

Truro Adventures Report

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A settlement was reached between the group suing Truro Adventures last February. All legal proceedings have subsequently been dropped. The body of the settlement is appended. There was no avoiding a negotiated settlement since neither the Court nor the Town, despite their previously indicated support for the suers' position, was equipped to enforce a categorical ban on Truro Adventures' activities.

The settlement addresses the concerns of the abutters about hosting large events on the property, but it does not address any of the concerns we have had in the past concerning the use of jet skis, placing of buoys in the bay, etc. However, Steve DiGiovanni has already sold one of his Mary's Way properties and continues to list the others. He must abide by the restrictions to which he has agreed for as long as he owns multiple homes on Mary's Way, but as he sells, it is quite possible that all of the concerns, both those in the settlement and others, will disappear in the years ahead.

DiGiovanni understands he is responsible for upholding these provisions and that abutters (and others) will be on the lookout for any infractions. If infractions are discovered, we should contact David Clive, who headed the lawsuit, (or me, and I can contact him) so that the abutters can complain directly to DiGiovanni, as the agreement gives that group enforcement power.

The body of the settlement is as follows:

WITNESSETH:

WHEREAS, Grantors own the real properties known as and numbered 2, 4 and 6 Mary's Way, Truro, Barnstable County, Massachusetts, which properties are shown as Lots 5, 4 and 3 respectively on a plan recorded with the Barnstable County Registry of Deeds with Book 558, Page 33; and 3 Mary's Way, Truro, Barnstable County, Massachusetts, which property is shown as Lot 2B and PCL 1A on a plan recorded with the Barnstable County Registry of Deeds with Book 655, Page 36, (hereinafter the Restricted Properties); and

WHEREAS, Grantees own the respective real properties identified herein above in Truro, Barnstable County, Massachusetts (hereinafter the Benefited Properties); and

WHEREAS, the Grantors and Grantees are desirous of creating and maintaining certain protections for the benefit of the Benefited Properties by imposing certain restrictions on the Restricted Properties.

NOW, THEREFORE, in consideration of the dismissal of certain legal actions and the promises contained herein, the sufficiency of which consideration the parties acknowledge, Grantors impose the following-described restrictions upon the Restricted Properties for the benefit of the Benefited Properties:

1. There will be no advertising or branding of any or all of the Restricted Properties under a single name, logo, trade or service-mark, with the exception of identification of the subdivision by signage and identification of the properties by street name.
2. There will be no offering or advertising of any or all of the Restricted Properties for weddings, wedding receptions or other group functions.
3. There will be no weddings, wedding receptions or other group functions conducted in or about the Restricted Properties between June 15 and September 15 inclusive in any year, nor during Memorial Day or Columbus Day weekends in any year.
4. There will be no more than a total of four weddings, wedding receptions or other group functions conducted in or about the Restricted Properties between September 16 and June 14 in any year, and any such functions will be subject to the following additional restrictions:
 - (a) No function shall include more than 100 persons, exclusive of service providers;
 - (b) There shall be no amplified music other than house sound systems within the homes or on decks located on the Cape Cod Bay sides of the homes. There shall be no amplified sound after 8:00 P.M.
 - (c) There shall be no tents other than: 1) small service tents; 2) guest tents located on decks between the homes and Cape Cod Bay; and/or 3) guest tents located on the lawn adjacent to the home at 3Mary's Way no more than two times per year.
 - (d) There shall be no parking of vehicles within the roadways, and there shall be no large buses used for transport of guests. Any vans or passenger vehicles used to transport guests shall be stored off-Premises with the exception of passenger vehicles and no more than one van, all of which must be parked within a parking areas and turned off.

5. The existing basketball court at 2 Mary's Way shall be converted to a sand-based recreational facility such as volleyball, sand tennis or other similar activity no later than June 1, 2016. Prior to removal of the basketball court, there shall be no use of the basketball court for the playing of basketball after 6:00 P.M.
6. The remainder of the recreation facilities located at 2 Mary's Way shall not be used after 8:00 P.M.
7. The Grantor/owner of 2 Mary's Way may permit the use of the recreational facilities thereon by the occupants of the homes at 3,4 and 6 Mary's Way, and by occasional invitees of the owners of those properties, until such time as Grantor GCQ Realty Trust(which shall include beneficiaries of said Trust, or any entity owned or controlled by the beneficiaries of said Trust) shall no longer own any interest in the property at 2 Mary's Way, or until such time as this Grantor shall no longer own or control any of said properties at 3, 4 or 6 Mary's Way, at which time the recreation facilities and the property at 2 Mary's Way shall only be used so as to comply with the Truro Zoning Bylaws in effect at such time regarding use and structural requirements. Meaning and intending that prior to the time that Grantor shall not own any interest in the property at 2 Mary's Way, or until it no longer has any interest in such other properties,no Grantee shall object to or seek modification or discontinuance of the recreation facilities or their use in compliance herewith on the grounds that they violate the Truro Zoning Bylaws or any other regulation.
8. These restrictions shall apply to each of the Restricted Properties so long as they are held or operated under common control by Grantors (the existence of that certain Declaration of Protective Covenants recorded with said Deeds with Book 28639, Page 308 shall not constitute such common control), or by a purchaser or grantee operating all of the Restricted Properties under common control.If and when any Restricted Property is conveyed to any bona-fide third-party purchaser not exercising such common control, the within restrictions shall be irrevocably terminated with regard to such conveyed Restricted Property. Upon the conveyance of the second-to-last of the Restricted Properties, all within restrictions are irrevocably terminated, with the exception of that portion of numbered Restriction 7 herein above that requires that 2 Mary's Way and the recreation facilities thereon, and all of the other formerly restricted properties, shall comply with the Truro Zoning Bylaws.The statement in any such conveyance that it constitutes a conveyance of all of the fee

interest to a bona-fide third party purchaser shall be conclusive evidence of such fact and may be relied upon by any person(s) interested in such fact.

9. In the event of a violation or breach of any of these restrictions, any Grantee, its successors or assigns, shall have the right to proceed at law or in equity to compel compliance with the terms hereof or to prevent the violation or breach of any of them. The failure to enforce any right, reservation, restriction or condition contained herein, however long continued, shall not be deemed a waiver of the right to do so thereafter as to the same breach or as to a breach occurring prior to or subsequent thereto and shall not bar or effect its enforcement. The invalidation by any court of any restriction herein contained shall not in any way affect any of the other restrictions which shall remain in full force and effect.