

PLANNING BOARD MINUTES
Wednesday, December 7, 2022 – 5:00 PM
ZOOM MEETING

TOWN OF TISBURY
P.O. BOX 602
TOWN HALL ANNEX
VINEYARD HAVEN, MASSACHUSETTS 02568
(508) 696-4270 | Fax (508) 696-7341
www.tisburyma.gov

IN ATTENDANCE:

Benjamin Robinson – Chair, Cheryl Doble – Clerk, Connie Alexander, Casey Hayward, Elaine Miller*

STAFF/MVC:

Pam Bennet – Human Resource Coordinator, Dan Doyle – Special Projects Planner/Martha's Vineyard Commission (MVC), Ross Seavey – Tisbury Building Commissioner, Jonathan Silverstein – Town Counsel, Amy Upton – Tisbury Planning Board Administrator

OTHERS:

Jack Arruda – Vineyard Wind, Louisa Hufstader – Vineyard Gazette, Alec Sargent – Acting (TPB) Associate Member, Reid Silva – Vineyard Land Surveying & Engineering (VLSE), Dawn Bellante Holand, Nancy Cohen, Jeannine Lenehan, Carlos Teles

*Members that arrived later: Elaine Miller around 5:07 PM.

Chair Benjamin Robinson called the December 7, 2022 Tisbury Planning Board (TPB) meeting to order at 5:03 PM. Due to ongoing efforts to prevent spread of Covid-19 this meeting was held remotely via Zoom platform. The Public could attend and participate in the meeting by the following method:

-Join Zoom Meeting <https://us06web.zoom.us/j/82344640616> Meeting ID: 823 4464 0616

-One tap mobile +16468769923,,82344640616# US (New York)

(Recorder's Note: Discussions are summarized and grouped for clarity and brevity).

MINUTES: October 5, 2022 and October 19, 2022, November 9, 2022

CHERYL DOBLE, AT 8:04 PM, MOVED TO APPROVE THE MINUTES FOR OCTOBER 5, 2022, OCTOBER 19, 2022 AND NOVEMBER 9, 2022 AS WRITTEN. SAID MOTION WAS SECONDED BY CONNIE ALEXANDER. MOTION PASSED WITH ABSTENTIONS AS ABSENT.

APPOINTMENTS:

Chair Robinson said the Planning Board would recess the regularly scheduled meeting on December 7, 2022 in order to hold the following Public Hearing. At the conclusion or continuation of the Hearing, the Planning Board would resume the regular meeting to conclude all unfinished business.

6:00 PM:

Public Hearing (Cont.) – Special Permit Application for Thomas L. and Patricia S. Bransford, 484 Main St., AP 4B17 Tisbury Bylaw Section 04.04.02

Members Present by roll call: Chair Robinson, C. Alexander, C. Doble, C. Hayward, E. Miller

Others: Others: George Sourati – Engineer for Applicant, Tom and Pat Bransford – Owners/Applicant, Fain Hackney – Reynolds, Rappaport, Kaplan & Hackney, LLC, Jack Arruda, Dawn Bellante Holand, Christine Hamilton, Louisa Hufstader, Happy Sayre-McCord, Hezekiah Pratt, Nevin Sayre, Reid Silva, William Stevens, Alec Sargent, Ross Seavey, Jonathan Silverstein, Carlos Teles, Amy Upton

THE CONTINUATION OF THE HEARING COMMENCED IN DUE FORM AT 6:05 PM.

Documents on file as referred to during the meeting:

letter to town re our use of the property.pdf

letter from Reynolds, Rappaport, Kaplan & Hackney, LLC

Chair Robinson said the Board had received correspondence since the last meeting: A letter from the Bransford's outlining how they would use their home; A letter from Reynolds, Rappaport, Kaplan & Hackney, LLC, the attorney/s representing some of the neighborhood.

J. Silverstein summarized how the Board should understand the letter from Reynolds, Rappaport, Kaplan & Hackney, LLC.:

1. A small number of cases that have dealt with this have been in the context of subdivision control and access; under the subdivision control law, one of the primary obligations of a planning board was to ensure there was adequate access to any subdivision.
2. He was not aware of case law in which a court in the zoning context has held that it was the province of a local board to adjudicate the questions raised by a deed restriction the runs solely in favor of a private party. It was the question of whether there was an enforceable private property restriction; he said it was not something this Board should be required to evaluate.
3. If a Special Permit were issued, the property owners still had the obligation to satisfy the private property restrictions contained in the chain of title.
4. His view was that the Board should not weigh in; if the Special Permit was granted, the Board should make note in the decision that the intention was not to adjudicate the question whether the applicant had the right to do this under its deed or any applicable deed restrictions.

