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## **Minutes of the Commission Meeting Held on March 14, 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)	- James Joyce (A-Edgartown)
P John Breckenridge (E-Oak Bluffs)	- W. Karl McLaurin (A-Governor)
P Christina Brown (E-Edgartown)	P Jim Miller (A-Aquinnah)
- Tim Carroll (A-Chilmark)	- Ned Orleans (A-Tisbury)
- Madeline Fisher (E-Edgartown)	P Camille Rose (E-Aquinnah)
P Josh Goldstein (E-Tisbury)	P Doug Sederholm (E-Chilmark)
P Erik Hammarlund (E-West Tisbury)	- Linda Sibley (E-West Tisbury)
P Fred Hancock (A-Oak Bluffs)	P Brian Smith (A-West Tisbury)
P Leonard Jason (A-Edgartown)	

Staff: Mark London (Executive Director), Bill Veno (Senior Planner), Paul Foley (DRI Planner)

**Chairman Fred Hancock** called the meeting to order at 7:00 p.m.

### **1. MARTHA'S VINEYARD HOUSING NEEDS ASSESSMENT STUDY**

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Commissioners Present: T. Barnes, J. Breckenridge, C. Brown, J. Goldstein, E. Hammarlund, F. Hancock, L. Jason, J. Miller, C. Rose, D. Sederholm, B. Smith.

**Fred Hancock** noted that the Martha's Vineyard Housing Needs Assessment Study (MVHNA) will be presented at the All Island Selectmen's Meeting on May 9, 2013.

**Christina Brown**, the MVC representative to the study group, further noted that the final report will be presented on May 9, 2013. Beforehand, the draft will be available for the Commissioners to review. The interim report was derived largely from the last census results indicating the patterns of income and the housing needs of the Island.

**Mark London** said that possibility will be explored of a joint meeting of the All-Island Selectmen and the MVC on May 9, 2013. The committee is hoping to use the All Island Selectmen's Meeting as a forum to emphasize the vital role of regional cooperation in addressing the affordable housing needs of the Island community.

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

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*Commissioners Present: T. Barnes, J. Breckenridge, C. Brown, J. Goldstein, E. Hammarlund, F. Hancock, L. Jason, J. Miller, C. Rose, D. Sederholm, B. Smith.*

*For the Applicant: Les Smith, Vern O’Heim, Alan Rugman, Mary O’Keeffi*

**Brian Smith**, Public Hearing Officer opened the continued public hearing from March 7, 2013. It was noted that the MVC has received additional correspondence and the public hearing is reopened for further testimony.

### **2.1 Staff Report**

**Paul Foley** presented the following.

- Correspondence was received from the office of attorney George B. Brush and the applicants have responded to that letter through their attorneys’ Edmond G. Coogan Law Office, Inc. (Geoghan Coogan Esq.). Martina Thornton, Dukes County Manager also sent a letter to Fred Hancock, MVC Chairman regarding the project.
- The applicants have reviewed the idea of sharing the excess fibers but they have not added that to the offers.

### **2.2 Testimony from Public Officials**

**Richard Knabel**, from the West Tisbury Board of Selectmen thanked the Commission for the ability to be able to make further comments.

- He wrote a letter when he realized that there would be joint fiber and cable with Comcast and NSTAR.
- He was under the impression that there was no available fiber on this cable, but evidently there is additional fiber capacity. He hopes that the next time NSTAR requests to lay a new power cable, the MVC would look at the public benefit for some of its use.
- When the Distributed Antenna System (DAS) was being discussed Up-Island, American Tower, the company that bid for the system, offered a number of fibers for emergency, municipal, and school use as well as a link to the Communication Center at the airport. This never happened because West Tisbury decided not to participate in the DAS system.
- The Open Cape company received a \$40,000,000 grant to build a fiber-optic system on the Cape and Islands, but opted to provide the access to Martha's Vineyard by microwave instead of by cable.
- The West Tisbury Board of Selectmen’s point is that this new cable or a future cable should have designated fiber for public purposes. Broadband is something that the Island needs.

There was discussion about municipal use:

- **Mark London** spoke with the CEO of Open Cape who said they are too far advanced in their project to switch from microwave to fiber-optic cable in providing service to the Island.
- **Richard Knabel** asked what the MVC powers are to obtain a public/municipal benefit from the Comcast/NSTAR project.
- **Doug Sederholm** asked how many fibers are available.

