

TOWN OF WEST TISBURY**ZONING BOARD OF APPEALS****DECISION OF THE ZONING BOARD OF APPEALS ON THE PETITION OF Bell Atlantic Mobile of Massachusetts Corporation, Ltd. d/b/a Verizon Wireless ("Verizon Wireless")**

Filed with the West Tisbury Town Clerk on June 28, 2013. ZBA Case File 2012-19

- Applicant:** Bell Atlantic Mobile of Massachusetts Corporation, Ltd, 400 Friberg Parkway, Westborough Massachusetts 01581-3956
- Owner:** Irrevocable Living Trust of the Doane Children, Robert Doane, Trustee, PO Box 46, West Tisbury, Massachusetts 02575, whose title to the property is recorded at the Dukes County Registry of Deeds and described in Book 531 Page 254 and dated 11/15/1989
- Agent:** Carl Gehring, Gehring and Associates, LLC, Box 98 West Mystic, Connecticut 06388
- Locus:** 21 New Lane, West Tisbury, Assessor Map 31 Lot 48
- Exhibits:**
- 1) Pre-application letter and submittals to Zoning Board for pre-application meeting on February 9, 2012.
  - 2) Application dated July 20, 2012 stamped received by ZBA on July 30, 2012 containing fifteen tabs of attached submittals for a hearing dated October 11, 2012, which included: ZBA Application Form; Statement in Support of ZBA Application; Statement in Support of DRI Approval; Consent of Landowner and Applicant's Agent Authorization; Field Card, Tax Map and Subject Property Deed, Ancient (1716) Deed; Alternate Site Analysis & Site Acquisitions Affidavit; FAA Height Analysis; FCC Licenses; RF Affidavit & RF Coverage Plots; RF Emissions Compliance Report; Environmental Noise Impact Evaluation; Site Specific Communications Tower Impact Analysis; Real Estate Market Value Impact Analysis; Generator Brochure; Photosimulations of Monopine and Stealth Pole; Site Plans and Elevation Drawings.
  - 3) During the pre-application meeting, under Section 8-10, submittal requirements, the Zoning Board waived various requirements under Sections 8-10 C-D, Siting and Design Information.
  - 4) Decision of the Martha's Vineyard Commission DRI 640 - Verizon Wireless Cell Tower, April 17, 2013
  - 5) Revised Site Plan Drawings, Dated 2/28/2013
  - 6) Revised noise assessment, Douglas Sheadel, CCM, Modeling Specialties, Dated March 4, 2013
  - 7) Revised radio frequency emissions assessment, Donald Haes, Ph.D. Dated February 18, 2013
  - 8) Addendum to original report of Andrew G. LeMay, SRA, Real Estate Consultants of New England, Dated February 13, 2013, re residential values
  - 9) Supplemental visual impact simulations of Benjamin E. Caron, Caron Assoc. Design, "West Tisbury 2," undated, submitted prior to June 6, 2013 meeting

- 10) Final revised site plan dated June 11, 2013 showing the 66' tapered monopine as agreed to by the Board and Applicant.
- 11) Eighty one letters from abutters and members of the public.
- 12) Photo of "emergent pine" taken at Lambert's Cove, submitted by Chairman Hubbell.
- 13) Letter from Certified Arborist Ian Jochems regarding tree heights.

**Notice:** Certified abutters list mailing sent out September 26, 2012. Advertised in Martha's Vineyard Times on September 27 and October 4, 2012.

Additional certified abutters list mailing sent on May 17, 2013. Advertised in Martha's Vineyard Times on May 23 and May 30, 2013

**Hearing & Request:**

Pre-application meeting was held on February 9, 2012. Hearing opened October 11, 2012 and the case was referred to the Martha's Vineyard Commission as required. The ZBA hearing was subsequently continued to June 6, 2013. Public testimony closed June 6, 2013, written record closed, and deliberations and decision on June 13, 2013.

Martha's Vineyard Commission approved with conditions (establishing exact location and height limitation, among other criteria).

An application by Gehring & Associates, LLC, on behalf of Bell Atlantic Mobile of Massachusetts Corporation, Ltd for a Tier 3 Special Permit under Section 8.8 to construct an 80 foot monopole camouflaged by a faux tree or flagpole style design and a 50' x 50' equipment compound.

