

February 27, 2023

To: West Tisbury Board of Selectmen

From: Nancy Dole, 69 Rogers Path

Dear Board Members,

A while back, the Town, Michael Colaneri and Nancy Dole made an agreement concerning Rogers Path maintenance.

Mike did not like the maintenance cost shares being based on the number of residences using the road, as it formerly had been, and proposed a simpler split that was easier for billing purposes. I agreed to that. So did the Town.

The agreement was that Rogers Path would be maintained from State Road to the Dole residence at 69 Rogers Path. The total cost would be shared equally by the Town, Mike, and Nancy. If Eric Medeiros and Clark Goff chose to contribute for their own and their tenants use of the road to access the Goff commercial property on State Road and the Medeiros property, then whatever Clark and Eric contributed would be subtracted from the total bill, and the remainder of the bill split between the willing owners (Town, Mike and Nancy). We did this because we had had little if any luck getting either Clark or Eric to contribute to the cost of road maintenance (attachment #2).

- 1) It was further agreed that no work would be done without prior notification of the 3 parties who had agreed to take responsibility for the cost of maintaining the road (attachment #4).
- 2) In 2014 and again in 2018 we took care to add fill and create a crown along the full length of the road from State Road to 69 Rogers Path so it would drain properly, per the agreement. Taurus Biskis, consulting with Kent Healy, approved by all parties, did the work. I sent bills to the Town and to Mike and they were paid (attachment #3 photo).
- 3) That agreement held until November 21, 2021 when Mike sent a bill in the amount of \$350 for work he had completed in September 2021 without notifying the other parties and only for the section of Rogers Path from State Road to just past his driveway, where he stopped. Mike wanted to be reimbursed. The Town decided the bill was minor and reimbursed him. I did not (attachment #8, 8A).
- 4) Because Mike did not contact me previous to doing the work.
- 5) Because the agreement was to go from State Road to my driveway. Mike stopped after he reached his own driveway. I would expect that if I had acted on my own, and then sent Mike and the Town a bill for work on only the section from the cemetery to my driveway, Mike would not have reimbursed me, and the Town would have problems understanding what was going on as well. It wasn't our agreement.
- 6) The bill sent by Mike in November 2021 for work he had done in September 2021 was money wasted: no fill was added. What was left of the crown was removed to fill the potholes. That worked for about a week. Mike has had work done twice in that same area since then, adding various amounts of fill by hand, a guy and a truck, but the sides of the road have not been graded to create a crown. Kent told us many many times that if there's no crown, there's no road.

Kent said its necessary to add enough fill to create a crown, by grading the road. Its ok to fill in potholes periodically, as long as you maintain the crown.

The Town should be aware that the section of the road where Mike eventually had a small amount of fill added but not graded has very heavy traffic from Mike's multiple rental properties as well as from Mike's home and my home, and Medieros property. Once past the Colaneri's rental properties, the road is generally in better shape because there is so much less traffic.

When you increase traffic on an old country lane, you risk destroying its character.

- 7) I'm sorry if the above is confusing to those of you unfamiliar with Rogers Path.
- 8) The Town is paying a share because the road has been declared a special way, open to the public. I was told that the Town agreed to participate in paying a share because their attorney informed the Town that they would have some liability if anyone was injured using the road due to poor maintenance. Or maybe they were just doing the right thing, understanding that with rights come responsibilities.
- 9) If you recall the court case where new owners on the other end of Rogers Path were seeking to block the road, the Town said the road had always been used to access the cemetery FROM BOTH DIRECTIONS. Which is why the section from my driveway to the cemetery is included. I've often wondered why the section from Medeiros property to my driveway is not maintained, but I assume that's because Eric Medeiros never asked for help from the Town, because he doesn't maintain it (attachment 7, 7A, 7B).

