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## Minutes of the Commission Meeting Held on April 7, 2016 In the Stone Building 33 New York Avenue, Oak Bluffs, MA

### IN ATTENDANCE

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

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|--|-----------------------------------|
| - Tripp Barnes (E-Tisbury)               | - James Joyce (A-Edgartown)       |
| - Yvonne Boyle (A-Governor)              | P Joan Malkin (A-Chilmark)        |
| P John Breckenridge (A-Oak Bluffs)       | P Katherine Newman (A-Aquinnah)   |
| P Christina Brown (E-Edgartown)          | - Doug Sederholm (E-West Tisbury) |
| - Peter Connell (A-Governor; non-voting) | - Abe Seiman (E-Oak Bluffs)       |
| P Robert Doyle (E-Chilmark)              | P Linda Sibley (E-West Tisbury)   |
| P Josh Goldstein (E-Tisbury)             | P Ernie Thomas (A-West Tisbury)   |
| P Fred Hancock (E-Oak Bluffs)            | P James Vercruysse (E-Aquinnah)   |
| P Leonard Jason (A-County)               |                                   |

Staff: Adam Turner (Executive Director), Bill Veno (Senior Planner), Paul Foley (DRI Coordinator), Sheri Caseau (Water Resources Planner), Christine Flynn (Economic Development and Affordable Housing Planner), Priscilla Leclerc (Transportation Planner).

**Chairman James Vercruysse** called the meeting to order at 7:00 p.m.

**Chairman James Vercruysse** polled the Commissioners to see if it would be possible to schedule a meeting for April 28, 2016 for Deliberation and Decision of the Squibnocket Parking Lot and Squibnocket Farm Causeway Projects. It was determined that nine Commissioners would be able to attend and there would be a quorum.

### 1. BAYES NORTON SOLAR FARM OAK BLUFFS C.R. 4-2016 CONCURRENCE REVIEW

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Commissioners Present: J. Breckenridge, C. Brown, R. Doyle, J. Goldstein, F. Hancock, L. Jason, J. Malkin, K. Newman, L. Sibley, E. Thomas, J. Vercruysse.

For the Applicant: Bill Bennett (W.H. Bennett, Inc.), Jamie Norton (owner Bayes Norton Farm, Inc.)

#### 1.1 Staff Report

**Paul Foley** presented the following.

- The applicant is W.H. Bennett, Inc. and Bayes Norton Farm, Inc.
- The location is 223 Edgartown Vineyard Haven Road, Oak Bluffs Map 40 Lot 4, 21.5 acres.
- The proposal is to construct a 650 kW solar array with 2,040 solar panels covering approximately 2 acres (83,838 sf) on existing farm fields.
- The MVC Staff Report includes the applicant's narrative, a letter of support and the plans.
- Zoning is R-3, residential.
- The Town of Oak Bluffs recently adopted a Zoning Bylaw for Solar Energy Systems (Section 12).
- In granting a Special Permit, the ZBA shall consider the following: effects on habitat and endangered species, character of the surrounding neighborhood, existing natural screening and

remedies to meet any deficiencies, erosion, drainage and stormwater runoff, solar access and cleaning.

- Permits include a Special Permit from the ZBA under the new bylaw, a Building Permit and a Site Plan Review.
- Surrounding land uses are farm, residential, the location is near the Goodale Gravel pit and Head of the Lagoon.
- The site was reviewed.
- The property has been in the Norton family for hundreds of years.
- This area was cleared in 1971 to plant and grow grapes for Chicama Vineyards. It apparently takes seven years to grow grapes. In the eighth year the plants got mildew and died. These fields are rotated between winter squash, potatoes, pumpkins, eggplant and buckwheat.
- The project site would be 65 feet from the southern property line abutting a residential house and 319 feet from the Edgartown Vineyard Haven Road. It would not be visible from Edgartown Vineyard Haven Road.
- The high side of the panels would be 4'8" off the ground and the low side 2'3" off the ground. The solar panels would be mounted on a racking system using I-beam pilings. A transformer would be mounted on a concrete pad on the north side.
- Utilities would be trenched.
- The electricity would be used to power Bayes Norton Farm and excess power would be sold at a discounted rate.
- The area would continue to be farmed as grazing pasture for sheep.
- The proposal is outside the Island Roads DCPC.
- The proposed location is enclosed by an existing fence. If necessary the applicant would install a six foot livestock fence surrounding the array.
- The DRI referral was from the Oak Bluffs Building Inspector.
- LUPC met on April 4, 2016 and voted unanimously to recommend to the full Commission that the project does not require a public hearing as a DRI.
- The specifications on the panels and the inverters will be explained by the applicant along with the new technology.
- Key issues include;
  - The referral is a Concurrence Review. The question before the MVC at this time is whether or not this proposal is likely to have a regional impact that requires a public hearing as a DRI.
  - The project site is in the Head of the Lagoon sub-watershed and very close to Lagoon Pond.
  - The proposal introduces a light industrial use (Energy Production) to a farm. The installation of the array on 2 acres of the 21.5 acre farm will allow for use of the land under the array as grazing and should help the finances of the farm.
  - Part of the property is designated as NHESP Habitat. The proposal currently falls outside of the habitat.
- The site was reviewed and a view was shown from the road 100 feet in.
- The site is in the Lagoon Pond Watershed. It is in the Head of the Lagoon sub-watershed. The status of the watershed is impaired.

### **1.2 Land Use Planning Committee (LUPC) Staff Report**

**Fred Hancock**, LUPC Chairman said LUPC met on Monday April 4, 2016 and LUPC did not feel the proposal rose to the level requiring a public hearing as a DRI and voted to not concur with the referral.

