Approved 2-3-87 Ivan Sand
Date

MINUTES OF THE House COMMITTEE ON Local Government.

The meeting was called to order by Representative Ivan Sand at
Chairperson

2:00 a.m./p.m. on Janaury 29, 1987 in room 521-S of the Capitol.

All members were present except:

Representative Dean, Absent
Representative Francisco, Excused

Committee staff present:

Mike Heim, Legislative Research Dept.
Bill Edds, Revisor of Statutes' office
Sharon Green, Committee Secretary

Conferees appearing before the committee:

Representative Phil Kline
Lila Paslay, Association for Retarded Citizens of Kansas
Gary Condra, President, Residential Alternatives, Inc.
Bryce Miller, President, Mental Health Association in Kansas
George Vega, representing Dr. Gerald Hannah, Mental Health and Retardation Services
Paul Klotz, Association of Community Mental Health Centers of Kansas
Ray Petty, Kansas Advisory Committee on Employment of the Handicapped
Scott Lambers, Assistant City Manager of Overland Park
Gerry Ray, Johnson County Board of Commissioners
Janet Stubbs, Home Builders Association of Kansas
Karen McClain, Kansas Association of Realtors
Ernie Mosher, League of Kansas Municipalities

Conferees who left written testimony, but did not appear before the committee:
Elton Burner, parent of retarded son
Billy M. Zillman, private citizen of Johnson County
John Kelly, Exec. Secretary, Kansas Planning Council

Chairman Sand called the meeting to order.

Representative Kline requested the committee to introduce legislation, dealing with 1) local water district changes and, 2) minor changes in road purchasing act for county commissioners. (Attachment 1 and Attachment 2)

Motion was made by Representative Baker and seconded by Representative Empson to introduce the two committee bills requested by Representative Kline. The motion carried.

The Minutes of January 27 and January 28 were approved as presented.

Lila Paslay testified in favor of HB 2063, stating that quality of life should be available to all citizens of Kansas who are mentally retarded regardless of the community in which they live. She also stated that parents of mentally retarded children trying to plan for the future of their children find long waiting lists to get them into group homes. (Attachment 3)

Gary Condra testified in favor of HB 2063, stating that in his opinion, HB 2063 is necessary if any significant development of new group homes is to take place. He also stated that at some future time, if HB 2063 was enacted into law, that it be amended to include the elderly. Mr. Condra said that small group homes are not cost effective. (Attachment 4)

Bryce Miller testified in favor of HB 2063, requesting that the mentally disabled be added to the bill as one of the groups to be covered. (Attachment 5)

George Vega testified in favor of HB 2063, stating that the State Department of Social and Rehabilitation Services strongly supports the bill and feels

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Local Government,

room 521-S, Statehouse, at 2:00 XXXp.m. on January 29, 1987

that its provisions should be made available to persons developmentally disabled, physically handicapped, or mentally retarded. (Attachment 6)

Paul Klotz testified in favor of HB 2063, stating that the same arguments can be used for the mentally ill as are used for the mentally retarded.

Ray Petty testified in favor of HB 2063, stating that this is a statewide concern and that in no less than thirteen of the thirty-nine home-rule states there is already a law which precludes exclusionary zoning against community homes. He also stated that establishing a state policy would prevent localities from permitting group homes only in a few zones, and that passage of this bill would let local officials off the hook. Mr. Petty recommended allowing eight or fewer residents per group home, and that "(4)" in line 48 should be "(E)". (Attachment 7)

Scott Lambers testified on HB 2063, to clarify an issue brought before the committee on January 28 by one of the conferees, having to do with a duplex situation in Overland Park. He stated that because of the requests of the conferee, there would need to be a special use permit. He also stated that the conferee declined to apply for the permit and that the money deposited for the permit was refunded to the conferee.

Gerry Ray testified in opposition to HB 2063, stating that the County Commissioners did not oppose group homes but they want to keep the home-rule, and that public hearings allowing citizens an opportunity to express themselves to their elected officials is a basic democratic right. (Attachment 8)

Questions arose regarding the exact intent of HB 2063, whether or not group homes would still need special use permits, and whether or not the bill would override city ordinances. Chairman Sand instructed the staff to research the intent of the bill and report to the committee at a later date.

