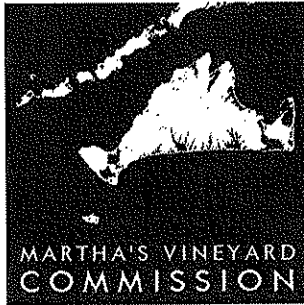




2013 00002504

Bk: 1315 Pg: 16 Doc: DECIS
Page: 1 of 8 04/17/2013 12:20 PM



P.O.BOX 1447 • 33 NEW YORK AVENUE • OAK BLUFFS • MA • 02557
508.693.3453 • FAX: 508.693 7894
INFO@MVCOMMISSION.ORG • WWW.MVCOMMISSION.ORG

Decision of the Martha's Vineyard Commission DRI 640 – Verizon Wireless Cell Tower

1. SUMMARY

- Referring Board: Zoning Board of Appeals, Town of West Tisbury, MA
- Subject: Development of Regional Impact # 640
Verizon Wireless Cell Tower at Doane property in West Tisbury
- Project: Installation of a new 66' foot high Personal Wireless Service Facility tower, with associated ground equipment.
- Owner: Robert Doane, Trustee
- Applicant: Bell Atlantic Mobile of Mass. Corp. Ltd. d/b/a Verizon Wireless; Carl Gehring (Agent)
- Applicant Address: c/o Gehring & Associates, LLC, Box 98, West Mystic, CT 06388
- Project Location: A 50-foot by 50-foot leasehold parcel at 21 New Lane, West Tisbury, Map 31 Lot 48 on the 20.2-acre property owned by the Doane family.
- Description: Installation of a new 66-foot high Personal Wireless Service Facility tower, with associated ground equipment. The tower is in "new location B" identified on the site plan prepared by Dewberry Engineers Inc. dated February 28, 2013. The tower may be either a stealth monopole or a monopine (artificial tree) – if a monopine, an additional 5-foot de minimus taper crown without equipment may be added to the top to give a more natural appearance provided this meets the West Tisbury zoning regulations.
- Decision: The Martha's Vineyard Commission (the Commission) approved the application for the project as a Development of Regional Impact with conditions, at a vote of the Commission on April 4, 2013.
- Written Decision: This written decision was approved by a vote of the Commission on April 11, 2013.

The permit-granting authorities of the Town of West Tisbury may now grant the request for approval of the Applicant's proposal in accordance with the conditions contained herein and may place further conditions thereon in accordance with applicable law, or may deny the request for approval. Any permit issued by the Town shall incorporate the plan approved by the MVC and the conditions.

2. FACTS

The exhibits listed below including the referral, the application, the notice of public hearing, the staff report, the plans of the project, and other related documents that are incorporated into the record herein by reference. The full record of the application is kept on the premises of the Martha's Vineyard Commission.

2.1 Referral

The project was referred to the Commission on October 16, 2012 by the Zoning Board of Appeals of the Town of West Tisbury, MA for action pursuant to Chapter 831 of the Acts of 1977, as amended (the Act) and the Commission's Standards and Criteria Administrative Checklist for Developments of Regional Impact, Section 8.1; a Telecommunications Tower over 35 feet.

2.2 Hearings

Notice: Public notice of a public hearing on the Application was published in the Vineyard Gazette, January 4, 2013.

Hearings: The Commission held a public hearing on the Application that was conducted by the Commission pursuant to the Act and M.G.L. Chapter 30A, Section 2, as modified by Chapter 831 on January 24, 2013. The hearing was continued to March 7, 2013, which was subsequently continued without public testimony due to weather to March 21, 2013 and closed on that date.

2.3 The Plan

The following plans and documents submitted by the Applicant and contained in the Commission's project file constitute "the Plan."

