

August 12, 2020

Town of Nantucket Board of Health
c/o Stephen J. Visco, Chair
NRTA Building
3 East Chestnut Street
Nantucket, MA 02554

Dear Chair Visco and Board of Health Members,

We write to you as a collective of local owners and developers who have had the distinct pleasure of living with and serving the residents of Nantucket for a combined more than 50 years. Long renowned for its historic significance and natural beauty, the Island of Nantucket has been a place that all its residents have been proud to call home.

Over the years, we have developed important and collaborative working relationships with the Town and its professional staff, and we have striven to be allies for positive, thoughtful development that preserves and reflects the natural beauty and resources this Island has to offer. These relationships have included a strong, collaborative partnership with the Board of Health, and for that, we collectively thank you for your dedication and professionalism.

In a meeting of the Board last year, a decision was made to include residential semi-public pools among the list of those required to maintain certified pool attendants on duty during hours of operation. This decision was contrary to nearly a decade of enforcement precedent and we believe based upon a misinterpretation of the policy adopted by the Board in 2011. This change in policy did not respond to a single water safety incident or fatality linked to a residential semi-public pool on Nantucket. We too take water safety very seriously and while we applaud the Board for its thoughtful consideration of improvements to local pool requirements, we respectfully believe that the Board's amendment fails to account for very real consumer incentives and resulting behavior. As a result of the Board's recent application of its pool attendant policy to residential semi-public pools, we expect to see our community turn to private pool alternatives that are not only less safe, but also contribute to environmental harm and energy waste.

Due to these concerns, we hired Boston-based Smith, Costello & Crawford Public Policy Law Group, a leading public policy law firm in Massachusetts in the areas of healthcare and public health to analyze the Town's policy and determine if any unintended consequences might result. After a careful review supported by extensive research, it was their assertion that the enforcement of this policy on semi-public residential pools will make Nantucket an outlier by creating harmful consumer incentives

that may undermine our shared goals of increased safety for our residents in Nantucket. We have attached Smith, Costello & Crawford's full report and findings and hope that you will carefully review and consider their recommendations.

As committed community partners, we respectfully request your collaboration in engaging around this issue and we look forward to years of continued service to the Town of Nantucket.

Thank you,

DocuSigned by:

Alfred T. Sanford

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Terry Sanford, Hawthorne Park

DocuSigned by:

Gary Kleiman

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Gary Kleiman, Finback Lane

DocuSigned by:

Steve Bowler

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Steve Bowler, Grey Lady Lane

DocuSigned by:

Mike Freedman

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Mike Freedman, Nobadeer Meeting House

DocuSigned by:

Ruth Plandowski

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Ruth Plandowski, Beach Plum Village

MEMORANDUM

TO: Blue Flag Partners, LLC; CEA Group Realty, LLC; Design Associates, Inc.; EK Associates, LLC; Mercantile Property Management; Slacktide Development, LLC

FROM: Smith, Costello & Crawford Public Policy Law Group

DATE: August 19, 2020

RE: Memorandum to Client: Review and Analysis of the Town of Nantucket's Board of Health Oversight of Residential Semi-Public Pools

PURPOSE OF MEMORANDUM

The purpose of this Memorandum ("Memo") is to document Smith, Costello & Crawford's (the "Firm") analysis of the public policy implications surrounding a 2019 decision by the Town of Nantucket Board of Health (hereby "the Board") to begin enforcement of a requirement that all semi-public pools, both residential and commercial, within the Town maintain a Certified Pool Attendant on duty during hours of pool operation. It is the Firm's understanding that while a requirement had previously been in place, it was the enforcement posture of the Board to specifically exclude residential semi-public pools (i.e. shared condominium pools) from this regulation.

