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March 6, 2018

Ms. Virginia C. Jones, Chair
West Tisbury Planning Board
P.O. Box 278
West Tisbury, MA 02575

Via Email

Re: **Flat Point Farm**

Dear Ms. Jones:

I represent Eleanor D. Neubert, Jean F. O'Reilly, Arnold M. Fischer, Jr. (collectively, the "Fischers"), and Martha's Vineyard Savings Bank, Trustees of The Priscilla P. Fischer 1994 Trust (the "Fischer Trust"), who are the owners of "Flat Point Farm" in West Tisbury. Eleanor, Jean and Arnie also each own a parcel of land on the farm individually.

The Fischers have filed with the Planning Board a Form B subdivision plan of their property, owned primarily by the Fischer Trust, but also with the parcels they own individually. You have referred this plan to the Martha's Vineyard Commission for review as a Development of Regional Impact ("DRI"). Certain questions have been raised concerning this plan, which I shall address. I am attaching a copy of the plan.

History of the Property:

Flat Point Farm was acquired by Arnold M. Fischer, Sr. in 1939, when he purchased it from the Executor of the Estate of Prudence R. Look. There was a farm house and existing barn buildings at the time he purchased the property. He later constructed two residences and additional structures

There was one small in-holding at the time of his purchase, now owned by the O'Sullivan family. It is shown on West Tisbury Assessors Map 35 as Parcel 5 and comprises 1.8 acres with several camps.

In 1964, Arnold M. Fischer, Sr. sold a small parcel of .9 acres to his first cousin, Walter E. Fisher. It is today owned by Walter's daughter, Anne Fisher, and is shown on Assessors Map 35 as Parcel 4. There is a two bedroom house upon it built in 1965.

Existing Buildings:

There are a number of buildings at Flat Point Farm that pre-date the adoption of the Subdivision Control Law in 1973 in West Tisbury. These are:

1. The five bedroom Farm House built by Jim Look circa 1915;
2. Farm buildings, including a barn built by Hancock & Sons in 1939 and a Quonset Hut moved to the farm from the M.V. Airport after World War II;
3. A three bedroom house built in 1952 with subsequent additions known as “Ira’s”;
4. A two bedroom house built in 1962 known as “Larry’s”; and
5. The “Oyster Shack” built circa 1950, used as a summer camp with one bedroom.

Existing Fischer Family Lots:

In 1976, Arnold M. Fischer, Sr. filed a subdivision plan recorded as West Tisbury Case File No. 94 (the “1976 Fischer Plan”), a copy of which is attached. This plan was reviewed and approved by the Martha’s Vineyard Commission as a Development of Regional Impact (DRI No. 34).

This plan divided the property into six lots: the large farm house lot and four 5+ acre vacant lots, which Arnold M. Fischer, Sr. deeded in 1976 to his four children, Eleanor D. Neubert, Jean F. O’Reilly, Mary Ann Fischer, and Arnold M. Fischer, Jr. In addition, the 1976 Fischer Plan created Lot 2, a 28,300 sq. ft. parcel with the “Oyster Shack,” which has been separately assessed since then and is shown on Assessors Map 35 as Parcel 3.4.

Eleanor D. Neubert constructed a three bedroom home on her lot in 1979. Mary Ann Fischer built a small summer shack on her lot circa 1980. She died in 2015 and her parcel is now owned by the Fischer Trust. Arnold M. Fischer, Jr. constructed a four bedroom home on his lot in 1983. He later constructed a garage-apartment with two bedrooms in 1989. His daughter Emily currently resides there with her family. Jean F. O’Reilly has never built upon her parcel. Eleanor’s daughter Sarah Rivers and her family reside in the Farm House.

2007 Subdivision of 12.9 Acre parcel:

A plan was filed to subdivide a 12.9 acre parcel at the southeast corner of Flat Point Farm by Short Cove. The MVC approved this plan as a DRI by a Decision dated May 25, 2007 recorded in Book 1122, Page 411 (DRI 34-M). The plan for this parcel was recorded in 2013 in Plan Book 17, Page 76, a copy of which is attached.

This parcel was sold to the Martha’s Vineyard Land Bank in 2013 by deed recorded in Book 1329, Page 337. In addition, an “Agricultural Preservation Restriction & Easement” was granted to the Land Bank at Book 1329, Page 350 and a “Conservation Restriction & Easement” was granted to the Land Bank at Book 1329, Page 365. These restrictions and easements both apply

to a 25.5 +/- area lying between the four lots shown on the 1976 Fischer Plan and Tisbury Great Pond and west of the parcel at Short Cove.

