

Bay Pointe Village Homeowners Association
Mailing Address
46 Bay Pointe Drive Extension
Buzzards Bay, MA 02532

To: Town of Wareham Planning Board
Town Planner Ken Buckland
Consulting Engineer Charles Rowley

January 31, 2022

Subject: Project 36-21 Bay Pointe Club LLC
Phase IV Site Plan Review

Re: Response to Attorney Rosa's Opinion Letter
Dated January 4, 2022

The Bay Pointe Village Homeowners Association (Village) would like to respond to the opinion letter by Attorney William Rosa dated January 4, 2022. The Village would like its response to be entered as part of the record.

There are many statements in Atty. Rosa's letter that are not accurate. The 2014 Sewer Pump Station Agreement (the Agreement) between the Village and The Bay Pointe Club (Club) was initiated by the Village. Not the Club as stated.

The Club did, in fact, receive consideration in this Agreement. The Club received the right to connect multiple multi-family condominiums, which they wanted to build for profit, to the existing Pump Station.

The Village disagrees that the document makes clear that the Club is the owner of the Pump Station. If anything, the document makes clear that the Village is the owner of the Pump Station. Otherwise, what is the point of the Easements spelled out in the Agreement? Why would the Village be responsible for all operational and maintenance decisions, entering contracts, meeting Town requirements, replacing equipment and lines at whatever cost and quality the Village determines without notification or approval by the Club if they were not the owners of the Pump Station? Why would the Village take on this hardship? The answer is because the Village is the owner of the Pump Station and has been since the owner of the golf course and original developer of the Village went bankrupt in 1989. This was twenty-five years before Mr. Fay and the Club owned the golf course property. There is a long-standing precedent regarding the Village's ownership of this Pump Station.

The Club does not have the right to grant easements to other parties, as stated. In fact, the Agreement spells out just the opposite - page four, last paragraph in part (3). Again, Atty. Rosa repeats that the Club did not receive consideration in this Agreement. This is simply not true. The Village received the easement to the land and the sharing of operational and maintenance cost of the Pump Station in writing, and the Club received development rights. This Agreement is a Quid Pro Quo. The Club received much more than they gave and now they are getting greedy and want complete ownership of the existing Pump Station for further profit on additional land that is not included in this Agreement

Nowhere in the Agreement does it state that the Village is obligated to assist with the operation and maintenance in return for the Easement. The Village is obligated because the Village is the owner of the existing Pump Station.

The Village agrees that this Agreement gives the Club the rights to connect their multi-family dwellings to the Pump Station under the conditions listed in sections 6B through 6F. As stated, sometimes these conditions require notifying and submitting plans to the Village after they receive Town authorization (6B). Sometimes they require notification and submission of plans to the Village before they seek Town authorization (6C). And sometimes they need the Village's written consent - as is the case with diverting the Force Main Line servicing the Village into the additional Pump Station (6C - last three sentences).

Atty. Rosa further goes on to state that if the Club purchases the parcel of land that Phase 4 is to be built on (Lot 1004B), that Lot could be characterized as Club Property included in this Agreement and therefore dwellings built on this land can be connected to the existing Pump Station. In order to get to this conclusion, he has to state the term "property" in the Agreement is ambiguous. Nothing could be further from the truth. Exhibit B on page nineteen specifically spells out the description of Club Property by Lot number and map (page 18). And the first sentence in section 6 says that additional Club structures are to be on Club Property. The additional piece of land that Phase 4 is to be built on is **not** on Club Property and is **not** included in the Agreement. This is about as unambiguous as it could be.

In Summary, it is the Village's position that:

- 1) The Club does not have the right to connect additional structures built on Lot 1004B to the existing Pump Station as spelled out in the 2014 Sewer Pump Station Agreement.
- 2) The Club does not have the right to divert the Force Main Line servicing the Village **without** the Village's written consent.
- 3) The Club is not supplying the required notifications and documentation to the Village as described in section 6C of the Agreement.
- 4) The Village is the owner of the Pump Station.

Thank you,

Bay Pointe Village Homeowners Association