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JC

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

PLANNED PARENTHOOD MID AND SOUTH MICHIGAN, a Michigan non-profit corporation,

Plaintiff,

vs.

SHRI SAI-KRISHNA GROUP, L.L.C., a Michigan limited liability company,

Defendant.

Civil Action No. 11-119441-CH

Hon. James M. Alexander

Alan M. Greene (P31984)
Krista L. Lenart (P59601)
Attorneys for Plaintiff
Dykema Gossett PLLC
39577 Woodward Avenue, Suite 300
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James L. Carey (P67908)
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South Lyon, MI 48178
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Joel J. Kirkpatrick (P62851)
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Attorney for Defendant
31800 Northwestern Hwy, Ste. 350
Farmington Hills, MI 48334
(248)855-6010

PLAINTIFF'S RENEWED MOTION FOR PARTIAL SUMMARY DISPOSITION

Plaintiff Planned Parenthood Mid and South Michigan, by its attorneys Dykema Gossett PLLC, respectfully requests that, pursuant to MCR 2.116(C)(10), the Court enter judgment against Defendant Shri Sai-Krishna Group, L.L.C. on Count I of Plaintiff's Complaint because there is no genuine issue as to any material fact and Plaintiff is entitled to a partial judgment as a matter of law.

This case involves the construction of a restrictive covenant. Defendant owns a Comfort Suites Hotel in Auburn Hills. Plaintiff recently purchased an adjacent property developed with a

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vacant, speculative office building. Plaintiff's property is burdened by a restrictive covenant that permits "restaurant, retail or office usage," and Plaintiff purchased its property for use as a medical office building. Defendant now objects to Plaintiff's proposed use of Plaintiff's property for medical office use, relying on the restrictive covenant.

For the reasons set forth in the accompanying Brief and exhibits, Plaintiff's use of its property for medical offices is not barred by the restrictive covenant as a matter of law. Furthermore, the Defendant has waived and/or is estopped from asserting that medical offices are barred by the restrictive covenant because Defendant acknowledged in writing that such use was authorized. Plaintiff asks this Court to determine, declare and adjudge that the restrictive covenant does not bar Plaintiff from using its property for medical office purposes and/or that Defendant has waived any argument and is estopped from asserting that a medical office use is prohibited by the restrictive covenant.

Respectfully submitted,

DYKEMA GOSSETT PLLC

By:/s/ Krista L. Lenart

Alan M. Greene (P31984)
Krista L. Lenart (P59601)
Attorneys for Plaintiff
39577 Woodward Avenue, Suite 300
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BRIEF IN SUPPORT OF PLAINTIFF'S RENEWED MOTION FOR PARTIAL SUMMARY DISPOSITION

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DYKEMA GOSSETT•A PROFESSIONAL LIMITED LIABILITY COMPANY•39577 WOODWARD AVENUE•SUITE 300•BLOOMFIELD HILLS, MICHIGAN 48304

Plaintiff Planned Parenthood Mid and South Michigan ("Plaintiff"), submits the following brief in support of its renewed motion for summary disposition pursuant to MCR 2.116(C)(10) on Count I of Plaintiff's Complaint, which seeks a declaration that the restrictive covenant at issue does not bar Plaintiff's use of its Property for medical office purposes. As set forth below, discovery has not (and could not) reveal any issue of material fact that would preclude summary disposition, because Plaintiff's proposed medical office use of the Property is clearly within the "office" use permitted by the plain language of the restrictive covenant. Plaintiff therefore respectfully requests that this Court enter a declaration to that effect, so that Plaintiff can proceed unhindered with its lawful use of its Property.

UNDISPUTED FACTS AND PROCEDURAL HISTORY

Plaintiff is a Michigan non-profit corporation. Plaintiff owns property located at 1625 N. Opdyke, Auburn Hills, Michigan 48326 (the "Property"), which it acquired from Fidelity Bank in November 2009. Plaintiff paid $733,150 for the Property. (*See* Closing Statement attached as Exhibit 1.) At the time Plaintiff acquired the Property, it was developed with a vacant, speculative office building constructed in approximately 2005. The interior of the building was never completed and it was never occupied.

Plaintiff acquired the Property for use as a medical office. Plaintiff's proposed medical offices will provide a variety of health care services to women, men and teens without regard to race, gender, age, marital status, national origin, disability or sexual orientation. The Property is zoned "B-2, General Business Districts" by the City of Auburn Hills, which authorizes the Property to be used for, among other things, any principal use permitted in the "O" (or "Office District"). The City's "Office District" zoning provides that "[t]he Office Districts are designed to accommodate office uses." "Medical offices" and "outpatient clinics" are principal uses permitted in the Office District. (*See* Exhibit 2, excerpts from Auburn Hills Zoning Ordinance.)

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Defendant is the owner of property adjacent to Plaintiff's Property. Defendant's property is developed with a Comfort Suites Hotel (the "Hotel"). Apparently, Plaintiff's Property and Defendant's property were at one time owned by the same entity – Torretta Investment Company. Through an instrument entitled "Declaration of Restrictive Covenant," recorded on September 29, 1998 at Liber 18997, Page 273 with the Oakland County Register of Deeds (the "Restrictive Covenant" or "Restriction"), Torretta Investment Company agreed to restrict Plaintiff's Property to "***restaurant, retail or office usage***." (*See* Restrictive Covenant attached hereto as Exhibit 3, emphasis added.)

Even though a medical office is plainly an office use permitted under both the Zoning Ordinance and Restrictive Covenant, Plaintiff sought to confirm this plain meaning of the Restrictive Covenant with Defendant, prior to closing on its acquisition of the Property during the course of a due diligence period. Plaintiff's counsel thus wrote Defendant on October 8, 2010, asking that Defendant confirm the following:

> My client intends to complete construction of the building interior with no change in the current building height, ***and to use the building for medical offices***. Our understanding of the Covenant is that use of the building for office purposes would include medical offices, and we would like to confirm that you agree with that interpretation.

(*See* Letter attached hereto as Exhibit 4, emphasis added.) Defendant's principal executed the letter, acknowledging his agreement thereto, and returned the letter to Plaintiff's counsel. (*See* Exhibit 4.)

Plaintiff thereafter completed the acquisition of the Property, paying a substantial sum for same. Plaintiff intends to invest substantial additional monies to complete the interior build-out for its medical offices. But after Plaintiff acquired the Property, Defendant's counsel wrote a letter to various City of Auburn Hills and Oakland County officials, attaching a copy of the

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Restrictive Covenant, and claiming that "[m]y client is concerned that the new owners of the Recently Purchased Property may have plans to develop the property in ways that would violate my client's rights." (*See* January 31, 2011, letter attached hereto as Exhibit 5.) At the same time, Defendant's attorney notified Plaintiff of Defendant's objection to Plaintiff's use of its Property for medical offices, threatening to seek legal action to prevent what Defendant improperly characterizes as a breach of the Restrictive Covenant. (*See* Exhibit 6.)

Defendant's conduct prompted Plaintiff to file this action on May 31, 2011, in order to remove the cloud on the title to its Property and seek the Court's declaration that the use of the Property for medical office purposes does not violate the Restriction. On July 13, 2011, in lieu of answering the Complaint, Defendant filed "Pre-Answer Motions to Strike and for Summary Disposition." Those motions raised various technical objections to the Complaint and sought dismissal of "parts" of the remaining claims on grounds that included *Noerr-Pennington* immunity and failure to state a claim.[1] On July 21, 2011, Plaintiff filed a motion for partial summary disposition on Count I of the Complaint, on the basis that no material issue of fact existed and Plaintiff was entitled to a declaration that its proposed medical office use of the Property was permitted under the Restriction.

This Court held a hearing on the parties' motions on September 7, 2011. At the hearing (and in his briefing), Defendant's counsel asserted that Plaintiff's proposed use constituted an "outpatient surgical facility" which counsel claimed was governed by a "vastly different" state regulatory scheme than a "private dermatologist's office." (Exhibit 7, 9/7/11 Transcript at 13.) The Court put the parties' motions on hold to allow the parties to take discovery so Defendant

[1] Defendant answered the Complaint on September 20, 2011, so the portion of Defendant's motion that raised technical objections to the Complaint is now moot.

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could develop its argument regarding the alleged regulatory differences between the uses, and the Court instructed the parties that the motions could be refiled after 60 days. (*Id.* at 17.)

On October 6, 2011, Defendant's counsel deposed Lori Lamerand, Plaintiff's President and CEO. Ms. Lamerand testified that Plaintiff intends to use the Property as a health center, a community education location, and for other general office space. (Exhibit 8, Lamerand Dep. Transcript at 35.) She testified that no decision had been made regarding the specific procedures or services that would be offered at the medical offices located on the Property, but she testified that procedures performed by physicians at other Planned Parenthood facilities include colposcopy, cryotherapy, LEEP (a treatment for cervical cancer), abortion procedures, and vasectomies. (Lamerand Dep. at 14.) She also testified that it was her understanding that Planned Parenthood's health centers were not required to be licensed as Freestanding Outpatient Surgical Facilities. (Lamerand Dep. at 24-25; 47-48.)[2]

ARGUMENT

I. Summary Disposition On Count I Of The Complaint Remains Appropriate Because Plaintiff's Proposed Medical Office Use Is Not Prohibited Under The Plain, Unambiguous Language of the Restrictive Covenant.

Nothing revealed during discovery has (or could) change the fact that Plaintiff's proposed medical office use is permitted under the plain language of the Restriction. It is well settled under Michigan law that when questions arise about the construction or application of a restrictive covenant, ***such covenants are to be strictly construed against those creating them or claiming a right of enforcement***, and all doubts are to be resolved in favor of free use of the property. *See, e.g., Sylvan Glens Homeowners Ass'n v McFadden*, 103 Mich App 118; 302

[2] Plaintiff sent detailed interrogatories and document requests to Defendant seeking additional information about the regulatory scheme that Defendant claims is relevant to this dispute. Defendant provided only general information and conclusory statements in response. (*See* Ex. 9, Excerpt From Defendant's Discovery Responses.)

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NW2d 615 (1981); *Sampson v Kaufman*, 345 Mich 48; 75 NW2d 64 (1956); *Moore v Kimball*, 291 Mich 455; 289 NW 213 (1939); *Wood v Blancke*, 304 Mich 283; 8 NW2d 67 (1943); *Austin v Kirby*, 240 Mich 56; 214 NW 943 (1927). This is precisely because the imposition of a restriction on the use of a person's property results in the loss of valuable property rights. *See Kaplan v Huntington Woods*, 357 Mich 612; 99 NW2d 514 (1959). Further, restrictive covenants must be "enforced as written, and should not be extended by judicial construction." *Hill v Rabinowitch*, 210 Mich 220, 224; 177 NW 719 (1920).

Here, the Restrictive Covenant at issue limits the Property to retail, restaurant or office usage. Consequently, the Property could not be used for residential or industrial use or for another hotel, but any office use is permissible, and the Restrictive Covenant must be construed narrowly to permit the free use of land. The right to use the land for "office" uses is extremely broad, and as explained in Plaintiff's prior brief, courts faced with similar broad language in deed restrictions have routinely refused to restrict the use of land beyond that which is expressly provided in the deed, and have refused to exclude particular types of the uses that are expressly permitted where the deed restriction language provides no such exclusion.

For example, the Michigan Supreme Court has twice held that a deed restriction for "residence purposes only" did not prohibit apartment buildings, and has rejected the argument that such language permitted only a single residence for a single family because "to give the language used this meaning would be to extend its scope beyond the expressed intention of the parties." *Casterton v Plotkin*, 188 Mich 333, 338; 154 NW 151 (1915); *Teagan v Keywell*, 212 Mich 649; 180 NW 454 (1920). *See also City of Livonia v Dep't of Social Services*, 123 Mich App 1, 22; 333 NW2d 151 (1983), *aff'd* 423 Mich 466 (1985) (rejecting argument that deed restriction allowing "single family dwelling" prohibited an adult foster care small group home,

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and noting that "the Michigan courts have consistently given a liberal construction of the word 'family' when used in a restrictive covenant to include other favored social units in addition to a traditional family," based, in part, on "the longstanding principle that land should be freely alienable" and "[r]estrictive covenants are to be strictly construed").

