



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 662 – Chappy Temporary Wireless Tower

I. SUMMARY

Referring Board: Edgartown Planning Board, Town of Edgartown, MA

Subject: Development of Regional Impact #662

Project: To construct a temporary 104-foot monopole tower with guy wires, a ground mounted dish antenna 6' in diameter, and associated mechanical equipment in an existing shed.

Owner: Robert Fynbo (Property Owner)

Applicant: New Cingular Wireless PCS, LLC ("AT&T")
C/O Brian Grossman (Anderson Krieger LLP)

Applicant Address: One Canal Park, Suite 200, Cambridge, MA 02141

Project Location: 14 Sampson Avenue, Edgartown Map 34 Lot 197 (0.528 acres)

Description: To locate a temporary wireless communications facility, including without limitation a 104-foot ballast mounted concealed antenna monopole with 3 guy wires and anchors, 3 panel antennas, a ground mounted dish antenna of 6 feet in diameter, coaxial cables, and 2 radio communications equipment cabinets to be located within an existing building. This is a temporary antenna to provide service for this summer. They plan to submit an application for a new taller permanent antenna within the next year. The base of the tower would be surrounded by a 6' stockade fence and there would be a 10' tall satellite dish in the yard.

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 14, 2016.

Written Decision: This written decision was approved by a vote of the Commission on April 28, 2016.

Dukes County Registry of Deeds
Received - Entered
Date 5/2/16
Time 11:39 A.M.
Bk/Pg or Doc # 1404/529
Dianne E. Powers, Register

The permit-granting authorities of the Town of Edgartown 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.

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 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 April 5, 2016 by the Planning Board of the Town of Edgartown, 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 9.1a (Construction of Telecommunication tower over 35') which requires a mandatory public hearing review as a Development of Regional Impact and the project was reviewed as such by the Martha's Vineyard Commission.

2.2 Hearings

Notice: Public notice of a public hearing on the Application was published in the Martha's Vineyard Times, March 24, 2016.

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 April 7, 2016; which was continued to April 14, 2016 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 "Application for a Special Permit to the Edgartown Planning Board from New Cingular Wireless PCS, LLS ('AT&T') for a temporary 104 foot high, ballast mounted, concealed antenna monopole tower submitted by Brian Grossman of Anderson Krieger LLP dated February 22, 2016. The Application package consists of ninety-six 8.5" by 11" pages including the completed Application Form; Table of Compliance with Zoning By-law; copies of Site Plans dated February 19, 2016; photographic simulations of the proposed facility; report of Radio Frequency Engineer; Radio Frequency Emissions Compliance Report; Alternatives Analysis; Letter of Authorization from the property owner; AT&T's Relevant FCC License Information; Proposed equipment specifications; and Deed.

2.4 Other Exhibits

- E1. Referral to the MVC from the Edgartown Planning Board; April 5, 2016.
- E2. Staff Report, by Paul Foley, MVC DRI Coordinator, with the assistance of other staff members, April 7, 2016; and revised April 14, 2016.
- E3. Photographs of the site, taken on April 11, 2016.
- E4. Letters from the following Island Organizations: The Vineyard Conservation Society.
- E5. Letters from the following citizens: Bob and Ellen Gernitz; Rob Kagan; Linda Eckles; Mary Scott Spencer; William and Susan Geresy; Serene Forte and Teri Carilli; Ellen and Clark Sole; Steve and