When I was walking the path recently I saw many trees along the road near the Medeiros property marked for removal, and when I asked, the Planning Board informed me that a new home will be built there on the piece of land that Gardner Burgess owned. The new owners apparently have been granted the Planning Board's approval to use Rogers Path from the State Road end, past the cemetery, past my drive, and to their new entrance. I'm not unhappy that someone is getting a home, but it would have been nice to know it was being considered by the Planning Board, for approval, since it directly affects me. I would want to ask if the new owners were asked to contribute to the maintenance of the road, and if they were prepared to fix the damage to the road that will be caused by heavy construction. I would want to ask that they didn't widen the road. To ask if the Planning Board had considered what would happen when cars met coming from opposite directions. Because there are no turnouts, not one. Rogers Path is a single lane and it is quite narrow. Rogers Path is bounded by stone walls, by the cemetery fence, by high banks on both sides of the road, by blind corners. No turnouts. If someone is driving in past my property when I am driving out, am I expected to back up the entire road and back into my driveway? If not, are they supposed to back up to State Road or turn into someone else's driveway? There is nowhere to pass.

The access to this property was poorly thought out by the Town, if they thought about it at all. If the other owners on the road had been asked, we could have pointed to real issues and helped to make Rogers Path work better for increased traffic and still be the special way it was designated to be.

If I am not mistaken, there are at least two large lots that are likely to be sold and developed in that same area of Rogers Path by Eric Medeiros and Tom Thomas. I hope the Town thinks more carefully about what is required to ensure the road works for the other owners, with major increase in traffic, and yet remains a special way for the public to enjoy. Which the public does. I see people walking and biking there safely every day when I am outside in my yard. It's a pleasure to see and worth preserving.

Here's an excellent example of something the Town didn't notice or wasn't aware of when thinking about allowing more use of Rogers Path as an access: there is a large oak that leans over a curve in the road by my driveway (attachment #3 photo). When Farmer Greene told Ernie Medeiros, Eric's dad, in 1987, that Ernie could no longer use the direct driveway on State Road Ernie had used for many years to access his property, (similar to how the Ferro's access their property) Ernie started driving home the roundabout way, using Rogers Path. When he got to my property, Rogers Path turned into an actual path (attachment #3 photo) so Ernie widened it considerably. In fact Ernie covered the granite boundary that was two feet off the road with a foot of fill, and when he still couldn't get around that oak in the curve in the road he pushed the road over directly through my property (attachment #3 photo). He didn't want to remove the leaning oak tree because it was ... maybe... Tom Thomas's tree. And Tom was not inclined to help Ernie out. Tom and Ernie were fighting over ownership of the land in that area. So Ernie got around the tree by putting the road over my property, knocking my fence down in the process. I moved my fence back further on my own property so Ernie could make the corner. The fence still tends to get damaged and/or knocked down every time Eric Medeiros plows snow. I assume that will continue. At my expense (attachment #3 photos).

If there are going to be more people living up that road, needing to plow it, maintain it, service their homes, the road logically should go to the other side of the oak tree. Drivers are going to hit either the fence, or the tree, and if they hit the tree enough times it will be weakened and eventually endanger my property, including structures on my property. I would have liked to have been given an opportunity to discuss that concern with the Town before more traffic was approved.

The Town recently suggested the owners on the road now, after the fact, form a Road Association. I believe that requires at least 3 owners to agree to such a thing. I think that ship has sailed (attachment #5, 5A & 6).

In closing, I attach bills for work I have done since June 2023 to present to maintain the section of the road from the cemetery to my driveway (attachment #1, 1A, 1B & 1C).

Thank you,

Nancy Dole



Attachments:

- 1) Recent bills paid by Dole
- 2) Map of owners on road
- 3) Photos of Rogers Path in 1986, 1987 and 2018
- 4) 2014 Letter from Town
- 5) Road maintenance agreement included in approval of Colaneri subdivision
- 6) Road Association Formation guidelines
- 7) Atty Rappaport re: Town's rights to Rogers Path
- 8) Bill from M. Colaneri for unauthorized road work.

1

Recent Road bills

Section of Rogers Path from mid cemetery to 69 Rogers Path

Materials

5/9/22	\$58.39	gravel/hardener mix Keenes
6/22/22	\$139.48	same
6/22/22	\$157.96	same
3/27/23	\$245.57	same

Labor

Six wheeler truck and 2 men 5/9/22, 6/22/22, 2/13/23 and 3/27/23 above
19 hours @\$40/hr inc truck = \$760.00

Total Labor and Materials above: \$1361.40

(IA)
Invoice



JOHN KEENE EXCAVATION, INC.
p.o. box 563 West Tisbury, MA 02575
(508) 693-5975

DATE	INVOICE #
5/31/2022	54715

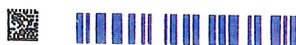
BILL TO:

