

THE MARTHA'S VINEYARD COMMISSION

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Minutes of the Special Meeting of May 1, 2003

Held in the Olde Stone Building,
33 New York Avenue, Oak Bluffs, MA

IN ATTENDANCE

Commissioners: James A. Athearn, Chairman (Elected – Edgartown), John Best (Elected – Tisbury), Christina Brown (Elected – Edgartown), Linda DeWitt (Appointed – Edgartown), Tristan Israel (Appointed – Tisbury), Deborah Moore (Elected – Aquinnah), Katherine Newman (Appointed – Aquinnah), Linda Sibley (Elected - West Tisbury), Doug Sederholm (Elected – Chilmark); Robert E. Schwartz - Appointed - West Tisbury), Paul Strauss (Appointed- County); Richard Toole (Elected – Oak Bluffs); Andrew Woodruff (Elected -West Tisbury)

Staff: Mark London (Executive Director), Christine Flynn (Regional Planner), Jennifer Rand (DRI Coordinator), Bill Wilcox (Water Resources Planner), Bill Veno (Regional Planner), David Wessling (Transportation Planner).

There being a quorum present, James A. Athearn, Chairman, opened the Commission Meeting at 7:45 p.m.

1. TISBURY WHARF (DRI No.565) – PUBLIC HEARING

Commissioners present: J. Athearn, J. Best, C. Brown, L. DeWitt, T. Israel, D. Moore, K. Newman, L. Sibley, D. Sederholm, R. Schwartz, P. Strauss, R. Toole, A. Woodruff

Present for the Applicant: Ralph Packer, owner; Elisabeth Thompson, owner's daughter; Simone DeSourcy, agent for Mr. Packard; Kent Healy, engineer

There being a quorum present, Christina Brown, Hearing Officer, opened the Public Hearing at 7:35 p.m. and read the Notice of Public Hearing.

1.1 Applicant's Presentation

Simone DeSourcy explained the project.

- When an ancestor of the applicant built the Daggett House in 1801, it was right on the water, as shown in a 19th century photograph shown to the Commission.

- Over the decades, the land was filled in and buildings were built around it so now, it is a block from the water.
- The applicant would like to move the house back to a harborfront location on Beach Road, near the Tisbury Wharf Building.
- The building's location on the site is determined by the 50-foot setbacks that give little leeway.
- The proposed use for the ground floor is 800 square feet of office space to allow spreading out overcrowded company offices presently in nearby buildings. There would be no new employees. On the second floor would be a four-story apartment to be used by visiting consultants and crews.
- There would be no change to traffic.
- This proposal would promote the objectives of the Vineyard Haven Harbor DCPC in that it would enhance historic structures, harbor uses and views.
- The new site will allow construction of a handicapped accessible ramp to the building.
- Chris Scott of the Vineyard Preservation Trust sent a letter of support indicating that moving houses is in the Island tradition and this would restore the house's original waterfront location.
- The site is in the Waterfront Commercial District that has no minimum number of parking spaces.
- The house is not on the Federal Register of Historic Structures, nor is it part of the William Street Historic District.
- On August 20, the Board of Health accepted the proposed wastewater flow and confirmed that the parcel had enough allocated capacity for this project.
- In December, the Harbor Management Committee endorsed the plan.
- In January, the Selectmen referred it to the MVC and also endorsed the plan.
- In February, the Planning Board voted that it was a permitted use.
- If approved by the MVC, it would need to go to the Town's Conservation Commission, Harbor Management Committee [is this right] and Site Plan and Review Committee (check names of committees).

1.2 Staff Report

Bill Veno gave the staff report.

- The Commission received letters from the Town Board of Health, Board of Selectmen, Planning Board, and Harbor Management Committee as well as the Vineyard Preservation Trust, all in support of the project. There was also a letter dating from January from the Tisbury Historical Commission saying it was not in favor of moving the building from its original site.
- There is no offer for affordable housing mitigation.

1.3 Commissioner's Questions

Jim Athearn asked about the landscaping. **Elizabeth Thompson** said that due to the nature of the site, no new landscaping was proposed but they will keep the existing rosa rugosa or beach plums along the roadway.

