

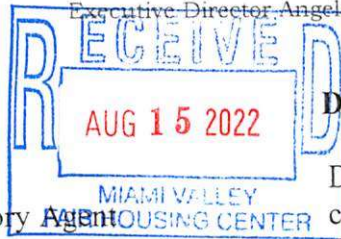


OHIO CIVIL RIGHTS COMMISSION

Governor Mike DeWine

Commissioners: Lori Barreras, Chair | J. Rita McNeil Danish | William Patmon, III | Madhu Singh | Charlie Winburn
Executive Director: Angela Phelps-White

August 11, 2022



Date Mailed: August 11, 2022

Ottercreek Group LLC
c/o Scott E. Hamilton, Statutory Agent
21865 Shirk Road
Marysville, OH 43040

Dublin City Council
c/o Chris Amorose Groomes, Mayor
5555 Perimeter Drive
Dublin, OH 43017

LETTER OF DETERMINATION

Ottercreek Group LLC v. Dublin City Council; Chris Amorose Groomes, Mayor;
Cathy De Rosa, Vice Mayor; Greg Peterson, Council Member; John Reiner, Council Member;
Christina A. Alutto, Council Member; Jane Fox, Council Member; Andy Keeler, Council Member;
City of Dublin Planning Department
TOLH1(49013)10052021 AMENDED

FINDINGS OF FACT:

On October 5, 2021, Charging Party, Ottercreek Group LLC, filed an affidavit with the Ohio Civil Rights Commission (“Commission”) alleging Respondent(s), Dublin City Council; Chris Amorose Groomes, Mayor; Cathy De Rosa, Vice Mayor; Greg Peterson, Council Member; John Reiner, Council Member; Christina A. Alutto, Council Member; Jane Fox, Council Member; Andy Keeler, Council Member; City of Dublin Planning Department, (hereinafter referred to as the “Respondent”), discriminated by subjecting them to discriminatory terms and conditions (change in city building code) on the basis of disability (by association). All jurisdictional requirements for filing a charge have been met. The subject property is a single-family dwelling located within the City of Dublin and Washington Township.

Charging Party states that in May 2018, they contacted the City of Dublin Planning Division and confirmed that a residential assisted care home for disabled seniors would be a permitted use under the zoning ordinance for 5281 Locust Hill Lane (the subject property). On July 18, 2018, Charging Party purchased the subject property. Charging Party applied for a building permit to make modifications to the subject property for the purpose of establishing a residential assisted care home for disabled seniors. Respondent approved Charging Party’s building permit. Charging Party states that in December 2020, during a City Council meeting wherein neighbors had requested Respondent to stop the Charging Party’s assisted care home project, Respondent initiated action to amend the City’s building code in a way that made Charging Party’s building plan non-compliant. This revised code was adopted April 26, 2021, and signed by the mayor.

Charging Party states that on February 10, 2021, a fire destroyed the subject property and delayed the completion of the approved renovations. Charging Party states that their building permit subsequently expired, and due to the change in the City’s building code, Charging Party’s original building plans will no longer be eligible for approval. Charging Party believes that Respondent changed the City’s building code specifically to prevent the creation of future residential assisted care homes for disabled individuals.

Respondent denies Charging Party's allegations. Respondent states that Section 153.074 of the City of Dublin Zoning Code was amended to permit residential structures to expand their internal space into a garage, while also maintaining the storage and parking needs for residences and keeping the aesthetic character of a traditional single-family neighborhood. Respondent states that the amendment was passed over a year after the City of Dublin approved Charging Party's building plans and months before the building plans expired. Respondent further states that the revision did not apply retroactively to existing approved building plans and did not prohibit the Charging Party from extending their permit pursuant to the Ohio Building Code. Respondent states that the amendment does not prevent future residential assisted care homes for disabled individuals.

Information shows Scott Hamilton and Ana Priscila Thomé-Hamilton are the sole members of Ottercreek Group LLC, and hereinafter will be referred to as Charging Party. Information shows Charging Party contacted the City of Dublin Planning Division in February 2018 to determine whether the zoning code would allow the conversion of a single-family dwelling for use as a residential assisted care home for seniors in the Dublin community. On March 28, 2018, Lori Burchett, City of Dublin Planner, indicated to Charging Party that there was a limit of no more than 12 residents according to the City of Dublin's zoning code. On May 18, 2018, the Planning Division issued a Zoning Compliance Letter to Charging Party, indicating that the subject property may be used as a community residence facility.

