

CAPE COD NATIONAL SEASHORE ADVISORY COMMISSION

TWO HUNDRED AND SIXTY-SEVENTH MEETING

HELD AT CAPE COD NATIONAL SEASHORE, Marconi Station
Area, Park Headquarters, South Wellfleet, Massachusetts, on
Monday, December 1, 2008, commencing at 1:12 p.m.

SITTING:

Brenda J. Boleyn, Vice Chairman
Peter Watts
Edward C. Sabin
Richard W. Philbrick
Judith B. Stephenson

Also present:

George Price, Superintendent
Lauren McKean, Management Assistant
Robert Grant, Chief Ranger
Catherine Finch, Planning Assistant
James Sexton, Wellfleet Alternate Energy Committee
Griswold "Gooz" Draz, Wellfleet Alternate Energy Committee
Clay Schofield, Cape Cod Commission

Audience members

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P R O C E E D I N G S

1

2

MS. BOLEYN: I'd like to call the meeting to order.

3

Thank you all for coming.

4

The first thing I'd like to do is welcome a new

5

member or potentially new member to be a new member when

6

the nominations go through the process and the

7

appointments are made. It's Judith Stephenson, who just

8

arrived now, and she is a summer resident of Orleans.

9

She's an attorney, and she's the governor's nominee to

10

replace Ernie Virgilio.

11

So welcome.

12

MS. STEPHENSON: Thank you very much.

13

MS. BOLEYN: Thanks for coming.

14

MR. PRICE: Well, she ought to know who her

15

official town rep is.

16

(Mr. Price indicates.)

17

MS. BOLEYN: Yes.

18

MS. STEPHENSON: Oh, that's nice. They turned them

19

away. Thank you.

20

MR. SABIN: By way of introduction.

21

MS. STEPHENSON: Yes, thank you.

22

MS. BOLEYN: Dick Philbrick; Ed Sabin, who you met

23

upstairs; and Peter Watts from Wellfleet. And I hope

24

there'll be others joining us shortly.

1 [REDACTED] Do we have any -- Sharon's not here, okay.

2 **REPORTS OF OFFICERS**

3 MS. BOLEYN: Any reports of officers?

4 (No response.)

5 MS. BOLEYN: Seeing none, we come to the Reports of
6 the Subcommittees.

7 **REPORTS OF SUBCOMMITTEES**

8 MS. BOLEYN: And I understand that Peter and Lauren
9 have an update for us.

10 MR. WATTS: I guess I would have a report from the
11 roundtable, which covers two topics, both zoning in the
12 Park and wind generation.

13 **ZONING IN THE PARK**

14 MR. WATTS: Zoning in the Park, we had a town
15 meeting on the 27th of October, and 450 people showed
16 up, a record number. They had to delay the start for an
17 hour so they could get everybody in the auditorium.

18 And there were two main issues or two proposals for
19 zoning changes in the National Seashore and the rest of
20 the town presented by the planning board and a
21 petitioned article presented by the petitioners and Mr.
22 Gooz Draz, the originator who was instrumental in the
23 petitioned article. And there was discussion. There
24 was a lot of confusion, but when the vote was called, I

1 would say the vote was 350 to 100 in favor of the
2 petitioned article.

3 At that point the planning board's articles
4 referred back to the planning board to see if they could
5 come up with something that would be more acceptable to
6 the town, but I think that that vote was a mandate on
7 zoning in the National Seashore. I mean, it was a huge
8 vote. We needed two-thirds vote, and it turned out to
9 be 350.

10 MS. BOLEYN: It was a huge vote, and a lot of work
11 and preparation went into that. And I think we want to
12 thank the principals who went to work on that, Mr. Draz
13 and you Peter and others.

14 MR. WATTS: And Kathleen Bacon, who was part of the
15 forum that brought it in front of the public, and there
16 were a lot of people involved in the fight to get
17 regulations that would control growth in the National
18 Seashore.

19 MS. BOLEYN: Yes, and that's a subject that will be
20 coming up later on our agenda.

21 MR. PRICE: Brenda?

22 MS. BOLEYN: Yes.

23 MR. PRICE: If I could just comment, I just have
24 to, again, express my appreciation for the core group of

1 folks from Wellfleet that stepped forward. I think this
2 was an extraordinary example of citizenship where these
3 folks were concerned about their town and specifically
4 as it was defined in the Seashore district. And I think
5 that that's been a remarkable occurrence.

6 I will tell you that when the vote came through to
7 me, I was out of town at another meeting with senior
8 Park Service folks. One of them was a fellow named John
9 Reynolds, who had actually written the first General
10 Management Plan for the National Seashore in the '60s.
11 One was Denny Galvin, who's a long-term Park Service
12 professional and deputy director. One was Bob McIntosh,
13 a senior planner with the Park. And when I told them
14 about the vote and the significance of it, they were
15 really just blown away. They just thought it was an
16 amazing opportunity of something that was a very good
17 thing to have happen.

18 So we were certainly very grateful. And everybody
19 who participated in it from the committee, especially
20 Gooz, who I think didn't have time for an additional
21 second or third job because he was working on the zoning
22 bylaws all the time, are to be commended. And certainly
23 we can't tell you how much we thank everybody for their
24 efforts because we think it's intended to be -- if you

1 take a look at the original intent of the establishment
2 of the National Seashore, it was to help preserve the
3 community character of Cape Cod, and here were the
4 citizens stepping forward to helping to define what do
5 they mean by that, which is why we're at some of the
6 issues that we are today.

7 **WIND TURBINES**

8 MS. BOLEYN: Yes, Peter?

9 MR. WATTS: The second issue is the wind turbines,
10 and that's going to be covered under the
11 Superintendent's Report.

12 MS. BOLEYN: Okay.

13 MR. WATTS: We're going to have a PowerPoint at
14 that point.

15 MS. BOLEYN: All right. Thank you very much. And
16 that brings us then to the Superintendent's Report.

17 **SUPERINTENDENT'S REPORT**

18 MR. PRICE: Sure, thank you.

19 **UPDATE ON DUNE SHACKS**

20 MR. PRICE: There are a number of things that are
21 continuous on the Superintendent's Report. One is the
22 update on the dune shacks.

23 I've reported a couple of times and, again, I'll
24 report again that I will attempt this year to both

1 identify the funds and identify a group we can work with
2 to work with the current dune shack residents on a
3 management/use plan. That's the one piece that we still
4 need to bring together, and again, because of
5 contracting and agreement issues that we've been dealing
6 with the last couple of years, it's been problematic.
7 So we're going to try to do that again. It has to fit
8 under the NEPA and FACA requirements, so we'll hope that
9 the Advisory Commission will continue to work with us on
10 that.

11 We also continued to permit the yearly permits, so
12 that nothing has been changed. Those that were able to
13 re-up their permits were asked to do so.

14 We also are continuing the work on the
15 documentation for the National Register status. This
16 has been a source of contention among some of the dune
17 residents because the dune shacks were listed as
18 National Register eligible, and in our world that's the
19 same as a listing. So that means no federal funds would
20 be able to be used to create any detrimental activity
21 towards the dune shacks without going through an
22 extensive NEPA process. However, since the 1980s, the
23 paperwork has never been finalized, so we've made a
24 commitment to move ahead on that and finalize that, and

1 that's what we're in the process of doing.

2 We also received some new information as well. We
3 have two nonprofit organizations, the Peaked Hill Trust
4 and the Provincetown Compact, that also manage a couple
5 of different shacks on behalf of the Seashore, and they
6 have different residents come in and stay there for
7 periods of time.

8 You may have read the -- actually, this is actually
9 out today -- about the Norman Mailer initiative.
10 There's a group that's formed called the Norman Mailer
11 Writers Colony that's planning to launch in May. And
12 the Provincetown Compact is working with this
13 organization to dedicate about 14 weeks of the winter
14 residencies with the Fowler cottage starting this
15 summer. So that's a program that they've engaged in.
16 One of the criteria as to why the shacks are on the
17 National Register is because of their affiliation with
18 writers in the past. So we think this is an absolutely
19 appropriate next step, and we congratulate the
20 Provincetown Compact for taking this initiative.

21 MR. WATTS: What was it? Winter residence?

22 MR. PRICE: They call it winter -- basically in the
23 early spring and the --

24 MR. WATTS: Oh, I see.

1 MR. PRICE: And some of these cottages, they have
2 heat. People stay their year-round. They might rather
3 be out there in the off off-season so they can have the
4 solitude that they desire for their writing endeavors or
5 other sorts of artistic endeavors.

6 IMPROVED PROPERTIES/TOWN BYLAWS

7 MR. PRICE: The improved properties I had on the
8 list, but obviously that was covered by Peter. I will
9 tell you that we also continue to work with the Town of
10 Truro on their bylaw preparation. We've been working
11 and in contact with the town manager's office as well as
12 have in the past at least worked with the town planning
13 board, and we'll reconnect with them. We understand
14 that they anticipate putting forward some new language
15 at their spring town meeting. So it will be interesting
16 to see the comparison between the two towns as to how
17 that actually develops.

18 WIND TURBINES/CELL TOWERS

19 MR. PRICE: The next topic on wind turbines, if you
20 will recall going back to when I first arrived, one of
21 the things that I mentioned was that I was approached by
22 literally all six towns that are involved with the
23 Seashore about wind turbine placement. Having just come
24 from the Harbor Islands, one of the exercises that we

1 went through was a viewshed analysis, and it wasn't a
2 case of just saying no, nowhere for wind turbines. It
3 wasn't a case of if, but where and where there are
4 places that were the drop-dead critical resources that
5 would be arrived at, granted through a subjective review
6 or a subjective panel of people that would take a look
7 at these views and say this is an area where we really
8 shouldn't have obstruction because it meets the criteria
9 of what the Seashore is all about, and perhaps there are
10 other areas, especially if there is development in the
11 background, where perhaps wind turbines wouldn't be as
12 bad. So it's not a case the Seashore would necessarily
13 be encouraging the development of wind turbines
14 necessarily, but there might be places where we wouldn't
15 object. And also, as you know, we have been actively
16 pursuing a wind turbine up at the Highlands Center as
17 part of that sustainable development up there. So it's
18 not that we're opposed unilaterally.

19 At the last planning development roundtable that I
20 attended, Jim Sexton from Wellfleet made a presentation
21 of a project that he's working on that I was very
22 impressed with, and I asked him if he would be available
23 for today's meeting to give us a brief overview so that
24 you all could at least get an idea of what we saw during

1 his presentation.

2 So I'm going to ask Jim to do his PowerPoint.

3 MS. BOLEYN: Welcome.

4 MR. PRICE: I thought this would be a much more
5 effective way of (inaudible).

6 (Pause.)

7 MR. PRICE: Clay, would you do me a favor and hit
8 the lights on the right-hand side.

9 MR. SEXTON: We're coming into focus here.

10 I'm only one of the members of this alternative
11 energy committee, so there are a lot of other people
12 that have done a lot of work here. The committee
13 started in 2005, and we were aware of the grant that was
14 given by the MTC if you could put a large turbine with
15 adequate wind resource and adequate space. So we
16 contacted MTC, who came to Wellfleet just to review what
17 we'd done. They agreed we did have a resource, and they
18 contacted or contracted the University of Massachusetts,
19 who did a year study of a MET tower.

20 These are a couple of facts and figures. I won't
21 go through all of them, but the most important one is
22 the definition of a tip. The tip is the distance of the
23 base of the tower to the upper tip of the blade, one tip
24 distance from the property line. So in other words,

1 when you have setbacks, you'd want one tip away from the
2 property line. Three tips is the distance required for
3 operation. So if you're three tips away, you probably
4 will not hear the turbine at all.

5 We looked at two turbines, the GE 1.5 megawatt and
6 the Vestas V82. Both have 400-foot tips. So they'd
7 have to be 400 feet from the property line or 1,200 feet
8 from a residence.

9 We looked at five sites. The transfer station
10 failed in the three tip. There are houses within 1,200
11 feet. The elementary school failed at the one tip and
12 the three tip. The Boy Scout camp met all requirements
13 but is heavily wooded, and I thought there were better
14 sites. The Marconi Airfield met all requirements,
15 except it's landlocked within the National Seashore. So
16 we ultimately picked White Crest.

17 I'm going to go back to the Marconi. Well, if you
18 look at -- Lauren got Gooz and I together to do a
19 viewshed, and I learned a lot there. And when I looked
20 at the southern approach from Marconi Station, that is a
21 money shot, and that's right where the Marconi airstrip
22 is. So I decided personally I would be against that.
23 So there are other places to put turbines.

24 If you look --

1 MR. PRICE: Jim, maybe I could just clarify for
2 everybody what the so-called airstrip is, and that's a
3 parcel -- what's it? How big is it again?

4 MR. WATTS: Forty-seven acres.

5 MR. PRICE: Forty-seven acres that's approximately
6 behind me over here in the headquarters area, and that
7 is a property that is landlocked that was never
8 transferred during the initial establishment of the
9 Seashore. So the Town of Wellfleet actually still owns
10 that. There is just no access to it. And they've
11 talked about that as different development
12 opportunities, including potential wind turbine sites.

13 MR. SEXTON: Well, now that would be off the table.
14 That viewshed study really made a difference to me.

15 MR. PRICE: Works for me.

16 MR. DRAZ: Can I just say something about that too,
17 the viewshed study that was part of the roundtable
18 group? We sort of shared this with other people in
19 Wellfleet, but what we decided was that for the purposes
20 of Wellfleet one of the key viewsheds here was basically
21 anything that runs west of Route 6 looking out towards
22 the harbor, of course, as being a critical sort of
23 viewshed that Wellfleet probably would prefer not to see
24 any wind generators out in that particular viewshed.

1 The second sort of viewshed that was critical was
2 certainly anything that runs along the coastline out
3 towards the Atlantic. Again, you go to the beaches and
4 you don't necessarily want to see either oil rigs or
5 necessarily a wind turbine right there out, you know,
6 over sort of off the shoreline. So this pretty much
7 left just the area -- again, anything right in here
8 between Route 6 and the shoreline (indicates). And
9 again, when you go to Marconi and you look south from
10 that viewing sort of station somewhere I think right in
11 here (indicates), that this was a pretty clean sort of
12 viewshed aside from sort of the water tower here
13 (indicates), but there wasn't a lot of other things up
14 here. But when you look back up this way (indicates),
15 you certainly see a lot of telephone pole lines and
16 stuff like that, plus the distance from this view --
17 this sort of viewing area up towards this White Crest
18 area, you'll see later what a wind turbine would look
19 like there.

20 MR. SEXTON: So we put the anemometer at the White
21 Crest site. It was up for a year, and the data was
22 pretty impressive. The MET tower had five anemometers,
23 two at the 164-foot level or 50 meters, two at the 40-
24 meter level, and one at the 20-meter level, and there

1 were three wind vane indicators on each one of those
2 levels. So it had wind, wind speed, and wind direction.

3 The upper graph tells you -- that's the real-time
4 study of the data, and that's 15 million samples of
5 data. And those samples are averaged over ten minutes.
6 So you basically have 300 samples every ten minutes.
7 It's put into the roller bin down below. So in other
8 words, if you have a 10-minute segment of data that was
9 15 meters per second, it would be put in that bin. Does
10 that make sense to everyone?

11 This is just a tabular indication of what goes on.
12 So in other words, if you took, say, 6 1/2 meters per
13 second, 13 percent of the time it's at that wind speed
14 or 1,138 hours. There's 8,760 hours in a year, so
15 that's 13 percent of that.

16 Then you put that onto a power curve and you say,
17 okay, 6 1/2 meters per second is between 6 and 7. It
18 turns out to be 424 kilowatts. You multiply that times
19 the hours, and you get 472,000 kilowatt hours in that
20 bin for that year. Of course, all the bins are filled
21 up to make up each month. So for the stable turbine, it
22 would generate 5.3 million kilowatt hours in a year.
23 The three turbines would generate 15.9 million kilowatt
24 hours in a year.

1 [REDACTED] MR. PHILBRICK: Million kilowatt?

2 [REDACTED] MR. SEXTON: Million.

3 [REDACTED] MR. PHILBRICK: Kilowatt hours?

4 [REDACTED] MR. SEXTON: Million kilowatt hours.

5 [REDACTED] MR. PHILBRICK: A lot of hours.

6 [REDACTED] MR. SEXTON: Huh? Kilowatt hours -- million

7 [REDACTED] kilowatt hours, a lot. Wellfleet's municipal load is

8 [REDACTED] approximately a million, a little less than a million.

9 [REDACTED] MS. BOLEYN: Could we go back to the earlier graph?

10 [REDACTED] It's interesting to me to see that in terms of the wind

11 [REDACTED] speeds that there were not dramatic differences

12 [REDACTED] seasonally, so to speak.

13 [REDACTED] MR. SEXTON: Well, January --

14 [REDACTED] MS. BOLEYN: Although winter -- let's see.

15 [REDACTED] MR. SEXTON: January and February are heavy winds

16 [REDACTED] out of the northwest.

17 [REDACTED] MS. BOLEYN: And December?

18 [REDACTED] MR. SEXTON: Yes.

19 [REDACTED] MS. BOLEYN: December, January, and February.

20 [REDACTED] MR. SEXTON: And you see June and July, July is

21 [REDACTED] pretty --

22 [REDACTED] MS. BOLEYN: Okay, yes. All right, thank you.

23 [REDACTED] MR. SEXTON: This is where we're going to put --

24 [REDACTED] I'm pretty sure we're going to put three turbines in.

1 This is in the White Crest site area.

2 MR. PHILBRICK: Can you indicate?

3 MR. SEXTON: There's one -- see the --

4 MS. STEPHENSON: Oh, they're the green ones.

5 MR. SEXTON: One, two, and three. The green in the
6 center of the harbor is just the key.

7 MR. WATTS: Jim, I think it's important to say that
8 this is municipal property within the National Seashore.

9 MR. SEXTON: Yes, but we had access to it.

10 MR. WATTS: Right.

11 MR. SEXTON: I think.

12 And that's just another shot of the three turbines
13 closer in. And we're going to be looking at this
14 turbine for the remainder of the study, the top, which
15 basically has probably got the best wind speed of all
16 three of them (indicates).