P1 "West Tisbury 2, MVC DRI #640, 21 New Lane, West Tisbury, MA 02575", consisting of eight sheets, prepared by Dewberry Engineers, Inc., February 28, 2012

2.4 Other Exhibits

- E1. Referral to the MVC from the West Tisbury Zoning Board of Appeals, received October 16, 2012.
- E2. Staff Report, by Paul Foley, MVC DRI Coordinator, with the assistance of other staff members, January 18, 2013; revised March 21, 2013.
- E3. Photographs of the site, taken on January 22, 2013 by MVC staff member Paul Foley.
- E4. Binder of information titled "Application for DRI Review & Approval", prepared on behalf of Verizon Wireless by Gehring & Associates, LLC, November 20, 2012.
- E5. Packet of photo simulations titled "West Tisbury 2" of modified proposal, prepared by Caron & Associates Design, undated but presented March 21, 2013.
- E6. Letters in opposition were received from the following: Betsy McIsaac; Colton Hand; James Cooper, Scott McIsaac, et al (78 pages); Dave Sample; Elaine Hughes; Norman and Elena Foster; Virginia Jones; Phillips Harrington & Susan Whiting; Jesse Hughes; Loren Ghiglione; Marilyn Hollinshead; Margaret & Frederick Weiss; Mike & Taffy Rodell; Richard & Anne Christofferson; Kirk, Richard, & Diana Reische; Alice Hall; Alan Temple; Elizabeth Temple; Chris McIsaac; Dina Elboghdady; David Lewis; Ian Temple; Jeanne Barron; Julia Katz; Maggie Barron Biroscak; Maurice Hiers Jr.; Mia Lewis; Michael & Valerie Keen; Polly Petersen; Peter Temple; Richard & Joan Spillman; Sarah Koch; Scott

Mclsaac; Sloan Seymour; Susan Shepherd; Tracey Braun; Gus and Davina Porter; Jessica Yager & Robert Baird; Alison Yager & Andrew Elmore; Mairi Cooper; Pat & Heather Wilson; Stephen Cohn; Suzanne Durrell; Sarah Hemphill; Yates Angus;

- E7. Letters in support were received from the following: A Form Letter endorsing Cell Tower submitted by Applicant and signed by the following 20 Individuals: Linda Lee Alley; Andrea Hartman; Ann Fielder; Clifton Athearn; Robin Brown; Nelson Bryant; Muriel Bye; Cynthia Riggs; George Hartman; Glen Hearn; Matt Hayden; Heidi Schultz; C.B. Kernick; Ruth Kirchmeier; Linda Hearn; Janice Manter; Richard Doane; Ronnie Schultz. Lucy Mitchell and Rez Williams also signed the petition but added in their own writing that they only support a monopole and not a monopine; Tom Hodgson.
- E8. Minutes of the Commission's Land Use Planning Committee meeting, November 5, 2012.
- E9. Minutes of the Commission's Land Use Planning Committee meeting, February 11, 2013.
- E10. Minutes of the Commission's Land Use Planning Committee meeting March 25, 2013.
- E11. Minutes of the Commission's Public Hearing, January 24, 2013.
- E12. Minutes of the Commission's Continued Public Hearing, March 7, 2013. The hearing was continued without testimony due to weather.
- E13. Minutes of the Commission's Continued Public Hearing, March 21, 2013.
- E14. Minutes of the Commission Meeting of April 4, 2013 – Deliberations and Decision.
- E15. Minutes of the Commission Meeting of April 11, 2013 – Approval of the Written Decision.

2.5 Summary of Testimony

The following is a summary of the principal testimony given during the public hearing on January 24, 2013.

- Presentation of the project by Carl Gehring.
- Staff report by Paul Foley, MVC DRI coordinator.
- Oral testimony from Town Boards or members of Town Boards: Tucker Hubbell (ZBA).
- Oral testimony from Public: Marcia Feinberg; Scott (Ian) Mclsaac; Alan Temple; Felicity Russell;

The following is a summary of the principal testimony given during the public hearing on March 21, 2013.