- **Geoghan Coogan**, attorney for Comcast and NSTAR, said the cables and fibers have been designed for Comcast and NSTAR, including excess future capacity, and are not being built to give fibers away, which is not to say that they would not consider that. What the West Tisbury Board of Selectmen and Open Cape proposed is not possible at this time. He has responded in writing to the letter from George Brush and the abutters.
- **Brian Smith** noted that the applicant has said that public use of the fiber is a government relations issue asked that further information be provided.
- **Alan Rugman** said that there is already a framework within which Comcast and towns negotiate for municipal benefits and this issue has not been part of those negotiations.
- **Mary O’Keeffi**, the Government Relations representative for Comcast, said that her department is in ongoing discussions with the towns, and the issue of municipal use of fibers has never been brought up. The fibers within the bundle are Comcast’s property. Comcast and NSTAR jointly own the casing and the armoring. Within the fibers, there is one active bundle and one backup bundle. Comcast has not left Martha’s Vineyard void of broadband services as they are currently providing them to the Island. There really is no excess capacity as it will be needed for future use and necessary to revert to the backup if one bundle goes down.
- **James Miller** asked for clarification on municipal service from the fiber.
- **Erik Hammarlund** said generally municipal fiber relates to dark fiber (fiber not currently being utilized). Municipal fibers can pick up their own connections between buildings and can transfer data between locations including voice. When municipalities have their own fiber it is usually less expensive and retains some control over the use of the communication.
- **Mary O’Keeffi** noted that Comcast provides business class services with regard to the use of the fibers. For example, Comcast provides a link between the Martha’s Vineyard Hospital and Mass General. In addition, a number of the Island’s town halls are connected to Comcast’s internet services at a cost; that is the business they are in. It should also be noted that the contracts that being negotiated with the towns are for cable only and not internet service.
- **James Miller** said it essentially seems that some towns are asking Comcast to provide for free what it now provides as a paid service.
- **Mary O’Keeffi** noted that Comcast already provides free cable service to all schools and one library in each town. There is an expense for putting up the fiber and maintaining it. Comcast is not a utility, it is an entertainment company.
- **Geoghan Coogan** said that Mary O’Keeffi makes a good point, this is the business Comcast is in.
- **Leonard Jason** asked how many cables and fibers are being used.
- **Vern O’Heim** said that the existing cable has been damaged along with some of the fiber.
- **Mary O’Keeffi** said the whole idea of the project is to accommodate current use and to allow for expanded service. They need all the cables for future growth.

## **2.3 Public Testimony**

**Caroline Flanders** noted that she has worked with George Brush and is here representing the Lucas family. The Lucas family became aware of the project a few weeks ago when they saw the stakes on their property so they are asking for additional time to review the project. The Lucas family is in favor of the project but urges the MVC to impose conditions in line with the public and add conditions to ensure that the project and the offers are executed as required. The Lucas family asks for an extended period of time to review and that the MVC keep the public hearing open.

There was a discussion about whether the public hearing should be extended and the notice to the abutters.

- **Philippe Artru** said he is an archaeologist and has not been on the Island and also was not aware of the project.
- **Geoghan Coogan** said there has been enough activity over the time period that everyone should be aware of what is going on.
- **Les Smith** said that certified letters were sent to the abutters regarding the project.
- **Caroline Flanders** said that she did track the certified letter for the Lucas family and it was not delivered in California. This is a significant project in a sensitive zone and the Lucas family wants more time to review the issues and submit written comment to protect the environment and themselves.
- **Mark London** noted that the MVC has no legal obligation to send notices to abutters and these are sent as a matter of courtesy.
- **Alan Rugman** noted that Comcast and NSTAR have been discussing this project with abutters for a long time, so they should be aware of this project. The West Chop Trust has also been involved with the project and NSTAR have been working with and updating property owners.

**Philippe Artru** stated that we all need electricity but the main thing is how it will look when they have completed the project. Trees have been by Comcast on Franklin Street and Mink Meadows.

## **2.4 Commissioners' Questions**

There was a discussion about capacity.

- **Christina Brown** asked what NSTAR's capacity is now and for the future.
- **Mary O'Keeffi** said that right now Comcast is leasing cables from NSTAR and all of the fibers are owned by Comcast. There are three electric cables and two fibers within the bundle.
- **Vern O'Heim** said that there are three cables on the Island; one just failed and that cable has failed six times previously. Since it will take about six months to repair, there will be additional generators on the Island to meet the summer peak.

**Josh Goldstein** noted that Comcast has a sanctioned monopoly on our internet services.

## **2.5 Applicants' Closing Statement**

**Les Smith** noted the following clarifications of Offer 3 Construction Season and Hours:

- Revise the language on 3.1 to "shall extend no more than four contiguous months".
- Add to 3.2 "and be completed by May 15, 2014".

- Revise the language on 3.3 to “for a period not to exceed two contiguous months”.

There was a discussion of the period of construction and nesting plovers.

