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RICHARD J. MCCARRON (1930-2009)  
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**Hand Delivery**

June 16, 2022

**COPY**

Town Clerk  
Town of West Tisbury  
1059 State Road  
West Tisbury, Massachusetts 02575

Re: Notice of Appeal to Decision of the West Tisbury Inspector of Buildings  
dated May 20, 2022  
Grange Hall, 1067 State Road, West Tisbury (the "Property")

Dear West Tisbury Town Clerk:

This office represents the Vineyard Preservation Trust (the "Trust"). Please accept this letter as the Trust's notice of appeal of a decision by the West Tisbury Inspector of Buildings as set forth in his letter to the Trust dated May 20, 2022 (the "Decision"), a copy of which is attached.

The Inspector of Buildings findings and conclusions are factually insufficient or erroneous and are contrary to Massachusetts Law and the West Tisbury Zoning Bylaws. This notice of appeal and grounds to appeal are filed pursuant to Massachusetts General Laws Chapter 40A, sections 8 and 15.

The Inspector of Buildings was wrong to determine that a special permit is required for uses planned for the Property by the Trust and its tenant, Martha's Vineyard Film Festival ("MVFF"). For purposes of this notice, the Trust presumes that the Decision is legally sufficient to require a notice of appeal under Massachusetts law but it does not waive its rights in the event that the Inspector of Buildings May 20 letter is legally insufficient to warrant an appeal. In the event that the Zoning Board of Appeals or another body determines that the Decision is not legally sufficient to require an appeal, the Trust and MVFF welcome the opportunity to discuss Mr. Tierney's concerns in greater detail.

As grounds for this appeal, the Decision states that as a result of the "*degree and intensity of the non-conforming use . . . increasing*" a special permit is required. The Decision does not specify which uses (perhaps all?) planned by the Trust or MVFF require a special permit. The Decision rests on the "*personal knowledge of the previous uses at the Grange Hall*" of the Inspector of Buildings without any more detail. Respectfully, both the legal reasoning and factual basis for the Decision are insufficient.

By deed dated January 31, 1997 (the "Deed"), the Town of West Tisbury conveyed the Property to the Trust in which it included a series of restrictions and reservations. As relevant to this matter, item c. in the Deed states as follows:

*c. The premises shall be used only for the following: public gatherings, organized youth activities, film showings, theatrical performances, lectures, fraternal meetings, panel discussions, concerts, weddings and wedding receptions, dinners, expositions and displays by non-profit and for profit organizations and other groups, and for other activities that have been historically conducted on a consistent basis on or from the premises.*

Implicit in this restriction is recognition by the Town of West Tisbury of the types of uses that have historically and regularly occurred at the Property prior to the Town's adoption of zoning and which may continue at the Property.

The uses planned by the Trust and MVFF<sup>1</sup> were shared with Mr. Tierney and include: educational film screenings; a five day Film Festival; screenings of new films, primarily art-house productions, with discussions by directors, actors or others involved in the film's production; a free family event, titled "Cinema Circus; family film nights; dance theater and/or films; local Artisans' Festivals; Antiques Fairs; World Markets highlighting products from other cultures; school plays and presentations; musical performances; Improv theater; theatrical readings and other theatrical productions in collaboration with Island Theater Workshop; and Halloween and Christmas/Holiday activities and/or films.

All of Trust's and MVFF's planned uses are within the uses contemplated by the Town in its Deed to the Trust, being either specifically named or directly related to uses historically and continuously conducted at the Property. The Property and its Grange Hall have been a regular venue for film screenings, book & author festivals, some with panel discussions; theatrical productions; dance performances; farmers' markets; musical concerts; art shows; artisans' fairs; antique shows; agricultural fairs; and specifically the Film Festival by MVFF and previously Silver Screen Society. A broader sampling of many of the events occurring at the Grange Hall since 1997 is attached to this letter as Exhibit "A". The Decision is silent to the previous uses known to the Inspector of Buildings, but given the wide range of long standing uses occurring at the Property, one must question the merit of an ill-defined Decision.

To be sure, there are numerous established and continuous pre-zoning uses at the Property. Under Massachusetts law it is well established that a use of property that existed prior to the enactment of a zoning bylaw and that would be prohibited or require a special permit under the then current bylaw were it not preexisting, is lawful and may

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<sup>1</sup> The list of planned uses presented to Mr. Tierney and the summary of past uses on Exhibit A are not meant to encompass all allowed uses at the Property and is not meant to waive any right to conduct other lawful uses at the Property.

continue even though nonconforming. Cf. Shrewsbury Edgemere Assocs. Ltd. Partnership vs. Bd of Appeals of Shrewsbury 409 Mass. 317 321 (1991). Moreover, the right to continue a nonconforming use is not personal to a property owner but relates to the property and the use itself. Revere v Rowe Contracting Co., 362 Mass. 884, 885 (1972). The identity of the party continuing an historic use, whether it be the Martha's Vineyard Agricultural Society, the Trust, MVFF, or any other entity, is irrelevant if the use at the Property is preexisting and has not been abandoned, because it becomes a lawfully protected nonconforming use.

