the 25-year life.

Joy Brookshire said the "green energy rebate program" was broken down into \$25.00 a household per month and questioned whether that was a big enough savings to have probable detriments like that on the other side.

Michael Blanton said to be fair to the applicant and to clarify on the "green energy rebate program," there were three concentric circles and the closer you were to the turbines there was actually a benefit a little greater than that and it diminished the farther on out you got. He said, again, they did not hear one person give testimony to the fact that they thought that was an overwhelming benefit that would cause them to be in favor of the project being so close to their homes.

Roy Richardson said when talking about reports on health impacts related to this particular issue he just wonders whether the health impact of the turbines that are being recommended for this location would be the same as the health problems that have been reported in other areas. He said when taking a look at them they seem a lot larger than the ones that are in other locations. He said he is not sure that they can take any of those reports that relate to one particular product. He said he is concerned about people's health and he certainly would not want something that is going to impact the health of individuals. He said he thinks the testimony that they have had on schools has been two-sided and said he is not sure whether he would like to go to school himself next to a turbine. He said the whole property tax business is antidotal in terms of probable. He said they don't really know how to determine probable.

Mary Pat Flynn said it really is a difficult decision here because in their 2,000 pages of material submitted they have evidence of some very successful wind projects in the state of Massachusetts and elsewhere. She said they also have evidence of some that have not been successful and health effects have ensued for a variety of reasons related to people's ability or problem in being near turbines. She said she thinks here they have some very strong factual probable benefits and then in the other column they have probable detriments that are possibilities they could actually happen. She said this could be a very successful project; they don't know that. She said they can only look at what they believe the benefits could be and they share the concerns about the possible benefits so it could be a very successful project and it could not be. She said maybe it could have some of the same negative effects that other wind projects have had. She said it comes down to how do you decide.

Michael Blanton said Commissioner Flynn raises an excellent question. He said when he looks down at the list of benefits many of them came to this project initially looking like benefits and was given a fairly beneficial look. He said unfortunately as they dove into the details they started to stir up some of the concerns with regard to health effects, environmental effects, water quality effects, property values, tourism impacts and what they might be. He said, again, are they definitive they don't know; they don't know for sure. He said the Chairman pointed to the idea that if we are going to err on one side or the other maybe it's best to err on the side of caution with regard to peoples' health and said he would concur with regard to that. He said he looks at all the benefits and said it really comes down to they do look like benefits and in some cases maybe they are. He said contribution to the grid; speculative. He said will it be a contribution, yes. Will it be significant that's for them to really look at and determine. He said the permanent protection of 20 acres of open space he thinks is quite significant. He said but then, again, when you look at all the benefits, and what it comes down to for him is, do they want those benefits and if they do at what cost and then that's when he looks at the list of detriments. He said he is having a very hard time finding that the benefits outweigh the detriments.

Elizabeth Taylor said she is just curious that in all of the discussions did anyone ever say, because they say it to every commercial applicant in front of the Commission, have they considered doing solar instead of wind. She asked if the

project could be withdrawn and come back solar. She said it would leave all the benefits and remove most of the detriments. She said they keep pushing alternative energy; the Commission is pushing it, the state is pushing it but the Commission is really pushing it. She said we have all these bylaws on the books now and if this is such a problem why not switch to a different alternative energy. She said this may be totally out of place with this discussion because it's not in front of the Commission but she just wonders whether the subcommittee ever discussed it.

Jessica Wielgus said Ms. Taylor is correct in that that is not the issue before the Commission today.

Mary Pat Flynn said she wanted to point out one other factor. She said the protocol that the applicant has provided for any issues that might arise related to the turbines if they were built, issues related to health issues, issues related to noise and issues related to many things and said she thinks a three-page protocol that anyone could follow if, in fact, they had some negative impact from the turbines. She said she thought it was very well done. She said she is not sure a lot of turbine projects have something like that; she said she has never seen one like that before as complete and thorough as that protocol is. She said she would see it, as it's not listed, to be a real benefit to the project for anyone who is impacted by the project to have recourse.

Chair Peter Graham moved that the probable benefits of the proposed development are not greater than the probable detriments. Joy Brookshire seconded the motion.

Austin Knight said he just wanted to emphasize what Commissioner Flynn just said to the Commission that there is a form that was given to the Commission that showed if there were any problems what the remedy to that would be. He said they do have that before them. He said because they have that mitigation plan, to him, the benefits are stronger than the detriments and he wants to go on record with that.

Michael Blanton said to that point the Commission also has the testimony of the Bourne Fire Department Chief testifying that if there were some sort of a fire related event on one of the turbines, the Town of Bourne, and no one in the surrounding area, has the equipment to reach that height so although the protocol is very impressive there are some gaps; there are some holes in that plan.

