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Kevin S. McDonald  
Senior Assistant City Attorney  
Ann Arbor City Attorney's Office  
301 E Huron St  
Ann Arbor, MI 48104

Re: Special Exception Use  
1919 Wayne Street

Dear Mr. McDonald:

It was good speaking with you on Wednesday regarding the Ann Arbor Jesuit Community's application for a special exception use permit for the property at 1919 Wayne in Ann Arbor, on which they have a signed purchase agreement. During our conversation, we discussed various issues related to the application and the upcoming Planning Commission meeting on 6/17/14. I want to reiterate my client's desire to work with the Planning Commission and concerned neighbors to address matters raised in what we understand is something of an issue of first impression for the Commission.

However, we also recognize that despite all of the Jesuits' best efforts to be reasonably accommodating, and our belief that the Jesuits meet the definition of "functional family" in the zoning ordinance, the Commission might still vote to deny the permit. That being the case, I believe it is my duty to make clear my client's position on the matter.

We believe that the Jesuits clearly meet all of the requirements of the definition of "functional family" under the ordinance, as well as all of the requirements for obtaining a special exception use permit. The authors of the staff report presented at the June 3<sup>rd</sup> meeting, and five of the seven commissioners who voted at the meeting, agreed with us.

The two commissioners voting against approval, Mr. Westphal and Ms. Giannola, appeared to vote against approval for reasons that are legally insufficient, at least as they expressed their reasons at the June 3<sup>rd</sup> meeting. Mr. Westphal stated that he was "particularly comfortable with this group," adding "I just don't know if it's precedent setting." *Delta Township v. Dinolfo*, 419 Mich. 253; 351 N.W.2d. 831 (1984), makes it clear that concern about setting a precedent is not a legally valid reason to deny a functional family the right to live in a residential setting. *Id.* at 271-272.

From her statements, Ms. Gianolla appeared to take the position that the "functional family" definition requires that the individuals comprising the family reside in the home for a certain unspecified minimum period. At other points in the Commission's discussion, it appeared she was saying that the functional family must be limited to certain specific individuals, rather than to the Ann Arbor Jesuit

Community. I do not believe that either of these propositions finds any support in the functional family definition or can be reasonably inferred from statements regarding “stability” in the Code. As pointed out in my client’s application and supplementary materials, traditional biological families experience a certain amount of change in the specific individuals comprising them due to a number of circumstances. For example, a wife might die and the husband might remarry and the new wife might move into the family home. Similarly, a child might die and the family might adopt another child. Regarding any implied minimum time for residing in the home, a traditional biological family could purchase a home, move in, and then sell the home and move out a year, a month, or even a week later.

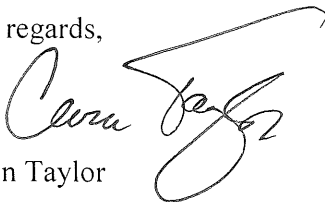
I understand that the Planning Commission has received a letter from the attorney for the Oxbridge Neighborhood Association, requesting that limits or conditions be placed on the permit, if granted, in addition to the parking condition proposed in the staff report for the June 3<sup>rd</sup> meeting. During the Commission’s discussion of the application, there was mention of federal statutes that might be implicated by efforts to craft limits on the permit. I want to take the opportunity to point out that in addition to those mentioned at the meeting, I believe that such limits could implicate the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc et seq. As you are no doubt aware, Section 2(b)(1) of RLUIPA (the “unequal treatment” section) provides that religious institutions must be treated at least as well as nonreligious institutions. Attempting to control which Jesuits live in the home, or imposing a minimum residence period requirement on them, when no such requirements are placed on biological families in the same neighborhood, appears to run afoul of the equal treatment provision. We also believe that unreasonably limiting the Jesuits with additional conditions could also run afoul of RLUIPA’s prohibition on substantially burdening their free religious exercise, in this case living the communal way of life their order has lived for centuries, among other things. These are just two illustrations that readily come to mind of the possible ways in which RLUIPA could be implicated.

In closing, I repeat that my client wishes to work with the City to obtain the special exception use permit, and to be a good neighbor, and they will seriously consider any reasonable conditions on the permit that the Commission wishes to propose. At the same time I believe it is my duty to state for the record our position regarding what grounds are valid ones on which to deny the permit, and that we are not taking the position that all conditions will be acceptable.

I also need to point out that Fr. Dan, the superior of the Ann Arbor Jesuit Community, will need to consult with his superiors in the Jesuit order regarding any proposed conditions on the permit, and consequently we need to have them with sufficient time prior to the June 17th meeting to allow him to do so.

If you have any questions, please feel free to call me.

Best regards,



Cevin Taylor

Cc: Fr. Dan Reim