### **1.3 Applicants' Presentation**

**Bill Bennett** presented the following.

- Bill Bennet introduced Brain Fisk who was with him this evening.
- We want to put a solar farm on the Bayes Norton Farm to make green power locally.
- The excess power will be sold to non-profits on the Vineyard at a discount. We transfer the power company credits to our clients and have been doing this for four years.
- We have saved the Island non-profits approximately \$40,000.
- This project is a win-win for all and we think it is a good thing in general.
- A mounting method that is pile driven will be used and that is all that will be done to the soils. In later years if there was any remaining metal it could be recycled.
- We have seen in other projects that sheep seem to like to graze under the panels and especially during hotter weather to be out of the sun.
- The project is a good solution to help the farm and also save the farm. The farm land remains farm land.
- It also helps the non-profits and we also make a little money as well.
- We want to keep the array low profile and the sheep love to graze in the field and have the shade in the summer under the panels.
- In prior methods four or five panels were attached together which could put shocks out. But with the new technology, SolarEdge, every panel has a box on the back and nothing happens to the field, it is very safe. The array will include a transformer that will be mounted on a concrete pad along the north limit of the array.
- The biggest concern at LUPC was if the array could be seen. Joan Malkin was concerned about this and it is virtually impossible to see the array from the road.
- Fencing will be very low key, livestock fencing will be used which is hard to see and is not like chain link and is not industrial, but is strong and made of galvanized steel.

#### **1.4 Commissioners' Questions**

There was a discussion about the fencing.

- **John Breckenridge** said we have seen other projects and fencing is a big component. Chain link fence is often seen in the proposals. Why can you do livestock fencing? **Bill Bennett** said code says the array needs to be fenced in. The purpose is to keep people out and not to be able to play with what is inside. He does not like chain link fencing. We have found fencing that is made for cows and is very safe and you cannot get into it. **Jamie Norton** noted that chain link fencing is less expensive and may be the reason why it is seen more often.
- **John Breckenridge** asked if the livestock fencing meets code. **Bill Bennett** said the code is a height requirement which is six feet but it does not talk about the type of fence.
- **Joan Malkin** asked for confirmation on the safety of the fence. **Bill Bennett** reiterated that it is strong and will provide protection to keep people out of the area.

**Joan Malkin** asked about the technology of the array. **Bill Bennett** said with the older technology each panel has voltage and each panel is tied to the next in a string. With the new technology, the box takes the voltage from the panel, senses it and takes it to the grid. It is a gatekeeper for the panel and the grid. If the grid shuts down the panel also shuts down. It is a panel specific optimization.

**Linda Sibley** said for the benefit of the people in the audience who don't have the MVC Staff Report as well as the TV viewers, the Oak Bluffs bylaw is very specific and allows the ZBA to consider all the things that the MVC looks at. The ZBA has the power to look at those issues. At LUPC we did not think the proposal had a regional impact because the array can't be seen.

***Fred Hancock moved and it was duly seconded to not concur with the referral because of the Town of Oak Bluffs bylaw and the project is not clearing any habitat it will be in an open field. Roll call vote. In***

*favor: J. Breckenridge, C. Brown, R. Doyle J. Goldstein, F. Hancock, L. Jason, J. Malkin, K. Newman, L. Sibley, E. Thomas, J. Vercruysse. Opposed: none. Abstentions: none. The motion passed.*

## **2. CHAPPY WIRELESS ANTENNA EDGARTOWN DRI 662 PUBLIC HEARING**

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*Commissioners Present: J. Breckenridge, C. Brown, R. Doyle, J. Goldstein, F. Hancock, L. Jason, J. Malkin, K. Newman, L. Sibley, E. Thomas, J. Vercruysse.*

*For the Applicant: Brian Grossman (representing AT&T), Marc Chretien (Engineer)*

**Fred Hancock**, Public Hearing Officer opened the Public Hearing at 7:25 p.m. and read the public hearing notice. The applicant is AT&T and the property owner Robert Fynbo. The location is 14 Sampson Avenue, Edgartown, MA, Map 34 Lot 197, 0.528 acres. The proposal is to construct a 104 foot monopole antenna with guy wires, a ground mounted dish antenna six feet in diameter and associated mechanical equipment in an existing shed. The public hearing process was reviewed.

### **2.1 Staff Report**

**Paul Foley** presented the following.

- The MVC Staff Report includes the antenna specifications, elevations and plans and correspondence which will also be posted on the MVC web site.
- The proposal is to construct a 104 foot monopole antenna with guy wires, a ground mounted dish antenna six feet in diameter and associated mechanical equipment in an existing shed.
- Zoning is R-120 Residential: Minimum Lot Area – 3 acres, Front Setback 50’, Rear Setback 25’, Side Yards Setback 25 feet. The existing residence is a pre-existing non-conforming lot with non-conforming setbacks. Section 23.2 allows the Planning Board to “exempt the (wireless) installations from dimensional requirements...”. Presumably the antenna/tower is considered a structure and per the Edgartown Zoning Board a fence or wall over six feet shall be considered a structure.
- Local permits include a Special Permit from the Planning Board and a Building Permit for the structure.
- Surrounding land uses are residential. The proposed location is on a small lot in a relatively densely packed neighborhood on Chappaquiddick.
- There is an existing WISP (Wireless Internet Service Provider) antenna that is 84 feet high on the property that was not reviewed by the MVC.
- The proposal is a temporary antenna to hopefully provide service for the summer and the intent is to have another permit at a later time in front of the MVC for a permanent and taller antenna.
- The DRI referral was by the Edgartown Planning Board on March 15, 2016 and was received at the MVC on April 5, 2016.
- Key Issues include.
  - Is this densely packed residential neighborhood of undersized non-conforming lots the best location on Chappaquiddick for a wireless tower of this size?
  - Has the Town explored the possibility of a DAS (Distributed Antenna System) for Chappaquiddick?
  - The application is from AT&T only for a “wireless communications facility, including without limitation...”. How many other carriers could go on this tower?. What would the process for adding carriers be? What would it look like with more carriers?
  - The application anticipates a revised proposal in the future for a permanent tower. How long can this “temporary” tower be here? Could this temporary tower become the permanent application?