The Firm's analysis was conducted at the direction of Blue Flag Partners LLC, CEA Group Realty, LLC, Design Associates, Inc., EK Associates, LLC, Slacktide Development, LLC, and Mercantile Property Management (the "Client") in order to determine whether, in the Firm's expert opinion: 1) such a policy achieved the express safety and environmental goals identified by the Town as motivational to this policy's creation; 2) based on relevant available studies and data, as well as the professional experience of members of the Firm whether enforcement of the Board's policy is likely to result in any unintended public policy consequences that may undermine the Town's express motivational goals; and, 3) any alternative policies that may exist that would meet these express goals without creating the identified consequences, if any.

Below, please find a detailed report on the Firm's findings, as well as a recommended course of action that will best achieve the public health and safety goals of the Board.

SUMMARY

The Town of Nantucket Board of Health’s decision to expand enforcement of staffing requirements to include residential semi-public pools raises a number of public policy consequences that are in direct opposition to the Board’s stated policy goals. First, the Town of Nantucket is an outlier compared to its state and national counterparts. This is largely due to both the operational impracticality of the requirements, as well as the unintended impacts that these requirements have in materially incentivizing consumer behavior, encouraging local residents to construct private pools as less burdensome and more cost-effective alternatives to residential semi-public pools. While the Board seeks to enhance the safety of its residents, discouraging residential semi-public pools will increase the likelihood of private pool development, significantly increasing the statistical likelihood of water fatalities—fatalities that are nearly twice as prevalent in private pools. Additionally, Nantucket is known throughout the Commonwealth as a leader in the development of environmentally-focused policy; however, these same consumer behaviors will likely result in negative environmental impacts, including, but not limited to increased energy utilization, increased water utilization, and increased contamination due to runoff. Therefore, the decision to impose this requirement on residential semi-public pools undermines the Board’s stated public policy interests. The Board’s objectives would be more effectively—and safely—achieved by adopting the attached recommended written policy.

PROBLEM & OPPORTUNITY

Massachusetts regulatory code 105 CMR 435.00, *State Sanitary Code Chapter V: Sanitary Standards for Swimming Pools* (“Massachusetts Pool Code”) establishes the statewide minimum standards for public and semi-public pools. Such standards may, at the direction of a local board of health, be supplemented and expanded. The Massachusetts Pool Code defines a semi-public pool as a “swimming, wading or special purpose pool on the premises of, or used in connection with a hotel, motel, trailer court, apartment house, condominium, country club, youth club, school, camp, or similar establishment where the primary purpose of the establishment is not the operation of the swimming facilities, and where admission to the use of the pool is included in the fee or consideration paid or given for the primary use of the premises.”¹

On December 8, 2011, the Board sought to increase water safety in the Town of Nantucket, and as part of that effort, required standards above and beyond the minimum requirements of the Massachusetts Pool Code. These local standards included requiring a trained and certified Lifeguard to be on duty at all times during the operation of a licensed semi-public pool. However, the Board appropriately recognized that this regulation was intended specifically for commercial properties, such as hotels and private clubs. During this meeting, then-Director Richard Roy stated, “...by asking the Board to approve...mandated lifeguards for all pools associated with hotels and motels, and not for housing developments and condominium units.”² As such, the Board distinguished residential homeowners’ associations from commercial public

¹ *Definitions*, 105 CMR 435.01 (2004).

² Roy, R. (Director). (2011, December 8). In *Minutes of Board of Health meeting 8 December 2011*.

pools through its enforcement posture, in effect, exempting residential semi-public pools from the Board's requirement for nearly a decade.³

Due to identified staffing shortages, on November 2015, the lodging community on Nantucket sought additional relief from the Board from this requirement, seeking allowances to employ CPR-trained pool attendants on premise, rather than a certified Lifeguard. Notably, this meeting began with an incorrect statement by the Board of Health that all semi-public pools required Lifeguards, when in fact residential semi-public pools had been exempt from this requirement since 2011. In November 2015, the Board granted the hotels' request to ease this burden, and because the existing regulation previously exempted residential semi-public pools, these residential semi-public pools remained exempt from this new regulation.⁴

It is the Firm's understanding that since the Board's meeting in 2011, there has not been a drowning incident at a residential semi-public pool in Nantucket.