Finally, a Trail Easement was also granted to the Land Bank at Book 1329, Page 378. The trail easement provides principally for a walking trail along the east side of Flat Point Farm running to the Land Bank Parcel at Short Cove and a walking trail along the shore of Tisbury Great Pond along the restricted agricultural field that then loops around to the trail along the east side of the farm. This trail is accessed by the Land Bank parking area at Tiah's Cove Road and the trail established on land now owned by Monomoy Farm, LLC (shown on Assessors Map 36 as Parcel 69).

2009 "Preliminary Estate Plan":

A Form B plan was filed in 2009 and reviewed by the MVC as DRI-35M2. The plan showed the remaining 91.6 acres of Flat Point Farm and created 5 four acre parcels around existing buildings, two large "conservation parcels" and 3 one acre "youth lots." This was approved in 2010 by a Decision recorded in Book 1201, Page 465. However, the Fischer Trust has never filed a Form C plan to follow and ratify this approval. Instead, the family sold the Short Cove parcel to the Land Bank in 2013 with the additional easements and restrictions described above.

Proposed Parcels under 2017 Form B Plan:

The present Form B Plan divides and reconfigures a total of *six existing parcels* of land at Flat Point Farm. Presently, the Fischer Trust owns three existing parcels: (i) the Farm parcel, (ii) the parcel with the "Oyster Shack" shown as Lot 2 on the 1976 Fischer Plan, and (iii) Lot 7 shown on the 1976 Fischer Plan (shown on Assessors Map 35 as Parcels 3.1, 3.4, and 3.8). In addition, there are the three other parcels shown on the 1976 Fischer Plan, which are owned by Eleanor D. Neubert (Lot 4), Arnold M. Fischer, Jr. and Christa Fischer (Lot 5), and Jean F. O'Reilly (Lot 6) (shown on Assessors Map 35 as Parcels 3.5, 3.6 and 3.7).

The present Form B plan creates a total of fifteen parcels (of which 13 are available for existing or new buildings) as follows:

1. The present Form B Plan creates five parcels, ranging from 3.1 acres to 6.3 acres, around the *existing buildings* as follows:

Lot A contains the "Farm House."

Lot B contains the existing farm buildings.

Lot C contains "Ira's"

Lot D contains "Larry's"

Lot E contains the "Oyster Shack."

2. The present Form B plan carves off areas of the four existing 1976 parcels, reducing their size from 5 acres to four parcels ranging from 3.39 to 3.41 acres.
3. The present Form B plan creates four new parcels ranging from 3.11 to 3.15 acres. These four parcels include portions of the four lots shown on the 1976 Fischer Plan as well as a portion of the farm.
4. The present Form B plan creates a separate parcel shown as "Field" for the farm field by Tisbury Great Pond containing 25.54 +/- acres, which is subject to the Land Bank restrictions and easements described above.
5. Finally, the present Form B plan also creates an "Agricultural Preservation Parcel" to the north of the farm buildings containing 34.95 acres. There is presently an agreement between the Fischer Trust and the Martha's Vineyard Land Bank Commission for the sale of this parcel, subject to final approval of the subdivision plan creating the parcel.

For the reasons set forth below, the Fischer Trust maintains that the present Form B plan is creating only four new lots available for building.

The Massachusetts Subdivision Control Law at M.G.L. c. 41, §81L provides in part:

"Lot" shall mean an area of land in one ownership, with definite boundaries, used, or available for use, as the site of one or more buildings.

"Subdivision" shall mean the division of a tract of land into two or more lots and shall include resubdivision, and, when appropriate to the context, shall relate to the process of subdivision or the land or territory subdivided; provided, however, that the division of a tract of land into two or more lots shall not be deemed to constitute a subdivision within the meaning of the subdivision control law if, at the time when it is made, every lot within the tract so divided has frontage on (a) a public way or a way which the clerk of the city or town certifies is maintained and used as a public way, or (b) a way shown on a plan theretofore approved and endorsed in accordance with the subdivision control law, or (c) a way in existence when the subdivision control law became effective in the city or town in which the land lies, having, in the opinion of the planning board, sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon or served thereby, and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon. Such frontage shall be of at least such distance as is then required by zoning or other ordinance or by-law, if any, of said city or town for erection of a building on such lot, and if no distance is so required, such frontage shall be of at least twenty feet. *Conveyances or other instruments adding to, taking away from, or changing the size and shape of, lots in such a manner as not to leave any lot so affected without the frontage above set forth, or the division of a tract of land on which two or more buildings were standing when the subdivision control law went into effect in the city or town in which the land lies into separate lots on each of which one of such buildings remains standing, shall not constitute a subdivision.* (emphasis supplied)

