

-25

M.P.
320-5

PROTECTIVE COVENANTS AND RESTRICTIONS IMPOSED UPON THE
PROPERTY IN WEST TISBURY, MASSACHUSETTS OWNED BY
ROBERT J. MURPHY

This instrument is being executed and recorded with Dukes County Registry of Deeds so that, as a matter of convenience, it may be referred to and incorporated by reference in future conveyances of all or portions of the land shown on the plan hereinafter mentioned for the purpose of expressly imposing on or granting as appurtenant to said land or portions thereof by such conveyances (and not by this instrument) from time to time the restrictions, rights, and other matters herein set forth. Said land is that shown on a plan entitled "Revised Subdivision Plan of Land in West Tisbury, Mass. for Robert J. Murphy Scale 1"=80' Dec. 7, 1973 John P. Doyle, R.L.S.", filed with Dukes County Registry of Deeds on February 11, 1974 as West Tisbury Case File Number 72.

"Notwithstanding anything contained in this instrument, (i) this instrument, either expressly or by implication, shall not have the effect of imposing on said land any of the restrictions or other matters herein set forth or of creating rights in any person to enforce any of the rights herein contemplated, (ii) such restrictions and other matters shall be imposed and enforceable rights hereunder shall be created, only if and to the extent expressly set forth in recorded conveyances of all or portions of said land, (iii) the exclusive benefit and right to enforce such restrictions as may be so imposed shall be held only by those persons to whom such benefit and right is expressly granted of record and shall not arise by implication under the so-called "common scheme" or like doctrine or otherwise, and (iv) references herein or in such conveyances to the "benefited land" shall not mean or imply that any restrictions are imposed on said land or that any rights to enforce restrictions are granted by any conveyance unless expressly imposed or granted, as the case may be, by recorded instrument as hereinabove provided."

The land shown on the above-mentioned plan is subject to and has the benefit of the following rights, restrictions and covenants:

1. a. Together with the right to pass and repass, by motor vehicle and otherwise, in common with others and subject to such reasonable restrictions as may be imposed from time to time by Robert J. Murphy, over such roads as the Grantor may from time to time construct in the said Robert J. Murphy land, reserving to the Grantor, however, the right to change the locus of said roads and to terminate such portions of said road as the Grantor may deem necessary or convenient, so long as the changes and terminations shall not deny the Grantee the right to pass over constructed roads providing access to a public way.

b. Subject to all rights of way and easements, all zoning and other governmental laws and regulations, and all other provisions of record.

2. The land is also conveyed subject to the following restrictive provisions with which the Grantee covenants and agrees to conform, and which shall run with the land and shall be construed as covenants real:

a. The land conveyed herein shall be used only for a single family residential purposes. A dwelling may have as accessory to it a garage of not more than three car capacity and other accessory structures which may include storage building, boat sheds, terraces, decks, porches, playhouses and other customary accessory structures.



b. No house trailer, camping trailer or mobile home shall be placed or maintained on said land except a camping trailer may be stored in a garage. No tent shall be placed or maintained on the land except that tenting by children shall be permitted after a dwelling has been constructed on the land. No trade, business or commercial activity of any nature shall be conducted on said land.

c. Two or more lots may be used by the Grantee for the erection and construction of a single family dwelling and incidental building permitted under these restrictions, but the area consisting of such combined lots shall not thereafter be subdivided unless the requirements of these restrictions as to area conveyed and location of buildings are complied with according to the original lot boundaries as shown on a plan of land of Robert J. Murphy recorded with the Dukes County Land Records. No lot shall be subdivided or its boundary line changed, except with the written consent of the Grantor. The Grantor hereby expressly reserves the right to replot any two (2) or more lots shown on said plan prior to their sale in order to create a modified lot or lots; and to take such other steps as are reasonably necessary to make such replotted lot suitable as a building site, including, but not limited to relocating easements, walkways and rights of way to conform to the new boundaries of the said replotted lots.

d. No building or part thereof shall be erected, placed or permitted to remain on any lot within twenty-five (25) feet from any private or public way and within ten (10) feet from any side and twenty (20) feet from any rear lot line without the consent of the Grantor.

e. No building or structure that exceeds the lesser of two and one-half (2½) stories or thirty (30) feet in height shall be erected, placed or permitted to remain on any lot.

f. No building, wall, fence, sewerage system, water system or other structure or installation, or anything used for habitation, shall be erected, placed, constructed, altered, or maintained on the land conveyed herein until and unless its plans, exterior color plans, specifications, site location and landscape plans have been filed with and approved in writing by Robert J. Murphy, and until the approval of any governmental agency having authority has been obtained. The said Robert J. Murphy shall have the right to refuse to approve any such plans, specifications and locations, which are not suitable or desirable, provided, however, that Robert J. Murphy, his successors and assigns, shall not reasonably withhold approval of the same. There may be an architect's fee of \$50.00 to review plans.

g. Except as may be necessary for clearing area for buildings, structures and driveways, no stone walls or live trees greater than four (4) inches in diameter at a height of four (4) feet from the natural ground level, shall be cut, destroyed or removed and no change shall be made in the natural character of the land conveyed herein, without the prior written approval of the Grantor, which approval the Grantor shall not unreasonably withhold. No trees specifically banded by the Grantor shall be removed without the prior written consent of the Grantor.

h. No "For Rent", "For Sale", or signs of similar import shall be placed, constructed, altered or maintained on the land.

320-27

porties, trash or garbage or maintained on the land conveyed herein, unless screened from view from other lots and roads.

j. No animals or fowls (except household pets and not more than three horses) shall be kept on any lot. Pets causing a nuisance or destruction shall be restrained.

k. No noxious dangerous, offensive or unduly noisy activity of any nature, nor any activity that may be or may become an annoyance or nuisance to owners of other land, shall be permitted or maintained on any part of the land conveyed herein.