However, in 2019, contrary to long-standing enforcement practices, the Board announced that all semi-public pools, including residential semi-public pools, shall be required to have a Certified Pool Attendant on duty during all hours of operation beginning in 2020, dissolving the distinction between residential and commercial semi-public pools.⁵

Based on the Firm's significant public health experience, a review of available research and data, and when accounting for consumer incentives and associated behaviors, a requirement for *residential* semi-public pools to staff a CPR Trained Pool Attendant during all hours of operation raises a number of probable environmental, economic, and public safety consequences that undermine several key objectives expressed by the Board. Specifically, based on likely consumer behaviors, application of such standards on residential semi-public pools (distinguished from commercial semi-public pools), will result in an increase of by-right development of cheaper, less safe, and less environmentally friendly private residential pools. Given these likely consequences, the Firm recommends to the Client that you work collaboratively with the Board to seek alternative policy measures that will best achieve the mutual desire for improved safety and environmental protection.

Nantucket is an outlier

While we fully recognize and do not dispute that pursuant to the Massachusetts Pool Code (see 105 CMR 435.17(4)), the Board may require "at least one trained person on the premises at all times that the pool is open...", Nantucket is an outlier in adopting such a requirement for residential semi-public pools—a fact acknowledged by this Board in December of 2011.⁶ Within Massachusetts, there are safety regulations regarding fencing, signage, hours of operation, and other measures that semi-public pools—both commercial and residential—must

³ Town of Nantucket. (2011). 'Semi public Swimming pool lifeguard policy'. In *Minutes of Board of Health meeting 10 November 2011*. 4 Fairgrounds Road: Community Room.

⁴ Town of Nantucket. (2015). 'Discussion regarding lifeguard requirement at all public and semi-public pools'. In *Minutes of Board of Health meeting 19 November 2015*. 4 Fairgrounds Road, First-floor Conference Room.

⁵ Town of Nantucket. (2015). 'Discussion regarding lifeguard requirement at all public and semi-public pools'. In *Minutes of Board of Health meeting 2019*. 4 Fairgrounds Road: Community Room.

⁶ Roy, R. (Director). (2011, December 8). In *Minutes of Board of Health meeting 8 December 2011*.

abide by.⁷ These are mandatory for all semi-public pools and are not at the discretion of local boards of health. However, very few municipalities within the Commonwealth have chosen to apply staffing standards to residential semi-public pools. The City of Worcester, which is home to a significant percentage of all semi-public residential pools in Massachusetts, does not outline requirements for a pool attendant to be on site during open pool hours for semi-public pools. The City of Boston also does not impose such a requirement on residential semi-public pools, such as condominiums. On May 27, 2020, the Board of Health in the Town of Barnstable reaffirmed a 2018 decision to exempt residential semi-public pools in condominiums with less than seventy-five (75) units.⁸ At minimum, there are seven towns on the Cape – Dennis, Sandwich, Bourne, Chatham, Orleans, Truro, and Provincetown – that do not have lifeguard or certified pool attendant requirements in their regulations.

Surrounding states have similar policy landscapes. For example, Rhode Island’s regulations specifically state in part, “condominium projects with forty-five (45) units or less are not required to have staff of any kind on duty at any swimming pool located on the premises.”⁹ In Maryland, while specific guidelines are established for the safe design of semi-public pools, regulations do not require Pool Attendants to be on duty.¹⁰ In fact, Worcester County in Maryland only explicitly requires signage alerting swimmers that no Pool Attendant is on duty.¹¹

We recommend that the Board follow the same sound public policy conclusion that it reached in 2011 and draw a clear distinction between residential semi-public pools and commercial semi-public pools for its policy. Doing so will maintain appropriate consumer incentives aimed at encouraging safer, more environmentally friendly semi-public options.

