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## **Martha's Vineyard Commission**

### **DRI # 584 Cozy Hearth Corporation**

#### **MVC Staff Report – 8/30/05**

*\*Note: Updated information is printed in bold type*

## **1. DESCRIPTION**

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- 1.1 Applicant:** Cozy Hearth Community Corp., William Bennett
- 1.2 Project Location:** Watcha Path Road, Edgartown Map 25, Lots 10.1 (3 acres), 10.2 (3.5 acres), and 10.3 (4.4 acres). 10.9 acres total.
- 1.3 Proposal:** To subdivide 3 lots (10.9 acres) into 11 one-acre lots in three-acre zoning through 40B.
- 1.4 Zoning:** RA-120 – Residential: Minimum Lot Size of 3 acres, 50' Front Setback, 30' Rear and Side Setback. However, the project is an application for a Comprehensive Permit pursuant to M.G.L. chapter 40B, Sec. 20-23.
- 1.5 Surrounding Land Uses:** Residential, woodlots, not far from the Transfer Station.
- 1.6 Project History:** The Cozy Hearth Community Corporation is a domestic corporation formed in May 2002. The articles of organization for the corporation state that the purpose of Cozy Hearth is: To deal with real property for the purpose of creating a community containing affordable housing which qualifies under a state or federal housing subsidy program, to own and maintain common areas and facilities in the community, and to undertake all other activities authorized or permitted by law. The corporation is composed of a group of people who intend to live in the subdivision, several of whom work in the same company. The applicant anticipates that the housing will be subsidized under the Federal Home Loan Bank of Boston's New England Find (NEF) Program as well or through privately contributed funds through the Island Affordable Housing Fund.
- 1.7 Project Summary:** The applicants would like to subdivide 3 lots (10.9 acres) into 11 one-acre lots in three-acre zoning through 40B. They are proposing three lots with houses to be available for families earning less than 80% Average Median Income (AMI), one lot for a family earning less than 100% AMI, four lots for families earning less than 140% AMI, and three lots at market rate. The three lots at 80% AMI will have houses built upon them and will be offered at lottery to residents of Edgartown. Members of the Cozy Hearth Corporation will own the remainder of the lots.

## **2. ADMINISTRATIVE SUMMARY**

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- 2.1 DRI Referral:** Edgartown ZBA
- 2.2 DRI Trigger:** 3.202, subdivision of 10 or more lots; 3.401a, creation of 10 or more dwelling units.
- 2.3 Pre-Application meeting with staff:** Thursday January 20, 2005
- 2.4 LUPC:** Monday February 7, 2005.
- 2.5 Site visits:** May 9, 2005
- 2.6 Public Hearing:** May 19, 2005, Cont'd to July 14, 2005, Cont'd to August 4, 2005, Cont'd to September 1, 2005

### 3. PLANNING CONCERNS

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#### 3.1 Some Key Issues

- Can the intersection of Watcha Path and Edgartown-West Tisbury Road handle the increase in traffic? Can the intersection be redesigned or moved?
- Can the property accommodate the water and wastewater needs of the development?
- How would the increase in intensity of use affect the neighborhood?
- Is this a vital habitat area?
- Does this set a precedent that undermines zoning?

