

## WEST TISBURY PLANNING BOARD MINUTES March 4, 2024 pg 1

PRESENT Leah Smith, Ginny Jones, Matt Merry, Heikki Soikkeli, John Rau, Amy Upton.

ALSO PRESENT: (Names as they appeared on the Zoom screen)

Katharine Sterling, Ben Reeves, Nicola Blake, Matthew Stackpole, Michelle Borre, Max Massick, Bob Massick, Casey Blum, David Foster, Deborah Wells, Indaia and Sebastian Hiatte, Reid Silva, Jeffrey DuBard, Jane Rossi.

Leah opened the meeting at 5:00 pm

● **Public Hearing to consider a motion to modify, amend or rescind the Planning Boards March 15, 2023 approval of a plan surveyed for Merry Farm LLC dated January 26, 2022 and revised March 13, 2023, recorded with the Dukes Registry of Deeds in Book 19, Page 161:**

Leah opened the public hearing and read the hearing notice. She explained the history of the plan that required open space with a Conservation Restrict to be held by a reputable organization. The plan was approved subject to the enforcement of the conservation restriction on the open space portion of the plan. The applicant signed an agreement stating he had 6 months for the date of the recording of the plan to secure an organization. However, an organization to hold the CR was not establish so the plan was no longer valid essentially making the plan null and void. In the meantime, the applicant has sold a ½ acre lot after the plan and agreement were filed with the Registry of Deeds. Reid explained that he represented the applicant to draft the prior plan and now a new plan.

Leah said the original plan shall be null and void. Matt Merry asked if the purchase of the ½ acre lot was purchased at risk? Reid explained there is usually a note on the plan stating that no lots can be released until the conditions have been met. Matt asked if the buyers knew about the recorded covenant regarding the 6 month time frame. Jane said the lawyers should have seen the covenant when running the title before recording the deed to the owners of the ½ acre lot.

Ginny said this had been a complicated transaction and was a poor reflection on the Planning Board. She said she was upset about the whole process. The board tried to make it possible for the buyers of the ½ acre to move forward to purchase and the board was pressured by the applicant. She said she found it upsetting for all parties. Heikki said he didn't understand how the sale went though with layers not coming across the covenant. Indaia said they did have a lawyer. John Rau said that he agree the plan should be null and void ab anitio (from the beginning).

Leah agreed and said the board should take a formal vote

Jefrey said when we were trying to get the plan approved, the ½ acre lot and the need to sell was a part of the discussion. It was done without the anticipation that the restriction not happening was not anticipated. Ginny said the board was clear that a CR holder would be a difficult and time consuming task. She commended Jefrey's efforts but felt the entire transaction should be null and void. Jefrey said voiding the plan cannot impact the ½ acre lot.

Matt felt he needed the whole picture from Reid before voting. Reid said the plan was done correctly with the exception of the open space CR holder. Matt asked if the plan is voided then

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how is the ½ acre lot maintained? Jeffrey read Section 81W of Mass General Laws which stated that “the Planning Board has the power to modify... No modification can effect any lot that has been sold or mortgaged.....” John Rau said it seemed the plan was never approved and was contingent upon the open space. He felt the plan was of no affect. Reid said the house can be on less than 3 acres because it pre-existed the subdivision control laws. Or a Form A plan could support the undersized lot. He explained ways “it could have been done”. Leah suggested Jeffrey grant the owners acreage to comply with zoning.

Ginny said the application should be null and void and the applicant should do the right thing for the owners of the ½ acre lot. Amy felt the lot is pre-existing, non-conforming so the lot lines could be redrawn. Reid said it is pre-existing but is not non-conforming. Reid said the ZBA would have to approve a variance to create the sub-standard lot. He added that there is only one way to get approval from the planning board to create a substandard lot and that is under the open space zoning bylaw. Amy said she was uncomfortable about nullifying the plan because the board should have a plan of action before voting so she would vote no. Leah said she didn’t believe the board was jeopardizing the ½ acre lot, and the board is obligated to adhere to the zoning bylaws.