According to the last sentence of the definition of “subdivision,” the creation of the five parcels on the new Form B plan (shown as Lots A through E) is not a “subdivision” as they contain buildings “standing when the subdivision control law went into effect in [West Tisbury] into separate lots on each of which one of such buildings remains standing.”

According to the last sentence of the definition of “subdivision,” the reduction in size of the four lots shown on the 1976 Fischer Plan (shown on the new Form B plan as Lots 4A, 5A, 6A and 7A) is not a “subdivision” as they will be created by “[c]onveyances or other instruments adding to, taking away from, or changing the size and shape of, lots in such a manner as not to leave any lot so affected without the frontage above set forth [20 feet].” These lots continue to use as their access the existing “Right of Way” shown on the 1976 Fischer Plan.

The two parcels shown as “Field” and “Agricultural Preservation Parcel” on the new Form B plan are not a “subdivision” as they are not a “lot,” as they will not be, or cannot be, “used, or available for use, as the site of one or more buildings...”

The four lots shown on the new Form B plan as Lots 4B, 5B, 6B and 7B do constitute a “subdivision.” They will have frontage on the new 40 foot right of way shown on the plan.

West Tisbury Zoning Bylaw Section 4.4-6 “Affordable Housing Requirement” provides:

In any subdivision containing three or more lots developed over any five year period, at least 20% of the lots shall qualify as affordable housing as defined in this bylaw...

As the word “*subdivision*” is not defined in West Tisbury Zoning Bylaw Section 14.2, we must look to the definition of the word in the Subdivision Control Law, M.G.L. c. 41, §81L.

According to and for the reasons set forth above, the new Form B plan is only creating a “subdivision” of four new “lots.” Twenty percent of these number of lots is .8 and the bylaw requires rounding up to 1. Section 4.4-6 thus requires the Fischer Trust to provide one “unit” of “affordable housing.” It should be noted that Section 4.4-6 applies to “...any subdivision containing three or more lots developed over any five year period...” The 12.9 acres parcel at Short Cove was created in 2007, or 10+ years ago, and should not be counted.

As to the MVC, the 1976 Fischer Plan was allowed prior to the adoption of any affordable housing requirements of the MVC or West Tisbury Zoning Bylaw. The 2007 MVC Decision allowing for the creation of the 12.9 acre parcel at Short Cove contained no condition pertaining to affordable housing.

To satisfy the West Tisbury affordable housing requirements, the Fischer Trust proposes to provide either (i) one parcel located off-site as discussed with the West Tisbury Planning Board, or (ii) provide one parcel for use by family members by Special Permit from the Planning Board under Section 4.4-6 subject to “suitable resale restrictions.”

The applicant will make this decision after MVC review of the present Form B plan and further discussion with the Planning Board.