Tina Pollock; Corrine Costello; John and Sandra Cavanaro; Molly Pickett; Dick and Judy Dimond; Robert Strayton; Woody Filley (Chappy Wireless Committee); Jack McCauley; Corinne Costello; Jack McCauley (2nd); Jennifer Clark; Amy Schuster; Robert Strayton (2nd); Bruce Strayton; Dana Strayton; Bob Mason; Alex Miceli; Dick and Judy Dimond; Steve and Kris Wardwell; Linda and John Anderson; George Mellendick; Michele Casavant; Jack McCauley (3rd); Sue Wacks; Eric Stark; Melissa Strayton; Deb Radway; Harold Flack; Harvey Richmond; Molly Pickett; Ginny Murray; Molly Pickett; Leslie Self; Dick Chasin; Ann Burger; Gail Rodney; JoAnn Tilghman; Martha Weston; Hadley Berkowitz; Ed and Betty Trider; Richard Knight Jr. Joseph Currier; Sylvia Malm; Change.Org 10 names; Jim Adelstein; Mitch Reiter; Kate Greer; Hanley Clifford; Chris Kennedy (The Trustee of Reservations); Change.Org up to 69; Elizabeth Morash; Sue Wacks; Boyd and Karen Osler; Briggs Phillips; Kirk and Liz Oswald; Cornelia Dean; Skip Bettencourt; Constance Hickey; Jack McCauley (4th); Timothy Leland; Penelope Dixon; Steve Rysz; Mary-Ellen Taplin; Diana Roy; William and Susan Geresy; Barbara Johns; Sydney Bath; Robert and Cornelia Hurst; Russell Etheridge; Nicholas and Andrea Jutzi; Anne Weston Meigs and Girard Higgins; Patricia Slater; Janet Jussel; Bob Colvin; Brendan O'Neill (Vineyard Conservation Society); Nancy Penhune; Matthew Ramsay; Corinne McGovern; and Phil Cordella.

- E6. Minutes of the Commission's Land Use Planning Committee meeting, March 21, 2016.
- E7. Minutes of the Commission's Public Hearing, April 7, 2016.
- E8. Minutes of the Commission's Continued Public Hearing, April 14, 2016.
- E9. Minutes of the Commission Meeting of April 14, 2016 – Deliberations and Decision.
- E10. Minutes of the Commission Meeting of April 28, 2016 – Approval of the Written Decision.

2.5 Summary of Testimony

The following is a summary of the principal testimony given during the public hearing.

- Presentation of the project by Brian Grossman (Attorney for AT&T from Anderson Krieger LLP) at the Public Hearing of April 7, 2016.
- Presentation of the project by Arthur Krieger (Attorney for AT&T from Anderson Krieger LLP) and Kevin Mason at the Public Hearing of April 14, 2016.
- Staff reports by Paul Foley, MVC DRI Coordinator.
- Oral testimony from Public Officials on April 7, 2016: Mike Donaroma (Edgartown Board of Selectmen); Mike McCord (Edgartown Planning Board); Dave Rossi (Edgartown Chief of Police); Peter Shemeth (Edgartown Fire Chief); Woody Filley (Chairman of the Chappaquiddick Cell Committee); and Adam Darack (Chappaquiddick Cell Committee).
- Oral testimony from Public on April 7, 2016: John Dropick; Hanley Clifford; Peter Wells; Serena Forte; Pat Rose; Corrine Costello; Teri Carilli; and Molly Pickett.
- Oral testimony from Public Officials on April 14, 2016: Dave Rossi (Edgartown Chief of Police); and Adam Darack (Chappaquiddick Cell Committee).
- Oral testimony from Public on April 14, 2016: Robert Wazyoz; Dana Strayton; Rob Strayton; Peter Wells; Mary Spencer; Corrine Costello; Hanley Clifford; Molly Pickett; and John Cavanaro.

3. FINDINGS

3.1 Project Description

- The proposal is to locate a temporary wireless communications facility, including without limitation a 104-foot ballast mounted concealed antenna monopole with 3 guy wires and anchors, 3 panel antennas, a ground mounted dish antenna of 6 feet in diameter, coaxial cables, and 2 radio communications equipment cabinets to be located within an existing building.
- The Applicants have said this is a temporary antenna to provide service for this summer. They plan to submit an application for a new taller permanent antenna within the next year. A permanent antenna requires more permitting and thus will take more time than is available to provide coverage for this summer.
- The Applicant hopes to have this temporary antenna up and operational by Memorial Day. This is not a Cellular on Wheels (C.O.W.) often associated with Presidential visits.
- Though intended for only six months the temporary antenna is structurally designed for an extended period of time. The existing Wireless Internet Service Provider (WISP) tower will remain.
- Currently the antenna is planned for only AT&T but other providers could be accommodated.
- The base of the tower would be surrounded by a 6' stockade fence. Associated equipment would be housed in an existing outbuilding with cables connected via an underground conduit. Three guy wires would extend to ballast blocks outside the tower enclosure and there would be a 10' tall satellite dish in the yard.

