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COMMONWEALTH OF MASSACHUSETTS

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(SEAL)

LAND COURT

APR 29 2009

DEPARTMENT OF THE TRIAL COURT

Nicholas J. Decoulos

DUKES, ss

MISCELLANEOUS
CASE NO. 238738 (CWT)

MARIA A. KITRAS
as trustee of BEAR REALTY TRUST, et
al.,

Plaintiffs

v.

TOWN OF AQUINNAH, et al.,

Defendants

ORDER ON THE PARTIES' MOTIONS TO STRIKE PROPOSED EXHIBITS

This case comes before the Court on the objections by various parties to proposed exhibits for trial. On January 30, 2009, plaintiffs, Maria A. Kitras, as Trustee of Bear Realty Trust, Maria A. Kitras and James J. Decoulos, as Trustees of Bear II Realty Trust, Maria A. Kitras and James J. Decoulos, as Trustees of Gorda Realty Trust, filed a Motion to Strike certain trial exhibits proposed by defendants, the Town of Aquinnah, Martha's Vineyard Land Bank Commission, Vineyard Conservation Society, Inc., Caroline B. Kennedy, Edwin Schlossberg, David Wice, Betsy Wice, and the Commonwealth of Massachusetts ("Defendants"). On February 2, 2009, defendants filed a Motion to Strike certain trial exhibits proposed by plaintiffs as well as certain trial exhibits proposed by defendants, Gossamer Wing Realty Trust and Barons Land Trust ("Trusts").

The motions were argued on February 4, 2009, and these are the matters presently before the Court. On February 9, 2009, JoAnn Fruchtman and Jack Fruchtman, Jr. Joined in the defendant's motion. The Trusts opposed the defendants' motion on February 10, 2009. On February 23, 2009, the parties submitted a joint statement listing the parties' proposed exhibits and the objections, if any, to each.

I. THE DEFENDANTS' PROPOSED EXHIBITS

a. Proposed Exhibits 69-73

Proposed exhibits 69-73 are documents from a period prior to the 1878 Set-Off Plan and, therefore, not relevant. Accordingly, it is hereby ORDERED that proposed exhibits 69-73 are not admitted.

b. Proposed Exhibit 74

Plaintiffs' only objection to proposed exhibit 74 is that it is duplicative of part of one of their own proposed exhibits. Accordingly, it is hereby ORDERED that proposed exhibit 74 is admitted.

c. Proposed Exhibit 82

Proposed exhibit 82 is a collection of deeds. Plaintiffs object that these deeds may not have much relevance because they lack descriptions of the boundary lines between the common lands and the individual owners adjoining the common lands. However, I do not see how plaintiffs will be prejudiced by the admission of this evidence. Accordingly, it is hereby ORDERED that proposed exhibit 82 is admitted.

d. Proposed Exhibit 85

Proposed Exhibit 85 is an 1850 commissioner set-off of lands in Chappaquiddick. Plaintiffs object to the relevance of this proposed exhibit. However, this evidence could

be relevant to show the practice and intent of the commissioner in the instant case.

Accordingly, it is hereby ORDERED that proposed exhibit 85 is admitted.

II. THE PLAINTIFFS' PROPOSED EXHIBITS

a. Proposed Exhibit 1

Plaintiffs have agreed to limit the use of this exhibit to a chalk. Accordingly, it is hereby ORDERED that proposed exhibit 1 is to be identified as a chalk.

b. Proposed Exhibits 23 and 24, and 37-39

Proposed exhibits 23 and 24 concern Lot 178, and proposed exhibits 37-39 concern Lot 79. The Appeals Court has determined that Lots 1-188 or 189 do not hold any easement rights. Accordingly, it is hereby ORDERED that to extent that these proposed exhibits involve Lot 178 or Lot 79, they are not admitted.

c. Proposed Exhibit 42

This proposed exhibit is a publication by the Dukes County Historical Society concerning Old South Road. Plaintiffs propose this exhibit for the purpose of informing the Court of the conditions of the land in this case. This literature is hearsay, and I am not satisfied that it is substantively relevant to the particular facts of this case.

Accordingly, it is hereby ORDERED that proposed exhibit 42 is not admitted.

d. Proposed Exhibit 50, 52, and 53

These proposed exhibits are case law, which are not relevant as exhibits in this case, but may be cited by the parties in their briefs. Accordingly, it is hereby ORDERED that proposed exhibits 50, 52, and 53 are not admitted.

e. Proposed Exhibit 60

This proposed exhibit is a plan of Moshup Trail. Defendants object to this proposed exhibit as having no foundation as to the data shown. However, the plan may be limited to use as a chalk. Accordingly, it is hereby ORDERED that proposed exhibit 60 is to be identified as a chalk.

f. Proposed Exhibit 63

This proposed exhibit is a plan of existing wetland resources surrounding Moshup Trail. Defendants object to it on grounds of relevance and hearsay. I see no reason why it should not be admitted. Accordingly, it is hereby ORDERED that proposed exhibit 63 is admitted.

g. Proposed Exhibit 75

Proposed exhibit 75 consists of documents concerning plaintiffs' application for the Self-Help Program concerning Moshup Trail. I see no relevance to this proposed exhibit. Accordingly, it is hereby ORDERED that proposed exhibit 75 is not admitted.

h. Proposed Exhibit 81

Proposed exhibit 81 is a December 1997 letter from the Friends of Moshup Trail. Defendants object to this proposed exhibit on the grounds of relevance and hearsay. I see no relevance to this proposed exhibit. Accordingly, it is hereby ORDERED that proposed exhibit 81 is not admitted.

i. Proposed Exhibits 25-36; 43-49; 51; 54-59; 61; 62; 64-67; and 76-80

The parties have agreed to defer the issue of the admissibility of these proposed exhibits until the second half of this bifurcated case, as they concern the issues of easement by prescription and "ancient way." Accordingly, it is hereby ORDERED that

proposed exhibits 25-36; 43-49; 51; 54-59; 61; 62; 64-67; and 76-80 are not admitted in this half of the bifurcated case.

j. Proposed Exhibit 41

The plaintiffs have agreed that this proposed exhibit will not be admitted. Accordingly, it is hereby ORDERED that proposed exhibit 41 is not admitted.

III. THE TRUSTS PROPOSED EXHIBITS

The Trust's proposed exhibits consist of certain documents concerning lots, which the Appeals Court has previously determined do not hold easement rights. Accordingly, it is hereby ORDERED that the Trust's proposed exhibits are not admitted.

All other proposed exhibits have not been objected to. Accordingly, it is hereby ORDERED that the remaining proposed exhibits are admitted.

So Ordered

By the Court (Trombly, J.).

Attest:

CWT

Deborah J. Patterson
Recorder

Dated: April 27, 2009

**A TRUE COPY
ATTEST:**

Deborah J. Patterson
RECORDER