- Presentation of the project by Carl Gehring. Ben Caron (Photo Simulation Expert).
- Staff report by Paul Foley, MVC DRI coordinator.
- Oral testimony from Town Boards or members of Town Boards: Tucker Hubbell (ZBA)
- Oral testimony from Public: Alan Temple; Glenn Hearn;

3. FINDINGS

3.1 Project Description

- The applicant first presented several alternatives. This included three possible sites (A, B, and C), two styles on each site – a stealth monopole and a monopine (artificial tree) – and various heights for each site and style. All alternative locations were on the same 20.2 acre property owned by the Doane family.
- Subsequently, the applicant revised the proposal for a fourth site, "new location B", farther from Town Cove of Tisbury Great Pond and out of the Coastal DCPC, which extends 500 feet from the shore.

- This decision is for the installation of a new 66-foot high Personal Wireless Service Facility tower, with associated ground equipment. The tower is in “new location B” identified on the site plan prepared by Dewberry Engineers Inc. dated February 28, 2013. The tower may be either a stealth monopole or a monopine (artificial tree). If a monopine, an additional 5-foot de minimus taper crown without equipment may be added to the top to give a more natural appearance provided this meets the West Tisbury zoning regulations.

3.3 Statutory Authority

The purpose of the Commission, as set forth in Section 1 of the Act, is to “protect the health, safety and general welfare of island residents and visitors by preserving and conserving for the enjoyment of present and future generations the unique natural, historical, ecological, scientific and cultural values of Martha’s Vineyard which contribute to public enjoyment, inspiration and scientific study by protecting these values from development and uses which would impair them, and by promoting the enhancement of sound local economies.”

The Commission has reviewed the proposal as a Development of Regional Impact, using the procedures and criteria that the Commission normally uses in evaluating the benefits and detriments of such a proposal. The Commission has considered the Application and the information presented at the public hearing, including listening to all the testimony presented and reviewing all documents and correspondence submitted during the hearing and review period.

3.4 Benefits and Detriments

Based on the record and testimony presented therein, the Commission finds the following pursuant to Sections 14 and 15 the Act.

A. THE COMMISSION FINDS THAT THE PROBABLE BENEFITS OF THE PROPOSED DEVELOPMENT WOULD EXCEED THE PROBABLE DETRIMENTS, AS EVALUATED IN LIGHT OF THE CONSIDERATIONS SET FORTH IN SECTION 14(a) OF THE ACT.

A1 The Commission finds that the proposed development at this location is appropriate in view of the available alternatives (Section 15(a) of the Act.)

The Commission finds that the project will improve cellphone coverage in the surrounding area in West Tisbury. It notes that several other alternatives, including locating it in the Town Hall or installing a Distributed Antenna System, were not approved by the Town.

A2 The Commission finds that the proposed development would have a minimal impact upon the environment relative to other alternatives (Section 15(b) of the Act).

With respect to Wastewater, Groundwater, and Surface Waters, the Commission finds that the proposal should have no impact.

With respect to Open Space, Natural Community, and Habitat, the Commission finds that it will require removal of a very small area of trees within a large area of significant habitat.

With respect to Night Lighting, Noise, and Air Quality, the Commission finds that the proposal should have minimal impact. Generators for backup energy will be intermittent and contained within buildings with sound mitigating baffles.

With respect to Energy and Sustainability, the Commission finds that the project will have little impact.

A3 The Commission finds that the proposed development would have a moderate overall effect upon other persons and property (Section 15(c) of the Act).

With respect to Traffic and Transportation, the Commission finds that the proposal should have no impact other than during construction.

With respect to Scenic Values, Character, and Identity, the Commission finds that the top of the tower will have limited visibility as it extends only a short distance above the surrounding tree canopy.

With respect to the Economic Impact, the Commission finds that the project will provide or improve cellphone service which is important to the operation of most businesses and is an asset to residents and visitors.

With respect to the Impact on Abutters, the Commission notes that the tower will have some visual impacts but these have been minimized by moving the tower away from the houses on New Lane and farther back from the pond.

A4 The Commission finds that the proposed development would have no impact upon the supply of needed low and moderate income housing for Island residents (Section 15(d) of the Act).

A5 The Commission finds that the proposed development should have a neutral impact on the provision of municipal services or burden on taxpayers in making provision therefore (Section 15(e) of the Act).