- The house on the property where the antenna is proposed is within the fall zone of the antenna. Several buildings on abutting properties are just outside the fall zone.
- The antenna will be the tallest structure on Chappaquiddick. Is a 104 foot tall monopole tower appropriate for the rural character of Chappaquiddick?
- The site is not mapped as NHESP habitat.
- A few plants in the applicants yard may be disturbed but an underground trench will be done for utilities.
- The mechanical equipment is proposed to be located in an existing outbuilding on the property. The guy wires would be connected to ballast blocks in the yard.
- Once permitted the antenna will take about three weeks to construct and another week to integrate into the wireless system.
- In terms of overall traffic operations and parking issues this proposal is not likely to have any traffic impacts.
- The facility will be unmanned with occasional servicing.
- The antenna will be very visible from the residential neighbors and the antenna will be somewhat visible from a distance from a variety of locations.
- In its referral letter the Planning Board stated it has “determined the necessity for this wireless tower service is vital to the safety of Chappaquiddick...”.
- The Vineyard Conservation Society has written asking the Commission to table immediate action until an inquiry into a Distributed Antenna System (DAS) alternative has been exhausted. They strongly urge the MVC to consider the visual impacts and creative alternatives.
- Correspondence received by the MVC was summarized for those in support and those in opposition as noted in the MVC Staff Report including a later letter that was received from Rob Strayton.
- The site and plot plan were reviewed.
- The existing versus the new specification for the tower was shown.
- Photos of the site were shown and views from the neighborhood. The coverage area was shown and it was noted that the applicant will review that.

**Joan Malkin** asked how high the new cabinet is. **Paul Foley** said there will be fencing that is six feet high.

**Katherine Newman** said she was a little confused about the temporary nature as the proposal says the tower could be six months but could be longer. **Paul Foley** said we want the applicant to explain that. Currently the project is permitted for 180 days but structurally it could last longer.

## **2.2 Applicants' Presentation**

**Brian Grossman** presented the following.

- He represents the applicant and **Marc Chretien** is here from the engineering group. He apologized that due to an unforeseen circumstance Kevin Mason could not be here but he is very involved with the project and is able to present the proposal in his absence.
- In terms of needs he showed a representation of the AT&T existing coverage on Chappaquiddick. The white area shows area without reliable coverage. In that area you may be able to make a call but cannot hold it. In speaking with the Chappaquiddick Wireless Committee this also holds true for the other carriers.
- In an emergency if you are not near a land line the potential to make a call is extremely limited.
- The project has been ongoing for a while. In August 2015 members of the Wireless Committee reached out for options.
- There was a concern on an immediate basis (the summer) as well as addressing the future of long term need.

- AT&T looked at the issue to meet the summer need, needing something by Memorial Day weekend and coverage to go to everyone in the coverage footprint.
- The new coverage footprint was shown for the proposed tower which is 104 feet. The coverage area covers about 78% of the land mass of Chappaquiddick and covers the vast majority of the public beaches that currently have no coverage. The proposal achieves AT&T's coverage goal.
- A topographical map was shown noting where there is ridge height that blocks coverage.
- There is a concern that the proposal is for AT&T and no other carrier. This is true but it is a start. In terms of beginning to provide coverage this is a good step. AT&T's market share is 33% of the United States.
- For other GSM companies 911 coverage will work with this proposal.
- The issue is not solely about emergencies, it is about residents who want to use their phones.
- We are trying to meet the needs expressed by the Wireless Committee as well as the AT&T subscribers.
- A temporary basis is an unusual step for AT&T but we understand the need for the summer and then we would come up with a permanent solution.
- AT&T would go through the same process as we are for the temporary solution when a permanent solution is designed.
- There are certain regulatory hurdles such as FTC and the Historical Commission for a permanent design.
- One part of the proposal is a dish for the back haul for the temporary site since there is not fiber available for AT&T. The dish will be about ten feet off the ground and the proposed dish was shown.
- It is a ballast mounted tower with a 14 x 14 foot steel frame surrounded by a wood fence. The Tower specifications were shown. The diameter at the top is about 24 inches.
- Photographic simulations were reviewed and are done by utilizing a three foot diameter weather balloon for the height of the tower and then software is used to superimpose the tower into the photograph of the area and it is done in scale.
- A number of locations were requested for the photographs and these were reviewed including; northwest from Chappaquiddick Road and the tower is visible from this view, a number of locations were shown where the tower is not visible and from the Fire Station existing and proposed views were shown noting this is probably the area with the most visibility.
- The tower design details are included in the MVC Staff Report and it is going through the permit process as if it were a permanent structure even though it is a temporary tower.
- The tower is designed to meet Massachusetts State Building Code and meets the 120 mph wind regulations which is why the three guy wires are needed.
- The tower is passive in nature and unmanned. No lighting is required including regulations for the FAA.
- The equipment is housed and located in an out building so there is no noise.
- During the Planning Board hearing we did discuss some check and balance in the timeline to permit the permanent site. This is an open process and AT&T is very clear on what it can and cannot do with a temporary and a permanent project.
- The permanent site would also probably be on Sampson Avenue.
- The permanent solution may end up with two towers, one to handle AT&T and the other for other carriers to co-locate on the site.
- AT&T worked with the Wireless Committee and went on a tour with them of Chappaquiddick.
- When AT&T did the analysis it was thought that perhaps a tower on wheels, such as is used for President Obama's visits, might be a solution but it was decided that it would not be adequate.

- The proposal does a great job meeting the requirements and the land owner is very willing to work with us on the project.
- AT&T has moved as quickly as I have seen to meet the objective to provide coverage for the summer.

### 2.3 Commissioner's Questions

**Josh Goldstein** asked if the tower requires a generator. **Marc Chretien** said it does not; there is battery back-up. However, if it is over 24 hours with a power outage, a temporary generator could be installed.

**Fred Hancock** noted this is an application for a temporary structure. For a permanent structure the applicant would have to come back to the MVC. He asked what timeframe AT&T sees this tower as being temporary. **Brian Grossman** said AT&T is working on a permanent design and we expect within the next few months the permanent design would be filed. We understand there needs to be seen something that has more teeth and it has been suggested a six month renewal check in. It will take us sometime to do due diligence and will take at least two months. The permanent project may be beyond six months. We are constructing this tower knowing it is temporary.

**Robert Doyle** asked if you get permits in nine months how long for construction and how long for Island permits. **Marc Chretien** said two months for construction. **Brian Grossman** said some is already in process and a reasonable timeline is 6 to 9 months from today.

