

EXHIBIT 5

Begin forwarded message:

From: Philip Murray <philip.x.murray@comcast.net>
Date: August 26, 2022 at 9:47:05 AM EDT
To: Joe Tierney <inspect@westtisbury-ma.gov>
Subject: Re: Attn: Joseph Tierney, Building Inspector

Thanks for the info.

Sent from my iPhone

On Aug 26, 2022, at 9:31 AM, Joe Tierney <inspect@westtisbury-ma.gov> wrote:

Phil,

Thanks for reaching out. The town will not allow me to establish the buildability of a lot without a building permit application. That building permit application should be submitted with a letter from an attorney stating why they feel the lot is buildable.

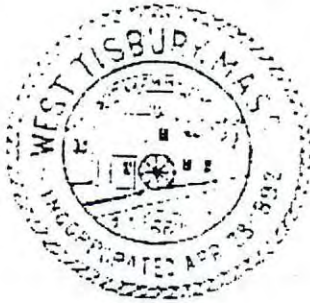
I hope this helps.

Joe

From: phil murray <>
Sent: Thursday, August 25, 2022 3:55 PM
To: inspect@westtisbury-ma.gov
Subject: Attn: Joseph Tierney, Building Inspector

Thank you for the call today. However , as you could see from the last letter, I am not looking for a permit but the status of the property whether buildable or unbuildable for a single family home to sell the property. The floor plan which was in the file , when Mr. Murphy was in the Board of Health a short time ago was there , he made a copy.... but, it is unnecessary for you to determine its current status. It cost my client several thousand dollars to get the documents prepared for the sewer application . Given the History set forth previously he wants to make sure of the status prior to putting it on for sale and determining the sale price.

Phil Murray.
Sent from [Mail](#) for Windows



Town of West Tisbury
 BUILDING AND ZONING INSPECTOR
West Tisbury, Massachusetts 02575

August 7, 2017

Robert J. Murphy
 71 Vineyard Meadow Farms Road
 Vineyard Haven, MA 02568

RE: 15 Pine Lane, West Tisbury/Assessors Map 10, Lot 168

Dear Mr. Murphy:

It has come to my attention that you have applied for permits from the Board of Health to install facilities on a vacant lot owned by you, identified above, located off of Pine Lane (the "Property"). As you know, the Property is shown as and designated a "Recreation Area" on a "Revised Subdivision Plan of Land in West Tisbury – Mass., for Robert J. Murphy" December 7, 1973" (the "1973 Plan"), which the Planning Board approved on or about January 7, 1974. On September 17, 2012, the Planning Board endorsed a revised plan (the "2012 Plan") showing the Property as "Lot 14", although unchanged from its configuration as shown on the 1973 Plan. The 2012 Plan is recorded in Plan Book 17, Page 33 at the Dukes County Registry of Deeds.

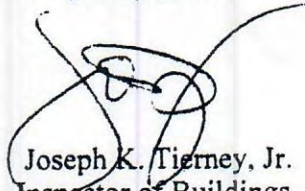
The Planning Board approved the 2012 Plan under the ANR provisions of the subdivision control law, and in connection with litigation culminating in a decision from the Appeals Court, dated November 11, 2011, entitled Murphy v. Planning Board of West Tisbury, 2011 WL 5374564 (the "Murphy Decision"). The Murphy Decision did not establish that the Property is a "buildable" lot under zoning. Rather, as the Appeals Court noted in its decision, and "[a]s explained in Hamilton v. Planning Bd. of Beverly, 35 Mass. App. Ct. 386, 389 (1993) . . . endorsement [under the ANR provisions] has no effect on the eligibility of the land shown on such plan for a building permit." 2011 WL 5374564, at *1 & n. 2. Indeed, separate from the Planning Board's endorsement under the ANR provisions, the Appeals Court's decision in J.A. Taylor Construction Company, Inc. v. Zoning Board of Appeals of Northridge, 73 Mass. App. Ct. 1105 (2008), as the Superior Court judge in the Murphy litigation observed, stands for the proposition that "any plan to convert areas designated as open [or recreational] space on [an] original subdivision plan to buildable lots must be submitted to the local planning board for proceedings under G. L. c. 41, § 81O . . ." DUCV2009-00018, slip op. at 5.

Since you have not sought approval from the Planning Board to convert the Property from recreational space to a buildable lot, I am advising you that the Property is not presently buildable under zoning.

Mr. Robert Murphy - Page Two
August 3, 2017

Please do not hesitate to contact me with any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "J. Tierney, Jr.", with a large, stylized flourish extending upwards and to the right.

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

Cc: Board of Health
Planning Board