17 MR. PHILBRICK: And that's at 150 something --

18 MR. SEXTON: That's 400 feet. Basically it's --

19 MR. PHILBRICK: That tower was 150 meters?

20 MR. SEXTON: Right, this is 150 (indicates).

21 MR. PHILBRICK: And then that's extrapolated out?

22 MR. SEXTON: It's basically -- you get the three
23 levels. You can extrapolate to 80 meters. And I can
24 show you an equation, but I won't bother.

1 So if you're looking at Turbine No. 1, it basically
2 meets all requirements as far as distance from
3 residences. The 800 feet is just to the beach, but you
4 have a residence just below 1,300 feet, above 2,050
5 feet, also 400 feet from the property line.

6 That's what the turbine would look like from that
7 person's porch, the one at the very top. This is what
8 three turbines look like. This is from the Marconi
9 viewing station, three turbines.

10 Now, if you're looking north along the path, it's
11 really kind of uninteresting, I guess. There are
12 houses, telephone poles. If you look south, it's just
13 magnificent, so you would never put a turbine south of
14 this point. This is what Black & Veatch did a study of
15 how much revenue the turbine would generate. It starts
16 out at a million, goes to 1.2 million, and it only goes
17 up at 2 percent per year, which I think is extremely
18 conservative. Projected revenue for the V82 would be
19 \$22 million gross. One turbine turnkey -- that's soup
20 to nuts, everything from shipping to putting it to bed
21 for its lifetime -- would be \$4.5 million. The interest
22 on the note, a 10-year note at 4 1/2 percent, is about
23 \$2 million for the course of the year -- the course of
24 20 years. O&M costs are \$1.8 million, and the savings

1 to the Town of Wellfleet is \$3.6 million. So basically
2 Wellfleet would not have any bills. So I've subtracted
3 that from the 22 million. It left \$10.4 million.

4 Assumptions are 2 percent energy inflation rate,
5 which I think is extremely conservative; a 10-year note
6 at 4 1/2 percent, which I think I'd buy it; \$75,000
7 yearly costs inflated at 2 percent for O&M; and no
8 project support from MTC. Now, MTC has supported us all
9 along up to this point. They've also supported other
10 towns. For instance, Jiminy Peak was not a town. They
11 paid for half the construction costs, which is probably
12 about \$500,000. I'm not saying we could expect that, so
13 I didn't put it in there, but it could be there.

14 So summary, it's the same thing as the bylaws. We
15 need to change the bylaws to at least 400 feet to get a
16 megawatts-size turbine in place at White Crest. Gooz
17 and I are working and Peter Stewart are working on
18 bylaws to present to the planning board on Wednesday, I
19 think.

20 Is it Wednesday, Peter?

21 MR. DRAZ: Well, yeah.

22 MR. SEXTON: Sort of, okay.

23 And I just put create a memorandum of understanding
24 between the Town of Wellfleet and the National Seashore.

1 I'm not sure what I mean by that, but at least keep them
2 (inaudible).

3 Continued public outreach and education. We've
4 completed the feasibility study by MTC. That is at the
5 reference desk, whoever wants to see it, at the library.
6 And I can make copies of that for anybody who wants one.

7 We've got the site simulations done. FAA has
8 approved the three sites. We've determined cost of
9 ongoing O&M. We've identified cost of equipment,
10 facilities, and metering and determined turnkey project
11 costs.

12 That's it.

13 MR. WATTS: Have you given this presentation to the
14 planning board?

15 MR. SEXTON: No.

16 Any questions?

17 MS. BOLEYN: Yes, sort of as a follow-up to what
18 Peter asked, I'm interested in how the public becomes
19 informed about this. Will there be hearings?

20 MR. SEXTON: Well, that's the public outreach.
21 I've been not great at doing that, so we probably should
22 get going.

23 MS. BOLEYN: So this energy committee is a
24 Wellfleet town committee?

1 MR. SEXTON: Yes.

2 MS. BOLEYN: And appointed by the selectmen?

3 MR. SEXTON: Yes.

4 MS. BOLEYN: So I would think that there would be
5 some sort of formal way of presenting it to the public.

6 MR. WATTS: Well, we have a Wellfleet forum where
7 Kathleen Bacon is involved, and they could have a whole
8 program on wind turbines.

9 MR. SEXTON: We've given it to the roundtable.

10 MS. BOLEYN: And certainly it's of interest to
11 people. Certainly I'm very pleased that you're here
12 today because the Advisory Commission is certainly
13 interested in this and people who are interested in
14 what's happening at the Seashore would be also.

15 AUDIENCE MEMBER (DANIEL KATZ): Can I have a point
16 of information?

17 MS. BOLEYN: Mr. Gooz Draz first.

18 MR. DRAZ: Jim did give this same presentation to
19 the board of selectmen two weeks or so ago. That was,
20 you know -- those meetings were televised, so there's
21 probably been a certain amount of people that watched
22 that particular meeting, say, you know, the televised
23 version of that selectmen's meeting, who got some
24 information.

1 [REDACTED] There hasn't been any sort of formal effort
2 [REDACTED] undertaken, but a lot of this information was just
3 [REDACTED] recently sort of put together with the Black & Veatch
4 [REDACTED] sort of analysis that this work is kind of summarized,
5 [REDACTED] the summarization of it. So we will certainly be doing
6 [REDACTED] more over the coming months to inform Wellfleet citizens
7 [REDACTED] about this information, and yet I can certainly tell you
8 [REDACTED] on a sort of anecdotal kind of basis that people always
9 [REDACTED] come up and ask, "What's happening with the wind?"
10 [REDACTED] because they certainly were well aware of the MET tower
11 [REDACTED] up at the White Crest Beach. They were all -- all the
12 [REDACTED] experience that I've had of people asking about it,
13 [REDACTED] they've been very positive about the idea of the town
14 [REDACTED] perhaps doing a wind turbine or wind project. And at
15 [REDACTED] one point I did an informal sort of poll outside of the
16 [REDACTED] Wellfleet post office on a Saturday. About 60 people
17 [REDACTED] came in. I asked probably 50 of those who passed by me
18 [REDACTED] that day what their first -- what they thought about the
19 [REDACTED] idea of wind power and if the town could think to use
20 [REDACTED] such an energy source would they be in favor of it.
21 [REDACTED] There was probably not one person who was against any of
22 [REDACTED] this.

23 [REDACTED] MS. BOLEYN: That's great.

24 [REDACTED] MR. SEXTON: Well, I went through and talked to the

1 people surrounding the -- where the turbines were going
2 to be, and they were all in favor. There was one person
3 that was kind of not sure. And Black and Veatch
4 actually went to her house, took pictures from her
5 house, and in the analysis you couldn't see the turbine.
6 There were no pictures to be taken. Climbed up ladders
7 to try to see where the turbine would be, still to no
8 avail.

9 The other thing about the MET tower is that when we
10 put it up, I was so excited and I was asking, "Have you
11 seen the MET tower?"

12 "I don't see anything." You don't look that way
13 when you're driving down Ocean Drive. You're looking to
14 the ocean, not into the bramble on the other side.

15 MS. BOLEYN: So how does the decision get made?

16 MR. SEXTON: Well, it's hard to walk away from \$10
17 million over 20 years. Now, that's 20 years. I don't
18 know what that is in 2008 dollars.

19 MS. BOLEYN: So town meeting -- town meeting will
20 --

21 MR. SEXTON: Well, town meeting will -- if Black &
22 Veatch and MTC has a feeling that we are going to or we
23 pass bylaws to allow such a turbine, they'll continue to
24 support us. There's \$150,000 waiting at the table when

1 we approve it. And Wellfleet has not paid one cent so
2 far.

3 MS. BOLEYN: When the committee approves it? When
4 your --

5 MR. SEXTON: No, the town has to vote two-thirds
6 for 400 feet.

7 MS. BOLEYN: Oh, all right. That's fine.

8 MR. SEXTON: Even though it's not for the turbines,
9 it allows the turbines to be -- so you're not voting any
10 money. You're just voting to allow for the --

11 MS. BOLEYN: Oh, the bylaw.

12 MR. SEXTON: -- the bylaw.

13 MS. BOLEYN: Yes, George?

14 MR. PRICE: Just a couple of things for
15 clarification. One is I think it was a year or so ago
16 we brought before the Advisory Commission the workings
17 of the group that was working on viewsheds, and I
18 remember having the map up here --

19 MS. BOLEYN: Yes.

20 MR. PRICE: -- as we kind of walked people through
21 what we thought was critical and what wasn't. I want
22 you to be clear that that's not a vetted, documented,
23 decision-making decision. That was a collective group
24 of this committee of the roundtable taking their best

1 subjective opinion, informed opinions, which we really
2 respect, and the concept was that if anybody had an idea
3 of going in a spot that we'd consider to be critical, we
4 would understand there's going to be a lot of
5 opposition, but in areas that we didn't think were that
6 critical for the goals of the Seashore at least, then it
7 wasn't that it was an automatic yes, but it was that's
8 not what the opposition is going to be.

9 The second thing that I want to mention is that
10 since we've been talking about this, a critical
11 Massachusetts law has been enacted. Back when Eastham
12 was proposing their wind turbines, that was on town
13 property outside the boundary of the Seashore. And at
14 that point municipalities in the Commonwealth were not
15 allowed to generate their own power. This goes back to
16 a 1930s state bill, that unless you elected to keep your
17 own power and light company, which is what the Town of
18 Hull did -- that's why Hull has the two turbines.
19 That's why they're planning for more because they have
20 their own power and light company. All the towns on the
21 Cape said they wouldn't do it, so they went with a big
22 utility.

23 This past summer the --

24 MR. SEXTON: The Green Community Act.

1 MR. PRICE: The Green Community Act will now allow
2 municipalities to own and operate these wind-generated
3 turbines. Why it's significant for us is that our
4 legislation prohibits additional commercial uses within
5 the Seashore boundary. So it grandfathered in the uses
6 that existed, the restaurants, the gas stations, the
7 campgrounds, et cetera, but would not have allowed a new
8 commercial business. So therefore, the issue with
9 Eastham was if Eastham had wanted to come within the
10 boundary, Eastham wasn't allowed at that point to
11 generate their power. That means they were only going
12 to lease their land to a commercial entity, and their
13 financial gain was going to be through the lease fees;
14 that, even though it was a municipality wanted to get
15 the turbines off the ground, it wasn't going to be a
16 municipality operating it.

17 So it wasn't until this meeting that Jim presented
18 what you saw that all of this sort of came together
19 where I understood that, number one, it's town-owned
20 land. It would be municipal owned and operated, which
21 means it's consistent with our legislation of municipal
22 purposes, and it's not in an area that we've all
23 generally agreed right off the bat would be a critical
24 viewshed. So that's why I thought this meeting -- and

1 I'm sorry there aren't more commissioners here to see
2 it, but I thought you all ought to see this at this
3 point. Obviously Jim and the committee has a long way
4 to go within the town to gain support to see where it
5 goes, but I certainly wanted this commission to be aware
6 of this as a possibility.

7 MS. BOLEYN: Thank you.

8 Yes, Dick?

9 MR. PHILBRICK: Has the board of selectmen of
10 Wellfleet shown any interest in joining the cooperative?
11 You know, the one that's involved -- it originated out
12 of the Cape Cod Compact. It's a cooperative of
13 municipal entities.

14 MR. SEXTON: I think that the next selectmen
15 meetings on the 19th are going to have some of these
16 folks --

17 MR. PHILBRICK: Maggie Downey?

18 MR. SEXTON: Yes, to talk with us and discuss those
19 options.

20 MR. PHILBRICK: I'm sure she must be coming because
21 that affects some of what you said and also the problems
22 of raising the money and bonding from the RUS possibly,
23 Rural Utilities Service of the Department of
24 Agriculture. It's a remnant of the old rural

1 [REDACTED] electrification programs from Franklin Roosevelt time.
2 [REDACTED] It's still there, and they do in rural zones. And this
3 [REDACTED] is all the Cape is zoned.

4 [REDACTED] MR. SEXTON: Rural.

5 [REDACTED] MR. PHILBRICK: Rural. For entities which are
6 [REDACTED] cooperatives can get that kind of support from the RUS
7 [REDACTED] with I think maybe even better interest rates than you
8 [REDACTED] indicated.

9 [REDACTED] MR. SEXTON: I'm sure. If I could, I'd buy all the
10 [REDACTED] bonds I could at 4 1/2 percent tax-free.

11 [REDACTED] One more. The thing about the Communities Act,
12 [REDACTED] Green Communities Act, also there's something called net
13 [REDACTED] metering. So if the Town of Wellfleet generates 5.3
14 [REDACTED] million kilowatt hours a year and they use two of them,
15 [REDACTED] they sell 2 million RECs, the rest can be sold to any
16 [REDACTED] town in the NStar area. In other words, you could sell
17 [REDACTED] it to Falmouth's fire station, a hospital, anywhere.

18 [REDACTED] MR. PHILBRICK: (Inaudible). (Inaudible) kilowatt
19 [REDACTED] hours?

20 [REDACTED] MR. SEXTON: Kilowatt hours.

21 [REDACTED] MS. BOLEYN: Peter?

22 [REDACTED] MR. WATTS: Jim, would you say that the Wellfleet
23 [REDACTED] selectmen were enthusiastic about this?

24 [REDACTED] MR. SEXTON: Incredibly enthusiastic.

1 MR. WATTS: Thank you.

2 MR. SEXTON: We were cheered.

3 MS. BOLEYN: I just wanted to ask Mr. Katz. Did
4 you have a specific question for Mr. Sexton?

5 AUDIENCE MEMBER (MR. KATZ): The superintendent
6 answered it. The superintendent answered it.

7 MS. BOLEYN: We normally wait to hold public
8 comment till the end, but if you have a specific
9 question for Mr. Sexton, I think it's appropriate.

10 Mr. Lavin?

11 AUDIENCE MEMBER (RICHARD LAVIN): I do. If I
12 followed it, the towers are 800 feet from the beach, and
13 you said that the noise travels 1,200 feet. So is it
14 going to be a noise issue for people on the beach?

15 MR. SEXTON: I think we've had the wave action
16 louder than the turbine. Also, during the engineering
17 part of this, we will do a noise analysis where you
18 really can't be 10 dB above ambient noise.

19 AUDIENCE MEMBER (MR. LAVIN): And the only reason
20 for rejecting the site back here is the lack of access?

21 MR. SEXTON: Well, but in retrospect I looked at it
22 and said I would never put a turbine there.

23 AUDIENCE MEMBER (MR. LAVIN): Because?

24 MR. SEXTON: It's just beautiful. It's a money

1 [REDACTED] shot. It's a viewshed.

2 [REDACTED] AUDIENCE MEMBER (MR. LAVIN): Viewshed. I don't
3 know. Just 800 feet from the beach. I thought the
4 beach is what the Park's all about.

5 [REDACTED] MR. SEXTON: You couldn't see the turbine from the
6 beach.

7 [REDACTED] AUDIENCE MEMBER (MR. LAVIN): Everybody pulling
8 into that parking lot is going to see it and hear it,
9 and I thought -- forgive me. I just thought that you
10 were saying these other areas back this way -- I'm a
11 little bit disoriented -- isn't that away from the
12 ocean?

13 [REDACTED] MR. SEXTON: The airstrip, you mean?

14 [REDACTED] AUDIENCE MEMBER (MR. LAVIN): Yeah, the Marconi
15 airstrip, yes. The only thing I heard him say about the
16 airstrip is it was landlocked. I'm just asking, is that
17 the place where --

18 [REDACTED] MR. SEXTON: Well, also we did the viewshed
19 analysis, and that came out, from my perspective --
20 granted, it's pretty subjective, but I would fight
21 putting a turbine there.

22 [REDACTED] MR. DRAZ: If I may, Jim.

23 [REDACTED] MS. BOLEYN: Mr. Draz?

24 [REDACTED] MR. DRAZ: Yeah, there are actually a couple of

1 other things too. Wellfleet by the Sea has a sort of
2 area that's municipally owned and kind of a little
3 narrow strip of land, actually two of them, that go
4 right to the power lines. So you have direct access
5 from this sort of Wellfleet by the Sea, which kind of
6 looks like a block of land with two narrow little
7 slivers that the town owns that go directly to, again,
8 the power lines, which provides us, again, access on our
9 town-owned land to hook back this power back into the
10 grid. The Marconi Beach area, the airstrip does not
11 have that kind of access. We would have to go over
12 somehow --

13 MR. SEXTON: Well, you'd have to go over also Park
14 land to get to these (inaudible).

15 MR. DRAZ: Right. Well, and then the other thing
16 --

17 AUDIENCE MEMBER (MR. LAVIN): My only comment is
18 that viewsheds, that's something you guys are doing, and
19 I think that's terrific. I would think that if the
20 principal issue is access over Park land, I'd be
21 surprised to learn that the National Park Service would
22 work with the town to allow that to work. That's all.

23 MR. SEXTON: Well, as Lauren said to me -- and I
24 thought she was kidding -- it would take an act of

1 [REDACTED] Congress to get access to that. So you're talking --

2 [REDACTED] AUDIENCE MEMBER (MR. LAVIN): I don't believe

3 that's true, but that's okay.

4 [REDACTED] MS. BOLEYN: Okay, we need to cut this.

5 [REDACTED] AUDIENCE MEMBER (MR. LAVIN): Thank you.

6 [REDACTED] MS. BOLEYN: Mr. Philbrick?

7 [REDACTED] MR. PHILBRICK: I have another question. The
8 three-tip setback for sound sounds to me exorbitant.

9 That would be a radius from the base of the tower --

10 [REDACTED] MR. SEXTON: Exactly.

11 [REDACTED] MR. PHILBRICK: -- of three times the height of the
12 top reach of the blades.