Section 153.002(3)(e) of the Dublin Code defines a community residence as: "A family-like residential living arrangement for five or more unrelated individuals with disabilities in need of the mutual support furnished by other residents of the community residence as well as the support services provided by any staff of the community residence." The Code further provides that no more than 12 individuals may live in a community residence, and that a community residence shall be considered a residential use of property for purposes of all zoning and building codes. A "family community residence" is defined as: "A relatively permanent living arrangement with no limit on length of tenancy for five or more unrelated individuals with disabilities, including but not limited to Adult Family Homes and Adult Care Facilities licensed by the Department of Mental Health and Addiction Services under R.C. § 5119.34."

There is no indication single-family dwellings have the same occupancy restrictions in the City of Dublin Zoning Code. Such restriction limits the housing opportunities for the disabled.

Section 153.073(C) and (E) of the Dublin Code provides that family community residences shall be allowed as of right in zoning districts R, R-1, R-2, R-3, R-4, R-10, R-12, BSC-R, BSC-OR, BSC-O, BSC-HC, BSC-HR, and all Planned Unit Developments, provided it is located at least eight lots on its side of the street from an existing community residence and is at least 660 linear feet from the closest existing community residence, and the operator or applicant is licensed or certified by the State of Ohio to operate the proposed community residence, has certification from an appropriate national accrediting agency, or has been recognized or sanctioned by Congress to operate the proposed community residence.

Information shows Charging Party purchased the subject property on July 31, 2018, and planned to renovate the subject property into a community residence to provide 24-hour on-site care for a maximum of 12 disabled seniors. Charging Party's building plans included a two-story addition and the conversion of the three-car garage to living space.

Information shows that after Respondent approved Charging Party's plans and issued the necessary permits, construction on the subject property began in March 2020. Information shows that after changes were made to Charging Party's plans, the revised layout was approved by Respondent and another full building permit was issued on November 4, 2020.

Information shows that at a Dublin City Council meeting on December 7, 2020, the neighbors of the subject property, through a representative, addressed their concerns with the renovation of the subject property to City Council. The neighbors were concerned with the major commercial modifications to the subject property, including HVAC units outside the building giving it the appearance of a hotel. The neighbors also were concerned that their deed restrictions required single family homes with a garage and mentioned litigation already underway against Charging Party. The neighbors also feared increased traffic from staff, visitors, and deliveries at the subject property. After the City's Law Director provided information that the subject property was in compliance with the zoning code as written, the City Council directed its staff to look into modifications to the Zoning Code.

If the land use or zoning decision results in discrimination against people with disabilities, it violates Ohio Revised Code Section 4112 and the Fair Housing Act. Intentional discrimination directed at the Charging Party in a change of the zoning code was a product of discriminatory animus based on unsupported stereotypes, prejudices, and fears stemming from generalizations such as property value being affected, appearance and increased traffic is a violation of Ohio Revised Code Section 4112. The change and or amendments of the garage conversion was a motivating factor in the decision to amend the ordinance. Also, officials enacted a zoning ordinance requiring community residences to be separated by at least eight lots on its side of the street from an existing community residence and at least 660 linear feet from the closest existing community residence in response to community concerns.

Information shows that on February 10, 2021, the subject property was substantially damaged due to a fire. The Washington Township Fire Department, City of Dublin Police Department, and Charging Party's insurance company began conducting investigations into the cause of the fire.

At the March 18, 2021, City of Dublin Planning and Zoning Commission meeting, an amendment to Zoning Code Section 153.074 to address the conversion of garages into habitable spaces in residential zoning districts was considered. The proposed language allowed for the conversion of attached garages to habitable living space if another garage similar in size either already existed on the property or would be constructed on the property. Warren Fishman, Planning and Zoning Commission Member, stated that his objection to conversions of attached garages is the elimination of enclosed parking space, resulting in vehicles being parked in the driveway and on the street. Mr. Fishman noted: "Currently, the proposed Code does not require that the replacement garage be in place when the attached garage is converted; it could happen at some future time, which in many cases, would never occur."

Information shows that the Dublin City Council passed Ordinance 16-21 at its April 26, 2021, meeting, which was to take effect 30 days later. This ordinance amended Section 153.074 of the City of Dublin Zoning Code to address the conversion of garage space into habitable space. The amended section provides:

“Attached garages in all residential zoning districts may be converted into habitable living space if either: a) another garage exists on the property that is commensurate in size to the garage being converted, or b) another garage is constructed on the property that is commensurate in size to the garage being converted.”