The "commonly used meaning" of the term "office" also supports Plaintiff's position. (*See* Defendant's 8/17/11 Brief at 9; *see also Bloomfield Estates Improvement Ass'n, Inc v City of Birmingham*, 479 Mich 206, 215; 737 NW2d 670 (2007)) (quoting definitions of "residence" and "residential" from Random House Webster's College Dictionary). An "office" is "[a] place where business is conducted or services are performed." BLACK'S LAW DICTIONARY 1190 (9th ed. 2009). *See also* RANDOM HOUSE WEBSTER'S COLLEGE DICTIONARY 907 (2nd ed. 1997) (defining "office" as "a place where business is conducted."). Plaintiff's proposed medical office use is clearly covered by these definitions.

Here, any construction of the Restrictive Covenant that prohibits Plaintiff's proposed use of the Property as a medical office would be entirely unreasonable and inappropriate, and would directly contradict the above-cited authorities that prohibit courts from extending restrictive covenants beyond their written language. The Defendant's position would require the Court to re-write the Covenant to provide that the Property may be used for "office" uses, *except for medical offices*, when the Covenant itself, "as written," contains no such limitation. That position should be rejected by this Court, just as the *Casterton* and *Teagan* courts rejected the argument that the restrictive covenants in those cases permitted use of the properties for "residence purposes," except for multi-family residence purposes. Under the plain language of the Restriction and binding Michigan authorities governing interpretation of such restrictions, Plaintiff remains entitled to summary disposition on Count I.

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II. Summary Disposition Is Appropriate On Count I Regardless of The Licensing Requirements Or Regulations Applicable To Plaintiff's Use.

In its briefing and at oral argument on Plaintiff's motion for summary disposition, Defendant took the position that Plaintiff's proposed use was prohibited under the restrictive covenant because the use might be considered an "outpatient surgical facility" which the state "define[s] and regulated quite differently" from "private practice offices for doctors," such as a "dermatologist." (Defendant's 8/17/11 Brief at 9; Ex. 7, 9/7/11 Transcript at 13.) As Defendant's counsel argued at the hearing, Defendant believes it "would be twisted logic to say an outpatient surgical facility equals office." (Ex. 7, 9/7/11 Transcript at 10.)

Under the provisions of the Auburn Hills zoning ordinance applicable to the Property, however, which Defendant's counsel admits are "instructive" (Ex. 7, 9/7/11 Transcript at 11), an outpatient surgical facility ***does*** equal "office." The "Office District" zoning classification specifically permits "medical offices ***and outpatient clinics***" (emphasis added), and "clinic" is a defined term in the zoning ordinance:

> **Clinic:** A place for the care, diagnosis and treatment of sick or injured persons, ***and those in need of medical or minor surgical attention***. A clinic may incorporate customary laboratories and pharmacies incidental or necessary to its operation or to the service of its patients, but may not include facilities for inpatient care or major surgery.

(Ex. 2, Excerpts from Zoning Ordinance at 2-4, emphasis added).[3] Thus, even if Plaintiff decides to offer outpatient surgical procedures at its medical offices on the Property, it would be a use specifically permitted under Auburn Hills' "office" zoning classification, and it would be permitted under the Restrictive Covenant.

[3] The Property is zoned as B-2 or "General Business District," which zoning specifically allows all principal uses permitted within the City's "O" or "Office" zoning district. The principal uses permitted in the General Business District also include "[p]rofessional offices of doctors, lawyers, dentists, chiropractors, osteopaths and similar or allied professions." (Ex. 2, Excerpts from Zoning Ordinance at 9-1).

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Further, Defendant has presented absolutely no authority for the proposition that state regulations or licensing requirements that may (or may not) apply to Plaintiff's use are relevant to determining whether the use is permitted under the Restriction.[4] The plain language of the restrictive covenant does not incorporate or make any reference to licensing requirements or state regulations. And it cannot be disputed that many uses (including "office" uses) specifically allowed under the Restriction would be subject to state licensing requirements and regulations. For example, any financial or insurance-related "office" use would be subject to extensive licensing requirements and regulations (*see, e.g.*, 1979 AC, R 445.1001 *et seq*; R 451.601.1 *et seq*); a "restaurant" use would be subject to Oakland County licensing requirements and could be subject to regulation by the state Liquor Control Commission (*see, e.g.*, 1979 AC, R 436.1001 *et seq*); and a "retail" use could be governed by any number of state and/or federal regulations, depending upon the items sold (including liquor, tobacco or pharmaceutical products).

Thus, whether state licensing requirements or regulations apply or do not apply to a particular use has no bearing on whether that use is permitted under the Restrictive Covenant at issue in this case. Defendant's argument to the contrary is unsupported by the plain language of the Restriction, and it therefore cannot serve as a basis for denying Plaintiff's motion for summary disposition.

[4] At her deposition, Lori Lamerand testified that it is her understanding that Plaintiff is not, in fact, required to license its facilities as "freestanding surgical outpatient facilities." (Ex. 8, Lamerand Dep. at 24-25; 47-48.) But whether such a license is required is irrelevant to resolution of this motion, because as explained in this section, even if such licensing and/or regulatory requirements applied to Plaintiff's proposed use, it would not affect interpretation and application of the restrictive covenant.

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III. Even If There Was Any Ambiguity In The Meaning Of "Office" Use, Which Ambiguity Would Have To Be Construed Against Defendant, Defendant's Own Admission That A Medical Office Use Was Permissible Is Dispositive.

Discovery has also revealed nothing that diminishes the dispositive effect of Defendant's pre-litigation admission that medical office use is permissible under the Restrictive Covenant. As set forth above, before Plaintiff closed on the purchase of the Property for more than $700,000, it had an opportunity to conduct due diligence. When it discovered the Restrictive Covenant, its counsel wrote Defendant to confirm that a medical office use was permitted under the Covenant. Plaintiff wanted to avoid any disagreement with its future neighbor. Defendant's principal executed the letter confirming the obvious – the Restrictive Covenant does not bar medical office uses of the Property. (*See* Exhibit 4.)[5]

It is clear from Defendant's prior briefing and argument that Defendant would like to pick and choose between the permitted uses on the Property, and would like to dictate to Plaintiff what types of medical office usages would be permissible or acceptable to Defendant, including the types of treatment, services, testing or other consultation activities. There is no basis in the Restrictive Covenant or any applicable law to give the Defendant such discretion or control over Plaintiff's use and occupation of its own Property, and, even if there were, Defendant is estopped by its written acquiescence from doing so.

[5] In its prior briefing, Defendant essentially argued that its admission with respect to medical office uses is not effective because the identity of Plaintiff as the purchaser was not disclosed. (7/13/11 Brief at 5; 8/17/11 Brief at 7). Such a position is without merit. The identity of the purchaser is not relevant to construction of the Restrictive Covenant, and Defendant has no right to dictate the identity of the owner of Plaintiff's Property. It does not matter whether the medical office use is for a group of radiologists, oral surgeons, pediatricians, urgent care doctors, or reproductive health services (such as Plaintiff's practice). These are all medical office uses not prohibited by the Restrictive Covenant and authorized office uses under the City's zoning of the Property. Moreover, not only is it common practice for potential buyers of property not to disclose their identity during due diligence investigation, the Defendant never requested the identity of the purchaser, nor did Plaintiff refuse to identify itself.

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As the Michigan Supreme Court has recognized, "[t]he right to enforce a restrictive covenant may be lost by waiver or acquiescence where by failing to act one leads another to believe that he is not going to insist upon the covenant, and another is damaged thereby; or ***where there has been acquiescence***, actual or passive, equity will ordinarily refuse aid." *Bigham v Winnick*, 288 Mich 620, 623; 286 NW 102 (1939) (emphasis added) (citation omitted).

Here, the undisputed facts demonstrate the unequivocal waiver and acquiescence by Defendant that Plaintiff's medical office is permitted under the plain language of the deed restriction broadly permitting "office" uses. (Ex. 4.) And there is no question that Plaintiff justifiably relied on Defendant's written representation in completing the acquisition of the Property for over $700,000. Consequently, Defendant is estopped from flipping its position now to assert a contrary, waived position. *See Bigham*, 288 Mich at 624 (party could not enforce restrictive covenant where "no complaint or objection was made during all of the time that [the other party] was making the expenditures in improving the premises for carrying on such business"); *see also Dunham Lake Prop Owners Assoc v Baetz*, No 237047, 2003 WL 21419268, at *2 (Mich Ct App June 19, 2003) (copy attached as Ex. 10) (citing *Bigham*, and discussing trial court's determination under the elements of equitable estoppel that "plaintiffs' failure to enforce the deed restriction induced defendants to believe that such structures were permitted and that defendants justifiably relied on and acted on this belief" and "would be prejudiced if plaintiffs were allowed to deny the existence of the facts and require removal of their structure").

CONCLUSION

For the reasons set forth above, Plaintiff is entitled to a declaratory judgment that its proposed use and occupation of its Property for medical office uses in a manner permitted and regulated by the City's Zoning Ordinance does not violate the Restrictive Covenant. Plaintiff

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therefore respectfully requests that this Court grant Plaintiff's renewed motion for partial summary disposition on Count I of the Complaint.

Respectfully submitted,

DYKEMA GOSSETT PLLC

By: /s/ Krista L. Lenart
Alan M. Greene (P31984)
Krista L. Lenart (P59601)
Attorneys for Plaintiff
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INDEX OF EXHIBITS

Exhibit 1	Closing Statement
Exhibit 2	Excerpts from Auburn Hills Zoning Ordinance
Exhibit 3	Restrictive Covenant
Exhibit 4	10/08/10 Letter from Plaintiff's Counsel to Defendant
Exhibit 5	01/31/11 Letter from Defendant's Counsel to City/County Officials
Exhibit 6	01/31/11 Letter from Defendant's Counsel to Plaintiff
Exhibit 7	09/07/11 Hearing Transcript
Exhibit 8	10/06/11 Lamerand Deposition Transcript Excerpt
Exhibit 9	Excerpt from Defendant's Discovery Responses
Exhibit 10	*Dunham Lake Prop Owners Assoc v Baetz*, No 237047, 2003 WL 21419268, at *2 (Mich Ct App June 19, 2003)

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Farmington Hills, MI 48334
(248)855-6010

PROOF OF SERVICE

Bethany Romanowski, an employee of Dykema Gossett PLLC, deposes and says that on the 8th day of December, 2011, she caused to be served copies of *Plaintiff's Renewed Motion for Partial Summary Disposition* and this *Proof of Service* via U.S. Mail to James L. Carey and Joel J. Kirkpatrick at their above-captioned addresses.

Bethany Romanowski

Bethany Romanowski

Oakland County Michigan

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TO BE FILED WITH THE CASE MANAGEMENT OFFICE BY 4:30 P.M. ON OR BEFORE WEDNESDAY PRECEDING MOTION DAY

PRAECIPE FOR MOTION AND MISCELLANEOUS DOCKET

STATE OF MICHIGAN
The Circuit Court for the County of Oakland
1200 N. Telegraph Rd., Dept. 404, Pontiac, MI 48341-0404

Case Number : 2011-119441-CH

(YYYY-123456-XX)

Plaintiff PLANNED PARENTHOO v. Defendant SHRI SAIKRISHNA GR

Judge: JAMES M. ALEXANDER

Summary Disposition Motion: ☑

Motion Date: Wednesday, 1/11/2012

Motion Title: PLAINTIFF'S RENEWED MOTION FOR PARTIAL SUMMARY DISPOSITION

YOUR MOTION WILL NOT BE SCHEDULED IF YOU DO NOT COMPLETE EITHER #1 OR #2 BELOW:

◉ 1. I hereby certify that I have made personal contact with James L. Carey on 9/7/2011 , requesting concurrence in the relief sought with this Motion and that concurrence has been denied.

