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**Minutes of the Commission Meeting  
Held on January 24, 2013  
In the Stone Building  
33 New York Avenue, Oak Bluffs, MA**

**IN ATTENDANCE**

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

P Tripp Barnes (E-Tisbury)	P James Joyce (A-Edgartown)
P John Breckenridge (E-Oak Bluffs)	P W. Karl McLaurin (A-Governor)
P Christina Brown (E-Edgartown)	- Jim Miller (A-Aquinnah)
P Tim Carroll (A-Chilmark)	- Ned Orleans (A-Tisbury)
P Madeline Fisher (E-Edgartown)	- Camille Rose (E-Aquinnah)
P Josh Goldstein (E-Tisbury)	P Doug Sederholm (E-Chilmark)
P Erik Hammarlund (E-West Tisbury)	P Linda Sibley (E-West Tisbury)
P Fred Hancock (A-Oak Bluffs)	P Brian Smith (A-West Tisbury)
P Leonard Jason (A-County)	

Staff: Bill Veno (Senior Planner), Paul Foley (DRI Planner), Jo-Ann Taylor (Coastal Planner DCPC Coordinator)

**Chairman Fred Hancock** called the meeting to order at 6:00 p.m.

**1. MEETING WITH LEGAL COUNSEL**

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Commissioners Present: T. Barnes, C. Brown, T. Carroll, M. Fisher, J. Goldstein, E. Hammarlund, F. Hancock, L. Jason, J. Joyce, W. Karl McLaurin, D. Sederholm, L. Sibley, B. Smith.

Legal Counsel: Brian Hurley, Gareth Orsmond

**Fred Hancock** welcomed the Commission's legal counsel from the firm of Rackemann, Sawyer and Brewster to brief the Commission on several things.

**Brian Hurley** introduced himself and Gareth Orsmond. He said they wanted to introduce themselves to the new Commissioner and noted that they came to represent the Commission, happily, from their association with Eric Wodlinger, who came to the firm about four years ago but had longed represented the Commission and the Cape Cod Commission at Choate, Hall and Stewart. Brian is chairman of the firm's litigation department and is on the firm's executive committee. – having thirty-five years of experience with litigation, particularly with real estate and permitting issues. He has also sits on the Town of Milton Board of Appeal's, so he has a feel for what it is like to be on the Commissioner's side of the table. Gareth is a partner of the firm's land use group and deals with planning law and is familiar with regulations and statutory provisions. They are here to address any questions and to have a discussion on general issues of concern. He

understands that the Commission intends to go into executive session to discuss particular legal cases they are handling.

**Doug Sederholm moved and it was duly seconded that the Commission go into Executive Session to discuss ongoing litigation, that Bill Veno be invited to sit in to take minutes, and that the Commission reconvene in public session after the Executive Session.**

- **Christina Brown** asked that Jo-Ann Taylor also be allowed in the executive session.

**Doug Sederholm amended his motion and it was duly seconded to also invite Jo-Ann Taylor to be included in the executive session.**

**Roll call vote. In favor: T. Barnes, C. Brown, T. Carroll, M. Fisher, J. Goldstein, E. Hammarlund, F. Hancock, L. Jason, J. Joyce, K. McLaurin, D. Sederholm, L. Sibley, B. Smith. Opposed: none. Abstentions: none. The motion passed.**

**Fred Hancock**, Chairman, recessed the open meeting at 6:15 p.m. and reconvened at 6:30 p.m.

**Gareth Orsmund** said he frequently worked on MVC matters with Eric Wodlinger and is pleased to be able to continue to work with the MVC. He views his role with the Commission as that of General Counsel to help keep the Commission out of litigation. Commissioners with legal questions for counsel should follow protocol by going through the Executive Director or the Chairman. Tonight, he will present general information on such things as the Conflict of Interest and Open Meeting Laws, but Commissioners should understand that most legal matters are fact specific and usually need to be discussed within the confines of an attorney-client privilege. While the material that Eric Wodlinger prepared for the Commission and which is in the Commissioners' resource binders is from the mid-1990s, the law has not changed much and it remains a worthwhile reference.

