

JAY FREDERIC THEISE LAW ASSOCIATES LLC
Street Address for Delivery: 19 Locust Lane, Aquinnah, Ma. 02535
Mail Address: PO Box 755, Chilmark, Ma. 02535
Telephones: Office: 617-482-8300, Cell: 617-930-1575, E-Fax: 617-391-3027
E-Mail: jft@theiselaw.com

September 18, 2022

Joe Tierney, West Tisbury Massachusetts Building Inspector
By email attachment addressed to: Inspect@westtisbury-ma.gov

Re: Objection to Application for foundation permits for 140 Sarita Walker Road,
Parcels 38.7.1 and 38.7.12 filed under cover of August 31, 2022 and received by
West Tisbury on September 2, 2022 by or on behalf of Troy and Kimberly
Stanfield

Dear Mr. Tierney:

The undersigned legal counsel to the MBG Realty Trust, Myron Garfinkle, Trustee,
(Objector), an immediate abutter to Troy and Kimberly Stanfield, owners and applicants
(Applicants), for the above referred to permits, hereby files this objection to the same and
requests they be DENIED.

Simply put Applicants' Counsel's cover letter of August 31, 2022 and its enclosures filed
before you on September 2, 2022, are unbuildable as they depend upon a 6.3 acre lot that does
not and cannot exist because of the Derelict Fee Statute, M.G.L.A. chapter 183, section 158,

popularly called the “Fee In The Way Law,” let alone the letter’s erroneous calculation of ‘as of right buildable square footage without Planning Board approval’.

THE FEE IN THE WAY DISCUSSION:

The words “Fee” as used in the statute means “Title” and “Way” applies to any and all “Private Ways.” Sarita Walker Road, as clearly shown on the Sourati Engineering ANR (Approval Not Required) Plan of November 2, 2021 (the Sourati Plan of 2021) attached to Applicant’s application is a such a Private Way.

The Fee In The Way statute automatically gives title in a private way to a buyer whose lot is cut out from a larger lot by a deed that describes one of its boundaries as the Way. All of the lots on Sarita Walker Private Road (Way) were cut out by various Coffin entity deeds, all of which used Sarita Walker as one of the bounds. The statute goes further and recites the Seller can eliminate automatic Title passage to the buyer only by the inclusion in the deed of very specific language. Merely granting a right to use the Way is not sufficient language to create the exception. The statute continues that the buyer automatically owns to the mid-point of the Way for the length of the property bound on the Way. If the seller owns the land directly across from the buyer on the Way, then the seller owns the other side to the mid-point. Otherwise, if two facing buyers have lots bound by the same Way, each owns to the mid-point, but the Seller retains no ownership. That is exactly the case here.

All of the Seller-Coffin deeds include Sarita Walker Road as a bound, none include the necessary exclusionary language to prevent the statute from passing the Way title to the Buyer, and as

clearly shown on the Objector Depiction attached here, a portion of the Gund and Walsdorf lots face each other on Sarita Walker Private Road (Way), cutting off the 6.3 Acres shown on the Sourati Plan of 2021.

In support of this objection, I also attach an unequivocal opinion letter dated November 18, 2019 from Attorney Erik M. Greene, certified by the Chief Justice of the Land Court of the Commonwealth of Massachusetts as a Land Court Title Examiner qualified to give expert opinions concerning land use matters, and the Affidavit of Brian Murphy, a licensed Massachusetts Professional Land Surveyor signed under the pains and penalties of perjury dated April 26, 2019 which states in paragraph 14 the Fee In The Way applies.

The Greene opinion and Murphy affidavit are also before you, attached to my memo with other exhibits on file at your office dated December 10, 2021, which I incorporate by reference in this Objection.

I further point out that the Applicants' Sourati 2021 Plan 30 foot wide Private Way creates a significant intrusion onto several portions of land owned by in addition to Mr. Gund and the Walsdorfs at the cutoff point, Gund at another point, Valenti, and Benjamin Coffin III.

