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November 23, 2015

**Via Overnight Mail and Electronic Mail**

Hon. Jonathan Mark, Mayor  
and Members of the Board of Trustees  
Village of Scarsdale  
Village Hall  
1001 Post Road  
Scarsdale, New York 10583

**Re: Monte Nido & Affiliates  
Proposed Residential Treatment Facility  
2 Morris Lane, Scarsdale, New York (the "Site")**

■ Also admitted in D.C.  
● Also admitted in CT  
▲ Also admitted in NJ

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MANAGER'S OFFICE  
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Dear Mayor Mark and Members of the Board of Trustees:

As you know, we represent Monte Nido & Affiliates ("Monte Nido" or the "Sponsoring Agency"), a provider of eating disorder treatment programs (i.e., anorexia, bulimia, binge eating, and exercise disorders) in a residential setting. On October 27, 2015, we provided the Village with Notice pursuant to New York State Mental Hygiene Law ("MHL") Section 41.34, also known as the Padavan Law, that Monte Nido is seeking to operate a residential treatment facility for up to eight (8) adolescents on the Site (the "Proposed Residential Facility").<sup>1</sup>

We submit this letter in advance of the meeting, scheduled for November 24, 2015, to preliminarily address some of issues raised by Cuddy & Feder in its November 13, 2015 letter (the "C&F Letter") on behalf of certain neighbors who have raised "concerns" regarding the Proposed Residential Facility.<sup>2</sup> As set forth herein, and as Monte Nido will further address at the upcoming meeting, the Proposed Residential Facility is a laudable project, which would provide a

<sup>1</sup> More specifically, Monte Nido would be licensed to accommodate eight (8) girls with eating disorders, ages 12 to 18. The girls would not be enrolled in the Scarsdale public schools, unless already enrolled prior to entering treatment at the Proposed Residential Facility.

<sup>2</sup> The C&F Letter is just one letter in a barrage of correspondence sent to the Village, the City of New Rochelle, and our office regarding Monte Nido's Proposed Residential Facility.

needed service to the community, and will not result in an over concentration of the same or similar facilities so as to substantially alter the nature and character of the area.

### **Notice Of The Proposed Residential Facility And Compliance With Statutory Requirements**

Initially, the C&F Letter, on numerous occasions, states that the Notice pursuant to the Section 41.34 of the New York State Mental Hygiene Law (“MHL”) was somehow deficient in its content, and did not provide sufficient information regarding the Proposed Residential Facility. (See generally C&F Letter). To the contrary, MHL Section 41.34(c)(1) requires only that Monte Nido, as the sponsoring agency, provide the Village with the “specific address of the site, the type of community residence, the number of residents and the community support requirements of the program.” MHL § 41.24(c)(1). The MHL also requires that the sponsoring agency include a list of other licensed facilities in the area. See *id.* All statutorily required information was included in our October 27, 2015 letter providing said Notice to the Village.

However, sensitive to the concerns that often surround residential facilities such as the one being proposed by Monte Nido on the Site,<sup>3</sup> following the Notice to the Village, Monte Nido reached out to and met with representatives of the Village. It also held an informational session with concerned neighbors to address questions and concerns about the Proposed Residential Facility on the Site. At the informational meeting with neighbors, Monte Nido provided a handout, which set forth answers to “Frequently Asked Questions” regarding the Proposed Residential Facility (the “FAQ”). The FAQ is annexed hereto for the Village’s information. Copies will also be available at the November 24<sup>th</sup> meeting. The FAQ is intended to dispel many of the neighbors’ misconceptions about Monte Nido and the Proposed Residential Facility, as well as correct various unsupported assertions and assumptions in the C&F Letter.<sup>4</sup>

### **The Padavan Law Process**

As the Village is aware, under the Padavan Law, the Village has three (3) options now that it has received Notice from the Sponsoring Agency that it wishes to operate the Proposed Residential Facility on the Site. The Village may: (i) approve the Site; (ii) suggest one or more

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<sup>3</sup> It is hardly uncommon for neighbors to raise various unfounded concerns when a residential facility is proposed in their neighborhood. It is for that very reason that the Padavan Law was enacted in 1978. The purpose of the Padavan Law is “to promote and encourage the placement of mentally disabled individuals in community settings in order to provide the ‘least restrictive environment that is consistent with [the needs of such individuals].” Anna L. Georgiou, “NIMBY’s Legacy: A Challenge to Local Autonomy: Regulating the Siting of Group Homes in New York,” 26 FORDHAM URBAN L. J. 209, 222-23 (1998), quoting 1978 N.Y. Laws 468.