- He said there are three distinctions concerning the Commissioners' job:
  - Know when you have to do something by statutory provisions. Commissioners should know what they have to do as individuals to respect a particular statute such as the Massachusetts Open Meeting Law, the MVC statute itself, and the Conflict of Interest Law. Commissioners need to pay close attention to the hard and fast requirements of these laws.
  - Know that things you do as a Commissioner can affect you personally. The primary concern is the Conflict of Interest Law. A public official who violates the Conflict of Interest Law can be fined and even imprisoned. Be conservative in your analysis of any conflicts you may have. Commissioners should forward any questions concerning conflict of interest to the executive director for forwarding to counsel.
  - Know what you can do in your adjudicatory capacity versus legislative capacity. For the MVC, adjudicatory actions are limited to DRI proceedings – not just in the deliberations of a proposal but also proceedings on whether to accept or concur with a DRI referral. In such circumstances, Commissioners should think of themselves as a judge or jury, and conduct themselves accordingly. Commissioners have far more leeway with legislative actions such as with DCPCs, the DRI Checklist or adopting any types of rules and regulation. While ex-parte

communications are generally prohibited with adjudicatory matters, they are not necessarily a bad thing with legislative matters.

- Conflict of Interest Law highlights that Commissioners are most likely to run in to:
  - Gifts - A Commissioner should not accept any gift of \$50 or more. Commissioners should file disclosure forms if needed. The Ethics Commission is very interested in disclosure forms – it has several dozen.
  - Self-Dealing/Nepotism–This is probably the trickiest part of the Conflict of Interest Law. The statute states that a Commissioner cannot sit in review of a project if they, their immediate family, their current employer, or someone with whom they'll have a future business involvement has any financial interest in the project. A financial interest doesn't have to be a gain; a potential loss is also potentially a financial interest. The statute is interpreted very broadly. For example; if someone owns an abutting or a nearby property, the Ethics Commission would presume there to be a financial interest in the matter. Commissioners should be especially aware of conflicts of interest for DRI hearings where they may have a conflict due to the abutters of the project. Appointed Commissioners who feel they may have a financial interest should either recuse themselves or get approval from their appointing authority to sit in on a project. Elected Commissioners must sit out if there is a financial interest, although there are some exceptions.
  - Appearance of a Conflict–A Commissioner cannot do anything that would cause a reasonable person to conclude that they are under undue influence. The distinction from an actual conflict of interest is that anyone can make the disclosure of an appearance of a conflict and proceed to sit on the matter. The remedy is simply public disclosure.

If the situation isn't clear, a Commissioner should request an opinion from the Ethics Commission. This can be done through its hot line and a response will be provided the same day; that response is not binding upon the Ethics Commission, however. A written opinion can be requested, which is binding, and the Ethics Commission will provide it within thirty days. Counsel can contact the Ethics Commission on the Commissioner's behalf or help formulate the question.

For the Conflict of Interest Law, Commissioners are considered to be municipal employees and not county employees, which provide more leeway. Counsel intends to explore making the process easier of allowing it to write an opinion for Commissioners that, unless overruled by the Ethics Commission within 30 days, would be upheld in court.

**Doug Sederholm** said his understanding was that elected Commissioners have been designated as special employees of the town. **Gareth Orsmund** agreed and said that perhaps this is why the Ethics Commission considers the Commissioners to be municipal employees. **Erik Hammarlund** said that he did not think West Tisbury had made that designation. **Gareth Orsmund** suggested that the MVC ensure that all of the towns make the designation.

**Fred Hancock** asked if a Commissioner who recuses himself has to disclose the reason for the recusal. **Gareth Orsmond** said it is not necessary to provide such an explanation.

**Christina Brown** asked whether Commissioners can, after they recuse themselves, sit in the audience and participate as a citizen. **Gareth Orsmond** stated that the Ethics Commission says that the best practice is to leave the room during deliberations and the vote. Commissioners are not prohibited from participating as private citizens to express their opinions during an open public hearing provided that they clearly state that they are appearing in their non-official capacity. It is better to err on the side of caution and recuse if there is a clear financial interest. In the case of an appearance of conflict, it is a looser standard of whether the person is acting in an appropriate manner.

**Madeline Fisher** asked if the Commission follows Roberts Rules of Order. **Gareth Orsmond** said that if the Commission has not adopted Roberts Rules of Order, then the MVC does not follow them, however they can be used as guidance.