Sincerely,

Eric L. Peters

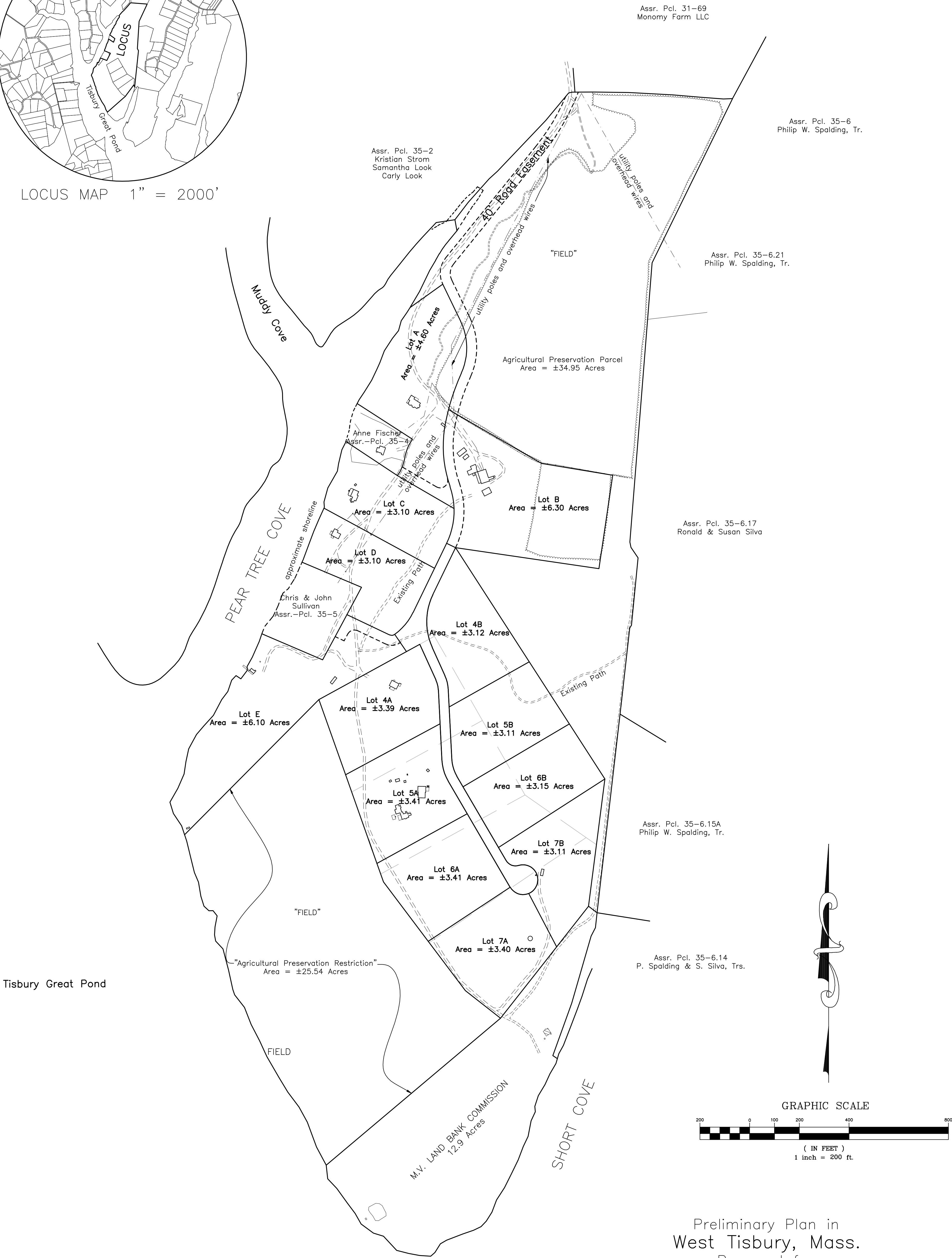
Enclosures: (prior plans)

cc: Eleanor D. Neubert
Jean F. O'Reilly
Arnold M. Fischer, Jr. (by email)
Martha's Vineyard Savings Bank, Trustee (by email)
Paul Foley, Martha's Vineyard Commission (by email)
Reid Silva, VLSE (by email)

PRELIMINARY PLAN



LOCUS MAP 1" = 2000'



LOT SUMMARY:
Total Area = ± 109.8 Acres
Area in Preservation ± 60.5 Acres (55%)
Area of existing and proposed development 49.3 Acres (45%)
Number of proposed Lots = 13
Proposed Lots around existing buildings = 7
Proposed Lots available for building = 6

Preliminary Plan in
West Tisbury, Mass.
Prepared for
"Flat Point Farm"
The Priscilla P. Fischer 1994 Trust

Scale 1" = 200'
September 20, 2016
Rev: May 19, 2017



VINEYARD
LAND SURVEYING
& ENGINEERING

12 Cournoyer Road
P.O. Box 421
West Tisbury, MA 02575
P 508-693-3774 | F 508-629-0440
VLSE.net

PLAN OF LAND IN WEST TISBURY, MASS.