OR

○ 2. I have made reasonable and diligent attempts to contact counsel requesting concurrence in the relief sought with this motion on .

Is this a re-praecipe?

◉ No ○ Yes

Notice: If this motion has been praeciped with no one appearing, the judge has an option of sanctioning parties or dismissing your motion. Your electronic signature certifies that the above information is correct.

Attorney: Krista L. Lenart Phone: (734)214-7676

Moving Party: Plaintiff

Date: 12/8/2011 1:54:50 PM

C-10 (11-07)46569 Local Rule 2.119

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EXHIBIT 1

Buyer Closing Statement

William T. Sheahan Title Company
32820 Woodward Avenue
Suite 210
Royal Oak, MI 48073

File Number: WS10867 | Printed: 11/16/2010 at 10:06 | Page: 1

Seller:	Fidelity Bank, a Michigan banking corporation
Buyer:	Planned Parenthood Mid and South Michigan, a Michigan non-profit corporation
Property Location:	1625 N. Opdyke Auburn Hills, MI 48326 City of Auburn Hills
Settlement Date:	11/19/2010

Description		Charges	Credits
Sales Price		733,150.00	
Deposit			42,500.00
City/town taxes	11/19/2010 to 06/30/2011	17,130.17	
County taxes	11/19/2010 to 11/30/2010	375.65	
Delinquent Water/Sewer			784.28
Water/Sewer October Bill			60.98
Water/Sewer November Prorate			36.59
Settlement or closing fee		495.00	
Record Covenant Deed		21.00	
Recording Processing Fee		45.00	
Courrier Fee		30.00	
CASH DUE FROM BUYER			707,864.97
Totals:		751,246.82	751,246.82

Planned Parenthood Mid and South Michigan, a Michigan non-profit corporation

By: Matthew P. Bertram, Vice President of Finance, CFO

William T. Sheahan Title Company

By _____
Closing Agent

Received for Filing Oakland County Clerk 2011 DEC 28 PM 03:55

Received for Filing Oakland County Clerk 2011 DEC 08 PM 03:55

EXHIBIT 2

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ARTICLE II
DEFINITIONS

For the purposes of this Ordinance, certain terms, or words used herein shall be interpreted as follows: All words used in the present tense shall include the future; all words in the singular number include the plural number and all words in the plural number include the singular number; and the word 'building' includes the word 'structure', and the word 'dwelling' includes 'residence'; the word 'person' includes 'corporation', 'association', as well as an 'individual'; the word 'shall' is mandatory and the word 'may' is permissive; the word 'lot' includes the words 'plot' or 'parcel'; the words 'used' or 'occupied' includes the words 'intended', 'designed' or 'arranged to be used or occupied'. Terms not herein defined shall have the meaning customarily assigned to them in the Webster New Collegiate Dictionary.

Accessory Building: A subordinate building, the use of which is clearly incidental to that of the main building or to the use of the land.

Accessory Use, or Accessory: A use which is clearly incidental to, customarily found in connection with and, unless otherwise specified, located on the same zoning lot as the principal use to which it is related. When 'accessory' is used in this Ordinance, it shall have the same meaning as accessory use.

Acre (Net): A parcel of land forty-three thousand five hundred and sixty (43,560) square feet in area exclusive of area under water and exclusive of area within the right-of-way requirements as adopted by the City of Auburn Hills, Board of Oakland County Road Commissioners, and Michigan Department of Transportation.

Acre, (Gross): A parcel of land forty-three thousand five hundred and sixty (43,560) square feet in area including all the area within the legal description of the parcel, and the area within the right-of-way as adopted by the City of Auburn Hills, Board of Oakland County Road Commissioners, and Michigan Department of Transportation

Adult Bookstore: An establishment wherein more than twenty (20%) percent of its stock in trade is comprised of books, magazines, and other periodicals having as dominant theme matter, depicting, describing or relating to 'Specified Sexual Activities' or 'Specified Anatomical Areas' as defined in this Article, or an establishment with a segment or section devoted to the sale or display of such material.

Adult Motion Picture Theater: The use of property commercially for displaying materials a significant portion of which include matter depicting, describing or presenting specified sexual activities for observation of patrons.

1. 'Significant Portion' As used in the definition of adult motion picture theater, the phrase Significant Portion shall mean and include either or both of the following:
   - A. Any one or more portions of the display having a duration in excess of five (5) minutes; and/or
   - B. The aggregate of portions of the display having a duration equal to ten (10%) percent or more of the single display as a whole.
2. 'Specific Sexual Activities' The explicit display of one or more of the following:
   - A. Human genitals in a state of sexual stimulation or arousal;
   - B. Acts of human masturbation, sexual intercourse or sodomy; or
   - C. Fondling or other erotic touching of human genitals, pubic region, buttock or breast.

Agriculture: Any use of substantially undeveloped land, of five (5) acres or more in size, for the production of plants and animals useful to man, including forages and sod crops, grains and feed crops, dairy and dairy products; livestock, including breeding and grazing; fruits; vegetables; Christmas trees; and other similar uses and activities.

Alley: Any dedicated public way affording a secondary means of access to abutting property, and not intended for general traffic circulation.

Alterations: Any change, addition, or modification to a structure or type of occupancy, any change in the structural members of a building, such as walls or partitions, columns, beams or girders, the consummated act of which may be referred to herein as 'altered' or 'reconstructed'.

Antenna: The arrangement of wires or metal rods used in the sending and receiving of electromagnetic waves.

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Building Inspector: The Building Inspector or Official designated by the City Council to inspect.
Building Line: A line formed by the face of the building, and for the purposes of this Ordinance, a building line is the same as a front setback line.
Building, Main or Principal: A building in which is conducted the principal use of the lot on which it is situated.
Bus: A motor vehicle which is designed to carry more than ten (10) passengers and which is used for the transportation of persons and also means a motor vehicle, other than a taxi cab, which is designed and used for the transportation of persons for compensation. The term does not include a school bus or a bus that is equipped and used for living or camping purposes.
Camper Enclosure: A structure or enclosure designed for mounting on a pick-up truck or truck chassis in such a manner as to provide temporary living or sleeping quarters including, but not limited to, a slide-in camper or truck cap.
City Council: The duly elected or appointed City Council of the City of Auburn Hills.
Clinic: A place for the care, diagnosis and treatment of sick or injured persons, and those in need of medical or minor surgical attention. A clinic may incorporate customary laboratories and pharmacies incidental or necessary to its operation or to the service of its patients, but may not include facilities for inpatient care or major surgery.
Club: An organization of persons for special purposes or for the promulgation of sports, arts, science, literature, politics or the like, but not for profit.
Commercial Equipment: Any machinery, parts, accessories, construction equipment or other equipment used primarily in the course of conducting a trade or business.
Commercial Use: The use of property in connection with, or for, the purchase, sale, barter, display or exchange of goods, wares, merchandise or personal services and the maintenance or operation thereof of offices or recreation or amusement enterprises.
Commercial Vehicle: A vehicle of the bus, truck, van or trailer-type, which is designed, constructed or used for the transportation of passengers for compensation, the delivery of goods, wares or merchandise, the drawing or towing of other vehicles, or for other commercial purposes. The term includes, but not to the exclusion of any other types not specifically mentioned herein, truck-tractors, semi-trailers, step-vans, dump trucks, tow trucks, pick-up trucks and sedan or panel vans in excess of one-ton capacity used primarily for commercial purposes, and pole trailers.
Conflicting Land Uses: Any situation which results in a residential use abutting any office, commercial, industrial, research, utility, storage, or parking use shall be deemed to be conflicting land uses.
Construction Equipment: A bulldozer, front-end loader, backhoe, power shovel, cement mixer, trencher, and any other equipment designed or used for construction, including parts and accessories thereto, or trailers designed for the transportation of such equipment.
Convalescent Homes and Congregate Care Facilities: The term 'Convalescent Home' and 'Congregate Care Facility' shall mean any structure with sleeping rooms where persons are housed or lodged and are furnished with meals, or with meals, nursing and medical care.
Development: The construction of a new use or building, or other structure on a lot or parcel, the relocation of an existing use or building on another lot or parcel, or the use of acreage or open land for a new use or building.
Disposal: The incineration, long term storage, treatment, or the discharge, deposit, injection, dumping, spilling, leaking, or placing of a waste into or on land or water in a manner that the waste, refuse, industrial solid or other waste, or a constituent of the waste enters the environment, is emitted into the air, or discharged into water, including groundwater.
Disposal Facility: The location, equipment, or facility where wastes, solid waste, refuse, industrial solid or other wastes are disposed of, including a disposal facility associated with, within, or adjacent to facilities generating the waste.
District: A portion of the incorporated part of the City within which certain regulations and requirements or various combinations thereof apply under the provisions of this Ordinance.
Drive-In: A business establishment so developed that its retail or service character is dependent on providing a driveway approach or parking spaces for motor vehicles so as to serve patrons while in the motor vehicle rather than within a building or structure.
Drive-In Restaurant: A business establishment for the predominant serving of food and/or beverages, with driveways and approaches so developed and designed so as to serve patrons while in the motor

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ARTICLE VII
O, OFFICE DISTRICTS

PREAMBLE

The O Office Districts are designed to accommodate office uses. Office may be used as zones of transition between non-residential uses and major thoroughfares, and residential uses.

(Amended: 7-09-01 per Ordinance No. 684)

SECTION 700. PRINCIPAL USES PERMITTED:

In the O Office Districts no building or land shall be used and no building shall be erected except for one (1) or more of the following specified uses, unless otherwise provided for in this Ordinance:

1. Office buildings for any of the following occupations: executive, administrative, professional, accounting, writing, clerical, stenographic, drafting and sales, subject to the limitations contained below in Section 701, Required Conditions.
2. Medical offices and outpatient clinics. 24 hour emergency care facilities shall not be permitted in this district.
3. Accessory buildings and accessory uses customarily incidental to any of the above principal permitted uses.
4. Uses determined to be similar to the above principal permitted uses in accordance with the criteria set forth in Section 1827 and which are not listed below as special land uses.

(Amended: 7-09-01 per Ordinance No. 684)

SECTION 701 SPECIAL LAND USES PERMITTED:

The following uses may be permitted under the purview of Section 1818 by the City Council, after site plan review and Public Hearing by the Planning Commission, and subject further to such other reasonable conditions which, in the opinion of the City Council, are necessary to provide adequate protection to the health, safety, general welfare, morals and comfort of the abutting property, neighborhood and City of Auburn Hills:

1. Nursery schools, day nurseries and child care centers provided the following conditions are met:
   - A. Such facilities shall be located on major thoroughfares with an existing or proposed right-of-way of one hundred and twenty (120) feet.
   - B. Any area not used for parking in the front yard shall be kept in lawn, and landscaped in accordance with Section 1808.
   - C. Outdoor plan areas shall be in the side or rear yard in the amount of one hundred (100) square feet for each child cared for, but at least a minimum of one thousand two hundred (1,200) square feet.
   - D. Whenever the school or center abuts a residential district, parking, drop off, and play areas shall be screened with an obscuring six (6) foot fence or wall, four foot six inch (4'6") high berm with landscaping in accordance with Section 1808, a twenty (20') foot wide greenbelt landscaped in accordance with Section 1808, or a combination of the above, whichever in the opinion of the Planning Commission and City Council, achieves the objective of screening and controlling noise levels.
   - E. Any other conditions which the Planning Commission and City Council deem necessary to assure that the residential character of the abutting neighborhood shall be maintained.
   - F. 24 hour facilities shall not be permitted abutting residential zoned property in this district.
2. Accessory buildings and accessory uses customarily incidental to any of the above special land uses permitted.
3. Special land uses determined to be similar to the above special land uses in accordance with the criteria set forth in Section 1828.

