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Via Email (jstaran@hsc-law.com) and First Class Mail

John D. Staran
Hafeli Staran & Christ PC
2055 Orchard Lake Rd
Sylvan Lake, MI 48320

Re: Single-Family Developments
South Oaks Condominium & Walton Oaks Condominium

Dear Mr. Staran:

Last year we corresponded with you regarding the proposed development of South Oaks Condominium and Walton Oaks Condominium (collectively, the “Condominiums”). These Condominiums are to provide single-family homes for sale to intellectually and developmentally disabled (“IDD”) individuals as well as neurotypical homebuyers, all in a neuro-inclusive setting. The ownership of the IDD single-family homes will be divided into up to four (4) separately owned private suites (the “IDD Units”) that include a bedroom, bathroom, sitting area, and closet plus a share of the limited common elements within the home (e.g. kitchen, dining room, living room, laundry room, storage areas, and garage) as well as a portion of the general common elements for the neighborhood. There will be no more than four (4) separately owned private suites, or IDD Units, in each IDD single-family home. The IDD Owners will live and operate as a permanent, non-transient single-family unit, sharing meals, daily activities, expenses, social events, and family gatherings. They would also share housekeeping responsibilities such as cooking, cleaning, and grocery shopping.

At that time, we reviewed the proposed developments with you to confirm that the Condominiums were acceptable under the Zoning Ordinances for the City of Rochester Hills (the “City”) pertaining to Single-Family Residential restrictions. We addressed your questions regarding: (1) whether the homes would be licensed through the State of Michigan, which we advised they would not be, and (2) the ownership of the IDD Units and their appurtenant common elements. You indicated that the City would be receptive to considering these projects as permitted Single-Family Residential developments, and our client then proceeded to prepare development plans as you suggested.

As you know, the City’s Planning Commission held a public hearing to approve or deny the “by-right” site plans on February 21, 2023. The Planning Commission’s votes on the same were adjourned. Thereafter, our client received a list of questions from you (via Sara Roediger) that you are requesting to be answered prior to you providing the Planning Commission with your opinion on these proposed developments. Though we addressed some of these questions with you last year, our client

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has asked us to prepare the following correspondence in response to your questions, and reaffirm the fact that the use of these properties is permissible under the Single-Family Residential restrictions, as defined in the City's Zoning Ordinances. This letter will address your questions, the usage of the homes in the Condominiums and the restrictions contained in their proposed Condominium Documents. The purpose of these developments has been and continues to be to provide permanent homeownership for IDD individuals in a neuro-inclusive setting in the community of their choosing. For many of the prospective IDD individuals, it is the same community they have grown up in or lived in with their families.

1. Under the MZEA, state licensed residential facilities are considered to be single-family residential uses. So why aren't they one? We need to understand this and they need to explain it. If there is something about their use or business plan that disqualifies them from state licensing, what is it? Or if there is a reason they don't want to pursue state licensing, what is it? These are threshold questions. If they want to be considered to be a single family use like a state licensed residential facility, then why aren't they one, or how do they differ?

The short answer to this question is that the Condominiums will not be licensed because their usage and the ownership of the IDD Units does not satisfy the requirements of the MZEA governing state licensed facilities. Rather, the structure and ownership are more akin to any other conventional type of home ownership and usage of residential real property, with the only difference being the owners are IDD individuals ("IDD Owners"). That, in and of itself, should not and cannot disqualify the usage of the IDD Units from being considered Single-Family Residential usage under the Zoning Ordinances. Whether or not the Condominiums will be licensed is not necessary to satisfy the requirements that the IDD Units be used as Single-Family Residences. In fact, some potential IDD Owners will be moving from other homes in the City and surrounding areas that are not licensed either. It is not mandatory that a home which houses unrelated IDD adults must be licensed through the State. That is an individual's decision to make, whether it be the owner of the home or the agency leasing the home, just as it is the decision of the IDD adult and their family whether they live in a licensed facility or not. Further, the State of Michigan has adopted initiatives that support the freedom of individuals with developmental disabilities to choose their individual living arrangement, which aligns with the proposed development of the Condominiums, rather than purchase a program or rent space in a home that then dictates what services and living arrangement the individual will have, which is typically how state licensed facilities are operated.

A. DISTINCTIONS BETWEEN THE STATE LICENSED FACILITIES AND THE PROPOSED DEVELOPMENTS

Under MCL 125.3206(1)(a), state licensed residential facilities are considered a residential use of property for the purposes of zoning and a permitted use in all residential zones, and would not be subject to a special use or conditional use permit or procedure different than that required for other dwellings of similar density in the same zone. MCL 125.3102(u) defines "state licensed residential facility" as, "a structure constructed for residential purposes that is licensed by the state under the adult foster care facility licensing act 1979 PA 218, MCL 400.701 to 400.737...and provides residential services for 6 or fewer individuals under 24-hour supervision or care."