C. Alexander asked for a written statement from our legal counsel; we needed a legal document that held the TPB harmless going forward; **J. Silverstein** said he would be able to provide an opinion letter next week.

E. Miller asked how aware the TPB needed to be, the knowledge of the information contained in these documents and how it should be interpreted. We are aware of the restrictions and covenants on the property; how do we use this? Do we pay attention to this?

J. Silverstein said the documents now were on public record; he said it was not incumbent on the Board to interpret instruments; the Board's duty was to act based upon the standards and factors set forth in the zoning bylaw. **E. Miller** said that clarified things for her; these documents were pieces of information that would be set aside; it didn't affect the decision making.

C. Doble said the Board had been made aware of the deed; we were aware this proposal went against a legal agreement; was there a problem for this Board to begin a Special Permit when there were legal differences tied to the property? She said it made more sense to wait until the legal process was over and then review it as a Special Permit; this is where she had difficulty.

J. Silverstein said that if he were advising, he would suggest they should work this issue out before going for the Special Permit; but that once someone applied for a Special Permit they had a right to the process; these were parallel issues. He said the Board could encourage the applicant to withdraw and resolve the legal issues before coming before the TPB again; an application could not be declined because of this issue.

Members discussed that the application should be withdrawn without prejudice; **C. Alexander** asked how to move forward if the applicant did not withdraw; **J. Silverstein** said the decision would be based on the merits of the application.

R. Seavey said there was a separation of two things to consider: the compatibility with the neighborhood (density) and the legal issues impacting the holder of the restriction.

Fain Hackney said Special Permits were discretionary; if this permit was approved first, before this case was determined in court, the Town would get dragged into litigation and it shouldn't be this way. He suggested the TPB urge the applicants to withdraw; if they chose not to, then the TPB should deny; they could come back once this was resolved. They were putting something before the Town that they didn't have the right to do.

Tom Bransford said he was confused by the process; he thought this was to review the application and discuss the plan and not get into the objections of the neighbors. He said his interpretation of the deed violated Massachusetts, Town and IHC regulations regarding habitability; he didn't want to get into that argument before talking about the planned house.

Chair Robinson said the primary function for this bylaw was to give the ability for property owners to develop affordable and community housing. The TPB asked the Bransfords how they would use this house, as it would help the Board make a determination, how well this project aligned with the intent of the bylaw; **Chair Robinson** said he didn't see that in the submitted letter and said they could clarify now or in another letter. **Tom Bransford** said the intended use was for both family and rental use. **Chair Robinson** asked if the Board put a condition that it would not allow rentals, would that fit within his plan? **Tom Bransford** said no. **R. Seavey** said conditioning and adding another layer for approval made it challenging for enforcement.

CHERYL DOBLE, AT 6:36 PM, MOVED TO REQUEST TO WITHDRAW WITHOUT PREJUDICE. SAID MOTION WAS SECONDED BY ELAINE MILLER. THE BOARD VOTED UNANIMOUSLY IN FAVOR OF THE MOTION: 5 AYES, 0 NAYS, 0 ABSTENTIONS. MS. ALEXANDER—AYE, MS. DOBLE—AYE, MS. HAYWARD—AYE, MS. MILLER—AYE & MR. ROBINSON—AYE.

Chair Robinson said they were formally requested to withdraw and gave **Tom Bransford** options on how to respond; **Tom Bransford** said he wanted to proceed.

William Stevens asked to have the three abutters in support of the project be part of public record, as he was an abutter and did not agree; **Chair Robinson** asked for that information from **Tom Bransford** so that it would be part of the public record.

C. Alexander underscored the need for a letter from the Town's legal counsel explaining how to hold the Board harmless with the decision making; she wanted to protect the town.

CONNIE ALEXANDER, AT 6:45 PM, MOVED TO CONTINUE THE HEARING ON DECEMBER 21, 2022 AT 6:45 PM. SAID MOTION WAS SECONDED BY ELAINE MILLER. THE BOARD VOTED UNANIMOUSLY IN FAVOR OF THE MOTION: 5 AYES, 0 NAYS, 0 ABSTENTIONS. MS. ALEXANDER—AYE, MS. DOBLE—AYE, MS. HAYWARD—AYE, MS. MILLER—AYE & MR. ROBINSON—AYE.

Chair Robinson said the Planning Board would recess the regularly scheduled meeting on December 7, 2022 in order to hold the following Deliberation. At the conclusion or continuation of the Deliberation, the Planning Board would resume the regular meeting to conclude all unfinished business.

