

**WEST TISBURY ZONING BOARD OF APPEALS
AGENDA THURSDAY SEPTEMBER 16, 2010
2ND FLOOR TOWN HALL AT 5 PM**

PRESENT: Bob Schwier (Acting Chair), Eric Whitman, Tony Higgins, Toni Cohen, Nancy Cole

ABSENT: Tucker Hubbell, Larry Schubert

ALSO PRESENT for All or Part of the Meeting: Reid Silva, John Keene

HEARINGS

5:20 PM An application by Vineyard Land Surveying on behalf of Michael Marcus for a Special Permit for an 18' by 36' in-ground pool with associated fencing and patio. Sects. 3.1-1, 8.5-4 of Zoning Bylaws; 44 Forest Rd; Map 13 Lot 1; RU District. *Correspondence: Abutters Jonathan and Lee Revere, in favor;*

Correspondence was read. It was reported that the Conservation Commission heard this on Tuesday and have continued it until the 28th for a possible re-siting of the pool and reduction in stone patio area. After discussion, Board members decided to try to close the ZBA Marcus hearing that evening.

Reid Silva of Vineyard Land Surveying submitted a revised plan showing the pool to be 60' away from the wetlands buffer zone, rather than 50' as before. He explained the lot had wetlands and a stream on it, so siting the pool had to consider these. They had already re-sited it due to a neighbor's objection. The fencing, with 2 gates, will be close to the patio and will meet state code. The Board told Reid there can be lights in the pool and downward facing lights in the area. Reid said the construction would take place at off-peak times. ConCom may ask them to haul any "draw-down" off the property. The ZBA has conditions for any drainage of a pool, including draining after chlorine content has dissipated, but as a rule the boilerplate conditions for pools do not include hauling the water off-site. The Board voted unanimously to grant the Special Permit with conditions, one of them being that any changes to the ZBA approved plans made through the ConCom be submitted to the ZBA.

OLD BUSINESS

- A draft letter was approved in reply to the Haynes and other neighbors who signed a letter of complaint to the Selectmen regarding State Road Restaurant. The Board briefly discussed various parking alternatives at State Road. Bob reported that in informal conversation with State Road management, they said that parking had not been an issue for them this summer.

NEW BUSINESS

- John Keene in to respond to Board about letter to Bd of Health and now one to ZBA from neighbour Henry Kudish (the letters are on file in the ZBA office); Board of Health Agent John Powers is to arrange site meeting at Kudish's to include ZBA members, sometime end of next week.

John Keene gave an account of the history of these complaints and of what he actually has operating at his business. Mr. Kudish, who lives on State Road and Old Stage Road across the street from Keene's, came to see John in July with DEP noise regulations and told him he was in

violation. The grinder Mr Kudish referred to, John said, is actually a rock and stick screener. He also has no Bobcats on the property. He said his neighbour complained that Keene's starts up before 7 and that the sawmill area on the property is new, which he said are not true. The sawmill area had been there long before Mr. Kudish bought his property. Mr. Kudish was particularly upset about the "green" machine. John color codes his equipment. The green one is a screener. They moved it further back on the property to respond to Mr. Kudish. It's an electric machine that's filled with water that separates rock and wood from soil. It is new to the business since the ZBA put conditions on the business after expansion in 2003. John described it as a quiet machine. He said it is not a rock crusher as Mr. Kudish says it is.

John said: Mr. Kudish wanted the machine shut off in August as he and a family in France were home swapping for that month. Mr. Kudish went on vacation and when he came back he wrote a letter of complaint to the Board of Health and visited with John Powers. Mr. Kudish is saying that the business has gotten busier and noisier: John says according to his numbers, business is down. He's had 900 loads (of fill presumably) less this past year and his fuel consumption is down by half. The rock and wood separator ran for only 2 weeks last year and this, as it keeps breaking down. Everything is roughly the same since '03; the new grinder is twice as quiet as the old one.

Mr. Kudish asked him to not start his business until 9 AM, which he can't do. In his letter Mr. Kudish complained to the ZBA that Keene's is not light industry and is therefore in violation of Zoning. Eric Whitman reminded John that the business was there long before zoning was adopted by the Town; the ZBA did not permit the business, it is a grandfathered use. The ZBA became involved when John applied to them to expand on to an adjoining lot. John said he had told his neighbour that his predecessors had started work extremely early in the morning, and that the dump was on open pit of garbage with rats and all sorts of other ills. Things are better John told him. John said Keene's had also paid for the Kudish drive to be moved and for a stockade fence running the length of the property on Old Stage Road.

Nancy Cole said to use the '03 sound tests and decision as the standard, benchmark. John Keene said they are trying to be as transparent as possible, and try to fix anything that is not compliant. He added that with the yard less busy, the ambient noise is less so individual noises might be more noticeable.

- The minutes of Sept. 9, 2010 were approved as written.
- Martha (Pat) Nagi owns 2.7 acres on shore of Makonikey, has a 1400 sq ft un-winterized house near bluff and wants to build a guest house, but does not have 3 acres. She pays high taxes and she and her son and his family can't use the lot year round: The Board had no other solutions for how she can further develop habitable space other than the many options she and Julie Keefe discussed in the office.

OTHER CORRESPONDENCE

In: Henry Kudish letter to Zoning Board for action re John Keene's and request for reply

Out: Response to Henry Kudish approved by Tucker.

The meeting was adjourned at 6 PM.

Respectfully submitted,
Julie Keefe, Bd. Admin.