3.2 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.

At 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 Chappaquiddick Cell Committee, who has been reviewing the situation for several years, found that the preferred alternative of a Distributed Antenna System (DAS) is not a viable alternative at this time.

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 and Groundwater, the Commission finds that the project will have no impact.

With respect to Open Space, Natural Community and Habitat, the Commission finds that the property is already developed and no additional trees will be cut.

With respect to Night Lighting and Noise, the Commission finds that the proposal will have no lighting. The Commission notes that the mechanical equipment will be housed in an existing building and the tower will not have a generator.

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 minimal overall effect upon other persons and property (Section 15(c) of the Act).

With respect to Traffic and Transportation, the Commission finds that the project will have no impact.

With respect to Scenic Values, Character, and Identity, the Commission finds that the proposal will be a slight detriment. The Commission notes that while several neighbors objected to the proposal a significant number of the near neighbors testified in support of the project. The Commission also notes that there is an existing antenna on the property.

With respect to the Impact on Abutters, the Commission notes that some neighbors expressed concern that there could be a negative impact to real estate values and health.

A4 The Commission finds that the proposed development would have a neutral impact upon the supply of needed low and moderate income housing for Island residents (Section 15(d) of the Act).

The Commission finds that the project would have no impact on affordable housing.

A5 The Commission finds that the proposed development would have a beneficial 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 there will be a positive impact for Police, Fire and the delivery of emergency services.

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).

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 such as those relating to wastewater and future traffic mitigation, the Commission has concluded that the probable benefits of this proposed development in this location exceed its probable detriment 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, advances the Commission's land development objectives, as outlined in the Martha's Vineyard Commission Regional Policy Plan adopted by the Commission in June 1991, and the Island Plan adopted by the Commission in December 2010, and 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.

The Commission finds that the project is subject to Special Permit review by the Planning Board.

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.

4. DECISION

The Martha's Vineyard Commission deliberated about the application at a duly noticed meeting of the Commission held on April 14, 2016 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 14, 2016.

- Voting in favor: John Breckenridge; Christina Brown; Robert Doyle; Josh Goldstein; Fred Hancock; Lenny Jason; Linda Sibley; and James Vercruyssé.
- Voting against: Ernie Thomas.
- 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 14, 2016 and was approved by vote of the Commission on April 28, 2016.

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 agent for the compliance of these conditions is the building and zoning enforcement officer 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 Temporary Approval

- 1.1 The approval of this temporary wireless communication facility and its use, by the MVC, is good for one year from the start of construction. If another carrier wants to co-locate within this tower the applicant does not have to come back to the MVC as long as there are no visible changes to the monopole.

2 De-commissioning

- 2.1 The Martha's Vineyard Commission recommends that during the Special Permit Review the Edgartown Planning Board consider measures to ensure the de-commissioning of this temporary wireless communication facility when its approval expires or when a permanent tower or alternative is approved.

6. CONCLUSION

6.1 Permitting from the Town

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

The permit-granting authorities of the Town of Edgartown 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 Edgartown 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.

6.3 Signature Block

James Vercrusse
James Vercrusse, Chairman

5.2.2016
Date

6.4 Notarization of Decision

Commonwealth of Massachusetts
County of Dukes County, Mass.

On this 2nd day of May, 2016, before me,
Jo Ann Taylor the undersigned Notary Public, personally
appeared Jim Vercrusse, 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.

Jo Ann Taylor
Signature of Notary Public

Jo Ann Taylor
Printed Name of Notary

My Commission Expires February 9, 2018

6.5 Filing of Decision

Filed at the Dukes County Registry of Deeds, Edgartown, on: May 2, 2016

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