- **Caroline Flanders** asked that if the construction is allowed to continue to May 15, 2014, the nesting period for plovers be kept in mind and all work will cease with regard to that period.
- **Erik Hammarlund** noted that it is covered in section 7 Construction Supervision under section 7.4.
- **Les Smith** noted that the Natural Heritage and Endangered Species Program has signed off on the project.

**Tripp Barnes** asked how long it takes to lay cable. **Vern O’Heim** said it will take about two weeks in the water, and a few more weeks to deal with the part on the land. The project will be done within the timeframe noted in the Offers.

**Brian Smith**, Public Hearing Officer closed the Public Hearing at 7:44 p.m.

*John Breckenridge recused himself from the meeting stating he is the Chairman of the Oak Bluffs Harbor Committee which has a financial interest in the Oak Bluffs Harbor Fuel Facility DRI-621-M proposed project.*

### **3. OAK BLUFFS HARBOR FUEL FACILITY (DRI-621-M) CONTINUED PUBLIC HEARING**

*Commissioners Present: T. Barnes, C. Brown, J. Goldstein, E. Hammarlund, F. Hancock, L. Jason, J. Miller, C. Rose, D. Sederholm, B. Smith.*

*For the Applicant: Todd Alexander (Harbor Master), Ron Bourne (Consultant for the Town of Oak Bluffs), Robert Whritenour (Town Administrator)*

**Brian Smith**, Public Hearing Officer, opened the Public Hearing at 7:45 p.m. and read the public hearing notice. The location is the Oak Bluffs Harbor Master Shack, Circuit Avenue Extension, Map 8 Lot 293. The proposal is to install one 10,000 gallon gas tank in front of the Harbor Master’s shack in order to provide a fueling station for boats. The tank would be located beneath the parking lot and fueling would take place on the floating dock next to the Harbor Master’s shack.

#### **3.1 Staff Report**

**Paul Foley** presented the following:

- The packet of information contains the MVC Staff Report, LUPC meeting notes from February 11, 2013, the applicant’s narrative, correspondence, a letter from the Oak Bluffs Fire Department to Mark Wallace, DRI-621 conditions, plans, and safety requirements.
- The Applicant is the Town of Oak Bluffs, Rob Whritenour (Town Administrator) and Todd Alexander (Harbor Master).
- The location is near the Oak Bluffs Harbor Master Shack.
- The proposal is to install one 10,000 gallon gas tank in front of the Harbor Master’s shack in order to provide a fueling station for boats. The tank would be located beneath

the parking lot and fueling would take place on the floating dock next to the Harbor Master shack.

- The project is located within the B-1 (or perhaps the B-2 Business District). Municipal facilities are allowed in the B-1 District. Boat yards and boat services require a Special Permit from the Planning Board.
- The project is in the Oak Bluffs Harbor DCPC.
- The Chapter 91 License for the floating dock will need a minor modification from the Department of Environmental Protection (DEP). The project will also likely require approval of a Spill Prevention Plan and a Vapor Recovery Plan from the DEP.
- Permits that are required include a Wetland Permit from the Conservation Commission and a Special Permit from the Planning Board. The Fire Chief must sign off on the project. The Spill Prevention Plan and the Vapor Recovery Plan is to be approved by the Mass. Department of Fire Safety.
- The surrounding land uses include North Bluff residences, Oak Bluffs Harbor, parking, harbor-side bars and restaurants, charter boats and several ferry boats (Island Queen, Patriot, Hy-line, and the Rhode Island Fast Ferry).
- Fuel for boats was available from Church's Pier on a very limited basis during the last few years. The Hy-line stopped pumping fuel in 2007 when the Fire Marshall reinstated a law that requires at least 25 feet of buffer between pumps and boat slips.
- The Town has informed the sole current provider of fuel on the harbor that no fueling will be allowed unless and until the fuel supply lines under the dock that supply fuel to the dispensers are replaced with new lines that are designed to handle additives such as ethanol, and a leak detection system is connected to the existing monitoring system.
- The MVC approved with conditions a temporary 3,000 gallon tank in this location in 2009 that was never acted on. The Town of Oak Bluffs is now proposing to install one 10,000 gallon underground gas tank in front of the Harbor Master's shack in order to provide a fueling station for recreational and commercial boats. The tank would be split 60/40 between diesel and gas. The facility would operate May to Columbus Day.
- The proposed fuel station would be managed and operated by the Oak Bluffs Harbor Master Staff.
- In 2009 approximately 60,000 gallons of gasoline a year (not including diesel) was sold in the harbor. The Town estimates that they could lose about \$100,000 from slip and mooring revenues if the harbor did not provide fuel.
- The DRI Referral was by the Oak Bluffs Conservation Commission. The project was referred under DRI Checklist Item 1.2 (Previous DRIs) but it also triggers a mandatory review under 3.2b (Storage of Fuel).
- The MVC has an unwritten policy not to apply its Affordable Housing Policy to municipalities.
- Since the project is by the Town, the applicant may request a DRI filing fee waiver.
- There has not been a site visit.
- The Public Hearing was continued from March 7, 2013 since the applicant and the engineer were not able to attend.
- Key Issues include the following;
  - The possibility of fuel spills, vapors, smells and other dangers associated with gasoline.

