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## Minutes of the Commission Meeting Held on April 14, 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)

P Tripp Barnes (E-Tisbury)	P James Joyce (A-Edgartown)
- Yvonne Boyle (A-Governor)	- Joan Malkin (A-Chilmark)
P John Breckenridge (A-Oak Bluffs)	- Katherine Newman (A-Aquinnah)
P Christina Brown (E-Edgartown)	P 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), Paul Foley (DRI Planner), Christine Flynn (Economic Development and Affordable Housing Planner).

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

### 1. DIAS MIXED USE HIGH POINT LANE-TISBURY DRI 653-M CONTINUED PUBLIC HEARING

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Commissioners Present: T. Barnes, J. Breckenridge, C. Brown, R. Doyle, J. Goldstein, F. Hancock, L. Jason, J. Joyce, D. Sederholm, L. Sibley, E. Thomas, J. Vercruysse.

**Fred Hancock**, Public Hearing Officer, reopened the Public Hearing and recessed it without taking testimony and continued the hearing until May 5, 2016. This was done because the MVC did not have a quorum of eligible Commissioners present to act on the Dias proposal.

### 2. BLUE ECONOMY

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Commissioners Present: T. Barnes, J. Breckenridge, C. Brown, R. Doyle, J. Goldstein, F. Hancock, L. Jason, J. Joyce, D. Sederholm, L. Sibley, E. Thomas, J. Vercruysse.

**Christine Flynn** presented the following on what Blue Economy is and why it is important to the Vineyard.

- Competing and balancing land uses can be challenging. Blue Economy is a great opportunity to combine our natural resources to create job opportunities and improve the quality of life for our residents.
- Blue Economy is a comprehensive look at our economy.
  - Research and development.
  - Education/professional development.
  - Maritime related infrastructure.
  - Coastal infrastructure.

- It also includes agriculture.
- Maritime and marine industries have been a big impact on Island life.
- Natural resources are a big component of our tourist industry.
- Over \$19 billion is in real estate assets, over 56 % of housing is seasonal and it has subsidized our towns by over \$100 million annually.
- We need to continue to plan for our future needs including coastal infrastructure and transportation.
- Every coastal community is affected by sea level rise and climate change and through Mass Seaport Economic Counsel initiatives have been funded.
- Infrastructure projects are huge job creators and ultimately impact our economy.
- Blue Economy is about creating jobs that help meet our Island needs.
- Blue Economy supports the MVC Island Plan.
- Blue Economy vision is about sustainability and creating a live/work environment for residents as well as visitors.
- It is important to create businesses while maintaining our resources.
- On March 9, 2016 the MV Donors Collaborative hosted the Cape Code Chamber to present Blue Economy. It was well attended and there was a lot of enthusiasm.
- The next meeting for Blue Economy will be on April 25, 2016 at 3:00 p.m. at the Featherstone Center for the Arts and the public and the MVC members are welcome to attend.

**Adam Turner** noted that the Island has numerous infrastructure projects such as the North Bluff project in Oak Bluffs and those jobs should include islanders. A focus of the blue economy is to provide economic opportunities for our residents such as providing jobs in areas of climate change, research and the food industry.

**Fred Hancock** said that tonight's MVTV camera man, Dan, is an oyster farmer and he applauded his efforts in contributing to Blue Economy.

### **3. CHAPPY WIRLESS ANTENNA-EDGARTOWN DRI 662 CONTINUED PUBLIC HEARING**

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*Paul Foley noted that the following Commissioners are not eligible to vote; Trip Barnes, James Joyce and Doug Sederholm.*

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

*For the Applicant: Art Kreiger (Attorney, Anderson & Kreiger), Kevin Mason (Regional Manager AT&T)*

**Fred Hancock**, Public Hearing Officer, re-opened the Public Hearing at 7:15 p.m.

#### **3.1 Staff Report**

**Paul Foley** presented the following.

- A site visit was done and numerous letters and emails have been received.
- The location was shown with a visual of the stockade fence that is six feet high and the building to hold the equipment.
- The existing WISP antenna was shown.
- The new monopole will be 104 feet and a visual was shown side by side with the WISP antenna.
- Views of the location were shown from different areas on Chappaquiddick.
- The existing coverage versus the proposed coverage was shown.
- Letters were received noting that the tower will not cover Verizon and Sprint and wondered if they would cover emergency calls from those carriers.

- Several views of the WISP tower on Sampson Avenue were shown.
- The staked area of where the monopole will be located was shown.
- Existing guy wires versus the proposed were shown.
- It has been suggested to locate the new tower at the Fire Station and on the site visit it appeared it would be more visible and obvious from that location.

### **3.2 Applicants' Presentation**

**Fred Hancock** noted that the MVC would like to not review what was presented at the last public hearing but would like clarification on 911 calls for other carriers.

**Kevin Mason** presented the following.

- He noted that he will be presenting tonight rather than Brian Grossman who was at the last public hearing and Art Kreiger is here.
- AT&T and T-Mobile customers can make a 911 call but Verizon and Sprint cannot.
- There is space in the second pod to put three antennas for another carrier.
- The temporary structure could accommodate one more carrier.
- It would be an internal antenna.
- The monopole would be 104 feet tall and the top 40 feet is what we call pods. AT&T is in the top 10 feet of the pod which is approximately at 100 feet on the pole.
- Mr. Fynbo said it would not be an issue for a second carrier to use and place the equipment in the building.

### **3.3 Commissioners' Discussion**

There was a discussion about a second carrier.