<sup>4</sup> For example, the C&F Letter assumes, based solely on online research, that there could be up “48 persons coming and going” at the Site on any given day (C&F Letter at 2). In fact, as Monte Nido shall demonstrate, there will only be 6-8 staff present during the day, and 2-3 at night.

alternative sites in the jurisdiction; or (iii) object on the grounds that operating the Proposed Residential Facility on the Site would result in an over concentration of the same or similar facilities so as to substantially alter the nature and character of the area. MHL § 41.34(c)(1). Monte Nido submits that the Village should approve the Site.

### 1. Oversaturation And Community Character

In order to object to the siting of the Proposed Residential Facility, the burden would actually be upon the Village to prove by “*clear and convincing evidence* that the establishment of the subject community residential facility would result in an over concentration of the same or similar facilities *so as to substantially alter the nature and character of the area.*” Port Chester v. Ayotte, 34 A.D.3d, 823 N.Y.S.2d 352 (2d Dep’t 2006) (emphasis added). Contentions, such as those in the C&F Letter, that the Village already has two (2) other licensed facilities and/or that the neighboring City of New Rochelle (the “City”) has four (4) such facilities (see C&F Letter at 6) are insufficient to overcome this burden. See, e.g., Huntington v. Maul, 52 A.D.3d 725, 861 N.Y.S.2d 97 (2d Dep’t 2008) (claims that there “is a disproportionate distribution of community residential facilities for the disabled in the [town] and that it has more than its fair share of such facilities was insufficient” to meet the “clear and convincing” evidentiary burden); Fisher v. Webb, 136 A.D.2d 806, 523 N.Y.S.2d 639 (3d Dep’t 1988) (even though siting would result in 3 residences within a mile, no evidence existed that the character of the area would be changed; apprehensions of neighbors were not based on “concrete evidence” and were only “speculation and undocumented fears concerning residents of community homes”).

Thus, the only relevant consideration for objecting to a Site is whether that there would be a ***substantial alteration of the character of the neighborhood***. Here, the Proposed Residential Facility would be operated as a quiet, private, family unit in an existing and established single-family home. Thus, the size, appearance, function and quality of the house is already entirely consistent with the neighborhood. See, e.g., Town of Gates v. Comm’r of N.Y. State Off. Of Mental Retardation & Developmental Disabilities, 245 A.D.2d 1116, 667 N.Y.S.2d 568 (4<sup>th</sup> Dep’t 1997) (holding that the municipality did not meet its burden where the “proposed site is a one-story ranch house that will remain a single-family unit and will not be distinguished in any way from the other one- and two-story homes on the street.”).

Monte Nido submits that operation of the Proposed Residential Facility on the Site would not alter the nature and character of the subject area.<sup>5</sup>

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<sup>5</sup> Characterizations of the Proposed Residential Facility in the C&F Letter as a “commercial” enterprise undermines the public policy imbedded within the Padavan Law to classify these uses as single-family homes for zoning purposes. It is likewise irrelevant that the Proposed Residential Facility operates for-profit, since it will be duly licensed by the New York State Office of Mental Health in accordance with the MHL. Indeed, this is precisely the type of safe and quiet residential area within which individuals can best receive the nurturing care they need and deserve.

## 2. Alternative Sites

Contrary to the neighbors' assertions in the C&F Letter, Monte Nido is not under any obligation under the MHL to suggest or pursue an alternative location to its own proposed Site. Nor is Monte Nido required to consider alternative sites proposed by the neighbors. See, e.g., Kunz v. Howe, 185 A.D.2d 539, 586 N.Y.S.2d 376, 377 (3d Dep't 1992) (holding that a sponsoring agency is only required to consider alternative sites formally proposed by the municipality, and not by members of the public).

Notwithstanding these legal requirements, Monte Nido undertook a review of the locations suggested by the opposing neighbors. (See C&F Letter at 5-6). For reasons Monte Nido can further expound upon at the November 24<sup>th</sup> meeting, the so-called "alternative sites" suggested by the neighbors are not superior to the subject Site. See, e.g., Town of Ramapo v. Webb, 137 A.D.2d 518, 524 N.Y.S.2d 261, 262 (2d Dep't 1988) (upholding a determination by the Commissioner that a proposed alternative site "was not a superior site" to the site proposed by the sponsoring agency); accord Paino v. Webb, 152 A.D.2d 699, 544 N.Y.S.2d 159, 160 (2d Dep't 1989); see also MHL § 41.34(c)(4) (stating that a proposed alternative site must be "satisfactory with regard to the nature, size and community support requirements of the program of the proposed facility."). As such, they are not satisfactory to Monte Nido.

### Access To The Site Is Viable

Presently, access to the Site is via an express driveway easement over property owned by an opposing neighbor. (See C&F Letter at 3). It is subject to an easement of ingress and egress over 24 Heathcote Road. The neighbors residing at 24 Heathcote Road (the Hausers) have rather aggressively objected to the use of the easement for the purposes of the Proposed Residential Facility. (See id.).