6:30 PM:

Deliberations (Cont.)– Special Permit Application for Main Street Medicinals, Mechanics Way, AP 22A18.1

Members Present by roll call: Chair Robinson, C. Alexander, C. Doble, C. Hayward, E. Miller

Others: Noah Eisendrath – Applicant, Josh Silver – Applicant’s Partner, Jack Arruda, Dawn Bellante Holand, Tom Bransford, Louisa Hufstader, Reid Silva, Alec Sargent, Ross Seavey, Jonathan Silverstein, Carlos Teles, Amy Upton

THE CONTINUATION OF THE DELIBERATIONS COMMENCED IN DUE FORM AT 6:52 PM.

Documents on file as referred to during the meeting:

Main St. Medicinal Special Permit Decision Draft FINAL (4).docx

Chair Robinson screen shared the decision document; **A. Upton** read for the record, the email from the Board of Health which outlined concerns of a commercial kitchen and wastewater disposal plan; **J. Silverstein** cautioned this discussion, stating if the BOH wanted this to be noted, the Public Hearing would have to open again; all agreed this was not part of the TPB decision.

ELAINE MILLER, AT 7:05 PM, MOVED TO APPROVE THE PROJECT WITH THE CONDITIONS AS STATED AND THE WRITTEN DECISION AS WRITTEN. SAID MOTION WAS SECONDED BY CHERYL DOBLE. THE BOARD VOTED IN FAVOR OF THE MOTION: 4 AYES, 0 NAYS, 0 ABSTENTIONS. MS. ALEXANDER—AYE, MS. DOBLE—AYE, MS. MILLER—AYE & MR. ROBINSON—AYE.

***Casey Hayward joined the TPB as a new member after this hearing began and was not able to vote.*

★ The Planning Board resumed their regularly scheduled session at 7:06 PM to address all unfinished business.

BOARD DISCUSSIONS:

A. NEW BUSINESS

a. Master Plan (MP) updates

i. steering committee (SC) mtg. & next steps

BRAZILIAN COMMUNITY OUTREACH:

D. Doyle screen shared the Language Translation Services for the Master Plan_Cost Estimate, he said a working number for translation services was in the range of \$3-4000. More ways to use translation services needed to be discussed as those that attend meetings were strong in conversational English;

C. Alexander said following SC Member **Pricila Vilaca’s** advice was the way to go.

C. Doble said the survey and information letter [to be included with the water bill] was coming up quickly, it would be in English and Portuguese; she recapped the process and cost for mailings with the water bills; **D. Doyle** said more would be known by December 15, 2022 including the associated costs, as they wanted it to go in the January cycle.

CHERYL DOBLE, AT 6:04 PM, MOVED TO SUPPORT TRANSLATIONS SERVICES AS OUTLINED. SAID MOTION WAS SECONDED BY CONNIE ALEXANDER. THE BOARD VOTED UNANIMOUSLY IN FAVOR OF THE MOTION: 5 AYES, 0 NAYS, 0 ABSTENTIONS. MS. ALEXANDER—AYE, MS. DOBLE—AYE, MS. HAYWARD—AYE, MS. MILLER—AYE & MR. ROBINSON—AYE.

UPCOMING MEETINGS AND RECAPS:

D. Doyle said the next meeting was Tuesday December 13, 2022 at 5:30 PM at the Martha's Vineyard Museum. There was lots of momentum around stakeholder groups; they would continue throughout the month. The working groups had really picked up the pace and were having meaningful conversations.

CONSULTANT DELIVERABLES:

The Inventory and Assessment Phase would come later in December.

b. Discussion on letter to the Vineyard Gazette in response to September 23, 2022 article on Leland Ave project

Documents on file as referred to during the meeting: LTE LELAND AVE PROJECT

Nancy Cohen and **Jeanine Lenehan** both said they would hold their comments until after the review of the draft letter and Board comments.

Chair Robinson said the Board's intention was to write a letter in response, to clarify for the record and for the Vineyard Gazette (VG) to print. He said not to go into deliberations again, but to comment on the press story as it was not taken in full context. This was more of an effort to help those to understand; the decision and minutes would provide more details, if so desired.

Chair Robinson read the draft into the record while screen-sharing the document and asked the Board if it captured the essence of the discussion. Members suggested edits so that the messaging would be clear and to shorten the overall text, as it was intended for print in the VG.

Members said much was discussed in regards to the curb cut (driveway access) location as there was a differing opinion between the neighborhood and the Department of Public Works (DPW); the curb cut was the overarching topic of concern for review. They said there was difficulty trying to support the DPW recommendation and trying to respond to the neighborhood concerns. Many factors were taken into account, weighing all the testimony; ultimately the decision went with the neighborhood.