- **Christina Brown** noted that it has been said that the temporary tower could accommodate another carrier and is the applicant asking for approval of a second carrier. **Kevin Mason** said they were not asking for other carrier approval and that would be up to the other carriers to seek approval.
- **Christina Brown** asked if there has been interest from any other carrier. **Kevin Mason** said AT&T received one email from Verizon but it has not been solidified into a formal application.
- **Christina Brown** asked if another carrier could be quickly installed. **Kevin Mason** said once the tower is up it is very easy for another carrier to come in.
- **Christina Brown** asked for it to be clarified for the record; will all common cell phone users be able to get through to 911. **Kevin Mason** said no, the only other carrier would be T-Mobile, other carriers have different technology.

There was a discussion about coverage area.

- **Robert Doyle** asked what the penetration that AT&T could cover. **Kevin Mason** said 78% of the area would be covered.
- **Robert Doyle** asked what portion of the 78% would be able to use 911.
- **John Breckenridge** said at the last public hearing AT&T stated approximately 30% share.

**Josh Goldstein** asked if XYZ carrier wants to come in and the antenna is internal would that carrier have to come to the MVC. **Fred Hancock** said the MVC would have to look at that.

### **3.4 Public Testimony**

**Fred Hancock**, Public Hearing Office, asked that only new information be presented. What has been previously presented is part of the record.

**Robert Wozyoz** has lived on Chappaquiddick through storms, power outages and land line failure. The last time there was a land line outage there was an individual that had a heart attack. If we had cell service on Chappy it would have been different. He is also a ranger for the Trustees of Reservations and if we are on the beach we have no reception and we need it badly. I have said we need this service for 25 years. I don't know if it is a money issue but Mr. Fynbo has the right area and we need it.

**Dana Strayton** lives at 307 Chappaquiddick Road which is next to Sampson Avenue. She is highly opposed to the cell tower. She does not want to look at it and it is looming over her house. The tower should not be in a private residential area. I did not invest my life savings to diminish it as well as have an impact on my family. The tower should be located on public land or Trustees of Reservations land. I understand the need of communication but I have Sprint and I can make a call. It is a disgrace to put it in our neighborhood. I don't want to be exposed to it. I have read the information about cell towers not having an impact on health issues but there are issues and it does affect your health. I understand Mr. Fynbo's position but why not get the revenue for the town so the town benefits. It will end up not being simply in a backyard as trucks will be driving up and down and servicing will be needed. I don't want to see it there. There has to be a better choice and not where our children play. It only services AT&T customers so it seems it is a little return. Do any of you live there? I would love to see what Mr. Fynbo is getting for rent to see how that money could benefit the town. She would like to see another location that does not affect our neighbors, our children and my beautiful view.

**Rob Strayton** said he is an AT&T shareholder and resents ATT for spending \$1 million to install a \$200,000 tower. As a Chappy resident the notion to put a tower in a highly populated area is contra-active to good stewardship. If the town cost is \$200,000 and AT&T donates \$837,000 to the Island that is a million dollar tower. He has talked to Bill Carroll about the up island system. By AT&T's own numbers they proclaim to have 33% of all United States users. That means two out of three people on Chappy won't be able to use the tower. This is really Verizon's backyard. A very large percentage of people coming to Chappaquiddick have Verizon and those people can't connect to the tower and use 911. This tower has limited use. He has many friends that are police or fire personnel and who are pro emergency service and this does not provide a benefit. We are seeking improved connectivity and safety. As residents of Chappaquiddick we realized we are isolated and have a tendency to be a little more cautious. An article in Outside Magazine noted that there is a belief that technology is available and can save them and it causes people to actually act more dangerously and believes people will behave with riskier behavior. The notion is that the tower will promote public safety but with the number of people that will be unable to use this it will not promote safety and he argues that the tower is not a benefit. If AT&T is going to spend a million dollars build the DAS system and be good neighbors, citizens and do the right thing and build a system that is more technologically advanced and everyone would be able to use the system. He encourages everyone on the Commission to understand the limits of this system and to have a system that is permanent and the money benefits the town.

**Peter Wells** said Mr. Strayton may not know what is down the street from him at the Fire Department. If we think there will be a delay of any kind with the Ferry or weather issues we stage an ambulance on Chappaquiddick. We just want to help and we all use the cell phones to do that.

**Davio Rossi**, Edgartown Police Chief disagrees with Mr. Strayton. We all carry AT&T phones and the connectivity is nil in a lot of areas. We need this tower.

**Adam Darack** is the IT Manager for the Town of Edgartown. To help clarify some of the issues he noted with regards to putting a tower on Community or Trustee property we did put out an RFP and the town community was very much against it as well as the height of a tower being 180 feet. This is a temporary tower to get through the season. A permanent tower has to go through the same processes and more. In addressing the money to Mr. Fynbo, the amount we heard was \$2,500 to \$5,000 per month. The town was going to get approximately 20% less which would be \$2,000 to \$4,000 per month. The

beaches get approximately 190,000 visitors. We as a committee and town reached out to the carriers. Verizon did research to try and design a DAS system on Chappaquiddick. The Wireless Committee was against a tower but Verizon would not commit to doing it as the access on the beach was not there. Coverage and carrier interest was just not there. If we get a tower up we hope perhaps Verizon would have interest as it is there. We just happened to luck out that our first responders happen to use AT&T. I don't think our visitors do things to endanger themselves on purpose. The beaches came up over and over again as a point of needed communication. He just wanted to respond to some of the points that had been made.

