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November 2, 2017

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Re: Proposed PWSF at 14 Sampson Avenue, Edgartown

Dear Mr. Turner:

Michael E. Porter
Harry F. Lee
*Sarah M. Waelchli
M. Bradford Bedingfield
M. Patrick Moore, Jr.

This firm represents Dana and Robert Strayton, owners of property at 307 Chappaquiddick Road in Edgartown, which is across Sampson Avenue from the proposed Personal Wireless Service Facility ("PWSF") at 14 Sampson Avenue (the "Proposed Facility"). We hereby request that any further hearings of the Martha's Vineyard Commission ("MVC")—and any vote(s) by the MVC—regarding the Proposed Facility be postponed until such time as the Edgartown Zoning Board of Appeals ("ZBA") considers our clients' appeal of the failure of the Edgartown Zoning Enforcement Officer to take corrective action against the business located at 14 Sampson Avenue, MV Wifi, LLC, and its existing eighty foot guyed tower ("MV Wifi Tower"). Any decision by the MVC regarding the Proposed Facility will be premature if made before the ZBA can fully consider this appeal and determine whether the business and the MV Wifi Tower comply with the Town of Edgartown By-law (the "By-law"). In the alternative, if the MVC does proceed to a vote, it should deny approval for the Proposed Facility.

Kevin M. Ellis
Donna A. Mizrahi
Nathan N. McConarty
†Paul M. Cathcart, Jr.
*•Steven L. Mangold

As you are aware, in order to approve a DRI, the MVC must find that "the proposed development is consistent with municipal development ordinances and bylaws." The Martha's Vineyard Commission Act, Chapter 831 of the Acts of 1977, as amended, § 14(b). In this instance, the Proposed Facility is inconsistent with the applicable provisions of the By-law, as demonstrated below.

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In connection with its application for a special permit for the Proposed Facility, New Cingular Wireless PCS, LLC ("AT&T"), submitted a Table of Compliance which not only contains numerous omissions and misrepresentations but also erroneously relies on the existence of the MV Wifi Tower. AT&T references the MV Wifi Tower more than twenty times in its attempt to justify the construction of the Proposed Facility—a proposed PWSF that does not comply in any way with the applicable By-laws. AT&T's reliance on the MV Wifi Tower is particularly misguided considering the MV Wifi Tower and associated equipment have been unpermitted since being constructed years ago and have accordingly never been reviewed under the ByLaw's standards and did not even receive a building permit.

For example, in response to the requirement in Section 11.6.a (General Criteria) of the By-law that "the Board find[] that the specific site is an appropriate location for such uses, that such uses will not adversely affect the neighborhood, and that adequate facilities and protection will be provided . . . ," AT&T responds only by stating that "AT&T has demonstrated and will demonstrate that the Site [14 Sampson Avenue] is an appropriate location for the proposed Facility . . . As part of AT&T's proposal, the existing eighty foot tall guyed tower utilized by MV Wifi, LLC, will be removed upon completion of the proposed Facility . . . By removing the existing MV Wifi guyed tower, and replacing it with AT&T's proposed permanent Facility, the number of permanent towers on Chappaquidick will remain unchanged." AT&T's response (or "compliance demonstration," as it characterizes it) for the requirement under Section 11.6.b.4 that "[a]ll outdoor parking, storage, loading and service areas will be screened from the view of the public road and from adjacent residences" is, not surprisingly, that AT&T will utilize existing parking and equipment storage already on the Site in connection with the MV Wifi Tower. AT&T's answer to the requirement that the design "minimize intrusion into the character of existing development" is that "by replacing the existing MV Wifi tower with the Facility, the Facility's design is consistent with, and minimizes any purported intrusion into, the character of the area."

In addition, to demonstrate that it "cannot substantially provide the needed service from one or more PWSFs that are more compliant with the bylaw," AT&T offers the following justification:

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“By removing the existing MV Wifi guyed tower, and replacing it with AT&T’s proposed permanent Facility, the number of permanent towers on Chappaquiddick and within Edgartown will remain unchanged. As discussed herein, the proposed Facility, including the replacement of the existing MV Wifi tower, is consistent with the current use of the Site and will not adversely affect the neighborhood, and adequate facilities and protection will be provided.”

AT&T ignores the very issue being addressed in Section 23.3.a—the availability of another, more compliant PWSF to provide service instead—again in favor of repeating that the MV Wifi Tower is already existing on the Site. Finally, in response to Section 23.4.c’s requirement that “all new construction of PWSFs shall be concealed,” AT&T responds that concealed antennae are impractical and “the existing MV Wifi guyed tower already includes externally mounted antennas.”

AT&T either does not understand or chooses not to understand that the existence of a non-compliant and unpermitted PWSF has no bearing on the appropriateness and legality of the Proposed Facility. Despite what AT&T would have the MVC and the Zoning Board believe, the Proposed Facility’s replacement of the MV Wifi Tower does not automatically render the Proposed Facility compliant with the By-laws. It is undisputed that no special permit issued for the MV Wifi Tower; as such, AT&T cannot rely on that tower’s mere existence to demonstrate, for example, that the parking and equipment storage are acceptable and that concealed antennae are not necessary, much less that the size, height, setbacks and exact location of the Proposed Facility are compliant and appropriate from a zoning standpoint and that no negative impact on the character of the area will result.

Moreover, there is no record of MV Wifi, LLC, obtaining a special permit for the purpose of conducting business at the Site. Pursuant to Section 11.6.b of the By-laws, “small scale businesses and industry in residential districts” are permissible only where the applicant has satisfied nine requirements and obtained a special permit. Because it appears MV Wifi, LLC, failed to even apply for a business permit when it became

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incorporated in 2010, the Zoning Board must now consider whether there are grounds to issue a special permit for that business. Absent a special permit for MV Wifi, LLC, AT&T will have no host for the Proposed Facility and AT&T's application will become moot.

For all of these reasons, as well as those detailed in the Straytons' Zoning Analysis, the MVC must postpone its hearings and its vote until the Zoning Board reaches a decision on the Straytons' zoning appeal or, in the alternative, vote to deny the DRI.

Thank you for your consideration.

Sincerely,



Joseph L. Bierwirth, Jr.

cc: Edgartown Zoning Board (by email and first class mail)
Edgartown Planning Board (by email and first class mail)
Dana and Robert Strayton
Diane C. Tillotson, Esq.

Enclosures