Staffing lifeguards and/or Pool Attendants at residential semi-public pools is not practical

The traditional homeowner’s association is a self-managed non-profit entity, run by a volunteer board of homeowners, many of whom may not be full-time residents, in order to collect dues, maintain properties, and enforce established bylaws. Such associations are not equipped, nor are elected, to maintain and manage fulltime seasonal staff. By enforcing the Board’s regulation on residential semi-private pools, the Board is effectively directing volunteers to undertake the hiring, training, scheduling, management, and termination of employees – actions well beyond a volunteer board’s scope and purpose. Out of necessity, affected homeowner associations would be required to hire a full-time employee to supervise and conduct the day-to-day operations of maintaining the required staff. This is in contrast to commercial pools operated by hotels and private clubs, which are established and appropriately staffed to seek profitability through the provision of these amenities. In 2011, the Board recognized this distinction and chose to not include residential semi-public pools in their policy enforcement.

⁷ *Pool Supervision*, 105 CMR 435.17 (2004).

⁸ Town of Barnstable. (2020). ‘Lifeguard Exemption’. In *Minutes of Board of Health meeting 27 May 2020*. 200 Main Street, Hyannis, MA 02601.

⁹ “Does the Community Need a Lifeguard?” New England Condominium, accessed April 16, 2020. <https://newenglandcondo.com/article/qa-does-the-community-need-a-lifeguard>

¹⁰ *Barriers*. Code of Maryland Regulations §10.17.01.21 (2001). <http://www.dsd.state.md.us/comar/comarhtml/10/10.17.01.21.htm>

¹¹ Worcester County Health Department. *Pre-Opening Guide: Semi-Public Pools*. 2009. Worcester, MA. <http://worcesterhealth.info/files/Preopening%20Guide%20Semi-Public%202014.pdf>

In Nantucket, the average hourly wage of a Certified Pool Attendant is \$18.00.¹² In order for a residential semi-public pool to remain open between the standard hours of 7AM – 10PM during the summer months, it will cost approximately \$35,000 to staff a residential semi-public pool each summer. Additionally, the cost of training each Certified Pool Attendant can cost up to \$500 per individual, costing a fully staffed team of ten Attendants upwards of \$5,000.¹³ Due to the transient and part-time nature of the position, new Attendants will likely have to be trained each season. In a meeting of this Board in November of 2015, this Board accepted the difficulty in employing lifeguards and voted unanimously to allow all hotels and motels within Nantucket to have a Certified Pool Attendant, rather than a lifeguard, on site during open hours.¹⁴ With the national average for homeowners remaining in their home at 8.17 years, we can safely estimate that each community member will be responsible for its share of \$287,000 of associated pool costs during the average homeownership.

Requiring semi-public pools to pay for Certified Pool Attendant staff will incentivize the construction of private pools—pools which save homeowners nearly \$200,000 when compared to a staffed semi-private pool.

Conversely, an individual private pool can be built in Massachusetts for approximately \$50,000¹⁵, with an average annual maintenance cost averaging as low as \$960 per year.¹⁶ Utilizing the same average tenure of 8.17 years, a homeowner would spend an average total of \$57,843 in associated pool costs, while adding significant equity and appeal to their home.

These significant administrative, logistical and financial incentives are likely to direct residents toward lower-cost, higher value private pool options, reducing water safety and increasing environmental impacts and energy utilization. With access to a residential semi-public pool, homeowners will be less likely to construct by-right private pools—private pools that neither the Board nor the Massachusetts Pool Code govern.

Private pools are more dangerous than semi-public pools

The Board has previously identified safety, particularly children, as the primary purpose for requiring Certified Pool Attendants at semi-public pools during hours of operation. Contrary to private pools, residential semi-public pools allow for community policing, where a larger number of parents and supervisors of children will be present, watching over the entire pool area collectively. This is not the case with private pools, resulting in materially higher rates of drowning fatalities. Furthermore, the safety regulations surrounding private pools are far less stringent than those governing semi-public pools. Health and safety measures such as signage, first aid kits, and sanitation standards are not required when building a private pool, as such

¹² “How much does a Lifeguard make in Nantucket Island, MA?” Indeed, accessed May 26, 2020. <https://www.indeed.com/career/lifeguard/salaries/Nantucket-Island--MA>

¹³ “How to Become a Lifeguard – Training, Certification & Jobs,” Money Crashers, accessed April 18, 2020. <https://www.moneycrashers.com/become-lifeguard-training-certification/>

¹⁴ Roy, R. (Director). (2015, November 11). In *Minutes of Board of Health meeting 11 November 2015*.