13 [REDACTED] When we were in Newfoundland a year or so ago, we
14 went to visit these wind farms, which is along the
15 Newfoundland coast from Yarmouth up to the north and
16 quite close beyond that. And it was a farm of something
17 like -- at that time there were probably 15, somewhere
18 around a megawatt, towers. I was interested in the
19 sound issue, drove out there, parked as close as I could
20 park to the tower -- base of the tower on a public road
21 and couldn't hear anything. I got out and walked over
22 to the base of the tower, and I still with (inaudible)
23 going by and winds about 10 knots at the surface
24 couldn't hear anything above the rustle of the wind and

1 the bayberry bushes. Nothing even approached the sound
2 of the wind and the bayberry bushes.

3 MR. SEXTON: Well, I'm playing it safe, or we're
4 playing it safe. If we do the analysis and find that
5 the ambient -- it would be our intent, 10 dB above
6 ambient anywhere in the location the turbines would go,
7 but you can't be above 10 dB of ambient.

8 MS. BOLEYN: These standards are set?

9 MR. SEXTON: Yes.

10 MS. BOLEYN: Are they federal standards?

11 MR. SEXTON: I think they're state.

12 MS. BOLEYN: Yes, Mr. Price?

13 MR. PRICE: Just one more thing. If this were to
14 proceed, then the comment from the National Seashore
15 would have to do also with environmental compliance. So
16 whether it would be on the project to determine the
17 potential effect on wildlife, the flyways, et cetera.

18 MR. SEXTON: Absolutely.

19 MR. PRICE: Which is exactly what we're doing up at
20 the Herring Cove area even for our small turbine before
21 we take the next steps on that. So that's a given that
22 I just wanted everybody to be sure that that's the case.

23 MS. BOLEYN: Any other comments or questions?

24 (No response.)

1 MS. BOLEYN: Thank you very much, Mr. Sexton. That
2 was an excellent report. Good luck with the project.
3 It's an exciting project.

4 MR. PHILBRICK: Yes.

5 MR. PRICE: Great, Jim, thank you very much.

6 MR. SEXTON: You're welcome.

7 MR. PRICE: When I saw it, I just thought that it
8 would make a lot more sense for people to see the whole
9 PowerPoint.

10 And I appreciate you giving us a heads-up on that,
11 Lauren.

12 HIGHLANDS CENTER UPDATE

13 MR. PRICE: Just quickly on the Highlands Center
14 Update.

15 Lauren, I was going to ask to just give a couple of
16 points.

17 MS. McKEAN: Sure. Basically there are a few off-
18 season things that we are doing to advance the Highlands
19 Center project. We're working on a sign plan to try to
20 come up with something that's a cohesive plan to get
21 people to the site and then direct them once they're at
22 the site.

23 Highlands Center Incorporated has a consultant, Sam
24 Miller, who's working with them on restructuring their

1 board and their activities.

2 Payomet had a really good season, a third season
3 out there at the site and had a lot more activity and
4 just a lot more attendance as a result.

5 The kiln that has been operated by Highlands Center
6 Incorporated -- the kiln had its second firing this past
7 month. That went off without a glitch.

8 And next summer -- we've been contacted by the
9 Truro -- I'm going to say it wrong, but the Truro
10 Centennial Committee, something like that, the 300th
11 Anniversary Committee for the Town of Truro about a
12 parade on July 19, and they are talking about some
13 interest in having a parade and the Highlands Center --
14 have the whole parade route be off of Route 6. And so
15 we'll likely continue to work with them and try to have
16 some activities there at the end of the parade route.

17 I guess last time Howard Irwin had asked what else
18 was going on -- what might be going on with the 300th
19 planning, and so it's that parade and also the
20 interpretation division has been asked by the Truro
21 Library to deal with children's programs. So they're
22 working on that with the library. I guess that's all.

23 ALTERNATE TRANSPORTATION FUNDING

24 MR. PRICE: Under Alternate Transportation Funding,

1 I've reported in the past about a number of projects
2 that we've obtained funding for, including some new
3 rolling stock for the Provincetown portion of our
4 shuttle service. We've also kicked off some meetings
5 with the towns on the parking lots near the beaches,
6 and, in fact, this coming week Clay and I and people
7 from the Volpe Center will be meeting with a number
8 of towns on the next steps on that particular
9 project.

10 We also kicked off our preliminary planning on the
11 bike trail extension.

12 And, Brenda, at your request we invited Clay to
13 join us, Clay Schofield from the Cape Cod Commission,
14 and he'll be doing a presentation under New Business.

15 CENTENNIAL CHALLENGE

16 MR. PRICE: I mentioned the Centennial Challenge.
17 People always say to us, "Boy, I bet you're in tough
18 times. You're not getting funded," but I have to be
19 honest. Remember, we have received over \$800,000 this
20 past year for what was called the Centennial Challenge.
21 And that was under Secretary Kempthorne and Director
22 Bomar, and those monies went towards -- directly towards
23 additional frontline seasonal staff and law enforcement
24 and interpretation and specifically for life guards as

1 well as for maintenance.

2 We also received monies and are continuing to work
3 on the Old Harbor restoration and the disturbed lands
4 project out here in the Marconi area. We've also been
5 assured that that same amount of money will be rolled
6 over into this year's budget, even though we're working
7 on a continuing resolution. So we don't actually have a
8 budget for this year, and of course, with the transition
9 there are a lot of things sort of on hold in D.C. right
10 now.

11 And then finally we've also undergone some senior
12 staff shifts. I'm not sure that I mentioned at the last
13 meeting that Ben Zehnder (sic) has retired from the
14 National Park Service. He --

15 MS. BOLEYN: Ben Pearson.

16 MR. WATTS: No, not Ben Zehnder. Pearson, Pearson.

17 MR. PRICE: He's way too early to retire. He's
18 going to be around for a long time. I'm sorry.

19 AUDIENCE MEMBER (ATTORNEY ZEHNDER): I'll accept
20 the job, if you've got one.

21 MR. PRICE: Do you want to be chief of maintenance?
22 It's open.

23 (Laughter.)

24 MR. PRICE: Basically Ben Pearson has retired, and

1 actually he's packing up his pods as we speak and
2 heading to Colorado or Wyoming. So he's a happy man.
3 But we sent him off, and we've been in the process of
4 recruiting a replacement for him.

5 But many of you knew that Steve Prokop left us
6 actually in the spring. Steve was our chief ranger, and
7 he's the superintendent of Kalaupapa, which is in
8 Hawaii, and it's the historic leper colony out there.
9 And Steve's having a wonderful time.

10 But I asked Bob Grant to join us at this meeting
11 for a couple of reasons; one, to get familiar with the
12 workings of the Advisory Commission but also introduce
13 him. He's our brand-new chief ranger.

14 (Applause.)

15 MR. PRICE: Bob has had a career in a number of
16 significant roles in the National Park system. He's
17 actually been here at the Cape Cod National Seashore for
18 quite a while as the South District ranger in law
19 enforcement where he'd fly up to the South and the North
20 District. And Bob is stepping into Steve's shoes, and
21 we really appreciate it.

22 MR. GRANT: Thank you.

23 MR. PRICE: So we wanted Bob to be available today.

24 So that's my report unless you have any questions.

1 MS. BOLEYN: Any questions for the superintendent?

2 (No response.)

3 MS. BOLEYN: Thank you very much.

4 **OLD BUSINESS**

5 MS. BOLEYN: We're still lacking a quorum, so under
6 -- well, first let me ask, is there any old business to
7 be brought before the Commission?

8 (No response.)

9 MS. BOLEYN: Seeing none, that moves us to New
10 Business.

11 **NEW BUSINESS**

12 MS. BOLEYN: And the role of the Advisory
13 Commission, following up on the discussion we had with
14 Mr. Zehnder and Mr. Lavin at the last meeting and so
15 forth, I prepared a simple motion that you received in
16 your packet. But since Mr. Schofield is here and is
17 prepared to do a presentation on the bike trail plan,
18 maybe it would make sense to move that up.

19 Does that make sense, do you think? Anyone opposed
20 to that idea?

21 (No response.)

22 MS. BOLEYN: I'd like to put that ahead of this
23 other motion and ask Mr. Schofield if he would tell us
24 about bike trail planning, which is of great interest,

1 as you know, on the Outer Cape here and certainly to the
2 Advisory Commission.

3 AUDIENCE MEMBER (MR. LAVIN): Madame Chair, sorry.

4 MS. BOLEYN: Yes.

5 AUDIENCE MEMBER (MR. LAVIN): Is the motion a
6 public document that could be shared while you're going
7 through the other piece?

8 MS. BOLEYN: Sure.

9 AUDIENCE MEMBER (MR. LAVIN): We got a copy of the
10 agenda. We did not get the motion.

11 (Document handed to Mr. Lavin.)

12 AUDIENCE MEMBER (MR. LAVIN): Thank you.

13 MS. BOLEYN: There are extra copies here, I guess.

14 BIKE TRAIL PLANNING

15 MR. SCHOFIELD: There's a brief handout. There is
16 no PowerPoint, which is uncharacteristic for me.

17 MS. BOLEYN: Let me just introduce you.

18 MR. SCHOFIELD: Oh, I'm sorry.

19 MS. BOLEYN: Clay Schofield is an experienced and
20 long-time member of the Cape Cod Commission specializing
21 in transportation issues.

22 MR. SCHOFIELD: One day I woke up and I've been
23 there nine years. No one has ever tolerated me that
24 long.

1 I'll go into a little history on this. Many of you
2 are aware of the five-year plan that was done back in
3 2002 that focused mostly on transit. We talked about
4 bicycles in that plan. Since then we've done a long-
5 range plan, and it incorporates a lot of things with
6 transportation. We've been very successful because of
7 that planning in getting funds from the Alternative
8 Transportation Parks and Public Lands program. Right
9 now actually we have four projects going with the Park
10 and one with the Monomoy Seashore -- National Refuge.

11 This one is a bicycle study. The bicycle study was
12 started as a two-phased project, one looking at the
13 region and how people move about the region and kind of
14 documenting that and looking at areas that need
15 improvement. The other was looking at a little more
16 fine-grain detail for the Outer Cape and looking at
17 connecting attractions and some of the town centers and
18 coming up with a scheme of bicycle paths and
19 improvements that would be beneficial to the Outer Cape
20 and promote bicycling.

21 One of the things we had expected to look at was
22 the long term, looking at the extension of the rail
23 trail from South Wellfleet to Provincetown, and that
24 actually got moved to the front. We're working on

1 developing a concept for that at the request of
2 Congressman Delahunt. Apparently there's a lot of
3 legislative interest in doing an earmark for the Teddy
4 Kennedy Trail, which would be this extension, and
5 apparently Delahunt and a bunch of other New England
6 legislators are interested in supporting that. Anyway,
7 the project -- I put this all down so you don't have to
8 write it -- is a \$250,000 study. It's going to be done
9 in concert with these other studies that I mentioned.
10 Three of them that are pertinent are an intelligent
11 transportation system study looking at signage and
12 things like that and monitoring traffic. Hopefully
13 we'll be able to direct people to bicycle facilities and
14 things like that. There is a parking study that George
15 mentioned a little bit. We're hoping to incorporate
16 parking bikes, among other things. We've also requested
17 funding for a bike shuttle, which would be a trailer so
18 that if people and their families got tired, they could
19 arrange for a pickup, and that way they could enjoy a
20 lot of the Park stuff.

21 I'll talk a little bit about what we've done as far
22 as the extension of the rail trail. It's about 18 miles
23 from where it ends about a mile north of here to
24 Provincetown. We've looked at a lot of the issues.

1 There are some really interesting challenges getting
2 around Pilgrim Lake, for instance. We've looked at
3 alignments within the Park. We've looked at alignments
4 within the east -- I'm sorry -- towards the west in
5 Truro. So we've come up with a whole bunch of options.
6 So we have a range of cost that we're going to discuss
7 with Delahunt. A lot of it came from a 1988 study that
8 was done for the Park, and we've learned a lot about
9 that, and we just kind of revisited a lot of ideas from
10 that study. There's also a statewide bike plan that
11 we're going to be using in the study. But anyway, the
12 study, again, is looking at access to the Park with
13 bicycling, and that's part of the General Management
14 Plan, and it's also consistent with the Region's
15 transportation plan.

16 Again, improving the regional network is big.
17 Again, protecting the natural environment. If we can
18 get people to visit areas with a bicycle rather than a
19 car, we see that as an improvement. Always bicycles are
20 cleaner than cars.

21 We're going to be working with the towns not just
22 on the Outer Cape but the whole Cape. One of the
23 visions is that we can try to create a safe environment
24 so that the serious bicyclist, the touring bicyclist may

1 want to visit the entire Cape, and we want to create
2 ways for them to do that and get to the Outer Cape and
3 then visit the Seashore.

4 In a nutshell, that's what we're going to be doing.
5 Any questions?

6 MR. WATTS: You don't have any maps at this time
7 that would indicate where the bike trails would be?

8 MR. SCHOFIELD: No, the studies right now -- as I
9 say, we got kind of sidetracked doing the support for
10 the earmark. We really haven't started the study. The
11 1988 study had a bunch of options for the Outer Cape.
12 We're going to revisit those. There were actually three
13 alignments that were extensions of the rail trail in
14 that study plus a lot of, you know, getting to downtown
15 Wellfleet and things like that. We're going to start
16 with that as a basis. And I could have brought that
17 map. I did not. I would have had my PowerPoint.
18 That's going to be what we're going to start with.

19 MS. BOLEYN: So the earmark is a relatively new
20 suggestion, is that it?

21 MR. SCHOFIELD: Yeah, a few months ago Mark Forest
22 asked me in his office, "How much is it going to cost to
23 do this thing?" I blurted out a number, and I'm glad we
24 have a consultant on board to actually do a little more

1 detailed analysis, but I'll say my number was in the
2 ballpark.

3 MR. SABIN: Isn't the word *earmark* a dirty word
4 anymore?

5 MR. SCHOFIELD: It depends on if you're getting the
6 earmark or if you're not.

7 (Laughter.)

8 MS. BOLEYN: Yes?

9 MR. PRICE: It also depends on if the election is
10 over or not.

11 I just want to mention a couple of points. One is
12 that I really appreciate Mark's renewed interest in this
13 because our previous proposal really was just to get the
14 study off the ground. And the concept, the outcomes of
15 that would have been theoretically an intelligent way to
16 address future funding proposals. So the planning money
17 was not going to put a shovel on the ground, but it was
18 going to take us through a process where we were going
19 to get to the process. And unfortunately in this day
20 and age, especially when you have a lot of environmental
21 issues and private property issues, that's a big
22 concern.

23 I will tell you honestly the '88 study came up
24 against a lot of community criticism. And a lot of work

1 was done at that time, but it didn't really go any
2 further. It is my understanding it wasn't taken up
3 during the general management planning process because
4 it was so controversial. It was just that we're
5 interested in having bike connections, safe nonvehicle
6 exploration of the Cape, but they didn't take it on at
7 that point in the late '90s.

8 So my expectation is that everybody at this point
9 thinks it's a very positive idea. I have a hunch
10 there's just more general enthusiasm for biking than
11 there might have been in the '80s.

12 MS. BOLEYN: Yes.

13 MR. PRICE: I know I've talked to a number of
14 people in the communities. The town leaders were very
15 enthusiastic when they heard this was coming down the
16 road, and the public safety people were very
17 enthusiastic. A couple of the hoteliers were very
18 enthusiastic, so it could be that it's a different time.

19 The other issue, however, that's very real is that
20 for the same reasons that we wouldn't necessarily want
21 to deal with the -- from a philosophical point of view,
22 at least by the National Park Service, would not be
23 interested in developing the airstrip is because
24 (inaudible) habitat. And as we take a look up towards

1 the Wellfleet/Truro area that's in the Park boundaries
2 and in many areas is owned by the federal government,
3 although there might be historic dirt roads up there,
4 they really haven't been developed roads in a long time.

5 So here we get into the classic balance of
6 preservation versus use, and I know that that's going to
7 take up a lot of time and energy as we start to explore
8 these routes and try to determine what's really the best
9 decision for the future of the Seashore. So that's
10 going to be an issue. We've already had it in dialogue,
11 and I know that that's coming -- something that's coming
12 to the Park, but I think it's really critical.

13 I have to say if you take a look at some of the
14 bike trails we have today, especially up in Provincetown
15 or in the wetlands, even some of our walking trails,
16 Cedar Swamp Trail, for instance, I doubt we'd be able to
17 pull these off today because we know so much more about
18 the environment and how a lot of use conflicts with it.
19 So the question is, where are we going to be able to go?
20 Because I think it's very critical, especially when we
21 make this connection between the extension of the rail
22 trail to Provincetown, just from a safety point of view.

23 MS. BOLEYN: Safety is a big one.

24 MR. PRICE: It is.

1 Just as a footnote, you might have read in the
2 paper we were successful in completing three of the
3 phases or we're about to complete three of the phases of
4 the rehab of the Provincetown bike trail. The majority
5 of our accidents, visitor accidents, takes place on the
6 bike trails. Now, we believe the majority of them are
7 user related, but still it's in an area that we really
8 have to pay attention to. And we have to catch up with
9 our partners, the state, who did a magnificent job
10 rehabbing the rail trail a couple of years ago.

11 So I think the time is now to really take this on,
12 and I really appreciate the fact that Clay and the Cape
13 Cod Commission has been able to partner with us so
14 closely on this, especially with the departure of Ben
15 Pearson, who is not only our chief of maintenance but
16 our chief bike guy, and Clay has the background and
17 resources to be able to walk us all through this as a
18 partnership.

19 MR. SCHOFIELD: Let me underscore what George said
20 about the bicycle popularity. You know, Ben, I'm going
21 to quote him on everything now since he's not here
22 anymore, but he says that that's the second most popular
23 activity in the Seashore. And some of the numbers here,
24 we've done counts on the rail trail, and in the peak

1 hours, there are about four hundred people that go by
2 here every day. That's a lot of people. Four hundred
3 thousand people use that every year. Those are big
4 numbers. But I think a lot of people come to the Cape
5 just to use the rail trail, and you see so many bikes
6 strapped onto some of those cars. And I think that
7 creating this longer -- longer trail will attract a lot
8 more folks here and, again, visitor experience will be
9 improved because you won't have the cars or as many
10 cars.