Initially, whether the use of the driveway to access the Proposed Residential Facility would be permitted by the easement is not within the purview of the Village, either under the Padavan Law or otherwise. See Pirrotti v. Town of Greenburgh, No. 18135-09, 2009 WL 3834399, at \*8 (Sup. Ct. Westchester Cnty. 2009) ("[I]t is not the obligation of a municipality to enforce [or interpret] a private easement."), citing Vadoros v. Hatzimichalis, 131 A.D.2d 752, 517 N.Y.S.2d 51, 53 (2d Dep't 1987). Easements are private agreements, and any dispute related thereto would be between the neighbors, and not the municipality. See Friends of Shawangunks, Inc. v. Knowlton, 64 N.Y.2d 387, 487 N.Y.S.2d 543, 545 (1985) (holding that easements and restrictive covenants are "matter[s] of private agreement"); Ford v. Rifenburg, 94 A.D.3d 1285, 1286, 942 N.Y.S.2d 285, 287, 2012 N.Y. Slip Op. 02746, 2012 WL 1205715 (3d Dep't 2012) (same); Ewing v. Watson, 15 A.D.3d 340, 790 N.Y.S.2d 40, 42 (2d Dep't 2005) ("The declaration of covenants and restrictions and the easements at issue here are private agreements with respect to the use of property . . ."). Scarsdale need not referee any issue of rights and obligations relative

to the easement of access. In any event, Monte Nido submits that the use of the access for the Proposed Residential Facility would in no way violate the terms of the easement.<sup>6</sup>

Moreover, Monte Nido is well aware that the easement is “limited to private use and cannot be used for public uses or parking.” (C&F Letter at 3). Although Monte Nido provides a service to the public, the Proposed Residential Facility would be a residence for eight (8) young girls. It is not a “public use” contemplated by the language of the easement, nor is it open to the public at large. Thus, in accordance with the intent of the Padavan Law, the Proposed Residential Facility would remain a private residential use. In addition, Monte Nido would provide parking on-Site. The easement area would not be used for parking. (See FAQ).

Notwithstanding, in addition to the Site in the Village, Monte Nido’s Contract to purchase the Site also includes a fifteen foot wide “flagpole” parcel, located entirely within the City, which connects the Site to Dorchester Road. Although Monte Nido’s Contract *does not* include the vacant property located in the City at the intersection of Morris Lane and Dorchester Road, it does include an easement to relocate the access drive over the vacant lot should use of the flagpole or some other part of the vacant lot be deemed necessary for access.

Accordingly, there is sufficient and viable access to the Site. The neighbors’ attacks predicated upon access though vociferous, are futile. This is not an issue Scarsdale need concern itself with – let alone for purposes of the Padavan Law.

### City of New Rochelle

Although the Proposed Residential Facility would be located in the Village, a portion of the access driveway to the Site would be located in the City.<sup>7</sup> In response to the comments raised by the opposing neighbors (see, e.g., C&F Letter 6-7), and in an abundance of caution, on November 18, 2015, Monte Nido provided Notice pursuant to the MHL to the City of its intention to operate the Proposed Residential Facility on the Site. (See also C&F Letter at 6-7).

We have since spoken with City Manager Charles Strome, as well as City Corporation Counsel Kathleen Gill, Esq., to discuss the Proposed Residential Facility on the Site, including the fact that access to the Site would be located in the City. We have been expressly and repeatedly assured that the City is well aware of the Proposed Residential Facility and its access,

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<sup>6</sup> For example, as previously stated, there would be 6-8 staff members on the Site during the day. There is no basis for the neighbors’ contentions that there would be “40 plus persons” regularly using the access easement. (C&F Letter at 3). There is simply no legitimate basis to assert waste or overburdening of the easement.

<sup>7</sup> The curb cut for the existing driveway is located in the City. Thus, whether the Site is accessed via the existing driveway pursuant to the easement over 24 Heathcote Road, over the flagpole to Dorchester Road, or otherwise, a portion of the access to the Site would be located in the City.

and that the City has no objection thereto. We were further advised that it is the position of the City that the Proposed Residential Facility would not cause an oversaturation of such licensed facilities, nor would it substantially alter the nature and character of the area.

**CONCLUSION**

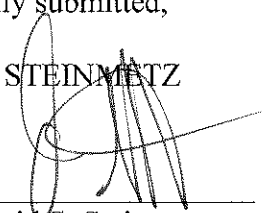
In sum, Monte Nido is confident that its Proposed Residential Facility has viable access, is lawful, its location is appropriate, and it complies with the Padavan Law.

We look forward to answering any questions the Village may have at its November 24<sup>th</sup> meeting, and addressing the stated concerns of the neighbors, who are seeking to preclude this laudable Proposed Residential Facility from operating in the community.