- The tank would be located in a public place and parking lot near homes and visiting boats.
- The Island Queen often backs up to this location.
- The cruise ship tenders use the floating dock to ferry passengers back and forth to the cruise ships. However, the applicant has said that fueling will not take place when the tenders are in.
- The floating dock is close to the Harbor Channel, currents swells, and main shipping lane. Will boats lining up for fuel interfere with the general flow of boats and ferries in and out of the harbor?
- What are the alternatives? Have the applicants explored all of the alternatives?
- How much will it cost? Who will pay for it?
- How will this impact the residential neighborhood?
- How often will the tank need to be refueled by tanker trucks?
- The tank would be located partly in a three foot planted buffer, now planted with Rosa Rugosa.
- This is not a National Heritage Endangered Species Program habitat.
- There is no landscaping planned for the project.
- Boats would pull up to the floating dock just north of the Harbor Master shack.
- There would be no parking spots lost as cars can park above the tank.
- With a 10,000 gallon tank and an average of 60,000 gallons sold per summer the tank would need to be filled or topped up about 10-20 times a summer (1-2 times per week).
- The Town has stated that the harbor generates \$900,000-\$1,000,000 a year for the town coffers. The Town estimates that they could lose \$100,000 from slip and mooring revenues if the harbor did not provide fuel. **Brian Smith** asked how the refueling calculation was determined and asked whether a real number can be obtained based on a review of diesel versus gas usage.
- The proposed fuel facility will operate seasonally from May to October and the specific dates have not been provided. The anticipated hours of operation during the peak months of July and August will be from 7:00 a.m. to 7:00 p.m. or 8:00 a.m. to 8:00 p.m. seven days a week.
- There are currently 16 employees at the Oak Bluffs Harbor including two full time employees, the Oak Bluffs Harbor Master and the Administrative Assistant. There are 14 seasonal employees.
- The provided capital costs for the project are estimated to be \$426,000 with total development costs spread out over fifteen years estimated at \$535,883.
- The projected annual revenue is between \$37,000 and \$60,000 based on total fuel sold. The fuel facility will have paid for itself over fifteen years based on estimated annual revenues of \$37,000 for a total of \$550,000.
- The project development costs and future maintenance costs to operate the facility will be paid for by the Town from the revenue generated by the sale of fuel.
- With regards to scenic values, the fuel facility would be located in a highly visible and visited tourist hub.
- Correspondence has been received from the neighbors. The proposal is within thirty yards of several residences.

- Several neighbors have expressed opposition to the fuel facility in a residential neighborhood with concerns of trucks refueling the tank in front of their houses, fumes wafting throughout the neighborhood and devaluation of their property. One neighbor cited the danger of such a target in a residential neighborhood in the post 9/11 world. Others questioned the location of the proposed project so close to the harbor channel and it's boat traffic as well as exposure to the northeast winds and rough chop experienced during storms in that part of the harbor.
- Kenneth Gallison (U.S.C.G.) who is an abutter has written in opposition and requested the public hearing be continued so that they can retain counsel.
- Barbara Gallison and Anne DeBettencourt have also written in opposition.
- The site plan was reviewed.

### **3.2 Applicants' Presentation**

**Todd Alexander** presented the following:

- He will answer questions regarding boat traffic, the site location and the operation of the facility. Ron Bourne the project's engineer has done a lot of work in the area and is here tonight to answer any questions regarding technical and safety concerns.
- The fuel dispensers are approximately 3.5 feet high.
- Going back through the years, there used to be two fuel docks on the harbor: Church's Pier and McCarthy who went out of business five to six years ago.
- The Town asked that he look at the possibility of a fueling station because there were past issues with spills and the reliability of getting fuel.
- Oak Bluffs is the most popular harbor on the Island.
- It is not the best situation to have a marina this busy without fuel.
- The location was selected due to where the operations are with boat traffic and space for the tank. Other areas are denser. There is more maneuverability here.

### **3.3 Commissioners' Questions**

**Brian Smith** asked if the above ground tank had been installed. **Todd Alexander** said that the temporary 3,000 gallon tank that was approved in 2009 as an emergency measure was never built.