11 Question?

12 MR. WATTS: I just think that the rail trail
13 concept is very good because the rails obviously wanted
14 to be on level land. When you get into areas of the
15 Park in Wellfleet and Truro, you're confronting a lot of
16 hills. It's up and down rather than flat, and if the --
17 I know that there are houses built across the old
18 railroad right of way, so that's a problem right there.

19 MR. SCHOFIELD: Well, one of the first things we
20 did was identify the rail rights of way that were still
21 available. A lot of them are actually roads now. There
22 were some areas that were theoretically available, but
23 when you look at the aerials, there's stuff on them.

24 MS. BOLEYN: This is certainly true, especially in

1 Truro, but with the increasing interest in bicycling and
2 bicyclists traveling through the Lower Cape to
3 Provincetown, when they go through Truro, they're
4 directed to the side roads, and they're extremely
5 dangerous. It's strange to say that the safest place to
6 ride a bicycle in Truro is on Route 6 because there's a
7 little margin and the lines of site for drivers on the
8 side roads are very poor, and it's very dangerous for
9 people on those side roads.

10 MR. SCHOFIELD: That's one of the things when we
11 were looking at doing things west of Route 6, you know,
12 again, the roads just don't have the site distance, and
13 there are some pretty interesting hills too.

14 MS. BOLEYN: Yes, there are.

15 Yes, Mr. Philbrick?

16 MR. PHILBRICK: When we were upgrading the bike
17 trails through Orleans and Harwich, there were a pair of
18 overpass for the bike trail over the highway.

19 MS. BOLEYN: Yes.

20 MR. PHILBRICK: And the specifications, state
21 specifications for the structures provided that the bike
22 trails were for bicyclists, pedestrian hikers, and so
23 forth and mounted on horseback passengers. How that
24 works out in terms of the classical problem on how does

1 a bike trail cross a town road with regular traffic on
2 it, is that crossing a pedestrian crossing for which you
3 need the bike rider to dismount and push his bicycle
4 across and so forth and where that happens and where it
5 doesn't happen. And this conflict happens to the riders
6 of bicycles because those roads sometimes change as they
7 go along.

8 Are use specifications the same?

9 MR. SCHOFIELD: We haven't gotten that far, but
10 what I expect is that, as with a lot of the bike paths,
11 there will be a stop sign for bicycles. It will be
12 their obligation to cross safely. Most of the roads
13 that we've looked at crossing are fairly low volume, and
14 I don't see that being a huge problem.

15 MR. PHILBRICK: It's been a problem downtown
16 Orleans because the bikers, even though we've turned
17 ourselves inside out, put lots of signs approaching that
18 to tell them that they are not protected crossing that
19 unless they are on foot, unless they are true
20 pedestrians, and there's a good reason for that.
21 Because the motorists assume that a pedestrian is
22 traveling at a certain speed and a bike could be
23 traveling several times that speed.

24 But what about the mounted bridal trail aspect of

1 it?

2 MR. SCHOFIELD: You know, one of the interesting
3 projects I worked on way back when was we had pedestrian
4 push buttons for the crossings that were up high enough
5 so you could push it from the saddle. We haven't really
6 talked about the equestrian element yet, and I don't
7 know if they're allowed on the existing bike trail. I
8 assume so, but I don't know.

9 MR. SABIN: I don't think they're barred.

10 MR. PHILBRICK: I haven't seen any, but I guess the
11 horse is on foot.

12 (Laughter.)

13 MR. PHILBRICK: Can't deny that.

14 MR. SCHOFIELD: As I said, I worked on a project
15 where we actually put -- there was a horse area, and
16 they had push buttons on the light poles up high enough,
17 and I thought that was a little different.

18 MS. BOLEYN: You had a question, Mr. Sabin?

19 MR. SABIN: I just would like to see this on an
20 agenda item in future meetings along with maps to
21 illustrate what we're talking about.

22 MR. SCHOFIELD: I'm sure we could do that. I'd be
23 happy to.

24 MS. BOLEYN: We can get updates periodically, I

1 presume.

2 MR. SCHOFIELD: Like I say, we really don't have a
3 map now. Otherwise I would have brought one. I was
4 going to steal one from the '88 study, but it's not
5 quite relevant.

6 MS. BOLEYN: Right. Well, thank you very much. I
7 think the project is very timely and much needed.

8 MR. SCHOFIELD: One thing I will say too, we're
9 also looking at the other end, the south end. There's a
10 project that has been on the books for a while to extend
11 it from Dennis to the Hyannis Transportation Center, and
12 that would be kind of neat to have a continuous bike
13 path from Hyannis to Provincetown.

14 MS. BOLEYN: Indeed. Yes, it would. Thank you.
15 Okay, well, this brings us to New Business.

16 AUDIENCE MEMBER (MR. KATZ): Can the public have
17 questions?

18 MS. BOLEYN: Oh, sorry, for Mr. Schofield?

19 AUDIENCE MEMBER (MR. KATZ): Yes.

20 MS. BOLEYN: Yes, go ahead.

21 AUDIENCE MEMBER (MR. KATZ): Specifically you, Mr.
22 Schofield, would you divulge that ballpark figure that
23 you said was more accurate than you thought it might be?

24 MR. SCHOFIELD: Well, we're still discussing it

1 because there are some other issues about amenities and
2 things like that, but I would say somewhere between 25
3 and 50 million.

4 AUDIENCE MEMBER (MR. KATZ): A couple of comments,
5 if I might. The safety issue which was brought up as
6 the largest single motivating issue in 1988 turned out
7 to be a spurious issue when the statistic that 82
8 percent of the accidents on the bicycles -- of
9 bicyclists and people happened on the bike trail, not on
10 Route 6 and not on a secondary road; that, in point of
11 fact, the bike trail is the most dangerous thoroughfare
12 on Cape Cod. Secondly, the conclusion of the 1988
13 study, of which hundreds of thousands of federal dollars
14 was spent and the study went nowhere because it was such
15 an ill-advised project, and the study's ill-advised --
16 the conclusion of their ill-advised study is the
17 following -- and I'm quoting from the 1988 study
18 conclusion: (Reading) A continuous network of bicycle
19 trails on the Lower Cape in the terminus of the Cape Cod
20 Rail Trail at the Lecount Hollow Road is not proposed
21 due to the lack of support by the majority of the
22 commenters on the Park-wide bicycle trails study for
23 Cape Cod National Seashore. In addition, the patchwork
24 of land ownership and multiple jurisdiction clearly

1 dictate that the need for a cooperative planning effort
2 beyond the National Park Service jurisdiction. The
3 National Park Service will cooperate with Lower Cape
4 towns, et cetera, et cetera, et cetera, for the
5 extension should it be done (end reading).

6 That's the end of the quote. The study, of which I
7 was inextricably involved in their conclusions, this is
8 not the panacea for transportation that Mr. Schofield
9 enjoys thinking about, and it's fraught with all kinds
10 of problems, not the least of which are problems from
11 sections of the National Seashore regulations which
12 mandate that they may do nothing that will diminish
13 property values, and it was demonstrated beyond any
14 doubt that the rail trail going through the Seashore and
15 past improved properties in the Seashore certainly
16 diminished the value of those properties. So this is
17 not easy, and it's not necessarily as popular as some
18 people would say it is.

19 Thank you.

20 MS. BOLEYN: Thank you.

21 Okay, that brings us then I think to New Business.
22 We do not have a quorum, unfortunately. By the way, I
23 neglected to mention that our chairman, Mr. Kaufman, had
24 hoped to be here today, and he informed the

1 superintendent this morning that, unfortunately, he had
2 conflicting meetings and couldn't get away. So it's too
3 bad. This is a very rare occurrence for us not to be
4 able to have a quorum for a meeting, and I think it's
5 just a case of individual situations where December 1
6 turned out not to be a good choice.

7 ROLE OF THE ADVISORY COMMISSION IN ADVISING THE
8 SUPERINTENDENT ON ZONING ISSUES

9 MS. BOLEYN: If you wish, we can take up this
10 motion and have a conversation about it, or we can delay
11 it to the next meeting. We can't take any action on it
12 today.

13 MR. PHILBRICK: I would like us to talk about it,
14 if I have any voice.

15 MS. BOLEYN: Everyone agreed that we'd like to talk
16 about it?

17 MR. WATTS: (Nods.)

18 MS. BOLEYN: All right. I've asked Mr. Watts to --
19 since I'm going to be presenting the motion, I've asked
20 Mr. Watts to take the chair temporarily and conduct the
21 conversation.

22 MR. SABIN: If we're just talking, does it matter?

23 MS. BOLEYN: Well, that's a good point. If we're
24 just talking, maybe it doesn't matter. All right.

1 It's a very brief motion, and it's written in
2 general terms. It doesn't address specifics. It gives
3 us a chance to get the zoning matter on the table and
4 just take the conversation where it goes.

5 I'll read it so that everyone in the room can hear
6 it: (Reading) The Cape Cod National Seashore Advisory
7 Commission endorses the efforts of the superintendent
8 and the Secretary of the Interior to support zoning
9 regulations in the Seashore towns that will limit
10 development and the construction of oversized dwellings
11 that are now threatening the character of the National
12 Seashore (end reading).

13 A lot has happened since our last meeting as
14 reported by Peter Watts, and as the superintendent has
15 pointed out, the conversations continue with the Town of
16 Truro regarding this issue that many of us think is very
17 important. And so I open the floor for conversation
18 about this.

19 Ed Sabin?

20 MR. SABIN: Since I represent Eastham and Eastham
21 is one of the towns that already has zoning which
22 supports the point that you make here, I certainly
23 absolutely favor the contents of this proposal --
24 motion. No question about it in my mind.

1 MS. BOLEYN: Peter?

2 MR. WATTS: I believe that Mr. Zehnder's original
3 question had to do with a particular house at 1440
4 Chequessett Neck Road. And I remember this situation
5 where the superintendent was concerned about that house
6 and he forwarded to the regional office in Boston where
7 Mr. Conte made a decision and then forwarded it down to
8 the Department of the Interior.

9 Am I right, George?

10 MR. PRICE: (Nods.)

11 MR. WATTS: And the Department of the Interior then
12 gave it to the Justice Department.

13 MR. PRICE: You're talking specifically about us
14 taking up the --

15 MR. WATTS: Right, right.

16 MR. PRICE: -- state court land court issue?

17 In order for us to file in state land court, we had
18 to get certain -- Tony didn't make the decision. He
19 made recommendations, and he helped craft language that
20 went to the director's office. The director went to the
21 Department -- Secretary of the Interior, who then went
22 to Justice, which then allowed an assistant U.S.
23 attorney to file in state land court.

24 MR. WATTS: My point really is that you are just a

1 whistleblower really.

2 (Laughter.)

3 MR. PRICE: I've been called worse.

4 MR. WATTS: No, I mean, you're not --

5 (Laughter.)

6 MR. PRICE: I've been called a local functionary.

7 MR. WATTS: You're not pursuing the zoning board,
8 Wellfleet Zoning Board. George Price is not suing the
9 zoning board.

10 MR. PHILBRICK: No, we're not whistling Dixie.

11 MR. PRICE: No, but I think the United States is
12 appealing to the Massachusetts State Land Court that we
13 believe as an abutter that Wellfleet did not follow the
14 existing laws as determined by the Massachusetts General
15 Court or Judicial Court. And so that was the issue.
16 And when we had the famous three sets of meetings with
17 the ZBA, as I reported to you all -- and some of you
18 were in attendance. Remember, there were three
19 attorneys basically arguing one side and three attorneys
20 arguing the other side. And our solicitor believed that
21 it was worthy of public pursuit in land court, so that's
22 where we took it.

23 So I think there's --

24 MS. STEPHENSON: Because it was so divided?

1 MR. PRICE: No, because our solicitor believed that
2 that was --

3 MS. STEPHENSON: Regardless of?

4 MR. PRICE: -- that was the proper direction to
5 take, and so did the director and so did the Secretary's
6 office.

7 MR. WATTS: I just want to say that because of 1440
8 Chequessett Neck Road, the citizens of Wellfleet saw
9 that and were presented that as evidence of we should
10 protect the National Seashore, and that's why we had a
11 record number turnout for a special town meeting in
12 October.

13 MR. PRICE: And I think the other, if I can, Madame
14 Chair -- the previous discussions that we've had in the
15 Advisory Commission, both on Mr. Lavin's property the
16 previous year in Truro as well as the Blasch family's
17 property in Wellfleet -- we've had general conversations
18 here at the Advisory Commission. And certainly there
19 was a consensus early on for me to pursue issues, but it
20 never came to a vote per se.

21 And, Brenda, is that what your objective is with
22 this motion when you'll actually be able to file, when
23 there's a quorum? That you're trying to make, I think,
24 a proactive statement?

1 MS. BOLEYN: Yes, yes, of support for the efforts
2 that are needed and the details of which are yet to be
3 worked out with the towns, I think.

4 Mr. Zehnder?

5 AUDIENCE MEMBER (ATTY. ZEHNDER): Yeah, if you
6 don't mind, I'd like to introduce myself again. There
7 are some people in this room, fortunately, that haven't
8 met me. My name is Ben Zehnder, and I represent the
9 property owner here, Mark and Barbara Blasch.

10 And for the benefit of the members that have not
11 had any history on this, this is a case in which a
12 private landowner within the Seashore bought a piece of
13 land on Chequessett Neck Road, went to the local
14 building inspector and asked what they were allowed to
15 do within the existing zoning law, and they were
16 advised, I believe correctly, that as long as they built
17 a house that met the setback requirements and the height
18 requirements and the lot coverage requirements and all
19 the dimension requirements of the zoning bylaw, they
20 could pull a building permit and build a house as a
21 matter of right, which, in fact, they did. They went to
22 the conservation commission and got a conservation
23 permit for the house, obtained a building permit, and
24 then following sort of a general outcry, for lack of a

1 better term, but a very choreographed outcry, the
2 National Seashore took an appeal to the zoning board of
3 appeals for the issuance of that permit claiming that
4 because the house was on a nonconforming lot -- it was
5 about 2.95 acres instead of 3 acres -- it required a
6 special permit from the zoning board of appeals. That
7 appeal was also taken by an abutter, the direct abutter
8 of the property. That appeal was also taken by a
9 private homeowners' association about a couple of miles
10 down the road (inaudible). Those people, having a piece
11 of property in their neighborhood they were concerned
12 about, felt they were -- should become involved in this.
13 And the appeal was also taken by the board of selectmen
14 for the Town of Wellfleet.

15 At the first night of these three hearings, which
16 were very heavily attended -- and Mr. Price is right;
17 they were very comprehensively argued -- the abutter
18 actually withdrew the appeal, citing that she spoke with
19 her attorney and believed after speaking with her
20 attorney there was no legal grounds for the appeal. The
21 Town of Wellfleet then said, "We're not going to present
22 any kind of a presentation. We'll stand on the written
23 presentations." And the Seashore made a presentation,
24 and (inaudible) made a presentation. It was then

1 continued to two more hearings, at which point the Town
2 of Wellfleet did hire a very, very well-known land use
3 attorney in Boston, who made some very comprehensive
4 presentations. And following those presentations, the
5 zoning board of appeals voted four to one that, in fact,
6 the building inspector was within his jurisdiction to
7 issue the building permit and that the zoning bylaw
8 allowed this particular activity.

9 Now, what we've placed before you as an issue --
10 and the final procedural aspect of that is that the Cape
11 Cod National Seashore took an appeal to the
12 Massachusetts Land Court and that the Town of Wellfleet
13 did not take an appeal and the homeowners' association
14 did not take an appeal, that it was only the Seashore
15 that took an appeal. What we've put before this board
16 was not the question as to whether or not you endorse
17 what the superintendent does to protect against large
18 houses. Of course, you endorse that. The question is,
19 what is the role of this particular body by statute in
20 advising the Secretary of the Interior with regard to
21 actions taken by the Secretary of the Interior?

22 Now, under your federal regulations, you are
23 lawfully required to accept input and to provide advice
24 and counsel to the Secretary of the Interior, not for

1 Mr. Price -- he's the agent of the Secretary -- for any
2 matters that involve private property rights within the
3 National Seashore. So the question before you is:
4 Should you sit here and after the fact accept reports
5 over what is being done, or should you actually accept
6 input and provide advice and counsel to the Secretary of
7 the Interior? And what I would argue is if you don't
8 provide that advice and counsel, then we as the citizens
9 of these towns are not getting what we're supposed to
10 get as part of the bargain with the Seashore, is that we
11 have representatives that go to these meetings and
12 represent us as citizens, whether citizens to the town
13 directly through Mr. Watts, as citizens at large through
14 the governor's appointee, and we have the right to have
15 our concerns expressed to the Secretary before these
16 actions get taken because these actions that get taken
17 cost a lot of money. They cause political repercussions
18 in some ways. They cause repercussions to the private
19 property owners themselves that have to defend these
20 actions.

21 Now, in this particular case -- and those of you
22 who have read these materials -- I'm sorry.

23 MS. STEPHENSON: I just want to understand what
24 your premise is. What is the language that you are

1 going to cite that says that we must --

2 AUDIENCE MEMBER (ATTY. ZEHNDER): It's actually the
3 Cape Cod National Seashore Act itself, and it's outlined
4 in the brief --

5 MS. STEPHENSON: But what is the specific language
6 because I read it differently than what you're --

7 AUDIENCE MEMBER (ATTY. ZEHNDER): Well, I don't
8 have it at hand. It's in the brief. I don't have it in
9 my mind. But I read the Cape Cod National Seashore Act
10 and the bridge that creates (inaudible) in more detail
11 as providing you with the role of providing advice and
12 counsel.

13 MS. STEPHENSON: But there are words like *shall*,
14 and there are words like *must*, and there are words like
15 *from time to time*. And I don't think you can ask us to
16 do this unless you can show us that we're required as
17 you're claiming that we --

18 AUDIENCE MEMBER (ATTY. ZEHNDER): Well, I don't
19 think I have to stand here and parse the statute with
20 you, and Rick might want to address that. And you may
21 disagree with my premise entirely and disagree with it.
22 That's possible. But part of what we're arguing is that
23 there is a scheme here, and the scheme is that the local
24 community controls zoning and creates zoning regulations

1 that are interpreted locally and enforced locally and
2 enforced judiciously. Yet the Seashore steps back,
3 observes that zoning process and, if it disagrees with
4 something that happens, it takes the property by eminent
5 domain.

