

COMMONWEALTH OF MASSACHUSETTS

DUKES, ss

LAND COURT DEPARTMENT
NO. 22 MISC 000294 (KTS)

MARTHA'S VINEYARD REGIONAL
SCHOOL DISTRICT,

Plaintiff

v.

TOWN OF OAK BLUFFS PLANNING
BOARD, and EWELL HOPKINS, ERIK
ALBERT, BILL CLEARY, MARK
CROSSLAND and JOJO LAMBERT, in
their capacity as members of the Town of
Oak Bluffs Planning Board and not
individually, and the TOWN OF OAK
BLUFFS,

Defendants

JOINT STATUS REPORT

Plaintiff Martha's Vineyard Regional School District (the "District") and Defendants the Town of Oak Bluffs Planning Board, and its members and the Town of Oak Bluffs (collectively the "Municipal Parties") hereby submit the below joint status report in accordance with the Court's September 5, 2023 Decision and Order on Plaintiff's Partial Motion for Summary Judgment (the "Decision"):

In its Decision, the Court instructed the parties to file a Joint Status Report by October 5, 2023 responding to the following questions:

(1) Whether there are any issues that remain to be tried to the court and each party's

readiness for trial; and

(2) Whether there is a need for further discovery.

As to both questions, the parties, having conferred through their respective counsel, report that neither party believes that any triable issues remain in this case and, therefore, a trial is not required at this time. Accordingly, there is no additional discovery to be conducted at this time.

Additionally, the parties, through their respective counsel, have discussed how best to conclude this matter in light of the above. The parties, however, are not in agreement as to how this case should conclude, and therefore are not, at this time, able to provide the Court with an agreed upon, proposed form of judgment or order. As the parties anticipate this will be a subject discussed at a future status conference, the parties therefore wish to briefly summarize their respective positions:

The District's position is that the case is in a posture for entry of final judgment, a form of which they furnished to the Municipal Parties attached hereto as Exhibit A.

The Municipal Parties' position is that an Order of Remand to the Planning Board for further proceedings is appropriate at this juncture. The Municipal Parties provided the District with a position statement on this issue, which is attached as Exhibit B. The Municipal Parties can readily submit a proposed order of remand for review.

In light of the above, and, in accordance with the Court's September 5, 2023 Decision, the parties respectfully request a status conference be scheduled so that the parties may confer with the Court as to how best to conclude this matter.

MARTHA'S VINEYARD REGIONAL SCHOOL
DISTRICT,

By their attorneys,

/s/ Brian Winner

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TOWN OF OAK BLUFFS PLANNING BOARD
AND THE TOWN OF OAK BLUFFS,

By their attorneys,

/s/ Michael A. Goldsmith

Michael A. Goldsmith
BBO No. 558971
Reynolds, Rappaport, Kaplan, Hackney, LLC
106 Cooke Street, P.O. Box 2540
Edgartown, MA 02539
(508) 627-3711

Dated: October 5, 2023

A

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FINAL JUDGMENT

1. The Planning Board’s May 16, 2022 decision denying the Project under Section 8.2 of the Town’s Zoning Bylaws is reversed and vacated.
2. The Project does not require a Special Permit under Section 8.2 of the Town’s Zoning Bylaws.
3. The Parties shall pay their own costs and fees.

So Ordered.

By the Court. (Smith, J.)

Attest:

Dated:

B

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Exhibit "B" to the JOINT STATUS REPORT

The municipal parties' position is as follows:

The Court ruled on pages 11-12 of the Decision that "Section 8.2.6 . . . is not a dimensional limitation on 'open space' that is exempted from the protections of the Dover Amendment [and,] [t]herefore, the Board acted beyond its authority when it imposed the water protection regulations of the WRPOD on the artificial turf field project." The Board based its denial solely on the composition of the District's proposed field. The Board did not, under the authority granted to it under Section 8.2, consider whether the District could reasonably locate its playing fields elsewhere on its campus – outside of the *dimensional*

limitations imposed by Section 8.2 and the WRPOD – and consistent with the constraints imposed by the Dover Amendment. The municipal parties believe that the proper procedural route, at this juncture, is for the Court to remand the matter to the Board to conduct this analysis in the first instance.

The District’s campus comprises approximately 46 acres of land to the south of the Edgartown-Vineyard Haven Road; currently about 8.67 acres are devoted to athletic fields. See Ex. 4 to the District’s Appendix, MVC Decision at page 21. The WRPOD runs through a portion of the campus. The cases cited in the Decision, including Trustees of Tufts College v. Medford, 415 Mass. 753, 757-758 (1993), prescribe a “balancing test” under which municipal permitting authorities should endeavor to harmonize the protection of legitimate municipal interests (water quality here) with an educational institution’s right to establish its Dover-protected uses. See Town of Sharon Board of Library Trustees v. Zoning Bd. of Appeals of Sharon, 20 MISC 000525 (KTS)(Decision on Motion for Summary Judgment, dated September 2, 2021), slip op at 14 (“The Trustees’ motion for summary judgment on Count I is allowed, and the Board’s decision is annulled. The matter shall be remanded to the Board for further proceedings consistent with this decision. On remand . . . the Board should employ the balancing test as described in Tufts . . . and make a decision on the merits of the project as proposed. . . . If the Board chooses to approve the project with any dimensional limitations, it must identify with particularity the municipal concerns which those limitations are intended to protect.”).

In addition to precluding the use of toxic chemicals at certain levels, Section 8.2 and the WRPOD also imposes use-neutral dimensional limitations on any property owner within

its overlay boundaries. The Board, consistent with the relevant case law, should be given the opportunity to apply the Tufts balancing test to determine whether it is reasonable for the District “to adapt [its] plans for the use of [its] land . . . so long as the provision is related to a legitimate municipal concern,” Id. at 758. The Town voters and the Attorney General’s office have determined that the WPROD (including a map showing its boundaries) is a legitimate exercise of the Town’s zoning powers. The validity of Section 8.2 has not been challenged. The Court acknowledges the legitimate municipal interest here: ensuring that the Town’s citizens (and Island residents) have a safe drinking water supply. Should the District’s proposal harm the Island’s aquifer, there is no alternative source to provide this critical public amenity.

The inquiry on remand would involve, under the factors enumerated in Tufts, whether it is feasible for the District to locate its artificial turf playing fields outside of the boundaries drawn by Town Meeting under Section 8.2. As the Supreme Judicial Court ruled in Tufts, “the question of the reasonableness of a local zoning requirement, as applied to a proposed education use, *will depend on the particular facts of each case.*” Tufts, supra at 759 (emphasis added).

The result suggested here is similar to the one that the Court reached in the Sharon Library case. Further, the municipal parties note that the Dover Amendment does not preclude zoning review – but only that local review cannot bar or unreasonably burden Dover-protected uses. The District is fortunate to have a large parcel to run the Regional High School. There can be little doubt that, if the District chose to locate an automotive repair facility, as an example, within the WRPOD, the Board would have the authority

determine whether such a facility could reasonably be sited elsewhere on the District's property – and outside of the WRPOD's limits. Consistent with the principle that local zoning authorities should apply their zoning by-laws in the first instance before judicial review is undertaken, a remand should be ordered.

TOWN OF OAK BLUFFS PLANNING BOARD
AND THE TOWN OF OAK BLUFFS,

By their attorneys,

/s/ Michael A. Goldsmith

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BBO No. 558971

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