#### 3.2 Environment

- **Vegetation:** Presently the property is scrub oak surrounded by rural residential lots.
- **Habitat:** The site is within Division of Fisheries and Wildlife Natural Heritage and Endangered Species Program Priority Habitat 1730. The Applicant has submitted a Rare Species Habitat Assessment to the Natural Heritage Endangered Species Program (NHESP). The State (NHESP) has reviewed the Rare Species Habitat Assessment done by Wendy and Robert Culbert for Cozy Hearth and has determined that a "take" of endangered species habitat would potentially take place for 2 moths. Therefore the Cozy Hearth Corporation is required to apply to NHESP for a Conservation Permit under the Massachusetts Endangered Species Act (MESA). A Conservation Permit requires 70% of the property to be protected, a management plan, and the filing of an Environmental Notification Form (ENF). Cozy Hearth has revised their site plan to protect 67% (from 62%) of the property. **NHESP has said they are satisfied with a plan that yields 67% habitat protection contingent upon approval of the final language for the Conservation Restriction and a long-term habitat management plan. Once Cozy Hearth submits the ENF they will be subject to Massachusetts Environmental Policy Act (MEPA) Review, which will last a minimum of 50 days. NHESP cannot issue a Conservation and Management Permit until the MEPA review is complete.**
- **Water:** The applicant's are proposing individual wells for each house lot. The Groundwater should be at a depth of about 30 feet below grade. The soil types in the area are well drained.
- **Wastewater / Stormwater:**
  - The applicants have offered to use Clivus composting toilets on 8-11 of the lots.
  - The total load for the project is estimated at 17.2-18.5 kilograms, or 1.6-1.7 kg/acre, assuming 8 year-round homes with 95-98% nitrogen reduction and 3 year-round homes with Title V systems, all 11 with the neighborhood average fertilized lawn of 773 square feet
  - A load of 1.6-1.7 kg/acre is very close to the MVC limit of 1.4 kg/acre estimated for the watershed.
  - The eight homes with composting toilets will also each need a small septic tank and leaching field for grey water (which is also included in the nitrogen

calculation). The three lottery homes will not be under corporation control and the applicant had not decided what type of septic system to be installed, as of this writing.

- The revised proposal appears to meet the MVC standard for preserving water quality in Oyster Pond.
- The Edgartown Wastewater Treatment Facility will accept the liquid waste from the proposed Cozy Hearth composting toilets. This Facility treats wastewater and cleans it to 90-95 % nitrogen removal and produces an effluent that meets drinking water standards.
- Notes from Clivus Multrum discussion
  - Homeowner role is highly variable, depending on homeowner's preference
  - What needs to be done:
    - For foam-flush, add soap monthly
    - For all, "level the compost" (rake it) ~ 4 X per year for waterless toilets and 2X per year for foam-flush units; this is accomplished by opening a maintenance door and raking the compost with a long-handled rake (like a clam rake) and adding wood shavings (after the system has matured, composting worms may be added, in which case the need to rake is reduced). These functions may be performed by the homeowner or by Clivus.
  - Regarding the "tea", if it is to be removed, they suggest a storage tank to be pumped by a licensed hauler
  - What Clivus does (typical maintenance contract):
    - Train the homeowner if the homeowner chooses to do maintenance.
    - Monitor for one year with reports to local Board of Health. Typically report yearly to the local Board of Health and separately about any emergencies

### **3.3 Transportation**

- **Access:** The project would be accessed from Watcha Path off of Edgartown-West Tisbury Road. An access road is proposed to run along the northern border of the property, setback 15' from the property boundary.
- **Parking:** The applicant's are proposing shared driveways for the lots that would result in there being five driveways off of the access road.
- **Traffic Summary:**
  - Watcha Path Road is a 12–14 foot wide unpaved road, privately owned and maintained by the Watcha Path/Jennie Lane/Watcha Lane Road Assoc.
  - The project is estimated to generate 110 daily trips, with a total of 16 trips during the peak hours.
  - The additional traffic will increase the volume on Watcha Path Road by 65%, currently the road has an average daily traffic of 168 vehicles (168 to 278).