Richard Toole asked what would happen to the existing site. **Ralph Packard** said that it would be sold. Richard Toole asked whether it would keep its wastewater allocation. **Kent Healy** said it would.

Linda Sibley asked for further clarification on the existing site. **Ralph Packard** said that he would clean up the site and sift the soil for artifacts. Tisbury rules require that the lot be graded and cleaned and he felt that zoning regulations would ensure a good project there.

Richard Toole suggested that the question of whether the “once a DRI always a DRI” rule would apply to the existing lot. **Tristan Israel** suggested that this DRI application deals only with the new site.

Linda DeWitt asked when he expects to move the building. **Ralph Packard** said that the intention is to do it in the third week of October He plans to barge it from the foot of the Beach Street Extension to the proposed site.

Christina Brown asked about the affordable housing contribution. **Ralph Packard** noted that they already provided housing in three locations for employees and that the proposed apartment would also be used by employees. They also provided economical “barge housing” in the summertime.

1.4 Testimony from the Public

Elizabeth Thompson, said that five of the seven descending generations of the original owners have lived in this house. She thinks this is important to the harbor. She mentioned other examples of houses that have been moved on the Island. She felt that this was preserving the past for the future.

At 8:00p.m., Christina Brown closed the Public Hearing.

1.5 Discussion and Decision

Linda Sibley moved and it was duly seconded that in view of the use of building, the affordable housing contribution be waived.

- Tristan Israel, noted that Ralph makes many generous contributions with respect to fuel.

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

Richard Toole moved and it was duly seconded that the proposal be approved as presented.

- Tristan says he thinks this is a good plan and will be a real asset.
- Linda DeWitt said that the previous commercial uses had found the existing site to be satisfactory and that this is a good use for the building.

Roll call vote. In favor: J. Athearn, J. Best, C. Brown, L. DeWitt, T. Israel, D. Moore, K. Newman, L. Sibley, D. Sederholm, R. Schwartz, P. Strauss, R. Toole, A. Woodruff Opposed: none. Abstentions: none. The motion carried.

2. AT&T BUILDING (DRI No.) – CONTINUED PUBLIC HEARING

Commissioners present: J. Athearn, J. Best, C. Brown, L. DeWitt, T. Israel, D. Moore, K. Newman, L. Sibley, D. Sederholm, R. Schwartz, P. Strauss, R. Toole

Present for the applicant: John Keene, Anderson & Kreiger; Ajay Sawant, RF specialist; and Melinda Petit, Turning Mill Consultants

There being a quorum present, Christina Brown, Hearing Officer, opened the Continued Public Hearing at 8:15 p.m. and read the Notice of Public Hearing.

Linda Sibley recused herself and left the room.

Given that there was no objection from the applicant or anyone else present, Jim Athearn and Bob Schwartz remained in the room although they are not eligible to vote, having missed the previous session of the public hearing.

2.1 Applicant's Presentation

John Keene continued the applicant's presentation from the last Public Hearing held on .

- There was considerable information in the application that he will not repeat.
- The major outstanding concern at the last Hearing was why this site was chosen instead of a site that respected the bylaw. The West Tisbury bylaw allows for a 60' tower if it is set back 400' from the property line and a 120' tower if it set back 1,000'.
- Out of the town's 2,700 properties, there were only seven properties in the entire town that were large enough to meet the 1,000-foot setback requirement. He described the status of each site showing RF coverage maps that were distributed to Commissioners. All either posed gaps in coverage or were unavailable.
 - At the airport, AT&T has already proposed a tower but this is not sufficient to serve all of West Tisbury; they still need a site in another part of town.
 - The Wodlinger site would provide coverage in the southern part of town but not in the central part of town.
 - The Seven Gates property is further to the southwest. It leaves many gaps in the central part of west Tisbury.
 - The Trustees of Reservations site has similar coverage problems to the Wodlinger site.
 - The property owned by the Town provides redundant coverage close to Vineyard Haven and the airport but does not cover the central part of town.
 - The Edwin and Jean Woods, would provide adequate RF coverage. However, the owners are not interested in allowing a cell tower so this site is not available.
 - The State Forest would provide good coverage. However, this site is not available and the airport expressed concerns about a tower there, with respect to air navigation safety.