Information shows that on July 2, 2021, Brad Fagrell, Director of Building Standards, asked Charging Party for an update on the progress of resubmitting the approved plans with the portions that would be torn down and the portions that would be saved. Charging Party indicated at that time that there was a lack of concurrence between the insurance company and the contractor regarding the cost and approach on the rebuild, and that they were working towards consensus. Information shows that on July 15, 2021, Mr. Fagrell informed Charging Party that the City was getting complaints and was concerned about the public welfare and safety issues with leaving the fire-damaged structure in its condition. Mr. Fagrell asked Charging Party to submit plans on moving forward or schedule a meeting to discuss the plans by July 23, 2021. Information shows that on July 23, 2021, Charging Party informed Mr. Fagrell that they were unable to proceed with demolition of the subject property without assurance that it would not interfere with the police and fire department investigations.

Information shows that the Washington Township Fire Department informed Charging Party on August 17, 2021, that the department had completed the scene exam at the subject property. On August 24, 2021, the City of Dublin requested a meeting on-site at the subject property to determine if there were any safety or security issues. Information shows city officials met with Charging Party at the subject property on September 3, 2021. Charging Party was informed at that meeting that their building plan approval and permit had expired, and they would need to apply for a new permit.

Section 105.4 of the Ohio Building Code provides:

“Extension. If in the course of construction, work is delayed or suspended for more than six months, the approval of plans or drawings and specifications or data is invalid. Two extensions shall be granted for six months each if requested by the owner at least ten days in advance of the expiration of the approval and upon payment of a fee for each extension of not more than one hundred dollars.”

Information shows that the city monitors progress on building projects through inspections. The City’s last inspection of the subject property had been on January 12, 2021, therefore Charging Party’s building plan approval and permit expired on July 12, 2021. Information shows that Charging Party did not request an extension of the permit until September 8, 2021, at which point the permit had already expired.

Information shows that the Washington Township Fire Department confirmed to Charging Party on September 8, 2021, that they had no hold on the subject property or its contents and would not need additional items from the building to complete the investigation. Also on September 8, 2021, the Dublin Police Department confirmed to Charging Party that all evidence had been collected from the subject property and no additional items would be needed to complete the investigation.

Information shows Charging Party received the final loss coverage payment from the insurance company on November 4, 2021. Charging Party ultimately listed the subject property for sale on December 17, 2021, and it was sold on May 5, 2022.

No city may enact or maintain an ordinance, development regulation, zoning regulation or official control, policy, or administrative practice which treats a residential structure occupied by persons with disabilities differently than a similar residential structure occupied by a family or other unrelated individuals.

Respondent required an occupancy restriction thereby classifying the home regarding the number of unrelated persons living in the proposed residence. This may be considered disparate treatment because it only applies to community residences. The proposed residential care home for disabled seniors shows Charging Party's home and like properties will be singled out based on Respondent's zoning decision.

There is no indication Charging Party would have been "grandfathered in" had Charging Party reapplied for permits subsequent to the expiration of his initial approved permit. Therefore, Charging Party would have been subjected to the changes and modifications concerning garage conversions, resident occupant limitations, and spacing requirements, should there be future community residences.

DECISION:

The Ohio Civil Rights Commission determines it is **PROBABLE** that Respondent has engaged in an unlawful discriminatory practice in violation of Ohio Revised Code Chapter 4112. Therefore, the Commission hereby orders that this matter be scheduled for **CONCILIATION**.

In accordance with Ohio Revised Code § 4112.05(A) and Ohio Administrative Code § 4112-3-03(C), the Commission invites you to participate in conciliation by informal methods of conference, conciliation and persuasion. Enclosed is a draft Conciliation Agreement and Consent Order for your consideration. Brad Adams has been assigned as Conciliator and can be reached by telephone at 419-245-2911 or by email at brad.adams@civ.ohio.gov. **Please contact the Conciliator to discuss the conciliation process.** If the Commission's attempts at conciliation are unsuccessful, a formal complaint will be issued, and the case will be scheduled for a public hearing.

NOTICE OF RIGHT TO REQUEST RECONSIDERATION:

Pursuant to Ohio Administrative Code § 4112-3-04, you have the right to request reconsideration of this determination of the Commission. The application must be in writing and state specifically the grounds upon which it is based. If you wish to appear before the Commissioners to present oral arguments supporting your request, you must specifically make a request to appear in writing.