**Erik Hammarlund** asked for information regarding the spills since 2009. **Todd Alexander** said there was a spill this year on July 4<sup>th</sup>, which is why the present facility is shut down. The previous spill to that one was with diesel.

**Tripp Barnes** asked how it will affect the Town financially if there is a spill. **Todd Alexander** said the insurance company will insure the Town and they will be prepared to respond to any incident.

**Fred Hancock** asked for clarification of the dates and hours of operations. **Todd Alexander** said the harbor officially opens on May 15<sup>th</sup>. The facility would operate from about May 1<sup>st</sup> to November 1<sup>st</sup> and from 7:00 a.m. – 7:00 p.m.

**Fred Hancock** asked how often refueling is anticipated. **Todd Alexander** said once per week and during peak periods twice per week. The refueling would be done in the morning around 8:00 a.m.

**Erik Hammarlund** asked if the facility will be full service or self-service. **Todd Alexander** said it will be full service although the staff is allowed to hand the hose to someone else under their supervision.

**Doug Sederholm** asked if there will be a leak detection system and how large were the spills. **Todd Alexander** confirmed that there will be a leak detection system. Three years ago the spill was diesel and he did not know the number of gallons. It was due to overfilling an already full tank. The spill this year was due to a fitting giving way due to ethanol. Todd Alexander noted that it has been said that the spill is anywhere from 20 gallons to 200 gallons; he did not have the exact numbers.

**Doug Sederholm** asked how the loss in revenue was calculated. **Todd Alexander** said that the numbers are an educated guesstimate based on how many people commented on wanting fuel on an hourly basis combined with his having been at the harbor for twenty years, knowing the business and the daily calls asking if fuel was available.

**Tripp Barnes** questioned the Town running such an operation and asked if there is a plan to leave it as a private operation. **Todd Alexander** said there is not a plan at this time to have the facility as a private operation.

**Christina Brown** asked what the public will see on the surface. **Todd Alexander** said it will be the two dispensers and the vents. The size of the dispensers was shown on the PowerPoint presentation and it was noted that one of the vents may be made into a flag pole.

**Erik Hammarlund** asked if additional lighting and security is needed. **Todd Alexander** said that there will be spotlights with motion detectors on each side of the office and on the floating dock.

**Josh Goldstein** asked how the lighting will be protected from vandalism. **Todd Alexander** said that there will be locked covers.

There was a discussion about the budget.

- **Doug Sederholm** asked if an operating budget has been prepared.
- **Todd Alexander** said that he and Robert Whritenour (Town Administrator) are working on it.
- **Fred Hancock** asked if the MVC should be inquiring about the operating budget.
- **Brian Smith** said it is a public project and the MVC should understand what the numbers are.
- **Todd Alexander** said that the revenue from 30,000 gallons would cover the cost of the borrowed monies and the staffing. Because this is a town facility the costs are much lower.
- **Doug Sederholm** asked if additional insurance costs have been estimated.
- **Todd Alexander** said he has that information for the budget.

**Brian Smith** asked Todd Alexander to address the correspondence that has been received by the MVC regarding this project.

**Todd Alexander** addressed the abutter's issues.

- He has had conversations with the people who have written letters and noted that he was surprised that the letters were sent since he had previously met and discussed the project with them.

- There will be a fuel delivery once or twice a week in an area that already has businesses, a car rental operation, and ferry traffic next to the abutters.
- Concern regarding explosions is understandable and this will be a state of the art facility.
- He understands that the neighbors don't want the facility in their front yard.

**Jim Miller** asked if Todd Alexander could address the concerns of Captain Kenneth Gallison.

**Todd Alexander** reviewed the following.

- The present fuel dock at Church's Pier is a lot more congested than the proposed project site.
- There is a lot more room for maneuvering in the proposed location.
- The proposed location is better than any other spot in the harbor and is one of the reasons it was selected.

**Camille Rose** asked what other privately run fueling alternatives are on the Island other than Oak Bluffs. **Todd Alexander** said that the operation on Church's Pier was shut down by the Town Fire Chief. There are fuel docks in Edgartown and Vineyard Haven that are privately run.

**Ron Bourne** noted that the Town of Welfleet took over the fueling from a private facility. The town did a major upgrade and is successfully generating revenue to pay off the investment and generate town revenue.

**Erik Hammarlund** asked if there are any concerns during hurricanes. **Todd Alexander** said that storm Sandy was the highest water level that he had ever seen in the harbor and it was six to eight inches below the floating dock. **Ron Bourne** said that the design is based on the assumption that the area will be flooded. FEMA stated that a hurricane will flood the parking lot and the tank is designed with anchoring systems so there is no buoyancy. It could deal with six to eight feet of flooding, more than enough to deal with sea level rise. The tank is designed for compressive loads and can be buried 7.5 feet deep. The tank can handle tractor trailer trucks riding over it. Compartments are sealed and that keeps seepage from getting in. Hydraulic pressure keeps the tank tight.

