

**WEST TISBURY ZONING BOARD OF APPEALS
MINUTES THURSDAY FEBRUARY 10, 2011
TOWN HALL AT 5 PM**

PRESENT: Tucker Hubbell, Nancy Cole, Toni Cohen, Tony Higgins, Bob Schwier, Eric Whitman

ABSENT: Larry Schubert

ALSO PRESENT for All or Part of the Meeting: Wayne Greenwell, Christopher Brooks, Louisa Williams, Fergus porter, Davina Porter, Wendy Forest, Phil Forest, Jim Sepanara, Jill Jupen, Richard Knabel, Steve Maxner, Ernie Mendenhall, Susan Silk, Jonathan Revere, Constance Breese, Jon Pavlik, Reid Silva, Jim Eddy

BUSINESS

- The minutes of February 3, 2011 were approved

HEARINGS

5:00 PM Continuation of an Appeal by Christopher Brooks and Mary-Louise Williams, and ten co-applicants, of a November 4, 2010 decision of the West Tisbury Zoning Inspector. It was the Inspector's decision that according to the Zoning Bylaws, the organized use of an existing dirt bike track is 1) an accessory residential use, and not governed by Sections 8.5-1&2 of the West Tisbury Zoning Bylaws, as per complaint; and 2) does not rise to the level of a public nuisance or prohibited use under Section 3.2-1 of the Zoning Bylaws, as per complaint. The appellants believe the use is in violation of the Zoning Bylaws by creating unacceptable noise and disturbance and ask for enforcement: That this use on this property be prohibited. The subject property is Fisher's Farm, Assessors Map 11 Lot 46.1, 27 Davis Look Rd; RU Dist. The right to appeal is under Sects. 8 and 15 of MGL Ch. 40A. **The Co-Applicants are: Jennifer Powers, Christine Kinsman, George Kinsman, Bonnie Tilton Jackson, Emily Galligan, Paul Galligan, Lily Morris, Todd Powers, Wayne Greenwell, Stephen Maxner**

Previous Correspondence: 1.) Ernie Mendenhall opinion; 2) Amy O'Brien, for; Pete Costas, for; 3) Wayne Greenwell, against; 4) Cynthia Bloomquist, against; Abutter Bonnie Jackson, against; 5) Christine Kinsman, against; 6) Thomas Dresser, against; 7) W. Fergus Porter, against; 8) Philip and Wendy Forest, against; 9) Steve Maxner, against; 10) Abutters Louisa Williams and Chris Brooks, against; 11) Steve Maxner letter to Fred and Betsy Fisher; New Correspondence: 1) Steve Maxner, 2) Wendy Forest, Atty Ron Rappaport

Autumn of 2010 Petition asking for use to be stopped signed by West Tisbury Residents and Abutters: Wayne Greenwell, Geoffry Borr, Bob Jahries, Paul Galligan, Todd Powers, George Kinsman, Christine Kinsman, Philippe Ezzanno, Madeleine Ezanno, Bonnie Jackson, Scott Campbell, Warren Morse, Janet Alley, Nadia Albanghini, Stuart Gardener, Stephen Maxner, Dorothy Fisher, Erin Leighton, Doug Seward, Sarah S Isenberg, Mary Wirtz, Fatiha Berichi, Louisa Williams, Christopher Brooks

Bob Schwier recused himself from the hearing as he was not available to attend the first hearing.

(Since the last hearing, the Selectmen and ConCom have looked at the language of the Agricultural Preservation Restriction on the property. A dirt bike track would not be an agricultural use. The owner of the property informed the Zoning Inspector that the use on the land would cease permanently. This fact is known to the applicants and attendees. The ZBA cannot rule in the matter of the APR.)

Attorney Rappaport wrote that the group of riders was basically a membership club that would need to apply for a Special Permit and that the use was not subordinate and customarily incidental to the primary use of the land which is agricultural. Attorney Rapaport wrote a footnote explaining that the nuisance issues were not covered by his letter as this is a fact dependent issue and not part of the ZBA's request to him. Wayne Greenwell questioned why, as their petition established that there was substantial noise. Tucker said that should there be an application for a dirt bike track, the noise issue would be addressed. By the time the Board had an application, the use had ceased, although some ZBA members did informally listen from various vantage points. Davina Porter said you would need to recreate the noise. Did Ernie Mendenhall measure sound levels when he made his decision? No he had not. Gus Porter said the town could borrow equipment from State entities. The ZBA told him that they can borrow equipment from MA DEP, but to do a good and fair job, it is quite an involved process needing expertise.

There being no further comment, the hearing was closed and the meeting re-opened. Nancy Cole reasoned that the use should have been granted by Special Permit in the first place. Eric Whitman said this appeal is a good example of how a hearing would go if someone applied for this use in a general area. It's too noisy; that the Board acts in the interest of the Town's people, and in this case the testimony overwhelmingly is that the use rises to the level of nuisance. The Board voted to overturn the Zoning Inspectors opinion, citing that the use was a public nuisance and that the use was not incidental and customary to, in this case, an agricultural use. Section 8.5-1 does not apply, but 8.5-2 does. A cease and desist order should be issued.

Nancy Cole said she was impressed at how civil and thoughtful the first, large, hearing had been, with both sides working hard to understand each other. Board members agreed.