Ottercreek Group LLC v. Dublin City Council; Chris Amorose Groomes, Mayor; Cathy De Rosa, Vice Mayor; Greg Peterson, Council Member; John Reiner, Council Member; Christina A. Alutto, Council Member; Jane Fox, Council Member; Andy Keeler, Council Member; City of Dublin Planning Department
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This request must be sent to the Compliance Department, Ohio Civil Rights Commission, 30 East Broad Street, 5th Floor, Columbus, Ohio 43215. You must submit the request for reconsideration, along with all additional evidence or supporting documentation, within **TEN (10) days** of the date of mailing of this notice. Any application for reconsideration or additional materials received by the Compliance Department in the Commission's Columbus Central Office after the ten-day period has expired will be deemed untimely filed. Extensions of this ten-day filing period are not permitted.

***Please note, conciliation efforts do not toll the applicable time period for submitting a Request for Reconsideration. See, Ohio Administrative Code § 4112-3-04.*

FOR THE COMMISSION,

Inder F. LeVesque

Inder F. LeVesque
Toledo Regional Director
IFL/mse

Enclosure: Draft Conciliation Agreement and Consent Order

Additional Respondents:

Cathy De Rosa, Vice Mayor
Dublin City Council
5555 Perimeter Drive
Dublin, OH 43017

John Reiner, Council Member
Dublin City Council
5555 Perimeter Drive
Dublin, OH 43017

Jane Fox, Council Member
Dublin City Council
5555 Perimeter Drive
Dublin, OH 43017

City of Dublin Planning Department
c/o Jenny Rauch, Director
5200 Emerald Parkway
Dublin, OH 43016

Additional Respondents:

Chris Amorose Groomes, Mayor
Dublin City Council
5555 Perimeter Drive
Dublin, OH 43017

Greg Peterson, Council Member
Dublin City Council
5555 Perimeter Drive
Dublin, OH 43017

Christina A. Alutto, Council Member
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Andy Keeler, Council Member
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cc: Ana Priscila Thomé-Hamilton, Member
Ottercreek Group LLC
21865 Shirk Road
Marysville, OH 43040

Scott Hamilton, Member
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Marysville, OH 43040
scott@ottercreekral.com

Representatives for Charging Party:

Miranda Wilson
Director of Investigations and Enforcement
Miami Valley Fair Housing Center, Inc.
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Dayton, OH 45405
miranda.wilson@mvfairhousing.com

Representative for Respondent:

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THE OHIO CIVIL RIGHTS COMMISSION

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CONCILIATION AGREEMENT AND CONSENT ORDER

Charge Number: TOLH1(49013)10052021 AMENDED
Charging Party: Ottercreek Group LLC
Respondent: Dublin City Council; Chris Amorose Grooms, Mayor; Cathy De Rosa, Vice Mayor; Greg Peterson, Council Member; John Reiner, Council Member; Christina A. Alutto, Council Member; Jane Fox, Council Member; Andy Keeler, Council Member; City of Dublin Planning Department

General Provisions

1. This Conciliation Agreement and Consent Order is made between the Ohio Civil Rights Commission (hereinafter "Commission"); Ottercreek Group LLC (hereinafter "Charging Party"); Dublin City Council; Chris Amorose Grooms, Mayor; Cathy De Rosa, Vice Mayor; Greg Peterson, Council Member; John Reiner, Council Member; Christina A. Alutto, Council Member; Jane Fox, Council Member; Andy Keeler, Council Member; City of Dublin Planning Department (hereinafter "Respondent") and Respondent's heirs, representatives, officers, agents, employees, successors, or assignees.
2. This Conciliation Agreement and Consent Order is designed to ensure voluntary compliance with the provisions of the Ohio Laws Against Discrimination, as set forth in Ohio Revised Code Chapter 4112.

Ottercreek Group LLC v. Dublin City Council; Chris Amorose Grooms, Mayor; Cathy De Rosa, Vice Mayor; Greg Peterson, Council Member; John Reiner, Council Member; Christina A. Alutto, Council Member; Jane Fox, Council Member; Andy Keeler, Council Member;

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3. Respondent agrees that there shall be no discrimination of any kind as prohibited by Ohio Revised Code Chapter 4112 and that there shall be no retaliation against any person because he/she has opposed a practice deemed illegal under that chapter or because he/she has filed a charge, testified, assisted, or participated in an investigation, proceeding, or hearing.
4. Charging Party hereby waives, releases, and agrees not to sue Respondent for any claims arising before the Ohio Civil Rights Commission that were the subject of the above-referenced charge.

