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**Minutes of the Commission Meeting
Held on March 21, 2013
In the Stone Building
33 New York Avenue, Oak Bluffs, MA**

IN ATTENDANCE

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

P Tripp Barnes (E-Tisbury)	P 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)
P 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), Christine Flynn (Affordable Housing and Economic Development Planner)

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

1. MINUTES

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

Erick Hammarlund moved and it was duly seconded to approve the minutes of March 7, 2013 with the correction as noted by Brian Smith for line 129. In favor: 12. Opposed: 0. Abstentions: 1. the motion passed.

**2. COMCAST/NSTAR HYBRID UNDERSEA CABLE – TIBSURY (DRI-641)
DELIBERATION AND DECISION**

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

For the Applicant: Les Smith (epsilon Associates – Agent), Vern O’Heim (NSTAR), Alan Rugman (Comcast), Mary O’Keeffi (Comcast)

2.1 Staff Report

Paul Foley stated that the packet of information contained the following;

- The applicant’s offers that include changes.

- The Land Use Planning Committee (LUPC) minutes of March 18, 2013

2.2 Land Use Planning Committee (LUPC) Report

Brian Smith, LUPC Chairman, said that LUPC had a discussion on whether Comcast should offer some fibers for municipal use and the vote was one vote in favor, one vote against and two abstentions from Commissioners eligible to vote and two abstentions from Commissioners not eligible to vote. It was unanimously voted to recommend approval of the project to the full Commission with the offers as amended.

2.3 Deliberation and Decision

Paul Foley spoke with the applicants about the offers and for section 6 Site Alteration, Landscaping, Restoration and Monitoring under 6.1, the applicants can have a Site Restoration and Landscape Plan before construction and then it can be amended if needed since the plan cannot be finalized until after the work is completed, the equipment is removed and then Comcast/NSTAR will know what needs to be done. There was a discussion about the revision to section 6.1;

- **Brian Smith** said that he did not have a problem with removing the language “prior to construction”.
- **Erik Hammarlund** thought “prior to construction” should be left in section 6.1 but the plan could say that the applicant will come back to LUPC and make the offer a multi-step plan.
- **Fred Hancock** noted that by striking “prior to construction” nothing is being lost in the offer.

Erik Hammarlund said that 7.1 under section 7 Construction Supervision should require that the Environmental Field Supervisor (EFS) be approved by the Tisbury Conservation Commission. There was a discussion about the suggestion;

- **Brian Smith** thought the suggestion was covered under section 7.2.
- **Erik Hammarlund** said that section 7.2 states what the environmental scientist is responsible for, but does not say who they are.
- **Doug Sederholm** thought it was a good idea that the EFS be approved by the Tisbury Conservation Commission.
- **Christina Brown** noted that the EFS should work closely with the Conservation Commission.
- **Les Smith** said that the applicants have no problem adding the approval of the EFS by the Tisbury Conservation Commission.

Erik Hammarlund suggested for section 9 Drilling Materials that under 9.2 the language “before drilling begins” should be revised to “before any such disposal begins”. **Fred Hancock** also noted that with that revision to the language, the MVC would also be able to look into where the disposable of the drill cuttings would be located.

Erik Hammarlund asked why the hours in section 3.3.1 Construction Season and Hours were listed as a question mark. **Paul Foley** said the hours were reviewed at LUPC and the hours are 7:00 a.m. to 11:00 p.m.

Leonard Jason noted that the Town of West Tisbury requested that some of the fibers be reserved for municipal use. The MVC should honor their request and make it a condition of the project. It is understood that the fibers can be dedicated for seven years and if not used during that time they would revert back to Comcast.

Leonard Jason moved and it was duly seconded to dedicate two strands of the 96 fibers for municipal use with a seven-year sunset clause.

