EXHIBIT 3

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June 9, 2022

Joseph K. Tierney, Jr.
Inspector of Buildings and Zoning
Town Of West Tisbury
PO Box 278
West Tisbury, MA 02575

Re: Lot 14, Pine Lane, West Tisbury, MA

Dear Mr. Tierney:

As you are aware, this office represents J.C. Murphy regarding the status of Lot 14, Pine Lane and your 2017 rejection of his application for a single-family home building permit on the parcel.

The purpose of this letter is to have you reconsider the current status of Lot 14, and have Murphy's application for the building permit renewed or replaced and approved without incurring additional costs to the landowner.

Your position and legal analysis set forth in your August 2017 letter make your view clear that unless the Planning Board's "recreational area" condition is terminated, Lot 14 will remain "unbuildable". It is my client's position that the Planning Board has no jurisdiction as the "recreational area" designation was a condition that has since lapsed long ago as a matter of law.

Therefore, to base the rejection of the building permit application on this expired "condition" is wrong and should be corrected.

At your direction set forth in your rejection letter, I met with the Planning Board on May 2, 2022 to determine its position regarding the status of Lot 14. Lot 14 has been denied a building permit three times (1999, 2011, and the rejection in 2017), all based on the Planning Board's reliance on its "Condition" of 1973 designating Lot 14 as a "recreational area. (See, Zoning Board's Findings and Decision of1999. The ZBA March 17, 1999 Finding and Decision (attached as Exhibit 3) makes it clear that the basis of the Planning Board's authority to set the condition was Section 81U.

> *MGL c. 41 § 81U indicates that a planning board may require a subdivision to set aside suitable land for recreational purposes for a period not to exceed three years. In the instant matter, the subject property was clearly labeled 'recreation area' on the endorsed definitive plan., however, there is no limitation as to the time of this condition. (2nd para. 1999 BZA decision).*
>
> *..... In the instant matter, the restriction is not an easement or a covenant, it is a condition of the planning board 's endorsement in 1973. Such condition need not conform with the formalities required for an easement or a covenant. Final para. last two sent.*

But, as clearly stated in the ZBA decision, the authority established in Section 81U allows the Planning Board to restrict building on that parcel for only three years after which it 'lapses' and the parcel goes back to being buildable as a matter of law.

MGL Chapter 41 Section 81U provides in relevant part:

> *Before approval of a plan by the planning board, said Board shall also in proper cases require the plan to show a park or parks suitably located for playground or recreational purposes or for providing light and air and not unreasonable in area in relation to the land being subdivided and the prospective uses of such land, and if so determined said Board shall by*

appropriate endorsement on the plan require that no building may be erected on such park or parks for a period of not more than three years without its approval.

"Ordinarily, where the language of a statute is plain and unambiguous, it is conclusive as to the legislative intent." Ryan v Mary Ann Morse Healthcare Group, 483 Mass. 612,620 (2019), quoting Ciani v. McGrath 481 Mass. 174,178 (2019). However, where the statutory language is ambiguous or unclear, "we consider the cause of its enactment , the mischief or imperfection to be remedied and the main object to be accomplished , such that the purpose of its framers may be effectuated" Spenser v. Civil Service Comm'n 479 Mass. 210,217 (2018) quoting Water Department of Fairhaven v. Dept. of Environmental Protection 455 Mass. 740,744 (2010). ""...we will not adopt a literal construction of a statute if the consequences of doing so are absurd or unreasonable," such that it could not be what the legislature intended, quoting Attorney General v. School Comm. Of Essex. 387 Mass. 326,336 (1982). The purpose for the three-year limitation found in Section 81U, is to give a municipality (West Tisbury) time to decide whether to purchase the lot for recreational purposes. If no purchase is made by the Town, the condition or restriction 'lapses' at the expiration of three years. Chamseddine v. Zoning Board of Appeals of Taunton 70 Mass. App. Ct. 305 (2007). See also MGL c. 41 sec. 81Q. As the Town took no steps to purchase lot 14 as required under Section 81U, the Lot 14 ''recreational area' condition terminated February 15, 1977 pursuant to the statute. 'It is clear under GLC 41 section 81Q, as inserted by St. 1953, c. 674 section 7 that 'no planning board (may)impose, as a condition for the approval of a plan of a subdivision, that any of the land within said subdivision be dedicated for the public use, or conveyed or released to the municipality for public use without just compensation to the owner thereof.' See, Planning Board of Chilmark 402 Mass. 841 , 844-845. (1985). Having failed to complete its purchase required under 81U, the Planning Board has no

jurisdiction to enforce the condition which in this case wrongfully denies Mr. Murphy as landowner, the best use for the parcel, the right to build a single-family home, on the land.