**Requirement:** Section 8.8: Wireless Communication Facilities. Section 9.2-2: Review Criteria.

**Present:** October 11, 2012, June 6, 2013, June 13, 2013: Tucker Hubbell (Chair), Eric Whitman, Toni Cohen, Tony Higgins, Bob Schwier and Associate Member Larry Schubert

**Absent (Recused):** October 11, 2012, June 6, 2013, June 13, 2013: Nancy Cole

**Decision:** The Zoning Board of Appeals voted unanimously to grant 1) a Special Permit with conditions, under Section 8.8 to construct a monopole and equipment compound for a wireless communication facility.

**Vote In Favor:** Hubbell, Whitman, Cohen, Higgins, Schwier

**Opposed:** None

**Findings:** **Special Permit**

- 1) On February 9, 2012 the ZBA granted the applicant's request for waivers from certain Submittal Requirements under Section 8.8-10 C-D as per the minutes of that meeting.
- 2) During the course of the pre-app meeting the ZBA reviewed additional information submitted by the applicant, and allowed the applicant to deviate from the exact specifications of Section 8.8-10 where the submittals presented satisfied the purpose and intent of the Submittal Requirements.
- 3) The locus is centrally positioned on a large (>20 acre) parcel in the Rural (RU) District.
- 4) Based on the coverage analysis provided by the applicant and reviewed by the Town's consultant (Isotrope, LLC) and on testimony of residents and the experiences of board members, a Verizon Wireless PWSF is needed in the vicinity of the 21 New

Lane "new location B" ("Site") to provide improved service in West Tisbury between the Verizon Wireless facilities at the fire tower and the airport.

- 5) The original application to the ZBA for an 80 foot tower at a specific location on the parcel was modified by a conditional approval of the Martha's Vineyard Commission in DRI 640 – Verizon Wireless Cell Tower on April 11, 2013, which provided, among other things, that the tower is limited to a maximum 66 foot tall stealth monopole or "monopine" with a flat top, with an allowance for an additional five feet of faux branches to create a conical monopine top up to 71 feet tall.
- 6) The ZBA acknowledges the presence in the natural environment of "emergent" trees that extend visibly above the skyline of the tree canopy from certain visual perspectives, and acknowledges public comments regarding those who prefer to minimize the appearance of the tower as an emergent pine, within reasonable limits.
- 7) The use of a monopine in this case provides benefits over the use of a stealth monopole, including but not limited to:
  - A. A well-implemented monopine will not be readily noticeable as a man-made object within the natural line of vegetation from the various vantage points, while a stealth monopole, when visible, is obviously not a natural vegetative or geological formation;
  - B. The monopine allows for the use of a wide mount to maximize the number of antennas the applicant can deploy from the highest allowed position on the tower, while the stealth monopole design requires the applicant to either, a) utilize more vertical space on the monopole and reduce co-location potential of the monopole, or b) to employ additional technological methods to combine the work of twelve antenna panels into three, which would result in a reduction in the applicant's flexibility to adjust its facility in space and over time for optimal performance;
- 8) To minimize the "emergent pine" characteristic of the monopine, the overall height of the monopine, including the tapered crown, shall be limited to 66 feet rather than the 71 feet allowed by the Martha's Vineyard Commission; further, because of the critical nature of the visual impact of the facility based on its height, any future increase in height for any purpose, including without limitation the applicant's expansion needs or the use of co-locators is hereby designated a substantial change in the physical dimensions of the tower, pursuant to Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012.
- 9) The required Tier 3 notifications were properly distributed to property owners within 500 feet of the subject parcel.
- 10) The proposed PWSF is not in an Avoidance Area or in an Opportunity Site as defined in Section 8.8-8 Location Standards and is therefore eligible for approval, subject to the Siting, Design and Safety Standards.
- 11) Per Section 8.8-8(B) Siting Standards, the facility has been placed to the greatest extent possible on an inconspicuous mount within trees.
- 12) Per Section 8.8-8(C) the 66 foot height monopine design has a minimized silhouette based on its limited height, is colored to camouflage it within its surroundings, is not guyed, is not within 100 feet of a residence, and mounts 12 antennas at one level as close to the mount as possible, while relying on the camouflage to address visual impact.
- 13) Per Section 8.8-8(C)(6) the overall height is less than the 80 foot maximum, and less than or at 15 feet above the ambient tree height, and the facility is surrounded by more than 20 feet of existing tree growth.
- 14) Per Section 8.8-8(D) the facility is specified to have a tower that will conform to the wind/ice loads of TIA 222-G. Per Massachusetts law and Section 8.8, the facility must be constructed after obtaining a building permit for which it is necessary to comply with the state building code.
- 15) Per Section 8.8-9 the proposed PWSF complies with the applicable Fall Zone and Setback requirements.