¹⁵ “How Much Does an Inground Pool Cost in Massachusetts? – Massachusetts Pool Prices,” Swimming Pool Quote, accessed May 2, 2020. <https://swimmingpoolquote.com/inground-pool-cost/massachusetts-pool-prices/>

¹⁶ “How Much Does It Cost To Own & Maintain A Swimming Pool?” HomeGuide, accessed April 19, 2020. <https://homeguide.com/costs/pool-maintenance-cost>

pools are not subject to the Massachusetts Pool Code. Residential semi-public pools are subject to these safety standards.

Nationally, an estimated annual average of 5,900 children 15 years of age or younger were treated in U.S. hospital emergency departments for nonfatal injuries associated with pool or spa submersions.¹⁷ Private pools create a unique set of circumstances as they typically are not supervised. In one medical study, 72% of all drowning cases occurred in private pools.¹⁸ In Florida between 2005 and 2007, there were 245 reported unintentional pool drowning deaths of adults and children. Of those deaths, nearly 56% drowned in a confirmed, single-family residential swimming pool, while only 10% drowned in a public or residential semi-public pool.¹⁹ Importantly, the State of Florida does not require Certified Pool Attendants at semi-public pools.²⁰

The U.S. National Library of Medicine also conducted a study which showed that from 1995-1998, 37% of drownings occurred in public pools, 35% occurred in residential pools, and 21% occurred in neighborhood semi-public residential pools—15% fewer related drownings.²¹

As previously mentioned, based on our analysis, many of the Client’s property owners have expressed interest in developing by right less safe private pools without continued and cost-effective access to a single, shared residential semi-public pool. Due to these likely consumer behaviors, the Board’s enforcement of this regulation on residential semi-public will statistically create a greater level of risk for residents.

According to the U.S. National Library of Medicine, Public and Private pools contribute to nearly twice as many fatal drownings as compared to communal Residential Semi-Public Pools

Semi-public pools have a lower environmental impact than private pools

Massachusetts has historically been a national leader in the fight against climate change, and as such, many other states look to the Commonwealth for guidance on how best to protect our shared environment. Nantucket and its residents—perhaps more than most—have significant incentives to aggressively implement climate-forward policies. Lowering overall environmental impacts to residential communities is a crucial component of successfully achieving these

¹⁷ Yang, Ted. 2017. *Pool or Spa Submersion: Estimated Nonfatal Drowning Injuries and Reported Drownings, 2017 Report*. Bethesda, MD: Consumer Product Safety Commission. https://www.cpsc.gov/s3fs-public/Pool_Spa_Submersion_Estimated_nonfatal_drowning_injuries_and_reported_drownings_2017_report_2017_H004.pdf

¹⁸ Shi-En Chan, Joanna, and Xin Ru Ng, Marie, and Yng Ng, Yih. “Drowning in swimming pools: clinical features and safety recommendations based on a study of descriptive records by emergency medical services attending to 995 calls.” *Singapore Medical Journal*, accessed May 4, 2020. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5778258/>

¹⁹ VanderWerf-Hourigan, Lisa. “Correlation of Pool Drowning Deaths With Number of Residential Swimming Pools by County in Florida, 2005-2007.” *International Journal of Aquatic Research and Education*, accessed April 21, 2020. https://www.researchgate.net/publication/238722947_Correlation_of_Pool_Drowning_Deaths_With_Number_of_Residential_Swimming_Pools_by_County_in_Florida_2005-2007