This analysis did not involve looking at other constraints such as wetlands and topography.

- Only forty more sites town-wide could meet the 400-foot setback requirement. Many of these were quickly eliminated because of their location. He recapped the status of the others.
 - Florence Olson said she was not interested in leasing her property but, in any case, it did not provide adequate coverage.
 - Crow Hollow inc. would be a good site in addition to the proposed site but would not be adequate as substitute for it.

- The Hickie Trust property would provide some coverage to the central part of town, but would leave large gaps in coverage between it and the Down-Island coverage.
- The Lewis site has connectivity problems to the east and would not conform to the zoning bylaw because it was within the proscribed setback distance from a school.
- Another Seven Gates site would provide very little coverage.
- The Ag Hall would not provide adequate coverage, even with 60' tower.
- The Polly Hill Arboritum site would leave major gaps to the northeast.
- The Whiting property also does not allow for adequate connection to the coverage areas to the east.

2.2 Commissioner's Questions

Andrew Woodruff asked about the lot that abuts this property that has considerable acreage. **John Keene** said that this property slopes off so it would provide inadequate coverage. Also, it belongs to a trust that is related to the Flanders family but is not in direct control of David Flanders, the owner of the proposed site. This site is not available.

John Keene said the others aren't merely not as good as this site, but that this is the only feasible option.

Tristan Israel asked what the redundancy of the proposed site is. **John Keene** said there is only minimal overlap with areas covered by existing towers. A little overlap is desirable to provide continuous coverage.

Mark London asked to what extent there is a responsibility for the town or the commission to consider the question of availability. Isn't their obligation met as long as it is legally possible to supply adequate coverage respecting the bylaws, even though this might mean having to seek the right to install a tower on a privately owned piece of land and pay whatever price the owner wants? **John Keene** said that the question of availability is a difficult issue but that the courts have said that it has to be "commercially reasonable" for the cellular carrier to erect the towers necessary to supply complete coverage.

Doug Sederholm asked about the specific location on the proposed site. Is it possible for it to be better located with respect to other nearby buildings, particularly Warren Mead's house and the house directly across Old County Road. What other nearby houses are there? **John Keene** noted that the plan shows all buildings within 300 feet from the property line and that doesn't include any other houses. He said AT&T was prepared to move the tower an additional 60 feet away from the Mead property. **Doug Sederholm** said that the site seemed quite flat and asked whether they could provide coverage maps with the tower moved 100 or 150 feet to the south. **John Keene** said any move beyond 60 feet would mean a decline in coverage.

John Keene reiterated that the proposal was for a monopole in a stand of trees, that it was virtually invisible from anywhere except Mr. Mead's property. From a regional point of view, it was a positive project. Moving it down the hill would reduce the feasibility of using the tower for co-location of other carriers and could lead to a proliferation of towers.

Mark London suggested that if the project is approved, the wording of the decision should allow some flexibility in location so that, if the Town of West Tisbury requires the tower to be located further to the south, the applicant would not have to come back to the Commission.

Tristan Israel asked why there is a need to provide coverage for one company if another carrier already provides coverage. **John Keene** said that there is presently little coverage Up-Island by any carrier. The purpose of the Telecommunications Act is to provide a highly competitive environment to encourage companies to provide the best quality of service and the best

features. The Act says that one cannot discriminate between carriers; it is the local authority's legal obligation to allow each company to provide complete coverage. **Christina Brown** said that the FCC does not allow discriminating against one carrier because of the actions of another carrier. **Linda DeWitt** remarked that she has received information from other carriers saying that they would be providing full Island coverage within a year.

Katherine Newman asked why moving the tower to a less intrusive place down the hill and making it a little higher wouldn't be better. **John Keene** said that this would be acceptable to AT&T if the town were willing to grant a second variance to exceed the height restriction.

Deborah Moore asked whether, if other carriers wanted to co-locate in the future, it would be prohibitively expensive to make the tower higher at a later time. **John Keene** said that it might be feasible. The question for the community is whether it is better to have fewer taller towers or more shorter towers in order to minimize the visual impact.

