

Freetown Board of Assessors
Minutes of Monday, April 8, 2024
Virtual Meeting – Zoom.us

Present: Jeff Field was present at the Town Hall. Mike Motta and Paul Sadeck were present via Zoom.

Absent: None.

Call to order: Meeting called to order at 5:15 p.m. All votes taken during this meeting were by roll call.

Approval of Minutes

A motion was made by Mr. Field, seconded by Mr. Motta, to approve the minutes of December 4, 2023, and both the Open and Executive session minutes of March 18, 2024, but not to release the Executive Session minutes. The motion carried unanimously.

New Business

- ♦ Discussion was held on reorganization of the board for the year ensuing. Mr. Sadeck stated Mr. Motta would be up for re-election in 2025 and therefore should be chairman. Mr. Motta stated he had intended to nominate Mr. Field. After brief discussion, a motion was made by Mr. Field, seconded by Mr. Sadeck, to nominate Mr. Motta as chairman. The motion carried unanimously.
- ♦ Discussion was held on how to address inflation in future solar PILOT agreements. The Assistant Assessor noted that some towns increase the payment due by $\pm 2.5\%$ per year following along with the allowable increase in the levy limits. Another option would be to apply CPI inflation; as an example, the \$23,500 per MW/DC negotiated in the spring of 2023 is now equal to \$23,900. Mr. Motta raised the concern of payments lowering if the economy reverses course. Consensus was to address this in the future if and when a new agreement is sought.

Old Business

- ♦ The board resumed discussion on how to treat seasonal/short-term rental properties (such as, but not exclusively limited to, "AirBNB" rentals). At a prior meeting, the board discussed whether homes used exclusively for this purpose could or should be viewed as commercial rather than residential. An article appearing in the *Vineyard Gazette* was reviewed, which reported on a Land Court case involving this subject on Nantucket and its possible impacts on Martha's Vineyard.

Quoting from the article, "...Land Court Judge Michael Vhay ruled that short-term rentals aren't expressly allowed as the primary use for a home in Nantucket's residential old historic district. He sent the issue back to the island's zoning board of appeals to determine whether rentals constitute an accessory use. The decision, in a case brought by a neighbor of a property used as a short-term rental, could set a precedent for how municipalities handle AirBNBs and VRBOs, several Vineyard officials said, though legal experts expect it will take time for the ruling's effects to play out." The article also went on to discuss a case in Lynnfield where "...the state's Supreme Judicial Court ruled that short-term rentals were not allowed as a matter of right in single-family zoning districts. But that decision also noted that a different result was possible in other circumstances, depending on what towns' zoning allows and what is considered a customary accessory use in each community." *[The full article is appended to these minutes.]*

Further discussion will take place later in the spring.

Any Other Business Properly Before the Board

No items were taken up under this heading.

Executive Session

A motion was made by Mr. Sadeck, seconded by Mr. Field, to enter into executive session to comply with the provisions of any general or special law; specifically, to discuss strategy with respect to litigation if an open meeting may have a detrimental effect on the government's litigating position, namely, DH-MA Solar 1, LLC vs. Board of Assessors of the Town of Freetown, Bullock Solar 1, LLC vs. Board of Assessors of the Town of Freetown, SunRaise Investments, LLC vs. Board of Assessors of the Town of Freetown, Borrego Solar Systems, Inc. vs. Board of Assessors of the Town of Freetown, and Renewable Energy Alternatives, LLC vs. Board of Assessors of the Town of Freetown; and also, to comply with the provisions of any general or special law; specifically, to discuss Real Estate and Personal Property exemption and/or abatement applications which are not open to public inspection (per M.G.L. Chapter 59, Section 60) and to discuss Returns of Property Held for Charitable Purposes which are not open to public inspection (per M.G.L. Chapter 59, Section 32); and to return to open session afterward. When polled, the members voted as follows: Field – Aye, Motta – Absent, Sadeck – Aye.

Results of Executive Session

Results of decisions made were announced as follows:

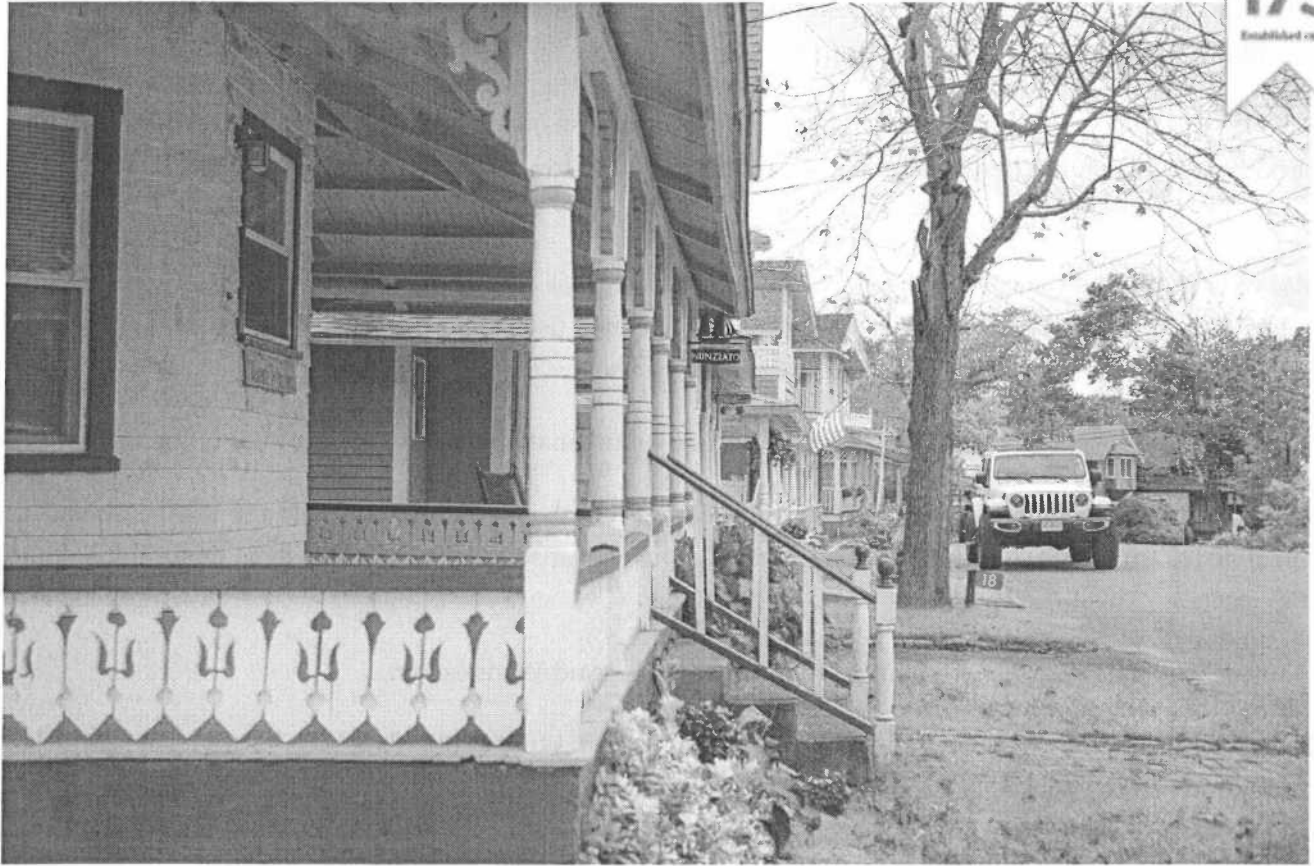
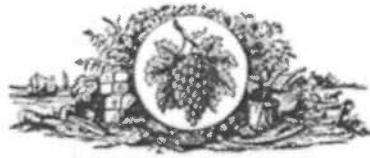
- ♦ The Form 3ABC submitted by the Fairhaven-Acushnet Land Preservation Trust was accepted as filed timely, despite having originally been delivered to the wrong office.
- ♦ Prior year Personal Property accounts deemed uncollectible by the Treasurer/Collector were abated.

Meeting Adjourned

A motion was made by Mr. Field, seconded by Mr. Sadeck, to adjourn. The motion carried unanimously, and the meeting was adjourned at 6:14 p.m.

This is a True Record by me.

Attest: _____
Assistant Assessor



There are more than 3,800 short-term rentals on the Vineyard. *Jeanna Shepard*

Vineyard Eyes Sister Island After Short-Term Rental Decision

Ethan Genter *Thursday, March 21, 2024 - 4:55pm*

A state Land Court ruling last week that could shake up how short-term rentals are regulated across the state has Vineyard eyes turned toward Nantucket.

On Thursday, Land Court Judge Michael Vhay ruled that short-term rentals aren't expressly allowed as the primary use for a home in Nantucket's residential old historic district. He sent the issue back to the island's zoning board of appeals to determine whether rentals constitute an accessory use.

The decision, in a case brought by a neighbor of a property used as a short-term rental, could set a precedent for how municipalities handle AirBNBs and VRBOs, several Vineyard officials said, though legal experts expect it will take time for the ruling's effects to play out.

"It is close to home," said Edgartown attorney Ron Rappaport who serves as town counsel to five of the Island towns. "It has direct relevance to us."