Roy Richardson said on that particular point they had a discussion previously, and believes in regard to this project too, that with part of the development of the project there would be material provided there that one would need in order to combat that kind of emergency. He said he can't quote it chapter and verse but they talked about it on more than one occasion and he thinks in this occasion too. He said that would be the applicant's responsibility to make sure that kind of thing was provided for.

Joy Brookshire said the mitigation form that was submitted by the applicant was very good but when she read it her concern was what does mitigate mean. She said when you have four turbines up and you start having health problems and noise problems how do you mitigate that.

Roy Richardson said they suggested turning them off.

Chair Peter Graham said he would remind Commission members that they have a motion on the floor and that particular item that they are discussing is not in the benefits/detriment analysis. He said the motion was that the probable benefits of the proposed development are not greater than the probable detriments.

Austin Knight asked for clarification, and asked if they had closed the probable benefits and detriments totally as to their discussion. He asked Chair Graham if he was saying that now because they didn't have that in the benefits and detriments so they can't talk about it. He asked if they formally closed the benefits and detriments discussion before going into the motion.

Chair Peter Graham said members were asked several times and nothing was brought up about it. He said he could withdraw his motion if Commission members wished to start a discussion about that.

Austin Knight said he doesn't want to be the one to have the meeting go on much longer but he does feel that that argument of the complaint protocol and mitigation plan should be one of the benefits.

Chair Peter Graham formally withdrew his motion. Joy Brookshire withdrew her second.

Austin Knight said he would move that the Commission find that the complaint protocol and mitigation plan is a benefit of the New Generation Wind project. He asked that counsel assist him on a motion if such a motion was possible.

Jessica Wielgus said the Chair has withdrawn his motion about the weighing and if the Commission is back to considering probable benefits and probable detriments, she believes Mr. Austin just moved to consider the complaint protocol and mitigation plan as a benefit of the project. She said if we have a second the Commission could discuss that.

Mary Pat Flynn seconded the motion.

A vote called on the motion to add the complaint protocol and mitigation plan to the probable benefits of the project failed with a tie vote of 6 votes in favor and 6 votes opposed.

Chair Peter Graham moved that the probable benefits of the proposed development are not greater than the probable detriments. Joy Brookshire seconded the motion.

A vote called on the motion failed with a tie vote of 6 votes in favor and 6 votes opposed.

A ten-minute recess was called at 5:25 p.m. and the meeting reconvened at 5:35 p.m.

Chair Peter Graham said it's incumbent upon them to make a decision on this. He moved to reconsider the motion that the probable benefit of the proposed development is not greater than the probable detriment. Michael Blanton seconded the motion.

A vote called on the motion to reconsider the motion passed with a unanimous vote.

Chair Peter Graham moved that the probable benefit of the proposed development is not greater than the probable detriment. Len Short seconded the motion.

Michael Blanton said the fact that they voted that motion before and arrived in a deadlock position underscores the difficulty of this particular project's proposal before the Commission. He said, again, he was moved by the Chair's earlier comment that being on the cusp and having to weigh one side against the other he still feels that it is incumbent upon him, and in other members he hopes they will consider whether to err on one side or another, that they err on the side of caution with regard to health, well-being, and welfare of the local impacted residents. He said he would encourage the Commission to vote for Chair Graham's motion.

Joy Brookshire said this project was denied without prejudice which means the project can come back to the Commission. She said we are not telling the applicant that they can never do this again. She said what the Commission is saying is maybe the Commission has questions, maybe the Commission needs to work with the applicant more, maybe the Commission just needs a little bit of time and they will come to a different decision. She said she thinks that is very important to know that it was denied without prejudice; it was not outright denied. She said this has been done with other projects so that the Commission can work with the applicant on what's best for the project and the people involved.

Elizabeth Taylor said she is struggling with the same issues because she is a proponent of alternative energy albeit wind or solar and it's hard to separate this vote on this specific project from being very supportive of alternative energy. She said if she thought that this might come back again and qualify under the new Bourne bylaw, with maybe shorter turbines, with solar as part of the mix, and get the Commission's okay, then she would probably feel better about this. She said she is very much on the fence and maybe she will change her mind in the next few minutes but she doesn't know.

Austin Knight said just a point of clarification. He said the Commission had not voted yet on denying the project without prejudice. He said just to make that clear that yet has to come; he said that motion has not come yet. He said so with respect to his fellow Commissioner they have not done that part yet. He said all they are doing now is the probable benefits and probable detriments and said he just wants to be clear.