**Joan Malkin** asked if Sampson Avenue was not an acceptable location for the permanent tower how long would the project then take and what is the timeframe. **Brian Grossman** said it would be dependent, as we would have to do a new search. We have done a lot of homework on location so we would not be starting from ground zero. To research and develop a new site is probably one year to 18 months. We have looked at a number of sites, 6 to 8 that have been vetted, so we have a fair amount of information in our files for further investigation. It would also need to be determined if the landlord was interested and if the site can be permitted.

**Katherine Newman** said it is terrific how you have done this in such a short time but is it possible once the emergency nature is taken care of to not wait seven months down the road to establish the permanent site or perhaps a DAS system. **Brian Grossman** said it relates solely to the permanent site. Some Commissioners and other individuals might also express that the temporary site is a foot in the door but AT&T did not view it that way. We will address issues as they pertain to a permanent site and the process is still ongoing.

**Katherine Newman** asked if the permanent development can be done simultaneously and is DAS part of the thought process. **Brian Grossman** said the development process is somewhat being done in parallel and yes DAS will be addressed.

There was a discussion about visibility of the tower and coverage.

- **Linda Sibley** said whatever you end up with will be visible or there won't be coverage unless it is a DAS system.
- **Brian Grossman** added that most likely a tower solution will be visible from somewhere given the topography of the Island (Chappaquiddick).
- **Linda Sibley** noted that he had shown that in the shadow of the ridge you don't get coverage so if a tower is not visible you won't have coverage.
- **Brian Grossman** said not necessarily. It may not be the best coverage but you would have coverage.
- **Linda Sibley** said absent a DAS system people will have a tradeoff of having service and seeing a tower in some locations.
- **Brian Grossman** said it is not an invisible solution.

**Christina Brown** noted that the visual of the tower was shown as a single monopole without any antennas and asked if he had a visual with the AT&T antenna on it understanding that there will not be other carriers this summer co-locating. **Brian Grossman** showed the tower profile noting the AT&T antennas are internal. If other carriers could co-locate the external antennas would be up to that carrier and would have to be done at a lower level.

#### **2.4 Testimony form Public Officials**

**Mike Donaroma** is an Edgartown Selectmen and is here to tell the MVC that the selectmen support this project. It has been five years and it seems like forever. The Board of Selectmen held meetings that invited all of the residents, the residents of Chappaquiddick including summer residents and the residents of Edgartown and we heard that the majority did not want a tower but yet they wanted cell service. So we ended up putting together a committee and spent a lot of time with the Town Administrator chasing a DAS system. The engineers and all of the parties were very difficult to work with but AT&T stepped up to work with the committee. The MVC can say no twice, to the temporary as well as the permanent solution. There is some hope for DAS someday but it isn't working right now. A lot of work was put into this project. Many meetings were heated. He congratulates all that have worked on this project and for all the work that was done.

**Mike McCord** is a member of the Edgartown Planning Board and commends the Wireless Committee with the work that was done with the Chappy residents. It has been a five year process and they have done a very thorough job. AT&T has stepped up to the plate and has come on board. With a temporary tower there are two chances to look at this; temporary to cover the summer and then condition for six months and review. In the meantime the Fire Department, Police and ambulance will have service for the summer and then a permanent site can be looked at. The tower that is there now is not very visible in his opinion. He thinks the MVC should back the project.

**Dave Rossi**, Edgartown Chief of Police said there is also an issue with radio coverage on Chappy, so if at the least if we have cell coverage we can provide service and supports the project.

**Peter Shemeth**, Edgartown Fire Chief said we have already heard about the lack of radio use on Chappaquiddick and along with radio we also use cell phone for service. If we have cell use we can just tap it and it gives us turn by turn directions on where the alarm is turned in or for medical response. It saves lives, provides safety and protection.

**Woody Filley**, current Chairman of the Cell Committee said to have cell service for some is important for safety reasons and for others it is not important to have cell service as it takes away from the lifestyle and could spoil a nice beach day. We need to see what honors the best of the community as a whole. He recognized the members of the committee that were in the audience. He provided a quick overview of the timeline of the committee's work.

- In 2010 a couple of Town employees heard about the issue on Chappaquiddick and commented on it.
- Over the next six months a study was done and the Town reviewed the feasibility of a tower.
- The Town felt the best solution was DAS.
- An RFP was done and the Town had no responses so it was resubmitted.
- Grain Communications responded and it was accepted but a cell provider could not be gotten to go on with the project.
- In mid-2013 two new companies showed interest and a RFP was issued and again no response.
- In 2015 the RFP was issued again for the tower or a DAS solution and three responses were received.
- The Board of Selectmen decided to create a new committee as the prior committee was getting "tired".

- The new committee had one mission, is DAS an alternative.
- Comcast was coming to Chappy so a fiber option was revisited.
- There was a meeting in August 2015 and Verizon was designing a DAS plan.
- The Chappaquiddick residents were surveyed and it was reiterated that there was poor cell service and the majority of the people were not in favor of putting in a new tower.
- In October 2015 the Committee made a presentation to the Board of Selectmen and the Committee knew there was some interest in the existing tower.
- Grain Communication was contacted along with AT&T and the property owner.
- The question was how did we see this proposal of a temporary tower and in the end the Committee agreed that was the next approach.

The temporary tower will cover the beach and the eastern side of Chappy. If you go to the beach and lots of areas on Chappy you don't see the WISP tower but would with a 180 foot tower and we knew that would not be acceptable. The fact is that the temporary tower will give us the ability to look at it, see all the incidental pieces and it can be installed for summer usage. There is a lot of data that can be collected from the temporary project to determine a permanent solution. He thanked AT&T for stepping up to the plate and hopes the project will be considered.

## **2.5 Public Testimony**

**John Dropick** is a resident of Chappaquiddick. For many years he was an EMT and he can tell countless times there was a delay in an emergency due to not having a cell phone. The temporary tower is a first step and he looks forward to a permanent solution. He commends the effort and approves of the project.

**Hanley Clifford** lives at 6 Sampson Avenue and he can see the current WISP tower and has great service. He likes Bob's efforts and AT&T and hopes it is approved. He has neighbors that have flag poles that are higher and noisier with the halyards banging against the pole. This is a good thing and the pole could be 300 feet high and it would be okay with him.