The Commission finds that the cell tower will help improve access to emergency services for people in the affected area, and that the applicant will pay real estate taxes to the town.

A6 The Commission finds that the proposed development would use efficiently and not unduly burden existing public facilities (other than municipal) or those that are to be developed within the succeeding five years. (Section 15(f) of the Act).

A7 The Commission finds that the proposed development does not interfere with the ability of the municipality to achieve the objectives set forth in the municipal general plan. (Section 15(g) of the Act).

A8 The Commission finds that the proposed development would not contravene land development objectives and policies developed by regional or state agencies. (Section 15(h) of the Act).

The Commission notes that the development is consistent with the policies of the 1991 MVC Regional Policy Plan and the 2009 Martha's Vineyard Island Plan.

In sum, after careful review of the plan and its attendant submittals and the testimony presented by the Applicant and others, and the addition of conditions, the Commission has concluded that the probable benefits of this proposed development in this location exceed its probable detriments in light of the considerations set forth in section 14(a) of the Act.

B. THE COMMISSION FINDS THAT THE PROPOSED DEVELOPMENT WOULD BE CONSISTENT WITH THE LAND DEVELOPMENT OBJECTIVES OF THE COMMISSION, AS EVALUATED IN LIGHT OF THE CONSIDERATIONS SET FORTH IN SECTION 14(b) OF THE ACT.

The requested project, as a whole, are consistent with the Commission's land development objectives, The Commission notes that the development is consistent with the policies of the 1991 MVC Regional Policy Plan and the 2009 Martha's Vineyard Island Plan, as noted previously in section A8 of this decision.

C. THE COMMISSION FINDS THAT THE PROPOSED DEVELOPMENT IS CONSISTENT WITH MUNICIPAL DEVELOPMENT ORDINANCES AND BY-LAWS, TO THE BEST OF THE COMMISSION'S KNOWLEDGE.

D. THE COMMISSION FINDS THAT THE SITE IS IN CONFORMANCE WITH THE REGULATIONS OF DISTRICTS OF CRITICAL PLANNING CONCERN, AS EVALUATED IN LIGHT OF THE CONSIDERATIONS SET FORTH IN SECTION 14(d) OF THE ACT.

The Commission notes that the proposed development was moved outside of the Coastal District of Critical Planning Concern (DCPC).

4. DECISION

The Martha's Vineyard Commission deliberated about the application at a duly noticed meeting of the Commission held on April 4, 2013 and made its decision at the same meeting.

The following Commissioners, all of who participated in all hearings and deliberations on this project, participated in the decision on April 4, 2013.

- Voting in favor: Trip Barnes, Josh Goldstein, Leonard Jason, Christina Brown, James Joyce, Fred Hancock, Doug Sederholm, Brian Smith.
- Voting against: Erik Hammarlund.
- Abstentions: none.

Based on this vote, the Commission approved the application for the project as a Development of Regional Impact with the conditions listed in section 5 below.

This written Decision is consistent with the vote of the Commission April 4, 2013 and was approved by vote of the Commission on April 11, 2013.

5. CONDITIONS

After reviewing the proposal for this Development of Regional Impact, the Martha's Vineyard Commission imposes the following conditions in order to increase the benefits and minimize the detriments of the project. The analysis of benefits and the resulting decision to approve the project is based on the proposal as modified by these conditions. These conditions form an integral and indispensable part of this decision.

These conditions are an essential part of this decision and shall be enforced as written. The primary enforcement agents for the compliance of these conditions are the building inspector, the zoning enforcement officer, and the Fire Chief of the Town. If the Commission or the Town finds it necessary to seek judicial relief to enforce the condition, the Applicant, or its successors in title at the time of such proceedings, shall pay the Commission's and/or Towns' attorney's fees and costs incurred in obtaining judicial relief.