Nancy Dole
69 Rogers Path
Vineyard Haven, MA 02568

P.O. NUMBER	TERMS	PROJECT
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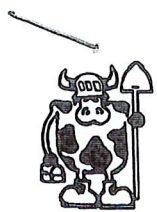
QUANTITY	DESCRIPTION	RATE	AMOUNT
	5/9/22		
1.35	1.5" Gravel/Hardener Mix	43.25	58.39T
	5/10/22		
0.58	White Sand	54.25	31.47T
	5/20/22		
0.75	White Sand	54.25	40.69T
	Sales Tax	6.25%	8.16

TOTAL \$138.71



(18)

Invoice



JOHN KEENE EXCAVATION, INC.
p.o. box 563 West Tisbury, MA 02575
(508) 693-5975

DATE	INVOICE #
6/30/2022	55017

BILL TO:

Nancy Dole
69 Rogers Path
Vineyard Haven, MA 02568

P.O. NUMBER	TERMS	PROJECT
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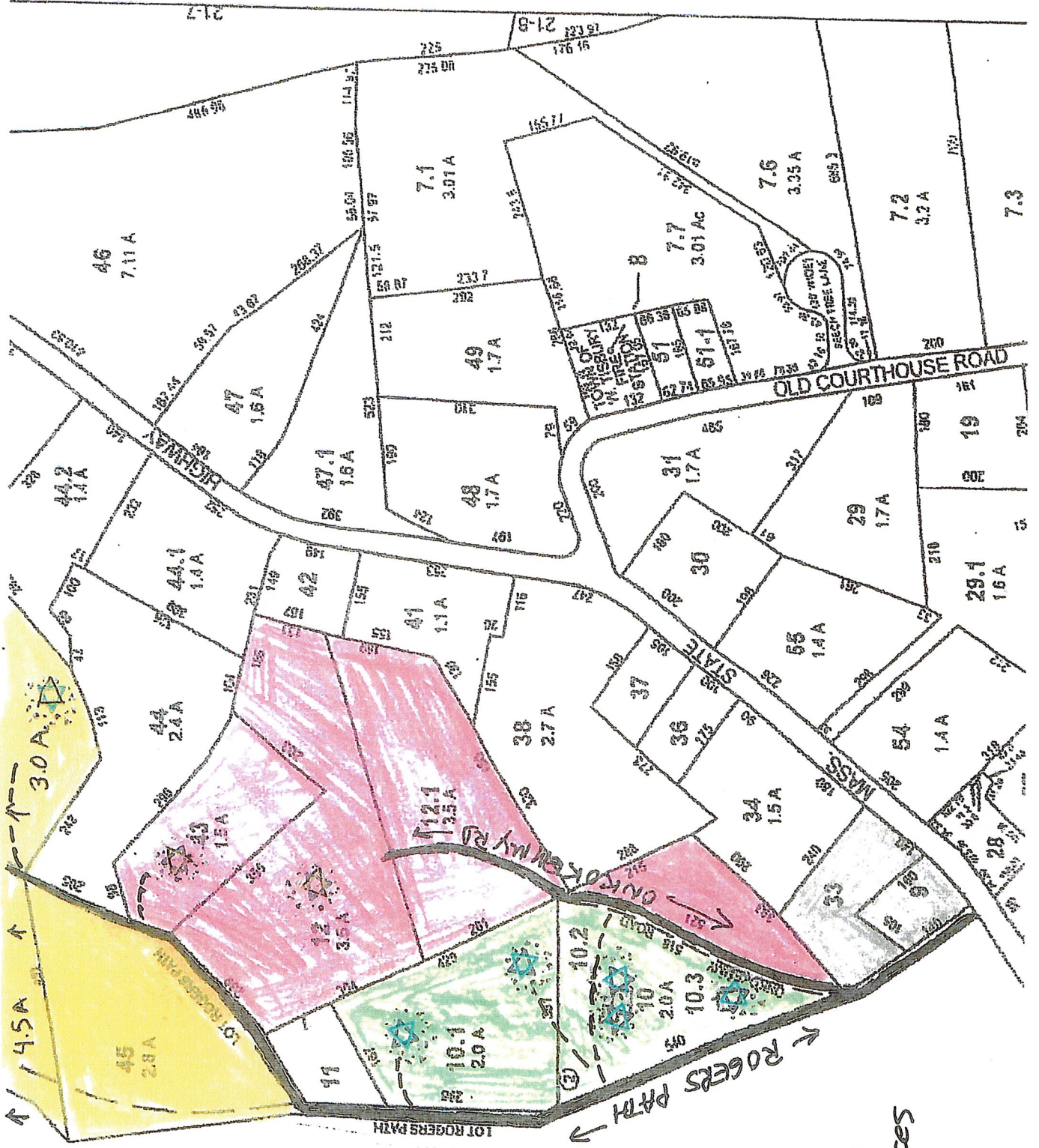
QUANTITY	DESCRIPTION	RATE	AMOUNT
	6/20/22		
1	Six-wheeler Load of Brush Disposal fee <i>Alonso & Doug</i>	115.00	115.00
3.17	3/4" Gravel/Hardener Mix	44.00	139.48
	6/20/22		
3.59	3/4" Gravel/Hardener Mix <i>} truck + 2 men</i>	44.00	157.96
	Sales Tax <i>} to spread</i>	6.25%	18.59

