

**IN THE FRANKLIN COUNTY COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO**

PETER & DEB CZERWINSKI
5280 Locust Hill Lane
Dublin, Ohio 43017

MIKE & HOPE BOREN
5170 Locust Hill Lane
Dublin, Ohio 43017

DAVID & ELLEN HAID
5200 Locust Hill Lane
Dublin, Ohio 43017

JOSEPH MESS & NICOLE HELFRICH
5290 Locust Hill Lane
Dublin, Ohio 43017

SCOTT & PATTI HOLOWICKI
5240 Locust Hill Lane
Dublin, Ohio 43017

MARCIA OLSON
5130 Locust Hill Lane
Dublin, Ohio 43017

DON & BARBARA SCHINDLER
5300 Locust Hill Lane
Dublin, Ohio 43017

JAMES & DENÉ SANFILLIPO
5241 Locust Hill Lane
Dublin, Ohio 43017

DAVID & SARAH TIEFENTHALER
5221 Locust Hill Lane
Dublin, Ohio 43017,

Plaintiffs,

vs.

THE LODGE AT HAYDEN FALLS, LLC
5281 Locust Hill Lane
Dublin, Ohio 43017

OTTERCREEK GROUP, LLC
2185 Shirk Road
Marysville, Ohio 43040

Defendants.

VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT, TEMPORARY RESTRAINING ORDER, PRELIMINARY AND PERMANENT INJUNCTION

1. Plaintiffs are residents of Dublin, Ohio in Franklin County, Ohio, and all live on Locust Hill Lane in Dublin, Ohio.
2. The Lodge at Hayden Falls, LLC is a commercial entity located at 521 Locust Hill Lane in Dublin, Ohio.
3. Upon information and belief, The Lodge at Hayden Falls, LLC is owned by the Ottercreek Group, LLC.

JURISDICTION AND VENUE

4. Venue is proper court pursuant to Civil Rule 3(B)(2) and Civ. (B)(3). As the property at issue and the plaintiffs are located in Franklin County and the purchase of the property occurred in Franklin County, this court has jurisdiction.

FACTUAL BACKGROUND

5. The properties involved in this lawsuit are all located within Hayden Farms Addition No. 2 comprising of lots One (1) through Eleven (11).
6. The Lodge at Hayden Falls, LLC is located at 5281 Locust Hill Lane.
7. On March 31, 2020, construction documents were submitted to the City of Dublin for phased plan approval. These documents were revised on May 29, 2020. The application was

to convert the existing single-family residence to an eight bedroom, living, elderly care facility including a two-story addition and converting a three-car garage to a living space.

8. The Hayden Farms addition contains covenants and conditions that run with the land, these covenants and conditions include:

1. No lot shall be used for other than residential purposes, and no soil shall be removed for any commercial use.

2. No building shall be erected on any lot other than one single-family dwelling with garage. On lots 1 through 5 inclusive, and Lot No. 11, the floor area of the dwelling house shall be not less than 1400 square feet, exclusive of garage, porches and basement. On the remaining lots of said Hayden Farms Addition No. 2, the floor area of the dwelling house shall be not less than 1800 square feet, exclusive of garage, porches and basement.

9. The above-referenced covenant mandates that no lots shall be used for other than residential purposes and that no building shall be erected on other than one single-family dwelling with garage. A copy of the restrictive covenant is attached as Exhibit 1.

10. The restrictive covenant is necessary to preserve the essential residential character of the neighborhood.

11. The covenants in Exhibit 1 further provide in paragraph eight (8) they may be enforced by the owner of any lot Hayden Falls and may include proceedings or injunctive relief or money damages.

12. The proposed construction and alteration of the existing structure at 4281 Locust Hill Lane, is in violation of these covenants as it provides for eight bedrooms and is clearly not a single-family residence and equally clearly, a commercial use, and does not contain a garage.

13. The sale in 2018 violated the restrictive covenants, and the proposed construction and operation of an eight-commercial facility with no garage also violates the restrictive covenants.

14. The plaintiffs have not waived the restrictive covenants nor has their permission granted for the sale and construction in violation of those covenants.

15. On August 31, 2020, a meeting was held with representatives of the defendants in the neighborhood to explain the remodeling and conversion of the residence at 5281 Locust Hill Lane, and these representatives admitted that there would be no garage on the premises and it would not be a single family residence and that it would be a commercial enterprise.

