

THE MARTHA'S VINEYARD COMMISSION

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Minutes of the Special Meeting of March 13, 2003

Held in the Olde Stone Building,
33 New York Avenue, Oak Bluffs, MA

IN ATTENDANCE

Commissioners: Jim Athearn, Chairman (Elected – Edgartown), John Best (Elected – Tisbury), Christina Brown (Elected – Edgartown), Linda DeWitt (Appointed – Edgartown), Jane A. Greene (Appointed – Chilmark), Tristan Israel (Appointed – Tisbury), Deborah Moore (Elected Aquinnah), Katherine Newman (Appointed – Aquinnah), Megan Ottens-Sargent (Elected – Aquinnah), Paul Strauss (Appointed – County), Richard Toole (Elected - Oak Bluffs), Douglas Sederholm, (Elected – Chilmark), Alan Schweikert (Appointed - Oak Bluffs), Linda Sibley (Elected - West Tisbury), Andrew Woodruff (Elected -West Tisbury)

Staff: Mark London (Executive Director), Christine Flynn (Regional Planner), Jennifer Rand (DRI Coordinator), Bill Wilcox (Water Resources Planner), Bill Veno (Regional Planner).

1. AT&T (DRI No. 561) - PUBLIC HEARING

Commissioners present for the Hearing: J. Best, C. Brown, L. DeWitt, J. Greene, T. Israel, D. Moore, K. Newman, M. Ottens-Sargent, P. Strauss, R. Toole, D. Sederholm, A. Schweikert, A. Woodruff.

Representatives of the applicant: John Keene AT&T, Linda Pettit, and Ajay Sawant, wireless specialist for AT&T

There being a quorum present, Christina Brown, Hearing Officer, opened the Public Hearing at 7:42 p.m. and read the Notice of Public Hearing

Linda Sibley recused herself from the proceedings and left the room.

Richard Toole declared that he owns a few hundred shares of AT&T and AT&T Wireless. No one present felt that this created a conflict.

1.1 Applicant's Presentation

John Keene explained the proposal and responded to issues raised at the LUPC meeting held on the project.

- The proposal is located on Old Courthouse Road in West Tisbury. It consists of a 60-foot flagpole-style monopole with internally mounted antennae that would not be visible from the exterior. There would be a 10' x 20' leased area at the base for equipment cabinets.
- The project would create no noise, odor, or dust.
- Under the provisions of the Federal Telecommunications Act of 1966 authorizing how cellular networks would be set up, AT&T now has three towers on the Island, namely in Edgartown, Oak Bluffs and Tisbury. This covers the eastern end of the Island well.
- AT&T intends to add two more towers in the near future, namely to the WMVY tower and at the airport. He showed the present and predicted coverage in the middle part of the Island.
- The proposed site would add coverage to the west of the previously mentioned areas.
- AT&T has asked the West Tisbury ZBA for a variance from the 400' setback from residential property lines required in the bylaw established for safety reasons. The proposed tower would be about 140' from the line. He included in his submission a letter from a professional engineer indicating that the tower is quite safe. In the unlikely event it ever fell, the fall zone would be limited to a small zone immediately around the tower.
- With respect to the interest of other carriers to co-locate on this tower, he has submitted letters written to three other carriers inquiring about co-location. Nextel Telephone indicated it might be interested in a tower on this site if it were 100' high. T-Mobile might be interested at 70'. Given that the height limit in the by-law is limited to 60', there is no interest at present. However, the tower is designed for two additional carriers at lower heights, namely at the 50 and 40' levels. He noted that other carriers might not be planning coverage for several years.
- With respect to health effects, he enclosed a report from Josh Cohen, Ph.D. at Harvard. This is not an issue available for review according to federal regulation. Dr. Cohen compared the radiation from a cell tower compared with other devices in community. A person standing 3' from a baby monitor would receive more electromagnetic radiation than from the proposed tower.
- With respect to visual impact, AT&T did a balloon test last summer and took photos in the submission indicating that it was not visible from the public way. They did a second test on February 19 for the Commission, although there was limited attendance due to the snow storm. He, Julie Kief, and Mark London drove on all the nearby roads and the balloon was not visible anywhere other than a very short stretch of State Road, near the Littlefield's house, where it was barely above the tree line in the far distance.
- With respect to the availability of alternative sites, AT&T had looked at properties that would be acceptable for their coverage needs, that conform to the bylaw and that are available for acquisition and has submitted a report on their findings. He showed the coverage plots for several alternative sites including several municipal properties since the latter are often suggested by towns.