- **Christina Brown** questioned the motion as she thought the applicant was using all of the fibers.
- **Fred Hancock** noted that the applicant said that they planned to use all of the fibers.
- **Doug Sederholm** asked if Leonard Jason is suggesting that a couple of strands be available for municipal use until the applicant needs them.
- **Leonard Jason** said no, they would be dedicated to the town.
- **John Breckenridge** noted that Comcast is using two of the 96 fibers and they are creating a duplicate system. By taking two of the 96 strands Comcast could create two bundles with 47 fibers in each. The motion would be asking Comcast to reduce their potential future business by one strand in the main bundle and one stand in the backup bundle.
- **Christina Brown** asked if the assumption is that two strands would be dedicated to municipal use for seven years, for a separate use other than what Comcast provides as a cost.
- **Leonard Jason** said that he wants to honor the West Tisbury selectmen's request.
- **Josh Goldstein** noted that the Commission is talking about cable from the mainland to the Island, but this still has to be distributed on-Island. He asked what benefit obtaining two fibers in this cable has to the overall objective.
- **Fred Hancock** questioned if when looking at Benefits and Detriments, is this a project that the MVC would not approve if the MVC did not get two fibers dedicated to municipal services.
- **Doug Sederholm** thought that the problem lies in the fact that the applicant has not been completely forthcoming with the technical aspect of the use of the fibers, but the applicant did state that they have plans for everything. The MVC does not have the technical expertise to question the use. Is the MVC suggesting that Comcast should make their infrastructure free? The MVC does not have the information or the understanding to know what the impact would be to make this decision regarding the motion.
- **Brian Smith** said it is being suggested that if in the future there is a need, the fiber would be available. It is not unprecedented for the MVC to take something from a private entity for the benefit of the community.
- **Leonard Jason** noted that West Tisbury would have seven years to figure out how the strands would be used.
- **Fred Hancock** noted that Richard Knabel did say at the public hearing that the West Tisbury Selectmen would like fiber to be available for municipal use in the next cable.
- **Erik Hammarlund** and **Brian Smith** said that Richard Knabel made that statement because it was thought that there was no possibility for municipal use within this project.
- **Christina Brown** said that a condition could be made that two strands are available and Comcast could come back and say the Town doesn't really have any use planned

and they would need them in, say, three years. The MVC should review the planned use before the town says to Comcast that they want the two strands.

- **Erik Hammarlund** said that the MVC has already reviewed the planned use and there was a long public hearing and letters from West Tisbury.
- **James Miller** noted that the MVC does require that in a project, some property be used for housing, but there is a policy for that and there is not a policy for this. He would be more comfortable with the motion or a condition if the need for these strands was well defined.
- **Brian Smith** said that if Comcast needed more strands they could come back to the MVC for a modification.
- **John Breckenridge** said that the sunset clause puts the onus on West Tisbury and he believes that to dedicate two strands would not be a hard and fast detriment to the applicant.
- **Leonard Jason** restated the motion; to dedicate two strands for municipal use to be utilized within seven years or the strands revert back to the applicant.
- **Christina Brown** asked if the motion can be revised to say that it would come back to the MVC for review.
- **Leonard Jason** said it should be the Town to review.
- **Mark London** suggested that if the request is for Island wide municipal use, then it might be better that West Tisbury not be the entity that reviews the proposal.
- **Doug Sederholm** asked Leonard Jason if he would consider revising his motion to state "reserved for possible future use by a governmental or municipal entity on Martha's Vineyard" with the condition that if the applicant came to the MVC stating that they need to use the dedicated strands now, that the MVC would review that request.
- **Leonard Jason** declined and said the Town of West Tisbury believes there is a need to have them and he would not like to see the applicant sublet the strands to a private concern.
- **Paul Foley** noted that the applicant clarified at LUPC that dedicating the strands would be a major issue for them.

Voice vote. In favor: 5. Opposed: 5. Abstentions: 0. The motion did not pass.

2.4 Benefits and Detriments

Fred Hancock noted that Benefits and Detriments were covered at the LUPC meeting;

- The increased electric and fiber optic capacity are a major benefit.
- The increased security to the electric supply is a major benefit.
- With regard to habitat the applicant is taking measures to mitigate the impact.
- Lighting and noise have been addressed and mitigated in the offers.
- The increased truck trips will be a temporary detriment to the neighborhood but they have mitigated much of the impact by not using Main Street and limiting the hours for trucks.
- There will be a temporary detriment to scenic values but the area should be restored upon completion.
- The project will be a benefit to the economy.
- There will be a temporary detriment to the abutters but the timing of operations will be such that many of the seasonal homeowners should not be impacted for long if at all.

John Breckenridge moved and it was duly seconded to approve the proposal as presented with the offers and conditions as noted and amended, including the addition of the Tisbury Conservation Commission approval of the Environmental Field Supervisor (EFS). Roll call vote. In favor: T. Barnes, J. Breckenridge, C. Brown, J. Goldstein, E. Hammarlund, F. Hancock, L. Jason, J. Miller, D. Sederholm, B. Smith. Opposed: none. Abstentions: none. The motion passed.

John Breckenridge excused himself from the meeting.