**Gareth Orsmond** continued his presentation.

- Open Meeting Law Highlights
  - Commissioners need to avoid any discussion among a quorum of members outside of a public meeting. This includes emails; if Commissioners receive an email from staff, they should not press “reply all” since their comments would go to all Commissioners. It is the back and forth of Commissioner opinions outside of a public meeting that is prohibited.
  - If a Commissioner misses a session of an adjudicatory hearing on a DRI, the Commissioner should recuse himself from further actions with that DRI. A Commissioner has to be at all hearings and receive all the evidence. The Commission can talk about whether it might be able to adopt regulations that mimic provisions that apply to municipalities, but right now Commissioners must attend all sessions on a DRI.
  - The Open Meeting Law now provides a means for remote participation— by video conferencing or telephone – but only if the Commissioner cannot attend due to one of the five specified reasons: illness, disability, emergency, military service or geographic distance. There has to be a quorum present in the room, the Chairman must announce the names of the people participating remotely, the remote participant has to be audible, and all votes must be done by a roll call.
- **Josh Goldstein** noted that the MVC meetings are recorded and asked if a Commissioner could watch the video and be able to participate. **Gareth Orsmond** replied that a Commissioner cannot. While the Commonwealth’s Mullen statute allows members of city and town reviewing boards to miss one session, it wasn’t thinking about the MVC or the Cape Cod Commission. However, because the MVC enabling act is such a skeleton of procedures and the courts have given bodies broad discretion in adopting practices to allow it to meet its responsibilities, he thinks the Commission could adopt regulations to mimic what cities and towns are allowed to do. But Commissioners should not do this until the Commissioner has adopted such a procedure.

- **Fred Hancock** asked when there is an open-and-closed gavel hearing session where no evidence is taken, if a Commissioner is absent from only that session can that Commissioner continue to participate. **Gareth Orsmond** said that they should not participate if any evidence was presented or if any discussion took place; if not, there should not be a problem.
- **Erik Hammarlund** said that many applicants feel that they want feedback and opinion before the Commissioners begin deliberations. To what degree are Commissioners allowed to interact with the applicant during an open hearing? **Gareth Orsmond** said that Commissioners can start formulating opinions while evidence is being presented in the public hearing, but needs to keep an open mind during the entire process and not make a final opinion until all evidence is received. As long as Commissioners avoid expressing final opinions, back and forth discussion during the public hearing is permissible. **Brian Hurley** added that his experience is that such communication of concerns by members of a reviewing board during the public hearing process is common. Applicants usually welcome such information since they can respond.

**Fred Hancock** thanked Gareth and Brian for attending and providing useful information.

## **2. MINUTES**

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*Commissioners Present: T. Barnes, C. Brown, T. Carroll, M. Fisher, J. Goldstein, E. Hammarlund, F. Hancock, L. Jason, J. Joyce, W. Karl McLaurin, D. Sederholm, L. Sibley, B. Smith.*

**Linda Sibley moved and it was duly seconded to approve the minutes of December 13, 2012 as written. Voice vote. In favor: 10. Opposed: 0. Abstentions: 3. The motion passed.**

**Erik Hammarlund moved and it was duly seconded to approve the minutes of January 10, 2013 as corrected. Voice vote. In favor: 12. Opposed: 0. Abstentions: 1. The motion passed.**

## **3.ADOPTION OF FISCAL YEAR 2014 BUDGET**

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*Commissioners Present: T. Barnes, C. Brown, T. Carroll, M. Fisher, J. Goldstein, E. Hammarlund, F. Hancock, L. Jason, J. Joyce, W. Karl McLaurin, D. Sederholm, L. Sibley, B. Smith.*

**Brian Smith moved and it was duly seconded to adopt the draft of December 11, 2012 as the Commission's budget for Fiscal Year 2013.**

- **Brian Smith** noted the following:
  - The MVC has met with the Town Boards and the Finance Committees and received various suggestions.
  - Every town is represented on the MVC Finance Committee.
  - The budget went up mainly due to legal and retirement costs.
  - It will cost the average homeowner about \$25/year.
  - It is a property assessment collected by towns on behalf of the MVC, not a bill to the town.
- There was a discussion of adding a budget item for the website.