The IDD Units will not be provided 24-hour residential services by the respective associations. Whether any individual IDD Owners will require 24-hour care from another outside entity will be decided on a case-by-case basis, particularized to the individual themselves, with that determination being made by the direct care providers. As we discussed last year, the IDD Units are not being offered by an "agency" that will manage these units like a group home. The residents will own these IDD Units outright, either by individuals or trusts set up for that individual's care, which they are choosing to live in with the intention of them being their "forever homes." The IDD Owners are not transient occupants, but rather, long-term, permanent owners of this real property.

Further, they will bring with them the services they are already eligible for through the State and have the freedom to choose who will provide them with those services. Agencies authorized by the Oakland Community Health Network (OCHN) will deliver all direct care services, as they would for any other living situation for the IDD Owners, whether they chose to live with their parents, rent an apartment or any other home they could choose to live in. If the IDD Owners were receiving these services in any of these referenced residential settings (i.e. living with their parents, renting an apartment, etc.), there would be no question or dispute whether the usage of the property constituted Single-Family Residential usage under the Zoning Ordinances.

Additionally, MCL 400.703(4)(k) provides that a private residence with the capacity to receive at least 1 but not more than 4 adults who all receive benefits from a community mental health services program does not constitute an "adult foster care facility" under the Act¹. These IDD Units are indeed private residences within a single-family home that will house no more than four IDD Owners, in which the occupants receive benefits from OCHN, and therefore are excepted from the statutory definition. Again, this is not 24/7 care for all but rather personalized support services, with the nature and frequency of that care being determined by the IDD Owners, their families and Oakland Community Health Network (OCHN) who oversees the agencies providing direct care services. This is distinguishable from "adult foster care family home" and "adult foster care small group home," as those definitions provide that the occupants receive "foster care," which is defined as, "supervision, personal care, and protection in addition to room and board, for 24 hours a day, 5 or more days a week, and for 2 or more consecutive weeks for compensation provided at a single address." (MCL 400.704(8)). The IDD Owners do not require and are not receiving this extensive supervision, personal care, room or board. Rather, the IDD Units are owned outright, and it is between the IDD Owners in a particular home to share in the responsibilities together for cooking, cleaning and maintaining the home, while also having personal relationships with each other as any other family living together (e.g. game nights, bowling, movie outings, etc.). The respective associations will not be providing nor responsible for providing staffing for these homes, as is the case for state licensed residential facilities.

¹ MCL 400.703(4) provides, "'Adult foster care facility' means a home or facility that provides foster care to adults. Subject to section 26a(1), adult foster care facility includes facilities and foster care family homes for adults who are aged, mentally ill, developmentally disabled, or physically disabled who require supervision on an ongoing basis but who do not require continuous nursing care. Adult foster care facility does not include any of the following:...(k) A private residence with the capacity to receive at least 1 but not more than 4 adults who all receive benefits from a community mental health services program if the local community mental health services program monitors the services being delivered in the residential setting."

B. OWNERSHIP MODEL EMPOWERS IDD OWNERS AND SUPPORTS PUBLIC POLICY

Those IDD Owners that are looking to purchase in these Condominiums are choosing an independent living model that is acceptable to the State of Michigan and allows residents to freely exercise their right to choose where they live. The State of Michigan has moved away from traditional service approaches for people receiving services from the public mental health system and has instead adopted a self-determination policy, known as the “Self-Determination Initiative” (“SDI”). The SDI sets forth an individual’s right and authority to select, control and direct their own specialty mental health services and supports living arrangements that support a meaningful life for these individuals. As summarized by the State, “Self-determination is about choice and control. It is about giving over decision-making authority to people with disabilities, with support of their family and friends. It is about freedom. Self-determination asserts that a person should not have to lose their freedom because they require support from the public sector.” [Self-Determination Initiative](#).

This Initiative includes the right for individuals to continue living in the City they were born and raised in, to be able to work or volunteer in activities that are chosen by and are meaningful to that IDD Owner, to establish and nurture reciprocal relationships with other people in the community, and to participate in daily activities that are chosen by the individual and are supported so the individual can connect with others and contribute to their community. Michigan’s SDI aims for a system which assures that services and supports for people with developmental disabilities are not only person-centered, but person-defined and person-controlled. These elements are lost entirely with group licensed homes that do not promote home ownership, the responsibilities that go along with the same, that designate where the individual must live and the services the individual must receive.

