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April 11, 2023

Ms. Sara Roediger
Planning and Economic Development Director
1000 Rochester Hills Drive
Rochester Hills, Michigan 48309

Sent via Email Only
roedigers@rochesterhills.org

Re: *Walton Oaks and South Oaks projects*

Dear Ms. Roediger:

You have asked for my legal opinion concerning whether the proposed detached single-family condominium developments known as Walton Oaks and South Oaks are properly and lawfully considered to be in conformance with the single-family residential zoning district. Of particular concern are those proposed houses that will have multiple owners and occupants. Do those fit within single-family residential, or are they something else, such as multi-family? Having considered, researched, discussed, and weighed all the facts and circumstances with City staff and with the developer's representatives, I conclude these are properly and lawfully considered to be single-family residential dwellings.

This project proposes a creative and unique approach to development, and this concept of having a house that will have 4 separately owned suites/units in which intellectually and developmentally disabled (IDD) individuals will reside together as a continuing, non-transient, single non-profit housekeeping unit is a novel one that I do not recall seeing anything quite like before. At first impression, the notion of having a house that would be divided into 4 separately owned and occupied condominium units ordinarily indicates a multi-family use. But there are other facts and circumstances at play here which lead me to a different conclusion.

The Zoning Ordinance's definitions of "Dwelling," "Single-Family Dwelling," "Two-family (duplex) dwelling," and "Family" are all important in analyzing this issue:

DWELLING. A residential unit providing complete, independent living facilities for one family including permanent provisions for living, sleeping, cooking, eating and sanitation.

* * *

- H. Single-Family Dwelling. A building designed exclusively for residential occupancy by not more than one family.
- I. Two-Family (Duplex) Dwelling. A building designed exclusively for residential occupancy by two families, and arranged to provide separate kitchen and sleeping accommodations and sanitary facilities for each family.

FAMILY.

- A. An individual or group of two or more persons related by blood, marriage or adoption, together with foster children and servants of the principal occupants, with not more than one additional unrelated person, who are domiciled together as a single, domestic, housekeeping unit in a dwelling unit; or
- B. 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.

Looking first to the definition of “Family,” the paragraph A definition is inapplicable to this project because the occupants will not be related by blood, marriage, or adoption. But paragraph B defines family very broadly to include a collective number of individuals domiciled together in one dwelling whose relationship is of a continuing, non-transient domestic character and who are cooking and living as a single non-profit housekeeping unit. I believe that because the owners/occupants will all be IDD individuals and that although they will have separate bedrooms they will otherwise be operating as a single housekeeping unit sharing meals, daily activities and events, and shared housekeeping responsibilities including cooking, cleaning, and grocery shopping bring this unique residential model into the fold of single-family residential. I have reviewed the proposed condominium documents and am satisfied that there will be adequate safeguards and restrictions that will not permit lease or sale of suites/units to non-IDD individuals, and there is also a review and approval process for any such transfers of ownership. I believe this insures this use will continue as a single housekeeping unit and will not later convert or transition to a multi-family use.

I have also considered that under the Michigan Zoning Enabling Act, state licensed residential facilities with 6 or fewer occupants are considered a residential use of property and permitted in all residential zones. See MCL 125.3206(1)(a). If this were a state licensed facility, there would be no doubt that this is a permissible single-family residential use. But

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since it will not be state-licensed, does this mean that it cannot be considered as a single-family residential use, or is the use similar – despite the absence of a state license¹ – such that it should still be regarded as a permitted single-family residential use? I lean toward the latter, not the former. I think we look to the nature of the use and not just the technicality of whether they hold a state license. Everything else being equal, this project strikes me as being substantially similar in its nature and operation to what a state licensed residential facility would be. An argument can perhaps be made that this project may have even more continuity and permanence in its occupancy, and operate more as a single, non-profit housekeeping unit than a state licensed residential facility would, in view of the ownership model.

It also appears that important to the distinction between “single-family dwelling” and “two-family (duplex) dwelling” under the Zoning Ordinance is whether the building is arranged to provide separate kitchen and sleeping accommodations and sanitary facilities for each family. Although the proposed individually owned units/suites will have a bed and private bath, they will not have separate kitchens.

After considering and analyzing all the relevant facts and circumstances, my opinion is that this is properly and lawfully considered to be a single-family residential use.

Very truly yours,

A handwritten signature in black ink, appearing to read 'J.D. Staran', with a stylized flourish at the end.

John D. Staran

JDS/dh

cc: Mr. Chris McLeod

¹ The developer has explained they will not be state-licensed for several reasons, but primarily because the proposed usage and ownership structure differs from the state license requirements and there may not be 24-hour supervision or care.