- **Erik Hammarlund** suggested that perhaps approximately \$50,000 should be added to the budget for a new MVC website. It is difficult for the public to access much of the work of the MVC.
- **Josh Goldstein** agreed with Erik Hammarlund that the website is antiquated and needs to be updated.
- **Linda Sibley** said it is hard to navigate the site even with the assistance of computer savvy individuals.
- **Doug Sederholm** agrees that the accessibility of information could be improved, but questioned the amount.
- **Erik Hammarlund** said that he is working with another organization on a similar project and based on that project, \$50,000 is reasonable a ball park number.
- **Doug Sederholm** said that given the MVC already has a 10% increase in the budget, he does not see how that amount of money can be added to this year's budget. The MVC should investigate and price what it would take, and could add it to next year's budget.
- **Brian Smith** noted that the MVC enabling legislation has a cap of what the assessment can be to the towns.
- **Tm Carroll** suggested that the MVC look into Virtual Towns & Schools, which might be less costly.
- There was a discussion of the reserve funds.
  - **Leonard Jason** thought the budget did not show what was in the reserve.
  - **Doug Sederholm** said the current balances along with explanations are shown on page 4, both for the general fund and the building fund.
  - **Fred Hancock** noted that the reserve fund goes up and down based on when the MVC receives the town's payments.
  - **Erik Hammarlund** asked that if at some point the MVC wanted to update the website, couldn't it be suggested that the Executive Director use the reserve fund.
  - **Brian Smith** said that this year, the reserve fund will probably be used for legal costs.

**Voice vote. In favor: 9. Opposed: 0. Abstentions: 4. The motion passed.**

#### **4. VERIZON WIRELESS CELL TOWER – WEST TISBURY (DRI-640) PUBLIC HEARING**

*Commissioners Present: T. Barnes, C. Brown, T. Carroll, M. Fisher, J. Goldstein, E. Hammarlund, F. Hancock, L. Jason, J. Joyce, W. Karl McLaurin, D. Sederholm, B. Smith.*

*For the Applicant: Carl Gehring (Gehring & Associates, LLC), George Evsuk (Verizon Real Estate Department), Andrew LeMay (Real Estate Appraiser), Doug Sheadel (Acoustical Scientist), Luis Teves (Radio Frequency Engineer), Eric Wainwright (Construction Manager)*

**Linda Sibley** recused herself from the meeting stating she has a conflict of interest, disclosing that she sells cell phones.

**Brian Smith**, Public Hearing Officer, opened the public hearing at 7:15 p.m. and read the public hearing notice. The location is a 50' x 50' leasehold parcel at 21 New Lane, West Tisbury,

Map 31 Lot 48 (20.2 acres). The proposal is the installation of a new eighty-foot-high personal wireless service facility tower with associated ground equipment for up to three carriers.

#### **4.1 Staff Report**

**Paul Foley** presented the following.

- The packet of information includes a letter from the West Tisbury Zoning Board of Appeals, base site plans, a binder of information from Verizon, a 78 page letter presented by multiple residents, and other correspondence received by the MVC.
- The property is off of New Lane and is a 50' by 50' leasehold parcel Map 31 Lot 48 (20.2 acres of the Doane property).
- Two of the three alternative sites are within the Coastal DCPC Inland Zone.
- The site plan was reviewed.
- The site is part of a 20.2 acre wooded property with one single family house and a barn.
- The proposal is for the installation of a new 80-foot-high personal wireless service facility tower with associated ground equipment for up to three carriers. The proposal is in the Rural District (RU). The applicant is applying for a special permit under section 8.8 Personal Wireless Service Facilities (PWSFs) of the West Tisbury Zoning Bylaws.
- The maximum height of the structures in the rural district is 30 feet. PWSFs are not identified in section 4.3-2 (height exceptions).
- Section 6.1 Coastal District states that PWSFs are eligible for consideration for Special Permits in the Coastal District DCPC. However, Section 6.1-6 (Height of Structures) states "The objective of this subsection is to ensure that structures do not rise above the tree canopy and break the skyline when observed from a public road or water body."
- The surrounding uses are rural residential and Town Cove of Tisbury Great Pond.
- The applicant has presented three alternatives as required by the West Tisbury Zoning Bylaw. All three alternatives are on the same 20.2 acre property owned by the Doane family.
- The applicant prefers an 80-foot-tall monopine (fake tree) to a stealth monopole in order to have more capacity for co-locators and data services.
- Key issues include:
  - Does the proposal fit in with the rural character of West Tisbury and the Coastal DCPC?
  - What is the cellphone coverage gap being filled?
  - Is the proposed location essential or especially appropriate in view of the available alternatives on the Island?
  - Though the Location Standards (8.8-8A) and the Siting Standards (8.8-B) in the West Tisbury bylaw are "directory...not mandatory", has the applicant and the ZBA considered alternatives that do meet the suggested location standards such as new or existing utility poles, or concealed within churches, commercial and industrial buildings or the Light-industrial Zone or Airport?
- Does Section 8.8 (PWSF) trump the height restrictions of the Rural Zoning District (4.3-2) and the Coastal DCPC (6.1-6A)?
- The 20.2-acre property that contains the three alternatives is mostly wooded with deciduous trees.