plus \$ 2/27
Road mix
+ truck + 2 men to spread

from cemetery to 69 Rogers Path
inc 1/2 cemetery -

TOTAL \$431.00

2



MEDEIROS

THOMAS

BURGESS

DOLE

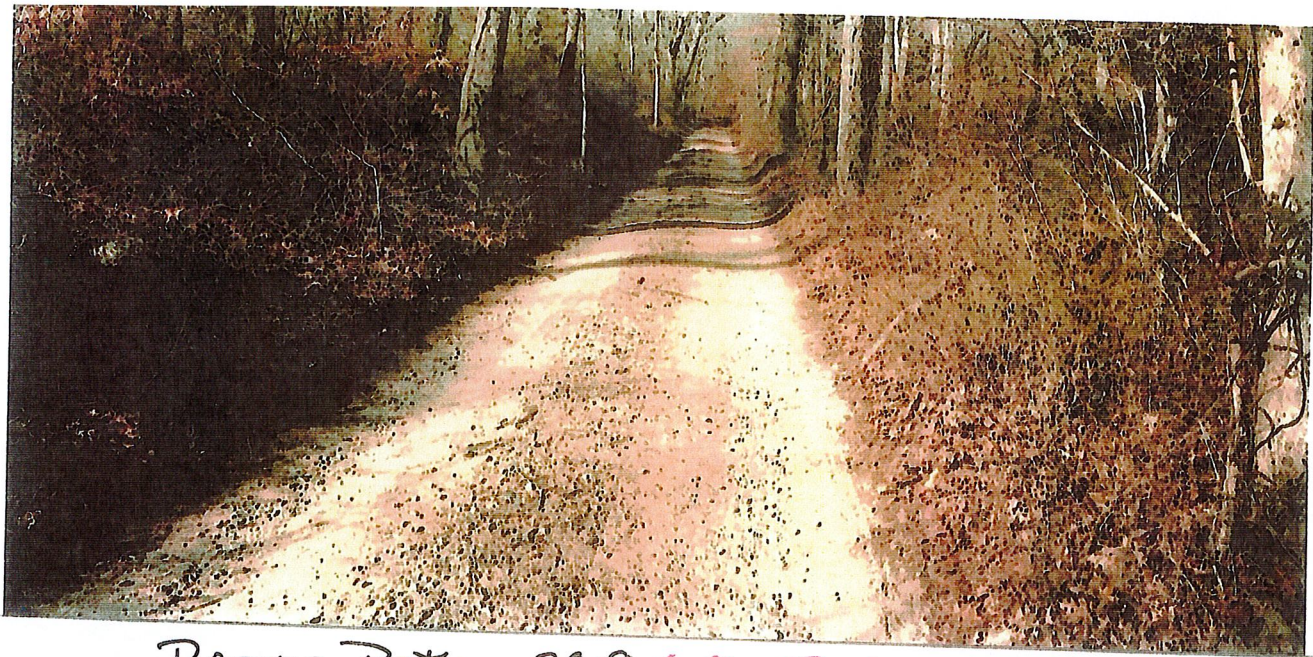
Town of W.T.