Remedial Action

5. As evidence of a good faith effort to resolve the above-referenced charge, it is agreed:
 - a. Respondent will not discriminate with respect to housing. Prohibited actions include, but are not limited to:
 - i. discriminating against any person in the availability, terms, conditions, or privileges of occupancy because of disability, race, color, sex, religion, national origin, military status, ancestry, or familial status.
 - b. Respondent's owners, managers, directors, and all other employees shall attend no less than four (4) hours of suitable Ohio Civil Rights Commission approved training with regard to disability discrimination within the meaning of Ohio Revised Code Chapter 4112 at Respondent's expense. This shall take place within 60 days of executing this agreement.
 - c. Respondent shall establish annual training sessions (at its own expense) to sensitize all City Council members inclusive of the Mayor, and all City Planning Department employees on disability discrimination whenever needed, but no less than once each year. The training shall focus on Ohio Revised Code Chapter 4112.
 - d. Respondent must amend, modify, or change zoning codes, regulations, or policies so that they are in compliance with Ohio Revised Code Section 4112 and the Fair Housing Act.
 - e. Respondent shall pay Charging Party actual damages incurred.
 - f. Respondent shall place a quarter page advertisement in local newspapers. The advertisements will state that Respondent supports The Fair Housing Act. The advertisement will be placed during Fair Housing month in April of 2023 and 2024 respectively.
 - g. In the event of a breach of this agreement, Respondent agrees to pay the Commission, as liquidated damages, the base hourly rate for Commission employee(s) involved in handling the breach, times the hours spent on documented enforcement efforts by said employee(s). Such liquidated damages are intended to represent estimated actual damages and are not intended as a penalty.

6. Supporting documentation and proof of compliance with this Conciliation Agreement and Consent Order shall be submitted to Inder F. LeVesque, Toledo Regional Director, Ohio Civil Rights Commission, One Government Center, 640 Jackson Street, Suite 936, Toledo, OH 43604 within 90 days of the signature date of the agreement.

Enforcement

7. In accordance with the terms of Ohio Revised Code § 4112.06 and Ohio Administrative Code § 4112-3-03(D), this Conciliation Agreement and Consent Order constitutes a final order of the Commission. Respondents agree to be legally bound by this Conciliation Agreement and Consent Order and to waive a public hearing in this matter. See Ohio Adm. Code § 4112-3-10(B)(3).
8. This Conciliation Agreement and Consent Order does not constitute an admission by Respondent of any violation of Ohio Revised Code Chapter 4112.
9. The Commission may investigate whether Respondent has complied (or is complying) with the terms of this Conciliation Agreement and Consent Order. To that end, the Commission may require written reports and/or conduct inspections, examine witnesses, and review and copy pertinent records to determine compliance with the terms contained herein.
10. Respondent agrees that upon its failure to fully comply with the provisions of this Conciliation Agreement and Consent Order the Commission may initiate further action including, but not limited to, the filing of a complaint in the Court of Common Pleas to seek enforcement of the terms and provisions of this Conciliation Agreement and Consent Order and reimbursement for any legal fees and costs incurred in filing such enforcement action.

SIGNATURES TO FOLLOW ON THE NEXT PAGE

Ottercreek Group LLC v. Dublin City Council; Chris Amorose Groomes, Mayor; Cathy De Rosa, Vice Mayor; Greg Peterson, Council Member; John Reiner, Council Member; Christina A. Alutto, Council Member; Jane Fox, Council Member; Andy Keeler, Council Member;

City of Dublin Planning Department
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CHARGING PARTY (Ottercreek Group LLC or Representative)

Signature Printed Name Date

Title

RESPONDENT (Dublin City Council; Chris Amorose Groomes, Mayor; Cathy De Rosa, Vice Mayor; Greg Peterson, Council Member; John Reiner, Council Member; Christina A. Alutto, Council Member; Jane Fox, Council Member; Andy Keeler, Council Member; City of Dublin Planning Department or Representative)

Signature Printed Name Date

Title

OHIO CIVIL RIGHTS COMMISSION

Signature Printed Name Date

Title