- The site is within the core habitat defined by the National Heritage Endangered Species Program (NHESP).
- The 50 ft x 50 ft lease area would be hidden in the woods and fenced.
- No lighting is proposed except a manually controlled light at the shelter during servicing.
- There would be backup diesel generators for power outages inside the shelter with acoustical mitigation.
- The closest neighbor is the owner of the property.
- LUPC voted that this project does not require a traffic study.
- The proposal – whether a monopine or a stealth monopole– would be visible above the tree line from the Tisbury Great Pond and the Edgartown-West Tisbury Road.
- A number of abutters and neighbors have written in support and opposition. Several of those in opposition specifically cite a negative visual impact from the Great Pond.

#### **4.2 Applicant's Presentation**

**Carl Gehring** presented the following.

- He introduced the other members of the team.
- The binder of information contains the following;
  - The DRI application.
  - The Zoning Board referral letter is included and Verizon has been to the Zoning Board several times for the pre-application and an open meeting. They are in compliance with the general terms of the bylaw.
  - There is a Statement of Support and it was noted that page five has an error on tab 3, item D; Carl Gehring corrected the statement to say that they do know that they are in the Coastal Zone.
  - Permission has been received by the landowner for application.
  - Public record information is included.
  - An alternative site analysis is in the information. The problem area is the village area at County Road and the Edgartown-West Tisbury Road. Verizon did have a cell on wheels (COW) in the location when the President visited the Island.
  - A new site is needed to fill the gaps and to improve service. It is being proposed to have a macro cell in this area. The ideal would be a 100 foot tower. The West Tisbury Church was looked at, but its construction will not lend itself to the need. It is not workable but the Doane site is.
  - An FAA analysis was done based on location C for the end of the runway and it cleared the FAA requirements by 100 feet.
  - The FCC licenses are also in the information.
  - A report of the RF guidelines. The RF plots are included and a consultant was hired by the Town of West Tisbury.
  - Noise and Acoustical and Real Estate Reports are in the binder.
  - Included are pictures of what is being proposed as well as pictures of what is not being proposed.
- Site plans were reviewed. The proposal requires that the only trenching of the land to be done is for the riser for underground utilities.
- The surveyor's raw data of the topography states that the average tree height is 51 feet.



**Erik Hammarlund** asked what the average tree height was based on. **Carl Gehring** said the survey was done for the area of the location sites and not the entire property.

**James Joyce** asked which site the applicant wants to develop. **Carl Gehring** said that he will explain that when he talks about the zoning, since this is a unique application.

- The proposal shows three sites but only one will be developed.
- The site compound is deep in the woods but Verizon is still proposing a shingled gable roof for the shed.
- Verizon is not applying for co-location which is similar to subletting on someone else's tower.
- A monopine tower is being proposed and is a more natural look rather than a stealth tower. The pole designs were reviewed. The monopole has external antennas on a platform and the monopine will have the antennas painted green with the pole painted brown. There are also spines to hide the antennas. A flush-mount monopole is a pole with the antenna flush against the pole.
- The West Tisbury bylaw requires different heights and alternatives and allows up to 80 feet. If the tree canopy exceeds 60 feet the pole can be no higher than 80 feet, so with a 51 foot tree canopy the pole can be 80 feet.
- The Town of West Tisbury adopted the DCPC guidelines for the Coastal District and the regulations are in effect. They had the MVC staff research this. In effect is the Special Overlay District for the Inland Zone. A Special Permit applies for special zoning districts.
- Good and bad monopine designs were shown and Verizon's design is a very different type of installation than what is usually done.

**Brian Smith**, Public Hearing Officer, asked that the applicant wrap up their presentation and then the MVC will come back to the hearing, as citizens also want to comment.