**Doug Sederholm** asked about prevention measures during an "event". **Ron Bourne** said if the pump is on and an "event" happens there is an automatic disconnect that does not allow a spill, similar to a gas station. The pump will be self-sealing and will be off if an "event" occurs. The system is designed to operate with a float or at dock level and has flexible hoses. These practices are part of the design so you are not setting yourself up for a risk during a storm event.

**Doug Sederholm** asked if there are fire suppression systems similar to a gas station. **Ron Bourne** said that those systems are being discontinued because they don't work. However, there will be emergency shutoffs and a fire extinguisher.

**Tripp Barnes** suggested that the facility be a year round operation and asked if the project is designed to be large enough. **Todd Alexander** said that there will fuel available in the winter via on-call. **Erik Hammarlund** noted that that needs to be included in the offers.

### **3.4 Testimony from Public Officials**

**Mike Santoro**, Oak Bluffs Selectman, said that the Oak Bluffs Board of Selectmen voted unanimously to approve the project and put it on the Town Warrant. He is also on the Harbor Committee and the committee is doing studies to change the entrance to the harbor in order to

protect it during storms and to have less wave action. This project is a benefit to the town by providing a service as well as making revenue. The town needs it and is taking the initiative and asks that the MVC supports it. With regards to current fueling practices, on any given day there may already be two or three trucks a day fueling boats for diesel.

**Todd Alexander** noted that Island Fuel has permission from the Town Fire Chief to fuel diesel only. **Brian Smith** asked if that permission will go away. **Mike Santoro** confirmed that it would.

### **3.5 Public Testimony**

**Martin Tomassian** stated that he is representing the Gallisons. When the Gallisons purchased the property there were businesses on both sides, however, they object to this new business. Martin Tomassian is asking to be considered as a party.

There was a discussion about being qualified as a party.

- **Mark London** noted that previously counsel had advised that a member of the public could ask the Commission to be designated as a party. However, the MVC's current counsel questions that approach.
- **Martin Tomassian** noted that previously, on another project, he had been qualified as a party.
- **Brian Smith** said this is a legal issue and the Commission will need to address it.
- **Mark London** suggested that he get an opinion from counsel about this to allow the Commission to decide at a future date.

**Martin Tomassian** continued with his testimony.

- In 2009, two fuel tanks with a 3,000 gallon capacity were approved as a temporary measure and that could go into effect if there are no reasonable alternatives and that would put the town in competition with the private sector.
- The MVC is charged with protecting the harbor and the environment.
- With the current economy, will day trippers and small boats fill up in Oak Bluffs, or in Falmouth where the fuel is less expensive? Often boats are used as floating summer homes and will they fill up in Oak Bluffs, or Falmouth where it is more economical?
- Edgartown pumps 58,000 gallons a year with two pumps. Selling 38,000 gallons per season will probably be closer to fact than the estimate of 60,000 gallons.
- Oak Bluffs is not a working harbor. Menemsha is probably the only working harbor due to the fishing boats. Oak Bluffs Harbor is called a marina, but marinas have carpenter sheds and storage sheds. This harbor is not a marina.
- It was asked if there is a business plan, so how were the numbers developed; it sounds like fricassee financing. This project will be in competition with the private sector. It is hoped that the MVC will ask the applicant to address the private sector.
- Regarding alternatives, who discussed them? There are other locations that might be more acceptable. Was there any discussion between the Town and the present license holder, (who has a license for life)?
- Who is paying for this, it is the taxpayer. This project is creating another level of bureaucracy with pensions, benefits and salaries. The cost of boating has gone through

the roof, especially due to the cost of gas. Harbor rentals and moorings are way down due to the costs of operating the vessel.

- What about the bulkhead, it was repaired with state funds. Is a Chapter 91 license needed for this project?
- How does this project affect the Historic District?
- There are homeland security issues. Installation of the facility will make the Gallison's home a more dangerous place to live.
- With a northeast wind it can be dangerous to bring a boat into the harbor. Previously, the Town had said that there would be no pumping during a northeast wind greater than 25 miles per hour.
- A fifty foot buffer is required around the tank and the Gallison's house is right within that buffer.
- Was an advertisement placed in the newspaper for an RFP (Request for Proposal) from the public? The applicant is asking to put a facility in a congested area, in front of someone's house based on a best guess of the revenue.
- His client asked that the MVC not approve the project and requested to keep the public hearing open for two weeks so written correspondence can be submitted.