**Linda Sibley** asked if the DAS system automatically covers all areas. **Kevin Mason** said no, it is a neutral whole system and each carrier has to add equipment at the hub.

**Mary Spencer** has lived on Chappaquiddick for 20 years and in the summer works as a trustee at the Dike Bridge. She pointed out at the barrier beach she has AT&T coverage and the following is what changed her mind about the need for a tower. Last summer she heard someone saying Help, Help and she called a ranger. There was not a ranger near so she ran out to the beach. The young man was caught in a rip tide and was thrown up on the beach and was incoherent. He was in the last spot where we could get a call with her phone and the ranger's radio did not work in that spot. If she was a half mile down the beach she would have had no coverage. Twice we got lucky with this guy. If we had this tower we would have coverage on the beach. If you asked that man regarding the cost he wouldn't put a price on it.

**Corrine Costello** lives on Sampson Avenue. She has looked at the cell towers on the Island. I live 20 feet from Mr. Fynbo's house and I don't get cell service, Wi-Fi or TV with the tower right there. She never received any notice about the WISP tower being put there. She is not against cell phones, she has one but this is not the correct location for the tower. We hear temporary location but she has looked at this and other sites and sees the equipment and wonders how it will fit on a residential property on a half-acre lot. Why are those that are against putting it on public property so interested in putting it in a residential area? I can't afford a loss in property value having the tower there. About going to the beaches you should take a red flare so if there is an emergency people can locate you. She is passionate about this. She does not want the tower next to her. If there is a huge thing right there she needs some benefit from it. She is not even sure the family (the Fynbo's) sleep there. What if it falls down?

**Hanley Clifford** said he lives two doors down and if it falls down it will only hit one house.

**Robert Fynbo** said his family lives and sleeps at their home on Sampson Avenue.

**Molly Pickett** said she understands all of the work that was done on the project. We hear temporary tower not permanent, maybe on Mr. Fynbo's property but we have not seen an analysis in the proposal. There is no limit on height and it is not time bound. The MVC is being asked to review without definitive answers and there are a lot of holes in the proposal.

**John Cavanaro** lives about 100 yards from the town property. It is mutually exclusive to propose cell coverage and a non-conforming structure. He wondered if there is a fall zone for these things. The structure is taller than the property is wide. He is not against the need for emergency personnel but when you live within a few feet of it, it is concerning.

### **3.5 Applicants' Closing Statement**

**Art Kreiger** said you heard from Brian Grossman last week about the limits of the location and the limits of a DAS system. So in fact there is no real alternative to providing public safety. You heard that T-Mobile benefits as well as emergency personnel and residents. They all benefit and there is space for another carrier. The standard project package was presented; site plan, photo simulations and standard

language. You know pretty much what you are getting based on the information in the project package. The fear of the facility is not factual and well founded.

### **3.6 Commissioners' Questions**

**Leonard Jason** asked how the tower crumbles on that parcel. **Kevin Mason** said he could provide an engineering stamp of where the breakpoint is. With high wind it is their experience it breaks in the middle.

**James Joyce** asked if the second carrier would get 78% coverage. **Kevin Mason** said the carrier would be ten feet lower and it depends on the power levels at their frequency and he can't speak to that.

**Fred Hancock**, Public Hearing Officer, closed the Public Hearing.

***Fred Hancock moved and it was duly seconded to waive the Post Public Hearing LUPC because it is a temporary tower and in this case the MVC has done due diligence. Voice vote. In favor: 9. Opposed; 0. Abstentions: 0. The motion passed.***

### **3.7 Site Visit Report**

**Linda Sibley** suggested that perhaps the MVC could have a report from those Commissioners who went to the site visit.

**Linda Sibley** presented the following.

- There were quite a few of us that went to the site visit.
- The surprising thing was we really couldn't see the WISP tower unless we were really close to it.
- They understood that the abutters could see it.
- They went to the Mytoi parking lot and the Dike Bridge and they could not find a public vista from which it could be seen.

### **3.8 Commissioners' Discussion on Possible Conditions**

**James Vercruysse** questioned the time line issue of the temporary tower and thought it might be helpful to see what conditions there may be before going to Deliberation and Decision.

**Christina Brown** said it would be helpful to us to refresh on what it would look like.

**Ernie Thomas** asked if it is possible for someone on the cell committee to approach another carrier.

**James Vercruysse** said that is not part of the application before the MVC.

**Leonard Jason** and **John Breckenridge** both said they thought the town tried to get other carriers.

There was a discussion about the time line for the temporary tower.

- **Fred Hancock** said realistically we may want to make it a one year time line. It seems a reasonable amount of time and if not dismantled by then the applicant could come back to the MVC.
- **Christina Brown** suggested permitting for one year and if there was not a permanent solution by then the tower would have to come down.
- **John Breckenridge** said by the amount of work done by the cell committee, with all due respect we can make a motion to approve with a condition that new plans are in place for a permanent solution within one year. This temporary proposal is not a permanent solution. It is to get a tower up and running for this season. A one year time line would give the cell committee and AT&T time to do due diligence and address the concerns of the citizens.
- **Christina Brown** clarified the temporary tower would be approved for one year and the applicant would have the right to come back for an extension.

**Leonard Jason** said we should go through the Checklist for Deliberation and Decision and set a time line.

**Fred Hancock** said it is important that we include designation in all of our paperwork that it says Temporary Chappy Wireless Antenna/Tower.