- 16) The applicant provided two alternatives to the proposed facility on the subject parcel; the Martha's Vineyard Commission stood in the shoes of the ZBA and directed the applicant to a third alternative location ("new location B") on the subject parcel; and the ZBA considered a further alternative in which the maximum height allowed by the MVC was reduced further.
- 17) The applicant has determined that they will be satisfied by the 66 foot height of the monopine conical taper resulting in a 61 foot top-of-antenna height of its antennas.
- 18) The preferred alternative of a 66 foot (overall height) monopine at "new location B" is consistent with Section 8.8-11(E) in that it not only maximizes conformance with environmental criteria by balancing coastal setback with residential setback buffering areas, but it also minimizes height and proportion within its surroundings, and maintains the benefits of coloration, buffering and natural vegetation of the original proposal.
- 19) The applicant has demonstrated its development of the PWSF will be in conformance with NEPA requirements and FCC radiofrequency emissions limits.
- 20) Monitoring and evaluation of RF Radiation shall meet the requirements of Section 8-8-13C of the Zoning Bylaws.
- 21) The PWSF is surrounded by extensive tree growth, and per Section 8.8-15, the natural vegetation shall be undisturbed to the greatest extent practicable.
- 22) Section 8.8-20 requires the landowner to enter into a recordable easement, restriction or similar instrument enforceable by the Town to restrict cutting of vegetation within 200 feet of the PWSF, with the exception of minor pruning along the shared driveway and existing interior woods roads, without prior written approval of the ZBA.
- 23) There will be sufficient parking at the Site.
- 24) Based on the evidence in the record, and per Section 9.2, the proposal complies with applicable provisions of the bylaw; avoids significant detrimental visual and environmental impacts on adjacent uses and on important features; does not affect pedestrians, roads or traffic; provides sufficient parking and public safety access; does not adversely affect water, ecosystems, runoff, or erosion; does not create any nuisance, including but not limited to noise and electrical emissions; has no material impact on Section 8.3 Design Requirements including but not limited to architecture, placement, access, landscaping, outdoor lighting and natural areas.
- 25) The Board has found the proposal to be in harmony with the general purpose and intent of the Zoning Bylaw
- 26) The Board has found the proposed use to the Town outweighs its adverse effects.
- 27) The Board has found the use is consistent with the West Tisbury Master Plan.
- 28) The applicant has expressed willingness to design the facility to accommodate possible future co-locators.
- 29) Based on the foregoing, the ZBA APPROVES THE APPLICATION AS MODIFIED AND WITH CONDITIONS.

**The Conditions are:**

- 1) The construction, maintenance and operation of the WCF shall be in conformance with the Plans dated February 28, 2013 and June 11, 2013 showing the 66' tapered monopine as agreed to by the Board and Applicant and all other relevant submittals.
- 2) The construction, maintenance and operation of the WCF shall be in conformance with the standards and conditions applicable to a Special Permit under the West Tisbury Zoning Bylaw, including without limitation Section 8.8.
- 3) The cutting of trees and other vegetation during construction shall be limited to what is needed for the site, access road, utilities and parking. The intent is to leave as much growth as possible for screening. After construction, the Special Permit holder and/or landowner shall apply to the ZBA when planning any removal or cutting of vegetation within 200 feet of the PWSF

compound with the exception of minor pruning along the shared drive and the landowners other existing interior woods roads.