(Amended: 7-09-01 per Ordinance No. 684)

SECTION 702. REQUIREMENTS FOR ALL USES:

All uses shall be subject to the following requirements:

1. The outdoor storage of goods or materials shall be prohibited regardless of whether or not they are for sale.
2. Warehousing or indoor storage of goods or material, beyond that normally incidental to the above permitted uses, shall be prohibited.
3. Illumination of the business, and all vehicular and loading traffic, shall be controlled or channeled so as to not allow glare into the adjacent residential district, and shall be subject to the requirements of Section 1810, Exterior Lighting.

(Amended: 7-09-01 per Ordinance No. 684)

SECTION 703. AREA AND BULK REQUIREMENTS:

See Article XVII, Scheduled of Regulations, limiting height and bulk of buildings.

(Amended: 7-09-01 per Ordinance No. 684)

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ARTICLE IX
B-2, GENERAL BUSINESS DISTRICTS

PREAMBLE

The B-2 General Business Districts are intended to serve the overall shopping needs of residents both within and beyond the City including convenience, comparison and highway needs.

SECTION 900. PRINCIPAL USES PERMITTED:

In the B-2 General Business Districts no building or land shall be used and no building shall be erected except for one (1) or more of the following specified uses, unless otherwise provided for in this Ordinance:

1. Any Principal Uses Permitted in the O Office Districts or B-1 Limited Business Districts.
2. Any generally recognized retail business which supplies commodities on the premises, such as, but not limited to, groceries, meats, dairy products, baked goods or other foods, drugs, dry goods, notions or hardware, and household goods or products such as furniture, carpeting and lighting fixtures.
3. Any personal service establishment which performs services on the premises, such as, but not limited to, shoe repair shops, tailor shops, beauty parlors, or barber shops.
4. Professional offices of doctors, lawyers, dentists, chiropractors, osteopaths and similar or allied professions.
5. Banks with drive-in facilities may be permitted when said drive-in facilities are incidental to the principal function, and subject to the following conditions:
   A. Drive-up windows shall provide at least ten (10) queuing spaces eighteen (18) feet long by ten (10) feet wide for each station. The lane containing the queuing spaces shall be separate and distinct from other access drives and maneuvering lanes for parking spaces. The queuing space lane shall have a clear width of ten (10) feet and be physically separated from access drives, maneuvering lanes and parking spaces with a landscaped area five (5) feet wide with raised curbs on all sides.
   B. Drive-up stations shall provide at least five (5) queuing spaces eighteen (18) feet long by ten (10) feet wide for each station. The lane containing the queuing spaces shall be separate and distinct from other access drives and maneuvering lanes for parking spaces. The queuing space lane shall have a clear width of ten (10) feet and be physically separated from access drives, maneuvering lanes and parking spaces with a landscaped area five (5) feet wide with raised curbs on all sides.
6. Any retail business, service establishments or processing uses such as the following:
   A. Any retail business whose principal activity is the sale of new merchandise in any enclosed building.
   B. Any service establishment of an office-showroom or workshop nature of an electrician, decorator, dressmaker, tailor, shoemaker, baker, printer, upholsterer, or an establishment doing radio, television or home appliance repair, photographic reproduction, and similar establishments that require a retail adjunct.
7. Restaurants, or other places serving food or beverage (without drive-through or drive-in facilities), when located within a planned shopping center.
8. Accessory buildings and accessory uses customarily incidental to any of the above principal uses permitted.
9. Uses determined to be similar to the above principal permitted uses in accordance with the criteria set forth in Section 1827 and which are not listed below as special land uses.

(Amended: 11-11-02 per Ordinance No. 710)
(Amended: 5-15-06 per Ordinance No. 779)

SECTION 901. REQUIREMENTS FOR ALL PRINCIPAL USES:

1. All business establishments, including contractors or builders, shall be retail or service establishments dealing directly with consumers, and without wholesale outdoor storage activities on site. All goods produced on the premises shall be sold at retail on the premises where

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EXHIBIT 3

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LIBER 18997 PG 273 SP 29 98 2 8 6 2 1 7

$ 9.00 MISCELLANEOUS RECORDING
$ 2.00 REMONUMENTATION
29 SEP 98 10:12 A.M. RECEIPT# 118
PAID RECORDED - OAKLAND COUNTY
LYNN D. ALLEN, CLERK/REGISTER OF DEEDS

DECLARATION OF RESTRICTIVE COVENANTS

These Restrictive Covenants are made this 8th day of September, 1998, by and between Paul Torretta on behalf of Torretta Investment Company, a Michigan co-partnership, of 990 E. Silver Bell Road, Lake Orion, Michigan 48360 (referred to in this instrument as "Torretta"), and Ghanshyamsinh D. Vansadia, of 3646 Hollenshade Dr. Rochester Hills, Michigan 48306 (referred to in this instrument as "Vansadia").

Torretta is the owner of the real property located in Auburn Hills, Oakland County, Michigan, and more particularly described in Exhibit A as attached hereto. In consideration of Ten ($10.00) Dollars, receipt of which is acknowledged, Torretta grants and conveys to Vansadia, the following restrictions to be placed upon parcel "A": Parcel "A" may only be used or sold by Torretta for restaurant, retail or office usage. Any building constructed on Parcel "A" may only be two-story in height for restaurant or office usage (not including basement level with partial windows above grade) and one-story in height for retail usage.

These restrictive covenants are for the benefit of and appurtenant to, the real property or any portion of it, owed by Vansadia, his successors and assigns more particularly described in Exhibit B, as attached hereto.

This Grant of Restrictive Covenants will run with the land and will bind and inure to the benefit of the parties to this instrument, their heirs, successors and assigns.

In witness, Grantor has executed this instrument on the date first written above.

WITNESSES:

Robert S. Bowen

Stephanie M. Dafoe

Torretta Investment Company,
a Michigan co-partnership

By Paul Torretta
Its Managing Partner

9.00
2.00
PT

O.K. - KB

State of Michigan)
County of Oakland) ss.

The foregoing instrument was acknowledged before me this 8th day of September, 1998, Paul Torretta, Its Managing Partner, on behalf of Torretta Investment Company, a Michigan co-partnership.

Michael J. Balian
Notary Public, Oakland County, Michigan
My Commission Expires: February 12, 2000

GRECO

DRAFTED BY:

Michael J. Balian, Esq.
Balian, Donovan, Messano & Mordell, P.L.C.
33 Bloomfield Hills Parkway, Suite 100
Bloomfield Hills, Michigan 48304

WHEN RECORDED RETURN TO:

Michael J. Balian, Esq.
Balian, Donovan, Messano & Mordell, P.L.C.
33 Bloomfield Hills Parkway, Suite 100
Bloomfield Hills, Michigan 48304

EXHIBIT "A"

PROPERTY DESCRIPTION (AS PER CITY OF AUBURN HILLS)

A PARCEL OF LAND LOCATED IN PART OF THE S.W. 1/4 OF SECTION 14, T.3N., R.10E., CITY OF AUBURN HILLS, OAKLAND COUNTY, MICHIGAN, DESCRIBED AS BEGINNING AT A POINT DISTANT ALONG THE WESTERLY LINE OF OPDYKE ROAD (100 FT. WIDE) N.02°30'00"E. 259.22 FT. FROM THE N.E. CORNER OF LOT 20 OF "COE COURT SUBDIVISION" AS RECORDED IN LIBER 68, PAGE 12, O.C.R.; THENCE S.89°49'26"W. 300.00 FT.; THENCE N.01°00'00"W. 205.93 FT.; THENCE N.89°03'05"E. 312.36 FT.; THENCE S.02°30'00"W. 200.00 FT. TO THE POINT OF BEGINNING. CONTAINING 1.43 ACRES OF LAND. SUBJECT TO ALL EASEMENTS AND RESTRICTIONS OF RECORD. PARCEL IDENTIFICATION No. 14-14-351-019.

PROPERTY DESCRIPTION (AS PER CITY OF AUBURN HILLS)

A PARCEL OF LAND LOCATED IN PART OF THE S.W. 1/4 OF SECTION 14, T.3N., R.10E., CITY OF AUBURN HILLS, OAKLAND COUNTY, MICHIGAN, DESCRIBED AS BEGINNING AT A POINT DISTANT ALONG THE WESTERLY LINE OF OPDYKE ROAD (100 FT. WIDE), N.02°30'00"E. 259.22 FT. FROM THE N.E. CORNER OF LOT 20 OF "COE COURT SUBDIVISION", AS RECORDED IN LIBER 68, PAGE 12, O.C.R. AND S.89°49'26"W. 295.43 FT.; THENCE S.00°09'36"E. 40.00FT.; THENCE S.89°50'47"W. 957.12 FT.; THENCE N.00°26'48"E. 264.14 FT.; THENCE S.89°03'05"E. 916.93 FT.; THENCE S.01°00'00"E. 205.93 FT.; THENCE N.89°49'28"E. 4.57 FT. TO THE POINT OF BEGINNING. CONTAINING 5.57 ACRES OF LAND. SUBJECT TO ALL EASEMENTS AND RESTRICTIONS OF RECORD. PARCEL IDENTIFICATION No. 14-14-351-018.

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EXHIBIT 4

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DYKEMA

Dykema Gossett PLLC
400 Renaissance Center
Detroit, Michigan 48243
WWW.DYKEMA.COM
Tel: (313) 568-6800
Fax:(313) 568-6701
Laura A. Weingartner
Direct Dial: (313) 568-5417
Email: LWEINGARTNER@DYKEMA.COM

October 8, 2010

Overnight Courier

Mr. Ghanshyamsinh D. Vansadia
Shri Sai Krishna Group, LLC
c/o 3646 Hollenshade Drive
Rochester Hills, Michigan 48306
Tel. 248-340-9566

Re: Office Building located at 1625 N. Opdyke, Auburn Hills, Michigan

Dear Mr. Vansadia:

By way of introduction, I represent the potential purchaser of the unfinished building located at 1625 N. Opdyke, Auburn Hills, Michigan, adjacent to the parcel owned by Shri Sai Krishna Group, LLC, on which the Comfort Suites hotel is located. As part of my client's due diligence in connection with a potential purchase of the property, we have reviewed certain documents provided to us that have been recorded in the Oakland County real estate records.

Specifically, it has come to our attention that the Declaration of Restrictive Covenants between you and Paul Torretta on behalf of Torretta Investment Company, dated September 8, 1998, was entered into and recorded in the Oakland County Records at Liber 18997, Page 273. Following our review of the Covenant, we note that the site is restricted to one of three uses: restaurant, retail or office, with a further restriction on building height. My client intends to complete construction of the building interior with no change in the current building height, and to use the building for medical offices. Our understanding of the Covenant is that use of the building for office purposes would include medical offices, and we would like to confirm that you agree with that interpretation.

I look forward to discussing this matter with you further if necessary. However, if you agree that use of the building at 1625 N. Opdyke, Auburn Hills, Michigan, for medical office purposes is an acceptable use under the terms of the aforementioned Covenant, I would ask that you provide your signature of agreement where indicated below.

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DYKEMA

Please do not hesitate to contact me if you have any questions, comments or concerns.