For these proposed Condominiums, the communities and ownership of the IDD Units and appurtenant common elements is akin to the Home Ownership and Independent Living Models, as summarized and discussed by The Arc of Oakland County. [ARC Website](#). The Arc provides a summary of the various categories of residential settings available to IDD adults. Its discussion of these models is particularly helpful in understanding the development of the proposed Condominiums and the manner the IDD Units will be used. Of particular note, the goal for the IDD Owners is a long-term commitment, including the ability to have equity build-up over time, have the permanence of ownership, and stability in monthly costs, just as would be the case for any other non-disabled residential purchaser. Licensed group homes, on the other hand, are typically rental models that do not provide the same level of choice for the IDD Owners or the benefits of home ownership enjoyed by any other resident of the City. Those individuals that are in a position to choose their living arrangements are more frequently choosing an Independent Living and/or Homeownership option that will promote the best quality of life for the individuals, allow them to live where they want and have the access to the community that they want, deserve, and are entitled to.

It is for these many reasons that the Condominiums will not be licensed homes with the State of Michigan.

2. We need to inquire further about the condominiumization process. Exactly what will and what will not be deeded to the future owners/occupants? Will they be receiving a deed

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giving them undivided ownership in the whole lot/building (like a joint tenant or tenant in common) which would tend to indicate a functional family unit, or are they being deeded only their room with other areas of the building being considered as general or limited common elements, which would tend to indicate a multi-family use?

The proposed IDD Units will be the individual bedrooms (private bathrooms, closets and sitting areas) in the residence, and are defined under the proposed Master Deeds as, “all that space contained within the finished unpainted walls and ceilings and from the finished subfloor, all as shown on the floor plans and sections in the Condominium Subdivision Plan.” All other items supporting the home are defined as Limited Common Elements which the IDD Owners that live in that residence have an equal interest in. This includes, but is not limited to, the deck or patio (as the case may be), porch, driveway, garage, living room, dining room, kitchen, yard and utility systems serving the home. Pursuant the Michigan Condominium Act, the IDD Owners, as co-owners of the Condominium would have an undivided interest in the common elements². The proposed Master Deeds for these Condominiums further provides, “Each Co-owner has an exclusive right to their Unit and has an undivided and inseparable right to share with the other Co-owners the Common Elements designated by this Master Deed” as well as provides that the IDD Owners have an undivided interest in the Condominium’s common elements. This layout and ownership structure does not automatically indicate that the use of the residences in the Condominium is multi-family in nature and not single-family, which is governed by the Zoning Ordinances for the City of Rochester Hills.

Further, Section 141 of the Michigan Condominium Act (MCL 559.241) provides that, “A condominium project shall comply with applicable local law, ordinances, and regulations. Except as provided in subsection (2), a proposed or existing condominium project shall not be prohibited nor treated differently by any law, regulation, or ordinance of any local unit of government, which would apply to that project or development under a different form of ownership.” In short, if the ownership of the IDD Units is acceptable if they were not condominiumized, but rather the interests were held as joint tenants or tenants in common, then they cannot be treated any differently by the City when they are condominiumized, to have units and common elements. As such, it is the use of the property that controls the City’s determination, not the form of ownership.

As detailed above and further addressed in #4, below, the proposed construction of the IDD Units will have the IDD Owners living as a single family housekeeping unit, as defined under the City’s Ordinances. While each IDD Owner would have an ownership interest in the property, that ownership alone should not be determinative of whether the use of the building is that of a single-family residence or a multiple family residence. Rather, the analysis should focus on the use of the residence. Here, IDD Owners will be living as a single family housekeeping unit (again as discussed in #4, below), as defined under the Ordinances. Under the Michigan Condominium Act, simply because the property is established as a condominium should not affect how it is treated.

² MCL 559.137 provides, “(1) The master deed may allocate to each condominium unit an undivided interest in the common elements proportionate to its percentage of value assigned as provided in this act.(2) If an equal percentage of value is allocated to each condominium unit, the master deed may simply state that fact and need not express the fraction or percentage so allocated...(5) Except to the extent otherwise expressly provided by this act, the undivided interest in the common elements allocated to any condominium unit shall not be altered, and any purported transfer, encumbrance, or other disposition of that interest without the condominium unit to which it appertains is void.”

Therefore, the condominiumization of the IDD Units and appurtenant common elements should not alter or affect the overall analysis and conclusion that these residences meet the definition for single-family residences.

3. Related to the preceding question, will there be any restriction or prohibition on owners renting out or subleasing their units? If not, then how will this be different from a multi-family use or rental apartments?

Similar to any other residential condominium under the Michigan Condominium Act, these proposed Condominiums will have leasing restrictions and, in fact, will have stricter leasing restrictions than that provided for under the Act, as well as restrictions on the conveyance of any IDD Unit.

Under the proposed Condominium Bylaws, any IDD Owner intending to transfer title to their Unit must give notice of the same to the Board of Directors, along with the information for the proposed transferee, and the terms and conditions of the conveyance. The Board has the authority to review and approve any proposed conveyance, prior to the same, and has broad discretion in rejecting any proposed conveyance, similar to a cooperative home. Additionally, transient tenancies and subleasing are outright prohibited, any lease must be for a minimum term of one year and any lease must be disclosed to the Board in advance, as required under the Act. Further, the Board must explicitly approve of any lease of an IDD Unit and has broad discretion to outright prohibit any conveyance or lease of the same.