Surveyed for

ARNOLD M. FISCHER

January 20, 1976

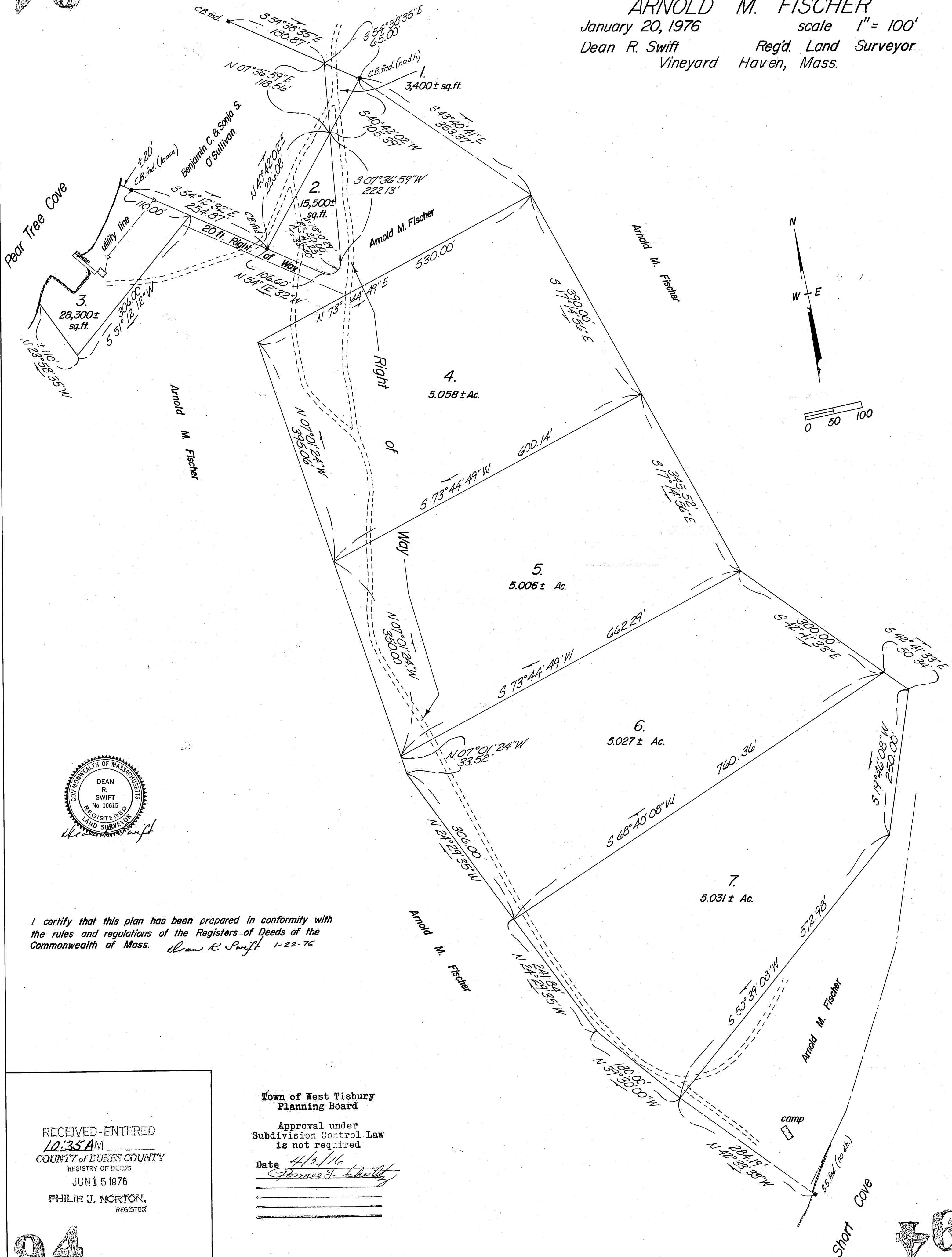
scale 1" = 100'

Dean R. Swift

Reg'd. Land Surveyor

Vineyard Haven, Mass.