Section 81Q is clear:

> *Once a definitive plan has been submitted to a planning board, and written notice and written notice has been given to the city or Town Clerk pursuant to 81T and until final action has been taken thereon by the planning board or the time prescribed for such action prescribed by 81U has lapsed, the rules and regulations governing such plan shall be those in effect relative to subdivision control at the time of submission of the plan.*

The plain purpose of those two statutes was to provide the mechanism by which the Planning Board could condition the subdivision for the benefit of the public and providing a reasonable period to purchase that lot to fulfill the purchase requirements of 81Q. Chilmark, **at** 844-845 and to avoid the exact circumstance that currently exists: West Tisbury taking control of the lot, restricting the use by the landowner, ignoring the three year limit and maintaining control of its use for 45 years without purchasing and compensating Murphy. Murphy hasn't had any control over that lot since February 11, 1974, the day the Planning Board Condition was recorded. Yet, the Town knowingly carried the lot as 'buildable' (DOR Code 130) on the assessors roles and assessed it as a buildable lot at the "buildable residential lot" tax rates from 1974 to 2018 when the Code was changed to DOR 132 (Unbuildable) indicating it was unbuildable based upon being a recreational lot.

When I approached the Planning Board, with this information at the May 2, 2022 at their regular meeting, they appeared to maintain the view that the recreational area condition remains in full force and effect and are not interested in the impact of Chapter 41 81U and 81Q or chapter 184 sec. 23.

I am sure your files reflect Lot 14's area and frontage specifications the lot meeting the requirements set forth in MGL c. 40A Section 6, ara.4 which qualify it for being 'grandfathered", for residential single-family home requirements of 1974.

In addition to 81U, there are other relevant statutes where the legislature addresses the 'condition' restriction issue. The Supreme Judicial Court found ...."restrictions on land are generally disfavored and the legislature has established procedures by which a landowner may remove or prevent the enforcement of obsolete, uncertain or unenforceable restrictions. ' Stop and Shop Supermarket Co. v. Urstadt Biddle Properties , Inc. 433 Mass. 285, 288-290 (2001). MGL Chapter 184 § 23 was enacted in 1961 to limit conditions and restrictions unlimited in time duration to thirty years from the date imposed. In 1961, MGL 184 Section 23 was passed by the Legislature declaring as follows in relevant part:

> *Conditions or restrictions unlimited as to time, by which the title or use of real property is affected, shall be limited to the term of thirty years* after the date of the deed or other instrument or the date of the probate of the will creating them, except in cases of gifts or devises for public, charitable or religious purposes. *Emphasis added.*

In addition to the time limitations, found within MGL Chapter 184 section 23, the legislature has also enacted MGL 184 section 26-30 providing that landowners may prevent enforcement of restrictions that are not of "actual or substantial benefit to a person claiming rights of enforcement". The legislature acting out of concern that 'rights might be lost through inadvertence', Chapter184, Section 30 provided a presumption that restrictions in certain circumstances are not of substantial benefit; however, that presumption does not apply to common scheme restrictions. The statute does provide criteria for determining whether common scheme restrictions remain enforceable, including among others, whether continuation of the restriction would ' impede reasonable use of land for purposes for which it is most suitable, and

would tend to impair the growth of the neighborhood or municipality in a manner inconsistent with the neighborhood public interest or to contribute to deterioration of properties or result in decedent or substandard areas or blighted open areas. ' Berger v. Wycliffe, LLC et al, Footnote 5 92 Mass. App. Ct. 517,522 (2017).

In sum, Mr. Murphy believes that the Planning Board "recreational area" condition under the several statutes cited has expired and the various enforcement actions since 1977 were taken without any authority and beyond the jurisdiction of the Planning Board. Your 2017 ruling to find Lot 14 'unbuildable' based upon the Planning Board "recreational area condition' and to require Murphy to go before the Planning Board when the Appeals Court's order to the Planning Board to sign the ANR endorsement was completed in 2012. The Planning Board has no reason when it has no jurisdiction to pass on zoning issues. At this time, the only impediment to issuing the building permit is your refusal to allow it.

The objective here is to free this parcel from a restriction which has been placed upon it by the Town for the benefit of the Boards of the Town and no other individual . The Town placed the temporary condition on lot 14 and through unlawful enforcement maintained it for 48 years, despite its being challenged and its obligations (purchase) under the law. Murphy is interested in building a single family home which is the best use of this parcel. The condition has lapsed and there is no impediment to approving the building permit.

If you are interested in pursuing an expeditious resolution to this matter, please let me know by June 22, 2022. Hopefully, this can be resolved quickly and save both parties another round on the litigation route.

Sincerely yours,

Philip X. Murray

Enclosure March 17, 1999. Zoning Board Finding and Decision.

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July 23, 2022

Joseph K. Tierney, Jr.

