

**Paul Foley**

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**From:** Davio [davio@ninemtn.com]  
**Sent:** Tuesday, December 13, 2011 11:17 AM  
**To:** Paul Foley; LR Oraibi; Kristen Reimann  
**Subject:** LUPC 12/19

Lagoon Ridge Association

Draft By-Laws

Second Draft, dated December 10, 2011

Title:

Declaration of Agreements and Protective Covenants for Lagoon Ridge, a Land Development Project in the Town of Oak Bluffs, MA.

Location and Description:

[X] \* Insert Maps and Page Numbers, bounds (if required for filing) and names of Owner's of Record, description of Nominee Trusts, etc.

Purpose:

It is the intent of the Lagoon Ridge Project to develop the land in a way that respects and nurtures the well-being of the natural environment and the human community by ensuring that the structures and activities of man enhance the open, natural, and scenic features of the land; to maintain open spaces; to protect the waters of Lagoon Pond; to foster the creation of a sustainable and vibrant community, and to provide for the proper use, management and maintenance of the roads, trails and common lands and structures on the above-described property.

Definitions:

The following words when used in this Declaration shall have the following meanings:

- a. "Architectural Review Committee" (ARC) shall mean a duly designated advisory committee of the Lagoon Ridge Project, hereinafter provided for.
- b. "Declaration" shall mean this declaration of protective covenants.
- c. "Association" shall mean Lagoon Ridge Association.
- d. "Lot or Parcel" shall mean and refer to any lot of land or building site shown on said Plan.
- e. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any lot situated on the property, but shall not refer to a mortgagee having a mortgage secured by any lot unless such mortgagee has acquired title pursuant to foreclosure or a proceeding in lieu of foreclosure.
- f. "Plan" shall mean the plan of land entitled "[X]"

"Building Envelope" shall mean the area designated on each residential lot or building site shown on the Plan. All residential and appurtenant structures, as well as improved vehicular parking areas and lawns, shall be contained within the approximate

\*Sections that are not yet written or defined fully are inserted in the text as "[X]" for ease in searching and editing.

boundaries of the building envelope, provided, however, that the area encompassed therein shall not be increased in size, and that no more than 10% of a building envelope may be relocated to change the shape of the envelope to accommodate a particular building and landscape design.

h. "No -cut zone" [x]

i. [x]

Community Obligations: General

Community Obligations: Roadways and Driveways

Community Obligations: Environmental Protection

Building's Energy Efficiency: Requirements

Housing for Persons Over 55 Years of Age: Requirements

District of Critical Planning Concern: Special Provisions

Water Recharge Area: Special Provisions

Cohousing Project: Limitations and Exclusions

[X] The following sections will be slotted in under the headings above, or vice versa.

#### Protective Covenants

a. Applicability. This Declaration and these covenants shall be binding on the Declarant, its successors in interest, and assigns, including all Owners. The covenants imposed herein shall run in perpetuity with the land shown on said plan and shall operate as restrictions upon said land and shall be for the mutual benefit of the owners of the lots and building sites shown on said plan. A duly executed copy hereof shall be recorded with said plan. Amendment of this provision shall require Oak Bluffs Planning Board approval.

b. The Association. Upon the distribution of lots in liquidation of the LLC [X] there shall be created the "Lagoon Ridge Association" the members of which shall be all owners of residential lots and building sites. The Association thereafter may be organized as a Massachusetts corporation, in which event it shall govern its affairs as provided in its Articles of Organization and Bylaws and empowered to make assessments for improvements and attend to other matters of mutual interest. Unless otherwise herein provided, the Association shall act on a majority vote of its members, with each lot or building site having one vote.

c. Assessments and Lien for Non-payment. The Declarant hereby covenants for each Lot owned by it, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant, to pay to the Association after the liquidation of [x]: (1) annual assessments or charges not to exceed \$1,000 per vote per annum unless modified by 2/3 affirmative vote of the Association and (2) special assessments for capital improvements, which shall require a 2/3 affirmative vote of the Association (except in the case of such critical improvements as may be necessary to ensure access to the land shown on said plan), such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof (including attorneys' fees) as hereinafter provided, shall be a charge on the Property and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together

with such interest thereon and costs of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due.

d. Purpose of Assessments. Assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the Owners and visitors to the Property and, in particular, for the improvement and maintenance related to the use and enjoyment of the roads and those portions of the subdivision used for common purposes, including, but not limited to, the payment of taxes and liability insurance thereon, maintenance of the roads, paths, and equipment, and for the cost of labor, equipment, materials, and the management and supervision thereof. Taxes and other costs related to any parcel of non-residential land not held in common by all partners shall be the responsibility only of those lot or building site owners having an interest in the said non-residential lot.