**Erik Hammarlund** noted that the MVC does not usually receive a 200-page binder of information for a Public Hearing.

**Paul Foley** noted that the MVC expected the Public Hearing to be continued since a considerable amount of information was received from the applicant as well as the public.

**Karl Gehring** concluded by asking that – after the MVC has reviewed all of the material and information and feels that what Verizon is proposing has been mitigated for the coastal area – the MVC refer them back to the Town of West Tisbury. If the MVC feels that the proposal may not fit, Verizon welcomes further discussion. A site is needed and Verizon feels that they did something that is suitable and a proposal that the MVC and the Town will be happy with.

#### **4.3 Commissioners' Questions**

**Brian Smith** asked whether there are any questions from the Commissioners. Then public comment will be heard since many individuals need to make the 9:30 p.m. ferry.

**Doug Sederholm** noted that in tab 9 there are various maps indicating the coverage area and noted that there is an 850 RF (Radio Frequency) and PCS in another and asked if Verizon wants to do both since they provide different levels of service. **Carl Gehring** confirmed both are wanted.

*Brian Smith, Public Hearing Officer temporarily adjourned the public hearing at 8:15 p.m. and reconvened at 8:25 p.m.*

**James Joyce** asked which design, the monopole or the monopine, can hold more carriers.

**Carl Gehring** said the 80-foot monopine will hold Verizon and two carriers and the 80 foot monopole will hold Verizon and one carrier.

#### **4.4 Testimony from Public Officials**

**Tucker Hubbell**, Chairman of the West Tisbury Zoning Board of Appeals, said that he came to the hearing to listen. He presented the following:

- There are new bylaws since August 2010 and this is the first tower that has come under the new bylaws.
- For the record, the Old Courthouse or Flanders pole is full, and they have Nextel and AT & T. The DEM Fire Tower has Verizon. There are two poles at the airport and each of them has three carriers and are full.
- The Zoning Board has made no decision. They have a pre-application process and did go through that with Verizon.
- Verizon's main choice is location C which is the Doane property.
- The point of the pre-application process is to discuss the bylaw and get feedback from the applicant before the hearing. The Zoning Board did that and the board asked Verizon to pick another location due to the concerns of the proximity of the houses and neighbors.
- With regards to co-location; it would be fine to put up a 69-70 foot pole just for Verizon but the bylaw does push co-location to service as many carriers as possible, to minimize the number of poles.
- It is key to understand the difference between the pole designs and the use by the carriers and to maximize the number of carriers per pole.
- Two of the zoning board members live in the area and they think the tree canopy is 55-65 feet and it is something for the board to find out.
- There is a windmill that is 115 feet and there, the tree canopy is in the 65-70 feet range.
- In the board's letter to the MVC the ZBA said it would allow an 80-foot pole, based on the bylaw that allows 15 feet above the tree canopy.
- Based on the Town Hearing and the attendees that were primarily the neighbors, it was decided to move the pole away from residences and no one at the time realized that the location was in a DCPC.

#### **4.5 Public Testimony**

**Marcia Feinberg** said that when this structure is being talked about, she feels it is a little off balance. The proposal is talking about corporate access for the customers. Everyone has made compromises to live on the Island. We have all made compromises in other areas such as the cost of lumber, the cost of food, and the access to our homes. The MVC has had the wisdom and foresight to not have the commercial interest run wild. How many more customers does Verizon need? She have been here for 51 years and she hopes that others will preserve this Island. The tower is an eyesore and does change the nature of this Island. She hopes the MVC has the foresight to keep the Island the way it is.