John Best asked how close other towers could be. **John Keene** said this depended on the direction of the antennae. If they are pointed directly at each other, they needed to be 50 to 75' apart. If the angle of the antennae were offset, they could be closer.

Linda DeWitt asked whether there was a standard leasing fee. **John Keene** said it was negotiated.

Andrew Woodruff asked for clarification about the coverage maps: is height or the presence of obstructions more important? **John Keene** said it depends on each site.

2.3 Testimony from Public Boards

Tucker Hubble, member of the West Tisbury ZBA, said that if AT&T thinks that this is the only acceptable location, won't the other companies come to the same conclusion and this spot will end up becoming an "antennae farm". **John Keene** suggested that if the Town doesn't want this to happen, it could look at its bylaw and see whether this might be changed to allow higher towers making more locations feasible.

Tucker Hubble said that over the past 3 or 4 weeks, it would appear that the DEM might be more open to allowing several carriers to co-locate on the fire tower and perhaps in the State Forest. **John Keene** said that if the DEM is changing its stance, AT&T hasn't heard it yet. At any rate, the fire tower property was not acceptable by itself from an RF level and there isn't another site on the other (southern) side of town to complete the coverage it would provide.

2.4 Public Testimony

David Wessling asked where the next sites would be. **John Keene** said it was premature to indicate specific sites but that the intention is to provide full coverage on the island including all of the Up-Island towns and Chappiquidick.

Warren Meade said he has several concerns including the escalation of this site into something that no one would want to bear. He wonders whether someone from another company would give the same information. He believes the height of the land continues to the south for hundreds of feet, and if it slopes downward, it is only slightly. It is a slap in the face of the hundreds of people who worked for a year to rewrite the zoning bylaw to allow a tower on this site.

Susan Button, resident of Vineyard Haven, asked whether there is a legal reason why we have to have these towers on the Vineyard. She only used her cell phone when off-Island.

Michael Colinari said that the cell phone was invented 30 years ago and is now part of our daily lives. He has a cell phone from another carrier. It is a safety issue. Coverage Up-Island is very incomplete. Every project affects somebody but this project affects very few people. He read a letter about an experience when he was rushing to the hospital at 2 a.m., hit a deer, and even though he had a state-of-the-art cellphone, was unable to communicate. He asked the Commission to approve the proposal. He asked whether the West Tisbury zoning bylaw was based on science. **John Keene** said he could not answer for the town. From AT&T's point of view, they don't see any justification for a 400' setback given that, from a safety point of view, the tower's fall zone is much smaller and he has submitted a letter from an expert saying that the radio waves have no health impact.

Kent Healy, engineer, has a cell phone that saves him 20 miles per week in driving, even with the poor coverage Up-Island.

At 9:12 p.m., Christina Brown closed the Public Hearing.

There was a recess from 9:12 to 9:20 p.m.

3. ISLAND ELDERLY HOUSING (DRI No. 564) – CONTINUED PUBLIC HEARING

Commissioners present: J. Athearn, J. Best, C. Brown, L. DeWitt, T. Israel, D. Moore, K. Newman, L. Sibley, D. Sederholm, R. Schwartz, P. Strauss, R. Toole

Applicants representatives: Carol Lashnits, manager of Island Elderly Housing; Peter Zorzi, architect with Studio One; and Doug Hoehn, engineer

There being a quorum present, Christina Brown, Hearing Officer, re-opened the Continued Public Hearing at 9:20 p.m. and read the Notice of Public Hearing.

3.1 Applicant's Presentation

Peter Zorzi explained the latest changes to the project and distributed plans of two alternatives.

- Alternative 1 has the building moved 10 feet further back from Clover Hill Road and 10' farther from the immediate abutter. This would allow preservation of more of the hill. The resulting setbacks would be 44' from Clover Hill and 47' from the abutter.
- Alternative 2 consisted of turning the building at an angle. This would allow preservation of even more vegetation.
- Either option would be acceptable to the applicant.
- The plans include replanting the slopes with indigenous vegetation. This is twice as much as HUD normally allows.
- They have removed from the plans the gable at the outside corner as this faced the slope at the rear; this would save \$10,000 that would go to regarding and planting.