3. VERIZON WIRELESS CELL TOWER – WEST TIBEURY (DRI-640) CONTINUED PUBLIC HEARING

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

For the Applicant: Carl Gehring (Gehring & Associates LLC), Ben Caron (Photo Simulation Engineer), George Evsuk (Verizon Wireless Real Estate Department), Luis Teves (Radio Frequency Engineer)

Brian Smith, Public Hearing Office opened the Continued Public Hearing at 7:40 p.m. and noted that significant changes have been made to the project since the last public hearing.

3.1 Staff Report

Paul Foley presented the following:

- Verizon has submitted a revised proposal.
- The preferred proposal is now out of the Coastal District of Critical Planning Concern (DCPC).
- The height of the tower has been lowered to 66 feet and the preferred tower is now a stealth monopole.
- The packet of information includes correspondence received from February 22 to March 21, 2013.

3.2 Applicant's Presentation

Carl Gehring presented the following.

- He introduced Ben Caron, George Evsuk and Luis Teves. They are attending tonight to answer technical questions.
- Verizon has taken the following steps to date for the project;
 - Filed with the West Tisbury Zoning Board in July 2012.
 - Had a meeting in the Fall of 2012 with West Tisbury.
 - There was a public hearing in January 2013.
 - Met with LUPC in February 2013.
- There were concerns from the public that the monopine was not appealing so Verizon has revised the project to be a stealth monopole.
- The new Location B has a 500 foot coastal setback and the alternate locations are still offered.
- During the site walk, he noted where this new location would be.

- There was some confusion about the tree canopy. The average tree canopy is 51 feet. It was independently measured in the field by the land surveyor.
- The proposed tower is a 66 foot monopole for Verizon's use only.
- The new Location B and the stealth monopole is now Verizon's first choice.
- Last year Verizon did a balloon float flown at 80 feet. Two balloons were flown, one at the old Location A and a balloon close to Location B. This was done on a flat calm day so the balloons were exactly at 80 feet. Through 3D modeling the engineer was able to create a new projection with the 66-foot monopole.
- A packet of information was given to the Commissioners and the tree canopy height with the new location and a monopole at 66 feet was reviewed with the photos in the packet.
- A crown can be placed on the monopine to make it more aesthetically pleasing if needed, but it will increase the height of the pole to approximately 71-72 feet.
- Verizon heard what the Town had to say and have revised the proposal to accommodate that.

3.3 Testimony from Town Officials

Tucker Hubbell of the West Tisbury Zoning Board said that he appreciates that Verizon has changed the application and has moved the location out of the DCPC. He would hate for the MVC to restrict the pole to 66 feet. It should be the choice of the West Tisbury Zoning Board to deal with the type of pole, especially with colocation being so important to the town. The Town could always make the project more restrictive. The Zoning Board would like to know if the pole was going to be a co-locator pole as they would not be restricted at the 66 feet.

There was a discussion about the pole height.

- **Fred Hancock** asked if the local ordinance says the tower cannot be 15 feet higher than the ambient.
- **Tucker Hubbell** said yes and the ambient is the surrounding trees. There are surrounding trees that are 62 feet tall so with the 15 feet the pole could be 77 feet in height.
- **Fred Hancock** asked if West Tisbury would like the MVC to state something that mimics the Town's absolute height.
- **Tucker Hubbell** said that the Commission is looking at the pole height from the MVC perspective. Verizon said that a 70 foot pole or a 66 foot pole could have two carriers, but West Tisbury would like to have an engineer tell the Town if at 66 feet they would have the best reception with two carriers.
- **Carl Gehring** noted that Verizon cannot speak for other carriers only what will work for Verizon. If the pole was at 66 feet Verizon, thinks it would work for other carriers but does not know what their needs really are.
- **Brian Smith** asked if West Tisbury is requesting that they want to determine what would adequately work.
- **Tucker Hubbell** stated that the Commission chose not to hire experts to analyze the information but the Town can hire an engineer to do that.
- **Erik Hammarlund** noted that even if the MVC approves a higher pole, the West Tisbury Zoning Board of Appeals will not approve the extra height unless the expert says it is needed.