- 1) As offered by the Applicant, the tower shall be either a 66' stealth monopole or a 66' flat-topped monopine. In the case of the monopine, the top of the underlying tower shall be limited to 66 feet but an additional 5 feet of branch taper may be added to afford a more realistic appearance, if consistent with West Tisbury Zoning.
- 2) As offered by the Applicant, the final design among the choices shall be decided by the West Tisbury ZBA.
- 3) As offered by the Applicant, if a stealth monopole is chosen, it shall be painted a flat, dull, color as decided by the West Tisbury ZBA.
- 4) As offered by the Applicant, the tower shall be erected at "New Location B" as shown on the plans titled "Verizon Wireless – West Tisbury 2" prepared by Dewberry Engineers, with last revision date 02/28/13.
- 5) As offered by the Applicant, the tower shall not be lighted.
- 6) As offered by the Applicant, the on-grade equipment compound shall be surrounded by an 8' tall wood stockade fence.
- 7) As offered by the Applicant, if the tower is decommissioned, the work shall be carried out pursuant the Applicant's approval under the West Tisbury PWSF Bylaw.

6. CONCLUSION

6.1 Permitting from the Town

The Applicant must, consistent with this Decision, apply to the appropriate Town of West Tisbury Officers and Boards for any local, state, and federal development permits which may be required by law.

The permit-granting authorities of the Town of West Tisbury may now grant the request for approval of the Applicant's proposal in accordance with the conditions contained herein and may place further conditions thereon in accordance with applicable law, or may deny the request for approval. Any permit issued by the Town shall incorporate the plan approved by the MVC and the above conditions.

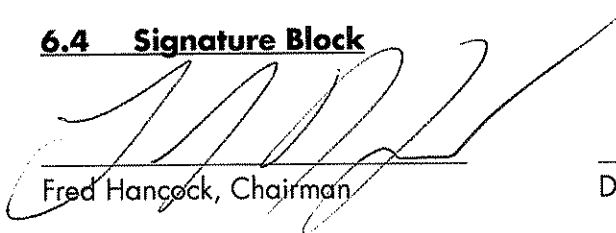
6.2 Notice of Appellate Rights

Any party aggrieved by a determination of the Commission may appeal to Superior Court within twenty (20) days after the Commission has sent the development Applicant written notice, by certified mail, of its Decision and has filed a copy of its Decision with the West Tisbury Town Clerk.

6.3 Length of Validity of Decision

The Applicant shall have two (2) years from the date of receipt of the Decision of the Martha's Vineyard Commission contained in this document to begin substantial construction. Should substantial construction not occur during said two (2) year period, this Decision shall become null and void and have no further effect. This time period may be extended upon written request from the Applicant and written approval from the Martha's Vineyard Commission.

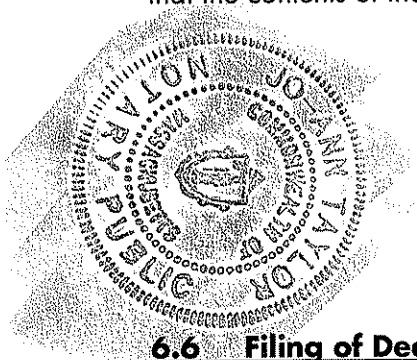
6.4 Signature Block



Fred Hancock, Chairman
Date 4-17-13

6.5 Notarization of Decision

Commonwealth of Massachusetts
County of Dukes County, Mass.

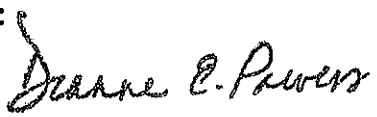
On this 17th day of April, 2013, before me,
Jo-Ann Taylor, the undersigned Notary Public, personally
appeared Fred Hancock, proved to me through satisfactory evidence of identity,
which was/were driver's license to be the person(s) whose name(s)
was/were signed on the preceding or attached document in my presence, and who swore or affirmed to me
that the contents of the document are truthful and accurate to the best of his/her/their knowledge and belief.




Signature of Notary Public
Jo-Ann Taylor
Printed Name of Notary
My Commission Expires February 9, 2018

6.6 Filing of Decision

Filed at the Dukes County Registry of Deeds, Edgartown, on: _____
Deed – Book _____, page _____

Attest:
 Register