Best regards,

DYKEMA GOSSETT PLLC

Laura A. Weingartner

ACKNOWLEDGED AND AGREED:

By: Ghanshyamsinh D. Vansadia
Ghanshyamsinh D. Vansadia

Dated: October 12, 2010

DET02\367520.3
ID\LAW - 101126/0002

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EXHIBIT 5

Received for Filing Oakland County Clerk 2011 DEC 08 PM 03:55

James L. Carey, Esquire

Attorney & Counselor at Law

January 31, 2011

City of Auburn Hills
Department of Public Services
1500 Brown Road
Auburn Hills, Michigan 48326

City of Auburn Hills
Community Development
1827 N. Squirrel Road
Auburn Hills, Michigan 48326

James D. McDonald, Mayor
1827 N. Squirrel Road
Auburn Hills, Michigan 48326

Linda Shannon, City Clerk
1827 North Squirrel Road
Auburn Hills, Michigan 48326

Peter E. Auger, City Manager
1827 North Squirrel Road
Auburn Hills, Michigan 48326

Oakland County Economic
Development Services
County Service Center
2100 Pontiac Lake Road, Dept. 412
Waterford, Michigan 48328-0412

Oakland County Water Resource
Commission
1 Public Works Drive
Waterford, Michigan 48328

Road Commission for Oakland County
31001 Lahser Road
Beverly Hills, Michigan 48025

Road Commission for Oakland County
Permits & Environmental Concerns
2420 Pontiac Lake Road
Waterford, Michigan 48328

Laurie M. Johnson
Economic Development Coordinator
1827 North Squirrel Road
Auburn Hills, Michigan 48326

RE: Recent Purchase of 1625 North Opdyke Road, Auburn Hills, Michigan by Planned Parenthood Mid and South Michigan

Ladies and Gentlemen:

I have been retained to represent the interests of Shri Sai-Krishna Group, L.L.C., the owner of the real property commonly know as 1565 N Opdyke Road, Auburn Hills, Michigan, 48326. In addition to any rights as an adjacent property owner, my client holds a recorded interest in the property recently purchased by Planned Parenthood Mid and South Michigan commonly known as 1625 North Opdyke Road, Auburn Hills, Michigan (the "**Recently Purchased Property**").

The purpose of this letter is to provide you with a copy of the recorded property interest that my client has in the Recently Purchased Property. My client is concerned that the new owners of the Recently Purchased Property may have plans to develop the property in ways that would violate my client's rights.

23781 Pointe O'Woods Court • South Lyon, Michigan 48178 • T: 248.605.1103 • E: jameslcarey@hotmail.com

Please feel free to contact me directly if you have any questions of concerns regarding my client's rights in the Recently Purchased Property. It is our hope that there will not be any need to resort to court action to safeguard my client's rights. I am contacting Planned Parenthood Mid and South Michigan directly to discuss these matters, but I wanted you to be aware of my client's concerns.

Thank you for your attention to these matters.

Sincerely yours,

James L. Carey

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James L. Carey, Esquire - Attorney & Counselor at Law
23781 Pointe O'Woods Court • South Lyon, Michigan 48178 • T: 248.605.1103 • E: jameslcarey@hotmail.com

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LIBER 18997 PG 273 $P 29 98 2 8 6 2 1 7

$ 9.00 MISCELLANEOUS RECORDING
$ 2.00 REMONUMENTATION
29 SEP 98 10:12 A.M. RECEIPT 118
PAID RECORDED - OAKLAND COUNTY
LYNN D. ALLEN, CLERK/REGISTER OF DEEDS

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These restrictive covenants are for the benefit of and appurtenant to, the real property or any portion of it, owned by Vansadia, his successors and assigns more particularly described in Exhibit B, as attached hereto.

This Grant of Restrictive Covenants will run with the land and will bind and inure to the benefit of the parties to this instrument, their heirs, successors and assigns.

In witness, Grantor has executed this instrument on the date first written above.

WITNESSES:

ROBERT S. Bowen

Stephanie M. Dafoe

Torretta Investment Company,
a Michigan co-partnership

By Paul Torretta
Its Managing Partner

9.00
2.00
JT

O.K. - KB

State of Michigan)
County of Oakland) ss.

The foregoing instrument was acknowledged before me this 8th day of September, 1998, Paul Torretta, Its Managing Partner, on behalf of Torretta Investment Company, a Michigan co-partnership.

Michael J. Balian
Notary Public, Oakland County, Michigan
My Commission Expires: February 12, 2000

GRECO

DRAFTED BY:

Michael J. Balian, Esq.
Balian, Donovan, Messano & Mordell, P.L.C.
33 Bloomfield Hills Parkway, Suite 100
Bloomfield Hills, Michigan 48304

WHEN RECORDED RETURN TO:

Michael J. Balian, Esq.
Balian, Donovan, Messano & Mordell, P.L.C.
33 Bloomfield Hills Parkway, Suite 100
Bloomfield Hills, Michigan 48304

EXHIBIT "A"

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A PARCEL OF LAND LOCATED IN PART OF THE S.W. 1/4 OF SECTION 14, T.3N., R.10E., CITY OF AUBURN HILLS, OAKLAND COUNTY, MICHIGAN, DESCRIBED AS BEGINNING AT A POINT DISTANT ALONG THE WESTERLY LINE OF OPDYKE ROAD (100 FT. WIDE) N.02°30'00"E. 259.22 FT. FROM THE N.E. CORNER OF LOT 20 OF "COE COURT SUBDIVISION" AS RECORDED IN LIBER 68, PAGE 12, O.C.R.; THENCE S.89°49'26"W. 300.00 FT.; THENCE N.01°00'00"W. 205.93 FT.; THENCE N.89°03'05"E. 312.36 FT.; THENCE S.02°30'00"W. 200.00 FT. TO THE POINT OF BEGINNING. CONTAINING 1.43 ACRES OF LAND. SUBJECT TO ALL EASEMENTS AND RESTRICTIONS OF RECORD. PARCEL IDENTIFICATION No. 14-14-351-019.

PROPERTY DESCRIPTION (AS PER CITY OF AUBURN HILLS)
A PARCEL OF LAND LOCATED IN PART OF THE S.W. 1/4 OF SECTION 14, T.3N., R.10E., CITY OF AUBURN HILLS, OAKLAND COUNTY, MICHIGAN, DESCRIBED AS BEGINNING AT A POINT DISTANT ALONG THE WESTERLY LINE OF OPDYKE ROAD (100 FT. WIDE), N.02°30'00"E. 259.22 FT. FROM THE N.E. CORNER OF LOT 20 OF "COE COURT SUBDIVISION", AS RECORDED IN LIBER 68, PAGE 12, O.C.R. AND S.89°49'26"W. 295.43 FT.; THENCE S.00°08'36"E. 10.00FT.; THENCE S.89°50'47"W. 957.12 FT.; THENCE N.00°26'48"E. 264.14 FT.; THENCE S.89°03'05"E. 916.93 FT.; THENCE S.01°00'00"E. 205.93 FT.; THENCE N.89°49'28"E. 4.57 FT. TO THE POINT OF BEGINNING. CONTAINING 5.57 ACRES OF LAND. SUBJECT TO ALL EASEMENTS AND RESTRICTIONS OF RECORD. PARCEL IDENTIFICATION No. 14-14-351-018.

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EXHIBIT 6

Received for Filing Oakland County Clerk 2011 DEC 28 PM 03:55

James L. Carey, Esquire

Attorney & Counselor at Law

January 31, 2011

Planned Parenthood Mid and South Michigan
3100 Professional Drive
PO Box 3673
Ann Arbor, Michigan 48104

RE: Your Recent Purchase of 1625 North Opdyke Road, Auburn Hills, Michigan

Ladies and Gentlemen:

I have been retained to represent the interests of Shri Sai-Krishna Group, L.L.C., the owner of the real property commonly known as 1565 North Opdyke Road, Auburn Hills, Michigan, 48326. In addition to any rights as an adjacent property owner, my client holds a recorded interest in the property commonly known as 1625 North Opkyke Road, Auburn Hills, Michigan 48326 (the "**Recently Purchased Property**"), which you purchased by covenant deed dated November 19, 2010.

I am uncertain whether you are represented by counsel, although my client did receive a letter dated October 8, 2010, from Laura A. Weingartner of Dykema Gossett PLLC. In this letter, Ms. Weingartner claimed to represent an unnamed party interested in the Recently Purchased Property. If she is your attorney for these matters, please let me know and I will happily follow-up with her directly. If not, please forward this to your lawyer or let me know that you have decided against legal representation at this time.

My client does not know what your plans are for the development and use of the Recently Purchased Property, but we are very concerned about some rumored uses that have been circulating – uses that may be counter to my client's rights. We would like to meet with you to discuss what your plans are for the property. We think it would be wise to be sure that your use of the property does not force us to otherwise defend our rights in court.

Please contact me, or have you counsel contact me if you are represented, so that we can schedule a time to talk. We think it is very important that we reach resolution on your use of the property so that there are no misunderstandings. In light of our concerns, I am also contacting various departments of the local government so that they are fully aware of my client's rights regarding the property and its development. I have included a copy of the letter we have sent.

I look forward to hearing from you or your legal counsel so that we can address these concerns as quickly and efficiently as possible. My client and I look forward to working with you to reach an appropriate resolution. Thank you.

Sincerely yours,

James L. Carey

23781 Pointe O'Woods Court • South Lyon, Michigan 48178 • T: 248.605.1103 • E: jameslcarey@hotmail.com

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EXHIBIT 7

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

PLANNED PARENTHOOD MID & SOUTH,

Plaintiff,

vs Case No. 11-119441-CH

SHRI SAIKRISHNA GROUP,

Defendant.

_____/

MOTION

BEFORE THE HONORABLE JAMES M. ALEXANDER

PONTIAC, MICHIGAN - WEDNESDAY, SEPTEMBER 7, 2011

APPEARANCES:

For the Plaintiff:
ALAN M. GREENE (P31984)
39577 Woodward Avenue, Suite 300
Bloomfield Hills, Michigan 48304
(248) 203-0757

KRISTA L. LENART (P59601)
2723 S. State Street, Suite 400
Ann Arbor, Michigan 48104
(734) 214-7676

For the Defendant:
JAMES L. CAREY (P67908)
2630 Featherstone Road
Auburn Hills, Michigan 48326
(248) 751-7800, Ext. 7758

Videotape Transcription Provided By:
Cheryl McKinney, CSMR-5594
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Pontiac, Michigan

Wednesday, September 7, 2011

- - -

(At 9:12 a.m., proceedings convened.)

THE CLERK: Calling Docket No. 29, Planned Parenthood versus Shri Saikrishna Group, Case No. 11-119441-CH.

MR. GREENE: Good morning, your Honor. Alan Greene and Krista Lenart appearing on behalf of the plaintiff.

MR. CAREY: Good morning, your Honor. James Carey appearing on behalf of defendant.

THE COURT: Let me ask you a question. If this was a dermatologist's office, would we be here today?

MR. CAREY: I would say if it was a plastic surgery office we probably would be.

THE COURT: I didn't ask about plastic surgery. I said if it was a dermatologist's office, would we be here? A medical office is a medical office, isn't it?

MR. CAREY: Well, there's a number of issues surrounding a medical office being a medical office, and I think we're probably at a stage in this proceeding where it's premature to really be able to just say that.

THE COURT: Well, what does the -- what does the zoning ordinance allow when it talks about medical office;

does it allow surgical offices? Do you know?

MR. CAREY: The zoning ordinance only talks in terms of offices, and it includes an administrative office line, it includes a medical office line, and it includes a nursery school line.

MR. GREENE: It would permit inpatient surgery, such as if you went to -- you know, if you went to your orthopedic guy and they had to fix a bone. There's a whole bunch of inpatient surgery. It does prohibit -- obviously it doesn't allow hospitals, it doesn't allow 24-hour care facilities, does not allow inpatient treatment. So it's the same kind of offices --

THE COURT: What do you mean it doesn't allow inpatient treatment?

MR. GREENE: What I meant, bedded -- bedded treatment. That is -- that what I meant by inpatient. It doesn't allow you to have a bedded facility where people stay overnight. That's considered a hospital, a nursing home type of facility.

