

From: Jay Talerman jay@mtclawyers.com 
Subject: RE: 3 Uncase Ave, oak Bluffs
Date: June 5, 2023 at 4:53 PM
To: Michael Busby MBusby@masshousing.com
Cc: Robert Sawyer robert@sawyerrealtygroup.com, Mike Sawyer mike@sawyerrealtygroup.com, Dean Harrison deanharrison13@outlook.com, Matt Provencher matt@mtclawyers.com



Mike: Thanks for the quick, albeit disappointing, reply. May I ask why MassHousing took this position? We will seek a waiver of the bylaw but to the extent that the ZBA relies on the MassHousing condition for the proposition that they don't have to waive it (ie, relying on the condition to block the issuance of the permit), would you be amenable to revisiting this issue?

Jay



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From: Michael Busby <MBusby@masshousing.com>
Sent: Monday, June 5, 2023 3:52 PM
To: Jay Talerman <jay@mtclawyers.com>
Cc: Robert Sawyer <robert@sawyerrealtygroup.com>; Mike Sawyer <mike@sawyerrealtygroup.com>; Dean Harrison <deanharrison13@outlook.com>; Matt Provencher <matt@mtclawyers.com>
Subject: RE: 3 Uncase Ave, oak Bluffs

Hi Jay,

MassHousing is not inclined to make any revisions to the existing Project Eligibility Letter.

From: Jay Talerman <jay@mtclawyers.com>
Sent: Friday, June 2, 2023 3:01 PM
To: Michael Busby <MBusby@masshousing.com>
Cc: Robert Sawyer <robert@sawyerrealtygroup.com>; Mike Sawyer <mike@sawyerrealtygroup.com>; Dean Harrison <deanharrison13@outlook.com>; Matt Provencher <matt@mtclawyers.com>
Subject: RE: 3 Uncase Ave, oak Bluffs

Mike: It was nice speaking with you a few minutes ago. Again, our issue is not that we be

required to use best efforts to resolve the demolition issue. Rather, it is with the unique way the condition is drafted, wherein we are required to resolve the issue even before the ZBA can issue the comp permit. If that is the case, we would never get our comp permit because the Copeland Commission is resolved to never resolve this matter. Stated differently, even though there may be the authority to have the ZBA waive the Copeland Bylaw, we would never get that far. All that said, I do not want to put you into the middle of our dispute with the Copeland Commission. To that end, I recommend a very minor change to your language, as follows:

CURRENT LANGUAGE

The Development of the Site will require resolution of the outstanding order issued by the Copeland District Commission which prevents the demolition of the building currently occupying the Site. The Applicant should expect that the Municipality will require resolution of that matter prior to the issuance of the Comprehensive Permit for the Project. [emphasis supplied]

PROPOSED REVISED LANGUAGE:

The Development of the Site will require resolution of the outstanding order issued by the Copeland District Commission which prevents the demolition of the building currently occupying the Site. The Applicant should expect that the Municipality will require discussion and resolution of that matter within the hearing on the Comprehensive Permit for the Project. [emphasis supplied]

We are not asking for a legal conclusion from MassHousing. Nor are we asking for you to take a position on whether a waiver should be issued. Rather, we are just asking for an opportunity to see to resolve this through the 40B process. This is a wonderful small project that Oak Bluffs desperately needs.

I look forward to hearing from you on this matter.

Thanks again,

Jay



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 Think before you print.

From: Jay Talerman

Sent: Monday, May 8, 2023 6:05 PM

To: mdbusby@masshousing.com; cmcniece@masshousing.com

Cc: Robert Sawyer <robert@sawyerrealtygroup.com>; Mike Sawyer <mike@sawyerrealtygroup.com>; Dean Harrison <deanharrison13@outlook.com>; Matt Provencher <matt@mtclawyers.com>

Subject: 3 Uncase Ave, oak Bluffs

Mr. Busby, Mr. McNiece:

Please be advised that I represent the 3 Harborwood, LLC, which, on April 28, 2023, was pleased to receive a reinstatement letter of their original Project Eligibility Letter. See attached for your reference. In that affordable housing is in critically short supply on Martha's Vineyard, this project will provide a substantial benefit to island residents.

There is one aspect of the PEL that warrants some clarification however. That is, the original PEL, the conditions of which were incorporated into the reinstatement letter, includes a condition that states as follows:

The Development of the Site will require resolution of the outstanding order issued by the Copeland District Commission which prevents the demolition of the building currently occupying the Site. The Applicant should expect that the Municipality will require resolution of that matter prior to the issuance of the Comprehensive Permit for the Project. [emphasis supplied]

While my client has diligently sought resolution of this matter by filing two separate applications (and a Superior Court appeal) for demolition, the Town is unyielding. Indeed, it appears that the Town is content to allow this uninhabitable, decaying building remain rather than permit its replacement with well designed affordable housing.

However, it is plain that the bylaw under which the Copeland District Commission operates is a locally administered zoning bylaw that is subject to waiver under G.L. c. 40B. While it is true that the Bylaw is borne from a process administered by the Martha's Vineyard Commission, such process results in the adoption of a local zoning bylaw that is administered solely by local Oak Bluffs officials. For your reference, see pp 75-79 of the Oak Bluffs Zoning Bylaws (<https://www.oakbluffsma.gov/DocumentCenter/View/2458/AMENDED-ZONING-BY-LAW-CURRENT-TO-MAY-2019-PDF?bidId=>) which describes a variety of processes (including demolition) that are administered by the Oak Bluffs Building Commissioner and a Committee consisting of members of other Oak Bluffs Boards and Commissions, including the Planning Board, Select Board and Park Commission, among others.

The purely local administration of the Copeland District Bylaw is important due to the Supreme Judicial Court's reasoning in Dennis Housing Corp. v. Zoning Bd. Appeals of Dennis, 439 Mass. 71 (2003), *see attached*. In Dennis, the SJC was asked to determine whether a locally administered component of the regional Old King's Highway Historic District would be subject to the waiver provisions under c. 40B. Ultimately, the SJC concluded that, notwithstanding the regional nature of the underlying Special Act, the Town of Dennis was solely responsible for its administration within the town of Dennis. Accordingly, the SJC ruled that it was subject to the reach of c. 40B.

The situation is no different here. That is, while the Copeland District was borne from the provisions of the Martha's Vineyard Commission Act, it is administered, in its entirety, solely local Oak Bluffs officials. Stated differently, the Martha's Vineyard Commission has no role in the day to day administration of the Copeland District Bylaw. As a consequence, the Copeland District Bylaw, and its requirements for requested demolition are subsumed into the process administered by the Oak Bluffs Zoning Board of Appeals. While my client fully expects to discuss demolition concerns with the Zoning Board of Appeals, the requirement in the PEL that such issues be resolved **prior** to the issuance of a Comprehensive Permit is not consistent with law and may result in further frustration of the realization of this modest but important project.

With this email, Please note that it is our intention to seek waiver of the Copeland District Bylaw when we apply for a comprehensive permit. To that end, we respectfully request that you issue a clarification to your reinstated PEL that addresses this issue in the manner described above.

I would be pleased to speak with you further about this issue should you so desire.

Best,

Jay Talerman



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