The Applicants' Counsel's cover letter refers to the Sourati 2021 Plan showing the 6.3 acres. Massachusetts law is crystal clear the Plan does not grant title to the Way. See Tatten v Kurlan at 32 Mass. App. Ct. 239 (1992), holding the Fee In The Way statute requires words of express reservation to prevent the automatic conveyance of some or all of the Way, and that the

instrument of conveyance (the deed) is the only evidence with respect to the operation of the fee-in-the-Way, and plans are not sufficient or admissible as evidence.

Further, when the entire private way is properly measured and deducted (see discussion below in the Calculations section of this objection), and the lot properly viewed by the disconnect as the two separate lots there actually are, the barn lot buildable area is at best 2.8 acres and the Pool lot 2.5 acres, both non-conforming in this 3 buildable acre district.

The law, the unequivocal authoritative Land Court Examiner's opinion, and a licensed Land Surveyor's affidavit are before you. As stated at the beginning of this portion of the objection, the applications before you depend upon the existence of a 6.3-acre lot. No such lot exists. No permits may be granted.

THE CALCULATION DISCUSSION:

I further point out that the calculations of entitlement set forth in the Applicants' counsel's cover letter filed with the application are incorrect as there is no deduction for the entirety of the 30-foot-wide private way depicted on the Sourati 2021 Plan. Under the By-laws it is clear that the entirety of the 30-foot-wide private way that the Plan depicts must be deducted as non-buildable acreage. See Bylaw 4.2-1A(3). The Sourati Plan only deducts the "dirt path" included in the Way! As a result of this failure to deduct, Counsel's letter incorrectly states on page 2, "... the Property's net Lot area... is 263,372 s.f. (+/-) or 6.046 acres, the Property can support an RFA of 4,261 square feet... plus an additional SFA of 2,000 s.f. by right." On page 4, "Based on the Property's square footage of 263,372 that the property can support as of right

without need for Planning Board or ZBA approvals 4,261.5 square feet, plus an additional 2,000 square feet.” On page 5, “...without requiring any zoning relief from either the Planning Board or Zoning Board of Appeals.”

Without any waiver of the Fee-In-The-Way objection which substantially reduces some of the claimed owned area including the disconnect, Applicants claim of 4,261.5 square feet exceeds what may be built as of right. Deducting the entire 30-foot Way on Stanfields submitted Plan is undeniably 1.01 acres of square footage. The definition of an acre of the West Tisbury Bylaws is 43650 square feet. Therefore, 6.3 total acres shown on the plan minus 1.01 acres equals 5.29 acres on buildable land. So, $6.3 - 1.01 = 5.29 \times 43650 = 230,908.5$. Per the new bylaw the correct buildable measurement of 5.29 acres only permits as of right 4,072 square feet and up to 5,500 Max with a Special Permit. Therefore, before this application which calculates an RFA of 4,261.5 square feet which is overstated by 189 square feet is in order to be acted upon it must be brought before the Planning Board prior to any application for a building permit of any kind, and otherwise must now be denied.

CONCLUSION:

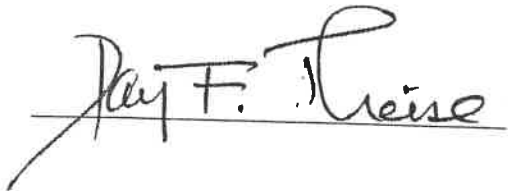
Without prejudice to any and all other issues such as access, public safety, Natural Heritage, maximum permissible access on a Way, no apparent turn around for emergency vehicles, environmental issues, etc., as these Applications are on a non-existent lot clearly established by including disconnecting land owned by others as a result of the Fee-In-The-Way statute, and are subject to a succeeding Plan filed on behalf of the same Applicants by their same Surveyor reestablishing separate lots to obtain a septic permit from West Tisbury for a smaller

lot (See Sourati Application For Disposal System signed by him on June 16, 2022, and Plan on file with the Board of Health showing the severed lots from the Sourati Plan of 2021), and the overstated as of right square footage claimed is not permissible without first obtaining Planning Board approval, Myron Garfinkle, Trustee of the MBG Realty Trust, a direct abutter Objects to any permits issuing and emphatically states the instant applications should be denied.