COLANERI

GOFF
 HAYNE

single family dwellings using roads currently for access to homes

driveway entrances



3

Rogers Path 2018 (after Tauris work done)

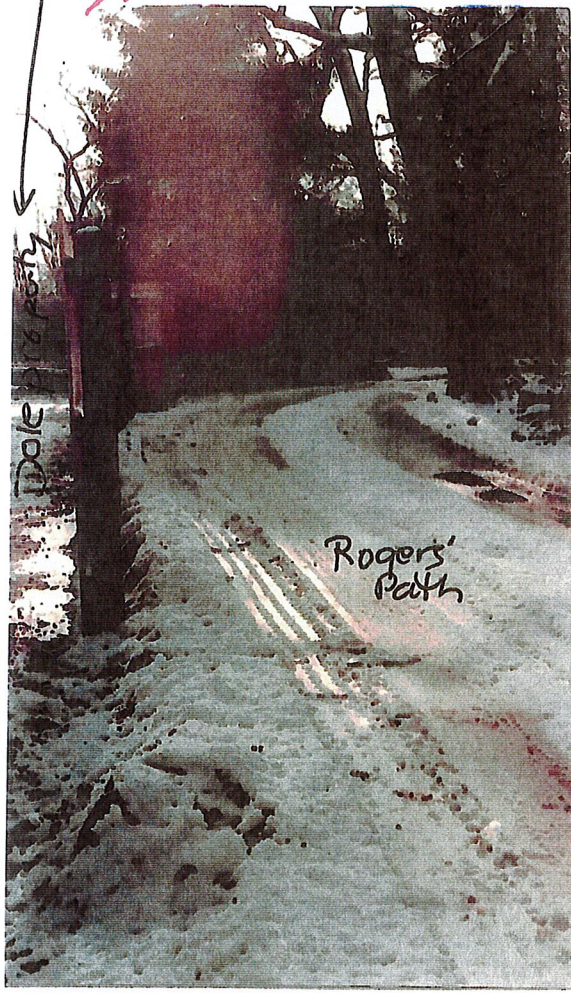
→ Medeiros "improvement" of existing path —
* BEFORE *

↓ leaning oak

* AFTER *

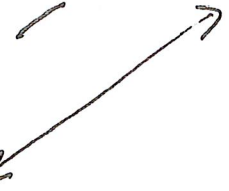
Dale Property

Dale Property



Rogers Path before 1987
"improvements" +
widening of road by Medeiros

VS.



Rogers Path same area post 1987: curve by my driveway + leaning oak, road moved over to allow cars to get past oak tree.



Town of West Tisbury
Board of Selectmen
West Tisbury, MA 02575

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July 10, 2014

Nancy Dole
69 Rogers Path
Vineyard Haven, MA 02568

Re: Maintenance of road, fog lines, streetlight

Dear Nancy;

The Board of Selectmen discussed your request for additional payment for the work done on Roger's Path. They voted to pay 1/3 of the total cost of this work; the bill will be submitted at the next bill pay period. This vote was only for the work that was discussed. If at any time in the future you wish to do further work the Board has asked that you speak to them prior to committing to any work and they will, at that time, determine what they feel is an appropriate level of participation.

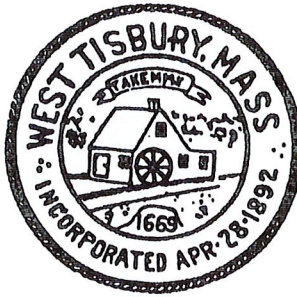
Regarding the fog lines on State Road, as you have seen the State is now aware of the issue and assures me they are planning to address it in some fashion, but this will not happen prior to Labor Day.

Finally, regarding the street light; the Board was not prepared to address the addition of a light in the Historic District last night when they signed the participation agreement. As you know, that would require yet another visit to the Historic District Commission. In addition, prior to pursuing this additional light the Board feels the other neighbors who would be impacted by the light should be in agreement. They have taken your request under advisement and it will be investigated.

If you have any questions about any of this please don't hesitate to call me.