²⁰ Florida Health. *Environmental Health Guidance: Swimming Pools*. 2020. Tallahassee, FL. <http://www.floridahealth.gov/>

²¹ Saluja, Gitanjali. *Swimming Pool Drownings Among US Residents Aged 5-24 Years: Understanding Racial/Ethnic Disparities*. 2006. *American Journal of Public Health*. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1470565/>

climate goals. Recently, Nantucket was designated a “Green Community” by the Massachusetts Department of Energy Resources and was awarded a grant of \$139,340 to support energy reduction projects.²²

Encouraging and materially incentivizing communities and residents to make use of a residential semi-public pool in lieu of installing a private pool in each residential lot is an effective and proven strategy to significantly improve safety, reduce energy consumption, and reduce environmental impacts, maintaining Nantucket’s thoughtful and progressive leadership in the fight against climate change. To encourage this, open space zoning regulations have been implemented in order to encourage common amenity areas, including semi-public pools, to address density issues.

The environmental footprint of a private pool is *significantly* greater than that of a singular, shared residential semi-public pool. On average, a private pool in Massachusetts is 52ft x 105ft, whereas the average residential semi-public pool in Nantucket is only slightly larger at 10.9m x 10.6m. Within each of the Client’s six communities, many of the individual lots may build private pools within their property line without being subject to the Massachusetts Pool Code, and by extension, the Board’s standards. Based on our analysis, many of the Client’s property owners have expressed the desire to build private pools if continued, cost-effective access to a single, shared residential semi-public pool is not maintained. As an example, using the average Massachusetts private pool measurements and assuming, conservatively, that one-half of the residents of Hawthorne Park, one of the smaller implicated condominium communities at 17 residential lots, install such private pools, the geographic footprint of these private pools would constitute 4,096 square meters, compared to the only 900 square meters of the development’s residential semi-public pool.

The environmental footprint of private pools is *significantly* greater than that of a singular, shared semi-public pool, on average, reducing total square metric size by four times, pool usage by nine times, water usage by eight times, and energy usage by four times.

The pumps that circulate pool chemicals and aerate water to keep pools clean and free of algae are major energy consumers. The Department of Energy’s Energy Information Agency estimates that private pool pumps “accounted for 0.9% of all U.S. residential energy consumption” nationally.²³ Semi-public pools in residential subdivisions provide a safer and more environmentally friendly alternative to private pools while retaining much of the utility. Studies have shown that the presence of a semi-public residential pool materially reduces the incidence of backyard pools and aggregate resource use per household. In a study of nine subdivisions, the mean backyard pool usage was 0.05 per house in subdivisions with a semi-public residential pool compared to 0.44 per house in adjacent subdivisions without—a meaningful nine-fold decrease. The mean subdivision aggregate resource use per household was

²² “Green Community Designation,” Town of Nantucket Energy Office, accessed May 11, 2020.

<http://www.ackenergy.org/reducing-municipal-energy-consumption.html>

²³ Betts, Kellyn. “Assessing Swimming Pools’ Environmental Cost,” Chemical & Engineering News, accessed May 2, 2020. <https://cen.acs.org/articles/88/web/2010/06/Assessing-Swimming-PoolsEnvironmental-Cost.html>

calculated to be 1,770 gallons of water and 327 kWh electricity in the residential semi-public pool subdivision compared to 8,500 gallons and 1,240 kWh in adjacent private pool subdivisions—again, nearly eight- and four-fold decreases, respectively.²⁴

Additionally, chlorinated water from private swimming pools are often discharged into storm drains, streets or gutters, resulting in significant contamination of streams, rivers, or oceans, producing by-products that are highly toxic and carcinogenic to fish and other wildlife.²⁵

All of these considerations are of particular importance for environmentally-focused coastal communities such as Nantucket as they seek to maintain the Island’s renowned natural resources. Based on available research, a residential semi-public pool will materially decrease these damaging effects.