Respectfully,

Jay F. Theise

Counsel to Myron Garfinkle, Trustee

A handwritten signature in black ink that reads "Jay F. Theise". The signature is written in a cursive style and is positioned above a horizontal line.

OBJECTOR'S DEPICTION

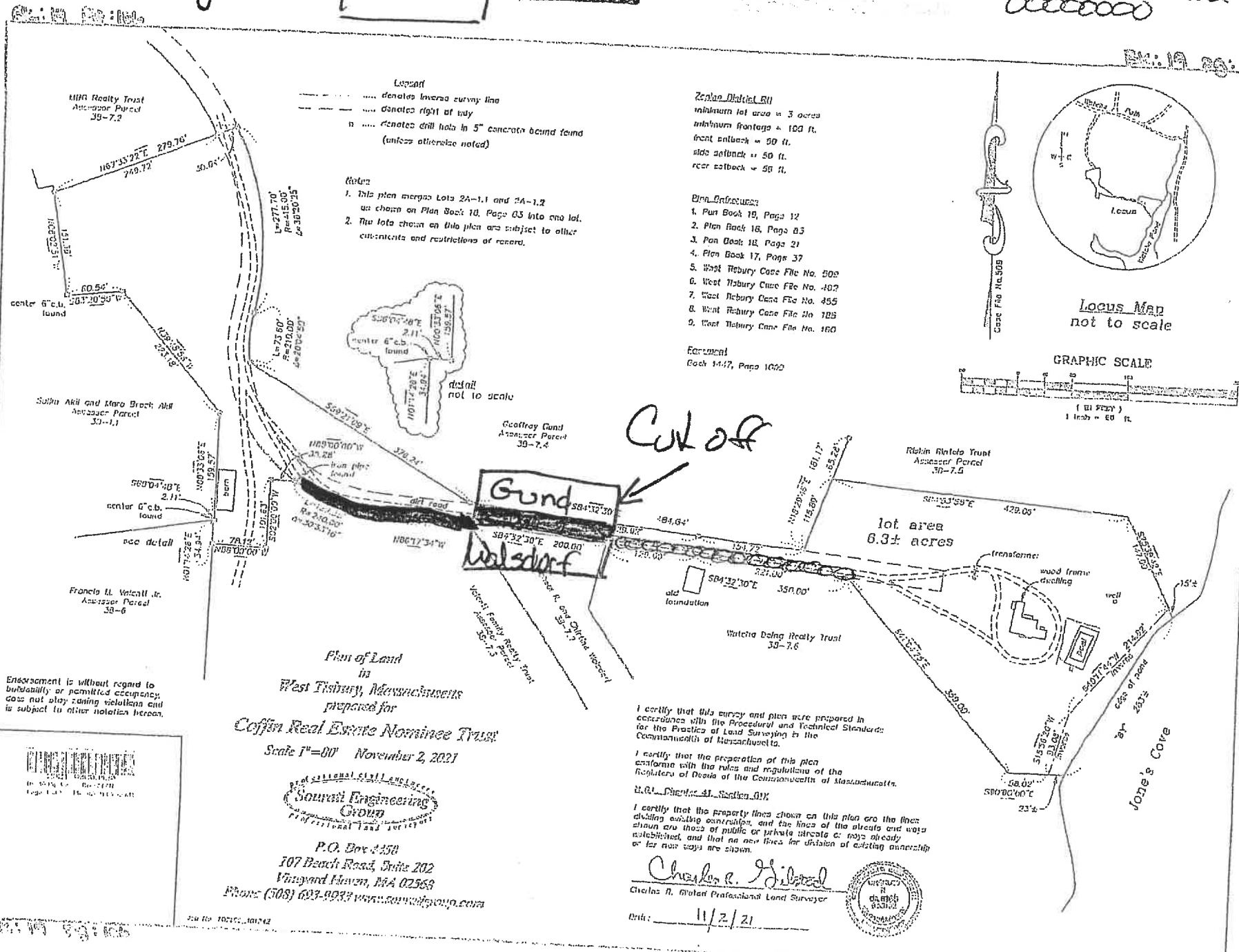
Legend:

Cut off

Valenti land

More Gund land

Ben Coffin TR land



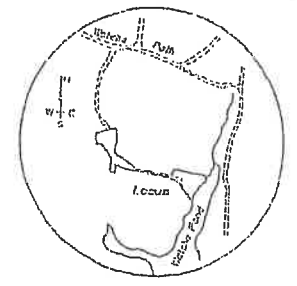
Legend
 denotes inverse curvy line
 - - - - - denotes right of way
 n denotes drill hole in 5" concrete bound found (unless otherwise noted)

Notes
 1. This plan merges Lots 2A-1.1 and 2A-1.2 as shown on Plan Book 10, Page 03 into one lot.
 2. The lots shown on this plan are subject to other covenants and restrictions of record.

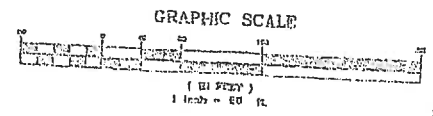
Zoning District RU
 minimum lot area = 3 acres
 minimum frontage = 100 ft.
 front setback = 50 ft.
 side setback = 50 ft.
 rear setback = 50 ft.

Plan References
 1. Plan Book 10, Page 12
 2. Plan Book 16, Page 03
 3. Plan Book 16, Page 21
 4. Plan Book 17, Page 37
 5. West Haverhill Case File No. 809
 6. West Haverhill Case File No. 402
 7. West Haverhill Case File No. 455
 8. West Haverhill Case File No. 105
 9. West Haverhill Case File No. 100

Enactment
 Book 14:17, Page 1002



Locus Map
 not to scale



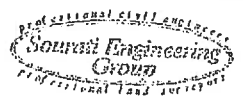
Cut off

Gund
 Valdorf

lot area
 6.3± acres

Enactment is without regard to
 lawfulness or permitted occupancy,
 does not allow zoning violation and
 is subject to other notations hereon.

Plan of Land
 in
 West Haverhill, Massachusetts
 prepared for
 Coffin Real Estate Nominee Trust
 Scale 1"=50' November 2, 2021



P.O. Box 2458
 107 Beach Road, Suite 202
 Vineyard Haven, MA 02568
 Phone (508) 693-9933 www.sourateng.com

I certify that this survey and plan were prepared in
 accordance with the Procedural and Technical Standards
 for the Practice of Land Surveying in the
 Commonwealth of Massachusetts.

I certify that the preparation of this plan
 conforms with the rules and regulations of the
 Registrars of Deeds of the Commonwealth of Massachusetts.

U.S.G. District of Massachusetts

I certify that the property lines shown on this plan are the lines
 dividing existing ownership, and the lines of the streets and ways
 shown are those of public or private streets or ways already
 established, and that no new lines for division of existing ownership
 or for new ways are shown.

Charles R. Gilbert
 Charles R. Gilbert Professional Land Surveyor



Date: 11/2/21

OPINION LETTER OF LAND COURT EXAMINER ERIC GREEN
AND LICENSED SURVEYOR BRIAN MURPHY AFFADAVIT

SHAPIRO & GREENE, P.C.
ATTORNEYS AND CONVEYANCERS
76 H STREET
POST OFFICE BOX 986
HULL, MA 02045-0986

Telephone: (781) 925-0040 Facsimile: (781) 925-6077
E-mail: ShapGreene@Aol.Com

Eric M. Greene
Marshall D. Shapiro, Senior Counsel

Marjorie J. Famiglietti,
Office Manager

File No. 19T463

November 18, 2019

Jay F. Theise, Esquire
Jay F. Theise & Associates, LLC
92 State Street
Boston, MA 02109

Re: Lot 2A-1.1, 118 Sarita Walker Road,
West Tisbury, Massachusetts

Dear Jay,

Pursuant to your request and our discussions, I have conducted extensive title research at the Dukes County Registry of Deeds ("Deeds") regarding the above described premises as well as so called "Sarita Walker Road" and other abutting properties, concerning MGLA c. 183, section 58; the so called Derelict Fee Statute, and its application to the Private road and encapsulated driveway known as Sarita Walker Road in West Tisbury, Ma. My opinion, for the reasons set forth below, is that the Statute applies to "Sarita Walker Road, and in particular Lot 2A-1.1 (and other lots).