Sincerely,

Jennifer Rand




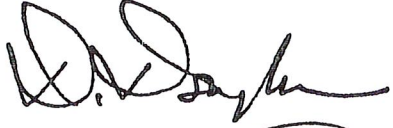

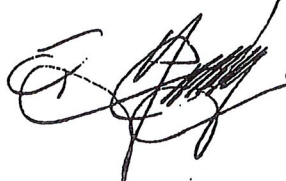

Town of West Tisbury
PLANNING BOARD

West Tisbury, Mass. 02575
CONDITIONS FOR APPROVAL OF THE DEFINITIVE PLAN
MICHAEL COLANERI
AS VOTED BY THE WEST TISBURY PLANNING BOARD
APRIL 7, 1986

Approval of the definitive subdivision plan entitled "Michael Colaneri" - "A Plan of Land in West Tisbury, Mass. prepared for Mr. Colaneri by Vineyard Land Surveying, Vineyard Haven, Mass." and dated January 23, 1986 shall be subject to the following conditions:

1. Each lot is required to have concrete monuments at all change of direction and where the property lines meet the road.
2. Road maintenance stipulations shall be part of the deed for each lot in this subdivision, a copy of which shall be filed with the Planning Board and mention of which shall be noted on the linen.

West Tisbury Planning Board April 14, 1986






 W. W. P. [unclear]

ROAD MAINTENANCE PROVISIONS FOR
COLANERI LOTS #1 & #2
WEST TISBURY SUBDIVISION

The owners of lots 1 and 2, as shown on a plan entitled "Michael Colaneri"-
"A Plan of Land in West Tisbury, Mass. prepared for Mr. Colaneri by Vineyard Land
Surveying, Vineyard Haven, Mass." and dated January 23, 1986, shall share equally
all costs incident to the Colaneri lots. Said costs, which shall include but not
be limited to maintenance costs, shall be apportioned and assessed to the owners of
said lots by a committee of said owners selected annually by a majority of said
owners, and shall be paid by said owners at least annually. Said committee shall
also set a date when the assessment shall be due and payable; if the assessment as
to any lot is not paid on the date when due then such assessment shall become
delinquent and shall, together with interest thereon and costs of collection thereof
as hereinafter provided, thereupon become a continuing lien upon the lot with respect
to which the assessment was made, which shall bind such lot in the hands of the then
owner, his heirs, devisees, and personal representatives and assigns; and the
owners of the lots with respect to which all assessments have been paid, or any
such owner, shall have the right to sell any lot subject to such lien to satisfy
said lien in the manner provided by law for the foreclosure of mortgages con-
taining a power of sale, provided that notice of the commencement of such pro-
ceedings is filed for recording in the Dukes County Registry of Deeds within two
years of the date on which payment becomes due and so long as said assessment or
assessments are unpaid; said assessment shall also be the personal obligation of the
then owners of any such lot.

If the assessment is not paid within thirty (30) days after the delinquency
date, the assessment shall bear interest from the date of delinquency at the rate
of ten (10) percent per annum and the said committee of owners, or any of them,
may bring action in any court of competent jurisdiction against the owner
personally obligated to pay the same or to foreclose the lien against the property,
and there shall be added to the amount of such assessment the costs of preparing
and filing the complaint in such action, and, in the event a judgement is obtained
as above provided, a reasonable attorney's fee to be fixed by the court, together
with the other costs of the action.

The lien of the assessments provided for shall herein be subordinate to the
lien of any mortgage or mortgages now or hereafter placed upon the properties
subject to assessment; provided, however, that such subordination shall apply
only to the assessments which have become due and payable prior to a sale or
transfer of such property pursuant to a decree of foreclosure, or any other pro-
ceeding of similar import. Such sale or transfer shall not relieve such lot from
liability for any assessment thereafter becoming due, nor from the lien of any
such subsequent assessment.

IN WITNESS WHEREOF we have hereunto set our hands and seals this 30th day of
April, 1986.

Michael Colaneri
Owner

Donald H. [Signature]
[Signature]
[Signature]
West Tisbury Planning Board
Acceptance by a Majority of the Board

EXECUTED as a sealed instrument this 30th day of April, 1986.

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August 2003

Re: Statutory Formation of Road Association

Dear ~~XXXXXXXXXX~~

Pursuant to M.G.L.A. c. 84, § 12, if four or more persons are the proprietors and rightful occupants of a private way, and three of them make application in writing to a clerk of the district court of the district or the clerk of the town wherein the private way is located or to a justice of the peace to call a proprietors' meeting, the clerk or justice may issue a warrant for such meeting, stating the time, place and purpose of the meeting. The warrant must then be posted in a public place of the town in which the way is situated, seven days at least before the time appointed for the meeting.