6 I would argue, although I may disagree with the
7 bylaw that was passed, that there was an effort
8 following the Blasch project to create a new bylaw in
9 Wellfleet to address what the townspeople considered to
10 be a bylaw that they thought was enforceable but maybe
11 not acceptable. And they passed a bylaw that created
12 limitations on development of structures in the
13 Seashore. There's an absolute size limitation. There's
14 a requirement to obtain a special permit if you're going
15 to exceed certain thresholds of site coverage. And that
16 was expressed through the citizenry of Wellfleet as to
17 what they thought was acceptable in the town.

18 Now, Eastham has a bylaw that they passed some
19 years ago that the Eastham people thought was acceptable
20 in their town. Truro right now is wrestling with the
21 idea of coming up with a bylaw that addresses their
22 concerns, and Orleans has some -- it's fairly minimal
23 because the area in Orleans is somewhat limited. It's
24 up to the towns to decide that. The townspeople of

1 Wellfleet came up with a new bylaw with the help of Gooz
2 and input from the Seashore and Peter and other people,
3 and they've expressed what they think the bylaw should
4 be, but the Blasch project was built under an existing
5 bylaw that allowed that at the time. That's why we had
6 the outcry, and that's why we had the change in the
7 bylaw.

8 So the question is, why is the Cape Cod National
9 Seashore pursuing an appeal in the land court which
10 could have the effect of determining certain things;
11 standing of the Seashore to get involved in all these
12 matters, which will have a cost impact on the Seashore
13 in terms of the amount of federal money that's being
14 spent to prosecute this? And it also has the cost
15 impact on the homeowner of having to defend against an
16 appeal and build at their own risk when they built under
17 a bylaw that was lawful.

18 So what we're arguing -- and hopefully Rick can
19 answer your questions. I can't. I'm sorry, and I
20 apologize for that -- is that this board shouldn't be a
21 rubber stamp. You shouldn't just sit here and express
22 general statements about what you support and what you
23 don't support. What you should do is you should listen
24 to things around this table, and you should provide

1 feedback to the Secretary about (inaudible).

2 MS. BOLEYN: I would like to jump in right there.
3 The enabling legislation says that the Advisory
4 Commission must advise the Secretary or his designee
5 about two things. One is commercial properties, and the
6 other is recreational facilities. And then the rest is
7 -- it talks about development, but this is a kind of
8 topic that's being discussed by the attorneys. The
9 Seashore, the National Park Service has its attorneys.
10 We are not lawyers. We generally do not get into the
11 details of legal arguments where you have lawyers
12 disagreeing with each other across the table. We do not
13 have that kind of expertise.

14 I think you would find that the majority of the
15 members of the Advisory Commission are concerned about
16 oversized properties that are changing the character of
17 the Seashore, and to that extent, what my motion says is
18 that we endorse the efforts of the superintendent and
19 the Secretary of the Interior to interpret the laws and
20 do their best to protect the natural resources and the
21 character of the Seashore. And I go back to Mrs.
22 Stephenson's question. I think it's right on target,
23 that the language does not say we must, in terms of the
24 things you would like to hear from the Advisory

1 Commission.

2 AUDIENCE MEMBER (ATTY. ZEHNDER): I'm going to
3 yield the floor in one second, but I've sat here through
4 three or four meetings. I have heard this board accept
5 reports. I have heard this board, you know, talk about
6 things generally. I haven't heard my appointed members
7 providing feedback. And maybe it will happen. And
8 throughout the process of both the Lavin project and the
9 Blasch project, I haven't heard any feedback. I've
10 heard general expressions of support. And that's my own
11 personal feeling. Secondly -- and Rick will address
12 this -- the Act says the Secretary shall consult with
13 members with respect to carrying out the provisions of
14 Sections 4 and 5 of the Act. Sections 4 and 5 of the
15 Act are the zoning provisions of the Act, which is
16 exactly what we're talking about here.

17 Thank you.

18 MS. BOLEYN: Mr. Lavin?

19 AUDIENCE MEMBER (MR. LAVIN): Thank you. I'm
20 Richard Lavin. I'm a principal of Goodheart Properties,
21 LLC, the owner of property at 29 Old Outermost Road in
22 Truro.

23 We received a building permit from the Town of
24 Truro to proceed with a construction project on that

1 property. The property is located in the National
2 Seashore. The superintendent on behalf of the United
3 States filed an appeal with the zoning board of appeals
4 claiming that the building permit was inconsistent with
5 the town's own bylaw. That is not an issue of federal
6 law but an issue of state law.

7 The position that Goodheart Properties took was, in
8 addition to the federal government being incorrect on
9 the merits, that under the Cape Cod National Seashore
10 Act all issues of zoning were for the town to deal with
11 and that the federal government did not have the
12 authority under the Cape Cod National Seashore Act to
13 interfere with local zoning by filing an appeal. The
14 day that the papers were due to be filed by the United
15 States government responding to our arguments, the
16 appeal was voluntarily withdrawn. Goodheart Properties
17 suffered a six- to eight-month delay at significant
18 costs. That's who I am.

19 I have two issues, and the second will address your
20 question. But the first is that I don't believe that
21 this motion speaks to the issue that I tried to raise
22 when I was last here. I think that I would even agree
23 that supporting the Secretary of the Interior -- sorry
24 -- endorsing the Secretary of the Interior to support

1 zoning regulations in the Seashore that limit
2 development -- that I think is the federal government
3 acting in an advisory role, trying to work with the
4 towns to get the towns to change their bylaws. I assume
5 that the Seashore had a role working with Wellfleet, and
6 Wellfleet has changed its bylaw.

7 So I don't think that this motion speaks to the
8 issue that I tried to raise and that I believe that Mr.
9 Zehnder tried to raise, which is whether the United
10 States government, the federal government, has the power
11 to file the zoning appeal; that is, does the Cape Cod
12 National Seashore Act authorize the United States
13 government to file an appeal challenging the application
14 of a town zoning bylaw? So I don't feel that this
15 motion in any way answers -- forget specific cases --
16 but my contention that Congress provided the National
17 Park Service, the Department of Interior with one and
18 only one remedy under the Seashore Act, and that's
19 condemnation and that Congress did not provide the
20 Department of Interior with the power to interfere with,
21 to file zoning appeals in town zoning hearings.

22 Yes?

23 MS. STEPHENSON: I think your issue is different
24 than Mr. Zehnder's, but your issue I should think would

1 be resolved by the land court and not something that we
2 would be deciding here as an advisory commission.

3 AUDIENCE MEMBER (MR. LAVIN): The whole purpose of
4 this commission --

5 MS. STEPHENSON: Its standing -- (inaudible) is a
6 question.

7 AUDIENCE MEMBER (MR. LAVIN): It is a question. If
8 I may, this commission was set up for the very purpose
9 of acting as a liaison with the town and with the
10 private citizens in dealing with private property. It
11 was expected and understood that, because you have
12 private property in the National Seashore, there was a
13 need for a commission like this so that there could be
14 ongoing dialogue and discussions so that the
15 relationship between the federal government, the local
16 governments, and the individual property owners could be
17 addressed.

18 And this commission, I believe, does have a
19 statutory obligation -- and I will turn to the "shall"
20 language to offer its advice to the United States
21 Government, Department of Interior of whether the
22 Commission believes that the Department of Interior has
23 the power or doesn't have the power to file zoning
24 appeals. And it is an issue of law, and you're right.

1 I think you would need to get legal advice, but it is an
2 issue that cannot be determined based on your personal
3 feelings to decide an issue of law based on personal
4 feelings --

5 MS. BOLEYN: Change that word to opinions. We're
6 talking about opinions.

7 AUDIENCE MEMBER (MR. LAVIN): Opinions. Sorry,
8 sorry. I'll accept opinions.

9 To decide a question of laws based on opinions. I
10 apologize if I said it wrong, but to decide an issue of
11 law based on opinions as opposed to based on a legal
12 analysis.

13 MS. BOLEYN: That's what attorneys do. They
14 interpret --

15 AUDIENCE MEMBER (MR. LAVIN): That's correct.

16 MS. BOLEYN: They interpret the language of the
17 law. This is beyond us. The National Park Service has
18 attorneys who will argue with the attorneys of others
19 about what the National Park Service can do.

20 AUDIENCE MEMBER (MR. LAVIN): I'm not arguing this
21 appeal. I'm arguing about the role of the National Park
22 Service. And this commission was created to provide
23 advice regarding what the federal government's role was
24 in dealing with private property. And it is a legal

1 issue, and it requires some legal -- if I may finish --
2 and it requires some legal advice. But the purpose of
3 this commission is to act as that liaison with the
4 federal government because there are going to be
5 dealings with the federal government and private
6 property owners. And if it's an issue of law, then
7 you're right; it does require legal opinion, and it does
8 require legal advice. It cannot be determined based on
9 just opinions because to me that would be arbitrary and
10 capricious.

11 There is an important issue of the federal
12 government's role in local zoning matters, and I believe
13 that a review of the statute, the legislative history,
14 and court interpretations of that statute make
15 absolutely clear that the only role that the federal
16 government can have is condemnation and that their
17 filing an appeal is outside of the power granted by
18 Congress and is also inconsistent with the national
19 policy of the National Park Service, which says, absent
20 express statutory support, the only role for a national
21 park to play in zoning is advisory.

22 MS. BOLEYN: That's your opinion, and that gets us
23 back to the term of abutter, doesn't it? I think I'd
24 like to turn to the superintendent for a minute.

1 MR. PRICE: Just really two things I'd like to
2 clarify. And, in fact, we have gotten legal opinion,
3 and that has been rendered by Tony Conte over a couple
4 of times. Let me just read in the memo that we prepared
5 for the last meeting and that is that: (Reading) The
6 contention that the Seashore does not have standing to
7 undertake an appeal is incorrect. The NPS, acting for
8 the United States of America, has the same rights as any
9 private property owner to appeal the decision of a town
10 building inspector or ZBA. By appealing the decision of
11 the building inspector to the ZBA and then the decision
12 of the ZBA to uphold the decision of the building
13 inspector, the NPS was not interfering with the ability
14 of the town -- the Town, in this case, of Wellfleet --
15 to enact local zoning law but rather to compel the town
16 to apply its zoning bylaw in accordance with the
17 Massachusetts Zoning Enabling Act (end reading).

18 So the opinion of the Department of Interior's
19 solicitor's office is that, as an abutter, we would have
20 that right on any property that we would represent. So
21 that's the disagreement right there as a point of legal
22 law.

23 The second thing, if I can, again going to Mr.
24 Lavin's case, when it was presented to me -- and I'm not

1 going to get argumentative but just present it as
2 objective as I can -- that particular issue was a tear-
3 down and rebuild. And in our legislation, it allows for
4 a rebuild for a property that's being threatened or
5 there's a weather -- you know, a hurricane or erosion we
6 have regularly allowed for houses to either be moved or
7 be rebuilt, and, in fact, that house, as I understand
8 it, had already been moved back from the edge
9 previously. So this was not -- this was not a typical
10 change. This was a demo and a rebuild, first of all.
11 Second of all, it also -- we believe there were three
12 other elements to it that we believe we had a case, and
13 that had to do with the frontage. It had to do with the
14 scale. I forget the third one now, but all of those --

15 MS. McKEAN: Increase of the volume.

16 MR. PRICE: The increase of the volume. We believe
17 those were the reasons why it should have had a ZBA
18 hearing. So, remember, what we're doing as an abutter
19 is believing that that building permit should not have
20 been given by right but at least should have had the
21 opportunity for a ZBA hearing. That was what our
22 argument was. And then I'm forgetting the last piece.

23 It was at that first meeting we had the advice not
24 only of our solicitor but also of, again, the land

1 attorney who believed that Massachusetts law should have
2 required a ZBA hearing, not just a building permit by
3 right.

4 After continuing to review the elements of the
5 case, at the end -- oh, the other issue is that's what I
6 personally learned as a manager here for the first time,
7 that the town had actually changed the definition of
8 alteration, and it was changed both in the Town of
9 Wellfleet and in the Town of Truro. So the zoning bylaw
10 language that had been approved by the Secretary of the
11 Interior originally determined that alterations would be
12 allowed and alteration intended to be an alteration. In
13 fact, we learned during this exercise for the first time
14 that now alteration was defined as a tear-down and
15 rebuild. So it was inconsistent with what we believed
16 had already been agreed upon from the Seashore to the
17 town, which obviously was outside of Mr. Lavin's purview
18 that that's what we were dealing with.

19 So it was for all of those reasons that we decided
20 to make an appeal before the ZBA.

21 On further investigation of the nature of the
22 proposed project, we believed and I certainly believed
23 as the manager that, although those elements still
24 existed, they became fairly minor in the scheme of

1 things and that I still could have pursued them as a
2 bureaucrat and I still would have had a legal right to
3 do that; however, I believe that that was not really the
4 case that we wanted to continue to pursue and,
5 therefore, withdrew it, not because we believed that it
6 still didn't need a ZBA hearing, but we believed that
7 our case was far weaker than I would have liked to have
8 seen.

9 MS. STEPHENSON: Has Mr. Lavin been aggrieved by
10 any decisions here?

11 AUDIENCE MEMBER (MR. LAVIN): If I may, I'm not
12 here to argue my particular case. I really am not.

13 MS. STEPHENSON: No, but my point --

14 AUDIENCE MEMBER (MR. LAVIN): Was I aggrieved? It
15 cost me a lot of money, and it took eight months.

16 MS. STEPHENSON: If the appeal was dropped --

17 AUDIENCE MEMBER (MR. LAVIN): I got a letter -- I'm
18 not here to argue my case, but I will answer your
19 question.

20 MS. STEPHENSON: But you are arguing the merits as
21 well.

22 AUDIENCE MEMBER (MR. LAVIN): No, I'm not. I was
23 just telling you that I am the principal of a property
24 that got a building permit, that the building permit was

1 appealed, and that the permit was dropped -- I mean, the
2 appeal was dropped. I didn't argue the merits of it.
3 I'm happy to, if you'd like. My aggrievement was it
4 took me eight months of having to sit on my hands.

5 But if I may, the point here is I understand that
6 Superintendent Price received federal advice that what
7 he is doing is permitted, and I think that's great. But
8 if the entire Cape Cod National Seashore was going to be
9 determined solely by federal opinion, this Commission
10 would be unnecessary. The purpose of this Commission is
11 to act as a check to make sure that the federal
12 government acts in a way that was intended by Congress
13 and that is consistent with what Congress intended them
14 to do, and interfering with appealing zoning decisions
15 was not part of that. And I don't think that it is
16 appropriate to say it's a legal issue and it's not for
17 us. It may be a legal issue for which you need legal
18 advice, but this Commission does have a statutory
19 obligation -- and I will turn to the "shall" now -- to
20 provide advice about whether filing appeals in local
21 zoning matters is authorized by Congress. And my
22 objection to the motion is it doesn't speak to that
23 question.

24 Now, in answer to your question of the "shall"

1 language, the statute does say the Secretary shall --

2 MS. BOLEYN: Where is this in the statute, please?
3 Could you point this out to us so we can read along with
4 you?

5 AUDIENCE MEMBER (MR. LAVIN): If somebody has the
6 statute, I'd be happy to. I haven't quoted from the
7 statute, but --

8 AUDIENCE MEMBER (ATTY. ZEHNDER): The second
9 (inaudible).

10 AUDIENCE MEMBER (MR. LAVIN): Do you have the
11 statute?

12 (Pause.)

13 MS. STEPHENSON: It is Section 8.

14 AUDIENCE MEMBER (MR. LAVIN): There's only one
15 section dealing with the Commission, so it shouldn't be
16 hard to find.

17 MS. STEPHENSON: Section 8, and you're citing
18 paragraph F: (Reading) The Secretary's designee shall,
19 from time to time, consult (end reading)?

20 MR. PHILBRICK: The Secretary's designee is the
21 chair.

22 MS. BOLEYN: The copy I have has different numbers.
23 I'm going to look over your shoulder here.

24 MS. STEPHENSON: Okay.

1 AUDIENCE MEMBER (MR. LAVIN): It says: (Reading)
2 From time to time, shall consult (end reading) -- sorry.
3 (Reading) The Secretary or his designee shall, from
4 time to time, consult with the members of the Commission
5 with respect to matters relating to the development of
6 Cape Cod National Seashore and shall consult with
7 members -- with the members with respect to carrying out
8 the provisions of Sections 459b-3 and 459b-4 of this
9 title. Those two sections are the only sections in the
10 Act which give the Department of Interior any power
11 whatsoever with respect to private property. 459b-3
12 deals with acquisition by condemnation, which also
13 includes suspension of authority to the extent that
14 zoning is passed, and 459b-4 deals with the approval by
15 the Department of Interior of zoning regulations and,
16 again, the termination of suspension of authority to the
17 extent that those zoning regulations are not enforced
18 properly.

19 Congress intended that a variance could be given.
20 The town was free to do what it wanted, but if the town
21 gave a variance, then the Secretary could withdraw its
22 suspension of condemnation. The remedy was
23 condemnation, which is also consistent, if I may, with
24 what the Second Circuit Court of Appeals said in dealing

1 with the Cape Cod formula in the Fire Island Seashore
2 where there was a complaint that the towns weren't doing
3 anything to enforce their bylaws. And the court said
4 the Fire Island Act quite simply does not prohibit any
5 zoning action by the various local governments located
6 on the Seashore. The Secretary of the Interior is
7 authorized only to condemn property zoned in a manner of
8 which he disapproves. It also said the validity, the
9 operative effect of local zoning ordinances, variances,
10 and amendments does not depend on the prior approval of
11 the Secretary of the Interior. He's authorized merely
12 to acquire by condemnation improved property not zoned
13 in an approved manner.