- 4) The facility shall employ: a 40 by 40 foot compound with 8 foot stockade fence with sound dampening material; a monopine with tapered top extending no higher than 66 feet above ground and with sufficient branch density to reasonably obscure antennas, appurtenances and mounting hardware, which shall also be painted to assist in this camouflaging; and underground utilities. The facility shall be kept in appropriate condition and appearance including but not limited to: Fencing, gate, signage, building façade and as per Section 8.8-8C(6)b the nearby dense tree growth for a radius of 20 horizontal feet.
- 5) The PWSF shall be at the location identified by the Martha's Vineyard Commission and shall comply with all conditions of the MVC decision on DRI 640 – Verizon Wireless Cell Tower.
- 6) The PWSF shall be capable of supporting up to two additional antenna arrays below the initial array that is located 5 feet below the top of the monopine and two additional sets of equipment owned by co-locators within the fenced compound; provided that because of the nature of maintaining the camouflage and managing potential noise, among other possible impacts of co-location, any co-locators shall be required to obtain a Special Permit from the ZBA.
- 7) Site Plans to be submitted for the Applicant's Building Permit application shall be revised to remove all no longer applicable alternate site locations, elevations and alternate tower designs so that only the approved style, height, and design at new Location B shall be portrayed on these final plans. A copy of said plans, as revised, shall be submitted to the ZBA contemporaneously with the Applicant's Building Permit Application.
- 8) All Conditions enumerated in Section 5 of the Decision of the Martha's Vineyard Commission DRI 640—Verizon Wireless Cell Tower, dated April 17, 2013 are incorporated into and made part of this Decision.

**No Variance or Special Permit shall take effect until:**

1. A period of twenty days has elapsed from the date of the filing of the Board's written Decision with the Town Clerk, and the applicant has received a copy of the Decision bearing the certification of the Town Clerk that a period of twenty days has elapsed from the filing of the Decision and that no appeal has been filed, or the appeal has been denied or dismissed. A Certificate of Granting will also be issued.
2. The Certified Decision is recorded at the Dukes County Registry of Deeds and the recording fee has been paid at the Dukes County Registry of Deeds. **Only Original Documents will be accepted at the Registry.**
3. A Certified Copy of the Recorded Instrument has been returned to the **Building & Zoning Inspector of West Tisbury** or to the office of the West Tisbury Board of Appeals who will turn over the receipt to the Building and Zoning Inspector.

Any person aggrieved by this Decision of the West Tisbury Board of Appeals may appeal to Court and must notify the Town Clerk of the action and submit a copy of the complaint within twenty days after the Decision has been filed in the office of the Town Clerk.

A Special Permit shall lapse in 2 years if not utilized.

The Building and Zoning Inspector and the Zoning Board of Appeals must approve any substantive or material changes made to the approved plans or made to a structure during actual construction and/or to a use. Please consult with the Inspector regarding change. Failure to do so may nullify your permit and may require removal of the unapproved construction.

Filed with the West Tisbury Town Clerk on

*June 28, 2013*

COPIES OF DECISION MAILED TO:

*July 23, 2013*

Carl Gehring, Representative for Applicant, PO Box 98 West Tisbury, MA 01988

*Handwritten notes and signatures:*  
"appeal has been filed"  
"Tisbury certifies that no"  
"Town Clerk"  
"Carl Gehring"  
"Dukes County Registry of Deeds"  
"West Tisbury, MA 01988"  
"JUL 23 2013"  
"5"

David Maxson, Town Consultant, Isotrope, LLC 503 Main Street Medfield, MA 02052

Martha's Vineyard Commission

Ernest Mendenhall, Building and Zoning Inspector, West Tisbury, MA

Board of Health, West Tisbury, MA

Board of Selectmen, West Tisbury, MA

Planning Board, West Tisbury, MA

Case: Verizon  
Date: 6-13-13  
Map & Lot: 31-48

**WEST TISBURY ZONING BOARD OF APPEALS  
RECORD OF VOTE**

The following members of the Zoning Board of Appeals vote to grant a Special Permit subject to the above stated terms:

<u>Robert M. SL</u>	<u>Tom M.</u>
<u>Tom Cohen</u>	<u>Ray W. Hubbell</u>
<u>Eric C Whitman</u>	

The following members of the Zoning Board of Appeals are in opposition to the grant of the Special Permit:

_____	_____
_____	_____
_____	_____

Attest:

Deanne E. Powers Register