Nancy Cohen thanked the Board for taking this up in a serious manner. She said it was not just one statement but many statements by an elected official. **Nancy Cohen** said the focus should be on the damage on the type of statement made, the harm that was done. She said the behavior was unacceptable; the Board should not allow it to be repeated.

Jeanine Lenehan asked to change 'abutters' to 'neighbors' in the last paragraph. She said the negative statements had a negative impact; they were reckless and incredibly hurtful. She recommended and encouraged the Board to invite stakeholders earlier into the process to avoid what had happened here, no one voice should ring the loudest.

C. Doble suggested working on the first paragraph, rewriting and being more direct after the comments made by the neighbors (above); **C. Doble** and **C. Hayward** would continue working on the draft so that it could be presented at the December 21, 2022 TPB meeting for approval and vote. **C. Alexander** asked for a copy of the decision to review.

c. Approval Not Required (ANR) for Sam Dunn 61 Beach Rd AP 9B18

Documents on file as referred to during the meeting: Teles.pdf

Chair Robinson screen shared the drawing of the area and recapped steps taken to date; Members discussed issues and if changes would need to go through MVC approval again. **Carlos Teles**, owner of the back portion of this lot, said the additional 5000 feet was to meet setbacks and was fine with this. **C. Doble** confirmed that the original plan had not changed; **Chair Robinson** said it was a minor lot-line adjustment.

CHERYL DOBLE, AT 7:16 PM, MOVED TO APPROVE THE APPROVAL NOT REQUIRED. SAID MOTION WAS SECONDED BY CONNIE ALEXANDER. THE BOARD VOTED UNANIMOUSLY IN FAVOR OF THE MOTION: 5 AYES, 0 NAYS, 0 ABSTENTIONS. MS. ALEXANDER—AYE, MS. DOBLE—AYE, MS. HAYWARD—AYE, MS. MILLER—AYE & MR. ROBINSON—AYE.

d. Discussion and vote on warrant article to change the Planning Board Administrative Assistant position to Administrator position and related changes to salary

Chair Robinson said December 16, 2022 was the deadline for money warrant articles to put forth; **Pam Bennet** was present for a follow-up discussion to review the choices of assigning the Administrative Assistant to a new grade or a Management Professional (M & P) position; she said the timing for the M & P process didn't seem likely to make it to the April Town Meeting.

E. Miller said to move forward with what would be more beneficial for **A. Upton**, the best funding to acknowledge her workload. *(Please see document on file for details: APPROVED Minutes TPB November 16, 2022.pdf, BOARD DISCUSSIONS: A. NEW BUSINESS, c. Planning Board administrative job position discussion with Pam Bennett Tisbury Human Resources Coordinator, pgs 6 & 7)*

Chair Robinson screen shared the Union and M & P scale copy 2; all were in agreement to move the position to Grade 7, Step 3; the numbers did not reflect the proposed 6% increase that would have to be voted on at Town meeting. **Pam Bennet** discussed the necessary steps for each of the scenarios; the Town supported promoting from within.

C. Alexander agreed this would be good for the short term using the Union scale but said to start looking at this in a larger scope. Long term, how to move this to an M & P opportunity in the future with two people running the office.

Dawn Bellante Holand asked if this was competitive with similar positions in other towns, a competitive spot for retaining employees? **Pam Bennet** said that was taken into consideration; **A. Upton** said an average hourly wage of the surrounding towns within the region paid \$33.09 for a Planning Board Administrator.

Dawn Bellante Holand said she was pleased to see this discussion happening; she recommended a more long term, regional approach toward planning/planners that would allow the towns to put more resources toward very professional and capable administrators; she felt that made the most sense.

CHERYL DOBLE, AT 5:48 PM, MOVED TO TO PUT FORWARD A WARRANT ARTICLE TO RECLASSIFY THE ADMINISTRATIVE ASSISTANT POSITION TO TOWN PLANNING BOARD ADMINISTRATOR AT GRADE 7, STEP 3. SAID MOTION WAS SECONDED BY CONNIE ALEXANDER. THE BOARD VOTED UNANIMOUSLY IN FAVOR OF THE MOTION: 5 AYES, 0 NAYS, 0 ABSTENTIONS. MS. ALEXANDER—AYE, MS. DOBLE—AYE, MS. HAYWARD—AYE, MS. MILLER—AYE & MR. ROBINSON—AYE.

e. Safe Harbors MVC hearing, review Safe harbors letter in response to Planning Board correspondence