14 Federalism, National Park Service policy, executive
15 order, and the statute itself all say that the only role
16 for the federal government is condemnation. They have a
17 role in approving bylaws, which happened a long time
18 ago, and its condemnation. They are not supposed to be
19 participating in local zoning procedures, and for 45
20 years they never did. And I do believe that this
21 commission has a statutory obligation to get legal
22 advice and then provide advice to the federal
23 government.

24 I hear you, Superintendent Price. The federal

1 government believes it has the power. I understand
2 that. You are the agent of the federal government. I
3 understand Mr. Watts' view. That it's not you
4 personally, it's the advice that you're receiving. This
5 commission has to give advice, though, on behalf of the
6 towns and the private property owners, the very purpose
7 that this commission was created, of whether you believe
8 that the superintendent and the federal government has
9 the power, is authorized to file appeals challenging the
10 interpretation of zoning bylaws by local governments, a
11 function that has historically always been a town
12 function.

13 MS. BOLEYN: Okay, we have already stated at a past
14 meeting that we believe that the National Park Service
15 has abutters' rights, and abutters' rights include doing
16 the process that you're just describing, appeals. So I
17 believe that the consensus here is that we do not
18 generally get into the narrow areas of the law here,
19 express our views. I'd also like to read another part
20 of the enabling legislation which has never been called
21 upon, but it does allow the federal government to be
22 involved in zoning. And it says this. This is under
23 459b, Zoning Regulations: (Reading) The Secretary may
24 issue amended regulations specifying standards for

1 approval by him of zoning bylaws whenever he shall
2 consider such amended regulations to be desirable due to
3 changed or unforeseen conditions (end reading).

4 AUDIENCE MEMBER (MR. LAVIN): And he absolutely
5 may, and if he proposes something and it goes through
6 the Federal Register process, it becomes law.

7 MS. BOLEYN: Okay, so that is -- that's an option.

8 AUDIENCE MEMBER (MR. LAVIN): Yes, but, if I may,
9 reaching the conclusion that the federal government has
10 abutters' rights without obtaining legal advice of
11 whether that is or is not the case under the Cape Cod
12 National Seashore Act, I don't think is a full and
13 complete analysis of the problem, and I don't think it
14 is a rationally based determination. It is a
15 determination that says, "Our opinion is they're
16 abutters. That's good enough." It is a legal issue.
17 It does require legal analysis, and this commission
18 should get independent counsel to provide advice.

19 MS. BOLEYN: That's your opinion. We should get --

20 AUDIENCE MEMBER (MR. LAVIN): It's my opinion of
21 what the statute requires. This commission is never --
22 this federal government has never filed a local zoning
23 appeal for 45 years. This issue never came up.

24 MS. BOLEYN: Mr. Superintendent?

1 MR. PRICE: Sure. Mr. Lavin, just two things.
2 Again, just to reiterate, we do have legal advice from
3 the Department of the Interior. So that is the agency
4 -- that's the department that we work under. So as far
5 as the legal minds of the Department of Interior are
6 concerned, and especially as it was exercised through
7 this last effort of going to land court, I think it's
8 been demonstrated right up through the top of the
9 solicitor's office that that is the opinion of the
10 people that represent the federal government. And I
11 would not be able to take actions if I didn't have that
12 kind of support, number one.

13 Number two, the issue of protecting the Seashore, a
14 lot of -- you, again, have to take a look at the
15 language when it talks about preserving the character of
16 the Seashore, preserving the recreational and the
17 natural resources, and then the -- even in the preamble,
18 it talks about preserving the integrity of existing
19 structures. Mr. Zehnder has pointed out numerous times,
20 however, the preamble is great, but once you get down
21 into the details, they then fall through on the
22 specifics. What I have learned as we've done our
23 research, because it is true that no previous
24 superintendent has taken a direct appeal as far as we've

1 been able to tell by the records, the records, however,
2 do indicate there are numerous times when
3 superintendents worked with the towns to attempt to
4 rectify the language because the bottom line was --

5 AUDIENCE MEMBER (MR. LAVIN): Here, here. I agree
6 completely.

7 MR. PRICE: Well, they did, and it didn't work. It
8 didn't work. In 1984 --

9 AUDIENCE MEMBER (MR. LAVIN): It doesn't mean you
10 have the power -- there's a difference.

11 MR. PRICE: Excuse me.

12 AUDIENCE MEMBER (MR. LAVIN): I apologize. Go
13 ahead.

14 MR. PRICE: In 1985 when the "Billboard House"
15 first came out, there was a unanimous town vote to try
16 to get the National Park Service to have that "Billboard
17 House" demolished and to have the existing town planning
18 board rectify the town bylaw language so it wouldn't
19 happen again. Neither thing happened. The Park
20 superintendent at the time was informed that the
21 National Seashore did not have the right to have that
22 particular house demolished, and obviously bylaw
23 language was never changed.

24 Our records indicate that there were numerous -- at

1 least four occasions before the most recent one where
2 the superintendents were in the same situation I was in
3 and they either felt there was going to be positive
4 language put forward at town meetings to rectify it,
5 where they thought there was going to be legislative
6 language that might be submitted that might change it,
7 and in each occurrence they had reason to believe that
8 things would get better, that either the towns were
9 going to take it on their own initiative or that there
10 were other forces at work that would bring the language
11 in line. Obviously in all of the years of the Seashore
12 that that didn't happen.

13 In this particular -- in your case, it was my
14 understanding that we had enough legal representation to
15 tell me that we had reason to go and have an appeal, to
16 at least have a ZBA hearing. We've gone to ZBA hearings
17 and have been overruled by the town vote at a ZBA board.
18 I mean, Lauren and I have testified against projects
19 that have gone before the ZBA, and we've accepted the
20 decision of the ZBA. In your case, there hadn't been a
21 ZBA hearing. It was by right. In the Blasch case,
22 there wasn't even a ZBA hearing. It was by right. In
23 the Blasch case, we believed it was such an egregious
24 change from the original 550 square-foot cottage when

1 the Park was established to the almost 2,000-square-foot
2 house that was there in '85 to the almost 6,000-square-
3 foot house that we saw today as a project that that
4 caused us to have to take more proactive language while
5 continuing to work with the town. We continue to go to
6 planning board meetings. We continue to support the
7 efforts of the local town citizens along this line, and
8 now we have an appropriate, I think mutually agreed-upon
9 solution, which is even outside of what previous
10 superintendents have been looking for. I believe it's
11 certainly appropriate.

12 So to say that superintendents never did anything,
13 I think the point is my predecessors attempted to do
14 things but believed that there was a more -- that there
15 was going to be local action, which never materialized.
16 Therefore, the resources of the Cape Cod National
17 Seashore continue to be threatened.

18 AUDIENCE MEMBER (MR. LAVIN): I just want to make
19 two quick points in response because I know that --

20 MS. BOLEYN: Real fast.

21 AUDIENCE MEMBER (MR. LAVIN): I will.

22 First, it is just not true that in every instance
23 in the past the Seashore was able to work things out and
24 that's why --

1 MR. PRICE: No, they didn't work. It didn't work
2 out. That's the point.

3 AUDIENCE MEMBER (MR. LAVIN): Here they did. Here
4 it did.

5 MR. PRICE: Right.

6 AUDIENCE MEMBER (MR. LAVIN): But you're saying in
7 the past they didn't?

8 MR. PRICE: No, in the past they attempted four
9 different times to rectify it and they never succeeded.

10 AUDIENCE MEMBER (MR. LAVIN): Mr. (inaudible) built
11 his house, and I am certain nobody in the National
12 Seashore liked it, and they didn't appeal it. But
13 that's beside the point.

14 MR. PRICE: I didn't say they didn't appeal it. I
15 said they attempted to do other remedies that did not
16 work.

17 AUDIENCE MEMBER (MR. LAVIN): And they didn't work,
18 and they didn't appeal it. You're the first
19 superintendent to appeal it.

20 MR. PRICE: That's true.

21 AUDIENCE MEMBER (MR. LAVIN): There you go. The
22 National Park Service has rules that govern all national
23 parks. Everyone, including Superintendent Price,
24 including Mr. Conte. And it says: (Reading) In

1 discussing zoning, the plan should give special
2 attention to maintaining cooperative relationships with
3 local governments rather than creating confrontations.
4 In the absence of special legislative provisions for the
5 particular unit, the National Park Service role in local
6 zoning matters is advisory. The land protection plan
7 should recognize that zoning changes are often
8 controversial, and the National Park Service role should
9 be defined with sensitivity to the potential for
10 criticism of federal involvement in local land use (end
11 reading).

12 I don't hear a single thing of why this park isn't
13 subject to the exact same rule that every other park in
14 the nation is subject to and where that specific
15 statutory authorization is that allows the role to go
16 beyond advisory and to actually appeal and challenge a
17 town official's interpretation of local town law and
18 then a zoning board's interpretation and now an entire
19 town which said, "You know what? We don't like what it
20 says. We're going to change it."

21 MS. BOLEYN: Okay, Mrs. Stephenson.

22 MS. STEPHENSON: I wanted to ask Mr. Zehnder.

23 AUDIENCE MEMBER (ATTY. ZEHNDER): Yes, Ma'am.

24 MS. STEPHENSON: Your request is just that this

1 board consult and then -- I mean, what is it, the
2 remedy, that you're seeking?

3 AUDIENCE MEMBER (ATTY. ZEHNDER): The request here
4 -- and it's the point I want to make as well that will
5 maybe address your point. The request is that this
6 board consider what its role is in zoning determinations
7 and zoning actions by the superintendent. And I think
8 the discussion here has been wandering a little far
9 afield. This is not about whether Mr. Price was correct
10 in bringing the Blasch appeal. It's not about whether
11 he was correct in bringing before or even not before the
12 Lavin appeal. We submitted certain materials that we
13 think argue about what the role of the Seashore is and
14 the Secretary is in zoning. We don't expect you to
15 accept those at face value, okay.

16 Mr. Price has sat here and told you what his
17 solicitors have told him about the Seashore's positions,
18 and you shouldn't accept that at face value. Your job
19 right now, okay, is -- as a board, is a check and
20 balance on the part of the community and the governor
21 and everybody else between the federal government and
22 the private landowners and municipalities. And if this
23 board is going to sit here -- and I understand how these
24 members are appointed. Generally, people who are

1 appointed are people that express concern about the
2 Seashore, most likely have property in the Seashore,
3 have a love for the Seashore, and are willing to protect
4 the goals of the Seashore. And that's fine.

5 MR. SABIN: These are all volunteers, I might add.

6 AUDIENCE MEMBER (ATTY. ZEHNDER): And all
7 volunteers, I understand that. Hold on a second. Let
8 me just finish.

9 That's fine, but your job here is -- think about
10 it. You're a board of directors for a corporation.
11 Your job is not just to sit and hear what the CEO tells
12 you about the thing and accept it at face value. I know
13 you're not -- it's not a direct analogy.

14 MS. BOLEYN: We're not a board of directors.

15 AUDIENCE MEMBER (ATTY. ZEHNDER): I understand
16 that.

17 MS. STEPHENSON: But that's an important
18 difference.

19 AUDIENCE MEMBER (ATTY. ZEHNDER): There's an
20 important difference, but your job here is not to sit
21 here and rubber stamp what happens. If that's what
22 happens, then you might as well just have the Seashore
23 send home a newsletter to you at your house.

24 MS. STEPHENSON: But having consulted now through

1 three meetings --

2 AUDIENCE MEMBER (ATTY. ZEHNDER): Yes, but you
3 haven't consulted.

4 MS. STEPHENSON: But what is your remedy? You want
5 us to just sit and say, "Yes, we approve the decision"?

6 AUDIENCE MEMBER (ATTY. ZEHNDER): No, what we want
7 you to do, okay, is to look at your role as a body, not
8 just with regard to this one, with regard to all
9 decisions that come before you and say, "What is our
10 role? And where do we stand? And how do we make our
11 decisions? Do we just sit here and listen to what
12 George tells us and say, 'That's fine. Go about your
13 business,' or do we ask questions about, you know,
14 windmills? Or do we actually try to -- if somebody
15 presents an issue to us, a legal issue, do we try to
16 educate ourselves about that legal issue to the extent
17 that we can consult and advise the way that --" --

18 MS. BOLEYN: You gentlemen come here when you have
19 a specific interest that pertains to your work and your
20 projects.

21 AUDIENCE MEMBER (ATTY. ZEHNDER): Yes.

22 AUDIENCE MEMBER: Here, here.

23 MS. BOLEYN: You do not hear what we're talking
24 about all the other things that go on at the Seashore.

1 We take our work very seriously. We review and we study
2 reports, and we have good discussions. It's true we do
3 not vote very often. We carry out most of our work via
4 consensus, and most of the advice to the Secretary's
5 designee takes place right across this table with
6 conversations.

7 AUDIENCE MEMBER (ATTY. ZEHNDER): Well, then I'd
8 like to respond to one point. There's a motion that was
9 put forward today. We came the last time. We presented
10 some materials seven days in advance, as we were asked
11 to. We didn't come to this board till that morning.
12 And the board said -- I think correctly so -- "We can't
13 address this today. It's too much. We can't deal with
14 it. We'll put it off till December 1." We come back on
15 December 1, and what I see is a motion in very general
16 terms. This is (inaudible). It's dated October 27.
17 This is dated a month and a half ago, give or take,
18 okay. There is no study here. There was no question
19 asking. There was no -- this was you sat and heard
20 George Price say, "We asked our solicitor, and he said
21 we're okay," and you said fine.

22 MS. STEPHENSON: I disagree.

23 AUDIENCE MEMBER (ATTY. ZEHNDER): Well, disagree
24 with me. I'm standing here ready to disagree.

1 MS. STEPHENSON: I did a lot of legal research into
2 this. So my question about the remedy -- and maybe I
3 should let Peter ask a question first.

4 AUDIENCE MEMBER (ATTY. ZEHNDER): There is no
5 remedy.

6 MR. WATTS: No, I'm --

7 AUDIENCE MEMBER (ATTY. ZEHNDER): I'm not saying
8 that you should take -- what I'm saying is we're just
9 here to express our concern of what your role is.

10 MS. STEPHENSON: This whole point is moot.

11 AUDIENCE MEMBER (MR. LAVIN): No, no, no. If I
12 may. No, no, no. If I may.

13 MS. STEPHENSON: You're arguing the merits.

14 AUDIENCE MEMBER (MR. LAVIN): No, I'm not. I'm
15 not.

16 MS. STEPHENSON: Yes, you are.

17 AUDIENCE MEMBER (MR. LAVIN): The remedy -- in your
18 language, the remedy is that this will not be the last
19 time that the superintendent considers filing an appeal.
20 And so I don't have anything pending right now. I don't
21 have any personal interest this moment in what the
22 decision is, but there will be other times, and there
23 will be other appeals. And this commission I believe
24 does have an obligation to provide advice of whether

1 filing appeals in the future is appropriate. And that's
2 the remedy that I want. I would like this commission to
3 get legal advice and then provide, based on that legal
4 advice, recommendations to the superintendent, which he
5 may or may not have to follow, about whether the
6 superintendent should, as a matter of law, have the
7 power to file appeals or as a matter of public policy is
8 a good thing to do.

9 And so what I'm asking for -- because what happened
10 last time is that there was general discussion about my
11 case, and by the time it came back to this commission,
12 my case was over and the board said -- the Commission
13 said, "Well, there is nothing pending right now. This
14 will be a discussion for information purposes only."

15 It has been my effort to try to get this commission
16 to provide advice on an issue that is going to come up
17 again. That's the remedy that I seek.

18 MS. BOLEYN: Peter?

19 MR. WATTS: I believe I represent the Town of
20 Wellfleet, the people of Wellfleet, not just the people
21 that live in the Park. I happen to live in the National
22 Seashore, but I represent all the citizens of the Town
23 of Wellfleet. And in an overwhelming vote, they voted
24 to save the National Park.

1 AUDIENCE MEMBER (MR. LAVIN): Which is their right,
2 and I think that's terrific, but that's different than
3 what legal rights this federal government agency has.

4 MS. BOLEYN: Okay. And you're focused on the word
5 *appeals*, and I think that it is not the role of this
6 advisory commission to get into something as narrow as
7 that particular tool. I think that as an abutter that
8 the National Park Service has tools that any other
9 abutter could use in the process that is followed in
10 each of these towns, and I think that we would endorse
11 that. But hiring legal counsel to pursue a particular
12 narrow question, I don't think is something that's
13 appropriate. I can speak only for myself at this point.

14 MR. SABIN: Speak for me too.

15 MS. McKEAN: Can I --

16 MS. BOLEYN: Lauren has been waiting to add.

17 MS. McKEAN: I think the U.S. Attorney's Office at
18 the Department of Justice answered that question because
19 they allowed the Park Service --

20 AUDIENCE MEMBER (MR. LAVIN): That's the federal
21 government's view.

22 MS. McKEAN: And the USA -- excuse me. You've been
23 saying you didn't want to be interrupted.

24 The USA is the one that filed the appeal on the

1 Blasch case to state land court. It is not just the
2 Department of Interior and our Interior solicitor's
3 office who says we have the authority as a private
4 landowner. We have broader authority than what you keep
5 narrowly defining. And I don't want to argue it with
6 you, but the U.S. Attorney's Office at the Department of
7 Justice has said we have the authority to take this
8 appeal, and maybe that's enough for the Commission.

9 AUDIENCE MEMBER (MR. LAVIN): That's the federal
10 government. I agree with you. It's the federal
11 government.

12 MS. BOLEYN: Okay, folks. It's --

13 AUDIENCE MEMBER (MR. LAVIN): If I may, the only
14 concern I have about your comment is I would feel much
15 better about it, about your view of abutters if it was
16 based on a legal analysis and advice of counsel. You
17 may be right. I don't think so, but that's the issue
18 that I believe this commission should get legal advice
19 on so that it can make a legal determination, not just
20 "This is my best opinion." And I respect you for your
21 opinion, but I think it's a legal issue.

22 Thank you.

23 MS. BOLEYN: Thank you.

24 MR. PHILBRICK: You have already labeled our

1 opinion as capricious and so forth.