**Linda Sibley** agreed with Leonard Jason that a limitation needs to be included.

### **3.9 Deliberation and Decision**

#### **Benefits**

- It is appropriate in view of the alternatives.
  - **Linda Sibley** said DAS is not automatically universal. It has its own infrastructure needs and has a limited range. The cell committee and AT&T found DAS at this time is not a viable alternative.
- It would be located on a site that does not need additional clearing.
- There is no effect on wastewater and groundwater.
- No lighting is needed and is not required by the FAA.
- There is no generator; it is all battery backup, so no noise.
- It is not a manned tower so it will not have an impact on traffic and transportation once it is installed.
- Impact on Abutters; some like it and some do not.
- No effect on housing and the MVC Affordable Housing Policy.
- Impact on Services; a positive impact for Police, Fire and delivery of emergency services.
- There is no undue burden on other services.
- It is consistent with State and Regional plans and objectives. The town has been working on the project for five years.
- It conforms with existing zoning but requires a Special Permit use.
- The project is not in a DCPC.

#### **Detriments**

- It will adversely affect other persons and property.
  - **Leonard Jason** asked if we have looked at the assessed values of the properties as compared to others in the town.
  - **James Vercruyse** noted that there has been testimony from the public that the temporary tower could devalue their property but no evidence was presented.
  - **Linda Sibley** noted that a significant number of very close neighbors have testified in approval, so it is a close call.
- Traffic and transportation will only be an issue during construction.
- Scenic values; the tower is a modest increase in height over the current condition.
- Character and Identity of the Neighborhood; an existing tower is there now so it will not be a huge detriment.
- Impact on Abutters; some like it and some do not.
  - **Linda Sibley** said the concerns of the abutters need to be acknowledged.
  - **Christina Brown** said there is no question it will have an impact on the immediate abutters. There is a tower there now but it is a bit lower. The temporary tower will be higher, closer to the road and service trucks will have an impact on abutters. It is mainly a visual impact and we have noted the concern of the neighbors.
  - **James Vercruyse** said he was surprised how little he noticed it on the site visit. He thinks it is more the psychological impact of having it in the neighborhood and not necessarily the visual impact.

**John Breckenridge** said the MVC needs to reference what the cell committee did with due diligence. They put out an RFP and there were no takers for a DAS system.

***Fred Hancock moved and it was duly seconded to approve the project in view of the Benefits and Detriments as outlined with the proviso that there is a one year window to have the temporary tower in place and if another carrier wants to co-locate in this tower the applicant does not have to come back to the MVC as long as it is not visible.***

- **John Breckenridge** asked for clarification on the one year limit.
- **Fred Hancock** said the temporary approval is for one year with the carrier to come back with a permanent proposal.
- **Ernie Thomas** asked how that is enforceable.
- **Leonard Jason** said when they apply for a permit the clock starts running so you know when the year ends. We talked about money in escrow if the tower needs to be removed. They need to go to the Planning Board for a Special Permit.
- **Christina Brown** said perhaps money could be put into a bond for demolition.
- **Leonard Jason** said the Planning Board could hold the money and recommended that the regulatory permitting board hold the escrow.

***Fred Hancock moved and it was duly seconded to amend his motion to include making a provision for escrow for the issuance of the permit and that the regulatory permitting board holds the escrow in case of failure or after one year to remove the temporary tower. [No vote was taken.]***

***Christina Brown moved and it was duly seconded that within three months of this approval AT&T will provide a Bond or escrow to the MVC as reviewed by our counsel in case of failure or after one year to remove the tower. Voice vote. In favor: 3. Opposed: 5. Abstentions: 4. The motion did not pass.***

***Linda Sibley moved and it was duly seconded that the MVC recommend to the Edgartown Planning Board that they look into the decommissioning procedure for failure of the temporary tower or in one year. Voice vote. In favor: 9. Opposed: 0. Abstentions: 3. The motion passed.***

**James Vercruyse**, Chairman reiterated that the following vote is to approve the original motion as amended with conditions.

***Roll call vote. In favor: J. Breckenridge, C. Brown, R. Doyle, J. Goldstein, F. Hancock, L. Jason, L. Sibley, J. Vercruyse. Opposed: E. Thomas. Abstentions: none. The motion passed.***

**James Vercruyse**, Chairman recessed the meeting at 8:45 p.m. and reconvened at 8:50 p.m.

#### **4. LAGOON RIDGE FORM C SUBDIVISION - OAK BLUFFS DRI 631-M2 PUBLIC HEARING**

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***Commissioners Present:*** T. Barnes, J. Breckenridge, C. Brown, R. Doyle, J. Goldstein, F. Hancock, L. Jason, J. Joyce, D. Sederholm, L. Sibley, E. Thomas, J. Vercruyse.

***For the Applicant:*** David (Davio) Danielson, Raul Lizardi-Rivera (engineer, Holmes and McGrath, Inc.), Eric Peters (attorney)

**Fred Hancock**, Public Hearing Officer, opened the Public Hearing and read the Public Hearing Notice. The applicant is Davio Danielson and the location is Double Ox Road off of Barnes Road, Oak Bluffs Map 35, Lot 3, 32.5 acres. The proposal is a Form C Definitive Plan for a subdivision of approximately 32.5 acres land to create 23 lots with up to 25 dwelling units.

##### **4.1 Staff Report**

**Paul Foley** presented the following.

- The Staff Report includes correspondence and plans. The proposed covenants were sent by email to the Commissioners and are on the MVC web site.
- The site plan and Locus were reviewed.