Janet Stubbs testified in opposition to HB 2063, stating that she supports home rule powers currently afforded local units of government, and that an exemption will only bring the same request from other groups. (Attachment 9)

Karen McClain testified in opposition of HB 2063, stating that current zoning rules should be kept in tact and unaltered, and that property owners and the city officials should be involved in the decision process. (Attachment 10)

Ernie Mosher testified on HB 2063, taking the position of "no position". He suggested to amend the bill by reflecting in the title of the bill to relate to restrictive covenants, as well as zoning; the word "township" should be inserted after the word "city" in line 35; and, changing the phrase "For the purpose of protecting the development of the area," on line 62, to "For the purpose of preserving the single family residential character of the area." He also stated that he was concerned about the state making local planning decisions. (Attachment 11)

Written testimomy was submitted by Elton Burner, Billy Zillman, and John Kelly in favor of HB 2063. (Attachments 12, 13 and 14)

Chairman Sand indicated that further discussion of HB 2063 and other bills previously heard in the committee would be held Wednesday or Thursday of next week.

Meeting adjourned.

7 RS 0180

HOUSE BILL NO. ________

By Committee on Local Government

AN ACT concerning water districts; relating to the officers of such districts; relating to the powers and duties of such officers; amending K.S.A. 19-3519 and K.S.A. 1986 Supp. 19-3505, 19-3516 and 19-3521 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 1986 Supp. 19-3505 is hereby amended to read as follows: 19-3505. The governing body of any water district to which this section applies shall be a five-member board holding positions numbered one to five, inclusive. Except as otherwise provided by this section, each member shall be elected and shall hold office from May 1 following such member's election until April 30, four years thereafter and until a successor is elected and has qualified.

The first election of members of the governing body of any water district created after the effective date of this act shall be held on the first Tuesday in August of any even-numbered year, at which time members shall be elected for terms beginning on September 1 of the same year, and ending on April 30 of the third year following the beginning of such term, to positions numbered three, four and five. At such first election, members shall be elected for terms ending on April 30 of the first year following the beginning of such terms, to positions numbered one and two. Members first elected to positions one and two shall have terms of approximately eight months. Elections shall be thereafter held on the first Tuesday in April of each odd-numbered year for the member positions whose terms expire in that year.

All elections shall be nonpartisan and shall be called and conducted by the county election officer. Laws applying to other

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local elections occurring at the same time and in the same locality shall apply to elections under this act to the extent that the same can be made to apply.

Following each election the board shall organize itself and not later than the second regular meeting following each election shall select from among its members a chairperson~~,-secretary-and treasurer~~ and a vice-chairperson. The ~~chairperson--may--designate an--acting-chairperson-to~~ vice-chairperson shall preside over any meetings at which the chairperson may not be present. Vacancies occurring during a term shall be filled for the unexpired term by appointment by the remaining members. All members shall take an oath of office as prescribed for other public officials. The members of the board shall be qualified electors in the water district. Prior to accepting office, the water district shall obtain for each member-elect a corporate surety bond to the state of Kansas in the amount of $10,000, conditioned upon the faithful performance of the member's duties and for the true and faithful accounting of all money that may come into the member's hands by virtue of the office. Such bonds shall be filed in the office of the county clerk for the county in which the major portion of such water district is located after approval by the board of county commissioners of such county.

Each member of the board shall receive a monthly salary in an amount determined by the board and shall be reimbursed for all necessary and reasonable expenses incurred in performing official assigned duties.

Sec. 2. K.S.A. 1986 Supp. 19-3516 is hereby amended to read as follows: 19-3516. (a) Any water district board may issue and sell revenue bonds to finance the cost of acquisition, construction, reconstruction, alteration, repair, improvement, extension or enlargement of any such water supply and distribution system. The board shall fix by resolution such rates, fees and charges for the services furnished by such water supply and distribution system as may be reasonable and necessary and provide for the manner of collecting and disbursing such

revenues subject to the limitations hereinafter contained.