THE COURT: What if you have an incident that requires overnight stays, then what happens?

MR. GREENE: They would send them to the hospital. They typically -- that's typically what all doctors would do.

And this is -- I mean, you could look on the Web

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site, it's a total reproductive health care facility. It's -- virtually all of the facility is mostly counseling and things like that. But it's the same kind of medical office that all of us know about when we go to my pediatrician, or I go to my -- I just had knee surgery and I went to an office building where my orthopod was and I had procedures there, (indiscernible) knee surgery that day.

Virtually medical office is permitted. Medical office is defined as office. And the restriction here which allows office is not restricted to these kinds of offices, but not medical offices; or some medical offices, but not medical offices we don't like. They don't have that kind of discretion.

What it does restrict -- I mean, think about this, your Honor. I didn't say this in the brief, what it really restricts is -- there's a hotel project that was built on property that was all owned by the same guy. They got this restriction there -- the ordinance, the B2 ordinance also allows hotels and motels. So you can't do that there. They're preventing competition there. Obviously you can't do industrial and you can't do residential, but the zoning ordinance allows retail, restaurant and office use. Those are the three -- and hotel. Those are the three uses that the restriction says

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you can use.

Doesn't limit it. It doesn't give the other side or a neighbor discretion to say, like he says in his brief, how many doctors do you have, what kind of doctors are there, are they licensed. I mean, to go in on a 12,000 square foot office building, which is what this is, and if we had multiple tenants or different doctors, we'd have to go to our neighbor every time and say, we have an orthopod here, we have a plastic surgeon or we have a pediatric practice and we're going to have sick kids coming here, is that okay with you.

We actually were very prudent, your Honor, in this regard. I mean, we looked at -- we looked at the office restriction. Clearly, at least on our part, it's a use that's permitted as of right, the restriction doesn't provide or restrict from a medical office.

As part of due diligence we asked the owner next door, didn't tell them who we are, and they make a big claim that that's subterfuge. That's typical. I mean, if I'm sending a letter and I'm representing a purchaser that hasn't closed on a deal and I'm doing due diligence, I rarely would ever disclose who it is. And who it is, is irrelevant. What we said is, neighbor, you know, we represent a client who is going to buy this and use it for medical office. We just want your confirmation that

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that's permitted under the restriction. He signed it.

There's no affidavit even here presented to say that I didn't know what I was doing, or I signed it but I only thought about, you know, orthodontists or something, or I was on medication. There's nothing like that, your Honor, in this to show that not only is it clearly permitted under the zoning, under all the law that we gave you with respect to construing restrictive covenants, they clearly haven't even distinguished that, your Honor.

And last, is he signed -- he signed a fairly clear letter regarding that. He never asked -- he didn't say, oh, tell me what kind of medical offices you're going to have here, or who is the owner of this medical office. None of that was even requested. There was no refusal to do so. No one's ashamed of who they are or what kind of services they provide.

THE COURT: How do you get around the Castraden (phonetic) and Tiegen (phonetic) cases, where the restriction says residential purposes only, and (indiscernible) go build a big apartment building? I mean, isn't that kind of the same situation here? It says medical offices, or it says offices, medical offices included, and it doesn't specifically say what kind.

MR. CAREY: Well, it doesn't specifically say what kind. In which case we need to take a look at not

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just the zoning ordinances, which are not dispositive in this area of law, --

THE COURT: Right.

MR. CAREY: -- but how people will normally interpret that, what does the public record actually reflect. And in this instance plaintiff is trying to argue half of a case on one side and half of a case on the other. That's one of my fundamental issues with this, is are we talking about what is permitted under the restrictive covenant or are we talking about waiver. Because plaintiff regularly starts the conversation with, well, it's medical offices permitted, but then they go on to say, well, they waived anyway.

Well, if medical office is permitted, and all they're going to do is medical office and not outpatient surgical facility, with is vastly different under the regulatory scheme, which I think is very important in this case, but if they are going to do just medical office, and indeed medical office is permitted under the restrictive covenant, which we disagree with, but if that is the case and this Court finds that's the case, then the waiver means nothing.

The only time the letter becomes significant is if indeed medical office is not permitted under the restrictive covenant. So I don't want to confuse the

issues, I want to know whether we're speaking about the restrictive covenant or whether we're speaking about the waiver. If we're talking --

THE COURT: In Michigan you're allowed to plead alternative theories, aren't you?

MR. CAREY: Well, certainly.

THE COURT: Okay.

MR. CAREY: But you can't say, well, we get halfway there on one point and halfway there on the other point, and so we're all the way there.

THE COURT: Are you saying that?

MR. GREENE: No, no.

THE COURT: I don't think he's saying that.

MR. GREENE: I'm saying that it's permitted, it's not restricted by the covenant, but if -- if you should find -- if they're going to argue there's an ambiguity or it is restricted, we do say in the alternative that he waived it. But --

MR. CAREY: Well, then taking a look at just the restrictive covenant, as your Honor asked, as far as the use that's permitted under the zoning, the zoning ordinance itself makes a distinction between what I think most people would consider to be an office use, an administrative use. And if we take the look at the type of circumstances that surround that use, they do become

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very instructive, and those are the sorts of things that we would develop after we answer and working through the interrogatories.

THE COURT: Well, I guess that's my question, what are you going to do in discovery, what are you going to find out?

MR. CAREY: Well, one thing that would be nice is what they're actually going to use it for, whether they do meet the definition of medical office, what that definition of medical office is, and how it should be applied in this case. So we need to know what they're actually going to use it for. Because there is evidence in the record and provided in the briefs that it could be used for an outpatient surgical facility, and we think that that would be twisted logic to say an outpatient surgical facility equals office. So we need to know what they're going to use it for.

And under the regulatory scheme, there are all kinds of different levels of uses. What types of use is it going to be? What type of waste is going to be created? What type of traffic is going to be incurred? All of these go to traditional --

THE COURT: Isn't that more of a zoning issue than it is a restrictive covenant issue?

MR. CAREY: Well, I think it's important in the

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case of this restrictive covenant --

THE COURT: You just said the zoning doesn't control.

MR. CAREY: It doesn't control, but it is instructive.

THE COURT: If it's instructive, they say you can have a medical office there, so --

MR. GREENE: And I do, I forgot, your Honor, we did attach to our reply brief, definitions from the zoning ordinance that define clinic, which is part of the medical office, you have a clinic. And clinic also talks about minor surgical attention and surgical treatment.

Again, here's the issue, your Honor --

THE COURT: (Indiscernible) what the issue is, but go ahead.

MR. GREENE: If they claim -- well, there's two issues here. They're claiming that medical office, I suppose, is not permitted under the restriction. And then they claim that, well, if some medical offices are allowed, some may not be. I don't know where they get that distinction. But if that were the case, and they think we're doing something that is outside the scope of medical office, I suppose at that time they could bring whatever claim or assert whatever they want with regard to that. The issue here is medical office.

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Second, your Honor, it is not a secret, of all the different medical services we perform. If you'd like, I mean, I took it -- I have right off our Web site, and I can give it to counsel, this is -- this is what we do in our area. These are the different services. It's all listed there. Well woman gynecological and breast exams. Low cost birth control. Emergency contraceptive. Prenatal care. It goes on. These are what we --

MR. CAREY: Your Honor --

MR. GREENE: These are what we do. It's been on our Web site. There's no secret about what kind of procedures we do, what percentage we do, what kind of -- how many patients we treat. We have -- you know, we bought this building based upon the zoning and reliance as well on defendant's letter, and on the clear interpretation that we would give our client with respect to that restriction.

And it is -- it is a medical office. There's nothing different. It's no different than any other medical office. And if we do something we're not allowed to do as a medical office, I suppose our neighbor can go and complain about it then. But --

THE COURT: Counsel.

MR. CAREY: Your Honor, if they agree not to do surgery, we settle this case.

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THE COURT: You guys want to go talk?

MR. GREENE: We're not -- we can't. We can't agree to -- I mean, we're not going to let our neighbor tell us what kind of medical procedures we can do or not do. I mean, that's not the issue. The deed restriction would never allow that or say that.

MR. CAREY: The regulatory scheme deals with outpatient surgical facilities vastly different than it deals with a private dermatologist's office. And we are very concerned that this -- that counsel's client is going to produce an outpatient surgical facility there, which is clearly well beyond the restrictive covenant in Michigan.

THE COURT: What additional regulatory approval would they need to do an outpatient surgical facility as opposed to a medical office?

MR. CAREY: I'm certainly no expert in this area, but I'm fast becoming one, your Honor.

THE COURT: You raised it. You raised it, counsel, so let me know.

MR. CAREY: Well, and, your Honor, I'm raising it before I even have a chance to answer the complaint, before we've even --

THE COURT: You could have answered the complaint and not filed a motion.

MR. CAREY: Well, we wanted to clearly know what

we were going to be filing, your Honor.

MR. GREENE: I could tell your Honor that everything that we're proposing to do is allowed in the zoning ordinance and we do not need any special licenses --

THE COURT: You don't need a certificate of need or anything like that or --

MR. GREENE: No, we don't need any special license to do anything that we're going to do at this facility.

THE COURT: Let me get to another issue with you, counsel. I mean, this slander of title claim, I mean, they've got ever right to petition the government, don't they? I mean, that's what this whole week is going to be about coming up.

MR. GREENE: Sure, they would have a right to petition the government, but what we say is that's not what really -- that's not what they did. What they did is -- first of all, what they did wasn't a petition because they weren't asking for redress of grievances. The ten officials -- this is the factual issue -- the ten officials that they identified and sent this letter to in Oakland County and in Auburn Hills, nine out of those ten have no regulatory jurisdiction whatsoever over anything we're going to do there.

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The only thing, as I said, the only thing that we need to get with respect to finishing up the construction of our interior offices is a building permit from the City of Auburn Hills. This isn't a zoning case. We don't need anything else. So what he did is, he sent to this laundry list of public officials out there, an indication that we believe, under our contract, which we don't think they had any reasonable right to believe based upon the contract itself and their client's signature that a medical office is okay, we believe under the contract they're going to violate our contractual rights.

They weren't petitioning them for anyone. They weren't people that were allowing them to provide relief. They were using their private contract to try to, as we said, slander title, restrict us from building, put us in a position actually that we had to come here and sue. We were the ones that had to come to court to do this because, again, we're sitting here fearful that we just paid $700,000 for this facility, after we bought it all of a sudden this issue comes up, and now we have a lot of other money to put in to fix up the offices and create the offices and reception areas and everything like that, and we were forced to sue.

I've done a lot of slander of title work, your Honor, and normally when something like this comes up, I

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usually would advise my client who thinks that they're going to restrict or stop somebody because they have a right to do it, you better get to court and do the declaratory relief because the longer you prevent somebody from reasonably using their property, you're running a risk of a slander of title action.

So what we say, your Honor, is, it's clearly a factual issue as to whether they're petitioning for anything, and the First Amendment right talks about a petition for grievances. I will absolutely agree, if we went in and this were a zoning case, and we had to go in, we got this property and we filed a request to rezone the property to B2, which is what it's zoned now, in order for us to build a medical office there, our neighbor could come in and has every right to show up, write letters, come to the planning commission at a public hearing and say I don't think they should -- the land should be zoned for medical office, or I've got an objection, or whatever. That's petitioning the government.

To simply go out there and send letters to people that have no jurisdictional role in what we're doing is not a petition for a grievance.

THE COURT: All right. I'll tell you what I'm going to do. I want you to answer the complaint. I'll give you guys some time to do some discovery. I'm

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concerned about this regulatory -- I mean, I want you to fill that out for me, regulatory differences between a medical office and what you're claiming that the plaintiff is going to use the property for. I'll give you 60 days to do that and you can come back and refile your motions at that point.

MR. CAREY: Your Honor, the ADA claims?