3.2 Commissioners' Questions

John Best asked why the building couldn't be moved even closer to the site's internal road and whether they had looked at other options for the parking. **Peter Zorzi** cited the difference in elevation of the parking area and the building. They do not want to institutionalize the building by putting in a handicapped ramp that would be necessary if the slope was greater. Also, if it were closer, units would begin to be uncomfortably close to the road. He felt this was the best balance. As people age in place, there is an increasing need for handicapped parking so it is important that it be close.

Doug Sederholm asked what physical constraints prevent it from moving 30 feet farther from Clover Hill. **Doug Hoehn** said that it was already as far as it could go without jeopardizing the adjacent drainage area.

Jim Athearn said that on the site visit, it seemed that turning the building would preserve the peak of the hill. **Doug Hoehn** said that it is not possible to preserve this peak.

Tristan Israel said he saw three or four concerns. One was traffic, particularly the possibility of eliminating the access from Clover Hill; he realizes this would require a major **change**. **Carol Lashnits** said they brought this up with Farmers Home Administration, which financed the first project. They said that this would be unacceptable since that phase is a separate property with different ownership and it would then have no access.

Linda Sibley noted during the site visit that the leaching field required a large area with no vegetation and wondered whether it could be under the parking area. **Doug Hoehn** said that there will be lots of drainage and other pipes under the parking. The leaching field could be used for a garden.

Linda Sibley asked whether it would be possible to add some evergreens to the top of the hill since the ones on the new slope will be so small for many years that they will have little effect. **Peter Zorzi** was concerned about the budget constraints.

Christina Brown read Susan Button's letter that said that the project exceeded acceptable nitrogen levels for Lagoon Pond and asked that Hillside Village be asked to upgrade the existing wastewater system of the whole project. **Doug Hoehn** said that Bill Wilcox's information was based on Bill's own study. This plan conforms to Title 5 and local regulations. He noted that Title 5 is based on there being two people per bedroom but here, there will only be one per bedroom. Also, the Bioclere System will reduce the nitrogen level by half so the whole project is the equivalent of 1¼ houses. There is room on the site to upgrade or replace the systems in the existing Hillside project if any of these fail.

Paul Strauss said that at some point, he would like to discuss the issue of cumulative nitrogen loading.

Mark London asked the architect which scheme the applicants preferred. **Peter Zorzi** said that alternative 1 is better from an architectural and solar orientation point of view and alternative 2 from a landscaping point of view.

Bob Schwartz asked whether the building couldn't be moved 10' closer to the internal road as this would only require lowering it 6" and it would preserve a lot of additional vegetation. **Peter Zorzi** said that this would be possible; it is a value judgment of preserving more of the slope versus having the two units at the ends of the building quite close to the road.

John Best asked whether it would be possible to grade up against the building as at the Hebrew Center. **Peter Zorzi** said that this would require building the lower part of the exterior wall of the building as a retaining wall, which would be expensive and would create drainage problems. **Doug Hoehn** said that a similar wall at the Hebrew Center, designed by his firm, doesn't

retain much of a slope. It is only 6 feet long whereas, at IEH, the required wall would be much longer. **Peter Zorzi** says that each change contributes to the problem of making it affordable.

Linda Sibley asked whether the avoidance of the handicapped ramp was an aesthetic requirement. **Peter Zorzi** said that HUD doesn't want the housing to look institutional with a handicapped ramp at the front door. They want to keep the residential quality. Given the height of the hill and the vegetation, it would be difficult to see the building from the Ms. Macchia's property.

John Best asked about accessibility for the handicapped. **Peter Zorzi** said that one unit would be handicapped accessible and the others would be handicapped ready.

John Best asked about erosion retention. **Peter Zorzi** said the entire slope will have a mat and will have a wildflower hydroseed. **John Best** suggested moving some of the trees from the side to the top of the slope at the back and along the road. **Peter Zorzi** said he had no problem with that and would be prepared to locate the trees where they would be most effective.