As discussed above, and expanded on below, the intent and goal for these Condominiums is permanent residences for IDD individuals. These are to be their forever homes and not a revolving door of individuals who come and go with the changing seasons.

4. Besides having a shared kitchen and dining area, how will they function as a single house-keeping unit? We need details not just that they will be, but how? Having a common kitchen and dining together may not be enough, because you can get that at a boarding house, B&B, or dormitory as well.

The IDD Owners would not only be occupying the same space together, but would also be sharing their lives with one another, including participating in activities together (such as playing games together, watching movies together in the living room, cooking, cleaning and doing laundry together) and sharing responsibilities for household chores. The IDD Owners would be accountable to the other Owners in their home for their responsibilities of the chores that go along with home ownership. Many of the interested IDD Owners have lived in the Rochester or Rochester Hills for all or most of their lives and it is their intention to continue living in this community they have grown so familiar with and love. This intentional community and the structure of having these individuals operate as a family on a permanent basis is entirely different from the transient nature of a boarding house, B&B, or dormitory.

To that end, the Zoning Ordinances of the City of Rochester Hills (the “Ordinances”) define “Family” as:

A collective number of individuals domiciled together in one dwelling unit whose relationship is of a continuing nontransient domestic character and who are cooking and living as a single nonprofit housekeeping unit. This definition does not include any society, club, fraternity, sorority, association, lodge, coterie, organization, or group of students or other individuals whose domestic relationship is of a transitory or seasonal nature or for an anticipated limited duration of a school term or other similar determinable period. (Emphasis added)

Under the Ordinances, the focus of defining a “Family” is how these individuals relate with one another. Not the layout of the home, not how the home is owned, not the blood relation to one another and not even the number of individuals in the home. As addressed above, the IDD Units have the permanency required under this definition. Their use is not transient, nor is it seasonal in use, as excepted from this definition as well. Additionally, the vast majority of household chores are shared jointly and done together, such as a shared living room, cooking and eating together, and participating in activities together both in and out of the home. These IDD Owners will be more akin to family than perhaps some blood-relation families that barely interact with one another, though they live under the same roof.

The model for the community and for the ownership interests in the community is that of a family, supporting one another and living together in a community of their choosing.

5. Will there be a live-in caretaker, and what role and responsibilities will that caretaker have?

At this time, it is unknown what level of support the eventual IDD Owners will need in the community. Each IDD Owner is unique and requires a different level of support than another IDD Owner. The decision on the support needed rests with the caregivers providing the services each IDD Owner is entitled to through OCHN. Approximately two weeks before an IDD Owner will move into an IDD Unit, OCHN will perform a long-term service support assessment, which will determine what services the IDD Owner will need. This is no different than any other homeowner that arranges for caregivers to come to their home and provide services on a scheduled basis, whether it is a few hours a day or more. A neurotypical adult who needs live-in nursing care is not considered as using their home for anything other than single-family purposes. That usage and designation is unchallenged. Whether live-in care is required is a determination the County will make, not the prospective associations or the developer, and this information simply will not be known until IDD Owners are about to move into their homes.

Additionally, and based on the desires of the eventual IDD Owners, there may be a Community Builder for the IDD Owners, who may or may not live on site. However, the Community Builder will not be responsible for any direct care for the IDD Owners, as that will be a part of the services the IDD Owners contract for directly, as discussed above. Rather, the Community Builder would provide

community integration opportunities for the IDD Owners, such as outings and events for the IDD Owners to participate in, and will also be available as a first-responder in the event issues arise in the Condominium, such as alerting families or service providers of any issues that may unexpectedly arise. This is in addition to any family and friend support the IDD Owners will have as well. However, whether or not there is a Community Builder does not alter the fact that the IDD Units will be used as single-family residences. The IDD Owners' ability to contract for their individual services is no different than any other residential owner who contracts for vendors to perform periodic services on or at their homes, such as landscaping, nanny services, house-cleaning or repairs to the same, or even longer terms services, such as a live-in nurse for an ailing parent.

We trust this correspondence addresses your questions for how these IDD Units will be owned and used, and how the IDD Owners will live as a family in a community supporting the same. Our client is still excited and very eager to bring this development into a community where the demand and interest are high. If, however, the City's position on this matter is changed from what it was a year ago and is barred from progressing based on the properties' single-family designation, our client is prepared to seek judicial relief and advocate to the utmost for the rights of these IDD Owners to live in a community of their choosing.

If there are any additional questions or concerns, we would be happy to discuss them further.

Very truly yours,
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