- The plan is based on Section 7.3: Flexible Development, a provision of the Oak Bluffs Zoning By-Laws which may allow density bonuses for certain obligations such as affordability, over 55 housing and open space.
- In 2014 the MVC approved with conditions the Form B Preliminary Plan for the proposed subdivision. The Conditions included that the Form C plan submission would include among other items: development envelopes, setbacks, delineation of cut zones and limits of work areas, location of septic systems, lawn areas, access and other fire safety issues, a landscaping plan, sign off from NHESP with a copy of the Declaration of Restriction and the covenants for the homeowners association including design and landscaping guidelines and restrictions.
- Originally the applicant planned to build the three clusters in three phases. The proposal is now to develop the infrastructure for the entire subdivision at one time including roads, electrical connections, waterlines and enhanced wastewater systems.
- The applicant will then sell lots, not build houses.
- All units would be for sale at market rate except that two lots (one single and one duplex) would be donated to the Oak Bluffs Affordable Housing Trust for affordable housing.
- Six units in Cluster C would be restricted to housing for people over age 55.
- The proposed “Flexible Development” would contain four more dwelling units than allowed by standard zoning through preservation of at least 60% open space and future units for people over the age 55.
- The project would be built in three clusters.
  - Cluster A: 4 large lots with 4 homes up to 4 bedrooms each (connects to Pond View).
  - Cluster B: 4 standard lots with 4 homes averaging 3 bedrooms (extension of Double Ox Road).
  - Cluster C: 15 small lots with up to 17 dwelling units (2 duplexes) and 6 over 55 units.
- Cluster C lots are 18-25% of the standard lot size.
- Key issues include.
  - Review of O.B. Z.B.L. Section 7.3 Flexible Development.
    - Section 7.3, which is unique and has never been used before; should the Planning Board or other Town Board make a decision or confirm some aspects of a proposal before it comes to the MVC such as the Yield Plan, the Density Bonus and Affordable Housing requirements?
    - The Town questioned if the Yield Plan is accurate and the Town doesn’t have a record that the Yield Plan is approved.
      - **John Breckenridge** asked if the Yield Plan is through the Planning Board. **Paul Foley** said it is and the applicant wants four units above what is allowed.
  - Form B Conditions.
    - Has the Form C submission complied with the requirements of the Form B Conditions?
  - Denitrifications.
    - How will the sewage package treatment plant be maintained?
    - Has the wastewater treatment facility plan been reviewed and approved by an outside engineer approved by the Oak Bluffs Board of Health?
    - How does the plan cover the costs of maintaining the wastewater treatment system in perpetuity?
  - Affordable Housing.
    - Does the offer to donate two lots in Cluster C meet the requirements of the Oak Bluffs Flexible Development By-Law?
    - Does the developer, if only clearing lots, have to develop units (i.e. actually build the houses) to meet the Oak Bluffs Flexible Development By-Law?

- Clustering; does having three clusters, two of which have large or standard sized lots, meet the goals of clustering and flexible development?
- Archaeology: The Covenants (Page 9 Section O. Specific Prohibitions #2) state that “any newly discovered site shall be protected by immediately stopping excavation and all work that would disturb the site and promptly notifying the MHC and other appropriate authorities”.
- NHESP expects Lagoon Ridge to pursue a MESA Conservation & Management Permit (CMP).
- The applicant is to protect 60% of the property as untouched habitat.
- NHESP reviewed the Form B plan and determined that no MEPA review is required.
- It is a wooded site of trees and paths.
- Existing trails will be maintained and be open to the public.
- The Land Bank has written encouraged the creation of an additional public trail extending laterally to Barnes Road and that it would be willing to accept responsibility – via the conveyance of an easement – for the oversight and maintenance of the project’s trails.
- The applicant has written Dark Skies principles into the covenants.
- The covenants state that achieving a Home Energy Rating System (HERS) rating of 50 will be written into the Architectural Review Committee Guidelines.
- The parcel is in the Lagoon Pond watershed which is impaired.
- The applicant shall have the wastewater treatment facility plan reviewed and approved by an outside engineer approved by the Oak Bluffs Board of Health and said approved plan filed with the MVC. We are waiting for third party review of the package treatment plant.
- The applicant shall provide an operation and maintenance manual for the wastewater treatment and denitrification systems based on design, installation, use and maintenance recommended by the manufacturer. This manual shall be submitted to and is subject to the approval of the MVC’s Land Use Planning Committee prior to installation.
- The Board of Health Agent for Oak Bluffs sent the MVC an email on April 14, 2016 stating that “The Lagoon Ridge application is under a 3<sup>rd</sup> party review as mandated by the MVC in section 7 of the MVC’s article of decision. The 3<sup>rd</sup> party will come up with a recommendation or approval by next week Tuesday (April 19)”.
- A new plan was received today (April 14, 2016) for the package sewer treatment plant.
- Vehicular access for 19 of the 23 lots would be off of Barnes Road through an extension of Double Ox Road into the Danielson property.
- Trip Generation for 25 units based on the Institute of Transportation Engineers (ITE) Trip Generation rate is 239 daily trips with 25 PM peak hour trips.
- The DRI 464-M Form B MVC Condition said that “For the Form C definitive plan submission to the MVC the Applicant shall submit a detailed offer with respect to affordable housing that meets the requirements of the Oak Bluffs Flexible Development By-law (7.3) and the MVC Affordable Housing Policy”.
- During the Lagoon Ridge Form B DRI review, the question was raised whether the proposed offer of lots was consistent with the Oak Bluffs Flexible Development By-law which only mentions the creation and requirement of units.
- The Oak Bluffs Planning Board has written saying it will ensure the project adheres to the regulations imposed by Section 7.3 when it reviews the project.
- Dave Grunden of the Oak Bluffs Shellfish Department has written asking the Commission to adopt a “No Net New Nitrogen” Policy for Lagoon Pond and if they approve the project have clear conditions on the wastewater plan.
- Doug Reece of the Lagoon Pond Association has written with concerns for the Lagoon and urging the Commission to adopt a “No Net New Nitrogen” Policy for Lagoon Pond.
- Correspondence received from the public was summarized and is included in the Staff Report.

