

**COMMONWEALTH OF MASSACHUSETTS
LAND COURT
DEPARTMENT OF THE TRIAL COURT**

BARNSTABLE, ss

MISCELLANEOUS CASE
NO. 21 MISC 000545 (DRR)

ROBERT J. DOLAN and)
CHERYL DOLAN,)
Plaintiffs,)
v.)
JOHN M. LOISELLE, TRUSTEE OF THE)
39 FRANKLIN CARTWAY NOMINEE)
TRUST,)
Defendant.)

SUPERIOR COURT
CASE NO. 2272CV00189

JUDGMENT

Plaintiffs Robert and Cheryl Dolan (the “Dolans”) commenced this action in the Land Court on October 29, 2021, by filing a single count complaint under G. L. c. 231A, § 1, seeking a determination that they are entitled to relocate a segment of a recorded pedestrian easement burdening their property, in accordance with the principles set forth in *M.P.M. Builders, LLC v. Dwyer*, 442 Mass. 87 (2004). On December 13, 2021, the defendant, John M. Loiselle, Trustee of the 39 Franklin Cartway Nominee Trust (the “Trust”), filed an answer with two counterclaims: a claim for damages under common law for repair and maintenance of the existing easement and a request for an order directing that the plaintiffs restore vegetation to the

existing easement area as necessary for stability and to stop erosion.¹ On December 14, 2021, the Land Court requested a transfer of the Trust’s counterclaims to Superior Court, along with a request for interdepartmental assignment of a justice of the Land Court to hear those claims. On December 29, 2021, the Chief Justice of the Trial Court issued an Order of Transfer and Assignment authorizing the Hon. Michael D. Vhay to sit as a justice of the Superior Court to hear the counterclaims, docketed as Barnstable Superior Court Case No. 2272CV00189. On May 6, 2022, the Chief Justice of the Trial Court issued an Order of Transfer and Assignment authorizing Judge Rubin to sit as a justice of the Superior Court to hear the counterclaims. On October 10, 11, 12 and November 30, 2023, the cases were tried together, with closing arguments held on June 6, 2024 (Rubin, J.).

In a decision of even date, the court has made findings of fact and rulings of law, concluding that the Dolans’ proposal to relocate a segment of the pedestrian easement meets the standards set forth in *M.P.M Builders*, entitling them to a declaration to that effect. The court further found that the Trust is not entitled to damages, nor entitled to an order that vegetation be restored. In accordance with the court’s decision, it is hereby

ORDERED, ADJUDGED and DECLARED on Count I of the Land Court Complaint, that the plaintiffs, Robert and Cheryl Dolan, are entitled pursuant to *M.P.M. Builders, LLC v. Dwyer*, 442 Mass. 87 (2004), to relocate a segment of a recorded pedestrian easement burdening

¹ The court notes that the Trust misunderstood the location of the recorded easement, mistakenly believing that an ancient cartway, in which it holds no rights, lay along the recorded easement. At trial it became evident that the Trust’s affirmative claims in the Superior Court action related to an ancient cartway, in which it holds no rights. As discussed in a Decision of even date, the recorded easement originated from a deed dated May 29, 1953, recorded with the Barnstable County Registry of Deeds (the “Registry”) at Book 843, Page 248, whereby August L. Young conveyed a parcel of land to Samuel J. and Ann M. Pattison, together with a right of: “access to the beach through land now or formerly owned by Augustus L. Young, along an existing ten (10) foot (more or less), path running Northerly adjoining land now or formerly of one Reynolds [now Todd]” (the “10 Foot Wide Recorded Easement”). See also *Pattison v. Kerrivan*, 1 LCR 74, (Misc. Case No. 137240) (Cauchon, J.) (the “1993 Land Court Decision”) recorded at the Registry, together with a Decision Sketch and Judgment After Rescript recorded at Book 9290, Page 316 and Book 10715, Page 161, respectively.

their property because the partial relocation will not significantly lessen the utility of the recorded easement, increase the burdens on the owner of the easement in its use and enjoyment, or frustrate the purpose for which the easement was created. It is further

ORDERED, ADJUDGED and DECLARED that the plaintiffs, Robert and Cheryl Dolan, are entitled to relocate a segment of the 10 Foot Wide Recorded Easement to the location of the Proposed Relocated Easement as shown on the 2025 Decision Sketch and the Sketch Plan, Location: 33 Franklin Cartway, Brewster, MA, prepared for Robert J. Dolan and Cheryl Dolan, Scale 1"=60, by Ryder & Wilcox, Inc. P.E. & P.L.S., by David A. Lytle of Ryder and Wilcox, dated March 13, 2020, revised March 10, 2021, both of which are appended hereto, as Exhibits A and B respectively.