**Peter Wells** said this is a golden opportunity to see what it looks like and hopes it is approved.

**Serene Forte** just recently bought a house on Chappy last October. She is torn between having coverage for emergencies and the impact on a residential neighborhood as well as the impact when different carriers come. Once the other carriers see the success they may want to also be present on Chappaquiddick. She is worried about something that may be permanent and really ugly and would potentially reduce the property values. She questions why DAS was not chosen or why didn't the project go in that direction.

**Pat Rose** lives near the Fynbo property and passes the tower regularly. It is not objectionable and supports putting the tower there.

**Corrine Costello** worries that the area is so condensed and is not a commercial area. She worries this is now going to be the permanent site. People choose to be away and live away from a tower. There is so much open space on Chappaquiddick to place a tower. The Committee should look for a better site long term as you know the tower will get bigger and bigger.

**Fred Hancock**, Public hearing Officer reminded the public that the MVC is only addressing the temporary tower and not what might be in the future.

**Teri Carilli** said she recently bought a home on Chappaquiddick and applauds to have a cell tower for emergencies but to put it in a residential area is nuts. It seems crazy. The Chappy Fire Station is 300 feet up the road and perhaps that is a better location rather than a residential area. She thinks there are better solutions for a location.

**Molly Pickett** lives at 24 Sampson Avenue. The pole as proposed is in the front yard of this lot as well as the tower that is already there and it is the worst spot. We are in a situation of cramming all of this equipment on a small lot in front of a house. Everyone going up Chappaquiddick Road will see the tower. Aesthetically it is not pleasing and especially for the Chappy aesthetic. We need to review the long term holistic view of how towers are viewed on Chappaquiddick.

## **2.6 Commissioners' Discussion**

**Fred Hancock** noted that the MVC had not done a site visit and suggested that perhaps that should be done before the public record is closed and the public hearing could be continued.

**Ernie Thomas** said he is hearing a lot of concern that the tower is not located at the Fire Station or another public place and asked if that is an option. **Brian Grossman** said the Fire Station was looked at and there wasn't room to locate the tower there. To utilize town owned property we would not be able to meet the process timelines. In order to meet the objective of Memorial Day weekend or as close to that date the proposed location would enable us to do that.

**Ernie Thomas** asked if AT&T would have time to determine where the tower could be located on town owned or public property for the permanent process. **Brian Grossman** said they have time during the permit and development process to do that. **Adam Darack** is a member of the Chappaquiddick Cell Committee and said there was significant push back from the residents of Chappaquiddick to put the tower on town property.

**James Vercruyse** noted there would be a dish on the property to relay information somewhere and asked how that information is relayed. **Brain Grossman** said it uses radio frequency and it is low frequency and it has to run with compliance to FTC regulations.

**Linda Sibley** agreed a site visit is needed and it should be scheduled.

**Fred Hancock** suggested a site visit for Monday April 11, 2016 at 3:00 p.m. at the site and the Commissioners agreed.

**Christina Brown** noted the public is welcome to a site visit but testimony is not taken at a site visit.

**Fred Hancock**, Public Hearing Officer continued the public hearing until April 14, 2016.

*James Vercruyse, Chairman recessed the meeting at 8:55 p.m. and reconvened at 9:00 p.m.*

## **3. DIAS MIXED USE HIGH POINT LANE TISBURY DRI 653-M PUBLIC HEARING**

*Linda Sibley recused herself she is an abutter and James Vercruyse recused himself as he has a conflict of interest.*

*Commissioners Present: J. Breckenridge, C. Brown, R. Doyle, J. Goldstein, F. Hancock, L. Jason, J. Malkin, K. Newman, E. Thomas.*

*For the Applicant: Chris Dias, Chris Alley*

**Fred Hancock**, Public Hearing Officer noted that he was concerned that if there was a continuation of the public hearing to next week it may be delayed as there is only a bare quorum of nine Commissioners tonight. The public hearing could be opened tonight and then continued to a later date in the hope of gaining more Commissioners. The applicant **Chris Dias** said he would like to proceed with the public hearing as scheduled.

**Fred Hancock** opened the Public Hearing at 9:05 p.m. and read the public hearing notice. The applicant is Chris Dias and the project location is High Point Lane, Tisbury, part of Map 22-A Lot 13.11. The

property is owned by the Pachio Family Trust represented by Thomas Pachio. The proposal is to construct a 25,200 gsf three story warehouse building with two studio apartments and a showroom.

### **3.1 Staff Report**

**Paul Foley** presented the following.

- The project location is High Point Lane, Tisbury, part of Map 22-A Lot 13.11. A four lot A.N.R. subdivision was remanded to the town by the MVC in 2012.
- The MVC Staff Report includes the plans and elevations.
- The revised plans are to construct a 25,200 gsf three story warehouse building with two studio apartments and a showroom. The building would be two stories facing on High Point Lane and three stories tall (42'4") on the interior of the site which would be warehouse space with stacking open to the ceiling.
- The site plan and the elevations were reviewed.
- On June 21, 2012 the MVC decided that the proposal by the Pachio Family Trust as represented by Tom Pachio to create an A.N.R. division of one 1.2 acre parcel into four (0.28-0.32 acre) lots on a wooded hillside located off of High Point Lane (Map 22-A Lot 13.11-1.2 acres) did not have enough regional impact to warrant a public hearing and voted not to concur that the proposal was a DRI. In 2015 the MVC approved with conditions a proposal by the same applicant to build a 60' by 60' metal building for wholesale lumber storage, an office and an apartment on half of this property. Later in 2015 the MVC approved a large-vehicle repair garage uphill from this site on land that use to be part of the same lot.
- The gross square footage is 140' x 60' (8,400 sf) times three floors equals 25,200 gsf. If the warehouse is counted as one floor the building is 11,760 sf.
- Key issues include.
  - The warehouse section in the back is open three stories to the ceiling. Should this area be counted in the calculations of space?
  - The proposal includes expanded access to the site from a right-of-way from an abutting property that was reviewed as a DRI which was conditioned to be for only the previously approved lot. Will the increased size of the building and the lot have adverse impacts on the right-of-way to State Road? What are the plans for improving the right-of-way?
  - Should the main access for the building and lumber materials business be from High Point Lane?
  - There is a new curb cut off of High Point Lane that is about 60' from another new curb cut. This curb cut is proposed to have four parking spots.
  - Does the proposal to permanently conserve a portion of an offsite lot in the Tashmoo watershed which would not meet the nitrogen load currently, but would have a greater impact over time on the pond, be acceptable as a method to meet the MVC Nitrogen Policy?
  - The revised building is very large on a small lot. Is this too much potential intensity of use for such a small lot?
- **Adam Turner** noted that the ANR shown in the slideshow was incorrect as the easement goes all the way thru.
- The floor plans and the perspectives were reviewed.
- Existing and proposed views were shown from State Road and it was noted that with the vegetation the proposed building blocks the DeBettencourt garage.
- Section close ups of the proposed building were reviewed and also shown from the DeBettencourt garage.

