

WEST TISBURY ZONING BOARD OF APPEALS

**Minutes for Tuesday, June 4, 2019 meeting
2nd Floor, West Tisbury Town Hall - @ 5:00 PM**

APPROVED ON AUGUST 22, 2019

PRESENT: Nancy Cole, Larry Schubert, Toni Cohen, Julius Lowe, Deborah Wells and Pam Thors, Board Administrator

Also Present: Atty. Mark Bobrowski (via conference call)

Absent: Tony Higgins

5:15 pm – Executive Session

A roll call vote was taken to open the Executive Session.

Mark discussed the Married Womens' Property Act and its relationship to the Smith case. He asked what marriage does not have common control to a certain degree. He pointed out that Mr. Smith paid \$10,000 towards the subject lot and that he also paid off a debt on his late wife's antique shop and financed his stepson's college tuition. He stated that the judge seemed to put the common control issue at the forefront of his thinking. He asked at a certain point for documentation of certain financial actions within the marriage. Mark said that he questions whether a land court judge should overturn precedence in a case like this. He said that if the board chooses to file an appeal, that it would be quick and easy to do so, (deadline for filing is June 14, 2019). He said that this case is important enough to go before the Appeals Court and should not end with the Land Court Decision. He said that he could file the appeal for a maximum of \$2,000.

Nancy stated that the questions regarding "Common Control", were not explored at the ZBA hearing. Mark said he felt the same way about delving into this aspect of the case and was surprised that the judge put so much weight on this. Nancy said they all took umbrage at the judge's accusation of the ZBA's "coverture" in this case. She said that they understand that this is not the best case for overturning precedence. Mark said he had asked Mr. Smith if he had ever considered the legal ramifications of his wife's purchase of the lot and Mr. Smith replied that he had not. Larry asked about #14, "At time of death, Mrs. Smith's only asset was lot #69". He asked how someone dies with only a parcel of land as an asset. Mark stated that Mr. Smith took care of his wife as is the case with common control in a marriage. He mentioned the fact that, as one would expect, there was no promissory note for Mr. Smith's payment of \$10,000 towards the subject lot, thereby supporting the evidence of common control in the marriage.

Mark said that the last part of the decision puts the onus on the board to issue a building permit should they decide not to appeal the decision. Nancy asked if they could be sued again. Mark said that the next lawsuit, if the abutters sued, would be Abutter vs Smith and Board – Smith carrying the financial weight of the case.

Nancy suggested talking to the BOS in executive session at their meeting tomorrow. She said they would get back to him on Thursday. Mark stated that there should be a vote at a meeting to issue a building permit per the remand.

A motion was made to seek the Board of Selectmen's advice on the matter.

The vote on the motion was unanimous in favor

The meeting adjourned at 6:10 pm. Respectfully Submitted, Pam Thors, Board Administrator