If you have any questions, please do not hesitate to contact us. Thank you for your consideration.

Respectfully submitted,

ZARIN & STEINMETZ

By:   
David S. Steinmetz  
Jody T. Cross

DSS:me

*cc via email with enclosures:*

- Vicki Kroviak, Monte Nido
- Wayne Esannason Esq., Village Attorney
- Elizabeth Marrinan, Village Planner
- Charles Strome, City Manager
- Kathleen Gill, Esq., City Corporation Counsel
- Cuddy & Feder, LLP, Attorneys for Opposing Neighbors
  - Joshua Grauer, Esq.
  - Charles Gottlieb, Esq.
  - Jordan Brooks, Esq.

*Monte Nido* <sup>& Affiliates</sup>  
2 Morris Lane:  
Frequently Asked Questions

☛ **Q: Will the property be used for outpatient services?**

A: No. There will be no clients other than our residents.

☛ **Q: What is the population you will treat and how many will be in residence?**

A: We will serve adolescent girls with eating disorders, aged 12 to 18. We will be licensed to accommodate eight girls in this home.

☛ **Q: Will the Scarsdale public schools be responsible for their education?**

A: No. Our residents remain enrolled in their home school districts while under our care, with instruction coordinated by our own trained teachers.

☛ **Q: Will residents be allowed to leave the property without supervision?**

A: No. Our residents will always be accompanied by staff members.

☛ **Q: How will you be licensed?**

A: We will be licensed and monitored by the New York State Office of Mental Health. All Monte Nido treatment programs are accredited by the Joint Commission.

☛ **Q: Where else are Monte Nido residences located?**

A: We have residences in Malibu, CA; Eugene, OR; Boston, MA; and Irvington, NY.

☛ **Q: How will the character of the neighborhood be impacted?**

A: We do not expect to impact the character of the neighborhood, any more than any other large family joining the community. This will be a residence, not an office.

☛ **Q: Will there be a sign?**

A: No. This will be a residence, not an office. Our residence will be discreet and private like any home in the neighborhood.

☛ **Q: Is there any intention to purchase the vacant lot near 2 Morris Lane?**

A: No.

☛ **Q: Will staff live in the residence?**

A: No. There will be 6-8 staff present during the day and 2-3 staff on duty overnight.

☛ **Q: Will additional night lighting be needed, outside of a typical residence?**

A: No.

☛ **Q: Will you need on-street parking?**

A: No. Our parking needs will be accommodated on-site.



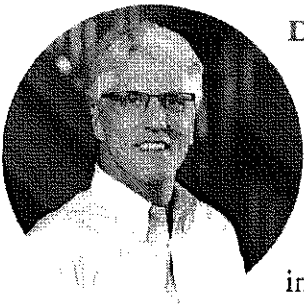
**MONTE NIDO PIONEERED** residential eating disorder treatment and has been providing high-quality care for people who suffer from eating disorders for almost 20 years. We have helped women and girls from almost all 50 states and around the world successfully recover. We've created this legacy by delivering best-in-class eating disorder treatment in a small, intimate, natural, homelike setting. We've established 12 programs in four states and are thoughtfully expanding care in order to provide more convenient access to the people who need it. Monte Nido is proud to hold the Joint Commission accreditation, which sets the standards for safe, high-quality patient care. We've provided \$330,000 in scholarships to New York residents this year. 🌸

**OUR LEADERSHIP** includes some of the most respected experts in the field:



**CAROLYN COSTIN, M.A., M.ED., MFT, FAED, CEDS**

Carolyn Costin founded Monte Nido in 1996. She recovered from her own eating disorder and has written five books on the topic which are popular with both professionals and the lay public. She continues to educate and train professionals around the country on the treatment and prevention of eating disorders. Her lectures and workshops range from key presentations at national and international conferences to local community organizations, high schools, and her study groups for professionals. 🌸



**DOUG BUNNELL, PH.D., FAED, CEDS**

Dr. Doug Bunnell is Chief Clinical Officer of Monte Nido. A resident of Fairfield, Connecticut, he is a graduate of Yale University. He completed his doctoral training at Northwestern University and has 30 years of clinical experience. He is a former board chair of the National Eating Disorders Association, a fellow of the Academy for Eating Disorders, an author, and a frequent presenter at national and international conferences. 🌸



**VICKI KROVIK**

Vicki Kroviak is Chief Executive Officer of Monte Nido. She lives in Irvington, New York, with her husband and three daughters. She joined Monte Nido two years ago, after co-founding an eating disorder treatment center in Florida. Previously, she was an international television executive who worked for 20 years in television programming and production in Hong Kong, Buenos Aires, Miami, and New York. 🌸