Massachusetts Pool Code Excludes Residential Semi-Public Pools from Staffing Standards

Our analysis indicates that that the application and enforcement of the Board’s staffing policy on residential semi-public pools does not—when accounting for probable consumer incentives and resulting behavior—achieve the Board’s stated goals of increased water safety and decreased environmental contamination and will, in fact, incentivize alternatives that are much less safe and environmentally-friendly.

Furthermore, while the Massachusetts Pool Code, as outlined in Attachment B, provides local boards of health the discretion to determine whether a semi-public pool must have a Certified Pool Attendant on duty, the same regulation provides specific factors that *shall* be weighed by the local board in determining whether such staffing should be required. Specifically, the Code states in relevant part: “The board when determining whether there is a need for the trained person, and the minimum training or certification requirements for this person, shall take into account the size and capacity of the pool(s), the average attendance, the complexity of the disinfection equipment, and the facility’s history of compliance with the regulations.”

These factors clearly indicate that local boards of health are expected to use their discretion and distinguish between different types of pools based on these factors when determining whether to require onsite personnel, rather than apply a blanket policy to all semi-public pools. When these factors are applied to residential semi-public pools on Nantucket:

1. ***THE SIZE AND CAPACITY OF THE POOL:*** The semi-public residential pools and the special purpose residential pools at all six implicated properties contain dimensions which are residential in nature. See Attachment C for details.
2. ***THE AVERAGE ATTENDANCE:*** The semi-public residential pools at each of the six developments serve as common facilities for small-scale communities, some with as few as 12 homes. These homes are primarily used as seasonal residences. The pools are open

²⁴ Forrest, Nigel and Williams, Eric. “Life Cycle Environmental Implications of Residential Swimming Pools,” ACS Publications, accessed April 29, 2020. <https://pubs.acs.org/doi/pdf/10.1021/es100422s>

²⁵ Wachusett Reservoir Watershed. 2011. *Swimming Pools and Surface Water Quality*. West Boylston: Department of Conservation and Recreation. <https://www.mass.gov/files/documents/2017/09/29/swimming%20pools.pdf>

from 7 AM to 10 PM from Memorial Day to Columbus Day each year. We estimate the attendance at its peak to be less than 10 persons, with there being no attendance whatsoever most of the time.

3. *THE COMPLEXITY OF THE DISINFECTION EQUIPMENT*: The semi-public residential pools and the special purpose residential pools at all six implicated properties are equipped with brand new disinfection equipment. For example, the residential pool and special purpose residential pool at Hawthorne Park is serviced with a Jandy AquaPure® salt-water chlorine sanitizing systems. This system is automated by a Salt Generator which turns salt into chlorine. The Chlorine production rate can be adjusted by simply touching a button on the equipment to increase or decrease the Chlorine production levels.
4. *THE FACILITY'S HISTORY OF COMPLIANCE WITH THE REGULATIONS*: None of the six implicated developments have had related water safety incidences or a history of non-compliance.

SUMMARY AND RECOMMENDATION(S)

Based on the Firm's extensive experience developing and enforcing public health and safety regulations across the Commonwealth of Massachusetts, including water safety policies, a review of available studies and data, a review of municipal practices, as well as an assessment of probable resulting resident consumer behaviors, the Town of Nantucket Board of Health's staffing standards for the operation of residential semi-public pools will lead to statistically less safe and less environmentally-friendly by-right development projects of unregulated private pools. We believe these unintended results do not comport with the express intent of the Board and will materially result in decreased water safety conditions.

While establishing such requirements is fully within the Board's authority, we believe that extending staffing requirements to residential semi-public pools does not consider the Code's expressly cited factors and will result in consequences that detract from the Board's public policy goals in establishing these requirements.

Therefore, we strongly recommend that the Client work with the Board to consider adopting a written, more nuanced policy on this requirement that accounts for consumer incentives and resulting behavior, and that best meets the shared goals of all parties – maximizing public health and safety and minimizing negative environmental impact. To this end, we have provided suggested language (see Attachment D) that we recommend the Board adopt as a written policy.

