Patricia Frisch

166 Ridgefield Road
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November 5, 2026

Toni Boucher, First Selectwoman
Members of the Board of Selectmen
Town of Wilton
Town Hall
238 Danbury Road
Wilton, CT 06897

To the First Selectwoman and Board of Selectmen,

I respectfully ask the Board of Selectmen to obtain a second legal opinion on the enforceability of the 2013 Declaration of Land Use Restrictions recorded against the property of the School Sisters of Notre Dame Real Estate Trust (SSND) on Belden Hill Road (the "Declaration").

I have lived in Wilton for almost 40 years and am an attorney specializing primarily in real estate and land use matters. I write solely as an interested resident: I do not represent a client or offer legal advice in this matter. Nor do I take a position on the merits of the development proposed by Hines Acquisitions (Hines), which has been proceeding through the municipal approval process since early 2025. My concern is that the Board of Selectmen and the Water Pollution Control Authority (WPCA) may fail to protect the rights they secured for the Town in 2013 under the Declaration based on incomplete factual and legal analysis and advice.

The Declaration restricts future uses of the property and expansion of its structures for 50 years from the date of the Declaration. The Declaration explicitly states that SSND's intent was to bind *the property*, *the current owner and subsequent owners of the property*, and their respective heirs, executors, administrators, successors and assigns, to the benefits *and burdens* of the restrictive covenants articulated in the Declaration and that the restrictive covenants *"run with the land"* for a period of 50 years from the date of the Declaration. If enforceable against any proposed redevelopment of the property, those restrictions would limit both the type and size of development (the "restrictions" or "restrictive covenants"). The threshold question is therefore not whether the proposal is desirable, but whether SSND may remove the restrictive covenants with impunity.

Two issues should be distinguished: the standards governing the WPCA's review of an application and the Town's possible rights under the Declaration. An agency's limited role in deciding title disputes does not, by itself, resolve whether the Town has an enforceable interest in the restrictive covenants and, if so, what can and should be done to preserve and protect them.

According to an email from Land Planner Michael Wrinn, Hines' attorney, Jim Murphy, asked early in 2025 whether Town counsel would sign a letter stating that the Town had no objection to SSND's removal of the restrictive covenants from the land records. First Selectwoman Toni Boucher reported that *Town Counsel Ira Bloom advised that removal would require action by SSND, the neighbors, and the Town*. That reported advice underscores the need for obtaining a second opinion to determine who holds enforceable rights under the Declaration.

On April 15, 2025, Hines, through its civil engineer Redniss & Mead, submitted an application to the WPCA for continued use of the existing sewer connection. The application narrative described that connection as a key requirement of the proposed development, acknowledged the recorded Declaration, and stated without explanation that SSND would release the land-use restrictions if Hines received approvals and acquired the property.

On May 2, 2025, Mr. Smeriglio emailed Toni Boucher, Michael Wrinn, Peter Gelderman, and Ira Bloom to report receipt of the application and his review of the WPCA's files. He described emails between former Town Counsel Ken Bernhard of Cohen & Wolf and SSND's counsel, Casey Healy of Gregory & Adams, indicating that the Declaration had been negotiated in connection with the sewer approval. He also reported that the proposed building area exceeded the Declaration's 10% expansion limit and requested guidance before the WPCA's May 21 meeting.

On the day before that meeting, Mr. Gelderman emailed his advice to First Selectwoman Boucher and Mr. Smeriglio. His advice raised two distinct issues: the Town's standing to enforce the covenants and the WPCA's role in reviewing the application. He summarized his position as follows:

> "In short, the existence of the RC [restrictive covenants] should have absolutely no impact on the WPCA's review of the application."
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> "First, neither the Town nor any of its boards, commissions, agencies, or authorities are a beneficiary of the covenant" and, therefore, "[t]he Town has no standing to enforce the RC and the Town has no legal interest in the RC or its enforcement. There is nothing on the face of the RC that suggests that its purpose had anything at all to do with the Town. This is true notwithstanding the fact that a former Town Attorney apparently participated in crafting the language of the RC. If the Town were intended to have some right or interest in the RC, that should/would have been included in the RC."

"Finally, since the SSND voluntarily recorded the RC, with no beneficiary and for no consideration, they could probably release it before conveying title."[1]

Mr. Gelderman's conclusions and advice depend on an analysis limited to what is stated in the Declaration itself and on the premises that the Declaration was made for no consideration and with no intended beneficiary and that SSND did not even intend that it would be bound by the burdens of the restrictive covenants.

I believe Mr. Gelderman's analysis and advice warrant further consideration because neither the absence of a statement of consideration nor the absence of an expressly named beneficiary, by itself, renders a recorded declaration of restrictive covenants unenforceable under Connecticut law.

First, with respect to the question of consideration, Connecticut's statutory requirements for a valid conveyance or instrument affecting real estate do not require a statement of consideration. Rather, they focus on the *format* of the deed or instrument: it must be in writing, signed by the grantor, witnessed by two people, acknowledged, and properly recorded.[2] The Declaration meets these requirements.