- the West Tisbury Town Hall would leave significant coverage gaps and would not connect to the coverage areas to the east;
 - the Agricultural Hall also left significant gaps,
 - the West Tisbury Fire Department property gave an even smaller coverage area;
 - the State Forest was the best of all the alternatives although even it would not allow a seamless network; however, the state has not chosen to make it available;
 - another property owned by David Flanders was examined; however, it is not available for lease and also does not provide coverage linking to other areas;
 - the DEM fire tower off Christiantown Road, could provide good coverage to the north and east but does not cover the area towards Chilmark and, in any respect, is not available.
- He said that this proposal meets those goals of the West Tisbury bylaw in that it maintains character by being hidden, it protects health, safety and welfare in that it is unmanned, it is safe with regard to health effects and falling, and it would for emergency and other communications.
 - He concluded by reading a letter from Michael Colinari, a medical professional at the Martha's Vineyard Hospital, describing a time when he had been on call and was needed at the hospital but couldn't be contacted.

1.2 Staff Reports

Jennifer Rand said that the proposal requires a special permit from the West Tisbury ZBA as well as a variance since it is set back only 138 feet from a residential property line whereas the bylaw requires a setback of 400 feet.

There are no water or traffic issues.

1.3 Questions from Commissioners

Andrew Woodruff asked why the coverage would not be better with the alternative sites. John Keene said that the coverage depends largely on topography but also on the surrounding trees. Reception is also affected by weather.

Andrew Woodruff wondered why the coverage drops off in southeast with the Town Hall option. Ajay Sawant replied that coverage is limited because of the height of the building and it is surrounded by trees.

John Best asked whether AT&T would purchase the property and whether it would still be developable. John Keene replied that the area for the tower would be leased and he doesn't know what Mr. Flanders intends to do on the rest of the property.

John Best asked if areas without coverage are for AT&T or for all companies. John Keene replied that the entire application looks at coverage only from AT&T's point of view. John Best noted that this means that the improved emergency access would only be for AT&T users.

Megan Ottens-Sargent asked whether, if the tower were higher, there would be a greater area served and what would the relation be to the power of the signals. John Keene replied that greater height would create a greater footprint. They have not sought this because the bylaw limits the height and, although they are asking for a variance, they want to comply to the bylaw

as much as possible. He noted that all wireless is low power; the power of the signal coming from the tower should not overpower that of the signal coming from the phone itself, which is very limited.

Megan Ottens-Sargent asked what is percentage of power near the tower compared to being near a cell phone. John Keene said he would get that information later.

Megan Ottens-Sargent asked whether there are other potential sites in residential neighborhoods where the setback would be less of an issue. John Keene said he is not sure but many are on small lots and would likely pose setback problems as well.

Doug Sederholm said that he now uses AT&T and where if there isn't an AT&T signal, the phone transfers to another carrier. John Keene said that most people have coverage that allows people to use another carrier's analog coverage when the primary carrier's digital coverage is unavailable. Cingular has a tower in Chilmark but it doesn't have much coverage. However, AT&T has a federal mandate that requires them to build out their own network at a certain rate or else they could lose their licence.

Linda DeWitt noted that workers at the hospital have beepers and there is an emergency tower on Peaked Hill. Doug Sederholm clarified that it is for coast guard, police and fire only.

Paul Strauss asked about the coverage from a higher tower and whether, if the tower was 10' taller, another carrier might be interested. John Keene said other carriers might be interested if the tower were higher. With a 60-foot tower, they feel that there would be two positions above the tree line that would be useful. If the tower were 10 feet higher, there would be three good locations. He distributed a plan showing the coverage with a 75-foot tower. It would have increased coverage; from a community point of view, carrying additional carriers would reduce the need for other towers.

Tristan Israel asked whether the two other planned sites, like WMVY tower, have been approved yet. John Keene said that they have not been approved. The WMVY tower would require approval from the Tisbury ZBA and the airport tower would require approval from the West Tisbury ZBA and the MVC. However, he assumes that these proposals would be more straightforward. He said there is room for more antennae on the towers

Megan Ottens-Sargent asked whether the setback would change if the tower were higher. John Keene, said that the tower would be in the same location and the diameter of the tower would only increase by a few inches. The WMVY tower is about 200 feet tall and the new antenna would fit into the existing height. They contemplate an 80-foot tower at the airport.