In the event cable television facilities are available to the land conveyed herein, no outside television antennas or other antennas or aerials shall be placed, constructed, altered or maintained on the land without the prior written approval of the Grantor.

l. All buildings, structures, sewerage systems, water systems, installations and other improvements to be erected, placed, constructed, altered or maintained on the land conveyed herein must comply with all municipal and other governmental laws, zoning ordinances by-laws, rules and regulations duly and validly affecting said land; and if any provision herein differs therefrom such variance shall not be construed as a waiver by the Grantor of the necessity of compliance with the terms thereof.

m. The Grantor reserves the right to install, maintain, repair and replace under, over, and upon the land conveyed herein and any ways on which said land abuts or shall abut, such electric light, power, telephone and telegraph poles and wires, water, sewer, gas and drainage pipes, mains and conduits, catch basins, surface drains and culverts; and such other facilities, installations, appurtenances and things as the Grantor may deem necessary or convenient in connection with the provision of adequate drainage, sewerage disposal, water, gas, electricity, telephone and telegraph communications and other utilities to any portion of land of the said Robert J. Murphy, and the Grantor further reserves the right to grant to telephone, power, water and other public and private utility companies and corporations, to municipalities, and to such other persons and corporations as the Grantor may determine, said right of installation, maintenance repair and replacement as above described, provided, however, that in the exercise of the rights reserved by this paragraph, the Grantor shall not unreasonably interfere with the use of the land conveyed hereby.

n. No temporary structures shall be built upon the land than those necessary and used in the construction of permanent buildings and all such structures shall be removed immediately upon completion of any building operation. All structures shall be completed on the exterior within twelve (12) months from the start of construction, subject, however, to strikes, accidents, acts of God, weather conditions, inability to secure labor, fire regulations or restrictions imposed by any government or governmental agency, or other delays beyond the control of the Grantee.

o. All chimneys intended for live fires shall have flues lined through the entire height with standard clay lining or other fire resistant material and shall be equipped with a suitable spark arrester. No trash shall be burned on the land conveyed herein, and all other burning shall be subject to the regulations of any governmental agency having authority.

p. The Grantor or his agents, may, at the Grantee's expense, enter upon any vacant land for the purpose of removing any trash which has collected on said land and any fallen trees or other unsightly growth, after giving the Grantee ten (10) days written notice of his intention to do so. The Grantor may, at the Grantee's expense, enter upon the land for the purpose of pumping out or otherwise cleaning any septic tank or other sewerage system which has overflowed, after giving the Grantee fortyeight (48) hours' written notice. This paragraph shall not be construed to create an obligation on the part of the Grantor to perform these functions.

q. Each Grantee shall provide two off-street parking spaces for each lot conveyed hereunder, prior to the occupancy of any of the dwelling houses on any such lot.

r. The provisions of Section II Paragraphs (a) through (g) of these covenants, shall run with and bind the land conveyed herein for a period of ninety-nine (99) years from the date of conveyance, and only the Grantor or successor corporation or association to whom the Grantor has specifically assigned its rights and obligations of record under these covenants shall have the right at any time or times during said period to proceed at law or in equity against any person violating or attempting to violate any provision contained herein, to prevent and abate such violations, to compel compliance with the terms hereof, to enter upon the land conveyed herein and remove any building, structure, sewerage system, water system, installation, improvement, or thing hereof, at the Grantee's expense, and to recover damages or other dues for any violation. Failure to enforce any provisions herein contained in any particular instance shall not be deemed a waiver of the right to do so as to any continuing, subsequent, or other violation. The Grantor reserves to himself the right in his absolute discretion to permit other lands of the Grantor to be used in a manner that is prohibited on the land conveyed hereby, and such use of other land shall not affect the right of the Grantor to enforce the restrictive provisions of these covenants, by judgment or court order, as hereinbefore set forth. The invalidation of any of the rights and restrictions contained in these covenants, by judgment or court order, shall not affect any other right or restriction which shall remain in full force and effect.

3 a. As used in these covenants, the term "Grantor" shall mean Robert J. Murphy and include where applicable any successor and assign who has assumed the obligations of the principal developer of the subdivision. Robert J. Murphy may appoint in writing an individual, corporation or association or other entity to undertake all or designated portions of the various enforcement or approval functions and obligations reserved to said Robert J. Murphy (sometimes referred to as the Grantor) hereunder. Such appointment when accepted in writing and acknowledged before a Notary Public or other person empowered by law to take acknowledgements shall be recorded with the Dukes County Registry of Deeds. The term "Grantee" shall mean and include, where applicable, his, her, their, or its heirs, executors, administrators and assigns. Any term used in the singular shall mean and include, where applicable, the plural, and vice versa.

b. The said Robert J. Murphy reserves the right to modify, amend or waive any or all of the above-described covenants,

agreements and restrictions for any particular lot or any category of lots. Any such modification, amendment or waiver may be retroactive to the date hereof, and shall be effective when recorded with the Dukes County Registry of Deeds and shall specifically refer to these covenants as originally filed.

WITNESS my hand and seal this 29th day of August 1974

Robert J. Murphy
Robert J. Murphy

THE COMMONWEALTH OF MASSACHUSETTS

SS.

1974

Then personally appeared the above-named ROBERT J. MURPHY and acknowledged the foregoing instrument to be his free act and deed, before me-

Edward J. Moore
Notary Public
MY COMMISSION EXPIRES
OCTOBER 10, 1980

My commission expires:

Edgartown, Mass. August 26 19 74
at 12 o'clock and 35 minutes P.M.
Received and entered with Dukes County Deeds
Book 390 Page 35.

Attest: Philip J. Norton
Register