At the meeting, the proprietors so assembled must choose a clerk and a surveyor. Also, such proprietors may determine the manner of calling future meetings, what repairs of the way are necessary and the proportion of money and of labor and materials to be furnished by each proprietor for such repairs. See M.G.L.A. c. 84, §-12; Rasnick v. Herring, 1996 WL 655736 (Mass. Super. 1996).

In order to finance repairs, proprietors may, at a meeting for that purpose, authorize any person to contract for making and keeping in repair such private way, and may vote to raise such amount as they consider necessary for carrying such contracts into effect. See M.G.L.A. c. 84, § 14; Popponeset Beach Assoc. v. Marchillo, 39 Mass. App. Ct. 586 (1996). Also, such proprietors may choose assessors, who shall assess each proprietor for his proportion of such amount according to his interest in the way, and shall deliver the lists of such assessments to the surveyor, with proper warrants of distress, in substance as is prescribed by law for collection of town taxes, and the surveyor may levy and collect such taxes in the same manner as collectors of taxes are empowered to collect taxes. Id.

In the event that a proprietor refuses or neglects to comply with a vote to raise money for repairs, such proprietor shall be liable to the surveyor for the amount of his proportion, with ten per cent (10%) interest thereon. See M.G.L.A. c. 84, § 13.

If you have any questions or concerns regarding the foregoing, or would like assistance in calling the first meeting of the proprietors of ~~XXXXXXXXXX~~ please do not hesitate to give me a call.

REYNOLDS, RAPPAPORT & KAPLAN, L.L.P.
COUNSELLORS AT LAW

106 COOKE STREET • P. O. BOX 2540
EDGARTOWN, MASSACHUSETTS 02539
TEL. (508) 627-3711
FAX (508) 627-3088
rrkllp@vineyard.net

JAMES F. REYNOLDS
RONALD H. RAPPAPORT
JANE D. KAPLAN
S. FAIN HACKNEY

MICHAEL A. GOLDSMITH
CYNTHIA J. GLAZIER

7
received
JUN 18 - 01 11:14

OF COUNSEL
KATHRYN R. HAM
MOLLY BRENNAN
MELISSA MCKEE HACKNEY

June 15, 2001

West Tisbury Board of Selectmen
PO Box 278
West Tisbury, MA 02575

RE: Roger's Path

Dear Members of the Board:

I have been asked to analyze the Town's rights in Roger's Path.¹ We have reviewed various deeds of properties along Roger's Path, including the title to the Town cemetery, and other historic documents. Based on that review, I conclude that the Town has rights to travel the entire length of Roger's Path.

The deed to the Town Cemetery is recorded at the Dukes County Registry of Deeds in Book 75, Page 249 (attached hereto as Exhibit "B".) The deed describes one of the boundaries as follows: "Beginning at a bound in the west side of the road leading from North Tisbury Post Office to the house of Capt. Edwin A. Luce" According to our research, the "Post Office" is shown on Exhibit A as the land of "Goff."² Exhibit

¹ Attached hereto as Exhibit "A" is a document which shows Roger's Path running from State Road by property denoted as "Goff" to the intersection of South Indian Hill Road.

² The description of the Goff parcel on a historical map (attached hereto as Exhibit "C") is as follows: "Thomas Merry, the second owner ran a store and post office here. Later it became a combination store, gas station, and ice cream parlor. Now it is Goff's Gallery, specializing in Island writers and artists." The Town cemetery is shown on Exhibit C as number 11 and is described as follows: "North Tisbury burial grounds, located behind Goff's Gallery was used from 1809 to 1947. The names on the gravestones include those of many of the earliest colonists."

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West Tisbury Board of Selectmen
Page Two
June 15, 2001

C, a historical map, shows Roger's Path and the Town cemetery. Since the Town's use of the cemetery dates from the beginning of the Nineteenth Century (see note 2) and Roger's Path is the only means of access, the Town has acquired rights to Roger's Path either by deed (the property description runs along Roger's Path), by necessity, or by adverse use.