ABOUT SMITH, COSTELLO & CRAWFORD

Smith, Costello & Crawford Public Policy Law Group is a regulatory and legislative public policy law firm dedicated to supporting clients through consulting, government affairs, and legal services. Our team brings proven strategic expertise, first-hand public service experience, and significant public policy experience. With deep insight into the complexities of the public sector and strong professional relationships with officials at all levels of government and business, our team has shaped public policy on wide-array of issues including energy, health care, public health, transportation and development, and much more.

105 CMR 435

105 CMR 435.17 (4)

(4) If required by the Board of Health, there shall be at least one trained person on the premises at all times that the pool is open. This individual may be the pool supervisor, a lifeguard, a pool attendant or any other trained person. The board when determining whether there is a need for the trained person, and the minimum training or certification requirements for this person, shall take into account the size and capacity of the pool(s), the average attendance, the complexity of the disinfection equipment, and the facility's history of compliance with the regulations.

105 CMR 435.23 (1)

(1) The operator shall provide one or more lifeguards 16 years of age or older if the Board of Health determines that they are necessary for the safe use of the swimming or wading pool. The Board, when determining whether there is a need for one or more lifeguards and the number of on-duty lifeguards to be present at the pool at any one time, shall take into account the size, shape and capacity of the swimming or wading pool.

Development and Pool Size and Capacity

Development	Year Developed	Number of Lots	Dimensions of Pool	Depth of Pool
Hawthorne Park	2019	17	19' 8" x 50'	4' 6"
Finback Lane	2012-2019	15	32' x 20'	8'
Grey Lady Lane	2020	12	40' x 20'	~5'
Nobadeer Meeting House	2004	48	~36' x 20'	5'
Beach Plum Village	Ongoing	40	~45' x 20'	5' 9"

Board Policy Recommendation

(a) For the purposes of this policy, the following terms shall have the following meanings:

“Certified Pool Attendant”, an individual 16 years of age or older that holds a current American Red Cross CPR Certificate for the Professional Rescuer or American Heart Association CPR Certificate for the Health Care Provider, or National Safety Council CPR Training.

“Public Pool”, any swimming, wading or special purpose pool, admission to which may be gained by the general public with or without the payment of a fee.

“Residential Semi-Public Pool”, a Semi-Public Pool on the premises of, or used in connection with a condominium, apartment house, or homeowners association.

“Semi-Public Pool”, a swimming, wading or special purpose pool on the premises of, or used in connection with a hotel, motel, trailer court, apartment house, condominium, country club, youth club, school, camp, or similar establishment where the primary purpose of the establishment is not the operation of the swimming facilities, and where admission to the use of the pool is included in the fee or consideration paid or given for the primary use of the premises. Semi-public pool shall also mean a pool constructed and maintained by groups for the purposes of providing bathing facilities for members and guests only.

(b) There shall be at least one Certified Pool Attendant on the premises of any Public Pool or Semi-Public Pool at all times that the pool is open; provided however, that a Residential Semi-Public Pool shall not be subject to this requirement if all of the following conditions are satisfied:

1. A warning sign is posted in a conspicuous location and shall state "WARNING-NO LIFEGUARD ON DUTY" in easy to read, legible letters which are at least four inches. (ten cm) high;
2. Signs are posted in readily visible locations stating "CHILDREN UNDER AGE 16 SHOULD NOT USE SWIMMING POOL WITHOUT AN ADULT IN ATTENDANCE" and "ADULTS SHOULD NOT SWIM ALONE."; and,

3. All individuals with access to the pool have been provided documentation detailing pool safety policies, risks associated with use of the pool, and supervision requirements, and have signed a form acknowledging that they have been provided such documentation.

(c) Notwithstanding subsection (b), the board, in its discretion, may require one or more Certified Pool Attendants on the premises of a Residential Semi-Public Pool at all times that the pool is open if the board determines there is a heightened risk of injury or death due to the size and capacity of the pool, the average attendance at the pool, the complexity of the disinfection equipment, or the facility's history of compliance.