**(Ian) Scott McIsacc** said he is one of the 24 people who submitted the correspondence.

- They did not know that there was a meeting of the Zoning Board in February.
- It is pretty offensive that Verizon picked a site they liked with the technology they liked without consideration of the land or the DCPC. They really didn't care what the regulations were.
- In the submission on page 5 prepared in November, Verizon didn't realize the site was in a DCPC. Their site selection was done four years ago. When Verizon says they are concerned about zoning, it doesn't appear so. Above ground utilities are not allowed in a DCPC, however, there is a Special Permit exception for the DCPC regulations but for personal and family use. When Verizon says the site selection was guided by zoning it was not.
- In many of the materials Verizon submitted, they state if you don't do what we want, Federal Law will prevent denial.
- Verizon only looked at private sites over ten acres. What they selected is a 50 ft. x 50 ft. site of the Doane property and if they had said they were looking for that size site with a 150-foot fall zone there would have been more sites and alternatives.
- Like his neighbors, he values the scenic integrity of Martha's Vineyard. He has been coming here since 1964. He was a staff intern at the MVC and believes in the values that are in the Coastal District. The way this particular structure and this particular spot is, it is contrary to the MVC beliefs.
- He questions the 51-foot tree canopy. They have provided pictures of neighboring houses and if they are 18-20 feet high, the trees are more than double that height. It is very frustrating to hear Verizon say they are trying to comply when they are not.
- For the Commission that has developed the Coastal District, it is important that they adhere to the guidelines. Section 6.1 of the zoning bylaw says it is the Overlay District that supersedes everything else in the bylaw.
- Their 78-page correspondence provides the neighbor's pictures, yet Verizon did not have them because they asked for a waiver stating that they did not want to trespass. They never asked him if they could take a picture of his property. He is not sure if it is a misrepresentation by Verizon or if they just do not want to comply.

**Brian Smith** asked if Mr. McIssac's objection was only to the monopine and not the monopole.

**Scott McIssac** said he feels the monopole is less obtrusive and many others feel the same way.

**Brian Smith** asked in the photos how many feet would the pole be above the houses. **Alan Temple** said the photos show 40 feet above the tree line. He also said that he sits on the Westport, CT Town Board and that board insists that there be a completed application. Verizon has to come up with something finite.

**Felicity Russell** said she feels the same as the first speaker Marcia Feinberg. It would be a shame, even with the photos that Verizon has prepared for this application, for such an artificial structure to be visible behind the Field Gallery and even when you are sailing.

#### **4.6 Applicants Closing Statement**

**Carl Gehring** made closing comments.

- He thanked Mr. McIssac for his memorandum and noted that Verizon did correct the error made regarding the DCPC.

- Whether the Zoning Board will allow the application is for decision but it is allowed by Special Permit in the Coastal District and that was noted in the July 2012 Zoning Statement. It was Verizon's understanding of the interpretation of the bylaw and he wants to be sure that this point was clarified.
- In the photo simulations, the surveyor determined the tree height. A professional engineer was hired and a balloon float was done in March 2012 in an area greater than just the site. The Zoning Board gave Verizon certain areas that they wanted to see in their pre-application meeting and they went out one half mile further than what was requested. The renderings were done with precision and engineering.
- Verizon is proposing a macro cell technology for greater coverage and service.
- He is hearing that the stealth pole is more desirable and they are certainly open to reviewing that and please keep in mind that bad and good monopine designs have been reviewed.

#### **4.7 Commissioners Discussion**

**Leonard Jason** said that he did not think that Verizon understands the process. The MVC has a certain responsibility. The first thing that has to be done, is to see if the proposal meets zoning.

**Carl Gehring** noted that the Coastal District language was approved by the MVC and it seems that the issues boil down to visibility and the Coastal District.

**Brian Smith** said that he is not sure exactly what Verizon has presented to the MVC and noted that the West Tisbury zoning does require alternatives.

**James Joyce** suggested to Verizon that they need to pick one alternative to be presented.

**Erik Hammarlund** noted that the MVC has its own criteria for evaluating a project. The idea that it can generally look at a project, whether it is a 65 foot pole or an 80 foot pole is difficult.

**Doug Sederholm** said that it looks like Verizon wants location A with an 80 foot monopine. The MVC always wants one plan showing what the applicant wants to build so the MVC can evaluate it and work from there. After hearing from the public and the Commission, this project might be good for a mid-public hearing LUPC review. There are people who prefer a monopole and others that prefer a monopine and it needs to be determined if this can be built in a coastal zone.

**Fred Hancock** asked if location C is in a coastal zone. **Carl Gehring** said that it is. **Doug Sederholm** noted that it is also 100 feet from the neighbors.

**Carl Gehring** said that Verizon are not real estate developers. The area wireless provider and want to get their signal out. He doesn't want to give the perception that this is the only plan. Verizon will work with everyone. There were pre-application meetings and they tried to fit the project into the bylaws. He apologized if anyone thinks Verizon is presenting a misconception.