My research into the title to Lot 2A-1.1, Sarita Walker Road, and the other lots abutting it begins with a deed from Richard W. Renehan, Trustee of Scrubby Neck Farm Trust to Benjamin H. Coffin, IV dated March 30, 1987 and recorded with said Deeds in Book 473, Page 312. Though not the first time that the title was put into the Coffin family's name, this deed covers all of the area directly abutting Sarita Walker Road prior to the various land divisions noted below. The said Benjamin H. Coffin, IV later gave a one half interest in the parcel to his wife Hazel Coffin by deed dated December 24, 1992 and recorded in Book 596, Page 69.

By deed dated July 14, 1996 and recorded in Book 682, Page 15, Benjamin H. Coffin, IV and Hazel Coffin gave a deed of Lot 1D to Francis M. and Sarita C. Valenti. Said deed also included a specific grant to use the 30' "existing sandy gravel road" shown on the plan (W-482) for access to Watcha Path. Please note that said Lot 1D appears to also abut this private road. Please also note that there was no reservation of title in and to the

fee of said road contained in this deed as would be required to exclude conveying to the center line under the Derelict Fee Statute which took effect in January of 1972.

By deed dated October 3, 1996 and recorded in Book 686, Page 368, Benjamin H. Coffin, IV and Hazel Coffin gave a deed of Lot 1C (which includes locus) to themselves as trustees of Coffin Real Estate Nominee Trust (the "Coffin Trust").

The said Coffin Trust trustees then conveyed out Lot E on Plan W-509 to third parties by deed dated October 29, 1999 and recorded in Book 780, Page 533. Said deed includes the entire access road now known as Sarita Walker Road where Lot E is on both sides of the said way and to the centerline of the road for the balance. No specific reservation of rights or the fee in the said road is stated though there are references to the costs of maintaining it in paragraph 9. Paragraph 10 gives an easement of the said way, but as it is included together with the fee conveyed as it is shown on plan W-509, it appears that the Coffin Trust may have landlocked itself by this deed. (Note: Although beyond the scope of what you asked me to opine to, this may be the case if this additional grant gave to the grantees anything more than only an easement to use the road from the end of their property along the said road to its terminus near Jone's Cove, which is the case on Plan W-509).

By deed dated July 13, 2017, Hazel T. Coffin as Trustee of the Coffin Trust conveyed Lot 2B-1 to Benjamin Howard Coffin V as trustee of a new trust. Said deed was recorded in Book 1443, Page 1068 and makes reference to the grantees "...right to use the roads as shown on said plan for all purposes for which roads are used..." The plan here specifically shows Sarita Walker Road as being more than just the traveled path. Further, Lot 2B-1 abuts it directly and again as there was no reservation made as to the fee in the said road, the Grantee would take to the center of it. The same would be true for Lots 2C and 2D conveyed by deed dated June 1, 2016 and recorded in Book 1407, Page 509, unlike the deed to the new trust referenced above, this second deed was for consideration to apparent third parties (the Walsdorfs).

Lot 2A-1.1 is shown on the plan recorded in plan Book 18, Page 83 as being on both sides of Sarita Walker Road. This is inconsistent with prior deeds referenced above. The Deed out of Lot 1D recorded in Book 682, Page 15 clearly shows the said lot abutting the "road" and as there was no specific reservation of rights to the road in the said deed, the grant should have run to the centerline of the road. The same would be true for the deed out of Lot E recorded in Book 780, Page 533. At best for Lot 2A-1.1, the deed for Lot E took the fee to the road, leaving the Lot to establish an easement by estoppel due to the road being shown on the land division plan. At worst, the deed for Lot E landlocked Lot 2A-1.1.