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I certify that this plan has been prepared in conformity with the rules and regulations of the Registers of Deeds of the Commonwealth of Mass. Dean R. Swift 1-22-76

RECEIVED-ENTERED
10:35 AM
COUNTY OF DUKES COUNTY
REGISTRY OF DEEDS
JUN 15 1976
PHILIP J. NORTON,
REGISTER

Town of West Tisbury
Planning Board

Approval under
Subdivision Control Law
is not required

Date 4/2/76

James F. Sullivan

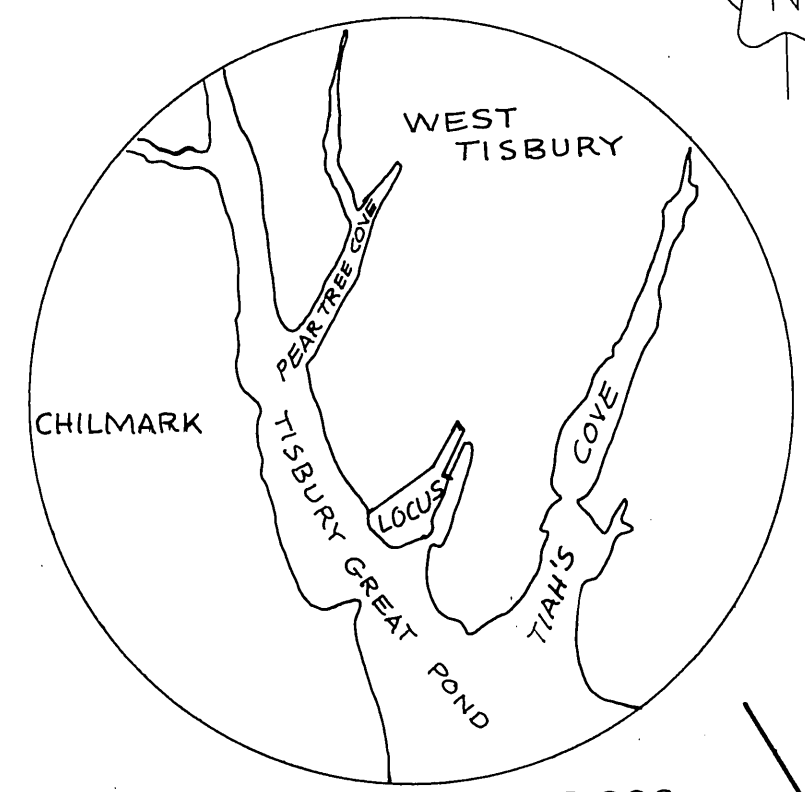
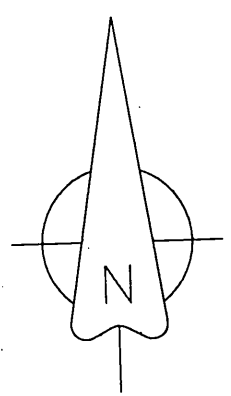
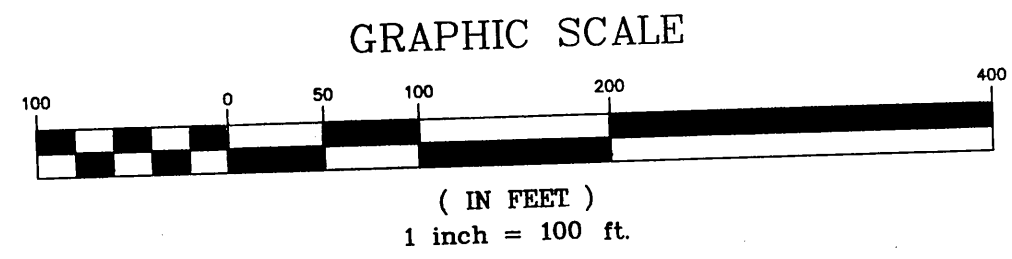
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\$2.00 Norton

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Bk: 17 Pg: 76 Doc: PLAN
Page: 1 of 1 09/18/2013 12:05 PM



TOWN OF WEST TISBURY
PLANNING BOARD
Endorsed
Approval under the Subdivision
Control Law Not Required