After a lengthy discussion all were in agreement that the TPB letter should stand. *(Please see documents on file for details: APPROVED Minutes TPB July 6, 2022.pdf, BOARD DISCUSSIONS: A. NEW BUSINESS, f. Safe Harbors MVC hearing, Planning Board Opinion, pgs 6 & 7 AND APPROVED Minutes TPB July 20, 2022.pdf, BOARD DISCUSSIONS: B. OLD BUSINESS, I. Safe Harbors MVC hearing, Planning Board Opinion, pg 6 AND APPROVED Minutes TPB August 3, 2022.pdf, BOARD DISCUSSIONS: I. B. OLD BUSINESS Safe Harbors MVC hearing, Planning Board Opinions, pg 5)*

f. All Island Planning Board meeting and responses to MVC on short-term rental study

Chair Robinson said the AIPB would reconvene next week. He asked Members to put their questions in writing and send them to **A. Upton**, who would then share with MVC Island Housing Planner **Laura Silber** who was gathering information from all six towns to assist with the scope of study.

g. Approval Not Required (ANR) for Tisbury Marin Terminal 190 Beach Rd AP10A1

Documents on file as referred to during the meeting: Tisbury Marine Term.pdf

Jack Arruda said Vineyard Wind would now purchase this lot versus leasing; time sensitive construction plans were to begin next week. **Reid Silva** the project that had been approved by the MVC is exactly the same, the form of ownership didn't impact the project; he expressed frustration over the process.

Members discussed the process, timing and the impacts of MVC decisions; **C. Alexander** said it was important to follow the steps and the Development of Regional Impact (DRI) checklist; they would have to do all the checklists to move forward correctly. **Jack Arruda** appreciated any expedition and said the timeframe for a special meeting on December 16, 2022 would work well.

ELAINE MILLER, AT 7:32 PM, MOVED TO REFER THE APPROVAL NOT REQUIRED AND ADVISED NOT TO CONCUR; SAID MOTION WAS SECONDED BY CHERYL DOBLE. THE BOARD VOTED UNANIMOUSLY IN FAVOR OF THE MOTION: 5 AYES, 0 NAYS, 0 ABSTENTIONS. MS. ALEXANDER—AYE, MS. DOBLE—AYE, MS. HAYWARD—AYE, MS. MILLER—AYE & MR. ROBINSON—AYE.

h. Bills Payable - 51Art - \$1222.00, Barrett Planning Group - \$16,950.94, Vineyard Gazette - \$26.65, Planning Board payroll - \$2,416.75

CHERYL DOBLE, AT 8:01 PM, MOVED TO APPROVE THE BILLS PAYABLE. SAID MOTION WAS SECONDED BY CONNIE ALEXANDER. THE BOARD VOTED UNANIMOUSLY IN FAVOR OF THE MOTION: 5 AYES, 0 NAYS, 0 ABSTENTIONS. MS. ALEXANDER—AYE, MS. DOBLE—AYE, MS. HAYWARD—AYE, MS. MILLER—AYE & MR. ROBINSON—AYE.

B. OLD BUSINESS

I. Joint Meeting with Select Board, discuss lists for discussion

II. Upcoming TPB Calendar: Public Hearings, Appointments & Discussions

All Island Planning Board meeting, December 14, 2022 Time TBD

TPB Special Meeting December 16, 2022 Time TBD

TBD working session for Bylaw review

A. Planning Board holiday get together

Members determined January would be best; a date would be set in the future.

1. Committee Reports (Updates only)

A. Vision Forum

B. Land Bank Advisory Committee

- C. Tisbury Housing Committee
- D. Community Preservation Committee
- E. Water Resource Committee
- F. Sewer Advisory Committee
- G. Site Plan Review Board
- H. Open Space and Recreation Committee
- I. All Island Planning Board
- J. Climate Committee
- K. Tisbury Waterways Committee

CORRESPONDENCE:

- 1. Martha's Vineyard Commission
 - A. Extended Meeting Schedule
 - B. Land Use Planning Commission (LUPC) Meeting

Other business not reasonably anticipated 48 hours in advance of meeting: None.

ADJOURNMENT:

DISCUSSION ENSUED THEREON, UPON A MOTION DULY MADE BY CONNIE ALEXANDER AND SECONDED BY ELAINE MILLER, THE MEETING UNANIMOUSLY ADJOURNED AT 8:10 PM.

Respectfully submitted;



Teresa Kruszewski, Recorder

APPROVAL: Approved and accepted as official minutes;

Date

Benjamin Robinson, Chair

APPROVED FEBRUARY 15, 2023