- The covenants encourage native plants and native species and all fertilizers will be slow release.

#### **4.2 Applicants' Presentation**

**Davio Danielson** presented the following.

- He was surprised somewhat by Paul Foley's summary since he is at the Form C and he did not realize he would be looking back at the Form B level. The MVC voted on and approved the Form B.
  - **Paul Foley** said he did not have the Yield Plan but noted that the Applicant's submitted narrative says it has been approved and asked if Mr. Danielson could submit it to the MVC.
- It is a complex proposal but he feels it is farther along than what has summarized.
- The proposal was sent to the MVC from the Planning Board on December 10, 2015.
- The referral is under Section 2.2 division of land 10 or more lots.
- He is eager to separate out the MVC requirements from the Planning Board as he is the first to use Section 7.3 Flexible Development.
- We want to build affordable housing, housing for older people and maintain open land.
- He wants to go back to the Planning Board to sort out two prevailing issues.
- The nitrogen issue is close to his heart. He has lived on the Lagoon his whole life. The idea of No Net Nitrogen in the future makes sense. 34% of the nitrogen is from septic fields. You can walk the banks of Lagoon Pond and you can smell failed septic.
- We are meeting the nitrogen standards of the MVC. We are moving the septic away from the pond and up to the center of the property and doing whatever is needed to meet the standards.
- He thinks the key thing is the nitrogen and what he is doing for reduction is expensive.

**Raul Lizardi-Rivera** presented the following.

- He is taking over for Bob Fitzgerald and is an engineer with Holmes and McGrath Inc.
- He has been following the MVC nitrogen calculations.
- Cluster A is four individual lots with denitrification septic systems for each lot. The limit is 14 mg/l per the DEP.
- The rest of the property will go to the package treatment plant and the location is out of the DCPC and outside of Zone 2.
- 32.4 acres has a limit of 110.4 kg/yr. With the amount of open space and landscape the concentration of the system will have a nitrogen load of 106.05 and is still below the threshold of 110.4.
- The calculations were provided to the Board of Health and he has not received any comments back.
  - **John Breckenridge** asked if the he has been in touch with Sheri Caseau. **Adam Turner** said the applicant has been in touch with Sheri Caseau and noted that it is admirable using the cluster and smaller lots with a central system. Moving forward the MVC has a grant in front of us for Lagoon Pond and we take the nitrogen issue very seriously.
- A peer review is due back on Tuesday and we need to pay special attention to it.
  - **John Breckenridge** asked if we know who is doing it. **Paul Foley** said he did not.
  - **Davio Danielson** said he was surprised that the Board of Health sent out for another review to a third party. Oak Bluffs is well behind on their time line.
- For the Amphidrome System, each lot will have an E1 pump and have a 2.5 inch pipe that pumps to this system and knocks the nitrogen down to 14 mg/l.
  - **Doug Sederholm** said that most people don't know what amphidrome means other than taking out more nitrogen and asked that it please be explained on how it works, the type of maintenance and how often the maintenance is needed and the history with Barnstable County.

- It is a mechanical system and does not just work on gravity. Raw sewage is received at the first tank and is aerated and then it goes to the reactor chamber. It doesn't leach anything and allows for vertical effluent and goes to certain media to denitrify.
- There are a couple more components called the reactors that add more oxygen and then goes to a Title 5 leaching facility.
- A sample is taken quarterly as coming in and also at the leaching facility and it needs to meet the nitrogen levels at this point.
- The first year is trial and error for the O & M until the flow is primed and working and eventually those are the numbers to be met.

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

There was discussion about the Amphidrome system.