- **Doug Sederholm** said that if the MVC approved a 72 foot pole and the expert says it should be 66 feet, the Town could come back for a modification. The entire opposition for this is the aesthetics and that is a regional issue. He doesn't know if the MVC could relinquish that decision to a town board as it is essentially a regional issue. If the Town and the engineer decide it is a different size or shape that is needed, the applicant should seek a modification.
- **Tucker Hubbell** said the applicant won't ask for a modification because they are looking for approval for their needs and right now they have a 66 foot pole for one carrier that meets their needs. Verizon is representing Verizon as they should be. West Tisbury is encouraging Verizon to create space for another carrier.
- **Leonard Jason** said that there could be Verizon's pole at 66 feet and then another pole and another pole, etc. So isn't it better to have a slightly higher pole at 71 feet to accommodate another carrier so aesthetically there are not multiple poles?
- **James Joyce** noted that having this pole involves safety issues such as 911 calls and communication capability. He does not have a problem with a taller pole if it will save a life.

3.4 Public Testimony

Alan Temple said that his interest in the project is the aesthetic interest for West Tisbury.

- Verizon said that they reduced the height of the pole and brought it down to where it conforms and should be. You can have multiple poles as long as they don't stick up where they can be seen.
- He thinks the 66 foot pole is a myth. Ambient height is ridiculous, this is a legal issue. There should be a proper affidavit from the land surveyor to justify the heights. The issue is whether we need the cell towers.
- The fact of the matter is whatever pole is there will be 15-20 feet more than the tree canopy and it will stick up like a sore thumb. The pole will be visible from the Grey Barn and public roads and is visual pollution. Visual pollution can be defined as an aesthetic issue to impair one's ability to enjoy a vista or view.
- In order for the MVC to review Benefits and Detriments they need to be presented with better alternatives. The proposal still considers a tower but just a different style of tower.
- The question is whether the development will have a better impact than the alternatives. Will the development favorably or adversely affect other properties? Water views and the unique character of the Island were not considered.
- He invites the MVC to come and view from other property sites to see if the proposed tower will be visible from those locations. The approval of the application will have a visual impact greater on the Island than just one tower, it will set a precedent and more towers will be built unless newer technologies are developed. The question is if the benefit of cell service will outweigh the detriment to the Island.
- The Commission should be required to view the application based on the needs and the desirability. The Verizon proposal meets the 2010 West Tisbury regulations but it is not sufficient for the MVC to review.
- He suggests that the MVC deny the application until additional information is presented.
- He submitted written testimony for the record.

Glenn Hearn noted that he was a former West Tisbury Selectmen and the tower is not on the West Tisbury Town Hall because there was an issue of needing the cellar for the electronics and that presented a problem as the Town needed that storage space. He asked what the difference is of a monopine versus a monopole. **Carl Gehring** said the monopine would have one mount height for Verizon and the second mount height would be for another carrier.

Glenn Hearn said that he is in favor of the simple pole as it is not as visible. He and his wife are two of the nineteen people who submitted a petition to the ZBA in favor of the project. There was beautiful coverage when the COW was put in for President Obama's visit. There is very spotty coverage at the Farmers Market, it is terrible. Everyone knows that cell service is especially important for public safety. During the summer there is always something going on at the Grange. There is a pole at the airport and it is 70 feet. They tried to get the DAS system and some people think it is less obtrusive and some people don't. DAS is more expensive and no one likes it. The MVC should approve the 71 foot height pole.

3.4 Commissioners' Questions

Erik Hammarlund said that he has been asked by at least five people why isn't this tower on top of the Town Hall or the new library. **Carl Gehring** said that the library is too short and the Town Hall was not interested.

Erik Hammarlund asked if there was a height above or below where the pole does not need to be lighted. **Carl Gehring** said that Verizon ran an FAA analysis and no lighting is required. It is a non-issue.

Doug Sederholm noted that Glenn Hearn said there is a pole at the airport that is 70 feet and asked for confirmation of that. **Carl Gehring** said the airport pole is 70 feet in height.

3.5 Applicants' Closing Statement

Carl Gehring clarified Alan Temple's question of the tree canopy and having an affidavit. The proposal includes a stamped document from a professional land surveyor stating the height of the tree canopy. In the packet of information, Location 6 offers a view of what the tower will look like from Alan Temple's property.

Ben Caron introduced himself as the photo simulation engineer who did the balloon test and noted that he has done a lot of these tests. He is not an artist using Photoshop to give an impression of what the tower might be; the information presented was done through a 3D modeling survey and was done in an engineering fashion. The balloon was used as a visual reference and he took the survey position and the exact position of the pole in a 3D space. All specifications are noted and 3D Studio B12 software was used to create a virtual camera to match the real camera. With this technology you are able to accurately put the tower where it belongs utilizing all specifications and software and it also corrects for the positioning. It is an engineered product.