- The Level of Service at the study intersections during the peak season will not be changed due to the additional traffic. The Barnes Road/Edgartown – West Tisbury Road Intersection currently operates at Level of Service (LOS) F during the peak season and theoretically intersections operating with LOS F should not be subject to additional traffic. However, this has to be balanced against the other benefits and detriments of the project and the community's general desire to accommodate some development while not modifying the road network.
- Although there hasn't been an accident analysis done in the traffic impact study, the accident summary submitted for the Barnes Road/Edgartown-West Tisbury Road intersection indicates that there is a high accident rate.
- The intersection of Edgartown – West Tisbury Road/Watcha Path Road/Oyster Watcha Road has sight distance and design deficiencies.
- The applicant has suggested mitigating traffic by promoting car pooling, improving signage, participating in the road association, and working with them to address sight line deficiencies at the intersection of Watcha Path and Oyster Watcha Road.
- The Cozy Hearth Corporation has offered to put \$5,000 into escrow to work on a solution when the project is approved.
- There are basically two options to fix the Watcha Path/ Edg-WT Road intersection. One is to take Watcha Path straight to Edg-WT Road and the other is to "T" Watcha Path into Oyster-Watcha Road. Option one would require a Special Permit to have a new curb cut within 1,000 feet of another curb cut. Both options would require permission from third parties as well. The Sheriff's Meadow Foundation owns the land between the two roads but does not have a conservation restriction on it so it would not require a change of legislation.

### **3.4 Affordable Housing**

- Breakdown of Income Thresholds & Resale Restrictions:

The following is a breakdown of the income thresholds of the Cozy Hearth Corporation members. This project is designed to meet a range of income thresholds:

To Lottery:

- 3 houses @ 80% or less of AMI (25% required under Chapter 40B)

Cozy Hearth Members:

- 1 lot @ 50% to 80% of Average Median Income (AMI)
- 1 lot @ 80% of AMI
- 1 lot @ 80% to 100% of AMI
- 3 lots @ 140% of AMI
- 2 lots @ above 140% of AMI

In summary, out of the 11 lots, there are 3 houses and 2 lots totaling 5 houses/lots designated for those earning less than 80% AMI. One lot designated between 80% - 100% AMI, 3 lots designated for 140% AMI, and 2 lots designated for above 140% AMI.

The following is a breakdown of the resale restrictions on the lots:

- 3 houses resale restriction @ 80% or less AMI

Cozy Hearth Members:

- 1 lot resale restriction @ 140% AMI for thirty years
  - 4 lots resale restriction @ 150% AMI for thirty years
  - 3 lots unrestricted
- The housing suitability analysis in the Edgartown Community Development Plan did not identify the area the site is in as highly suitable, mainly because it is not served by municipal services and is in a nitrogen sensitive watershed. The Plan also noted that affordable housing would likely occur in other locations due to opportunities that are presented.

### 3.5 Scenic Values

- **Streetscape:** The project will not be visible from Edgartown – West Tisbury road.
- **Building Massing:** The applicant has proposed a revised cluster plan.
- **Architectural Detailing:** The proposal is for three modular homes to be built on the three lots proposed for families earning less than 80% AMI. There was some talk at the Staff/Applicant meeting of the potential for design guidelines for the rest.

### 3.6 Local Impact/Abutters

- Several abutters have called, come in, and written letters opposed to the project so far. Their main objections include the proposal for one-acre zoning in a three-acre zone, the increase in traffic on Watcha Path, increased nitrogen loading in Oyster-Watcha Pond, and the effect on their land value.

## 4. **CORRESPONDENCE**

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- 4.1 Town Officials:** The Edgartown Resident Home Site Committee has written a third letter stating that they are satisfied with the offer of three perpetually restricted lots and six additional lots with resale restrictions for 30 years. "The Committee is not requesting that any further contributions be made by the proponents beyond those already offered." Matt Poole of the Edgartown Board of Health has written that it is important that shared cluster septic systems utilizing enhanced treatment with nitrogen removal must have a operations and management plan. The Edgartown Planning Board sent a letter unanimously supports the application of Cozy Hearth. Joe Alosso of the Edgartown Wastewater Commission has written to say that the Edgartown Wastewater Treatment Facility would accept the liquid waste from the proposed composting toilets.
- 4.2 State Officials:** John Regosin of the Natural Heritage Endangered Species Program (NHESP) has written to say that the Cozy Hearth proposal will constitute a "take" under the Massachusetts Endangered Species Act (MESA) and will require the Applicants to apply for a MESA Conservation Permit providing a management plan for the property and requiring the filing of an Environmental Notification Form (ENF). **Misty-Anne Marold of NHESP subsequently wrote that NHESP is satisfied with a plan that**