Inspector of Buildings and Zoning

Town Of West Tisbury

PO Box 278

West Tisbury, MA 02575

Re: Lot 14, Pine Lane, West Tisbury, MA

Dear Mr. Tierney:

Thank you for your June 27th telephonic response to my June 9th letter. It was helpful. Although your comments did not directly address the issues the letter raised as to "buildability" , I continue to seek to resolve the issue of 'buildability' short of the courts. Your comments focused me on reviewing the July/August 2017 Board of Health filing by Mr. Dowling on behalf of Mr. Murphy which apparently is what your August Letter was addressing.

What I found answered some questions and raises others. The Board of Health application for a sewer permit filed in 2017 included the following:

- The Form Permit Application
- Plot Plan
- Foundation Plan
- Single Family Layout by floor
- Sewer design/analysis

This was the first step to filing a full Application for a Building Permit at your office. The plot plan was the plan prepared by Sourati Engineering in 2009 indicating the circular lot was lot 14. The 'ANR' (Approval not required) endorsement by the Planning Board members in 2012 at direction of the Appeals Court was recorded on the plan. See Plan at West Tisbury Registry of Deeds Book 17 page 33 9/18/2012. The Sewer Permit application filed at the Board of Health in July 2017 was never endorsed by the Board at a public hearing and has been held at the Board of Health according to the Lot 14 file 'Hold awaiting approval by Planning.'. Neither Mr. Murphy nor Mr. Dowling, the architect/ filer for Murphy, were ever notified of the 'hold' or the reason for it by the Board of Health until recently. Curiously, a notation on the application by Mr. Van Ness, Board member at the time, indicated on July 17, 2017 the Plan was 'ok'. A staff member could not explain the 'Hold' status and a review of the Board of Health Minutes after the filing date provides no mention. (A review of the Board Minutes of July 13, 2017 through year's end , indicates that the application was neither approved nor rejected and never on the public meeting agenda.) A staff member recently indicated to Murphy that the Lot 14 application was approved. The fact that both the Board of Health and your office with no Application for a Building Permit both were/are awaiting Planning Board action in 2017 is curious. Your 2017 letter notified Mr. Murphy the lot is unbuildable and needs to go to the Planning Board. This position was curious given the fact that the Appeals Court indicated in the 2011 litigation that the Lot seeking the ANR (Approval Not Required) endorsement by Murphy 'did not show a subdivision and was entitled to the requested endorsement under MGL Chapter 41 Section 81P. Murphy v. Planning Board West Tisbury Appeals Court 11-P-307 (2011). It is also curious that for the first time since the lot's creation in 1974, in 2017 Lot 14 legal tax status was changed from 'buildable (DOR code 130) to nonbuildable (DOR Code 132) in 2017 based upon the 2011 Murphy case which

did not consider the question of buildability and the 'recreational lot' condition, which was no longer on the plan signed off by the Board.

There is further support from the Supreme Judicial Court in the more recent case of RCA Development , Inc. that the option of going through the planning board is Murphy's option and not a requirement. I set forth the following argument relative to your requirement that Murphy go back to the Planning Board, notwithstanding the ANR endorsement directed by the Court, five years previously. Planning Board Approval is not required as found by the Appeals Court in Murphy v. Zoning Board of Appeals of West Tisbury 2012 and as found more recently by the Supreme Judicial Court in RCA Development , Inc. v. Zoning Board of Appeals of Brockton SJC 12619 Slip Opinion 2019. In both these two cases, the Courts found plan did not show a 'subdivision'; and that the question presented did not require Planning Board approval. The SJC found MGL Chap 41 81P gave the option to the landowner if he wanted to present through the Planning Bord. In Murphy, the Appeals Court directed the Planning Board to endorse the plan indicating 'Approval Not Required' which it did on the 2009 Lot 14 Plot Plan in 2012. Further, because lot 14 'satisfied the zoning requirements at the time of its creation' (in 1974), it did not require the Planning Board approval under GL. Chap. 41 Sec. 81O. RCA .

Finally, in determining the single lot status of the locus separate from the adjoining lot for grandfather protection, case law has delineated a number of factors beyond GL Chap. 40A Sec. 6 including tax assessment status and physical uses of the locus. Lindsay v. Board of Appeals of Milton 362 Mass. 126 (1972). Lot 14 'satisfied the zoning requirements at the time of its creation' (in 1974), Lot 14 has the frontage, the size and depth and metes and bounds and is vacant from its creation in 1974. From 1974 through 2017, it has been assessed and taxed as a buildable lot. It is entitled to being 'grandfathered' pursuant to MGL Chapter 40A section 6.