**Sheri Caseau** presented the following.

- The applicant has offered to use composting toilets in the apartments and the traditional toilet with a standard Title 5 septic in the office.
- The applicant proposes to use composting toilets in the apartments only and place a temporary deed restriction on .97 acres of another parcel (Map 20 Block A Lot 1) to mitigate nitrogen offsite.
  - This parcel is located adjacent to the Seaman’s Burial Ground which is partially in the Tashmoo watershed.
  - The applicant would use composting toilets for ten years to amortize the cost and connect to the sewer. At that time the deed restriction would be removed.
  - The MVC Water Quality would be met with this option.
    - **Joan Malkin** asked for clarification that the nitrogen policy is met and that the option conforms to the allowable nitrogen load. **Sheri Caseau** confirmed that it would and the total load would be under 10.65 kg/yr.
    - **John Breckenridge** noted the applicant would be doing the offset with denitrification and composting toilets.

**Priscilla Leclerc** presented the following.

- ITE goes by floor square footage which is 11,760 sf for this proposal.
- The proposal trip generation is estimated to be 101 total daily trips in and out with 10 in the PM peak hour.
- The estimated daily trips from State Road are 27 with 3 PM trips and from High Point Lane (for the showroom and the apartments) per ITE 74 trips with 7 PM trips.
- The trip generation estimates are based on two apartments and a 1,350 sf showroom from High Point Lane and from State Road a 722 sf office and 7,330 sf storage space for lumber and building materials.
- In terms of overall traffic operations and parking issues, the results of this review indicate there are no significant impacts due to the estimated traffic volume.
- A possible safety issue/concern is with trucks through the area of the recreational mini-golf parking area where children and families are walking and parking. And as in the previously approved DRI for this site, MVC staff recommends that the applicant works with the mini-golf property owner to have the right-of-way delineated.

### **3.2 Commissioners’ Discussion**

**Josh Goldstein** asked if the customers come into the warehouse with a different access than the trucks. **Chris Dias** said they use the same access.

**John Breckenridge** thought at LUPC it was said that the proposal was butting up against the retaining wall. **Paul Foley** said the applicant is going before the Zoning Board of Appeals for a variance to allow that.

**Christina Brown** asked if the perspectives are to scale. **Chris Dias** confirmed that they were.

There was a discussion about the right-of-way.

- **Paul Foley** reviewed the deeded right-of-way and noted that the 12-foot-wide easement is part of the 20-foot-wide easement. The right-of-way from the mini-golf was also shown.
- **John Breckenridge** asked if the width of the right-of-way is 17 feet. **Priscilla Leclerc** stated that it was 20 feet.
- **Joan Malkin** asked if two cars can pass on the right-of-way. **Chris Dias** said they could. **Priscilla Leclerc** added that it would be tight.
- **Paul Foley** said the site lines at the entrances are adequate.

**Katherine Newman** stated that all of the business is coming from State Road so that is what is confusing. **Priscilla Leclerc** noted that the showroom is on the High Point Lane side of the property. **Chris Dias** said he would be lucky if the number of people coming to the showroom was five per day.

**Fred Hancock** noted that because this is a modification the conditions in the original Decision are still in place unless the MVC changes them.

There was a discussion about trip generation and peak hours.

- **Christina Brown** asked what effect the trip generation coming from State Road would have with the mini-golf. **Priscilla Leclerc** estimated 3 peak hour trips from State Road and 7 from High Point Lane. Overall, the project would generate about 10 trips during peak hour. For comparison, the adjacent DeBettencourt project was estimated to generate 17 peak hour trips at High Point Lane.
- **Joan Malkin** asked Chris Dias what are his peak hours. **Chris Dias** said he is a wholesaler so he doesn't really have peak hours. Based on his business on the Cape, goods are brought to the yard early in the morning and you would have a few deliveries going out.
- **Joan Malkin** asked when do customers come to load up trucks to go to the job site? **Fred Hancock** added that when your customers are coming to your facility is it when there is peak traffic on State Road and with the mini-golf? **Chris Dias** repeated that he really does not have peak hours.
- **Joan Malkin** asked Priscilla Leclerc what was used for peak hours to determine the trip generation. **Priscilla Leclerc** said 4 to 5 p.m.

**John Breckenridge** asked the applicant if the sewer came by, would one of his offers be hooking up to the sewer. **Chris Dias** said absolutely.

### **3.3 Applicants' Presentation**

**Chris Dias** said the proposal is different from what was approved. The proposal is for a bigger office, bigger showroom and one more apartment. He is planning more space to move in and store things so it will be easier to run the business. He is buying the lot next door so he will have more parking. Using the access from High Point Lane so there would be a minimal curb cut and minimal trips. The warehouse would be a steel building and the second phase would be the attached, stick-built three-story building facing High Point Lane.

### **3.4 Commissioners' Questions**

There was a discussion about the timing of the project.

- **Fred Hancock** asked about the timing of Phase 2. **Chris Dias** said as fast as he can afford to do it.
- **Fred Hancock** said from the MVC point of view, when we weigh the benefits and detriments, having workforce housing is a benefit if we can see it in a set period of time. **Chris Dias** said he would like to do the shell since it is stick built. One of the apartments would be for himself.
- **Joan Malkin** noted that the proposed façade is a feature to the project so it would be better to have a timeline. **Fred Hancock** said some type of a timeline is better to have. It would be hard for the MVC to leave that open. **Chris Dias** said he could say in three years it would be shelled in but the apartments may not be complete and the showroom may be framed in.

