

Colie Colburn

From: Emily Sendelbach <emilysendelbach86@gmail.com>
Sent: Wednesday, March 20, 2024 11:58 AM
To: Colie Colburn
Subject: FCC/ HOA restriction testimony

To Whom It May Concern,

The purpose of this letter is to share our experiences with operating a family child care within two different HOA's. Emily skillfully runs a group family childcare out of our home.

Emily has been running an in-home daycare program for over ten years – beginning well before we moved to our last home on Holasek Path. When we made the decision to purchase our home in the Harvest Neighborhood, we knew we were going to be a part of a homeowner's association. We carefully considered whether a daycare would be a good fit in the area, both from the perspective of the association's bylaws, and from those who would be living next to us. At the time, we firmly believed it was going to be beneficial to our family and the neighborhood.

Prior to the move, we reviewed the Master Declaration as well as the information available to us through the Minnesota Department of Human Services (DHS). DHS is a licensing body for daycares in the state, and a source we believed to be particularly reputable. Our research couldn't have been more clear. With regards to homeowner's associations in Minnesota:

Minnesota Statutes, section 245A.14, subdivision 1 and 2 offers homeowners the protection of making the decision to operate a licensed family child care program in their homes.

<https://mn.gov/dhs/partners-and-providers/licensing/child-care-and-early-education/family/child-care-licensing-faq/>

Emily, in an attempt to be thorough, took the time to call First Service Residential. She spoke with somebody about our intentions to move a daycare into the association. She was told that a daycare would not be in violation of any bylaws as long as it was licensed and there was no signage in the yard. This confirmed what we already knew. We never dreamed we would someday be called out for violating the covenants of our homeowner's association.

The first year and half went without a hitch. Notably, several families from the Harvest Neighborhood began sending their kids to our daycare. They loved having high-quality childcare so close to home, and our daycare was clearly seen as a beneficial feature we had provided to the neighborhood.

In the winter of 2021-2022, we addressed some complaints that had begun to trickle in from neighbors. Some daycare parents were parking the wrong way in the street. Some parents parked too far from the curb. Some parents needed to slow down. Neighbors preferred if parents didn't park in front of their houses. Emily addressed all these concerns as they came in. The bad behaviors stopped. We encouraged parents to park in our driveway to lessen the burden on those around us. We felt we did everything we could to be good neighbors. We had open lines of communication with our neighbors.

In June of 2022, First Service Residential contacted us. They told us that the daycare we have been operating for over two years was a violation of our association bylaws, and a neighbor had lodged a complaint. We were shocked. The property manager was gracious, patient, and helpful through those early days as we scrambled to figure out how we were so wrong. This was our livelihood! So many families counted on Emily to care for their children every day! What do we do?

We began to explore our options. The housing market and mortgage rates at the time made moving a particularly difficult option. The property manager said the fine that would eventually be imposed on us would be \$10.00. She suggested we pay the fine and hope the problem went away. We were never asked to stop operating the daycare. We asked them about the position DHS had taken regarding daycares in an HOA. We understood our question represented a complicated legal issue, and the ramifications of giving daycares carte blanche to operate raised obvious potential problems for the association. The property manager abruptly notified us that the board had decided to turn the matter over to an attorney for an opinion.

While waiting for the association to obtain their legal opinion on the matter, we began house hunting. Regardless of the HOA's final position, it was never our intention, to cause stress to our neighbors. Emily scoured real estate listings in our area, and even sent about a dozen handwritten letters to homeowners whose houses were not for sale.

When we finally received the letter in which the association's attorney took a position that the daycare could not continue, we made the financially painful choice to honor the decision and those who wished to live on a street trafficked by a few less cars. We looked at several homes and eventually found one that could work. We closed on our new property on October 14th of 2022, and my family and our daycare left the Harvest Neighborhood.

Closing and/or relocating a daycare was not a simple task. Many people rely on us to care for their children. The association's attorney gave us ten days to cease operation of the daycare. This was clearly unreasonable. We could not, in good conscience, leave the families we care for twisting in the wind. We were disappointed that the Harvest Association did not make any attempt to work with us through this problem. The property manager told me that "communications moving forward regarding the daycare issue will be left to an attorney". The HOA's position and the bylaws were clear. We had no choice but to wait to be fined so that we could appeal our situation to the board.

The notice that we were being fined came on 9/13/2022. They had told us that we would receive a monthly escalating fine that would begin at \$10.00. We were surprised and dismayed when the fine we actually received was \$500.00. Let's be clear: this fine represents the position that our property caused an extra 6-7 cars to drive down a public street and park for a few minutes twice a day on weekdays. No damages ever resulted from this traffic. Notably, the daycare, in and of itself, is not the problem. Were it not for the vague and debatable "unusual levels of... vehicular traffic", an in-home daycare could certainly operate within the bylaws of the association.

On 9/16/2022, we learned that the board intended to charge us \$1,447.00 in legal fees.