The Decision inappropriately relies on the “degree or intensity” of a use<sup>2</sup>, without more, to find that all of the planed uses by the Trust and MVFF will violate the West Tisbury Zoning Bylaws without a special permit. This conclusion is contrary to established law as the expanding degree of intensity of a use by itself is legally insufficient to make a lawful nonconforming use unlawful. See for example, Cape Resort Hotels, Inc. v. Alcoholic Licensing Bd. of Falmouth, 385 Mass. 205 (1982) where the Court found that a nonconforming use may be enlarged as long as the increase is an outgrowth of the original use; and Selectmen of Blackstone v Tellestone, 4 Mass. App. Ct. 311 (1976) where an increase in the number of customers did not render a nonconforming use unlawful. Here, all of the planned uses at the Property communicated to the Inspector of Buildings are of the same nature, purpose, quality, character, and kind that long pre-date West Tisbury's Zoning Bylaws. Indeed, several uses are lawful simply because they are educational uses exempt from the Town's Zoning Bylaws under MGL chapter 40A, §3.

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<sup>2</sup> The Decision seems to ignore the reduced intensity of use at the property occasioned by the move of the West Tisbury Farmer's Market to a new location.

McCarron, Murphy & Vukota, LLP  
June 16, 2022

Both factually and legally, the Inspector of Buildings' Decision is insufficient or simply wrong and must be overruled.

Very truly yours,



Robert M. McCarron

RMM/

Cc: Joseph K. Tierney Jr, Inspector of Buildings  
West Tisbury Zoning Board of Appeals  
West Tisbury Select Board

## Exhibit "A"

### Sampling of Grange Hall Events

1. Antique Association Show
2. Artisans' Fair
3. Consenses Festival of the Senses
4. African Crafts and Puppet Show
5. Paint the Vineyard art Classes
6. Cooking Demonstrations and Classes
7. Academy of Children's Theatre Cabaret
8. Summer Art Show Celebration & Concert
9. VCS Winter Walk Series
10. West Tisbury Holiday Cheer
11. Climate Action Week
12. Generations at the Grange
13. VCS Annual Meeting and Film Screening
14. Islanders' Write author panel discussion
15. MV Contradance Society
16. WIMP Improv
17. Silver Screen Society
18. MV Film Festival
19. MV Community Foundation Creative Living Award Ceremony
20. Weddings and Wedding Receptions
21. Annual Vineyard Artisans Summer Fair
22. Charter School Performances
23. Farmers' Market
24. World Market Mondays
25. Island Theater Workshop performances
26. Pick of the CROP play & festival
27. Annual Windemere live and silent auctions

28. The Grange Exchange antique market

29. Art show

30. Ms. On Martha's Vineyard



**Town of West Tisbury**  
BUILDING & ZONING INSPECTOR  
West Tisbury, Massachusetts 02575

May 20, 2022

Vineyard Preservation Trust  
Attn: Nevette Previd, Executive Director  
P.O.Box 5277  
Edgartown, MA 02539

Re: 1067 State Rd.- Grange Hall

Dear Nevette,

I have reviewed the narratives provided by the Vineyard Preservation Trust as well as Martha's Vineyard Film Festival regarding the upcoming planned uses at the Grange Hall, located at 1067 State Rd. Included in that are the Phase 1 plan and the Phase 2 plan for future use.

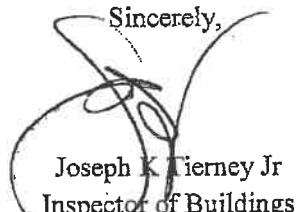
Based on my knowledge of the previous uses at the Grange Hall and both present and future planned uses I have determined that the degree and intensity of the non-conforming use is increasing and will require a Special Permit under Section 11.1-3 (A) and 8.5-2 of the West Tisbury Zoning Bylaws.

I have attached an application for your convenience.

If the Vineyard Preservation Trust feels aggrieved by this determination you may appeal to the Zoning Board of Appeals within 30 days of this notice.

Feel free to contact me if you have any questions or you need assistance with the application.

Sincerely,

  
Joseph K. Tierney Jr.  
Inspector of Buildings  
Town of West Tisbury

**COPY**

Cc: ZBA  
Planning Board