16. At the meeting, it was further explained that the residents would not need daily living assistance and would be fully able to function on their own with only one staff member for 12 residents from 7:00 p.m. to 7:00 a.m.

COUNT ONE — DECLARATORY JUDGMENT

17. Adopt and incorporate the allegations in paragraphs one (1) through sixteen (16) the same as if fully rewritten herein.

18. Plaintiffs have an actual justiciable controversy with defendants regarding the validity, enforceability and applicability of the restrictive covenants in Exhibit 1; therefore, plaintiffs are entitled to bring a declaratory judgment action under R.C. 2721.03.

19. Pursuant to R.C. 2721.03 and 2721.04, plaintiffs request a declaration that the defendants are in breach of the restrictive covenant in Exhibit 1 as the proposed multi-occupant facility is not a single-family residence, is a commercial property and does not have a garage.

20. Pursuant to Ohio R.C. § 2712.03, plaintiffs request this court to exercise its discretion and award them reasonable attorney's fees for the prosecution of this action which would not have been necessary but for defendants' failure to abide by the restrictive covenants which were a matter of public record.

**COUNT TWO — TEMPORARY RESTRAINING ORDER,
PRELIMINARY AND PERMANENT INJUNCTION**

21. Adopt and incorporate the allegations in paragraphs one (1) through twenty (20) of the complaint the same as if fully rewritten herein.

22. The plaintiffs are entitled to injunctive relief pursuant to paragraph eight (8) of Exhibit 1 which states as follows:

8. These restrictions may be enforced by grantors herein or by the owner of any lot in Haden Farms Addition No. 2 either by proceedings for injunction or to recover damages for breach thereof. Failure on the part of anyone to enforce any one or more provisions hereof shall not invalidate said restrictions.

23. As construction is proceeding with application for permits, the plaintiffs will have no adequate remedy at law if construction is allowed to proceed which would permanently alter the character of the neighborhood eliminating single-family homes that were to be protected by the restrictive covenants. While the covenants also provide for money damages, such damages do not provide an adequate remedy for the permanent damage to the neighborhood. The proposed construction and remodeling will also lower the value of nearby properties.

24. There is no indication or evidence that any third parties would be harmed by a temporary restraining order, preliminary or permanent injunction, as the effect of any injunction would be limited.

25. More specifically, the plaintiffs are entitled to permanent injunction prohibiting construction of the multi-occupant home and enforcing the restrictive covenants.

Wherefore, the plaintiffs respectfully request that the court order the following relief:

1. Count One — a declaration by the court pursuant to R.C. 2721.03 of the parties rights, interests and obligations under the deed attached as Exhibit 1 including a declaration that the proposed construction and alteration of the premises by 5281 Locust Hill Lane is in violation

of the restrictive covenants limiting construction to single-family homes and prohibiting commercial use and requiring a garage.

2. Count Two — a temporary restraining order and a preliminary injunction as well as a permanent injunction prohibiting the proposed construction of a commercial multi-occupant home at 5281 Locust Hill Lane and that no further activities or permits be obtained while the injunction remains in effect.

3. Such other relief as the court deems proper including a reasonable attorney's fee.

Respectfully submitted,

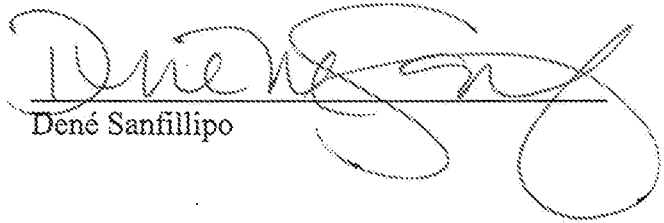
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Deb Czerwinski, et al.*

VERIFICATION

Dené Sanfillipo, being first duly cautioned and sworn, deposes and states that she executed this verification based upon her own knowledge, information and belief, that she has read the foregoing Verified Complaint, and that the averments contained in it are true and accurate to the best of her information and belief.


Dené Sanfillipo

Sworn to before me and subscribed in my presence this 1 day of October, 2020.



Notary Public



MICHAEL L. CLOSE, Attorney at Law
NOTARY PUBLIC, STATE OF OHIO
My Commission has no expiration date.
Section 147.03 R.E.