- **Doug Sederholm** asked what the nitrogen numbers are with a Title 5. **Raul Lizardi-Rivera** said regular wastewater is 35-60 mg/l.
- **Doug Sederholm** asked how often people need to be there to run the system. **Raul Lizardi-Rivera** said each house has its own ejector pump and the package plant is where you have to take the readings and samples monthly.
- **Doug Sederholm** asked how long are the samples taken. **Davio Danielson** said monthly for two years or quarterly based on whatever DEP requires.
- **John Breckenridge** asked if this is a closed system. **Davio Danielson** said it is and is top of the line. It is stainless steel and the pumps are extremely reliable. Data from all over the Cape is remarkable.
- **Fred Hancock** asked what happens in a power failure since each house uses a pump. **Davio Danielson** said there is plenty of storage capacity based on 95% of all power failures nationally.
- **Doug Sederholm** noted that the applicant is not building all 21 units at once and asked how the system adjusts. **Davio Danielson** said the computer adjusts based on the number of units and it is the best system for seasonality.
- **Adam Turner** asked if you have one house at the top of the property and one at the bottom how does the system work. **Davio Danielson** said the system has a lift capacity of 180 feet and the project is well below that – not in excess of 60 to 70 feet.
- **Linda Sibley** noted that a few minutes ago the applicant said data from all over is remarkable and asked if it was available and can it be shared with the MVC Water Planner. **Davio Danielson** said it has been shared with the MVC Water Planner.
- **Raul Lizardi-Rivera** said the system is underground but there is a structure that houses the air panels.
- **Fred Hancock** noted that there is an expense to maintain the system and asked if the affordable housing occupant would have to pay the same as the market rate housing. **Davio Danielson** said the contribution to the cost of the septic wastewater treatment system is based on the number of bedrooms in your house. All of the affordable housing would be two bedrooms. We have been flustering with this. There is a provision in the Rules of Management of the Homeowner Association if there are hard times or sickness, fees do not have to be charged until it is straightened out. It puts it to the community to handle.
- **Doug Sederholm** asked what the costs will be. **Davio Danielson** said initially \$1,000 per month for testing. The system costs \$85,000 and another \$85,000 to install it, so approximately \$170,000.
- **Adam Turner** said he wants to understand how the system works. The sewage comes out of the house, goes to the tank, sits in the tank and is pumped 160 feet to what? **Davio Danielson** said it then goes to tank one. The treatment facility once treated goes to the leaching field because conceivably the nitrogen is taken out.

- **Robert Doyle** asked if in the budget if he is setting up a “sinking fund” as pumps can fail. **Davio Danielson** said he is not. He can’t imagine the system needing replacement; others have been in operation for 20 to 30 years. Pumps can be taken out and replaced if necessary. **Raul Lizardi-Rivera** added that the system is designed with dual pumps. The purpose is that the pumps are not all working at the same time, they will be alternating. There is also an alarm system. He has seen pumps last 10 to 15 years but has also seen some last 5 years.
- **Josh Goldstein** asked if each of the 21 units has a redundant pump. **Davio Danielson** said they did.
- **Eric Peters** (applicant’s attorney) said most homeowner associations have a per lot assessment and we changed that for those with just a septic system.

#### **4.4 Public Testimony**

**Doug Reece** has been involved in a couple of different homeowner associations over the years and it is safe to say most don’t work well. He thinks leaving a septic treatment plant in the hands of a homeowner association is short sighted. If collection of fees doesn’t work and there is not enough there for testing, etc. what is plan B? He is working with several wastewater groups on the Island and Koehler has a new product which is a urine separating toilet. It removes over 90% of the nitrogen and he suggested that this option be looked at. He wonders how much flow this system needs to operate properly. So if the real estate market doesn’t support the sale of the lots what happens? He asked the engineer how many of these systems he has designed and seen in operation.

**Alan Robillard** said it is interesting to hear the applicant and the engineer say this is marvelous and the wastewater system will last 100 years yet he can provide studies that are contrary. He suggests that both sides of the picture be looked at. He questioned that the Form B and Form C plans are essentially the same; Form B calls for a 30 foot Right of Way and Form C calls for a 40 foot Right of Way and what effect does that have on the 60% open space.

**Linda Sibley** noted that at some point she would like Davio to clarify about the 40 foot Right of Way.

**Debbie DeBettencourt** is an abutter and has questions about the covenants. She lives in Meadow View and we just redid ours and she understands the issues that arise. She has several questions:

- Is there a restriction on business in the area?
- What about truck storage?
- Is there two entrances?

Things that happen in the surrounding development that our development does not allow would have an effect on their neighborhood. She thinks the ideas that Davio has are innovative. She is concerned about how the innovative septic plan will affect those with a lesser income.

#### **4.5 Commissioners’ Questions**

**Leonard Jason** asked what the number of gallons per day (flow) is that the system would handle and doesn’t it need a licensed operator? **Raul Lizardi-Rivera** said 6,607 gallons per day and a licensed class 4 operator is needed. The operator would be doing the testing.

**Leonard Jason** said the system will generate sludge and asked how that is handled. **Raul Lizardi-Rivera** said the system will generate sludge and scum and it will be measured and the operator would call for it to be pumped out.

**Adam Turner** noted that the MVC condition is that the applicant would submit a detailed offer to meet the Oak Bluffs By-law. A letter from Brian Packish (Oak Bluffs Planning Board) says the applicant would have to be in compliance and asked about that process. **Eric Peters** said the applicant went to the Planning Board in December and we have an inherent catch 22 situation here, you have the MVC approval and then the Planning Board approval. It was suggested to have the Planning Board Public

Hearing first and they said they would not do that until we are finished with the MVC. We have had several communications with Town counsel Michael Goldsmith concerning the by-law and the answer has been the letter that you received and it is as frustrating to you as it is frustrating to us. We have expressed our concern to him and he feels we will be continuing to have that discussion. The by-law is poorly drafted. There are some ambiguities in it. In conversations with Mr. Goldsmith he sent me the statute for Oak Bluffs under affordable housing and the affordable housing commission would not meet with us either. We have heard the local committee wants to handle that so we are offering those units to them.

**Linda Sibley** said that one thing that bothers her is that the affordable housing units would be limited to two bedrooms as there could be families that would need more than two bedrooms. She would like to hear from the Dukes County Affordable Housing what the bedroom need is for affordable housing.

**Davio Danielson** said based on experience with other affordable housing the need is two bedrooms but he will do whatever the Town tells him to do.