Alan Schweikert asked where the other carriers in developing their networks. John Keene said that each proceeds at its own rate and that it is rare that several carriers are ready to proceed at the same time in a given area. Each must provide coverage for its own network. If other carriers could share the AT&T tower either now or later, AT&T would have no problem accommodating them

1.3 Town Officials

Tucker Hubble is a member of the West Tisbury ZBA. He gave comparable heights of other towers: WMVY is 214', the Edgartown tower is 110', the new Chilmark tower is 57', the fire tower is 72', and the West Tisbury ZBA recently approved a tower of about 70'. John Keene noted that these heights are approximate. Tucker Hubble said that the bylaw allows for greater height if the tower is located farther from the property line. For example, if it is 1,000 feet

away, such as at the Ag Hall or at Polly Hill, the tower could be higher. If it could be in the State Forest, it could be 120' tall. It would be desirable if someone conducted an investigation (into the optimal siting of cell towers for the Island), perhaps the MVC. All Towns would like fewer, taller towers. The Telecommunications Act says that each company can have its own tower. With respect to the West Tisbury ZBA, should the proposal go back to them, they are not worried about the height and agree that it is hard to see. They are concerned about the distance of the tower from the residential property lines. Since West Tisbury has prepared their own cell tower bylaw, they have issued permits to all applicants, namely on the fire tower and at the airport. The ZBA has not voted yet but he notes that asking for 262' of relief on a 400' setback is asking for a lot.

1.4 Public Testimony in Favor of the Proposal

There was none.

1.5 Public Testimony with Concerns about the Proposal

Warren Meade is the closest abutter. Three years ago, *Omnipoint* was given a simple building permit for a shed and a 40-foot tower. Most people on the road didn't want the tower and 400-500 people signed a petition in West Tisbury. The Town rejected the permit and then prepared a new bylaw that was adopted at Town Meeting. He measured the distance and says it is only 125 feet from the property line and 240 feet from his living room. Mr. Flanders' property is large and there is plenty of room to set the tower further back, still keeping it at the same height. But, he said, Mr. Flanders prefers to lease the part of his property right next to Mr. Meade's property. The coverage map with a tower on Town Hall would seem to indicate that the missing areas of coverage are in the State Forest and in part of the airport property. The MVC would be the best body to do a study for the whole Island. He is concerned that this site could become like the Edgartown tower; what would prevent this. He thinks that AT&T should adhere to the setbacks in the zoning bylaw. This is a commercial use in a residential and rural area.

Julianne VanBelle is a resident of West Tisbury. She asked how many people in West Tisbury use AT&T, how many other wireless carriers there are now or might potentially be on the Vineyard, what part of the market share does the Vineyard represent for these companies. She was active on the committee that created the new bylaw. People felt that this is a utility that doesn't belong in a residential neighborhood. She doesn't understand why the federal government can mandate putting this type of project in a residential area but not in the State Forest. It is not appropriate to have a utility in a residential area. She was reluctant to bring up health, but said that we are all electrical beings and although the impact may not be measurable today, it could be in 25 or 50 years. The cumulative effect of many antennae on the same tower is worrisome.

John Best asked what is the elevation of the State Forest. Bill Wilcox said that it is between 30-40' at the southern part and 70' at the northern end. Christina Brown suggested that this be discussed next time, perhaps at an LUPC meeting.

Doug Sederholm asked that at the next meeting, they explain why the tower can't be sited on Flanders property while respecting the setback requirement in the bylaw

Tristan Israel asked whether they could explain the drawing of pole profiles at the next meeting and clarify the FCC regulations about what can be dealt with respect to health issues. He asked what would happen if AT&T goes bankrupt or if the technology becomes outmoded.

John Keene replied that this same technology will continue to be used for the foreseeable future and that the West Tisbury bylaw has very specific requirements with respect to posting a bond to ensure removal of the tower should it no longer be used.

Christina Brown closed this session of the Hearing at 8:56 p.m. and continued it to April 17, 2003. This proposal will be discussed at a LUPC on March 31, 2003, at 5:30 p.m. (subsequently cancelled).

2. BRIDGE HOUSING (DRI No. 560) – CONTINUED PUBLIC HEARING

Commissioners present for the Hearing: J. Athearn, J. Best, C. Brown, L. DeWitt, J. Greene, T. Israel, D. Moore, K. Newman, M. Ottens-Sargent, L. Sibley, P. Strauss, R. Toole, D. Sederholm, A. Schweikert, A. Woodruff.

There being a quorum present, Christina Brown, Hearing Officer, re-opened the Public Hearing at 8:58 p.m. and read the Notice of Public Hearing

John Best disclosed that, as a real estate broker, he had talked to the Norton's about the sale of their property but never listed it and has no financial interest. He also said that he is the Chairman of Land Bank Committee of Tisbury.

Christina Brown closed this session of the Hearing at 9:02 p.m. and continued it to April 10, 2003.

3. TAPESTRY HOLDINGS (Scottish Bakehouse – DRI No. 563) - VOTE ON WRITTEN DECISION

Commissioners present and eligible to vote on DRI No. 563: J. Athearn, J. Best, C. Brown, L. DeWitt, J. Greene, T. Israel, K. Newman, M. Ottens-Sargent, L. Sibley, R. Toole, A. Schweikert, A. Woodruff.

Jane A. Greene moved and it was duly seconded that the written decision be approved.

Megan Ottens-Sargent moved and it was duly seconded that the term "building commissioner" be changed to "building inspector." All agreed to the correction.