5:40 PM Continuation from March 11 & 17, 2010 and March 3, 2011 (not the required quorum on this date) of an application by Reid Silva on behalf of Big Sky Tents for a Special Permit for a 9,600 sq ft structure for the business use of renting equipment for weddings, parties and other functions. **The proposal has received Martha's Vineyard Commission approval with conditions.** Sects. 3.1-1 and 9.2-2 of the Zoning Bylaw; 90 Dr Fisher Rd; Map 21 Lot 12; 1 ac.; Light Industrial District. *Previous correspondence: 1) Abutter William Coogan; 2) Constance Breese and John Pavlik;*

Reid Silva said there had not been many changes made by the MVC to the original plans. A lot of conditions had been placed however: They have to develop and submit specific landscaping, building and lighting plans, for example. They'd done the original plans with a broad brush while waiting for approval of the concept. They need to attend to trim detail for the building and how to break up the outside walls, etc. They need to show berms and concrete rap on their landscaping plans as ways to contain runoff.

Connie Breese had questions regarding the use by Monte Bizarro's Co., and Big Sky of Pine Hill and Dr Fisher Roads. Who will pay for upkeep of the roads and will the businesses pay their fair share. Bizarros is conditioned by the Planning board to upkeep the road. It was said that Jim Eddy would only have responsibility for Dr. Fisher Rd not Pine Hill. Board members agreed the businesses should pay a proportionately larger share, but that it should be laid out within a private road association agreement that they all should form. Connie Breese asked that it be made a condition that Big Sky pays their fair share of maintenance fees. The Board suggested they form a road association.

Connie mentioned that part of Monte's fence was down. She was told to let Ernie Mendenhall know, and to call Monte too. He should fix it. Connie said that the 3 acre subdivision of Peter

Williams property should have been sent to the MVC by the Planning Board, but it wasn't. Lighting was discussed, the merits of motion sensor v. timer. Big Sky will have to conform to the Zoning bylaws in any case. The hearing was closed and the meeting resumed. The following findings and conditions resulted from the hearing:

- 1) The probable benefits of the proposed development would exceed probable detriments. The use as conditioned will not have a negative impact on abutting and nearby residential properties. The building and use are consistent with what is allowed in the Light Industrial District. The building and use will be relatively modest compared to other permitted uses in the Light Industrial District. The business is most active between mid-May and mid-October.
- 2) Relevant to other possible light industrial uses, this proposed use will have minimal impact on the environment. The previous owner had clear-cut the property: This proposal will restore some of the vegetation and will utilize a landscaping and screening plan.
- 3) The applicant reduced the size from 10,000 sq ft to 9,600 sq ft.
- 4) The lighting will be consistent with the lighting requirements of the West Tisbury Zoning Bylaw. A final lighting plan will be submitted.
- 5) A proposed easement for the abutting company, Bizarro Brothers, to use as an alternative entrance to their lot will reduce traffic along Pine Hill Road.
- 6) The building is now on the opposite side of the lot than first proposed, which will in effect screen and mute business activity and traffic on the light industrial lots in the area. The building will be large, but is not over the size of what may be permitted in the Light Industrial District. The building's size will help block noise, sight and activity from the more industrial uses in the district from nearby residents.
- 7) The building will make setbacks. The applicant has agreed that the façade will be a mixture of shingles and clapboard and other effects. The applicant lowered the height from 33' to 26', changing the pitch to accommodate, then agreed to change the pitch to a less commercial looking one, adding a little height to the 26'. Final plans will be submitted to the ZBA for approval
- 8) Vegetation in the form of staggered evergreens will be planted along the Dr Fisher Road and Pine Hill Road sides of the lot. A detailed landscaping plan will be submitted.
- 9) The construction applied for will not be substantially more detrimental to the neighborhood and Town, and the construction is in harmony with similar development in the neighborhood and town in scope, size, and design.
- 10) The application met the Review Criteria of Section 9.2-2 of the West Tisbury Zoning Bylaws.

Conditions:

- 1. The Martha's Vineyard Commission's decision dated December 13, 2010 regarding the property shall be made a part of this Special Permit. Each and every condition set forth therein is hereby incorporated by reference in this decision and made a condition thereof. Copies of plans approved by the MVC must be submitted to the ZBA.**
2. Detailed landscaping, building and lighting plans as conditioned and approved by the MVC must be submitted and approved by the ZBA before a Building Permit may be granted.
3. The landscaping must be in place before a Certificate of Occupancy may be granted.

4. Hours of operation may be 7 AM to 7 PM, 7 days of week.
5. The business shall not clean dishes, tents or other rental equipment on the property
6. A 20 foot buffer zone along Dr. Fisher and pine Hill Roads shall be flagged before construction and no vegetation shall be cut within this buffer.

An informal inquiry by John Hoff as to whether he could build storage hutches up against his northern bound was denied by the ZBA. Mr. Hoff contended that since his brother was using a part of his garage to make old lamps, he had less storage space. Since John had asked the ZBA to approve that use of his garage, the ZBA felt his new request was unreasonable.

OTHER CORRESPONDENCE: Christie Phillips of Island Co-housing: Package of material to ZBA, MVC, DHCD and I-C re association dues and other assessments.

The meeting was adjourned at 7:10 PM.

Respectfully submitted, Julie Keefe, Board Admin.