Carl Gehring said that anything that someone does next door to you is new including a wind turbine. It is progress. Verizon went back to the drawing board and the revised proposal was reviewed with LUPC. The proposed tower was moved out of the DCPC and has a lowered height to Verizon's own detriment. Verizon is here tonight because the project was deemed a regional impact under the DRI Checklist. There is no impact to affordable housing as the project comes

down to aesthetics. Verizon respectfully asks the Commission to approve the application as submitted as they have done what we can within the MVC guidelines.

Brian Smith, Public Hearing Officer, closed the public hearing at 8:30 p.m. There will be a post public hearing LUPC on March 25, 2013 at 5:30 p.m.

Fred Hancock, Chairman, recessed the meeting at 8:35 p.m. and reconvened at 8:40 p.m.

Christina Brown recused herself from the meeting; she is a member of the Town of Edgartown Affordable Housing Committee.

4. FIELD CLUB – EDGARTOWN (DRI-551-M5) MODIFICATION OF AFFORDABLE HOUSING OFFER

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

For the Applicant: Mark Hess (Chairman), Janet Hathaway (Member)

Fred Hancock, Chairman reminded the Commissioners that this is a request for a modification of a DRI. The Commission's first responsibility is to determine if this modification is significant enough to rise to the level of a public hearing.

4.1 Staff Report

Paul Foley presented the following.

- The Edgartown Affordable Housing Committee has requested to change a condition in DRI 551-M3 Field Club Decision to broaden how the committee may spend the remaining \$700,000 in monetary mitigation funds it received from the Field Club.
- The Committee requests that it no longer be restricted to use the monetary mitigation only to acquire property for affordable housing and instead be allowed to use the funds "for developing new projects, maintaining existing projects, special circumstances and administrative and consulting costs with regard to affordable housing in the Town of Edgartown".
- The proposed new wording, as vetted by MVC Counsel, is:
 - The affordable housing mitigation may be used for the following purposes:
 - Capital expenses including land acquisition and construction of new affordable housing, either rental or home ownership opportunities.
 - Programs offering housing assistance such as soft second mortgages, provided that there is shared equity to create new permanent affordable housing stock including a provision that funds would be repaid into the program upon sale of the property and that the property remains in the affordable housing pool, ideally in perpetuity.
 - Project costs including consultants, administration, and similar soft costs directly related to the development of a specific affordable housing project.
 - Rental subsidies provided:
 - There are not enough opportunities to provide rental units that are permanently restricted to low or moderate income units via long term deed restrictions and

- The rental subsidies are comparable on value to a long term deed restriction (normally 30 years or more in Massachusetts).
- Monies shall be placed in a segregated fund.
- The funds shall not be used for:
 - Maintenance, heat, electricity or other operating costs of existing affordable housing.
 - General staff, consultants, pre-development planning or other administrative costs of affordable housing entities.
- MVC Counsel noted that the use of these funds for rental subsidies is not something for which there is a lot of jurisprudence. If they decide to use it for these purposes, they should further clarify with their counsel that this is appropriate.

4.2 Land Use Planning Committee (LUPC) Report

Brian Smith, LUPC Chairman said that LUPC discussed the modification relatively briefly and did not take a vote since they were waiting for the wording and advice from Counsel, which has now been received. However, the discussion was positive.

Fred Hancock reminded everyone that the previous decision said the monies could only be spent to acquire property and the Edgartown Affordable Housing Committee in is asking to use this money for other things.

4.3 Applicants' Presentation

Mark Hess thanked the MVC for their time. There was an understanding of the original wording of the DRI that the Field Club money could only be used for buying homes. The Committee purchased five homes with the money and is looking at one or two more purchases with a buy down program. The Committee is looking for latitude with the DRI language. The funds will not be used for general administrative and staffing costs.

Janet Hathaway said that the Committee needs clarification from the MVC on being able to use the Field Club monies in other areas of the affordable housing arena and hopes that this request will be acceptable to the Commission.

4.4 Commissioners' Questions

Erik Hammarlund asked if the Committee would be open to restrict the modification to projects that are affordable in perpetuity. **Janet Hathaway** said that they would like to use some of the monies to purchase a nine-acre parcel of land known as Meshacket and they do not know at this time if that project will be rental or homes that are sold.

Erik Hammarlund said that he considers rentals as affordable housing and is referring to permanent deed restrictions. **Janet Hathaway** said as of now all of the money has been used for projects in perpetuity. **Mark Hess** added that the Edgartown Affordable Housing Committee is looking to require perpetuity in any new project.