**Leonard Jason** suggested that the applicant come back to LUPC to see how the objections can be dealt with.

**Brian Smith** thought it was a good idea to go to LUPC and to also have members of the West Tisbury Zoning Board there as well.

**Erik Hammarlund** noted that at LUPC, Verizon would be able to hear some of the MVC opinions that are not heard at a public hearing.

**Christina Brown** stated that LUPC is a more give and take meeting.

**Tripp Barnes** said there are very impressive names in the correspondence received from residents of the Town that are in favor of this proposal. There is a small number here tonight that are against the project. He thought the applicant should come to LUPC and make a decision which way to go.

**Brian Smith** noted for the record that a petition was received with 55 signatures from all over the Island against the project.

**Brian Smith**, Public Hearing Officer, continued the Public Hearing to February 21, 2013 after the applicant meets with LUPC on February 11, 2013.

**Erik Hammarlund** noted for the public that any continuances and dates will be noted on the MVC website.

## **5. COMCAST/NSTAR HYBRID UNDERSEA CABLE – TISBURY (DRI-641) PUBLIC HEARING**

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*Commissioners Present: T. Barnes, C. Brown, T. Carroll, M. Fisher, J. Goldstein, E. Hammarlund, F. Hancock, L. Jason, J. Joyce, W. Karl McLaurin, D. Sederholm, B. Smith.*

**Brian Smith**, Public Hearing Officer, opened the Public Hearing at 8:20 p.m. and read the Public Hearing Notice. The proposal is to install an approximately 4.5 mile long undersea hybrid fiber optic and electric cable from Falmouth to Martha's Vineyard that will supply both power and fiber-optic cable capability.

**Erik Hammarlund** moved and it was duly seconded to continue the Public Hearing until February 7, 2013 without taking any testimony tonight.

**Brian Smith**, Public Hearing Officer, closed the Public Hearing at 8:25 p.m.

## **6. NEW BUSINESS**

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*Commissioners Present: T. Barnes, C. Brown, T. Carroll, M. Fisher, J. Goldstein, E. Hammarlund, F. Hancock, L. Jason, J. Joyce, W. Karl McLaurin, D. Sederholm, B. Smith.*

**Christine Flynn** noted that the interim report of the Housing Needs Assessment is available and any Commissioner who would like one can obtain a printed copy.

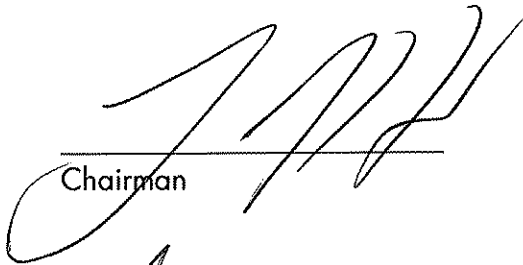
**Fred Hancock** said there is a Compliance Meeting on February 29, 2013.

The meeting was adjourned at 9:30 p.m.

### DOCUMENTS REFERRED TO DURING THE MEETING

- Minutes of the Commission Meeting – Draft, Held on December 12, 2012
- Minutes of the Commission Meeting – Draft, Held on January 10, 2013
- Martha's Vineyard Commission Draft Budget FY2014 Dated December 11, 2012

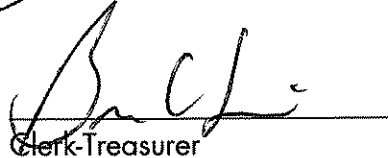
- Gehring & Associates LLC Verizon Wireless – Hearing Attendees
- Martha's Vineyard Commission – DRI #640 Verizon Wireless/Doane Cell Tower – MVC Staff Report – 2013-01-23
- Correspondence from Judith F. Leggett and Nickolus E. Leggett Dated January 20, 2013 to the Martha's Vineyard Commission, Testimony in the Development of Regional Impact (DRI #640)
- DRI 640 Verizon/Doane Cell Tower Correspondence – Received by January 24, 2013 at 3:00 p.m.
- 78 Page Letter to The Martha's Vineyard Commission regarding the Verizon Wireless/Doane Cell Tower DRI #640
- Gehring & Associates, LLC Wireless Planning & Zoning Binder of Information for the Verizon/Doane Cell Tower for DRI #640
- Statement in Support of Application for a Special Permit with Site Plan Approval, Dated July 20, 2012



Chairman

3-7-13

Date



Clerk-Treasurer

3-7-13

Date