Second, with respect to the question of whether intended beneficiaries must be named in the Declaration, the Connecticut Supreme Court definitively answered that question in the negative in its landmark case, *Wykeham Rise, LLC v. Federer*, 305 Conn. 448 (2012), when it reversed a lower court's decision that had granted summary judgment declaring restrictive covenants unenforceable against neighboring owners who were not expressly identified as beneficiaries. The Connecticut Supreme Court concluded that the recorded restrictive covenants *were not rendered unenforceable as a matter of law because the claiming beneficiaries were not named in the instrument and that factual questions remained about the neighbors' right to enforce them*. That decision does not establish the existence of the Town's enforceable rights here, but it does establish that a determination of the *nonexistence* of enforceable rights cannot be made solely from an examination of the words in the Declaration or the Declaration's failure to identify the intended beneficiaries.

Accordingly, I believe that the absence of a statement of consideration or a named beneficiary in the Declaration is meaningless, and that a careful examination of the law and the context and circumstances of the instrument's creation is necessary to determine if the Town, or any other person, can seek to enforce the Declaration as an unnamed intended beneficiary.

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[1] See email dated May 20, 2025 from Peter Gelderman to Toni Boucher and Frank Smeriglio.

[2] See C.G.S Section 52-550. While it is true that *contract or promise* to sell an interest in real estate must be in writing and recite consideration to be enforceable, there is no requirement that consideration be given or recited in a deed or other writing that *conveys* an interest in real estate.

Any second opinion determining whether SSND is legally bound by the restrictive covenants in the Declaration, whether SSND is free to remove them without consequence, and whether the Town has a right as an unnamed intended beneficiary to enforce the restrictive covenants should include an examination of the words of the Declaration *and* all other relevant evidence of the context in which it was created, with particular attention to the following evidence:

- SSND's pending request for a discretionary extension of the public sanitary sewer connection to the property at the time the Declaration was negotiated by attorneys representing the Town and SSND.

- The correspondence between SSND's counsel and Town counsel, together with the lists of documents that refer to the Declaration as part of the sewer-extension application.

- The sequence of execution, escrow, approval, and recording of the Declaration and other documents relevant to the sought-after sewer extension. For example, the evidence shows that SSND executed the Declaration on June 10, 2013, and that it was held in escrow pending the Town's final approval, execution, and recording of the Temporary Easement for Construction of a Sanitary Sewer Line that was necessary for the extension (the "Easement"). The Easement was executed on July 8, 2013, and approved by the Board of Selectmen on July 20, 2013. The Declaration and the Easement were simultaneously recorded on the Land Records on July 30, 2013.

- Any additional evidence available from former Town Counsel Ken Bernhard; SSND's counsel, Gregory & Adams; Sister Kathleen Cornell, who executed the Declaration and the Temporary Easement for Construction of a Sanitary Sewer Line as SSND's president; and former WPCA and Board of Selectmen members with personal knowledge of the transaction.

Based on my preliminary review of the law and the documents that were available to me, I believe there are sufficient reasons to support a decision to obtain a second legal opinion about whether SSND granted *enforceable* restrictive covenants *in exchange for* the Town's approval of the sewer extension, *intending to bind itself* as owner of the property, and *intending to bind the property and any subsequent owners* (which would include Hines or any other potential purchaser/developer), and *intending to benefit the Town and affected property owners.*

Mr. Gelderman offered a second rationale for his advice, which focused on the limits of an agency's role in deciding title disputes. He stated:

> "Second, Town agencies do not decide title issues. Any agency reviewing an application with respect to the SSND property should review it under the standards and regulations applicable to that particular agency, without regard to the RC. A title claim, including a claim that a private deed restriction might preclude some development, is a private legal matter to be decided by a court."

I generally agree that an agency should review an application under the standards governing that agency and should not adjudicate a private title dispute. But that principle is distinct from the Town's possible rights as a beneficiary of the Declaration. If the Town holds such rights, the Board of Selectmen should seek legal advice about what steps they and the WPCA can and should take to preserve those rights.

I suggest that any second opinion also consider whether the WPCA has a duty and standing to enforce the restrictive covenants under C.G.S. § 7-247(a), which governs the powers and duties of a municipal water pollution control authority regarding the regulation, operation, use, and integrity of sewerage systems and contracts to provide or obtain sewerage-system service.

This is a request for a sound legal determination, not a request to prejudge the development proposal or the WPCA's decision last year on the Hines application that was predicated on Hines' representation that SSND would withdraw the Declaration prior to transferring its property. But if it is determined that the Town secured binding restrictive covenants in exchange for the extension of public sewer service to SSND's private property, then it is incumbent on the Board of Selectmen to fully understand and protect those rights before allowing them to be removed unilaterally.

Respectfully yours,

Patricia Frisch

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