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TESTIMONY OF CHARLES A. RYAN, ESQ.

TESTIMONY IN OPPOSITION TO RAISED BILL No. 5121
AN ACT CONCERNING CERTAIN PROTECTIONS FOR GROUP AND FAMILY CHILD CARE HOMES
As it applies to Common Interest Communities

My name is Charles Ryan. I am an attorney with an office in Watertown, CT. I have been practicing law since 2010 and my practice focuses almost entirely on representing Common Interest Communities[1] throughout the State of Connecticut.

I am a member of the Executive Board for the Connecticut Chapter of Community Association Institute ("CAI-CT"). I am a Member of CAI-CT's Education Program Committee, Conference Committee and a delegate of CAI's Legislative Action Committee. I am also a member of the CAI Lawyer's Council for CT.

My practice encompasses all aspects of Association representation and is not limited to debt collection. Accordingly, I spend many nights at Board Meetings and Unit Owner Meetings discussing and resolving many issues that affect Connecticut's Common Interest Communities. I also litigate issues involving Common Interest Communities.

Please accept this testimony in opposition to Raised Bill No. 5121 as it applies to Common Interest Communities.

If the Committee adopts this Raised Bill 5152, it is urged to clarify that Family childcare homes and group child care homes must comply with other land use restrictions including, but not limited to, private deed restrictions, covenants, and condominium declarations.

OPPOSITION AS TO SECTION 1.

It is not that I object to Condominiums or other Common Interest Communities being able to allow family child-care or group child-care. It is that the decision should be left to the Board of Directors and the Unit Owners that live in the Community. Condominiums are often looked at as though they are subdivisions in a community. This is not so.

Many condominiums are not designed for child care. To begin, there are long standing

1 The terms Common Interest Community, Condominium, and Association are used interchangeably throughout this written testimony.

Declaration provisions that prohibit commercial uses in condominiums. The intent being that because people live so close to one another, most often sharing thin walls, the use should be residential. Furthermore, in a condominium, unlike in a subdivision, the actions of your neighbor can greatly affect you. For example, if childcare was being provided in a condominium unit, if a child was injured, the Association could be liable. Those Communities with pools are at an even greater risk for a child to be injured. The reality is that the Association's Insurance Policy will likely have an exclusion for such uses. The result would be that the Unit Owners would have to pay for an attorney and pay any settlement or awards. This could drastically affect the financial stability of homeowners and their Associations. If the Insurance Policy did provide coverage, this would result in increased premiums as the risks associated with the condominiums would increase.

Even if the owner providing childcare obtains insurance, CT law requires that the Association's insurance be primary and subrogation rights are explicitly waived. The result of which is that the Association's insurance must be exhausted before the owner's insurance is liable.

In addition to liability for personal injuries, condominiums are not carved out as an exception, condominiums will now face liability for interfering with a business. I receive noise complaints almost every month. A contiguous owner complains that a neighbor is too loud and interfering with their use and enjoyment. The Association investigates these claims but they are difficult to substantiate because noise is not constant. The Board must be present when the noise is occurring. Ultimately, if the noise does not stop the unit owner files a lawsuit against the Association. Often times the Association does not have insurance coverage for such claims and must pay privately for an attorney to defend the action. With the enactment of section 1, condominiums would be exposed to liability for noise that interferes with a business. For example, the operator providing childcare may sue the Association because a neighbor's noise wakes up sleeping children more often then he or she deems acceptable.

Beyond liability for personal injuries and business interference, condominiums are simply not designed to handle the added pedestrian and vehicular traffic that accompany commercial uses. Parking is a major concern in condominiums and the influx in visits from the public, generally during busy drop-off and pick-up times, will negatively affect the use and enjoyment of the neighboring homeowners.

While a residential condominium is subject to Fair Housing Laws, it is not subject to the American's with Disabilities Act. If childcare were allowed, it would create a place of public accommodation and subject the common areas in the condominium to the ADA. Doing so would expose the condominium to ADA complaints, the hefty penalties that follow, and the added expense of compliance with ADA laws. All of which could bankrupt a condominium.

Finally, the Housing for Older Persons Act, specifically authorizes a condominium to prohibit children under age 18, if the Community qualifies as an over 55 Community or an over 62 Community. Congress created such Communities as it recognized some homeowners do not wish to live in Communities with children. This Bill would affect those Connecticut residents who reside in 55 + and 62+ Communities.

Conclusion

For the aforementioned reason I respectfully request that section 1 of Raised Bill 5152 be amended to require compliance with other land use restrictions including, but not limited to,

private deed restrictions, covenants, and condominium declarations.

Respectfully submitted,

Charles A. Ryan, Esq.