THE COURT: I'm just going to put everything here on hold.

MR. CAREY: Very good.

THE COURT: So you guys go ahead and do your -- I'll tell you this, I don't think there's a whole lot with the ADA or the slander of title, but I also think you've got some serious issues.

MR. CAREY: Understand, your Honor.

THE COURT: Okay.

MR. GREENE: Okay. Thank you, your Honor.

THE COURT: Thank you. Good argument. Appreciate it.

(At 9:28 a.m., proceedings concluded.)

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CERTIFICATION

I certify that this transcript, consisting of 18 pages, is a true and accurate transcription, to the best of my ability, of the video proceeding in this case before the Honorable James M. Alexander on Wednesday, September 7, 2011, as recorded by the clerk.

Videotape proceedings were recorded and were provided to this transcriptionist by the Circuit Court and this certified reporter accepts no responsibility for any events that occurred during the above proceedings, for any inaudible and/or indiscernible responses by any person or party involved in the proceedings, or for the content of the videotape provided.

Date: 9/18/11

/s/ Cheryl McKinney, CSMR-5594
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EXHIBIT 8

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

PLANNED PARENTHOOD MID AND SOUTH MICHIGAN, a Michigan nonprofit corporation,

Plaintiff,

-vs- No. 2011-119441-CH

SHRI SAI-KRISHNA GROUP, L.L.C., a Michigan limited liability company,

Defendant.
_____/

The Discovery Deposition of LORI MARIE LAMERAND taken before me, Laura A. Borlinghaus, CSR-7134, a Notary Public, within and for the County of Macomb, (Acting in Oakland), State of Michigan, at 39577 Woodward Avenue, Suite 300, Bloomfield Hills, Michigan on Thursday, October 6, 2011.

APPEARANCES:

DYKEMA GOSSETT, P.L.L.C.
39577 Woodward Avenue, Suite 300
Bloomfield Hills, Michigan 48304
(By Alan M. Greene, Esq.),

Appearing on behalf of Plaintiff,

JAMES L. CAREY, ESQ.
23781 Pointe O'Woods Court
South Lyon, Michigan 48178

Appearing on behalf of Defendant,

APPEARANCES (Continued):

KIRKPATRICK LAW OFFICES, P.C.
31800 Northwestern Highway, Suite 350
Farmington Hills, Michigan 48334
(By Joel J. Kirkpatrick, Esq.),

Appearing on behalf of Defendant.

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contract's with University of Michigan it could be anybody that they have --

A. No, no. The physician's are identified.

Q. Okay. They are identified?

A. Um-hmm.

Q. And what's the methodology of payment, is it a per day, is it a per hour, is it an annual stipend or fee?

A. It depends on the services that they're performing for us.

Q. What services do these seven physicians normally perform?

A. Colposcopy, cryotherapy and LEEP which is a treatment for cervical cancer, abortion procedures and vasectomies.

Q. And where do these physicians actually perform these services for Planned Parenthood?

A. In one of our facilities.

Q. All 15?

A. No.

Q. Ten of the 15?

A. No.

Q. Five of the 15?

A. No.

Q. One of the 15?

A. No.

Q. Two?

A. No.

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A. I don't know.
Q. And what does that license let you do?
A. In the building it would allow for outpatient surgery.
Q. Do you do outpatient surgery in Detroit and Flint?
A. Yes.
Q. But you don't have a freestanding surgical license?
A. No.
Q. How come?
A. Why?
Q. Yeah. Why the difference?
A. The building needs a -- the Ann Arbor building was there always. I inherited the freestanding surgical center license. One is not required in the other locations.
Q. But since you've obtained the building -- when did you obtain the Ann Arbor facility; when did Planned Parenthood Mid And South Michigan obtain the Ann Arbor facility?
A. They built it in 1984.
Q. So Planned Parenthood Mid And South Michigan built the building in 1984?
A. The organization was not called that in 1984. But, yes, the same entity built it.
Q. Okay. So a predecessor entity 'cause there's been a big merger?
A. No. The name of the organization has changed, but the

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primary entity has not changed.
Q. But that license has been renewed since you've been President and CEO?
A. I don't think it gets revoked unless there is reason to revoke it. Once you have it, it's there.
Q. I wasn't thinking of a revocation. I was thinking of, you know, my driver's license, every year I have to renew it.
MR. GREENE: It's not that kind of license.
MR. CAREY: Oh, okay.
BY MR. CAREY:
Q. Why have that license for the Ann Arbor facility, but not for Detroit and Flint, just a historical accident?
A. Yeah. I didn't make that decision.
Q. Do you get any advantages by having the freestanding surgical designation for Ann Arbor?
A. I guess we would if we sold the building, but in our operation it has no bearing.
Q. No differences as far as reimbursement for different items?
A. No, sir.
Q. What do you do as far as billings with Medicare or Medicaid for surgical procedures?
A. Can you tell me more of what you're looking for.

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Q. Okay. So conversations with an architect, conversations with a general contractor, but no actual agreements yet?
A. No.
Q. Any plans or blueprints been produced?
A. No. Hobbs & Black (ph).
Q. I take it that's the architect?
A. It is.
Q. It's maddening sometimes how --
A. Couldn't think of it.
Q. Yeah. Have the same problem regularly.
What is your intended purpose for the Auburn Hills facility?
A. It's going to be a health center and a community education location and we'll have offices.
Q. What kind of offices?
A. Administrative sort of, probably community educators. I'm not sure who else will be there.
Q. Whereabouts do you currently have your executive offices CEO, CFO?
A. Ann Arbor.
Q. Is that where the Board meets as well normally?
A. No.
Q. Where does the Board meet?
A. Livonia.
Q. Any plans to move executive offices to Auburn Hills?

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Q. Are these suction machines the types of things that can be wheeled from room to room or are they stationary within a room?
A. They move.
Q. Okay.
A. When they can move.
Q. Now, you mentioned that you were going to get a building permit for the Auburn Hills facility, no other licenses or permits?
A. No.
Q. No plans to have it designated as a freestanding surgical facility?
A. No, sir.
Q. Why not?
A. I doubt that we would be able to get one. There is pretty much a moratorium on them right now in this Metro Detroit area, for hospitals, for others things, and it's unnecessary.
Q. The moratorium's unnecessary or the license?
A. No, no. The license is unnecessary.
Q. But you have one for Ann Arbor?
A. Yes.
Q. But you view it as unnecessary?
A. Yes.
Q. Any reason why you keep it?

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A. Because it's an asset. If we ever wanted to sell the building, it would make the building more attractive.
Q. But you don't get any current benefit from --
A. No.
Q. - the license?
It doesn't change your rates of remuneration from different government medical agencies?
A. As I indicated before, it does not.
Q. Approximately how many LEEP procedures does Planned Parenthood do?
A. I don't know the number right now.
Q. Rough guess?
MR. GREENE: Don't guess.
A. I really --
BY MR. CAREY:
Q. About how many vasectomies?
A. 90.
Q. About how many abortions?
A. 3,000.
Q. And this is per year, per month?
A. Per year.
Q. And which of the 15 facilities perform abortions?
MR. GREENE: Asked and answered.
MR. CAREY: Sorry. Yeah, you're right. I do have it. I'm sorry.

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EXHIBIT 9

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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

PLANNED PARENTHOOD MID AND SOUTH MICHIGAN, a Michigan non-profit corporation,

Plaintiff,

vs.

SHRI SAI-KRISHNA GROUP, L.L.C., a Michigan limited liability company,

Defendant.

Civil Action No. 2011-119441-CH

Hon. James M. Alexander

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Defendant's Responses to Plaintiff's First Set of Interrogatories and Requests for Production of Documents to Defendant

NOW COMES Defendant, Shri Sai-Krishna Group, L.L.C., by and through its attorneys listed above, and for its responses to Plaintiff's First Set of Interrogatories and Requests for Production of Documents to Defendant states as follows:

INTERROGATORIES

INTERROGATORY # 1. Please identify each person responding to these Interrogatories and each person who assisted in responding to these Interrogatories.

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RESPONSE: Gee Vansadia, member of SHRI SAI-KRISHNA GROUP, L.L.C., with the assistance of his attorneys.

INTERROGATORY # 2. Please (a) identify all state and/or federal regulations and/or licensing requirements that you contend apply to a "medical office," as referenced in your August 17, 2011 response to Plaintiff's Motion for Partial Summary Disposition, (b) explain in detail the factual and legal basis for your conclusion that a medical office would not be a permitted use under the restrictive covenant, and (c) identify and describe all documents upon which you rely to support your conclusion.

RESPONSE: As of that date hereof, (a) City of Auburn Hills Zoning Ordinances; Michigan Department of Licensing and Regulatory Affairs, Bureau of Heath Systems, Division of Health Facilities and Services regulations; Occupational Safety and Health Administration regulations; (b) each of these regulatory regimes differentiates between the structure, risks and regulators applicable to "medical offices" and/or "dental offices" and/or "clinics" and/or "outpatient clinic" and/or "freestanding surgical outpatient facility" and/or "emergency care facilities", on the one hand, and "offices" on the other hand. As the restrictive covenant uses only the word "office" to describe this category of permitted use, a "medical office" would not be a permitted use; and (c) published regulations by each named body.

INTERROGATORY # 3. Please (a) identify all state and/or federal regulations and/or licensing requirements that you contend apply to an "outpatient clinic," as referenced in your Affirmative Defense No. 14 set forth in your Answer, (b) explain in detail the factual and legal basis for your conclusion that an outpatient clinic would not be a permitted use under the restrictive covenant, and (c) identify and describe all documents upon which you rely to support your conclusion.

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RESPONSE: See response to Interrogatory #2.

INTERROGATORY # 4. Please (a) identify all state and/or federal regulations and/or licensing requirements that you contend apply to an "freestanding surgical outpatient facility," as referenced in your Affirmative Defense No. 14 set forth in your Answer, (b) explain in detail the factual and legal basis for your conclusion that a freestanding surgical outpatient facility would not be a permitted use under the restrictive covenant, and (c) identify and describe all documents upon which you rely to support your conclusion.

RESPONSE: See response to Interrogatory #2.

INTERROGATORY # 5. Please describe in detail all funds that you allege Plaintiff obtained from the Federal Government and through the State of Michigan, as referenced in Affirmative Defense No. 14 set forth in your Answer, and describe in detail the legal and factual basis for your conclusion that those funds "legally restrict Plaintiffs possible uses of the property."

RESPONSE: Plaintiff's agent was quoted in a December 21, 2010 article in the *Oakland County Press* stating that "A $200,000 grant was made available to the state to provide such a facility in the area as there was a need for it". Such funds from the Federal Government and the State of Michigan often prohibit the use of such funds to purchase "bricks and mortar" and/or support the providing of abortions. To the extent that such funds were used to purchase the subject property, Plaintiff may be prohibited from performing abortions and/or proving abortion related services.

INTERROGATORY # 6. Please identify each individual or entity who has paid or agreed to pay attorney fees or any other expenses associated with this litigation on behalf of Defendant, or who has contributed or agreed to contribute any money toward such fees or

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EXHIBIT 10

Westlaw

Not Reported in N.W.2d, 2003 WL 21419268 (Mich.App.)
(Cite as: 2003 WL 21419268 (Mich.App.))

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Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Court of Appeals of Michigan.
DUNHAM LAKE PROPERTY OWNERS ASSOCIATION and Dunham Lake Civic Committee, Plaintiffs-Appellants,
v.
Rainer BAETZ and Carol M. Baetz, Defendants-Appellees.

No. 237047.
June 19, 2003.

Before: TALBOT, P.J., and WHITE and MURRAY, JJ.

[UNPUBLISHED]

PER CURIAM.