A great deal of discussion ensued regarding what could be done to remedy the situation for the owners of lot 3 regarding the structures on the lots, case law, history, comparable properties, which permits to apply under and what was on the property prior to zoning.

John Rau said the plan never came into effect because the conditions were not met. He added that it is not the PB’s job to protect the owners of the ½ acre lot, the onus is on them to act as is necessary.

Amy suggested Ginny should recuse herself from the vote. Jane asked if Ginny should abstain. Leah suggested Ginny recuse herself to be safe.

Leah said the plan is “not a plan” as it stands.

*Matt made a motion to null and void “ad initio” and Heikki seconded the motion. Matt-yes, Heikki-yes, Amy-nay, Matt-yes.*

*Leah said to the owners of the ½ acre lot that the vote does not nullify their property. Matt moved and Amy seconded the motion to close the public hearing. Matt-yes, Amy-yes, Leah-yes, Heikki-yes.*

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### ●Public hearing on a Form C application from Merry Farm LLC to apply for a special permit to create 2 buildable conforming lots on Assessor's Map 8, Lot 22, 140 Merry Farm Road, RU District:

Reid displayed the previous plan and explained its contents. He explained that the proposed plan has two being created from what is left from the acreage the applicant had retained and the ½ acre lot from the previous plan. The 5 acre lot has its existing dwellings that will contain the building envelope and the 3 acre lot includes a condensed building envelope containing no structures.

Jane stated it was her understanding that the plan could show a 1 acre Homesite lot and a larger lot under the Housing section of the bylaws. However, she wasn't understanding which section of the bylaws would support creating a ½ acre lot. Reid explained that the undersized lot could be created under a Form A and a Form C application. Reid said he felt that was a legal question. He added that he was under the impression that the ½ acre lot already exists.

Matt said it is in the boards best interest to get a legal opinion. On the proposed plan, land bank easement has not been relocated and other things need to be addressed. He would prefer to not waste time on a plan that has a lot of questions. He asked Jeffrey if the ½ acre lot was market rate. Jeffrey said it was. Matt asked about the LB easement. Jeffrey said an agreement with the Land Bank exists, and there is nothing being proposed to build on the lot. There is an agreement in place with the Land Bank that they will agree to the relocation if it is satisfactory to them. Matt said that is information that needs to be provided and we cannot bring the plan forward without having all the answers. He said the board needs to talk with counsel, and so does Jeffrey. Amy said the board needs to talk with a land use attorney. There are multiple unfortunate pieces. It seems the applicant needs to revert back to creating buildable lots and selling them. It seems the Form C, Form A idea appears to be standard. The applicant could set up a 53 G escrow account and the board could seek an opinion from counsel. Leah added that the initial property was less than 9 acres so it is not divisible into 3 lots so she questioned whether the applicant can divide into 3. Reid said Planning Boards are about access, safety and density. *He suggested asking an attorney about whether or not you can Form A around existing structures.*

Jeffrey said he was sorry for the complicated process. This plan submitted was done so that the houses cannot be large due to creating a smaller building envelop. Matt said he felt as though the clarity needed to be 100%. He said he was not ready to vote until all was clear. Leah agreed.

Leah asked for a motion to continue until a legal opinion could be met.

Amy suggested the board familiarize themselves with the Rules and Regulations Governing Subdivision Control Laws.

*Amy moved to continue the hearing to April 5, 2024 at 6:00 pm and Heikki seconded the motion. Amy-yes, Matt-yes, Ginny-yes, Heikki-yes, Leah-yes.*

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*Reid suggested adding the question “What is the status of that parcel of land that has been sold now that the plan is null and void”.*

**ZBA Referral:**

**●Decker request for setback relief to construct a screened in porch on the existing house on Map 31, Lot 28, 625 Edgartown Road.**

*The board voted to refer the application back to the ZBA for their consideration.*

Meeting adjourned at 6:40 pm

Respectfully Submitted,

**Jane Rossi, Board Administrator**

**Approved on March 25, 2024 Jones-yes, Smith-yes, Merry-yes, Upton-yes, Soikkeli-yes**