**yields 67% habitat protection contingent upon approval of the final language for the Conservation Restriction and a long-term habitat management plan**

- 4.3 Island Organizations:** The Vineyard Conservation Society wrote in opposition because they think it would be a bad precedent, too much density in a 3-acre zone, the proximity to the sandplain habitat, and water quality impacts. The Nature Conservancy Islands Program has written that they elect not to take a position but wanted to offer a conservation perspective on the tension between housing and conservation.
- 4.4 Public:** Gunner and Kristen Lamb of Jennie Lane have written in opposition primarily due to the zoning and the affects increased density will have on privacy. Jonathan Spalter of Jennie Lane wrote in opposition citing noise, the environment, zoning, traffic and personal financial impact. Karen Hannigan of Jennie Lane is concerned with the increased density, change of character to the neighborhood, increased traffic at the intersection of Watcha Path and Edg-WT Road, and the circumvention of 3-acre zoning among other issues. William and Betty Kennedy wrote in opposition based on zoning, environment, and in their view this is an inappropriate 40B. Geoff Patterson of Watcha Path wrote in opposition based on zoning, water quality, environment and open space, noise, inappropriate 40B, and traffic. David and Cheryl Mance wrote in opposition based on ground water, traffic and neighborhood character. They feel the added traffic will bring the road to the breaking point and that the applicant should therefore pave the road up to their entrance. They feel that the Town zoned this area 3-acres based upon the distance to sewer treatment. Robert Green of Watcha Path notes that Watcha Path is a designated DCPC when it crosses into West Tisbury. He is also concerned with nitrogen loading into the ponds, rural character and that the tradeoff for only 3 affordable lots is not good planning. Linda Dewitt of Watcha Path has traced the origins of Watcha path to the 1640's and notes the abundance of birds and wildlife. Greg Blaine of Watcha Path is opposed based on character, zoning, density, traffic, water quality and increasing noise from the transfer station. Tam Blaine of Watcha path is opposed based on character, traffic, the environment, and quality of life. Christopher Downing of Jennie Lane is opposed based on density, zoning, and the impact on Watcha Path.

Richard Moon has written in opposition citing density, environmental impact, significant abutter opposition, and setting a bad precedent. He states, "the affordable housing camp must not be allowed to run roughshod over the concerns of conservationists."

Art Nelson has written in support of Cozy Hearth citing the uniqueness of this 40B application. "This group took 40B, a well-intentioned and poorly written piece of legislation crafted toward commercial developers, and turned it into a tool for a small group of local individuals to create their own affordable housing."

Christopher Downing of Jennie Lane wrote a follow up letter with two objections to the Cozy Hearth proposal. One is that he believes that Watcha Path cannot easily sustain the added use that it would be subjected to and that allowing this to proceed would set a precedent that others would use for their own projects. He included pictures of erosion

problems on Watcha Path and maps of other properties that may use this proposal as a test case.

A letter signed by six neighbors – Ellinor Parece, Steven Parece, Robert Green, John Carbon, Virginia Carbon, and Chris Downing – states that the Cozy Hearth Corporation is not a qualified 501 (C) 3 nonprofit organization and therefore is not eligible to apply for a Comprehensive Permit and thus must be denied by the MVC until this is resolved.

NOTE: The MVC is reviewing the project as a subdivision of 10 or more lots (S&C 3.202) and as a creation of 10 or more dwelling units (S&C 3.401a). The Commission's Standards and Criteria for what types of developments constitute a DRI are not contingent upon the legal status of the applicant (other than the control of the property). While only a public agency, non-profit organization, or a limited dividend organization can file for a Comprehensive Permit under Chapter 40B Comprehensive Permit Law, the Commission is looking at the proposal as a DRI, not a 40B.

Elizabeth Harrington has written two more letters in opposition questioning who will be responsible for the agreements made in this process if the Cozy Hearth Corporation is dissolved.

Gina Burns has written in opposition citing traffic and the misuse of 40B.