***1** Plaintiffs appeal as of right a judgment of no cause of action in this declaratory action to enforce recorded deed restrictions. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendants are the owners of property in "Dunham Lake Estates South" subdivision in Livingston County. The property is subject to deed restrictions that were originally recorded in 1964 and subsequently amended in 1965 and 1966.

The Declaration of Restrictions and Easements, as amended, stated in part:

A. RESIDENTIAL AREA REQUIREMENTS

1. No lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any lot other than one detached single-family dwelling not to exceed two (2) stories in height and a private garage for not more than three (3) cars.

2. No building shall be erected, placed, or altered on any lot until the construction plans and specifications and a plan showing the location of the structure have been approved by the Dunham Lake Civic Committee as to quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finish grade elevation....

Defendants' lot had a single-family dwelling with an attached garage. The dispute concerns a detached, enclosed structure, which has been characterized as a "building," "a storage building," and an "outbuilding." The structure was constructed of wood, without a cement floor or footings, and was approximately ten feet by twelve feet. It had a window and a double door. The structure was used primarily for storage of lawn equipment. The cost of construction was approximately $2800. Defendants did not seek approval of the structure by the Civic Committee.

Plaintiffs filed this action seeking a declaration that defendants violated the deed restrictions and an injunction requiring defendants to remove the "outbuilding" from their property. Plaintiffs alleged that the "outbuilding" was not a dwelling or garage and that the deed restrictions did not allow "other outbuildings."

Following a bench trial, the trial court denied plaintiffs' requested relief and granted judgment to defendants. The court's opinion discussed in detail the inconsistencies in plaintiffs' interpretation of the deed restrictions, specifically in regard to the plaintiffs' definition of "building." The court did not expressly find that defendants' structure was a building. Rather, the court concluded that the evidence "justifies the application of the defense of estoppel, waiver, and laches."

This Court reviews equitable actions de novo,

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but reviews the court's findings of fact for clear error. *Webb v. Smith (Aft Second Remand)*, 224 Mich.App 203, 210; 568 NW2d 378 (1997).

Plaintiffs argue that although the trial court referred to laches, the court did not analyze that doctrine and the evidence did not support its application. We agree. Laches is an affirmative defense that requires both a delay in instituting an action to enforce the restriction and a showing of prejudice to the party asserting the defense. *Rofe v Robinson (On Second Remand)*, 126 Mich.App 151, 154; 336 NW2d 778 (1983). Here, plaintiffs were aware of the purported violation as early as August 26, 1996, within two weeks after the structure was complete. Plaintiffs granted defendants' request for time to allow them to gather signatures for a petition to amend the restrictions. The deadline for obtaining the signatures, as extended by plaintiffs, was June 30, 1997. Defendants did not obtain the necessary signatures for their petition. In a letter dated July 2, 1998, plaintiffs asked defendants to remove the outbuilding. Defendants did not remove the structure. On April 23, 1999, plaintiffs commenced the instant action. Although the question whether plaintiffs acted with reasonable promptness in instituting the suit after the expiration of the June 30, 1997, deadline is debatable, there was no evidence that defendants were prejudiced by this delay. Absent some prejudice to defendants resulting from the delay, we agree with plaintiffs that the defense of laches was not applicable.

***2** Plaintiffs next argue that the court erred in determining that plaintiffs lost the right to enforce the restrictive covenant through waiver. We agree.

Waiver of restrictions requires a showing that the character of the subdivision has been so altered as to defeat the original purpose of restriction. *O'Connor v. Resort Custom Bldrs, Inc*, 459 Mich. 335, 346; 591 NW2d 216 (1999), citing *Carey v. Lauhoff*, 301 Mich. 168, 174; 3 NW2d 67 (1942). "There is no waiver where the character of the neighborhood intended and fixed by the restrictions remains unchanged." *Rofe, supra,* p 155. Here, the trial court found that plaintiffs had been inconsistent in application of the restrictions and that many structures within the Dunham Lake properties violated the plain language of the deed restrictions. However, defendants did not demonstrate a change in the character of the subdivision, and the trial court did not find that a change in character had occurred. Therefore, the evidence and the court's findings do not support the court's conclusion that the restriction had been waived.

Plaintiffs have not addressed the trial court's determination that they were estopped from enforcing the restrictive covenant. In the context of negative covenants and deed restrictions, the term "estoppel" is often used in conjunction with the analysis of laches and waiver. See e.g., *Bigham v. Winnick*, 288 Mich. 620, 623; 286 NW 102 (1939); *Carey, supra,* p 174; *Baerlin v. Gulf Refining Co*, 356 Mich. 532, 534-536; 96 NW2d 806 (1959.) Here, however, the court referred to the elements of equitable estoppel as set forth in *In re Yeager Bridge Co*, 150 Mich.App 386, 394; 389 NW2d 99 (1986): "(1) a party by representation, admissions, or silence, intentionally or negligently induces another party to believe facts; (2) the other party justifiably relies and acts on this belief; and (3) the other party will be prejudiced if the first party is permitted to deny the existence of the facts." (Citations and internal quotation marks omitted.) The court essentially determined that plaintiffs' failure to enforce the deed restriction induced defendants to believe that such structures were permitted and that defendants justifiably relied on and acted on this belief. Defendants would be prejudiced if plaintiffs were allowed to deny the existence of the facts and require removal of their structure. The trial court noted that Michael Wolanin, who testified as plaintiffs' representative, acknowledged that a person looking at the other structures in the neighborhood might reasonably conclude that a structure like defendants' would be permitted. Indeed, Wolanin admitted that defendant's structure would be permissible as constructed if it were *used* as a playhouse, thus reinforcing the reasonableness of

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defendants reliance on the *structure* being permissible under the restrictive covenant. Plaintiffs have presented no argument challenging the court's findings concerning justifiable reliance on the part of defendants or the court's conclusion concerning equitable estoppel. Because plaintiffs have failed to address this basis for the court's decision, they are not entitled to reversal of the judgment. *Roberts & Son Contracting, Inc v North Oakland Development Corp*, 163 Mich.App 109, 111; 413 NW2d 744 (1987).

***3** Moreover, we conclude that the judgment in favor of defendants was warranted because plaintiffs failed to establish a violation of the restrictions. Although the trial court did not expressly resolve the dispute between the parties concerning the whether defendants' structure was a "building" as that term is used in the restrictions, we conclude that plaintiffs' failure to establish the claimed violation is an additional basis for affirming the trial court's judgment.

The premise of plaintiffs' request for relief is that the deed restrictions prohibit any "building" other than a single-family dwelling and a garage and that defendants' structure is a prohibited building because it is neither a dwelling nor a garage. Plaintiffs had the burden of proof in establishing a violation of the restriction. *Wilde v. Richardson*, 362 Mich. 9, 12; 106 NW2d 141 (1960). "The provisions are strictly construed against the would-be enforcer, however, and doubts resolved in favor of the free use of property. Courts will not grant equitable relief unless there is an obvious violation." *Stuart v. Chawney*, 454 Mich. 200, 210; 560 NW2d 336 (1997) (citations omitted).

The term "building" is not defined in the restrictions. The absence of a definition in the restrictions does not necessarily lead to the conclusion that the term is ambiguous. *Terrien v. Zwit*, 467 Mich. 56, 76; 648 NW2d 602 (2002). Rather, the term is to be interpreted in accordance with its "commonly used meaning." *Id.*

At trial, plaintiffs' evidence concerning the meaning of "building," as interpreted by the Civic Committee was presented by Wolanin, who had been a member of the Dunham Lake Civic Committee for approximately ten years. Wolanin acknowledged that the definition of "building" was "vague." No Civic Committee procedures, rules, regulations or guidelines governed the determination of what constituted a building. Although the Civic Committee did not have authority to approve a building that was not a dwelling or a garage, the Civic Committee assessed a structure that was not a residence or a garage on an individual basis using a "common sense definition" to decide if it would be deemed in conformance with the restrictions.

However, Wolanin's testimony did not present a coherent definition of the term "building."

According to Wolanin, whether a structure was a "building" depended in part on its proximity to the house or garage. Thus, a structure that was pushed up next to the house or garage or attached to the house or garage by latticework, for example, would not be considered a building. According to Wolanin, if defendants' structure were near the house, no one "would have a problem with that."

According to Wolanin, whether a structure was a "building" depended in part on whether it was cosmetically "unitized" and in harmony with the house. Thus, an enclosed structure built on a deck four feet from the home was not a violation of the restrictions because it was "unitized" with the deck and the house, regardless of its use. The same structure placed thirty to fifty feet into the yard would be "a real problem" for Wolanin.

***4** According to Wolanin, regardless of proximity to the house and harmony with the dwelling, a structure used as a playhouse is not a "building." Playhouses were "outside the scope" of the restrictions. However, if the same structure is used for storage, it is a building. According to Wolanin, if defendants' structure had been used for a playhouse, it would not have been deemed to violate the re-

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striction. Defendants' structure was deemed in violation of the restrictions not because of the structure itself, but because of what defendants put in it.

According to Wolanin, the deed restrictions were "getting at" metal or wooden storage buildings. However, he acknowledged that two metal storage structures had previously been approved by the Civic Committee.

Plaintiffs' theory was that defendants' structure violated the restrictions because it was a "building" other than a dwelling or a garage. However, rather than establishing a commonly understood meaning of the term "building," plaintiffs showed that the meaning of the term was uncertain and interpreted at the whim of the Civic Committee members.

Moreover, plaintiffs' position that the intent of the restrictions was to preclude "outbuildings," such as barns and storage structures, is undermined by a separate restriction referring to outbuildings.

A. RESIDENTIAL AREA REQUIREMENTS

9. No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other outbuilding shall be used on any lot at any time as a residence, either temporarily or permanently.

The deed restrictions are grounded in contract, and in an action to enforce deed restrictions, the intent of the drafter controls.[FN1] *Stuart, supra,* p 210. As in other cases involving interpretation of contracts, this Court considers the instrument as a whole, and all parts are to be harmonized so far as reasonably possible. *Rofe, supra,* p 157; *Associated Truck Lines, Inc v. Baer,* 346 Mich. 106, 110; 77 NW2d 384 (1956). "Every word must be taken to have been used for a purpose, and no word should be rejected as mere surplusage if the court can discover any reasonable purpose thereof which can be gathered from the whole instrument." *Id.* (Citations and internal quotation marks omitted.)

FN1. Because the intent of the drafter concerning the meaning of the restrictions is controlling, we do not agree with plaintiffs' contention that defendant Rainer Baetz' opinion that the structure was a building precluded defendants from maintaining that the structure was not a "building" as that term was used in the deed restrictions.

In this case, the provision in the deed restrictions prohibiting use of an "outbuilding" as a residence militates against plaintiffs' position that the restrictions prohibited "outbuildings" in all circumstances. A prohibition against use of a barn or "other outbuilding" as a residence is mere surplusage if these structures may not be "erected, altered, placed or permitted to remain on any lot" pursuant to paragraph 1 of the Residential Area Requirements. Instead, the prohibition on using a barn or "other outbuilding" as a residence implies that the listed structures are permitted when they are not used as a residence. The inclusion of this provision suggests that the drafter drew a distinction between "buildings" and "outbuildings," and the drafter's intent in limiting "buildings" to a house and a garage was not to ban outbuildings, such as defendants' structure.

***5** In summary, plaintiffs bore the burden of establishing an obvious violation of the restrictions. *Wilde, supra,* p 12; *Stuart, supra,* p 210. Construing the restriction against plaintiffs and resolving doubt in favor of the free use of the property, we conclude that plaintiffs failed to sustain their burden of establishing that defendants' structure was a "building" in violation of the restrictions. *Id.* Thus, we affirm judgment for defendants because plaintiffs failed to establish that defendants' structure violated the restriction and because plaintiffs failed to challenge the court's findings and conclusion concerning the application of equitable estoppel.

Affirmed.

Mich.App.,2003.
Dunham Lake Property Owners Ass'n v. Baetz

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