**Joan Malkin** said you are undertaking a large and expansive building but there are tradeoffs to the plan you are proposing. **Chris Dias** said he hired an architect and did two versions to come up with something that looks good from the roadside and works to make his business better, will look better and have more parking.

**John Breckenridge** said you have heard that housing is a plus. One of the apartments is workforce housing and is the other market rate meaning it does not qualify for affordable housing. **Chris Dias** said it would not be a summer rental.

There was a discussion about affordable housing mitigation.

- **John Breckenridge** said on day one there is mitigation mentioned in the staff report and perhaps a monetary mitigation could be paid up front as that would be a plus coming in. **Christine Flynn** said if the applicant is offering two staff housing units, it is her recommendation that the housing is better than a onetime monetary mitigation.
- **John Breckenridge** said the monetary contribution could be held in escrow. He is looking for a creative way.
- **Robert Doyle** said he was thinking the same way to be insured of some component for housing by putting money in escrow.

There was a discussion about the construction.

- **Katherine Newman** asked for clarification on how the building would be built. **Chris Dias** said the warehouse is a steel building and the apartments would be stick built.
- **Fred Hancock** asked if the applicant can clarify from what was heard at LUPC about the facade aesthetic. **Chris Dias** said the stick built portion would be shingled. When looking from the mini-golf you probably can't tell it is shingles. When looking from Doug Hoehn's office [farther down State Road] there is the Plumber Supply Building that is metal, which is about the same distance as what the proposed building would be and you don't really see it. He would rather put the money into the trim of the building for the apartments rather than spending \$20,000 for shingles on the warehouse.
- **Joan Malkin** asked what the warehouse facade will be. **Chris Dias** said it is powder coated metal.
- **Chris Alley** said that for a brown metal building that is 360 feet off the road, you might possibly see a difference between that and wood siding but it would not be highly visible.
- **Fred Hancock** said you are telling the MVC that you are building two distinct buildings one of which is 42 feet in height. **Chris Dias** said the reason is that he is building from High Point Lane and he is not opposed to perhaps changing to 35 feet.

There was a discussion about the timeline and the variance.

- **Leonard Jason** asked what the timeline is. **Chris Dias** said he is preapproved by the bank and is going for a variance and wants to do the project as quickly as possible.
- **Chris Alley** said they have two variance requests at the ZBA. The common property line along High Point Lane with the DeBettencourt parking lot requires a retaining wall. The required side setback would create 15 feet of dead space between the wall and the warehouse of minimal if any use. The variance proposal is to push the entire building back 15 feet so Chris Dias's building acts as the retaining wall. The side of the warehouse will be 20 feet taller than DeBettencourt's retaining wall. We had discussions at the staff meeting and LUPC on how to handle the variance, which can't be granted prior to MVC approval. Bill Veno suggested we could ask the Commission to approve the project with the 15-foot setback as required by zoning and shown on the plans, but also accept the zero lot line setback option should the ZBA grant the variance. This would save them from having to come back for a modification.
- **Joan Malkin** asked what the plan would be on the other side if the building is pushed back 15 feet. **Chris Alley** said an expanded parking lot.
- **Adam Turner** asked for clarification that if the building is moved back, it would be the retaining wall and the back of your building. **Chris Alley** confirmed that is correct.

- **Joan Malkin** asked if that would mean that DeBettencourt would have to come back to the MVC for conditions related to that retaining wall. **John Breckenridge** said the MVC would have to release DeBettencourt from that.

**Leonard Jason** asked what is gained by building one building instead of adding another building to the one the Commission has already approved. **Chris Dias** said a parking area. He would lose parking for the setback if he did two warehouse buildings. Based on parking issues and nitrogen, he could not meet the requirements with a two building design.

### **3.5 Public Testimony**

**Michael Goldsmith** represents Ray and Mary Gosselin the owners of the mini-golf and is representing them on an appeal of a 2015 Form A Division of Lots. There were two approvals by the Tisbury Planning Board on the subdivision of Lots in 2012 and 2015. When looked at it, it is not a Form A. State law requires 20 foot frontage. We brought the appeal forward and it is pending. He does not believe it is a proper approval of the Planning Board and it should have been a Form C. It would have required a wider road coming off High Point Lane. There would have been a public hearing process rather than a public meeting process. They recorded the 2012 approval which allowed them to convey to Mr. Dias and Mr. DeBettencourt. It never got the local scrutiny and review it should have. He is asking the MVC to give it review for the access that it should have had on the local level. Condition 3.3, truck traffic, is limited to 10:00 a.m. only on weekdays, but the mini-golf business is on weekends so it should be in writing that the common way is not used on the weekends.

**Mary Gosselin said** with all due respect, she is a business owner and people should be allowed to do business in the Town of Tisbury. The conditions that the MVC and we agreed to, we can work with. It was a smaller building and the applicant said that 75% of his business is special order. But now the scope has changed and it is hard to believe it won't have an impact on traffic.

***Christina Brown moved and it was duly seconded to extend the meeting time 15 minutes. Voice vote. In favor: 9. Opposed : 0. Abstentions: 0. The motion passed.***

**Mary Gosselin** continued. Regarding parking on the site, is there a definitive plan on how the trucks will move within the property. The number of parking spaces in the Staff Report speaks to eight spots for zoning for the office and the apartments but what about for the showroom. How does this building compare to the applicant's building off Island for the business that is already in existence? She understands small trip generation extends to the off Island business but is this building larger? We would like to have the trip generation that was in the original proposal and not change those conditions.

- **Fred Hancock** noted that the MVC would ask for the business hours and the previous conditions remain unless the Commission changes them.

**Mary Gosselin** continued. It looks as if the height is below the ridge of High Point Lane but visually is doesn't appear to be correct. Visually is there another building that could be used as a comparison? Regarding the setback, if someone goes for a variance from 15 feet to 0 feet is that even possible? There is a limit to how much the setback can be reduced within the B-2 District and how does that work? **Fred Hancock** noted that if the Town can't grant it, they won't. **Adam Turner** said if the applicant gets a variance, he would have to come back to the MVC.