ORDERED, ADJUDGED and DECLARED that Count I of the Trust's Counterclaims in the Barnstable Superior Court Case No. 2272CV00189, seeking damages for repair and maintenance of the existing easement is **DENIED**. It is further

ORDERED and ADJUDGED and DECLARED that Count II of the Trust's Counterclaims in Barnstable Superior Court Case No. 2272CV00189, requesting an order directing that the Dolans restore vegetation is **DENIED**. It is further

ORDERED and ADJUDGED that all claims set forth in the Barnstable Superior Court Case No. 2272CV00189 are **DISMISSED WITH PREJUDICE**, and it is further

ORDERED that today's Decision, and this Judgment issued pursuant thereto, dispose of this entire case; the court has adjudicated or dismissed all claims by all parties in this action and has not reserved decision on any claim or defense, and it is further

ORDERED, ADJUDGED, and DECLARED that upon payment of all required fees, this Judgment or a certified copy of this Judgment and the two plans appended hereto, may be

recorded at the Barnstable County Registry of Deeds and marginally referenced on all relevant documents.

ORDERED that no costs, fees, damages or other amounts are awarded to any party.

So Ordered.

By the Court (Rubin, J.)

/s/ Diane R. Rubin

Attest:

/s/ Deborah J. Patterson
Deborah J. Patterson, Recorder

Dated: January 28, 2025

SKETCH
21 MISC 545

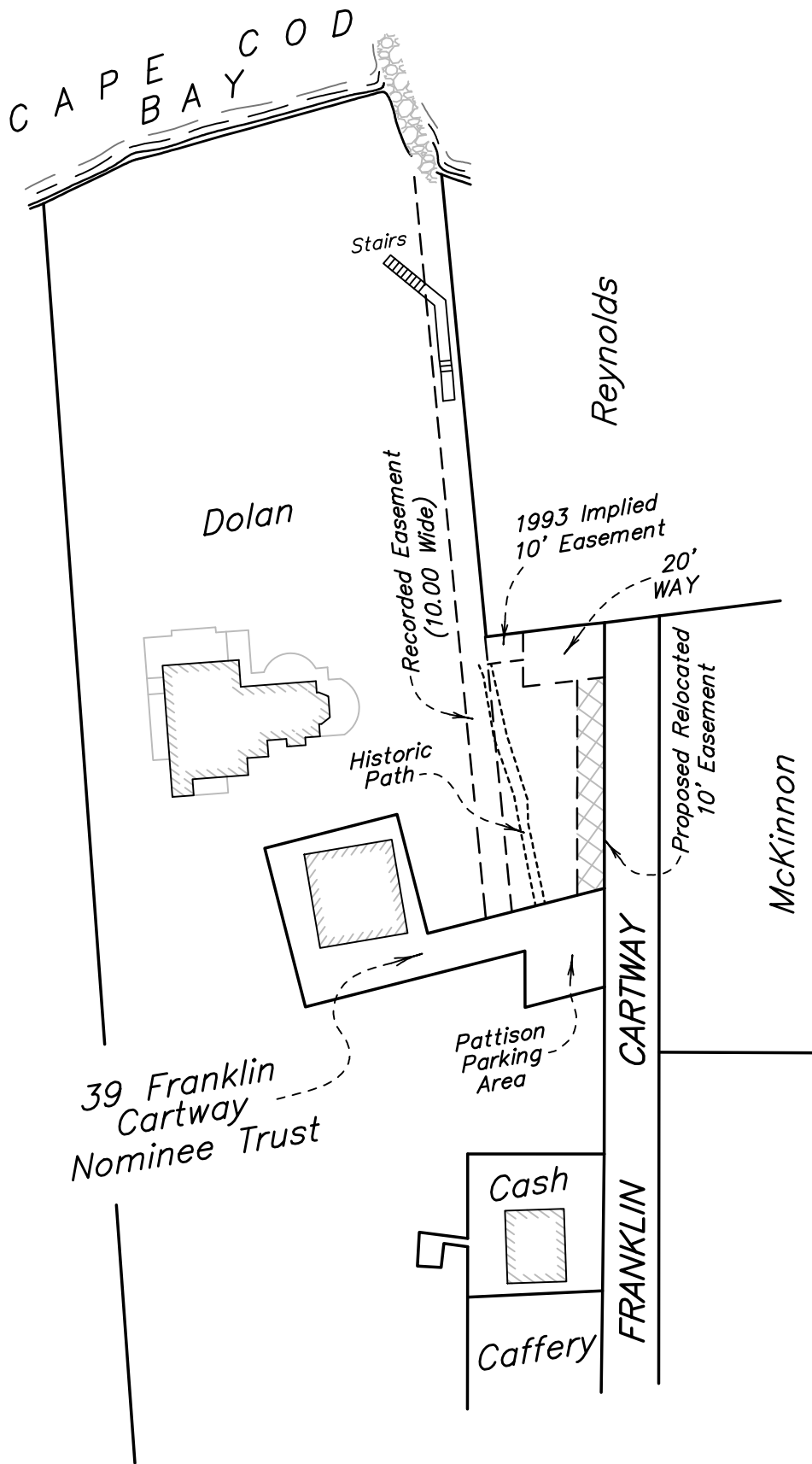


EXHIBIT "B"