Section 6, reflects the statutory policy of keeping once buildable lots buildable, which is grounded in principles of fairness to landowners. Rourke v. Rothman 448 Mass. 190 (2007). Massachusetts courts have construed this provision to 'preserve the buildable status of certain nonconforming lots in perpetuity. Id .

. I am asking you as Building Inspector, based upon the arguments set forth in my June 9, 2022 letter and the additional argument set forth below if you can decide if Lot 14 is a buildable lot pursuant to law. As presentation to the Planning Board is an option of the Land Owner and in fact Planning Board endorsement was directed by the Appeals Court in 2012, your opinion of 2017 that the lot is unbuildable for failure to go to the Planning Board is no longer valid. As you gave that opinion without a full application and without consideration of the Sewer Permit and other documents submitted at a cost of $9,000.00 to the landowner without Town response,

- There is no need for any further action by the Planning Board (argument above)
- If the Planning Board Condition as defined by the Zoning Board Decision of 1999 is
- The condition if considered time-unlimited has expired GL 184 secs 23 25-30 (June letter);
- The condition if considered time limited by 81U, time (three years) lapsed in 1977 without the Town performing as required under 81U, 81P and 81Q. (June letter)
- The single lot protection provided in GL Chap. 40A Sec. 6 considering plot plans of 1973 and 2009 as endorsed by the Planning Board qualifies for 'grandfather' treatment (Argument above)
- Murphy's covenants recorded as Protective Covenants and Restrictions Issued Upon The Property in West Tisbury Massachusetts Owned By Robert J. Murphy in 1974, Paragraph 2-2a indicate the single-family use is the only use allowed without prior

approval of Murphy for any adjustment. (Dukes County Book 320 Page 25-29 August 26, 1974) were extended by Murphy on 10/8 2003 thru 2024, see Dukes County Registry Book 973 Page 150.

Please give your opinion of the lot 14's buildability for a single-family home. Please consider my previous letter to you, as well as the new SJC case law regarding the Planning Board and the 'grandfather' statute and provide an opinion of buildability. If positive, a full permit application will be forthcoming. If not, provide the basis of your objection. Thank you for your assistance. Please provide by August 5, 2022. The 1973 plot plan and the 2012 endorsed Plot Plan are attached.

Sincerely yours,

Philip X. Murray
cc: Robert J. C. Murphy

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August 20, 2022

Joseph K. Tierney, Jr.

Inspector of Buildings and Zoning

Town Of West Tisbury

PO Box 278

West Tisbury, MA 02575

Re: Lot 14, Pine Lane, West Tisbury, MA

Dear Mr. Tierney:

Both my letters of June and July have gone unanswered. You indicated in your phone call that you were unable to advise me as to whether Lot 14 was buildable or not, because you didn't have a full building permit application before you.

Mr. Murphy's problem is that he is not building, he is selling. My question to you is whether the lot in developable/buildable at this time.

If you recall, your August 7, 2017 letter to Mr. Murphy, when he did not have any building permit application before you, you advised Mr. Murphy that he had to go before the Planning Board as an initial step that at that time. You advised him that Lot 14 was unbuildable.

As you are aware, if a building permit application for new construction is being sought, a sewer permit is required by your office. Mr. Murphy was unable to continue with filing a full building permit application as the Board of Health continues to hold the endorsement of the sewer permit awaiting Planning Board action.

If you still believe that Mr. Murphy is required to go through the Planning Board, in light of the Supreme Judicial Court decision in RCA Development , Inc. v. Zoning Board of Appeals of Brockton SJC 12619 Slip Opinion 2019 and the Appeals Court 2012 directive to the Planning Board that approval of the planning board was not required. This endorsement is now on the plan. Please indicate what is required from the Planning Board.

If you don't believe lot 14 is grandfathered by MGL Chapter 40A Section 6, given its current frontage and acreage which has been consistent since its creation, please indicate what more is required,

If you don't believe that the Planning Board's condition lapsed by law in 1977 pursuant to Chapter 41 section 81U, 81P and 81Q,or in 2003, pursuant to MGL Chapter 184 Section 23 and Section 30, please indicate the basis.

Let's remember, you were willing to give your opinion in 2017 of buildability without a full application, what has changed that prohibits you from advising Mr. Murphy of Lot buildability?? My client has already spent thousands to file the sewer permit application without a response. Mr. Murphy deserves an answer.

At the Board of Health, the technical documents for the sewer permit application are in the Lot 14 sewer permit file that was 'oked' by BOH staff . These documents would provide the construction data you require for the full building application for a single family sewer permit for a five bedroom house. If you still believe the lot unbuildable, please indicate why.

Please let me know your opinion or, if you don't plan to respond let me know by September 3, 2022.

Again, I am interested in moving forward without further litigation.

Thank you.

Sincerely yours,

Philip X. Murray

cc: Robert J. C. Murphy