**Bill Anderson** is an abutter.

- He has lived on the Oak Bluffs harbor for 55 years, and worked in the Martha's Vineyard Shipyard for 20 years.
- He is concerned about the Town being in the gas business.
- There have been two spills in the last five years and they were intense.
- In 1978 almost two feet of water rose in the harbor.
- He has asked Todd Alexander how the harbor is doing and was told that it was the best year ever, but there was dark space.
- He buys gas before he comes back to the harbor because it is a lower price off Island. The town will have to hire two or three extra kids for the facility as that is who will be working for there.
- There is a concern about the flooding. He understands that Ron Bourne is an expert, but it is still a concern. Every gas station on the Island has had a gas spill, but who will pay the fine, it will be the taxpayer. If the harbor has had the best year ever, how can they add more boats?

**Mark Wallace** said these are his neighbors and he lives in the neighborhood. He is also the other gas operator.

- This is the first that he heard that the dispensers will be visible.
- There is no question that this project will be a benefit for the town and a convenience.
- He took over the fuel operation after the spill in 2008.
- The harbor had needed two operations when 150,000 gallons of gas were sold each year. Now it is only 38,000.
- Spills happen but they are through delivery and operation error and usually happen on Friday night and Sunday.
- It was determined that the best place to run the fuel lines was to McCarthy's and Church's Pier and it was a mandate to get fuel in the harbor when he took over the operation. He spent a lot of money to get it going.

- The Town allows a diesel truck to come to the harbor and undercut the price, but now the Town says that won't happen any longer.
- Of the 38,000 gallons that was pumped last year, only 4,000 gallons was diesel, so this is disturbing to him.
- He has spoken with Todd Alexander and he doesn't want to stand in the way of getting gas to the harbor.
- This is the first time he has been to a meeting regarding fuel in the harbor. He found out only because he is an abutter and a notice was sent to his home, not because he is in the fuel business.
- There is an alternative that could involve himself and the Town and would also involve the neighbors. If the purpose is to provide fuel to Oak Bluffs there is a way to do it by working with him. He is not here to oppose fuel in the harbor and would like the opportunity for the facts to be made clear as well as for Mike Santoro, Ron Bourne and Todd Alexander to view the other options.

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

**Todd Alexander** presented the following.

- The Oak Bluffs Harbor is a popular transient marina. Not all marinas have repair facilities.
- The harbor use to sell 100,000 to 120,000 gallons of fuel from the supplier and seller when there were two docks. Then, the Harbor made \$300,000; now it is a million.
- The reason why the numbers are lower now is because there is no one on the dock. When someone wants fuel, he receives the calls as the Harbor Master. He thinks the volume could go up to 60,000 gallons, perhaps even 100,000.
- He thinks he can offer gas at a good price, compared to the other towns.
- The truck providing diesel fuel was only allowed to operate after the other facility stopped pumping diesel.
- He knows Bill Anderson personally and understands his concerns. The facility will be run safely and professionally.
- Fuel prices are higher on the Island, but to say that people don't buy fuel here is ridiculous as he receives calls hourly asking where the fuel is.

There was a discussion about service.

- **Brian Smith** said since the number of gallons sold has gone down from 100,000 to 30,000 due to the lack of service, how will the proposed facility change that issue?
- **Todd Alexander** said that he receives calls that people try to get fuel and they can't. There have been issues over the years with reliability, safety and spills. The proposed project will provide the service with a better rate and level of service. The diesel was granted permission after Mark Wallace's operation was shut down.
- **Mike Santoro** said in order to pump gas you must be 18 years or older and the Town will be using the Harbor Shack staff to pump so there will be no additional personnel. There is a vapor recovery system to address the fume issue. The Town is trying to get people into the harbor in downtime such as in June and fuel availability will help to do that.

- **Ron Bourne** noted that when you have a fuel delivery the standard procedure is that the driver is required to stick the tank to ensure there is enough capacity for the load. The driver hooks up the vent that goes back to the tank which traps the vapor. Diesel is vented out, but the majority of the usage will be gasoline.

**Brian Smith** noted that the tank is under the parking spots and asked how the parking spots will be protected. **Todd Alexander** said the tank will be under staff parking and the vehicles can be moved if there is a fuel drop. Fuel delivery will not be during peak times, it will be midweek and early in the week in the morning hours.

**Bill Anderson** commented that if the tank is filled at 7:00 a.m. and the Patriot comes in at that time, the first thing the passengers do when they come off is light up cigarettes.

