

25B Daffodil Lane  
Nantucket, MA 02554

October 5, 2015

Mr. Robert DeCosta, Chairman (via email [bdecosta@nantucket-ma.gov](mailto:bdecosta@nantucket-ma.gov))  
Nantucket Board of Selectmen  
16 Broad Street  
Nantucket, MA 02554

Dear Sirs,

**Re: Sandpiper Place Development, Nantucket, MA MH#791**

We are property owners and residents in Daffodil Lane and write in relation to the proposed Sandpiper Place Development. For the reasons set out in this letter we object to the development as submitted and implore the Board of Selectmen to consider our concerns and bring them to the attention of MassHousing.

**Context**

Our concerns must be considered against the background to this application.

The Sandpiper Place Development is currently one of at least 3 proposed "40B" developments in the mid-island area. Sandpiper Place Development, as proposed by Richmond Nantucket Single Family One LLC is for 50 homes on approximately 8.25 acres, but is part of a far larger plan by Richmond Great Point Development ("RGPD") to develop in excess of 300 homes and commercial units in the area.

It has been proposed that Sandpiper Place is developed on land purchased by RGPD from Walter Glowaki in 2013. Part of the land in question however is located within an existing, and entirely separate development – Cedarcrest III, and use of lots in Cedarcrest III are subject to express restrictions.

Back in 2000, as one of the conditions to the development of 46 building lots and roadways in the area which includes Evergreen Road, Daffodil Lane, Mayflower Circle and Little Isle Lane ("Cedarcrest III") the Town of Nantucket required the then developer, Mr. Glowaki, to establish a Homeowners Association ("HOA") and the covenants and restrictions to be placed upon the building lots in that development. The HOA was duly created pursuant to a Declaration of Trust dated 10 May 2000.

It is expressly stated in the Declaration of Trust that one of the purposes of the Trust/the HOA is: *"generally to promote common enjoyment by Owners of their respective portions of the Land and the best interests of all Owners with respect to the Land, as the same may from time to time be determined by the Owners, acting in accordance with the Provisions hereof."*

A further document entitled "Declaration of Restrictions and Easements" was also established at the time, the purpose of which was to restrict the use of the land so that the Cedarcrest III development was in conformity with the Planning Board's conditions of approval. The HOA has the right to enforce all of the Restrictions provided by that Declaration.

The Cedarcrest III development, as approved by the Town of Nantucket, provides for lots at the end of Mayflower Circle and Daffodil Lane. There are no roadways leading off Evergreen as suggested by the plans for the Sandpiper Place Development.

In June 2014, almost a year after it purchased the land in question from Walter Glowaki, RGPD approached the property owners in Cedarcrest III to discuss its plans for further development. Meetings of the HOA were held and shortly before the 2015 Annual Nantucket Town Meeting, an MOU was agreed between RGPD and Cedarcrest III. This MOU set out the plans RGPD and Cedarcrest III were prepared to agree in terms of future development. That MOU provided no access between Cedarcrest III and any new RGPD development.

RGPD plans were rejected by the people of Nantucket at the annual Town Meeting. The feeling of Nantucket residents was that the development, as then proposed, raised numerous issues including that the development would be too dense and did not address the issue of affordable housing.

The MOU is now defunct but despite efforts by local residents/Trustees of the Cedarcrest III Housing Association, RGPD has not re-engaged with the adjacent neighborhood regarding development plans.

Now, less than 6 months after the Town of Nantucket rejected RGPD plans, the first stage of a mammoth development has been submitted as a 40B. It knowingly includes development that Cedarcrest III has expressly stated they take issue with. This is precisely the kind of behaviour by developers that so offends communities in Massachusetts and generates resentment towards the 40B process.

### **Objections to the current proposals**

#### **Sandpiper Place ignores the Declaration of Trust and Declaration of Restrictions pertaining to Cedarcrest III**

Our principal objection to the current plan is the presumed right to use lots in the entirely separate Cedarcrest III as roads to the proposed Sandpiper Place development.

We consider this contrary to the terms of the Declaration of Trust and Declaration of Restrictions. It is absolutely not in the best interest of all property owners in Cedarcrest III.

Richmond Nantucket Single Family LLC has presented a plan for development which includes non-existing road access to the entirely separate Cedarcrest III development as a "fait accompli". They are seeking to change the use of land in an unrelated development without any reference to the obligations provided by the Declaration of Trust dated May 10 2000 or the restrictions of the Declaration of Restrictions of the same date. No consideration is being given to the rights of the property owners in Cedarcrest III or to their reasonable expectation that any empty lots will be developed subject to the covenants and restrictions placed upon those building lots.

We do not consider the matter to be as simple as Richmond Nantucket Single Family One LLC might suggest and initial legal advice obtained by concerned residents in Cedarcrest III supports this view. While it has been suggested that 40B "trumps" local zoning provisions/overrides prior approvals, we submit it does not exonerate a developer from its existing obligations nor does it deprive property

owners in the entirely separate Cedarcrest III development of the rights and restrictions set out in the Declaration of Trust and Declaration of Restrictions.