2 AUDIENCE MEMBER (MR. LAVIN): What I mean by that
3 only is to the extent that --

4 MR. PHILBRICK: I take exception to that.

5 AUDIENCE MEMBER (MR. LAVIN): To the extent that
6 it's not based on a legal analysis but simply on
7 opinions that are held, I don't believe it has any
8 rational legal basis. That's just the way that a --

9 MR. PHILBRICK: It may not have legal basis, but I
10 believe it has basis.

11 MS. BOLEYN: Mrs. Stephenson?

12 MS. STEPHENSON: Mr. Zehnder?

13 AUDIENCE MEMBER (ATTY. ZEHNDER): Yes, Ma'am.

14 MS. STEPHENSON: Do you agree with Mr. Lavin that
15 what you're seeking, though, is a future definition of
16 the role when the same circumstance might arise, or are
17 you trying to do something to remedy the past?

18 AUDIENCE MEMBER (ATTY. ZEHNDER): No, we're not
19 trying to remedy the past. What we're seeking -- what
20 we're trying to get is this board to sit down as a board
21 and say, "Okay, when somebody presents a question to us
22 that is of legal import to both the National Seashore
23 and the property owners in the Seashore, we as a board
24 will investigate that. We will try to educate ourselves

1 about that, and we will try to provide advice and
2 counsel to the superintendent about that." And we would
3 like the Secretary of the Interior to let us know before
4 they take actions that are going to involve the property
5 rights and our citizens within the Seashore so that we
6 can have some input on that. And I'm not saying you
7 have to go out and spend hundreds of thousands of
8 dollars. But the Blasch case, that was a train coming
9 down the tracks. You all read about it in the papers
10 for -- what? -- seven months. And you heard the
11 discussion about the Lavin case. And it came to you
12 after the fact, and you said, "Well, it's over and done
13 with. We won't have to deal with it, but maybe it may
14 come up in the future."

15 Just to say to the superintendent and the
16 Secretary, "Look, something of that import, tell us
17 about it in advance. Let us look at the questions. Let
18 us perform whatever analysis we want." It may be
19 nothing. I'm not suggesting you have to go out and hire
20 an attorney, but don't just sit here and say, "Well, we
21 agree with the Seashore. We love it," you know, stamp.
22 Be a board --

23 MS. STEPHENSON: You think that's been accomplished
24 by these three meetings?

1 AUDIENCE MEMBER (ATTY. ZEHNDER): I think this
2 discussion -- and I listened to this discussion, and I,
3 you know -- I listened to this discussion, but I don't
4 think there was a lot of agreement about what was being
5 said. But I do think that a little bell has been rung
6 in this room about that you're going to go home and say,
7 "Okay, what's our role?" It's not just to show up and
8 read the agenda and say, "That sounds nice" or "We don't
9 like it."

10 If only we get you to think about your role as a
11 board, I think I've been successful today, and I hope I
12 have. You know what? This board is a good board.

13 MS. STEPHENSON: So do you take what Mr. Price said
14 about the fact that this board had been consulted in
15 previous meetings before they filed suit as sufficient?

16 AUDIENCE MEMBER (ATTY. ZEHNDER): My -- and I
17 wasn't at every -- and George can correct me, if he
18 wants. I wasn't here for every meeting. I think what
19 happened in reality was that the superintendent with his
20 counselors and his people -- we all have people, right?
21 -- and his people investigated this, made certain
22 decisions and then reported back to this board about the
23 decisions that were made. And I think that's
24 appropriate. What I don't think happened is I don't

1 think this board undertook an independent -- any
2 independent review or analysis to whether or not maybe
3 the allegations that were even before this board were
4 correct or incorrect, and maybe there might be some
5 reason why a lawsuit should or shouldn't be filed.
6 That's what I'm saying. I'm not faulting George for
7 anything he did. I'm just trying to raise the awareness
8 of this board as to what your job is. And because there
9 are going to be -- most of the issues before you, you
10 know, are going to be, "Should we try to get some grant
11 funding? Should we do this?" Of course, you're going
12 to agree with that. But there are going to be issues
13 that are going to involve difficult questions of
14 property owners' rights and the people that you
15 represent in the Seashore and the cost of the actions,
16 and that's where I think it becomes difficult for you to
17 make decisions.

18 MS. STEPHENSON: Is there anything further, though,
19 that you're suggesting that this board do?

20 AUDIENCE MEMBER (ATTY. ZEHNDER): What I would like
21 to see this board do? I would like to see this board
22 take a motion on a vote, which you can't do today
23 obviously, that says to the Secretary, to the
24 superintendent, "Look, if you're going to file a zoning

1 appeal in a state court or if you're going to file a
2 zoning appeal through the zoning board of appeals, we'd
3 like to know about it in advance. We'd like to hear
4 about it. We'd like to have a chance to give you our
5 opinions on it." Simple as that.

6 MS. McKEAN: There's a 20-day appeal period.

7 AUDIENCE MEMBER (ATTY. ZEHNDER): Well, Lauren's
8 right. I mean, realistically. I'm not suggesting that
9 George should blow an appeal period until there's a
10 public meeting.

11 MS. BOLEYN: First of all, I'd like to thank you
12 for what you said. I find the references in it are very
13 interesting, but it also points out the fact of what it
14 takes to become informed about legal issues.

15 AUDIENCE MEMBER (ATTY. ZEHNDER): Difficult.

16 MS. BOLEYN: You guys live with this stuff. You're
17 wrapped up in it. You know it. And so I think your
18 question is valid. We all need to step back and think
19 about what is our role. The degree to which we get into
20 legal minutiae and hire legal counsel is another --
21 that's another huge departure from anything that's been
22 done before.

23 AUDIENCE MEMBER (MR. KATZ): If you did hire legal
24 counsel, who would pay for it?

1 MS. BOLEYN: That's right. We don't have a budget
2 for that. We're not allowed to handle money, which is a
3 good thing.

4 AUDIENCE MEMBER (MR. KATZ): Hit the superintendent
5 up for it.

6 MR. PRICE: Again, this is a federal advisory
7 commission, so it's an instrument of the Secretary of
8 the Interior. The Secretary of the Interior's solicitor
9 in the form of Tony Conte provided the legal expertise
10 and advice.

11 AUDIENCE MEMBER (MR. LAVIN): That is not a true
12 statement. That's not a federal -- this is created by
13 Congress.

14 MR. PRICE: Yes, as a federal -- under the FACA
15 laws --

16 MS. STEPHENSON: We're all appointed federally.
17 Therefore, we're a federal advisory commission.

18 MR. PRICE: Yes, they're all appointed by the
19 Secretary of the Interior.

20 MS. STEPHENSON: By the Department of Interior, not
21 the towns.

22 AUDIENCE MEMBER (MR. LAVIN): That's all true. It
23 doesn't mean you can't get legal advice. My answer to
24 your question would be that if the superintendent

1 doesn't have the -- if the National Park Service, if the
2 United States government doesn't have the authority
3 under the Cape Cod National Seashore Act to file an
4 appeal, then even a pending appeal should be dismissed.

5 AUDIENCE MEMBER (ATTY. ZEHNDER): I think we're
6 getting --

7 MR. PRICE: And obviously our legal counsel --

8 AUDIENCE MEMBER (ATTY. ZEHNDER): I think those
9 questions for appeal --

10 MS. BOLEYN: I think we're beginning to go in
11 circles.

12 MR. PRICE: -- and the Justice Department agree.

13 AUDIENCE MEMBER (ATTY. ZEHNDER): I think I'd like
14 to take this up before I take it away.

15 MR. PRICE: Just one clarification now, Ben. And I
16 don't have it in front of me, and certainly my memory is
17 slipping, but it seems to me that actually the time line
18 of Mr. Lavin's case was we had the opportunity to
19 discuss generally what was happening with that project.
20 And I remember vividly describing learning about the
21 change of definition of alteration. And there was a
22 general discussion and a general consensus towards
23 pursuing trying to protect, under my definition, why I
24 was doing it to begin with, was to protect the resources

1 of the National Seashore.

2 MR. PHILBRICK: As an abutter.

3 MR. PRICE: As an abutter, and I was given
4 concurrence of that. On a very specific -- and Ron
5 Kaufman reminded me -- that's what the agreement was
6 for, as an abutter to pursue it through the town
7 processes. So they weren't giving me carte blanche in
8 their opinion as advice, but they were agreeing. So the
9 next meeting when you talk about the Lavin case was over
10 because you were sure we explained it all, but there
11 actually was a previous meeting to that. So there was a
12 consensus given to me --

13 AUDIENCE MEMBER (MR. LAVIN): That's true.

14 MR. PRICE: -- as an agreement in general
15 principles, although it was not a vote.

16 MR. WATTS: It was seven to four. The consensus
17 was based on seven to four.

18 AUDIENCE MEMBER (MR. LAVIN): There was absolutely
19 a discussion, just like the superintendent said, and a
20 consensus that he should go forward. My disagreement is
21 that rather than it being a consensus of opinion, it
22 should be a legal analysis because it's a legal issue of
23 the power of the federal government to --

24 MR. PHILBRICK: Not our role.

1 AUDIENCE MEMBER (ATTY. ZEHNDER): Thank you.

2 MS. BOLEYN: Thank you very much, gentlemen.

3 AUDIENCE MEMBER (MR. LAVIN): Will this be put on
4 the next agenda when --

5 MS. BOLEYN: Yes.

6 AUDIENCE MEMBER (MR. LAVIN): -- you have a quorum?

7 MS. BOLEYN: Yes.

8 AUDIENCE MEMBER (MR. LAVIN): Thank you.

9 THE COURT REPORTER: Brenda, I need to make a new
10 file.

11 MS. BOLEYN: Oh, okay.

12 (Pause off the record.)

13 MS. BOLEYN: We're going to go back on the record
14 now, which brings us to the date and the agenda for next
15 meeting.

16 **DATE AND AGENDA FOR NEXT MEETING**

17 MS. BOLEYN: Mondays have been -- up until today,
18 Mondays have worked fairly well. Maybe we should
19 reexamine that question.

20 So are we looking at early February? We'll have to
21 check with Mr. Kaufman, our chairman.

22 MS. STEPHENSON: Excuse me.

23 MS. BOLEYN: Yes?

24 MS. STEPHENSON: I am not able to be here on

1 February 2.

2 MS. BOLEYN: Okay, that's important.

3 MR. PRICE: Let me share this with you, but Ron has
4 informed me that with the change of administration we
5 can expect that he'll submit his resignation because
6 he's an appointee of the Secretary of the Interior. And
7 so as a pro forma appointee, which is what all the
8 appointees -- there actually are not that many Secretary
9 of the Interior appointees in our world, but because of
10 his stature as a senior Republican activist, he feels
11 that that's what he ought to do. That would be the most
12 appropriate. Whether that resignation will be accepted,
13 whether it will be acted upon, whether he'll be
14 reappointed, I said I could see him being reappointed
15 like Bob Gates, you know. Bob Gates/Ron Kaufman.

16 MR. SABIN: Has a ring to it.

17 MR. PRICE: As a transfer. But certainly Ron has
18 been a tremendous supporter and I think a fair chair,
19 but that's yet to be decided. Obviously any date that
20 we have in February/March will be after his decision.
21 So that's a little bit up in the air.

22 So I think my point is, Brenda, I'm not sure that I
23 would necessarily have to drop-dead commit to his
24 schedule, which is what we usually do.

1 MS. BOLEYN: Sure.

2 MS. STEPHENSON: Which is a Monday?

3 MR. PRICE: Well, it's not just a Monday. We
4 negotiate because he's in and out of the country with
5 his employer.

6 MR. WATTS: So if the 2nd is off, what's the next?

7 MS. BOLEYN: 9th.

8 MR. WATTS: Let's go for it.

9 MS. BOLEYN: Does February 9 work for the
10 superintendent?

11 MR. PRICE: Yes.

12 MR. PHILBRICK: It may not for me.

13 MS. BOLEYN: If February 9 seems like it's a
14 workable date, let's go for that. And I'm open for
15 agenda suggestions.

16 MR. PRICE: Obviously we heard about the bike
17 planning, and certainly I don't know that there would be
18 any really advanced paperwork ready by the February
19 meeting, Peter, to see maps yet because that's going to
20 require some time. But, remember, we do have two other
21 transportation studies in the air. One is the parking
22 study that I mentioned, and the other is the intelligent
23 transportation system at the Volpe Center.

24 Clay, do you have a sense if either one of them

1 will be far enough down the road to at least introduce
2 the concept to the Commission?

3 MR. SCHOFIELD: Yeah, I think the parking study we
4 should have some feedback. (Inaudible) last week. I
5 had hoped to have a public meeting in late January and
6 bring the results of that. That's still tentative.

7 MR. PRICE: So, Madame Chair, that might be an
8 appropriate time to talk about the parking study.

9 MR. SCHOFIELD: We could make a general update on
10 the transportation project.

11 MS. BOLEYN: Good.

12 MR. PRICE: Just so people are clear, I know the
13 Nauset Light Beach parking lot is going to be in peril
14 within the next 15 years. We know that a number of the
15 town parking lots with their own beaches are in peril
16 now, and they're looking for National Park property to
17 help remedy because the natural inclination is to just
18 pull back and pull out. So this is an attempt to engage
19 everybody in a forward-looking piece. So I think Clay's
20 right. After we at least have our preliminary meetings
21 with the towns on parking, it would be good to wrap you
22 in. Right now it's just too conceptual.

23 The intelligent transportation system, Clay, that
24 will be further in the spring, do you think?

1 MR. SCHOFIELD: They just got a project manager on
2 board. This is through the Volpe Center. And she's
3 jumping in with both feet. I don't know how quickly
4 they'll progress. I've asked all project managers for
5 schedule updates because I want to try to get some more
6 (inaudible) started, and I haven't gotten them yet.

7 MR. PRICE: Well, how about this? I'd recommend
8 maybe we put off that as an agenda item until there's
9 more substance with that report then.

10 MS. STEPHENSON: The intelligent transportation?

11 MR. PRICE: The intelligence transportation system.

12 MR. WATTS: Brenda, could I ask Lauren a question
13 about Charlene, the planner from Truro. I would really
14 like to find out what Truro's doing about zoning bylaws.

15 MS. McKEAN: I do have an update, a slight update.
16 They are working on site plan review right now, and then
17 they intend to change -- to move over to lot coverage,
18 and their warrant is due in February.

19 MR. WATTS: It is?

20 MS. McKEAN: So they're working on it now. The
21 Cape Cod Commission is making some maps (inaudible)
22 preliminary, working on that similar to what they made
23 for Wellfleet.

24 AUDIENCE MEMBER (MR. KATZ): Lauren, doesn't Truro

1 already have a site plan review in the Seashore?

2 MS. McKEAN: It does. They're talking about a
3 townwide site plan review, so I think they want to look
4 at the thresholds to see if they're going to be
5 compatible. So they may change the ones for the
6 Seashore.

7 MS. BOLEYN: Okay, so we'll have some information
8 by the February meeting probably about what the Truro
9 Planning Board has in mind. Is that what you're getting
10 at?

11 MS. McKEAN: Uh-huh, definitely. And they may have
12 had a hearing before that as well.

13 MR. WATTS: Do you know if this is going to be
14 covered in the roundtable in January?

15 MR. SABIN: Put that on the agenda.

16 MS. BOLEYN: Yeah.

17 MS. McKEAN: I assume so, but at the roundtable,
18 which I believe will be January 7, they're inviting
19 Maggie Downey because of this Green Community Act change
20 to come and talk. But I would assume we would go around
21 the table again on any zoning changes.

22 MR. PRICE: So should we put a progress on Truro
23 zoning?

24 MS. BOLEYN: Yes.

1 MR. PHILBRICK: Are you looking for agenda items?

2 MS. BOLEYN: Yes.

3 MR. PHILBRICK: I don't know if it's for the next
4 meeting, but sometime soon I would like to see us keep
5 an agenda item going on the subject of condemnation as a
6 problem, condemnation and its funding. And (inaudible)
7 out of the box to enabling the use of this process. It
8 may be bad timing as far as national and international
9 economics are concerned, but it's going to take some
10 time for us to understand better what these problems are
11 and form an opinion about that. So I would like to
12 start it sometime soon.

13 MS. BOLEYN: Okay.

14 MR. PRICE: It might be appropriate with the change
15 of administration, although we won't know the lay of the
16 land, Dick, for a long time.

17 MR. PHILBRICK: Is that supporting?

18 MR. PRICE: Pardon?

19 MR. PHILBRICK: Are you supporting or --

20 MR. PRICE: Well, certainly we can bring it up as a
21 topic for what I know, but things -- I don't want to get
22 into the whole dialogue now.

23 MR. PHILBRICK: I would visualize maybe a six-month
24 period when this board takes it up and the various

1 aspects of it.

2 MR. PRICE: To be honest with you, I'm not sure --
3 I certainly am not in a position -- and I know Tony
4 Conte isn't -- to do more than just an introductory
5 report, though, as far as condemnation because it's
6 certainly more of a political -- there's the legal
7 reality. The legal reality is we have it. The
8 political reality and the financial reality, does it get
9 utilized and do we have the monies to support it? So
10 that's really what it comes down to.

11 MR. PHILBRICK: I know that.

12 MR. PRICE: Okay, well, I'm not sure we know more
13 than that.

14 MR. PHILBRICK: That's why I want to get it onto
15 the agenda, so that we continue to probe into it.

16 MS. BOLEYN: Maybe we would have something at the
17 meeting after the next meeting.

18 MR. SABIN: When you think of the difficulty in
19 funding the North of Highlands purchase, a very few
20 million dollars, it's hard to imagine to have very much
21 condemnation money in the foreseeable future.

