

Dukes County Commission

EXECUTIVE SESSION

Minutes

Wednesday, June 13, 2012

5 p.m.

Dukes County Administration Building
9 Airport Road, Edgartown, MA

Present:

County Commissioners: Chair Melinda Loberg, Carlene Gating, Tristan Israel, Lenny Jason

County Staff: Noreen Mavro Flanders – Acting County Manager

Others: Warren Doty – MV/DC Fishermen's Association, Wesley Brighton

The meeting was called to order at 5:00PM.

Tristan/Carlene moved to go into an executive session according to MGL Chapter 30A, Section 21 (a) 3. to discuss strategy with respect to litigation as staying in an open meeting could have a detrimental effect on the litigation position of the public body **and not to reconvene in an open session**. Roll call: Tristan – yes, Lenny – yes, Carlene – yes, Melinda – yes. Motion carries.

Warren Doty said that in 2010 a lawsuit against the federal government asking for injunction against establishment of offshore wind turbines on Horseshoe Shoals was filed with Jonathan Mayhew as one of the plaintiffs and the MV/DC Fishermen's Association being the other plaintiffs. They received pro bono legal services from a law firm from Washington, D.C. The Fishermen's Association worked out a settlement with Cape Wind where they would cooperate with Cape Wind as supposed to oppose it. The settlement is to work together to establish a safe fishing in the area where the fishermen would support the project as a clean energy project and Cape Wind agreed to support the fishermen in establishing programs for marketing local seafood and establishing a permit bank (in a similar way as was done in the Gloucester area). It is very hard to get a coastal access permit for use of mobile gear inside state waters (for scallops, etc.) otherwise commercial fishing is prohibited within 3 miles from shore. They approached the MV Permanent Endowment Fund that would receive the money but the Martha's Vineyard Fishermen Preservation Trust (a new non-profit) would serve as the permit bank and buy these permits from individuals that currently own them and distribute it among the local fishermen. The new non-profit would have a board in place and Bylaws that would spell out how the board is created etc. They would have a 7% from the total amount of the settlement for legal representation. The Fishermen's Association is currently under strict confidentiality agreement and would have to sign a disclosure agreement. There will be no money up front. There will be no denial of fishing in the Cape Wind area and they are willing to put it in writing. The court bundled four lawsuits together. The fishermen are planning to settle theirs. To see the lawsuit through it would cost half a million dollars. The law firm already did \$110K worth of work at discounted rate of \$400 per hour. They originally agreed on \$75K pro bono work and so they

informed the fishermen to either drop the law suit or that the firm will withdraw their representation of the case. Warren read a public statement that the Fishermen's Association and their lawyers put together regarding the settlement and dismissal of the law suit. The commissioners discussed the statement and why it would not be the County to receive the settlement funds. Noreen said that if they are to sign a confidentiality agreement, it would not work because it is public information what fund is the County receiving. Noreen also questioned the right of the Fishermen's Association to sign any type of contract. Warren said that the fishermen might want to distribute some of the settlement money (as much as \$200K) to the County as the MV/DC Fishermen's Association considers themselves as part of the county at this point. They are using the county's employee identification number and the county treasurer disburses their grant funds. Noreen said that she is concerned that if the commissioners vote to agree to be part of this agreement the settlement money from that agreement would be then public information. It also should be clear in the settlement what is the MV Permanent Endowment Fund supposed to do with the money, meaning to further distribute it to the permit bank. Technically it is the County that is part of the settlement and would be agreeing to receive the money, but the commissioners can not agree to sign an agreement that they don't know the terms of. It was agreed that the county counsel will discuss this with the fishermen's lawyers and find the logistics of getting it settled. Lenny – two checks

Tristan would like to move (no second) to support the concept of the MV/DC Fishermen's Association to settle their lawsuit against the Cape Wind project as presented. Discussion: Carlene would like for it to be subject to the county counsel working with the fishermen's legal counsels and figuring out to settle the lawsuit without compromising the confidentiality of the agreement and without the county agreeing to it unless they know the terms of the agreement. Melinda pointed out that the commissioners did not agree to file the lawsuit in the first place and does not feel that the commissioners should be interfering with any agreement terms that the fishermen and their lawyers worked out. Wesley said that the MV/DC Fishermen's Association is not a member organization and this settlement does not prevent other fishermen or fishermen groups to sue later.

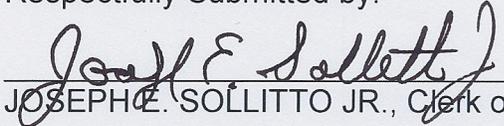
Carlene/Lenny moved to support the decision of the MV/DC Fishermen's Association to settle the lawsuit and find a way how to do it. So voted. All in favor.

Tristan/Lenny moved for the county counsel Marcia Cini to clarify the County's role in the signing of the settlement agreement. So voted. All in favor.

Tristan/Carlene moved to adjourn the executive session. Roll call: Carlene –yes, Tristan – yes, Lenny – yes, Melinda- yes.

Meeting was adjourned at 5:55pm.

Respectfully Submitted by: -


JOSEPH E. SOLLITTO JR., Clerk of the Courts

Documents presented at the meeting and part of the official records:

- Agenda