There was a discussion about rental subsidies.

- **James Joyce** said that the only objection that he has is the rental subsidies. It does help but it only helps the family in the unit at that time and not in perpetuity.

- **Janet Hathaway** said that the Field Club money has not been used for rental subsidies and the Committee is looking for possibly using it for capital improvements on Town0-owned land.
- **James Joyce** noted that with the modification, the Committee is asking for the option for rental subsidies.
- **Mark Hess** said they would like that option for emergency purposes.
- **Erik Hammarlund** noted that he would not like to see someone not be able to have the rental subsidy in an emergency situation. It is a complex subject.
- **Mark London** stated that in the draft wording of the modified condition is based on the advice of MVC Counsel. The wording on rental subsidies is to avoid the situation where all the funds are used for, say, a five-year rental subsidy program and there is no money left in year six; Counsel said that this would not meet the MVC policy. Counsel said that a rental subsidy program that provided continuous funding over thirty years might be acceptable. Leaving the capital intact and using only the interest would allow the program to go on in perpetuity. Any use of the funds for rental subsidies may raise legal issues so even if the MVC allowed the modification, the Edgartown Affordable Housing Committee might want to check with their lawyers.
- **Mark Hess** said that he would be okay without having the language about rental subsidies and if needed the Committee can come back for a modification in an emergency.
- **Janet Hathaway** said that since the CPC has come forth, they have not needed the money for rental subsidies.

Doug Sederholm moved and it was duly seconded that the modification is not significant enough to require a public hearing. Voice vote. In favor: 11. Opposed: 0. Abstentions: 0. The motion passed.

Doug Sederholm moved and it was duly seconded to approve the modification DRI 551-M5 with the elimination of the rental subsidies bullet point. Roll call vote. In favor: T. Barnes, M. Fisher, J. Goldstein, E. Hammarlund, F. Hancock, L. Jason, J. Joyce, J. Miller, C. Rose, D. Sederholm, B. Smith. Opposed: none. Abstentions: none. The motion passed.

Christina Brown rejoined the meeting.

5. OAK BLUFFS HARBOR FUEL FACILITY (DRI-621-M) CONTINUED PUBLIC HEARING

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

For the Applicant: Todd Alexander (Oak Bluffs Harbor Master), Mike Santoro (Oak Bluffs Selectmen)

Brian Smith, Public Hearing Officer, noted that the written record had been kept open until March 20, 2013, 12:00 p.m. After reviewing the materials received and concluding that there were no new issues raised that needed additional oral testimony, he closed the Public Hearing at 8:50 p.m.

Erik Hammarlund moved and it was duly seconded to re-open the Public Hearing for further public testimony for those who have attended tonight for new issues and for general principle.

Voice vote. In favor: 12. Opposed: 0. Abstentions: 0. The motion passed.

Brian Smith, Public Hearing Officer reopened and continued the public hearing at 8:55 p.m.

5.1 Public Testimony

Ross Gannon operates a business on the Vineyard Haven harbor. He does not claim to be well informed on this issue but is shocked that a town would try to open a business that would put a private business out of business. He is here seeking more information on the issue.

Brian Smith noted that information regarding the DRI is available on the MVC website.

Mike Wallace introduced himself as the additional owner of the gas station on the harbor. His lease runs out in four years. He has asked the engineers about putting a dock off of his property close to the current pier and it was \$60,000 rather than the \$500,000 that the Town has proposed since it does not have to start from scratch. Given the amount of gallons that the harbor supplies, he does not think it is profitable to have two gas businesses on the harbor. The numbers don't even make sense, but perhaps they do over 15-20 years. There are a lot of houses in the proposed town area and it is not good to have dispensers and vents in front of them.

Brian Smith asked Paul Foley for a reminder of what triggers the referral. **Paul Foley** said the trigger is fuel storage.

Mark Wallace said fuel is a dangerous thing in the first place. To add another facility does not seem logical from that aspect. He did meet with Robert Whritenour and if the entire Town of Oak Bluffs says they want to do the proposed project he will walk away. He will have a full proposal for the Town to review in about one week.

There was a discussion about the possibility of an alternate proposal.