**Christina Brown moved and it was duly seconded to extend the meeting time ten minutes. Voice vote. In favor: 12. Opposed: 0. Abstentions: 0. The motion passed.**

**Fred Hancock** noted that information is still needed such as for affordable housing and yield calculations.

**James Vercruysse** said the MVC is being presented with this definitive plan and if it then goes to the Town and if that is different you will be back to the MVC. **Davio Danielson** said he did not think so, we meet the MVC nitrogen standards and we think we are ready to move forward.

**Fred Hancock** said the MVC needs the applicant's Form C plan. **Davio Danielson** said the MVC has it.

**Paul Foley** said the MVC received a new one today (April 14, 2016).

**Fred Hancock**, Public Hearing Officer, continued the Public Hearing to May 19, 2016.

## **5. EXECUTIVE DIRECTOR REPORT**

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*Commissioners Present: T. Barnes, J. Breckenridge, C. Brown, R. Doyle, J. Goldstein, F. Hancock, L. Jason, J. Joyce, D. Sederholm, L. Sibley, E. Thomas, J. Vercruysse.*

**Adam Turner** presented the following.

- Doug Reece noted and we talked about it earlier that there are a lot of alternative options for cleaning up our waters.
- The MVC will hold a conference on nitrogen removal solutions on May 12, 2016, 9:45 a.m. to 3:00 p.m. at the Grange Hall in West Tisbury.
- The Koehler toilet could be revolutionary.
- Ten alternatives for wastewater will be presented at the conference.
- It will be a good session and this is the direction that we are headed.

## **6. ISLAND INN MANAGER UNIT - OAK BLUFFS DRI 150-ME MODIFICATION REVIEW**

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*Commissioners Present: T. Barnes, J. Breckenridge, C. Brown, R. Doyle, J. Goldstein, F. Hancock, L. Jason, J. Joyce, D. Sederholm, L. Sibley, E. Thomas, J. Vercruysse.*

### **6.1 Staff Report**

**Paul Foley** presented the following.

- The site plan was reviewed.

- The MVC approved the applicant to build dormitories in the basement of Building G and now the applicant does not want to as they feel it would be dungeon-like.
- The modification is to create the employee housing in the Managers Cottage.
- The plan is as follows.
  - The applicant wants to make two different units in the cottage.
  - To create one additional full bath and install kitchen cabinets and sink on the lower level.
  - The first and second levels are currently accessed via a spiral staircase which will be removed and the floor opening will be sealed off. One additional egress door will be installed in the lower level in accordance with building codes.
  - The existing roof shingles will be removed and replaced.
  - There will be no size changes or alterations to the exterior of the building. The exterior dimensions will remain the same.
- This is a significantly smaller project than what was approved by the MVC. No additional bedrooms will be added.
- The applicant needs to do this quickly to be available for the arrival of seasonal employees.

***John Breckenridge moved and it was duly seconded that the modification does not rise to the level requiring a public hearing. Voice vote. In favor: 12. Opposed: 0. Abstentions: 0. The motion passed.***

***Linda Sibley moved and it was duly seconded to approve the modification as presented. Roll call vote. In favor: T. Barnes, J. Breckenridge, C. Brown, R. Doyle, J. Goldstein, F. Hancock, L. Jason, J. Joyce, D. Sederholm, L. Sibley, E. Thomas, J. Verduyck. Opposed: none. Abstentions: none. The motion passed.***

The meeting was adjourned at 10:10 p.m.

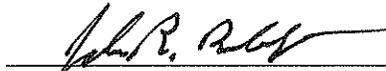
#### DOCUMENTS REFERRED TO DURING THE MEETING

- Martha's Vineyard Commission DRI #662 Chappy Wireless Antenna MVC Staff Report - 2016-04-07
- Chappy Wireless Antenna Specifications – CDMI Lite-Site 15
- Chappy Wireless Antenna Elevations and Plans – AT&T Site Number:MA5931, AT&T Site Name: Chappy WISP
- Correspondence – DRI 662 Chappy Wireless Antenna – as of 4:30 p.m. 4/14/16
- Martha's Vineyard Commission DRI #464-M3 Lagoon Ridge Form C Subdivision MVC Staff Report 2016-04-14
- Town of Oaks Bluffs Planning Board letter, dated March 14, 2016 regarding Lagoon Ridge Form C
- Letter to Martha's Vineyard Commission from Alan T. Robillard, dated April 6, 2016, Re: DRI 464-M-2 Lagoon Ridge Form B Subdivision and letter to Paul Foley with attached memo from Davio Danielson, dated February 4, 2016 and February 2, 2016 respectively
- Letter to MVC from Debbie DeBettencourt, Dated April 12, 2016 regarding Lagoon Ridge Subdivision
- Letter to Martha's Vineyard Commission from Kate Feiffer and Chris Alley, dated April 6, 2016, Re: DI 464-M-2
- Town of Oak Bluffs Shellfish Department letter to the MVC, dated April 14, 2016 Re: Lagoon Ridge Development
- Lagoon Ridge, Oak Bluffs Site Plan
- Email to Paul Foley from Charles Malo, dated April 3, 2016, DRI 150-M2 Island Inn Manager Conversion of Bedroom to Kitchen
- Arts Martha's Vineyard 5<sup>th</sup> Annual Meeting Announcement for May 2, 2016

- Martha's Vineyard IA Conference: Cleaning Up Our Waters Announcement for May 12, 2016

  
Chairman

7/29/16  
Date

  
Clerk-Treasurer

7/28/16  
Date