

**WEST TISBURY ZONING BOARD
MINUTES APRIL 15, 2009
HOWES HOUSE 7 PM**

PRESENT: Eric Whitman, Tucker Hubbell, Toni Cohen, Tony Higgins, Nancy Cole, Bob Schwier, Larry Schubert

ABSENT: none

Also Present for All or Part of the Meeting: Ginny Jones, Glenn Hearn, Karen Magid, Prudy Burt, Martyn Stuurman, Abbey Ronco, Barbara Paciello, Richard Knabel, Skipper Manter

BUSINESS

- The minutes of March 11 were approved
- Tony Higgins project...question for Bd from Ernie: Tony got a Special Permit in January of '06 to put a shed/garage/workshop on his property 40' from a property line. The Special Permit was also heard under Section 6.3-5B (Firetower and Indian Hill Special Places). Tony wants to attach a shed to one side of the existing structure that will not further encroach on the setback and will be on the side further away from the concerns of Section 6-35B. Section 11.1-3 provides that if the non-conforming nature of the structure will not be increased and the lot is over 60,000 sq ft, the Building Inspector may issue the building permit without the need of a Special Permit. The Board agreed that the small shed addition would not require another Special Permit.

HEARINGS

7:20 An application by Karen Magid for 1) a Special Permit for retail sales of related products in connection with an agricultural use (the keeping of horses as a commercial enterprise): The sale of second-hand tack, new riding clothes and horse treats; and 2) a Special Permit for a home occupation to be able to show and sell her own artwork and photographs in the same area. Sects. 3.1-1, 8.5-1 of Zoning Bylaws; Map 30 Lot 11.1; 85 Red Pony Rd; RU District. *No Correspondence*

The applicant owns and manages Red Pony Farm. They have clinics, boarders, lessons and host the Rising Tide Therapeutic riding program. They propose to have a consignment shop for second hand tack, and to sell new riding clothes. The retail will be conducted in an existing 2nd floor area of the barn known as the viewing room. Karen had submitted a floor plan of the barn, photos of the barn, an assessors map of the area and a written narrative. She feels there is a need in the riding community for a consignment and exchange place for second hand horse tack, and for new riding clothes such as breeches, as there does not seem to be such an outlet on the Island. Also she has her horse paintings and photographs hanging on the walls and would like to be able to sell them; she is the artist.

The applicant stated the parking is large enough for peak summer clients/visitors.

The applicant stated that the welfare and safety of animals is foremost in their minds and the sales will be run in such a manner as to ensure this. It was discussed that under Home Occupations an applicant may apply to display and sell artwork that they have created. They must be living on the premises. Karen Magid is living on the premises. Her artwork will be displayed in the same area of the barn as the consignment articles and riding clothes. They are not open at night. They do ride in the early evening.

Eric suggested to Karen that she talk to Building Inspector Ernie Mendenhall regarding whether handicap accessible entrance would be required. Karen has spoken with the Therapeutic Riding Program members and they don't see it as a problem, as anything for sale can be brought to the ground floor for them.

Larry asked if they were planning art openings? The answer was no...the welfare and safety of the animal and visitors was what was important; they do not want swarms of people around. The main issue would be to sell/swap second hand tack. Tucker asked about the sign. They plan to use the current sign but would add the consignment business info on to that. They were advised to talk with Ernie Mendenhall re the sign. Karen and Martyn said they would like to put the sign on the other side of the drive from where it currently is.

Barbara Paciello introduced herself as an abutter and said that what Red Pony was trying to do was much needed in the horse community, and speaking as a neighbor, she said it would not be detrimental to the community. The hearing was closed. The Board voted unanimously to grant the 2 Special Permits.

OLD BUSINESS

- **Distributed Antennae Systems:** This was on the agenda in order to further discuss the subject. Vice Chair Tucker Hubbell led the discussion. Richard Knabel submitted a list of new questions that were to be put to ATC at the next joint Chilmark, Aquinnah hearing on May 5. Tucker stated there should be some sort of public hearing for the 11 new monopoles proposed for West Tisbury. He felt it fell under the Zoning Bylaws as written. The bylaw however does call for new monopoles to be 400' from residential property, even if they were put in the public way. He said we have 3 towers with 3 or 4 carriers and good coverage. The DAS system is driven by Aquinnah. He said he realized that trying to get this together has been in the works for 3 years, and it has of late come to the Zoning Board's/ West Tisbury's attention. American Tower Corporation presented a different scenario last fall than what was proposed at the tri-town meeting on April 5. He asked, does the Telecommunication Act cover a DAS system...are they public utilities, not carriers?

Julie wanted to clarify that this was not a publically notified meeting for examining DAS, but that it had been put on the agenda as an Old Business item for the Board to discuss. She didn't want it to be misconstrued that this was a meeting people didn't hear about.