If, contrary to the rights of the HOA, use of land in the Cedarcrest III development can be changed without involvement of their trustees or the property owners, the very essence of the Declaration of Trust, the Declaration of Restrictions, and the basis on which property in the Cedarcrest III development is purchased and maintained is brought into question. Where does this leave the property owners? Why would they have to continue to comply with the restrictions and obligations placed on them? The legal arguments don't stop with RGPD using the lots contrary to the conditions of the Cedarcrest III development.

The Cedarcrest III development has lots which for whatever reason remain empty. The development has not been completed. When the HOA requested RGPD to transfer the "fee" in the roads of Cedarcrest III to them, as would be usual at the completion of a development, RGPD refused to do so. If, as a consequence, they are now claiming they have the right to use the roads in Cedarcrest III to connect with Sandpiper Place we submit they are acting contrary to the terms of the Declaration of Trust which provides that it is for the Board of Trustees of the HOA to adopt or amend regulations governing the operation and use of roadways within the Cedarcrest III development.

A lengthy and expensive legal battle in relation to RGPD's rights and obligations under the Cedarcrest III Declaration of Trust and Declaration of Restrictions is highly unattractive but residents and owners may be left with no choice but to pursue legal action if it is the only way to ensure their rights, and the obligations of the developer of Cedarcrest III, are upheld.

### **Safety**

The root of our concern that RGPD complies with existing restrictions on the use of the land in question is not just a matter of principle but a matter of safety.

The Evergreen Road, Mayflower Circle, Daffodil Lane, and Little Isle Lane area was permitted to be developed as a cul-de-sac. The road is currently paved and without speed bumps. In accordance with the provisions of the Declaration of Trust, it is for the HOA to maintain, improve and replace the roadway. The roadway is indeed ploughed in winter by the residents. On any given day there are families strolling along the sidewalks, dogs being walked, and children running between houses. It is above all a very family oriented neighborhood.

RGPD's plans, if permitted to be developed as proposed, would massively increase the number of cars using our neighborhood roads and would create a "rat-run" between busy Old South Road and Airport Road.

The proposed Sandpiper Place is bigger than the original Cedarcrest III development in relation to which the Town permitted only 46 units. As we have said, for whatever reason there are units in Cedarcrest III which have not yet been developed but which RGPD now appears not to want to develop in accordance with the development plan agreed to by the Town of Nantucket.

If Sandpiper Place is permitted to be developed as proposed, it alone may at least double the number of cars using roads in Cedarcrest III.

The further stages of RGPD's plans, if permitted, would again increase the number of cars and commercial vehicles in the neighborhood but also create a link between Old South Road and Airport Road. There is no other neighborhood like it on the island. A fair comparison would be to open up Naushop to Milestone Road via Tawpoot and Sesapana Road. Or if Milestone Crossing could be accessed by vehicles coming from Old South Road/Pine Tree Road via Proprietors Way which of course is restricted to pedestrian access only. For obvious reasons of safety, there is no precedent for such a roadway to be developed in a residential neighborhood.

It is impossible to ignore this valid concern of the plan as currently proposed. RGPD have been well aware of Cedarcrest's III's objections to their development for this very reason and yet still persist in presenting a plan which takes absolutely no consideration of our concerns or the provisions of the Declaration of Trust. To allow a separate development to have the effect of substantially increasing traffic in Cedarcrest III would be devastating to the nature of this neighborhood.

### **Conclusion**

We disagree that Richmond Nantucket Single Family One LLC/Richmond Great Point Development has the right to use the roads in Cedarcrest III as presented, but in any event, for reasons of safety the plan should not be considered acceptable as currently proposed.

The island needs affordable housing—there is no question about that. Whether the number of homes envisaged by RGPD can be supported by the existing infrastructure at the proposed development site is a separate issue which we are not in a position to address. But we do ask the Town and MassHousing to explain why a developer should be permitted to ignore the conditions of an existing (unfinished) development and in doing so substantially change the character of that existing neighborhood. Surely the logical and reasonable step is for Richmond Great Point Development to complete the Cedarcrest III development, and Sandpiper Place, to the extent it may be permitted, be developed as its own neighborhood with its own separate access? This would be in keeping with every other development on the island, avoid the legal issues of the current plan and satisfactorily resolve our concerns regarding safety.

There can be no disagreement that the objective of the 40B process is to provide affordable housing which is indistinguishable from the neighboring community. By the same token, it must be seamlessly integrated within an existing area. Sandpiper Place as currently proposed does not do that. Small developments located across the island, not just one mammoth development isolated in the mid-island area must surely be the way to proceed.

Kind regards,

  
**Mr. and Mrs. Scott Allan**

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