22 MR. PRICE: But it's more than the money. It's the
23 principle.

24 MR. SABIN: But it's the money too.

1 MR. PHILBRICK: I've been asking about this for
2 over ten, fifteen years.

3 MR. SABIN: Early on -- early on Congress --

4 MR. PHILBRICK: (Inaudible) matters, but I think we
5 ought to get started.

6 MR. PRICE: Well, I'll be glad to share with you
7 the information that I know, but again, it's more of a
8 political --

9 MR. PHILBRICK: Starting the next time we take it
10 up.

11 MR. PRICE: Sure.

12 MS. BOLEYN: Peter?

13 MR. WATTS: I brought up Lance Lambros the last
14 time. What will happen to him as a member of this
15 commission?

16 MS. BOLEYN: Okay, here's the story on that. Lance
17 Lambros is the Barnstable County representative to this
18 advisory commission, and there's no reason for him not
19 to remain a member because there seems to be this
20 thought among the county commissioners that they need to
21 appoint one of their own. They don't. They can appoint
22 any member, any citizen of Barnstable County to
23 represent the county on this commission. And maybe I
24 should -- now that there are two new members, it might

1 be appropriate to remind you of that.

2 MR. PHILBRICK: Who is Rich Delaney appointed by?

3 MS. BOLEYN: Okay, the situation with Rich Delaney
4 right now is that he is the alternate Commonwealth
5 member, and I have requested to swap places with him so
6 that he would become -- since I've been on the Advisory
7 Commission for so long, that he would become the
8 Commonwealth member and Mrs. Stephenson presumably will
9 become the other Commonwealth member. That's the one
10 constituency that has two members, and then I'd be happy
11 to serve as the alternate for that.

12 MR. WATTS: And if Ron Kaufman doesn't come back,
13 who do we have for chairman?

14 MR. PRICE: Well, I assume you'll have an acting
15 chairman for a while until the new Secretary gets in
16 place and comes up with some recommendations. I assume
17 Congressman Delahunt's office is going to have a lot to
18 say about that.

19 MS. BOLEYN: It's also -- well, there will be a
20 federal representative to the Advisory Commission.

21 MR. PRICE: Right, the Secretary's office will
22 appoint the new incoming person. By our statute, that's
23 the chair.

24 MS. BOLEYN: Not necessarily. There is language --

1 have to go find it -- that says the Advisory Commission
2 elects its chairman. And in the past it has not always
3 been the federal appointee. However, since the
4 Secretary makes the appointment, the Secretary sort of
5 has to confirm whoever is elected, and in the case of
6 Ron Kaufman's appointment, she appointed him sort of
7 independently.

8 AUDIENCE MEMBER (ATTY. ZEHNDER): I have a
9 question.

10 MS. BOLEYN: Question?

11 AUDIENCE MEMBER (ATTY. ZEHNDER): Yeah, I remember
12 when Ron Kaufman was appointed there was a lot of
13 concern over his appointment, and I don't think it was
14 really well-founded. I think he's turned out to be an
15 excellent member of the Commission and an excellent
16 chairman.

17 Would it be possible to write some letters either
18 from within this council or from outside for us to write
19 letters to the Secretary of the Interior asking that he
20 remain as a member of the Commission? Just a thought.
21 I mean, it might help.

22 MS. BOLEYN: He has been a very helpful member of
23 this commission. There's no question about it.

24 AUDIENCE MEMBER (ATTY. ZEHNDER): I think I will

1 write a letter in support.

2 MR. WATTS: I'm not sure how interested he is. He
3 has to fly up from Washington all the time.

4 AUDIENCE MEMBER (MR. ZEHNDER): Well, I don't know.
5 That's a different question, but I'm just suggesting. I
6 think I might -- I'm just suggesting I'll write a letter
7 when I get back to the office. I think people might
8 want to do the same.

9 MS. BOLEYN: Good idea.

10 MR. PRICE: I think he's enjoyed it. He's enjoyed
11 it.

12 MS. BOLEYN: Yes.

13 AUDIENCE MEMBER (ATTY. ZEHNDER): The helicopter
14 ride, I know that.

15 AUDIENCE MEMBER: Madame Chair, is there going to
16 be public comment at all or questions?

17 MS. BOLEYN: Yes.

18 Are we finished with agenda items?

19 MR. PRICE: So we have -- so, Brenda, your motion
20 will have to be taken up again. Will that now be under
21 Old Business or because it wasn't acted on, it's still
22 --

23 MS. STEPHENSON: It might be a new motion.

24 MR. PRICE: New Business, okay.

1 MS. BOLEYN: Yeah, either one, I guess, but I think
2 the motion should appear on the agenda.

3 MR. PRICE: Do we want the Truro zoning under the
4 roundtable or as New Business?

5 MR. WATTS: Yes, under the roundtable.

6 MS. BOLEYN: That would be good.

7 MS. STEPHENSON: Did we want a motion more specific
8 or not? Brenda's motion? Mr. Zehnder asked for some --

9 MS. BOLEYN: I would like to stick with the motion
10 that's there since we're carrying it over from this
11 agenda, since people have it. If someone wants to
12 suggest another motion, that could be added to the
13 agenda.

14 MR. PRICE: And any Advisory Commission member can
15 -- basically what Brenda did was just ask me to
16 distribute it in the mailing so people had it ahead of
17 time.

18 MS. STEPHENSON: So anyone could submit a motion?

19 MR. PRICE: Any Advisory Commission member, yes.

20 MS. STEPHENSON: My only concern is I wonder
21 whether we will -- the same motion will trigger the same
22 comments, that we won't get beyond where we were today.
23 We may not wish to, but --

24 MR. SABIN: The motion will at least be formalized,

1 which couldn't have been this time because we didn't
2 have a quorum.

3 MS. BOLEYN: We have to keep the motion as it is
4 because we have no -- we have no procedural way to
5 remove it right now. It's on the agenda. And so we
6 can't really erase it. We can't amend it because we
7 can't vote on it.

8 MR. SABIN: At least next time we can.

9 MS. BOLEYN: Hopefully, yes.

10 MR. PRICE: And then what will happen by the
11 February meeting, although the weather may be tricky, on
12 an opportunistic basis I've often advertised to the
13 Advisory Commission members -- if there's a particular
14 project going on, we've done field trips in advance of
15 the meeting, but I'm not sure there's any that I'd ask
16 you to freeze outside on in February. So I don't think
17 that would come up, but I would let you know in advance.

18 MS. BOLEYN: Is there likely to be anything to
19 report on for the Highlands Center?

20 MS. McKEAN: We've had it as an ongoing agenda
21 item.

22 MS. BOLEYN: Yeah, let's put it on there anyway.

23 MS. McKEAN: I mean, you can decide whether to or
24 not in the Superintendent's Report.

1 MS. BOLEYN: Yes, I would like to.

2 MS. STEPHENSON: If someone from the town, like a
3 person who lives in Wellfleet, can come to you and ask
4 you to submit a motion to this group?

5 MR. WATTS: They could.

6 MS. STEPHENSON: On their behalf?

7 MR. WATTS: Sure.

8 MR. PHILBRICK: Sure.

9 MS. STEPHENSON: Has anybody ever done that?

10 MR. WATTS: No. I mean, we've worked very hard on
11 the zoning issues in the Town of Wellfleet, and I have
12 been involved with that for 20 years.

13 MS. STEPHENSON: But somebody could submit
14 something to be considered from the public ahead of
15 time?

16 MS. BOLEYN: Sure. It's usually done through the
17 chairman. And then if it's a report kind of thing, then
18 we can try to deal with it. If it's an action item,
19 then it has to go on the agenda.

20 MS. STEPHENSON: If something doesn't get on the
21 agenda before it goes to Washington, does it get onto
22 the agenda as an addendum or something?

23 MS. BOLEYN: It can. If it's not an action item,
24 doesn't require a vote. As I say, usually --

1 MS. STEPHENSON: You can talk about anything?

2 MS. BOLEYN: Yes, correct.

3 MS. STEPHENSON: Okay.

4 (Mr. Philbrick leaves the room.)

5 AUDIENCE MEMBER (MR. LAVIN): The difficulty for
6 the public has been that, as I understand it and because
7 I remember the public has to submit things seven days in
8 advance for the chairman to consider to be heard, but
9 that, in fact, the Commission members don't get it in
10 sufficient advance time to actually discuss it. So that
11 has been -- that's how, in fact, this conversation came
12 today. Mr. Zehnder had submitted materials in
13 accordance with that seven-day-in-advance concept, but
14 it didn't get into people's hands until just before the
15 meeting. And therefore, the discussion was put over
16 till today as an agenda item, which is how people --

17 MS. STEPHENSON: From the last meeting?

18 AUDIENCE MEMBER (MR. LAVIN): Yes, which is how --
19 in other words, when people, like for myself, have tried
20 to get items on the agenda, it seems that you submit it
21 in accordance with how it's requested, but as a
22 practical matter, it ends up having to be put off till
23 the next meeting. Just because of the timing.

24 MS. BOLEYN: It's not unusual for a topic to be

1 brought up at a meeting and then we don't take action
2 until the following meeting.

3 AUDIENCE MEMBER (MR. LAVIN): Yes, thank you.

4 MR. WATTS: Public comments?

5 MS. BOLEYN: Yes, are we finished with the agenda
6 items?

7 (No response.)

8 MS. BOLEYN: Okay. Of course, if you think of
9 anything, you can call the superintendent or in my case,
10 I guess, you can call me, and we'll try to take care of
11 it. It needs to be done within a week or so, as I say,
12 to get this off to Washington, I think.

13 Is that about right?

14 MR. PRICE: (Nods.)

15 **PUBLIC COMMENT**

16 MS. BOLEYN: Okay, yes, comments from the public. Ye

17 AUDIENCE MEMBER (CHARLES ZEHNDER): I had a
18 question that I didn't quite get the answer to.

19 MS. BOLEYN: Could we have your name?

20 AUDIENCE MEMBER (CHARLES ZEHNDER): It's Charlie
21 Zehnder, Ben's brother, younger brother.

22 It was for Mr. Sexton. I understood you, when you
23 were talking about the turbines, to say that you were
24 talking about net metering, selling the power back into

1 the grid.

2 MR. SEXTON: Yes.

3 AUDIENCE MEMBER (CHARLES ZEHNDER): And then you
4 gave some numbers about Wellfleet's annual utilities
5 bill versus how much would be generated.

6 What were those numbers?

7 MR. SEXTON: The Town of Wellfleet municipal bill
8 is just below a million kilowatt hours.

9 AUDIENCE MEMBER (CHARLES ZEHNDER): Okay.

10 MR. SEXTON: The turbines generate roughly 53 --
11 5.3 million kilowatt hours. So that takes up -- the
12 Town of Wellfleet is basically paid. Then there's RECs
13 there, a renewable that pays you credits. Those are
14 guaranteed to be bought by MTC for ten years. So you
15 have a rate structure that guarantees -- it might be
16 low. It might be high, but it's guaranteed.

17 AUDIENCE MEMBER (CHARLES ZEHNDER): And that's
18 another agency that's buying them? It's not a private?

19 MR. SEXTON: No, MTC bought it.

20 AUDIENCE MEMBER (CHARLES ZEHNDER): They're buying
21 it directly, so it doesn't cross into the commercial?

22 MR. SEXTON: No.

23 AUDIENCE MEMBER (CHARLES ZEHNDER): Okay, thank
24 you.

1 MS. BOLEYN: Yes?

2 AUDIENCE MEMBER (GAIL FERGUSON): My name is Gail
3 Ferguson. I'm a resident of Wellfleet. This is my
4 second meeting. And I didn't intend to speak the first
5 time, and I didn't intend to speak this time, but I
6 wanted to just say that after the last meeting I took
7 Ms. Boleyn's advice to the membership, and I went and
8 read the National Seashore Act. And it was my
9 impression that the Act defined very clearly the role of
10 the advisory committee, and that was, one, to meet from
11 time to time with the superintendent or its appointee.

12 I'm confused by the allegations that the advisory
13 committee should do more and should be -- should have
14 been more active in the Wellfleet zoning challenge. And
15 speaking only as a resident, I want to observe that the
16 town itself sued its own zoning board. It's a very
17 unusual situation. I was one of many Friends who were
18 happy to hear that the Seashore had as an abutter taken
19 the case to the land court. I think it shows respect
20 for the land court, and the land court is the best place
21 for the particular facts of the Blasch situation to be
22 straightened out.

23 The other point I wanted to make was that -- again,
24 I can't speak for all of Wellfleet, but I can tell you

1 that I certainly was surprised that there was such a
2 loophole in the zoning bylaws in Wellfleet, surprised
3 and disappointed. It was a real challenge. And you
4 have a challenge when your board of selectmen sue their
5 own zoning board of appeals.

6 I can't help but observe that the two gentlemen who
7 spoke earlier are both connected with development in the
8 Seashore, and they can comment on my comment. One is a
9 developer. The other is an attorney for the Blasch
10 family who represents -- and I can be corrected -- a
11 group of people seeking to build a house there as a
12 developed spec house. It's not going to be the home for
13 the Blasch family.

14 So I just felt that you needed to hear from a
15 Wellfleet citizen, and I'm happy with the role of the
16 Advisory Commission, and I thank you.

17 MS. BOLEYN: Thank you for speaking.

18 Anyone else? Yes?

19 AUDIENCE MEMBER (KATHLEEN BACON): I'm Kathleen
20 Bacon. I was a major proponent in the zoning bylaw
21 change that went through town meeting October the 27th.
22 To developers, we said game over. We put a living --
23 square footage living restriction on now what can be
24 built in the National Seashore. How this came about was

1 a direct, you know, take on what the Blasches were
2 allowed to do without review, without notifying the
3 abutters, which were the Park. The Blasch people got a
4 building permit by right, and in my mind, in that
5 viewshed that was wrong. That just came up a big wrong
6 to me. And you know what? It came up wrong to
7 everybody else in Wellfleet because when you saw the yes
8 vote for Article 4 and Article 5 that supported putting
9 dimensional controls on development now within the Park,
10 it was unanimous.

11 So a lot of this contention, do you feel whipped by
12 these two? You know. You have a statutory obligation.
13 We had a statutory obligation as residents in Wellfleet
14 in 1961 when the National Seashore came in and bought
15 property. In my mind right now, the hoodwinking game is
16 over.

17 And I thank you for your time in all of this stuff.
18 Thank you.

19 MS. BOLEYN: Thank you.

20 Mr. Zehnder?

21 AUDIENCE MEMBER (ATTY. ZEHNDER): I think, with the
22 exception of Peter, I've lived in Wellfleet longer than
23 anyone in this room. I was born there in 1963. I've
24 lived there my whole life. I came back after college

1 and law school. I practice law there. I have purposely
2 throughout this entire process never slung mud at
3 anybody, and I've had a lot of opportunities. And I
4 think for these two women to point to me and say for
5 some reason because I'm being paid is -- it takes the
6 discussion to a place that I've never taken it, and I
7 won't take it. And I do take exception to those words
8 even though they were nicely couched.

9 I believe in Wellfleet, and I believe in its
10 zoning. I believe in its character. I believe in its
11 people. I believe in the federal government, and I
12 believe in what it does. I believe in the National
13 Seashore. But I think that the one thing that we have
14 to keep in perspective is the relative powers and duties
15 of these people and what each one of these actions that
16 we take costs us.

17 You know, everybody in this room -- I'm going to
18 ask everybody in this room, who in this room doesn't own
19 a house on the Outer Cape? Okay, that means that
20 everybody in this room designed and built and occupied a
21 house that meets their needs, and they want to live
22 here. We all want to live here. We're now fighting
23 around the edges of who else gets to live here.

24 Now, I support zoning in Wellfleet. I support the

1 federal Seashore's role in zoning appropriately, but I
2 will not sit in this room and accuse people of doing
3 things because they're being paid for it. George gets
4 paid to sit at the head of this table, okay. Rick Lavin
5 doesn't get paid to be here. Dan Katz doesn't get paid
6 to be here. I get paid to be here, but I also -- I have
7 lived in this town. I was born in this town. Peter
8 knows me from being a kid. I believe in this town. To
9 have discussion about what the rights of the people are
10 and to protect the rights of the people is not something
11 to be ashamed of at all.

12 Kathy is a wonderful person. I'm sure Gail
13 Ferguson is a wonderful person, but these personal
14 attacks don't belong in this room. And I think until
15 now they've stayed out of it, and I hope they do stay
16 out of it because if we keep having these discussions,
17 we will arrive at correct consensus and correct results.

18 Sometimes we have to go to court to protect our
19 rights and the courts decide what's right and wrong, but
20 again, Gail, Kathy, I didn't hoodwink anybody.

21 AUDIENCE MEMBER (GAIL FERGUSON): I wasn't speaking
22 about you.

23 MS. BOLEYN: We're not going to do any back and
24 forth.

1 AUDIENCE MEMBER (ATTY. ZEHNDER): Thanks.

2 MS. BOLEYN: No, no. We're not going to do any
3 back and forth here. We respect the comments of
4 everyone who comes and spends time here and is
5 interested in the Seashore and the work of the Advisory
6 Commission, but we're not going to go back and forth
7 correcting incorrections or that sort of thing.

8 I appreciate those comments and agree. And thank
9 you.

10 Do you have something new? If you have something
11 new you'd like to comment, but --

12 AUDIENCE MEMBER (MS. FERGUSON): It's not new, but
13 it's not back and forth.

14 I respect Mr. Zehnder, and I did not mean to attack
15 him personally but just to observe his connection to a
16 piece of property.

17 MS. BOLEYN: Thank you very much.

18 **ADJOURNMENT**

19 MR. SABIN: I think we should make a motion that we
20 adjourn.

21 MS. BOLEYN: Are we adjourned? Thank you all for
22 coming. We are adjourned. Thank you very much.

23 (Whereupon, at 3:54 p.m. the proceedings were
24 adjourned.)

REPORTER'S CERTIFICATE

PLYMOUTH, SS

I, Linda M. Corcoran, a Court Reporter and Notary Public, in and for the Commonwealth of Massachusetts, do hereby certify that:

The foregoing 131 pages comprises a true, complete, and accurate transcript to the best of my knowledge, skill, and ability of the proceedings of the meeting of the Cape Cod National Seashore Advisory Commission at Marconi Station Area, Park Headquarters, South Wellfleet, Massachusetts, on Monday, December 1, 2008, commencing at 1:12 p.m.

I further certify that I am a disinterested person to these proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal on this the 6th day of January, 2009.

Linda M. Corcoran - Court Reporter
My commission expires:
September 13, 2013