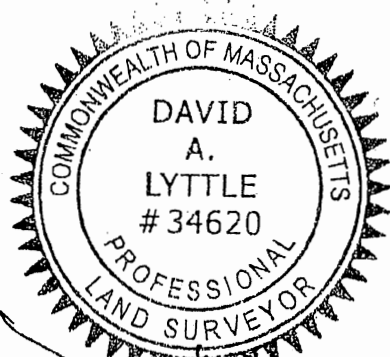
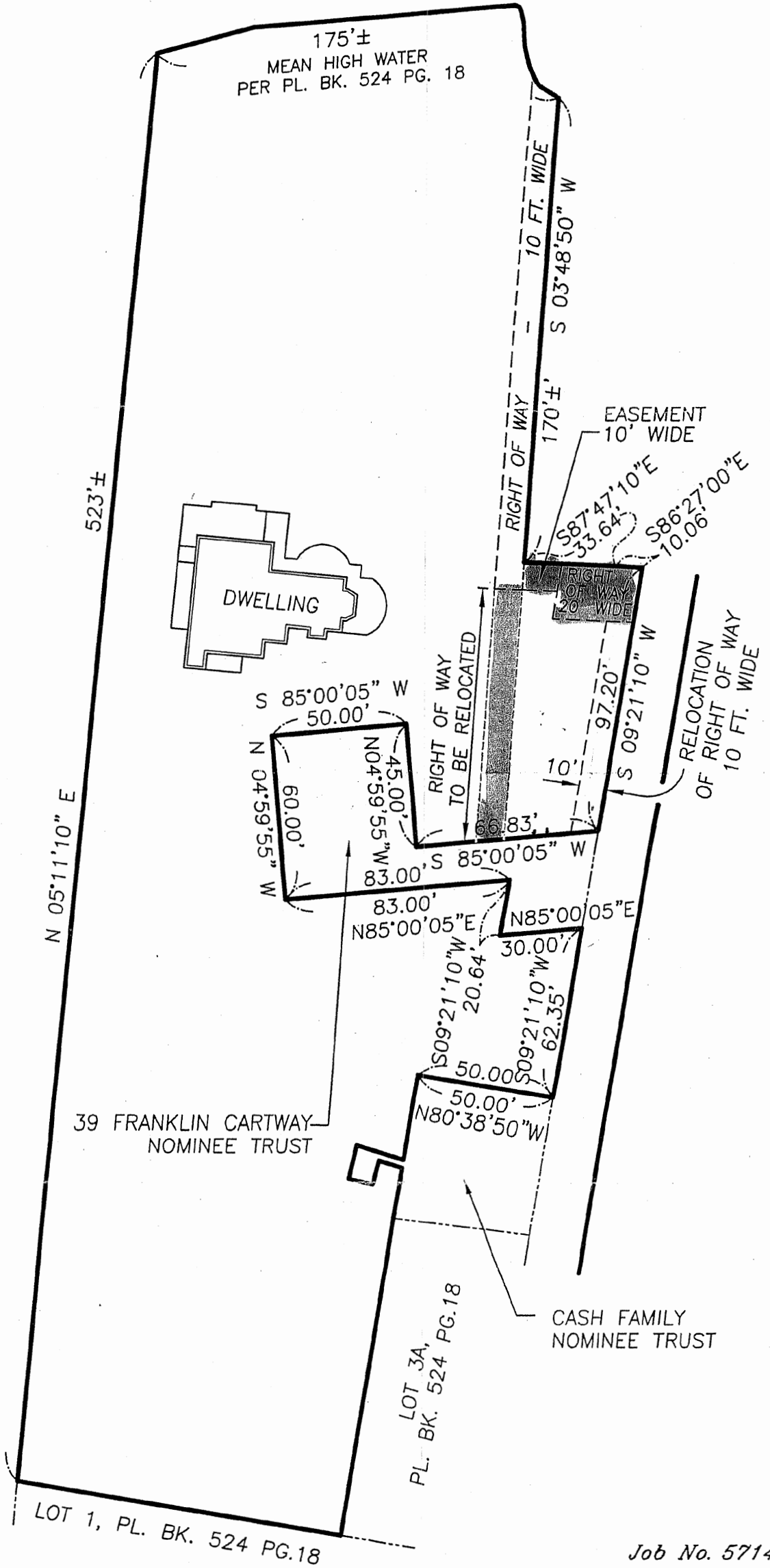
Sketch Plan
 Location:
 33 Franklin Cartway
 Brewster, MA
 prepared for
 Robert J. Dolan
 and
 Cheryl Dolan

Scale: 1" = 60'
 Date: March 13, 2020
 Revised: March 10, 2021

Ryder & Wilcox, Inc.
 P.E. & P.L.S.
 So. Orleans, MA



Reference:
 Assr's. map 50 Pcl. 12
 Dd. Bk. 30077 Pg. 272
 Lot 2A, Pl. Bk. 524 Pg. 18



3/10/2021

Job No. 5714