Joy Brookshire said that's just a step in the process and said she's an optimist more than a pessimist. She said the applicant has worked with staff and the Commission already to reduce the size of the project and to relocate some of the turbines. She said she is hoping that this doesn't pass tonight and is denied without prejudice and that there would be more working with staff and the Commission in the future.

Jack McCormack said he doesn't like to make light of the subject but it's a heavy subject and said his learned colleague from Dennis weighed the materials submitted for the project and said it's 35 pounds worth of evidence.

Chair Peter Graham said he is moved by his responsibilities as a representative from Truro as well as representing his region. He said he believes in regional solutions to regional problems and said he also believes that when there is a default such as the effect of the project on community morale what he is talking about is respecting what he has seen and his understanding of the record that the community has weighed in on this project and for him to vote against that, in his mind, would be flying in the face of the citizens of Bourne. He said he is very serious about that particular aspect and that through public hearings, through letters, through Selectmen's meetings, through other boards in the Town of Bourne this thing has to be reconsidered.

Paul Niedzwiecki said as a point of clarification for where the Commission is now. He said the Commission has a motion on the floor that pertains to the benefits and detriments analysis. He said the Commission needs an affirmative vote whether the probable benefits of the proposed development are greater than or are not greater than the probable detriments. He said the situation that we have now is a 6-6 tie deadlock and that is a no vote. He said two no votes would mean that the Commission didn't get an affirmative vote and the Commission would not be able to move forward. He said that is the reason for reconsideration at this point. He said it seems like a bit of a technicality but we need an affirmative vote one way or the other. He said there are serious consequences to not being able to come to a decision.

Mary Pat Flynn said her question is to what was just said previously before Mr. Niedzwiecki and asked at what point do they get to the point of the applicant being able to come back. She asked when does the without prejudice kick in; at what point does that happen. Would it happen with a positive vote or just is it based on the applicant's own desire as to whether or not he wanted to pursue that.

Jessica Wielgus said without prejudice speaks to the ability to re-file the application. She said it's immediate and they are available to re-file at any time.

Mary Pat Flynn asked if that was inherent in this motion.

Jessica Wielgus said right now the Commission is only voting on the benefits and detriments analysis.

Mary Pat Flynn inquired about another vote.

Jessica Wielgus said there would be another motion and vote on the draft decision itself.

Chair Peter Graham said the motion on the floor is the probable benefit of the proposed development is not greater than the probable detriment. He said it has been seconded and discussed.

A vote called on the motion passed with 8 votes in favor and 4 opposed.

Chair Peter Graham moved to deny without prejudice the Development of Regional Impact application for New Generation Wind. Austin Knight seconded the motion.

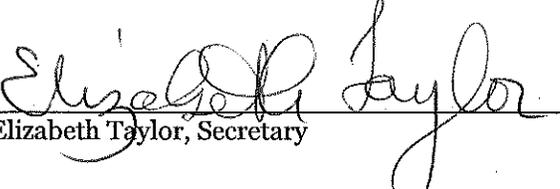
A vote called on the motion passed with 9 votes in favor and 3 opposed.

Chair Peter Graham moved to adopt the subcommittee's draft decision, as amended, denying the Development of Regional Impact application for New Generation Wind. Michael Blanton seconded the motion.

A vote called on the motion passed with 9 votes in favor and 3 opposed.

A motion was made to adjourn at 5:45 p.m. The motion was seconded and voted unanimously.

Respectfully submitted,


Elizabeth Taylor, Secretary

LIST OF DOCUMENTS PRESENTED AT THE FEBRUARY 16, 2012 COMMISSION MEETING

- Handout material: February 16, 2012 meeting agenda.
- Handout material: New Generation Wind Joint Venture project draft written decision.
- Materials presented: Municipal Development Bylaws—Turbine #7. Red-line amendment to General Finding GF9 on page 6, Delete General Finding GF10 on page 6, amend Conclusion #3 on page 23.
- Materials presented: Economic Development MPS ED4.1—Demonstrated Need and Public Benefit. Red-line amendment to Economic Development Finding EDF1 on page 8 and delete EDF2-7.
- Materials presented: Economic Development MPS ED1.4. Red-line amendment to EDF8, additional Economic Development finding for Grazing Fields Farm.
- Materials presented: December 16, 2011 applicant information—4,000-gallon tank no longer being offered as offset. Red-line amendment to Water Resources Finding WRF37, WRF38, WRF39, WRF40, WRF41, WRF42.
- Materials presented: Vegetable oil-based transformer fluid. Red-line amendment to Water Resources Finding WRF18, WRF19, WRF20, WRF28, WRF29, WRF35, WRF36, WRF44, WRF46.