Under the Derelict Fee Statute the deed of Lot E included the fee in the said road where Lot E abutted Lot 2A-1.1, and as there is no specific reservation in the deed, and that as the road was shown on this and prior land division plans, a likely easement by estoppel was established. Access however is not the question here, but the fee to the area shown as the road within Lot 2A-1.1 is. Chapter 183, Section 58 makes clear that the reservation must be specific and there was nothing in the deeds even suggesting such a reservation never mind the making of a specific one. Both Kuczinski v. Gliniecki, 29 Mass.L.Rptr. 408 and Tattan v. Kurkan, 32 Mass.App.Ct. 239 clearly discuss and reinforce this point. Tatten goes on to say that even if the grantor's (Coffin Trust sic) intent was to retain the fee, something that cannot be ascertained from the record here, that intent is still not applicable absent an express reservation or exception of the fee in the road in the granting instrument; meaning the deed must include the reservation.


In conclusion, my opinion is clear that Lot 2A-1.1 as shown on a Plan as being 3.01 Acres is wrong to the extent it includes within it the entire area the so-called 30' wide Private way. Further, it appears that Lot 2A-1.1, broken off from the Lot it was established from, was already cut off from its "mother lot", by operation of the same statute.

Nothing in this opinion is a zoning opinion, and deals only with the size and bounds of Lot 2A-1.1.

Very truly yours,

SHAPIRO & GREENE, P.C.

By:


Eric M. Greene
EMG/mf

SHAPIRO & GREENE, P.C.
ATTORNEYS AND CONVEYANCERS
76 H STREET
POST OFFICE BOX 986
HULL, MA 02045-0986

Telephone: (781) 925-0040 Facsimile: (781) 925-6077
E-mail: ShapGreene@Aol.Com

Eric M. Greene
Marshall D. Shapiro, Senior Counsel

Marjorie Famiglietti,
Office Manager

RESUME OF ERIC M. GREENE, ESQUIRE

PROFESSIONAL:

Admitted to practice in the Commonwealth of Massachusetts December, 1986.

Member of **Shapiro & Greene, P.C.** and **Shapiro & Greene, LLP**, 1999 to date
President and Managing Partner since January, 2001. Duties also include closing attorney,
principal title examiner; reviewing and preparing of title reports and title insurance
underwriting. Responsible for all transactional work, representing Sellers, Buyers, and
lending institutions. Supervises foreclosures. Responsible for Land Court cases.

Of Counsel to **The Law Offices of Shapiro & Greene**, 1994 – 1998

Associate of the **Law Offices of Marshall D. Shapiro**, 1986 - 1994

Appointed a Land Court Title Examiner by the Chief Justice of the Massachusetts Land Court
Division of the Trial Court March 26, 1993

Professional Associations: American Bar Association;
Massachusetts Bar Association;
Real Estate Bar Association / Massachusetts Conveyancers
Association

Teaching Assistant, **Purdue University**, Department of History, 1981 – 1983:
Assisted Associate Professor Gordon D. Young, taught individual sections on selected
subjects, graded all exams and generally assisted in the Ancient History Survey Course.

Teaching Assistant, **Purdue University**, Department of Political Science, 1982 – 1983:
Worked with Professor Louis R. Beres, graded examinations and term papers in
undergraduate course on International Relations and graduate course on International
Relations and World Order.

EDUCATION:

Suffolk University Law School, Boston, Massachusetts. (Juris Doctor, Cum Laude, June 1986)
Honors: Phi Delta Phi International Legal Honor Society
Best Brief Award: Justice Thomas Clark Advanced Moot Court Competition, 1985
Best Brief Award: First Year Moot Court Competition, 1984

Purdue University, West Lafayette, Indiana (Master of Arts, May 1983, areas of specialization:
Modern European History, International Relations and Military History)
Honors: Awarded full fellowship for graduate studies

Purdue University, West Lafayette, Indiana (Bachelor of Arts 1981, triple major in Modern European History, Political Science and General History)
Honors: Inducted into both Phi Alpha Theta (History) and Pi Sigma Alpha (Political Science) national honor societies

Continuing Legal Education programs offered by the Massachusetts Bar Association, Massachusetts Conveyancers Association/ Real Estate Bar Association and other organizations are regularly attended.