- **Doug Sederholm** asked if Mark Wallace said that he will provide an option.
- **Mark Wallace** said he will provide the Town with an option as the MVC provided the opportunity to do so due to the public hearing. He did not provide fuel last year due to the leak. He will provide an option to the Town with the existing tanks and making the required repair. He will present it and let the Town see if it is a good idea. Does it make sense to install another set of fuel tanks on the harbor?
- **Doug Sederholm** asked what the process is for Mark Wallace to get approval from the Town.
- **Mark Wallace** said that he needs approval from the Board of Selectmen.
- **Todd Alexander** noted that approval will also be needed from the DEP.
- **Doug Sederholm** clarified that approval will be required from the Town as well as the usual gauntlet with the state agencies in order to put in a dock.
- **Brian Smith** asked for clarification of providing fuel and asked if Mark Wallace was capable of doing so at this time.
- **Doug Sederholm** stated that currently, Mark Wallace cannot provide fuel but would be able to do so for the next two years if the repairs are made.

- **Mark Wallace** said that he is willing to try and see if the Town people think it is the right way to go with his proposal.
- **Mike Santoro** noted that there is a lot of hearsay going on right now and Mike Wallace can bring his proposal to Town Meeting. The Town proposal is to provide fuel in a much safer and easier location and it will go before the Town at the Town Meeting. The Town of Oak Bluffs has a proposal in front of the MVC and the Town would like the MVC to act on that proposal. It was voted by the Board of Selectmen to move forward with the proposal.
- **Mark Wallace** stated that the MVC understands the proposal and the politics and he will go from there.
- **Mike Santoro** said that Mark Wallace's proposal requires Chapter 91 permission from the State, DEP approval, and a lot of permitting. The Town needs to move forward and Mr. Wallace has failed right now to provide fuel.
- **Doug Sederholm** and **Brian Smith** asked for clarification on the two year time period.
- **Mark Wallace** said that in two years he will lose where the pumps are currently located but he does own the tanks.

Martin Tomassian asked about the party status. **Fred Hancock** said that will be dealt with before deliberation.

5.2 Commissioners' Questions

There was a discussion about having fuel availability.

- **Leonard Jason** asked Mike Santoro what happens if the Town Meeting does not vote in favor of the Town proposal.
- **Mike Santoro** said there would not be fuel in the harbor.
- **Todd Alexander** said that the Town was before the MVC in 2009 because the harbor did not have fuel and now the Town is back again for the same reason. The only reason the Town is here is because the harbor needs to have fuel in 2013.
- **Mike Santoro** noted that the trucks will come in with fuel if the application is not approved.
- **Mark Wallace** said it is not a good precedent as the fuel truck will be eliminated if the Town project is approved.
- **Tripp Barnes** said that he is all for private enterprise and asked if Mark Wallace can pump fuel in two months.
- **Mark Wallace** confirmed that he could but he needs to do the repairs first.

Brian Smith asked if there was a reason why an RFP (Request for Proposal) did not go out on this project. **Mike Santoro** said this is the second time that fuel has not been provided in the harbor and the Town can't take that chance again. There have been two major fuel spills and the Town feels that it can do it safer.

Brian Smith, Public Hearing Officer closed the public hearing at 9:20 p.m. A post-hearing LUPC is scheduled for March 25, 2013. **Fred Hancock** noted that Deliberation and Decision will be on April 4, 2013.

5.3 Party Status

There was a discussion about party status.

- **Erik Hammarlund** asked for clarification about whether the MVC is obliged to give party status.
- **James Joyce** asked for clarification on what party status is.
- **Fred Hancock** said that in Chapter 831, the language states that people who can appeal a ruling are aggrieved parties and Martin Tomassian wants to be ready for that.
- **Mark London** said that determining who does and does not have party status is normally done by the courts. Our former Counsel had suggested a procedure whereby the MVC could make this determination. However, current MVC Counsel has advised that it is better to leave it to the courts. Having the Commission determine who has party status could unfairly benefit or penalize the applicants or abutters. The MVC will have a written version of Counsel's advice on party status for the Commission to review at the next meeting.

Tripp Barnes stated that he is confused. The MVC tries to iron things out for the towns and the Commission should be helping the town, they need gas. **Fred Hancock** said the Commission should not be discussing the merits of the proposal this at this time.

Camille Rose noted that in principal the MVC has an obligation to look at something like this in view of another business that could be similar.

6. NEW BUSINESS

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

6.1 Executive Director's Report

Mark London presented the following information.