Roll call vote: In favor: J. Athearn, J. Best, C. Brown, L. DeWitt, J. Greene, T. Israel, K. Newman, M. Ottens-Sargent, L. Sibley, R. Toole, A. Schweikert, A. Woodruff. Opposed: None. Abstentions: None. The motion passed.

4. MINUTES OF PREVIOUS MEETINGS

Note that this item was on the agenda and discussed in error, in that the minutes of the meetings of February 13 and 20, 2003, had previously been revised and adopted.

At 9:11 p.m. Jane A. Greene left the meeting.

5. COTTRELL (DRI No. 562) – DELIBERATION AND DECISION

Commissioners present and eligible to vote on this item: J. Athearn, J. Best, C. Brown, L. DeWitt, J. Greene, T. Israel, K. Newman, M. Ottens-Sargent, L. Sibley, R. Toole, A. Schweikert, A. Woodruff.

Jim Athearn read the possible conditions as drafted by the LUPC.

Tristan Israel would like a definition of the retail category.

Linda Sibley noted that the purpose is to restrict traffic because a high traffic generating use could be a problem, even in a small space.

Jennifer Rand has discussed his intention with the applicant. She suggested that the type of use could be limited to an art gallery, art supplies, crafts, furniture or similar craft making and sales.

Megan Ottens-Sargent noted that former Commissioner Bob Zeltzer had come up with categories of use based on traffic with his Process and Procedures Committee a couple of years ago.

Tristan Israel noted that on this list, retail is a high traffic generation use and there is no differentiation as to type of retail.

Christina Brown moved and it was duly seconded that the Commission approve the project with conditions as proposed, specifying the location of the proposed tree, specifying the distance that the Belgium block curbing would be extended, and specifying that the retail use exclude any high traffic-generating use.

- Chris Cottrell clarified that he hasn't picked out a specific use yet; he just wants the option.
- Linda Sibley asked that staff list exclusions of possible high traffic-generating uses, based on ASHTO standards. Katherine Newman noted that this could be a criterion for future approvals. She advocated the Commission focus on limiting traffic, not types of businesses.
- Tristan Israel is concerned that if there is unrestricted retail, it is a carte blanche that sets a precedent.
- Jim Athearn asked whether the approval could be for a low traffic-generating use based on ASHTO standards, to be verified by the Executive Director at an administrative level.
- Alan Schweikert said the MVC doesn't have to limit the type of retail and has better things to do than worry about people changing the use of their 500 sq. ft. of retail space. Tisbury has a zoning bylaw; why should the MVC tell Towns what uses the town can have in its retail spaces? This level of detail is beyond us.
- Linda Sibley noted that the request to define the type of retail comes from a Tisbury selectman who is involved in zoning and is concerned about traffic.
- Tristan Israel said that this is not interfering in the Town's authority, the MVC is an integral part of Tisbury's system.
- Deborah Moore noted that the Commission has already restricted the retail use by limiting the square footage. She asked whether the motion intends for all uses to be approved by

the Executive and whether this would be a problem for staff. Mark London said it would not be a problem.

Roll call vote to approve DRI No. 562 conditioning the location of the tree, extent of curbing blocks, and that proposed retail uses are to be reviewed by the Executive Director to ensure said uses are not high traffic generators. In favor: J. Athearn, J. Best, C. Brown, L. DeWitt, T. Israel, K. Newman, A. Schweikert, D. Sederholm, L. Sibley, A. Woodruff. Opposed: M. Ottens-Sargent. Abstentions: R. Toole. The motion passed.

Andrew Woodruff suggested we define what light and heavy traffic-generating uses are and set clear rules.

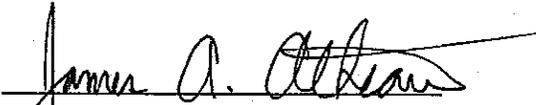
6. UPCOMING LUPC MEETINGS AND SITE VISITS

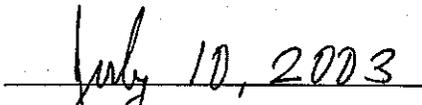
The Commissioners decided to visit the Church Street Landing project on their own.

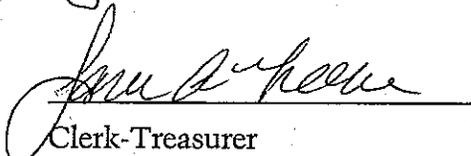
7. OTHER BUSINESS

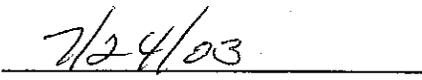
Mark London distributed a copy of his report entitled *Looking at the Commission*.

The Meeting adjourned at 9:42 p.m.


Chairman


Date


Clerk-Treasurer


Date