e. Amount and Time of Payment of Annual Assessments. The amount of each annual assessment and the time at which the same shall be payable shall be determined by the Association.

f. Certificate of No Lien. The Association shall, upon demand, at any time furnish to any owner a certificate in form recordable in the registry of deeds, setting forth the amount and due date of said assessment and whether the same has been paid. Such certificate may be signed by an officer designated by the Association, and the signature of such shall be conclusive of their authority, and shall be conclusive evidence of payment of any assessment therein stated to have been paid and, except to the extent disputed by such Owner, of the amount of any assessment therein stated to be unpaid.

g. Effect of Non-payment of Assessment; The Personal Obligation; The Lien; Remedies of Association. If any assessment is not paid on the date when due, determined as aforesaid and in accordance with any Articles of Organization or Bylaws of the Association, then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the Lot with respect to which the assessment was levied which shall bind such Lot in the hands of the then Owner, his or her heirs, devisees, and personal representatives and assigns. Said assessment shall also be the personal obligation of the Owner.

If the assessment is not paid within ninety (90) days after the date upon which the same shall be payable, the assessment shall bear interest from such date at the rate of eight (8%) per cent per annum, and the Association may bring an action at law against the Owner liable therefore, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action; and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the court, together with the costs of the action.

h. Review by Architectural Review Committee. No building, fence, wall or other structure or improvement of any kind or nature shall be commenced, erected, or maintained upon the Property, nor shall any exterior addition to or change or alteration therein be made until forty-five days after the plans and specifications showing the nature, kind, shape, height, materials, and location of the same, as well as plans for landscaping, the cutting and clearing of vegetation, the location of driveways, the height and location of antenna(e) for radio or television, and the location of water and sewerage facilities shall have been submitted for review by the Architectural Review Committee (ARC). Maintenance of established improvements, fields and the like shall not require further review, nor shall minor changes to existing landscaping require review.

i. Review Guidelines. In making its recommendations, the ARC shall consider the purposes of these covenants, particularly the preservation of land in its natural state to the maximum extent possible, and to the extent land is developed, that such development be done unobtrusively, and in a manner which accents, and the colors and materials of which blend into, the desired rural environment.

j. Owner's Duty to Maintain. Every Lot and any structure thereon shall be maintained in a neat and orderly condition with respect to adjacent lots and ways.

k. Use of Residential Lots and Building Sites.

(1) Except as hereinafter provided or shown on the Approved Plan, the Residential Lots and Building Sites in this subdivision shall be used for single family residential purposes only (including accessory uses allowed by zoning), unless the Association specifically approves some other use which may be permissible under law. It is the intent of this provision that no additional buildable lots will be created. Provided however, that the foregoing provisions shall not be deemed to prohibit any re-subdivision of the land shown on said plan which (a) adjusts lot lines between any lots, or (b) provides for the relocation of a residential lot, without increasing the number of residential lots or building sites shown on said plan, or (c) is for the purpose of adding land to a non-residential lot by decreasing the acreage of a residential lot. Amendment of this provision shall require Oak Bluffs Planning Board approval.

(2) No building shall be constructed upon any Lot or Building Site except in the building envelope designated on the Plan. Agricultural, garage and other accessory buildings may be physically separate from the residential building but shall be constructed or maintained only within the building envelope. A building envelope may be changed only with the approval of the Association and the Oak Bluffs Planning Board and subject to requirements of law.

These building envelopes to contain the house, accessory buildings, lawn, garden, parking area and the like are intended to decrease the area permanently disturbed by development. Areas outside of building envelopes may be restored in character with the surrounding land or maintained as woodland, tall grassland or meadows (maintained by occasional mowing) to establish or maintain vistas as well as to replace lost open field habitat. These areas of meadow may include septic systems, wells, water pipelines and similar subsurface improvements that are appurtenant to the development. Agricultural and recreational uses will also be allowed outside of the designated building envelope, subject to requirements of law and these covenants.

(3) Height of structures on all lots shall be subject to the Oak Bluffs Bylaw Section [X] . In no event shall a structure on a Lot, except chimneys and antennae servicing living units, exceed [X] feet in height measured from the mean of the contiguous (adjacent) ground level.

(4) No more than three motor vehicle parking spaces per residential unit shall be allowed on each Lot unless the same shall be screened from any point outside the boundaries of the Lot. This provision shall not be construed to prohibit occasional visitors from parking on Lots for brief periods of time (e.g. during social events). Parking areas shall not be paved unless required for compliance with the Americans with Disabilities Act (ADA).

