

9869/188

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss:

LAND COURT
TRIAL DEPARTMENT
MISC. NO. 198886

MARK LEBLANC, as TRUSTEE of)
 CLASSIC HOMES REALTY TRUST,)
 and DEAN A. WEBBER,)
 Plaintiffs,)
 v.)
 CAPE COD COMMISSION,)
 Defendant.)

HEREBY ATTEST AND CERTIFY ON)
 April 3, 1995 THAT THE)
 FOREGOING DOCUMENT IS A FULL)
 TRUE AND CORRECT COPY OF THE)
 ORIGINAL ON FILE IN MY OFFICE)
 AND IN MY LEGAL CUSTODY)
 CHARLES W. TROMBLY, JR)
 RECORDER)
 LAND COURT)

BY Geneva M. Pelletier)
 Deputy Recorder)

APR 3 10 18 AM '95

FILED

AGREEMENT FOR JUDGMENT

This agreement is entered into this 24th day of March 1995, by and between the Cape Cod Commission, Dean A. Webber and Classic Homes Realty Trust.

BACKGROUND FOR CONSIDERATION:

1. The Cape Cod Commission (the "Commission") is a body politic created by the Cape Cod Commission Act, Chapter 716 of the Acts of 1989, as amended (the "Act"), with regulatory authority to review Developments of Regional Impact ("DRIs"); and
2. The Classic Homes Realty Trust, Mark LeBlanc, Trustee (the "Trust") exists under a Declaration of Trust dated February 8, 1993 and recorded in the Barnstable County Registry of Deeds, Book 8450, page 280; and
3. The Trust is presently developing approximately 18.1 acres of land owned by the Trust and Dean A. Webber, located in the Hamblin Hills section of West Falmouth off of Route 28A as a 19 lot, single family home residential development, which development received definitive subdivision approval

from the Falmouth Planning Board on February 9, 1993, and which approval allowed a maximum of 19 single family homes (the "Project"); and

4. The Commission believes that the Project is located within the watershed to West Falmouth Harbor and Oyster Pond and as such is deemed to be within a Marine Water Recharge Area as defined in the Cape Cod Regional Policy Plan, Barnstable County Ordinance 91-6 (the "RPP"), which claim the Trust contests; and

5. The Falmouth Historic District Commission (HDC) referred the Project to the Commission for DRI review under Section 12(e) of the Act as a purported discretionary referral, and at its meeting of September 2, 1993 the Commission voted to review the Project as a DRI; and

6. The Trust filed a complaint in Massachusetts Land Court, Misc. No. 198886, challenging the jurisdiction of the Commission to review the Project as a DRI, claiming that the HDC lacked the legal authority on the facts to make a Section 12(e) referral; and

7. On October 11, 1994 the Land Court joined Dean A. Webber as a party plaintiff to Land Court Misc. No. 198886. The Trust and Dean A. Webber are plaintiffs to the Land Court action (the "Plaintiffs"); and

8. The Commission and the Plaintiffs hereby agree that Judgment shall be entered in this action as follows:

THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. The Commission agrees to accept the HDC's request to withdraw its discretionary referral and to cease reviewing the Project as a DRI. The parties agree that the withdrawal of the discretionary referral shall take effect upon the duly authorized execution of this Agreement; and

2. The Plaintiff's dismiss, with prejudice and without costs, all of the claims which they asserted or could have asserted in this action; and

3. The Plaintiff's and the Commission agree to be bound by the following conditions which shall be specifically enforceable by the Town of Falmouth, its officers, agencies and agents and/or the Commission and which conditions shall be enforceable in equity;

Conditions:

A. Visual Impact on the West Falmouth Historic District: The Plaintiffs agree to provide landscaping by spring or early summer and to replace the stonewall at the entrance to the Property in accordance with HDC approvals. The plaintiffs also agree to record a deed restriction on the lot(s) where the landscaping and stone wall will be located. The restriction will require the owner of said lot(s) to maintain in perpetuity the landscaping in a manner reasonably acceptable to the HDC.