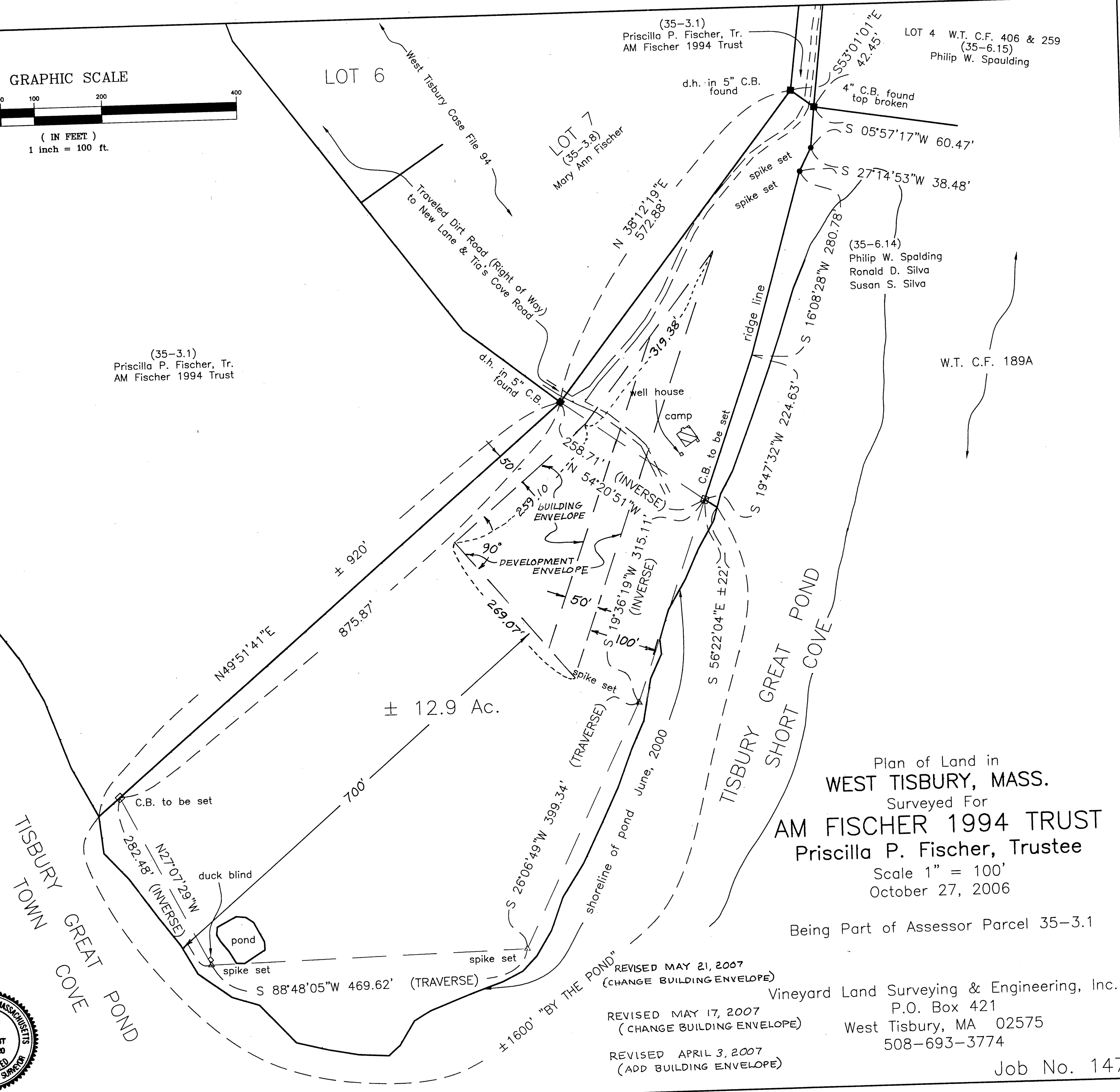
Date: May 21, 07
[Signature]
Chairman

Endorsement is without regard to buildability or permitted occupancy, does not stay enforcement of zoning violations, and is subject to other notation hereon

I certify that this survey and plan were prepared in accordance with the Procedural and Technical Standards for the Practice of Land Surveying in the Commonwealth of Massachusetts.

I certify that this plan has been prepared in conformity with the rules and regulations of the Registers of Deeds of the Commonwealth of Massachusetts.

Date: 10-27-06
[Signature]
Professional Land Surveyor



Plan of Land in
WEST TISBURY, MASS.
Surveyed For
AM FISCHER 1994 TRUST
Priscilla P. Fischer, Trustee
Scale 1" = 100'
October 27, 2006

Being Part of Assessor Parcel 35-3.1

REVISED MAY 21, 2007
(CHANGE BUILDING ENVELOPE)
REVISED MAY 17, 2007
(CHANGE BUILDING ENVELOPE)
REVISED APRIL 3, 2007
(ADD BUILDING ENVELOPE)

Vineyard Land Surveying & Engineering, Inc.
P.O. Box 421
West Tisbury, MA 02575
508-693-3774

Job No. 1476