(5) No unregistered vehicles, equipment or material shall be placed or stored on any Lot except:

(a) Equipment or material for use in connection with the construction or maintenance of a living unit or amenities appurtenant thereto and permitted hereunder upon a Lot, except that construction materials and/or vehicles shall not be stored on a lot for longer than eighteen (18) months at a time; (b) Unregistered vehicles, equipment and materials not visible from any point outside the boundaries of the Lot; and (c) Equipment and machinery which is part of ongoing farming activities; and

(6) No mobile home, either with or without wheels, shall be permitted upon any Lot except for the temporary installation by the owner of a Lot or his contractors of trailers for use as field offices or tool sheds and the said trailers shall not be kept on the lot for longer than eighteen (18) months at a time.

(7) Any exterior lighting installed on any Lot shall be installed and operated in such manner as to prevent offensive glare or illumination beyond the boundary lines of the Lot.

(8) Except as authorized by the Association, no signs shall be permitted on any Lot except for one sign not over 1-1/2 square feet in area, indicating, at the Owner's option, the Owner's name, occupation and/or the name and street address of the Lot.

(9) All garbage, trash and rubbish placed outdoors shall be kept in covered containers protected from animals and screened from view outside the boundaries of the Lot.

(10) [X] Insert any issues required by the Massachusetts Natural Heritage and Endangered Species Program and the Oak Bluffs Conservation Commission. Any amendment of this provision shall require Oak Bluffs Planning Board approval and the approval of the Oak Bluffs Conservation Commission.

#### I. Use of Non-Residential Lots.

(1) Any lands shown on the said plan designated as non-residential lots, transfer lots, or hereafter designated as common lands, or hereafter added to these areas, shall be managed by the owner or owners of such area. Certain of these areas shall be managed for agricultural purposes, wildlife and/or plant management. Any structures to be built appurtenant to said uses shall require a 2/3 affirmative vote of the Association and shall comply with requirements of law. Any significant changes to vegetation patterns on the non-residential lots shall require a 2/3 affirmative vote of the Association and shall comply with all other requirements of law. If said lots are proposed for use other than those set forth herein, Oak Bluffs Planning Board approval shall be required.

#### Specific Prohibitions.

(1) Use of pesticides, herbicides and fertilizers shall be prohibited except as part of ongoing agricultural activities, or to control noxious vegetation such as poison ivy, all subject to municipal regulations and any other legal requirements. Any fertilizers containing nitrogen compounds must be formulated as slow-release products and used in their minimally-effective concentrations.

(2) No activity will be undertaken which will disturb any known archaeological site on the property without the prior written approval of the Massachusetts Historic Commission. Any newly discovered site shall be protected. Amendment of this provision shall require Oak Bluffs Planning Board approval.

#### Easements

##### a. Access Easements.

1. Each Lot and building site shown on said Plan shall have the benefit of an appurtenant easement to use the ways shown on said Plan for passage by any means, including to and from Sages Way, subject to such restrictions as the Vineyard Hills Association and Lagoon Ridge Association may from time to time impose to reasonably regulate speed and travel for the common good. Except as hereinafter provided, all roadways and paths noted in this section shall be maintained by the Lagoon Ridge Project and Association in accordance with the roadway design approved by the Oak Bluffs Planning Board for this subdivision.

2. Residential lots and building sites in the subdivision shall have the benefit of appurtenant easements to use non-residential and common areas for such purposes as walking, horseback riding, bird-watching and other similar passive recreational activities, under regulations established by vote of the Association, and in those areas designated by vote of the Association. [x] More detail on gardens, playing fields, if any, etc. required.
3. An area adjacent to the intersection of Barnes Road and Double Ox Road shall be reserved for the purpose of establishing and maintaining a parking area for use by the lot owners, their tenants and guests for picking up children from school busses, utilizing public transportation, carpooling and the like.

General:

- a. Counterparts. This agreement may be executed in any number of counterparts, each of which when executed and delivered, including the copy to be recorded in the Dukes County Registry of Deeds, shall be an original instrument, but all counterparts shall constitute one and the same instrument.
- b. Enforcement. The provisions hereof may be enforced by Declarant, by its successors in interest and assigns, and by the Owners from time to time of any Lot shown on said Plan and by the Town of Oak Bluffs, through civil action in any court of competent jurisdiction, or by administrative proceeding before any appropriate authority. Amendment of this provision shall require Oak Bluffs Planning Board approval.
- c. Severability. Invalidation of any one or more provisions hereof by judgment or court order shall not affect the remaining provisions, which shall remain in full force and effect.
- d. Amendment. Except as herein provided, the provisions hereof may be amended by a 2/3 affirmative vote of the Association.
- e. ....Recording. This document, including subsequent amendments, may be re-recorded by the Association or the Oak Bluffs Planning Board at such intervals as may be necessary to ensure these covenants shall continue in full force and effect.

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