

MEMORANDUM

Re: Agricultural Preservation Restriction dated November 22, 1991 and recorded with the Dukes County Registry of Deeds in Book 570, Page 864 (the “APR”)

Property: 35 Panhandle Road, West Tisbury, Massachusetts
West Tisbury Assessors’ Map 25, Parcel 1.1

Date: April 7, 2022

This Memorandum analyzes the APR and whether it restricts or prohibits a Farmers’ Market at the Property. This Memorandum does not consider whether use of the Property as a site to conduct Farmers’ Markets can receive a special permit under the West Tisbury Zoning By-laws.

For purposes of this Memorandum, the concept of a “Farmers’ Market” means a retail market open to the public where a gathering of Martha’s Vineyard farmers or fishermen market and sell products raised, grown or harvested by them on Martha’s Vineyard, including shellfish or other seafood cultivated or harvested by fishermen living on Martha’s Vineyard from the surrounding waters. The Farmers’ Market has in the past been managed by the West Tisbury Farmers Market either at the Property or at the Grange. This Memorandum analyzes whether the APR restricts or prohibits that Market at the Property.

The APR is a restriction upon the Property which is owned by the MVAS¹. The APR was drafted from a form commonly used for conservation, agricultural and other perpetual restrictions. As relevant to this Memorandum, the first paragraph identifies the parties and describes the property burdened by the APR. Next is a series of recitations detailing the purpose and intent of the APR, then in Clause A., a broad list of restrictions, followed by Clause B., which details rights reserved to the Property’s owner. The concluding series of paragraphs concern enforceability and other boiler plate statements.

As the Grantee in the APR, Vineyard Conservation Society (“VCS”) and the West Tisbury Conservation Commission (“ConCom”) hold a right of enforcement should violations of the restrictions imposed by the APR occur. Separate from enforcement is VCS's right to determine whether a use or activity at the Property is *“inconsistent with the intent of this grant, being the perpetual protection and preservation of agricultural lands and the use of said lands for agricultural purposes. . . .”*

Note, however, that VCS's right to determine whether a particular use or activity is consistent does not apply to reserved rights in Clause B, which beings by stating *“Notwithstanding any provision of this instrument to the contrary . . .”*, meaning that the reserved rights in Clause B can occur without any determination by VCS. Therefore, a threshold issue is whether a Farmer’s Market is within the rights reserved in Clause B, in which case it may occur at the Property without pre-determination by VCS and without violating the APR.

¹ MVAS owns other abutting property at 1 and 5 Janes Fair Way which is not subject to the APR.

The list of reserved rights in Clause B, include "*the use of the Property . . . for non-profit and non-profit educational purposes only, and for non-profit agricultural purposes and such limited commercial agricultural purposes as may be directly related to the permitted non-profit and non-profit educational uses of the property.*"

It is axiomatic that the Farmers' Market is one of the limited commercial agricultural purposes directly related to the non-profit purpose of MVAS as contemplated by Clause B. Further, the recitals are instructive. Grantor (Edwin & Jeanne Woods) intended:

"to allow MVAS to continue, at the Property, the full range of non-profit and educational activities MVAS has historically pursued, as well as limited commercial activities to the extent those limited commercial activities relate directly to the non-profit and education function of MVAS, while at the same time perpetually restricting the Property against residential development, subdivision, industrial activities and commercial activities unrelated to the historical activities of MVAS"

and then:

*"the historical activities of MVAS have included . . . promoting the pursuits of agriculture . . . and encouraging raising . . . plant and animal stock . . . and also included **FARMERS' MARKETS**" [emphasis added].*

Mr. & Mrs. Woods specifically recognized that Farmers' Markets are an historical activity that MVAS pursued. Farmers' Markets promote agriculture and encourage farmers to raise plant and animal stock by providing a place to market the fruits of their labor. The specific intent by Mr. & Mrs Woods to allow historic activities and then to include farmer's markets among those activities is not meaningless ink in the document, but go to inform the types of limited commercial agricultural purposes authorized in Paragraph B. After all, the Ag Society and the West Tisbury Farmers Market are both non-profit organizations looking to conduct farmer's markets which are directly related to the agricultural mission of both MVAS and WTFM.