**Jim Miller** asked Mark Wallace if his business at Church's Pier will be operational in the summer. **Mark Wallace** said that there is a situation with the harbor fuel lines; there is a third party inspection. The reason there was spill was due to the repair, which was a splice in open conduit. It will cost \$20,000 - \$40,000 to repair and to get the facility up and operational. If I only have two years to pay for it, it is not cost effective to do the repairs. If the Town will work with him and they discuss the best opportunity, he will be open to that.

**Jim Miller** asked the abutters what their main objections are to the proposed facility. **Bill Anderson** replied it is the odors, explosion possibilities and flooding. The water has risen over the area during past storms and he does not think the Town should be in the gas business and that it would be a liability for the Town.

**Doug Sederholm** asked for clarification about the reference made to not pumping with northeast winds over 25 knots. **Todd Alexander** said when there is a Nor'easter boats are not coming into the harbor anyway, fueling is stopped and that is done for safety reasons. **Doug Sederholm** noted that it might assist the public who have concerns that the information regarding operational issues for when fueling will not happen was in the offers.

**Ron Bourne** noted that the dispensers will not be on the walkway so they will not interfere with pedestrians. This site is for servicing the boats.

**Todd Alexander** also noted that currently the harbor has a pump out boat and he has never received a complaint about that. He also noted that he and the abutters are friends and the Town will be doing everything they can to make a lesser impact to them.

**Jim Miller** asked if there have been discussions with Mark Wallace. **Todd Alexander** said no.

**Brian Smith** asked that the applicant finalize the dates and hours of operation for the proposed project.

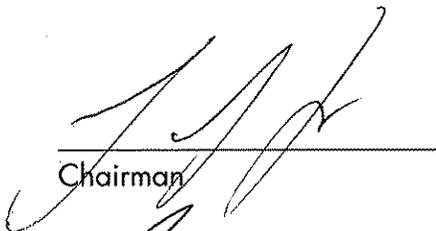
**Robert Whritenour**, Oak Bluffs Town Administrator, said that the borrowing of monies has been placed on the Special Town Meeting and the Town would proceed with construction once permits were received, so the proposed project would be operational for next summer.

**Brian Smith**, Public Hearing Office, continued the Public Hearing until March 21, 2013 and kept the written record open until March 20, 2013, 12:00 p.m.

The meeting was adjourned at 9:25 p.m.

DOCUMENTS REFERRED TO DURING THE MEETING

- Martha's Vineyard Commission Memo Dated March 14, 2013 , Update on the Martha's Vineyard Housing Needs Assessment Study and Request to hold a Joint Meeting on May 9th
- DRI #641-Comcast NStar Hybrid Undersea Cable –Offers
- Letter from Geoghan Coogan to the MVC, Dated March 14, 2013, RE: DRI #641: Comcast & NStar Hybrid Cable Project
- Letter from George B. Brush to the MVC, Dated March 13, 2013, RE DRI # 641: Comcast & NStar Hybrid Cable Project
- Letter from County of Dukes County, Martina Thornton, Dukes County Manager to Fred Hancock, Chairman, Dated March 5, 2013, RE: Proposed New NStar Undersea Cable
- Site Plan Martha's Vineyard Cable Project, C-2, Dated April 6, 2012
- Martha's Vineyard Commission DRI #621-M Oak Bluffs Permanent Fuel Facility, MVC Staff Report – 2013-03-14
- Land Use Planning Committee (LUPC) Meeting Notes Dated February 11, 2013
- Oak Bluffs Dock Narrative, from Todd Alexander, Oak Bluffs Harbor Master, Dated March 1, 2013
- Correspondence to the Martha's Vineyard Commission from Barbara Gallison, Dated March 1, 2013, RE: O.B. Harbor Fuel Facility (DRI 621-M)
- Correspondence to the Martha's Vineyard Commission from Captain Kenneth Gallison U.S.C.G. Master, Dated March 1, 2013, RE: O.B. Harbor Fuel Facility (DRI 621-M)
- Letter to the Martha's Vineyard Commission from Anne. S. DeBettencourt, Dated March 7, 2013
- Letter to Marc Wallace from the Oak Bluffs Fire Department, Dated July 6, 2012, Re: Marina Fueling Facility
- MVC Decision – DRI No. 621 – Oak Bluffs Harbor Gas, Pages 7, 8 and 9
- Preliminary Design for the Marine Fueling Facility, Town Landing, Town of Oak Bluffs, Dated January 2013
- Memorandum from Ronald R. Bourne, PE, Dated March 4, 2013 to Oak Bluffs Refueling Project, RE: Oak Bluffs Marine Refueling Facility, Safety Provisions, Requirements and Oversight
- Site Plan/Staging Plan, Town Landing, Town of Oak Bluffs, Dated January 2013.

  
Chairman

4-4-13  
Date

  
Clerk-Treasurer

4-4-13  
Date