Tucker went on to say he personally felt West Tisbury should withdraw; what benefit would it be to West Tisbury? Richard Knabel asked what that would accomplish? Tucker replied the Town has good coverage. Richard said if the Town withdraws, it doesn't stop them from applying anyway, under the Telecommunication Act of 1996. Do we want to end up in Federal Court? Ginny mentioned RFP's. Richard said we do not want to battle. Tucker said he'd like to ask an attorney; West Tisbury hasn't discriminated against any carriers. We probably have 80% coverage and if there should be a case, West Tisbury could probably win it.

Glenn Hearn said if you have specific questions for ATC, please ask them, add them to the list. Although they are having problems with NStar (about co-locating on their poles), a Nantucket type system is still being considered. Glenn talked about the concerns re the size of the poles (18" in diameter and 40' high) and the fact that no battery back-up would be

provided. In an earlier written statement supplied to the Board, Richard had voiced these concerns. Glenn emphasized it's a work in progress with many questions re the node system, views, wetlands, private property, etc.

Richard said Aquinnah and Chilmark have adopted DAS zoning bylaws. There is no jurisdiction along State Roads; they regulate the Town roads. He said West Tisbury Zoning doesn't apply along the State Road.

Larry Schubert said Atty Mark Bobrowski had given them an opinion in the fall that DAS was not subject to our Zoning Bylaw as it was a right of way issue. Larry said he felt it was a bad opinion. Richard said the circumstances in the fall were that it would be a Nantucket type system with antennae on existing phone poles. It is now entirely different; it has gone from whip antennae of phone poles to new monopoles because NStar said no to their poles being used. It is now unacceptable for aesthetic reasons and because there would be no battery backup, an important part of the proposal. The committee has heard all the objections, such as abandoning the 18' inch poles. They still aren't sure what happened with ATC and NStar. Then there is the Katrina rule of required backup for public safety.

He explained that Aquinnah was in a cell tower lawsuit 3 years ago and the decision settlement included that the Town come up with an alternate system. Aquinnah pursued DAS, Chilmark asked to join. West Tisbury was asked to join. Chilmark came up with a DAS Zoning Bylaw and a 13 member super-committee...if all voted for it, then they would sign the contract. They had asked our Planning Board some time ago to adopt a DAS Bylaw, and basically the Planning Board declined. Ginny referred to a November 08 letter in which they told Richard they stood ready to act on a DAS zoning amendment should the tri town committee and their consultants recommend it. She said she has continually asked how ATC is a public utility; that this is an important question. She referred to Section 8.8-5 of the zoning bylaws regarding adequate coverage and justification of need.

Nancy was emphatic that there should be a public forum for the Townspeople. The Selectmen were pro-active, but did not talk to the Town to get feedback. Ginny said the ball was dropped in November; there should have been investigating.

Tucker asked, why should West Tisbury consider continuing with variations of DAS? Why not wait until the next company comes in and wants a tower. Richard Knabel said, we have a contract, and then there is the revenue sharing standpoint. The poles are proposed on public land. Tucker said that's 11 new poles; it will duplicate some coverage. The Town probably needs only one more tower, probably in the Great Pond area. Richard said the point was to not have more towers. Tucker said it would be 11 new cell phone towers instead of one. Richard said the DAS system would be low power. Tucker asked how ATC feels at this point? Aquinnah is under the gun, Richard said due to the court order. They were to have a system in place by Memorial Day of this year.

Ginny said we need to know if the zoning bylaw applies. Skipper Manter said it seemed that only ATC benefited from the long tri-town meeting. West Tisbury started at 11 PM. West Tisbury will have a public meeting soon, after the May 4 continuance of Aquinnah and Chilmark. Glenn Hearn said Aquinnah wants DAS, there are questions from Chilmark; they voted to continue. Richard said any new poles have to come to a Selectmen's public hearing,

with abutters notified. NStar poles are a public utility. If we had a DAS zoning bylaw, they would come to the ZBA, if not, to the Selectmen.

Ginny said, Richard says we can't deny them, but there's has not been an application to West Tisbury. Ernie has said he has no permit to issue re DAS. What is the permitting process? Glenn asked, what if the 2 towns drop out, will they still come to Aquinnah? Prudy Burt asked all to consider Ebba Hierta's letter, a copy of which Ebba had dropped off at the ZBA office and was passed out to those at the meeting. She also feels that the MVC should be contacted; talk to DRI director Paul Foley, check their criteria check list. Richard Knabel added that none of the carriers had committed.

OTHER CORRESPONDENCE

- Planning Board re Thurber/ Macarthur property on State Rd
- MVC re Special Ways
- Proposed changes to Proposed Wind Tower regs*

The meeting adjourned at 9:15

Respectfully submitted, Julie Keefe, Bd. Admin.

Approved on April 29, 2009