Doug Sederholm asked whether the proposal of moving it 10 feet is acceptable and would still avoid ramps. **Peter Zorzi** said it was acceptable and would avoid ramps. [check this with them]

Tristan Israel suggested that they look at an alternative to the wildflower seeding.

Jim Athearn asked whether Japanese Black Pine have good longevity. **Peter Zorzi** said that native pine is not readily available and this is a reasonable substitute. **Tristan Israel** suggested that White Pine could be desirable.

Susan Button asked whether the building could be flopped so the L is not on the Clover Hill side. This could be combined with closing off the internal road. **Peter Zorzi** said that the fire department would have to review this proposal, partly because there is a fire hydrant nearby.

Tristan Israel asked whether it would be feasible to close the Clover Hill road entrance. **David Wessling** said that a row of bollards could separate the two parts of the road so that the present building (A) close to Clover Hill would continue to enter from that side but the new building would be accessed from the Edgartown Vineyard Haven Road. **Carol Lashnits** said that there is presently no entrance from Edgartown Vineyard Haven Road, it is a one way out at the request of the Commission. The Clover Hill entrance is now two-way.

Katherine Newman thanked the applicants for being so responsive to comments of the Commission.

John Best asked whether the changes are significant enough to need new plans. **Christina Brown** said that many options had been discussed and suggested that the Commissioners discuss these options first, before asking for new plans for each option. **John Best** asked that the applicant at least give a clarification of what changes would be acceptable and give comments on these options.

3.3 Testimony from Public Officials

There was none.

3.4 Public Testimony

Arthur Dickson said he is pleased to see that there are major improvements that will help the project. They may need catch basins near the leaching field to intercept the water coming down

Clover Hill Road. This plan will allow for the preservation of very tall white and black oaks along Clover Hill Drive.

Marie Laursen asked whether there were any Island Elderly Housing Board members present. [There were none.] As clerk of the road association, she said that IEH was assessed as two shares, which she thinks is very fair. This project will add a third share that would be assessed on an ongoing basis. She thought it would be advantageous to have the project enter directly from a public way, namely the Edgartown - Vineyard Haven Road, instead of using Clover Hill Drive on which they have to pay an annual assessment. The dues are normally \$300 per year per share, but have gone up to \$600 to pay for planned repaving. This would also be better for the abutters. She asked the MVC to condition the project by requiring that the driveway be moved.

Marie Laursen said that, because of this project, the road association would have to break a contract they had already given for repaving the road and they were not sure the contractor would continue to honor his quote.

Idalyn Macchia is the direct abutter. She noted that the Tisbury Board of Health said that there had been two repairs to the IEH wastewater system. She feels that the plans are better. She would prefer more vegetation within the existing vegetation at the top of the slope. She wondered how to retain the 2:1 slope without a seeded lawn. She is concerned about the steep drop near her property line. She thinks that fencing is important; she doesn't want to assume the liability.

Arthur Dickson said that notwithstanding the improvements, he cannot see why it is justified taking out all this mature vegetation to squeeze in five houses on this site. It is still a negative impact.

3.5 Applicant's Closing Remarks

Carol Lashnits concluded by asking the Commission to consider the social impact and the needs of the elderly.

Tristan Israel was concerned about closing the Hearing and having the Commission add conditions without ensuring that they are acceptable to the applicant. **Linda Sibley** said that Commission counsel has clearly said that the Commission has a right to do this.

Carol Lashnits said it was better to have full and continuous traffic access throughout the site. The fire department would probably require keeping the internal road open or, if it were closed, to install a crash barricade for emergency access.

Christina Brown closed the Public Hearing at 10: 41 p.m., keeping the written record open until Thursday, May 8 at noon.

4. MINUTES OF PREVIOUS MEETINGS

Deferred until next week

5. FUTURE SITE VISITS AND LUPC MEETINGS

Christina Brown said that the May 12th meeting of LUPC will deal with Bridge Housing, and she asked all Commissioners to read all the material carefully including the new staff summary distributed at the meeting.

The meeting adjourned at 10:44 p.m.

Chairman

Date

Clerk-Treasurer

Date