

STATE OF NORTH CAROLINA
COUNTY OF TRANSYLVANIA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
07 CVS 589

TOXAWAY VIEWS HOMEOWNER'S
ASSOCIATION, INC.,

Plaintiff,

v.

**MEMORANDUM OF
MEDIATED SETTLEMENT**

TOXAWAY VIEWS, INC., JOHN FISHER,
and JEANETTE FISHER,
Defendants.

The parties, TOXAWAY VIEW HOMEOWNER'S ASSOCIATIONS, INC., TOXAWAY VIEWS, INC., JOHN FISHER, and JEANETTE FISHER, hereto stipulate and agree that a Mediated Settlement Conference was held on the 29TH day of June, 2009, and subsequently an agreement was reached. The terms of this agreement are:

1. set forth on the attached Exhibit A.

2. Issues not settled by this Agreement are as follows:

N/A

3. Closing papers (consent judgment or voluntary dismissal) will be filed with the Court

by ~~_____~~ (date). Bleynat (attorney or party) will be responsible for

filing the closing papers with the Court. Upon completion of the documentation, the parties shall be mutual dismissed with prejudice.

Handwritten initials: (circled) JAF, (circled) JKE, (circled) WJK

4. Each of the parties hereto shall bear his/her/their/its own attorney fees, costs and pro rata share of the costs of this Mediated Settlement Conference.

5. The parties and their respective attorneys agree and consent to the Court entering and enforcing an Order based upon the terms and conditions contained in this Agreement.

For the Plaintiff

Toxaway Views Homeowner's Association, Inc

by: [Signature]

For the Defendants

Toxaway Views, Inc.

by: [Signature]

[Signature]

John Fisher

[Signature]

Jeanette Fisher

[Signature]

[Signature]

[Signature] for David Neal

Consented to:

[Signature]



Exhibit "A"

1. John Fisher and Jeanette Fisher (hereinafter, "Fisher" which reference shall include any legal entity controlled by Fisher) and Toxaway Views, Inc. (hereinafter "TVI") shall obtain a new survey of the entire property encompassed in the Toxaway Views Development (approximately 11.7 acres) together with any encroachments by the common facilities of Toxaway Views Development ("development") on the personal property of Fisher, and TVI shall then file one or more supplemental declarations to subject all of said property to the Declaration Creating Ownership and Establishing Restrictions, Covenants, and Conditions for Toxaway Views (Book 130 at Page 971) together with amendments thereto, subject to the terms and conditions of this agreement.
2. Fisher and TVI shall effect conveyance to Toxaway Views Homeowner's Association, Inc. (hereinafter, "HOA") of an easement for the subject drain field located on property controlled by Fisher into which a portion of the sewage from Building 1 flows. Once Fisher completes construction of a sewage treatment plant on Fisher's property, or other property not part of the condominium then HOA agrees on behalf of itself and the owners of the units in Building 1 that Fisher may disconnect the units in Building 1 from the 'septic tank' and subject drain field described herein and connect those units to the private sewage system constructed by Fisher and TVI, provided that the construction of the system and the connection of the owners to the system is at no cost to the HOA or the owners of the units in building one, and further provided that the owners of the units in building one at the time of the connection to the sewage system will be entitled to use the system for as long as they own their units at no charge. Subsequent owners will not be charged at a higher amount than the going rate, but such exemption from charges for sewerage treatment will

Justice Matters

terminate upon conveyance of each unit in building one.

3. HOA agrees on behalf of itself and its members not to interfere in the construction of any additional units described herein by TVI, and TVI agrees to adhere to reasonable construction guidelines to avoid interference with use of the condominium property in line with constructions practices found in other similarly situated residential developments in western North Carolina.
4. So long as the declaration of covenants is amended to require the use of fiber cement siding on the units in the development, TVI agrees to use only fiber cement siding on any new units constructed. TVI further agrees to vote any interest they may have in favor of such an amendment of declaration. TVI further agrees that it will use the same color fiber cement siding on any new units as that in the existing units.
5. The parties hereto agree to execute a general release of all claims except for claims arising out of a breach of this settlement agreement.
6. TVI agrees to abandon all declarant and/or development rights within the development and as set forth in the declaration as amended, except the right to build and to market the units more fully described herein including use of reasonable signage attendant to marketing.
7. The parties agree to take such steps as are necessary to "clean up the title and tax issues" consistent with the laws of the state of North Carolina and as they may pertain to the submission of real property to the condominium property.
8. Within 3 months from the date hereof, TVI shall demobilize all construction activity and remove construction equipment in the development except for the internal finish work to be completed in Unit 801. If there are any other times during which Fisher or

TVI are not engaged in construction for a period of three months or more, they must demobilize then as well.

9. Within 7 years from the date hereof, TVI may begin construction of the first additional building to be constructed by TVI, which building may consist of up to 6 units. Upon commencement of construction, the first building must be complete within 2 years thereof. This building will be constructed within the "center" area marked on the attached plat.

10. Within 10 years from the date hereof, TVI may begin construction of the second additional building to be constructed by TVI, which building may consist of up to 6 units. Upon commencement of construction, which in this document means issuance of a building permit, the second building must be complete within 2 years thereof, which in this document means issuance of a certificate of occupancy. This building will be constructed within the "center" area marked on the attached plat.

11. Within 13 years from the date hereof, TVI may begin construction of the third additional building to be constructed by TVI, which building may consist of up to 6 units. Upon commencement of construction, the third building must be complete within 2 years thereof. This building will be constructed within the "center" area marked on the attached plat.

12. Within 20 years from the date hereof, but only upon completion of the three additional buildings described in paragraphs 9-11 above, TVI may construct two additional buildings consisting of up to 6 units each within locations marked as X4 and X5 on the attached plat.

13. If the Fishers and TVI fail to meet any of the deadlines set forth in paragraphs 9-12, then Fishers' and TVI's rights to build hereunder shall cease, except that they may complete the building then in progress.

14. During the period of construction of the buildings described in paragraphs 9-12, TVI shall have the right to maintain a model unit for sales purposes in each building constructed.

15. TVI agrees, that upon the completion of construction of any additional building and the sale of the first unit therein, the individual assessments for the units sold to any purchaser shall be made to HOA. TVI further agrees that from that point until the point at which the last unit in said building is sold, TVI shall be responsible for paying a 25% share of a regular assessment to HOA, and that TVI shall also be responsible for maintenance of said building, said maintenance to meet the community-wide standard, until the last unit in it is sold.

16. From 1 July 2009 forward, TVI shall be responsible for payment of a 25% share of the regular assessment on Unit 801 until said unit is sold. During the period in which TVI is paying a 25% share of an assessment, they shall be entitled to a ¼ vote in HOA matters for each such 25% share of an assessment paid.

17. Within 30 days hereafter Fisher and TVI shall pay HOA \$15,000.00.

18. The parties agree to execute such documents as are reasonably necessary to effectuate this agreement.