**Mary Gosselin** thanked the MVC and everyone who came to the site visit – even in the rain. We need your help to protect the character of the Island. We feel our business will be impacted in many ways. Island Cove is unique. It is the only mini-golf on the Island and has been there for 25 years and we want to keep it a mini-golf business. Yes we are up for sale but we want to sell it as a mini-golf and we are having a hard time with the way this proposed project is set up.

**Ray Gosselin**, also the mini-golf owner, said he goes back to the safety issue. He has seen the trucks on the road and it is difficult for another vehicle to go down when a truck unloads as it is only 17 feet wide.

Look at my railroad ties they are crushed now. There should be a traffic study. There is now a dry cleaner and a pizza place in the location across State Road from us and traffic exiting across from our entrance is a lot worse. He is worried about the kids, especially in the climbing wall area. Those kids don't watch and even their parents don't always watch. He will lose six parking spaces. How can he sell his place, no one will want it that way especially with that road. It will hurt us financially and this is our retirement. The proposal will ruin my business and retirement and we need the MVC's help on this.

**Judy Soloski** owns the building on the other side of the right-of-way and easement. She has two tenants and two professional offices. Will the green buffer that occupied some of the right-of-way be cut away for traffic? There will be a lot of trucks going down a dirt road. 101 trips a day is a lot of trips. If you are going to have that much warehouse capacity it is because you want to sell it all and that will create traffic. **Fred Hancock** noted as clarification that the green space is not on her property but is on the mini-golf property. **Judy Soloski** explained that the hedge, the roots at least, are on her property and when she bought the property that was a factor. That is how we figured the width of the property. We wanted the buffer from the traffic and the road. My tenants are also concerned about the potential traffic and noise.

**Christina Brown** said that Michael Goldsmith had made reference to the road coming in from High Point Lane rather than from State Road. Are you suggesting that is a viable option with the typography of the property and the legal situation? **Michael Goldsmith** said he believes a subdivision road would have to be built to service the four lots when two of those lots do not have frontage. He does not think the easement over their property handles that. **Christina Brown** noted that it is not an easement it is a right-of-way. **Michael Goldsmith** said it is an easement over their property.

**Joan Malkin moved and it was duly seconded to extend the meeting time 5 minutes. Voice vote. In favor: 9. Opposed: 0. Abstentions: 0. The motion passed.**

### **3.6 Applicants' Closing Statement**

**Chris Alley** addressed the questions that were asked.

- The 20 foot frontage requirement for division of land is a State requirement when the Town does not have a frontage regulation, but Tisbury has a requirement of zero feet in the B-2 District.
- The parking spaces were reviewed by Ken Barwick and he assigned the requirements for a display room as retail space, apartments and office. 18 parking spaces are consistent with Kenny's calculations.
- The elevation is 153 feet at the top ridge where it crests and at the parking area about 150 to 152 feet so it is almost the same.
- There are two variances in front of the ZBA and this may be the third one that Schofield has ever applied for.
- It was a previous requirement that there would not be any tractor trailers.
- There is no cutting of the buffer on the right-of-way it is not Chris Dias's property.
- The question of the value of the mini-golf is tricky. There is certainly an encumbrance with the right-of-way but it was there when the property was bought. To ask to unencumber after it was purchased is unfair to the holder of the easement.

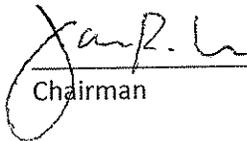
**Chris Dias** said his business off-Island is three times the size that the Island business will be. The off-Island facility is 70' x 250' and the parking is two times what it will be on the Island. This should be an indication of the relation to massing of the wholesale space to the parking lot.

**Bill Venio** raised an issue; since the project is two separate buildings, if you get the variance for the wholesale portion is there any reason why you have to also shift the stick built building. **Chris Dias** said no but it would look better because of the roof lines.

Adam Turner suggested leaving both the public hearing and the written record open.  
 Fred Hancock, Public Hearing Officer continued the Public Hearing until April 14, 2016.  
 The meeting was adjourned at 10:25 p.m.

DOCUMENTS REFERRED TO DURING THE MEETING

- Martha’s Vineyard Commission C.R. 4-2016 Bayes Norton Solar Farm MVC Staff Report – 2016-04-07
- Applicant’s Narrative – W.H. Bennett, Inc. Electrical & Energy Contracting, Dated April 7, 2016, Solar Invictus 4, LLC Project Summary
- Correspondence to Members of the Commission from Tammy Smith, Dated April 3, 2016
- Illustration of SolarEdge Three Phase Inverters for the 227/480V Grid for North America
- Solar Array Plan , Oak Bluffs MA, Solar Invictus 4, LLC / Bayes Norton Farm, Dated February 5, 2016 (April 7, 2016)
- Martha’s Vineyard Commission DRI # 662 Chappy Wireless Antenna MVC Staff Report – 2016-04-07
- CDMI Lite-Site 15 Antenna Specifications
- Site Number: MA5931 Site Name: Chappy Wisp; AT&T Details, Elevation, Site Plan and Plot Plan
- Correspondence – DRI 662 Chappy Wireless Antenna as of 2:45 PM 4/7/2016
- Email from Rob Strayton to Martha’s Vineyard Commission, Dated April 7, 2016, Subject: Fwd: Town of Edgartown and AT&T to build Cell Tower on Chappaquiddick, in spite of overwhelming opposition!
- Martha’s Vineyard Commission DRI # 653-M Dias Phase 2 Mixed Use High Point Lane MVC Staff Report – 2016-04-07
- Plan of Easement for DRI 653-M
- SBS Lumber Yard/Office High Point Lane, Tisbury MA Floor Plans, Dated 3/15/2016
- SBS Lumber Yard/Office High Point Lane, Tisbury MA Exterior Elevations, Dated 3/15/2016
- Site Plan Tisbury MA, Specialty Builder’s Supply Inc., Dated January 26, 2016

  
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 Chairman

5.18.16  
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 Date

  
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 Clerk-Treasurer

5/18/16  
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