As previously outlined, the property manager had contacted us about the alleged violation of the association's bylaws, and we immediately followed up with an open dialogue about our understanding of the law. No collection measures or enforcement actions were being taken at that time. Instead of the board having open dialogue with us, they hired an attorney resulting in us being charged thousands of dollars as a result.

We felt that the association's utilization of an attorney to levy an otherwise standard fine was arbitrary and capricious. The board, through the use of its management company, is more than capable of levying a fine without the need for an attorney or the associated attorney's fees. Without a doubt, it would be an unreasonable practice for any business to hire an attorney to conduct normal business operations and expect customers to foot the bill.

The board's reliance on their attorney made an appeal process difficult for us as we would be held responsible for any attorney fees that were accrued during this process. At that time we already made the decision to move and did not have a fair opportunity to appeal.

We picked up our family and business and moved across town. This was financially devastating to us at the time. We had only lived in our home for two years and were not in the position to sell it. We needed to find a home large enough to support our family and childcare business in a difficult market. We ended up using up all assets and savings we had worked hard to build over years in order to move.

Our community is heavily made up of HOA's and we were finding it very difficult to find a home that wasn't in an HOA. We found a home in our price range and did our research again about whether we could operate a daycare there. We first reviewed the declarations and nothing said we could or could not. Emily contacted the property manager to see if we could get it in writing that we were allowed to have a family childcare, and they refused saying they couldn't put it in writing but that they didn't see an issue as there were 10 other daycare's within the association. We picked this home because it was on a half acre lot, had a large enough driveway to fit 10 cars, had no houses across the street and was only 2 houses in from the main road. Within two months we had received a phone call from the association letting us know that one neighbor had made a complaint. We were in shock to say the least.

The process with this association looked a lot different, as we had the opportunity to be before the board and we were not responsible for any attorney fees. We had a chance to speak as did the one neighbor who made the complaint. The biggest complaint he had was that the sound of children was annoying. At this time it was obvious that he was making assumptions of what a summer would be like with kids playing outside. Thankfully this situation ended in our favor with the association stating that I was allowed to operate my daycare.

We are passionate about seeing change in HOA's not being allowed to say whether or not family childcare is allowed or not. There is a huge shortage of daycare in Minnesota. The restrictions in HOA's limit the people available to open and help with our childcare crisis.

Phil and Emily Sendelbach

I am writing to express my strong support following the recent testimonies and hearing on HF4425. Having closely followed the discussions surrounding it, and I am greatly encouraged by the positive feedback received from various committee members endorsing this bill.

My personal connection to this issue stems from my own experience with my Homeowners Association (HOA), which is seeking to terminate my wife's in-home daycare service due to their by-laws. This issue, which has not been a concern for our community for over four years, has garnered significant support from our neighbors who are in favor of my wife continuing to provide childcare. In fact, one of our neighbors regularly brings their children to her daycare multiple times a week.

I would like to address some of the arguments made against the passage of this bill and provide feedback on why I believe they are invalid:

1. **Noise Complaints:** In-home daycares are often located in family-oriented neighborhoods where children playing outdoors is commonplace. If noise becomes an issue, existing city ordinances regarding noise complaints should suffice. Additionally, if having multiple children or hosting birthday parties outdoors is acceptable, then prohibiting in-home daycares based on noise concerns seems arbitrary.
2. **Traffic Concerns:** Similar to noise complaints, concerns about increased traffic seem unfounded. Drop-offs for children are brief and can be staggered to minimize disruptions. The number of children permitted in an in-home daycare is limited, resulting in negligible traffic impact. In my own situation, none of my six neighbors have experienced any issues related to increased traffic.
3. **Insurance Costs:** The assertion that in-home daycares result in increased insurance costs for the community is unsubstantiated. Personal liability insurance specifically designed for in-home daycares exists and has no bearing on the community's insurance premiums. Moreover, my own insurance providers have never required any information regarding our in-home daycare, nor have our premiums increased as a result.
4. **Moving into a non-HOA community:** Arguing that individuals should simply avoid living in HOA communities is impractical. In many areas, mine included in Woodbury where more than 1000 new homes were built over the last few years, the communities are automatically enrolled in HOAs prior to residents moving in via the builders. I was told by our builder Lennar that they do not read or even update their HOA by-laws but simply copy and paste them from community to community. Given the limited housing options, particularly for young families seeking starter homes, restricting in-home daycares based on HOA regulations unfairly limits childcare choices.

I believe passing HF4425 and the companion bill SF4499 is essential to address the critical shortage of childcare options. Restrictive HOA policies only exacerbate this issue and infringe upon the rights of homeowners to utilize their properties for legitimate purposes. As a homeowner directly impacted by these restrictive practices, I strongly urge you to

support this legislation and ensure that families have access to essential childcare services.

Thank you for your attention to this matter.

Woodbury Resident