COMMUNITY:

South Shore Charter Educational Foundation, Inc. Board of Directors, October 2003 to date;
Treasurer, March 2006 to date

South Shore Charter Public School, a Commonwealth Charter School and its development arm, SSCS Foundation, Inc. Norwell, Massachusetts:

Board of Trustees Clerk, 1999 to October, 2002
Member of the Board of Trustees, 1998 to October, 2002
Served on Executive, Education, Finance and Nominating Committees
Assistant Treasurer of Foundation, 2000 to October, 2002
Parent Representative to All Parents' Group, 2005-2006 school year
Member of Primary Council, 2002-2003 school year

Temple Beth Sholom, Hull, Massachusetts:

Board of Directors, Finance (present Co-Chair), Strategic Planning and Ritual Committees
2003 to date
President, September 2001 to September, 2003,
First Vice President and Co-Chair of the Ritual Committee, 1998 to August, 2001
Third Vice President, 1996-1997
Member of the Board of Directors and Chair of Educational and Youth Committees, 1995 to 2000

Nantasket Youth Center, Hull, Massachusetts:

Treasurer and Building Manager, September 2000 to date
Assistant Treasurer, 1996 to September 2000
Member, Board of Directors, 1996 to date

South Shore Brotherhood, Hull, Massachusetts:

Founding Co-Chairman, 1994 to 1999, Member of Board 1994 to 2005

Boy Scouts of America, Troop 225, Newton, Massachusetts:

Assistant Scoutmaster, 1984-1993
Member of Troop Committee, 1977 to 1993

Hull-Nantasket Chamber of Commerce:

Member, 2000 to date

Hull United Youth Soccer:

Various coaching positions 1998 to 2008.



ENGINEERING A BETTER T
ENGINEERING | SITE WORK | LAND SURVEYING



SURVEYOR'S AFFIDAVIT

I, Brian Murphy, upon oath do depose and state the following:

1. I am a Professional Land Surveyor in good standing in the Commonwealth of Massachusetts and have been licensed since 1995.
2. I am employed by the firm of Farland Corp, located at 401 County Street, New Bedford, Massachusetts.
3. I make this affidavit upon facts of my own personal knowledge.
4. I have reviewed the attached "Plan of Land in West Tisbury, Massachusetts prepared for Coffin Real Estate Nominee Trust, Scale 1"=80', dated July 12, 2017 by Sourati Engineering Group and signed by Charles Gilstad on July 12, 2017 recorded at the Dukes County Registry of Deeds in Plan Book 18, Page 83" (the "Plan").
5. The Plan is a FORM A or Approval Not Required ("ANR") plan which does not include approval of zoning requirements, other than frontage.
6. I was asked to calculate and confirm the acreage of Lot 2A-1.1 (the "Subject Lot") as shown on said Plan.
7. The Subject Lot is situated near the Northwesterly terminus of Sarita Walker Road and shown on the Plan to be 3.01 acres of land.
8. Office Calculations verify that the area of 3.01 acres shown on said plan is accurate.
9. The Subject Lot contains a 30-foot-wide private road, known as Sarita Walker Road.
10. I was asked to calculate and remove the area of this private road from the total Lot area.
11. Based on information shown on the record Plan, I was able to calculate the area of this private road to be approximately 0.77 acres.
12. By removing the area of this roadway, the remaining area of the Subject Lot would be 2.24 Acres.
13. West Tisbury Zoning By-laws dated 2018, Section 4.2-2 states "For lots in all zoning districts, no part of a public or private way may be included in the lot area required for zoning compliance."
14. Lastly, the Subject Lot with the acreage shown (3.01 acres) on the above-mentioned plan, INCLUDES land owned by others pursuant to M.G.L. c. 183 §58 (Derelict Fee Statute), see Deed recorded in Book 1407 Page 509.

Signed under the pains and penalties of perjury this 26th day of April 2019.



Brian Murphy
Brian Murphy
Professional Land Surveyor
License No. 38387

SOURATI APPLICATION FOR DISPOSAL SYSTEM CONSTRUCTION PERMIT

DATED JUNE 16, 2022

(SEE PLAN ON FILE WITH BOARD OF HEALTH NOT ATTACHED HERETO)