B. West Falmouth Harbor Water Quality: In order to protect ground water and the water quality of Oyster Pond, the Plaintiffs agree to provide, through a deed restriction, for the approval, installation and maintenance of ten (10) nitrogen-removing systems, with the development of each of ten single family lots # 3, 4, 7, 8, 9, 10, 11, 12, 15 and 19 of the plan. Said nitrogen removing system(s) shall remove at least 25% of nitrogen from wastewater prior to disposal, and shall be approved by the Massachusetts Department of Environmental Protection (the "DEP") and the Falmouth Board of Health (the "BOH"), as required by law. These nitrogen-removing systems shall be built concurrent with the construction of the homes on the specified lots.

The Plaintiff's agree to insure compliance with this condition by attaching a deed restriction on ten (10) lots designated above. Said deed restriction shall state that the terms of the restriction shall be strictly construed, and said restriction(s) shall run with the land for each of the designated lots and shall also be enforceable by the BOH. The Plaintiffs further agree to restrict the ten (10) lots within the Project area by deed to require that all information submitted to the

DEP and/or the BOH regarding nitrogen removal systems be provided to the Commission's Water Resources staff for informational purposes.

4. Enforceability

All deed restrictions required under this Agreement shall be of a form and content satisfactory to counsel to the Commission and counsel to the Plaintiffs. The Commission and the BOH shall maintain the right to enter and re-enter the property to insure compliance of the ten designated lots with water quality conditions attached to this agreement. This Agreement shall be enforceable in equity and its terms shall be strictly construed.

5. Definitions

For the purposes of this Agreement, where agreed or legally permitted, the definitions contained in the Act and Barnstable County Ordinance 94-10 shall apply.

6. Applicability

This agreement shall apply only to the Development of the ten designated lots within the Project area and the landscaping and stone wall at the entrance to the Project.

7. Successors

The Plaintiffs shall ensure that their successors and assigns shall be bound by the restrictions contained in this Agreement. The restrictions contained in this Agreement, where applicable, shall run with the land and shall be enforceable by the parties hereto as provided herein.

8. Waiver

The waiver by any party of a breach or violation of any provision of this Agreement shall not operate as or be construed to be a waiver of any subsequent breach thereof.

9. Validity

The Plaintiffs agree and acknowledge that the CCC has the legal authority to enter into this agreement and impose the conditions specified herein and the Plaintiffs hereby waive any claim to the contrary. The invalidity or unenforceability of any provision or clause of the Agreement shall not in any way affect the validity or enforceability of any other provision or clause of this Agreement.

10. Modification

This Agreement sets forth the entire agreement of the parties. Any modifications or amendments hereto must be in writing, signed by all parties and specifically reference this Agreement.

11. Recording

A fully executed version of this Agreement shall be recorded with the Barnstable County Registry of Deeds by the Commission.

12. Entire Agreement

This writing shall constitute the entire agreement of the parties and no agent or employee of any party has authority to change this agreement or to waive any of its provisions except as otherwise expressly stated herein.

13. Governing Law

The provisions of this Agreement, and all rights and obligations of the parties hereunder, shall be governed by the laws of the Commonwealth of Massachusetts.

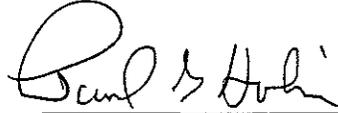
14. Local Review Authority

Nothing in this Agreement shall be construed to limit or in any way restrict the authority of the Town or its officers, agencies or agents to regulate Development within the Project area.

Respectfully submitted,

The CLASSIC HOMES REALTY
TRUST
and DEAN A. WEBBER

By their attorney,



Paul G. Holian, Esq.
BBO # ~~23820~~ 238020
240 Commercial Street
Boston, MA 02109
(617) 367-3006

Respectfully submitted,

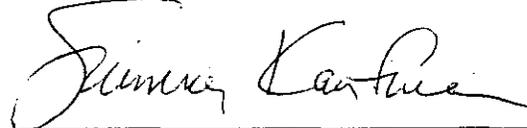
The CAPE COD COMMISSION

By its attorney,



Patricia A. Daley, Esq.
BBO # 552075
Cape Cod Commission
3225 Main Street
Barnstable, MA 02630
(508) 362-3828

and by its Vice-Chairman,



Sumner Kaufman, Vice- Chairman
Cape Cod Commission
3225 Main Street
Barnstable, MA 02630
(508) 362-3828

DATED 3/26/95

So ordered, by the Court