Like Nantucket, the Vineyard has had a long history as a vacation destination, and short-term rentals

have been a source of contention as the housing crisis on both Islands intensifies. Here on the Vineyard, there are more than 3,800 properties registered as short-term rentals and hundreds operate in residential districts, a proposition that now lies in legal limbo.

The Nantucket case revolved around a dispute over a Wellesley couple's rental home on the island. In 2021, Catherine Ward sent the Nantucket building commissioner a letter asking him to stop her neighbors, Peter and Linda Grape, from renting their home on West Dover street.

She claimed that such a rental was an illegal commercial use of a property in a residential district. The building commissioner denied Ms. Ward's request and the town's zoning board of appeals backed the rejection.

Ms. Ward appealed the case to the state Land Court, where it landed in front of Judge Vhay. He determined that short-term rentals cannot be the principal use for a primary dwelling under Nantucket's zoning, though they could be allowed as an accessory use.

Accessory uses, according to the town's zoning, are subordinate to the main use of the home.

While there have been other court rulings on vacation rentals, Mr. Rappaport told the West Tisbury select board this week that this one hits closer to home because Nantucket's zoning is so similar to the Vineyard.

"Nantucket's bylaw is almost identical to our bylaw," he said Wednesday.

Like Nantucket, none of the six Vineyard towns have zoning that explicitly allows short-term rentals as a primary use in residential areas. Nantucket's zoning does allow for some business activity as an accessory use, and Judge Vhay ordered the zoning board to reconsider if the Grapes' home would fall under that distinction.

The potential for a similar challenge on the Vineyard puts short-term rentals on shaky ground.

The Nantucket decision has raised concerns with West Tisbury officials, who have a general bylaw on the spring town meeting warrant that limit owners to renting only one property as a short-term rental for a minimum of seven days. Owners would also have to reside at the property for at least 30 days a year.

The Grapes argued in the Nantucket case that the town did have regulations on short-term rentals in the form of a general bylaw, which means they are allowed under zoning. But Judge Vhay said a general bylaw doesn't supersede a zoning regulation.

"In fact, the law points in the other direction: if a municipality regulates activities through its zoning bylaws, it may adopt general bylaws that supplement zoning regulations, but not contradictory laws," the judge wrote.

That language had the West Tisbury select board wondering what to do with the general bylaw article that is already on the April 9 town meeting warrant.

The town meeting date is too close to get a zoning bylaw on the warrant, though Bea Phear, the chair of the town's short-term rental committee that worked on the proposed new regulations, suggested bringing zoning changes to a fall town meeting.

"I wish we had done this as a zoning bylaw," she said. "It would be much cleaner if we had."

Other attorneys weren't so sure that the Nantucket decision was as much of a bombshell as initially believed.

Jessica Gray Kelly, a partner at the Boston law firm Freeman Mathis & Gary, has studied the Nantucket case and written about a previous case in Lynnfield that is one of the foundational rulings on short-term rentals.

In the Lynnfield case, the state's Supreme Judicial Court ruled that short-term rentals were not allowed as a matter of right in single-family zoning districts. But that decision also noted that a different result was possible in other circumstances, depending on what towns' zoning allows and what is considered a customary accessory use in each community.

Nantucket's economy, like the Vineyard's, is built on tourism and seasonal visitors who stay in short-term rentals and spend money at local restaurants and shops.

"In Nantucket, unlike Lynnfield, short-term rentals are customary," Ms. Kelly said.

The more pertinent issue for Ms. Kelly is whether homes that are used as short-term rentals — but never actual residences for their owners — would qualify under the accessory use definition.

"The harder question for [Nantucket] and the ZBA will be explaining why short-term rentals are 'subordinate' to a primary use, where many owners of short-term rental properties may not actually use the property themselves," Ms. Kelly said.

If Nantucket can clarify why short-term rentals should be permitted as an accessory use, Ms. Kelly believed the Land Court would uphold that decision.

Mark Leonard, chair of the Oak Bluffs affordable housing committee, said other towns were watching the Nantucket case as they try to wrap their heads around what to do about vacation rentals on the Vineyard. Both Oak Bluffs and Tisbury are planning to do assessments of short-term rentals in their towns.

Oak Bluffs voters will consider an article at the spring town meeting that would dedicate \$50,000 toward the assessment, which would look into whether the town needs more regulation and, if so, the best way to go about that.

The Nantucket challenge to short-term rental's status quo leaves a lot of uncertainty, Mr. Leonard said.

"It's one of those unknowns," he said. "It's all pretty much new territory for everybody."

But as town meetings approach, Vineyard officials will keep looking east.

"We'll be watching this for a while," Mr. Rappaport said. "We'll see how they come out."

More by Ethan Genter »

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