A review of various other deeds along Roger's Path supports the conclusion that the Town has rights to pass along the entirety of Roger's Path. A plan of land prepared for Michael Colinari, and recorded at the Dukes County Registry of Deeds as West Tisbury Case File No. 330, denotes the road running from Goff's Gallery as "Road to the Burying Ground" (attached hereto as Exhibit "D"). Other deeds in the Colinari chain of title, dating back to at least 1902 (see Dukes County Registry of Deeds Book 115, Page 482) also refer to a boundary of his property as "beginning at the southwesterly corner of the burial ground by the lane between land formerly owned by Hovey Luce and that formerly of the heirs of Abijah Athearn" The Colinari property is on the State Road side of the Town Cemetery.

Roger's Path is also mentioned in a deed from Harold D. Rogers and Elizabeth A. Rogers to David T. Hugo and Stephanie W. Hugo (attached hereto as Exhibit "E") recorded at the Dukes County Registry of Deeds at Book 262, Page 370. The same property is also shown on Exhibit A as formerly being owned by Ernest Medeiros and lies on the South Indian Hill Road side of the Town Cemetery. The Rogers deed bounds the "Medeiros" property as follows: "Beginning at a stone bound at the northerly corner of said lot near a road leading to the cemetery." This description confirms that the Town has rights to Roger's Path both from the State Road side and from the South Indian Hill Road side of the cemetery.

The plan for Robert R. and Sarah C. White (West Tisbury Case File No. 108 - attached hereto as Exhibit "F") and the plan for "Roger's Farm" subdivision (West Tisbury Case File No. 473 - attached hereto as Exhibit "G"), which borders South Indian Hill Road, both clearly delineate the location of "Roger's Path". The Planning Board, in approving the Roger's Farm subdivision, noted that Roger's Path deserved special attention and protection. Roger's Path is designated as a special way in Section 6.2-4A of the West Tisbury Zoning By-laws. That section refers to the road as "Roger's Path and Burying Ground Road" and defines its location as follows:

7B

West Tisbury Board of Selectmen
Page Three
June 15, 2001

Beginning approximately sixty feet on South Indian Hill Road from the intersection of Christiantown Road and Indian Hill Road and running south to connect with the Burying Ground Road and ending at the Massachusetts State Highway West of Map 22, Lots 40.1 and 9.

Section 6.2.4D(3) of the Special Ways By-law also prohibits obstructions of Roger's Path and Burying Ground Road as follows:

No fences, walls, structures, or obstructions shall be erected, placed or constructed within the Special Way, except for gates, bars or stiles designed to allow passage for non-vehicular travel or for vehicular travel where vehicular rights-of-way exist.

Based on all of the above recited evidence, I am of the opinion that the Town of West Tisbury enjoys a historic right of access along Roger's Path/Burying Ground Road (also known in part as Burying Ground Road) from the State Road to South Indian Hill Road. Please let me know if you need any further information.

Very truly yours,



Ronald H. Rappaport

RHR/jmh

8

ROGERS PATH ROAD GRADING

Dear All Road users, I will forward or hand deliver to Jen (Town of WT ADm), Nancy Dole and Eric Mederious and myself. \$87.60 each users share. I will pay the whole bill and be reimbursed by the three users. share users.

Flag for follow up.
LAURIE TURNEY2 <lbform@comcast.net>
Mon 9/27/2021 2:35 PM

Hi Mike

L.B. Form Inc.

PO Box 1394

West Tisbury, MA 02575

lbform@comcast.net

Invoice # 921 9/27/21

Mike Colaneri

41 Roger's Path (WT)

Vineyard Haven, MA 02568

508-560-0094

mcpa72@hotmail.com

Road Grading \$ 350.00

Thank you

L.B. Form Inc.

Nancy
Please pay
Mike

8A

NOVEMBER 8, 2021
N DOLE

RE: GRADING ROAD WORK DONE BY DECA ON ROGERS PATH SEPTEMBER 2021

\$350.00 (THREE HUNDRED AND FIFTY DOLLARS) TOTAL COST

COST TO BE SPLIT 1/4 EACH SHARED BY TOWN OF WEST TISBURY,
ERIC MEDEROUS, M COLANERI AND N DOLE .

THIS IS TO NOTIFY N DOLE THAT HER SHARE OF THE ROAD WORK
IS \$87.50.

THIS IS THE SECOND NOTICE FOR PAYMENT DUE.

PLEASE MAKE CHECK PAYABLE TO M COLANERI
WHO HAS PAID DECA IN FULL FOR WORK DONE.

THANKS
M COLANERI