- Affordable Housing Needs Assessment: The All Island Selectmen were not receptive to having a joint meeting with the MVC on May 9, 2013, so some other way will be determined to present the results of the study to the MVC and selectmen.
- Arts Martha's Vineyard: Commission staff is helping facilitate getting this collaborative going as an economic development tool as recommended in the Island Plan. Currently, Christine Flynn is helping to pilot the effort to set up an arts district in Vineyard Haven.
- Transportation: The Commission is working with the Town of Tisbury on the extension of the bike path on Beach Road from the Town Landing to Five Corners. The MVC submitted a proposal to the state asking that the proposal be approved for TIP funding. The Commission also has a request from Chilmark to work on parking issues including the layout of the Menemsha Beach parking lot and general parking supply and demand in the Beetlebung corner area.
- Wastewater Management: The Cape Cod Commission received a substantial three year grant for wastewater management planning on the Cape. Sheri Caseau will keep the Commissioners and the community up to date as this will be a useful way to learn about the challenges and possible solutions.

6.2 Reports from Committees and/or Staff

Bill Veno presented the following.

- Last year the State passed a law regarding fertilizer and will be regulating and preventing towns from proposing their own regulations. However, the law does allow the Cape and Islands to adopt their own regulations under the auspices of the regional planning agencies, before the end of the year.
- He attended the Citizens Planner Collaborative Training on March 16, 2013. Planning and zoning for medical marijuana was discussed and the towns have the ability to adopt regulations for medical marijuana.

Mark London said that the draft guidance from the Commonwealth requires every town to have regulations allowing for at least one marijuana dispensary. There must be a minimum of one and a maximum of five dispensaries in each town. He questioned whether it made sense for a community as small as Martha's Vineyard that each town be required to zone for a medical dispensary. He suggested that Martha's Vineyard might request that the state regulations be modified to allow smaller counties to avoid each town zoning for dispensaries provided all towns in the region adopt a regional plan that allows for at least one dispensary.

Josh Goldstein thought that would be the same as having regionalization of fire departments, etc.

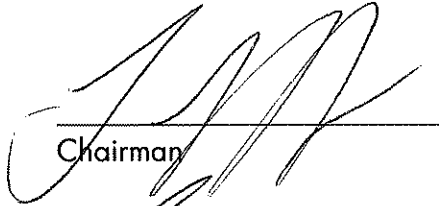
James Joyce thought that a monopoly would be created for one person with one dispensary.

The meeting was adjourned at 9:35 p.m.

DOCUMENTS REFERRED TO DURING THE MEETING

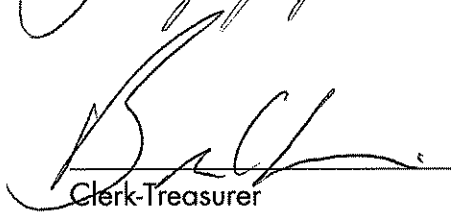
- Minutes of the Commission Meeting – Draft, Held on March 7, 2013
- DRI #641- Comcast NSTAR Hybrid Undersea Cable - Offers
- Martha's Vineyard Commission Land Use Planning Committee- Notes of the Meeting of March 18, 2013
- Martha's Vineyard Commission DRI #640 Verizon Wireless/Doane Cell Tower, MVC Staff Report – 2013-03-21
- DRI 640 Verizon Wireless/Doane Cell Tower Correspondence – Received from February 22-March 21, 2013
- DRI-621-M Oak Bluffs Harbor Fuel Facility – Draft Offers 2013-03-21
- Email from Mark Wallace to the MVC; OB Gas Dock, Dated March 20, 2013
- Correspondence from Martin Tomassian Jr., Esq. Dated March 20, 2013 to the Martha's Vineyard Commission on Behalf of the Gallison Family. RE; The Gallison Family Abutters, Abutter's Opposition to the N Oak Bluffs Application for a Permanent Fuel Facility on Oak Bluffs Harbor
- Memo to The Martha's Vineyard Commission from Christine Flynn, Economic Development and Affordable Housing Planner and Mark London, Executive Director, DRI #551-M5 Field Club Affordable Housing Condition, Dated March 21, 2013
- Correspondence to the Martha's Vineyard Commission from the Town of Edgartown Affordable Housing Committee, Mark Hess, Chairman, Dated January 25, 2013

- Modification to a Decision of the Martha's Vineyard Commission, DRI 551-M4 – Field Club Affordable Housing Change, (Previous Decision)
- Extract from LUPC Minutes of March 18, 2013, DRI 555-M5 Field Club Affordable Housing Condition
- Email to Paul Foley from Sean Murphy, Esq. Dated March 21, 2013, Subject: Field Club



Chairman

4-4-13
Date



Clerk-Treasurer

4-4-13
Date