Revenues derived from the operation of any such water supply and distribution system shall be deposited in a responsible bank within the county in which the greatest portion of such water district is located and the deposits shall be governed by article 14 of chapter 9 of the Kansas Statutes Annotated and shall not be used except for the purpose of: (1) Paying wages and salaries of all officers and employees, (2) paying the cost of operation, (3) paying the cost of maintenance, extension and improvement of such water supply and distribution system, (4) providing an adequate depreciation fund, and (5) creating reasonable reserves for such purposes. All revenues over and above those necessary for the above enumerated purposes shall be placed in a reserve fund which, together with any moneys not currently needed which have been set aside for the purposes described in (4) and (5) above, may be invested in accordance with the provisions of K.S.A. 10-122, and amendments thereto, or K.S.A. 10-131, and amendments thereto. Such reserve fund shall be used solely for improving, extending or enlarging the district's water system or for the retirement of revenue bonds issued hereunder and the payment of interest thereon. Such revenue bonds are hereby made a lien on the water supply and distribution system and on the revenues produced from such water supply and distribution system but shall not be general obligations of the issuing water district. Such revenue bonds shall not be taken into account or in any way be a limitation upon the power of the water district to issue bonds for any other purpose. All revenue bonds issued under this act shall be signed by the chairperson of the issuing water district board and attested by the secretary and shall contain recitals stating the authority under which such bonds are issued; that they are issued in conformity with the provisions, restrictions and limitations of that authority; that such bonds are to be paid by the issuing water district from the revenues derived from the rates, fees or charges herein mentioned and not from any other fund or source; that the same have been registered in the office

of the county clerk of the various counties in which the issuing water district is located and in the office of the treasurer of the state of Kansas, respectively; and that such bonds are negotiable. All such bonds, when registered and issued, as herein provided, shall import absolute verity, and shall be conclusive in favor of all persons purchasing such bonds, that all proceedings and conditions precedent have been had and performed to authorize the issuance thereof. The provisions of K.S.A. 10-112, and amendments thereto, shall not apply to any bonds issued under this act.

(b) Revenue bonds issued under this act shall mature not later than 40 years after the date of the bonds; may be subject to redemption prior to maturity, with or without premium, at such times and upon such conditions as may be provided by the water district board; and shall bear interest at a rate not to exceed the maximum rate of interest prescribed by K.S.A. 10-1009, and amendments thereto. The board may sell such bonds in such manner and for such price as it determines will best effect the purposes of this act. In no case where revenue bonds are issued under this act shall the total amount received therefrom be in excess of the actual cost of the plan or program which includes, in addition to all expenses incurred in the acquiring of a water supply and distribution system, all expenses incurred prior to and including the bond election, the no-fund warrants outstanding under the provisions of K.S.A. 19-3505a, and amendments thereto, and unpaid at the time such revenue bonds are issued and all costs of operation and maintenance of such water supply and distribution system estimated to be necessary for a period of two years immediately following the acquisition of such system and the amount necessary to pay the salaries of the water district board due from the date the first member of the first board is elected. Whenever any such water district board has sufficient revenues to pay the operational and maintenance cost and the board members' salaries, then such expenses shall be paid out of such revenues and any surplus funds remaining from the sale of revenue bonds

shall be transferred to the revenue bond sinking fund of the water district. No water district or county in which a portion of such water district lies shall have any right or authority to levy taxes to pay any of the principal of or interest on any such bonds or any judgment against the issuing water district on account thereof, and the ~~provision~~ provisions of K.S.A. 10-113, and amendments thereto, shall not apply to any bonds issued hereunder. All water district boards created by this act ~~shall~~ by appropriate resolution shall make provisions for the payment of such bonds by fixing rates, fees and charges, for the use of all services rendered by such water district, which rates, fees and charges shall be sufficient to pay the wages and salaries of all officers and employees and the costs of operation, improvement and maintenance of the water supply and distribution system; to provide an adequate depreciation fund and an adequate sinking fund to retire such bonds and pay the interest thereon when due; and to create reasonable reserves for such purposes. Such fees, rates or charges shall be sufficient to allow for miscellaneous and emergency or unforeseen expenses. The resolution of the water district board authorizing the issuance of revenue bonds may establish limitations upon the issuance of additional revenue bonds payable from the revenues of the district's water supply and distribution system or upon the rights of the holders of such additional bonds and may provide that additional revenue bonds shall stand on a parity as to the revenues of the water district and in all other respects with revenue bonds previously issued on such conditions as specified by the board in such resolution. Such resolution may include other agreements, covenants or restrictions deemed necessary or advisable by the district board to effect the efficient operation of the district's system and to safeguard the interests of the holders of the revenue bonds and to secure the payment of the bonds and the interest thereon.

(c) The water district board shall cause an audit to be made annually by a licensed municipal public accountant or by a certified public accountant of the operations of any water supply

and distribution system created hereunder for which revenue bonds have been issued by any water district, and, if the audit discloses that proper provision has not been made for all of the requirements of this section, the water district board shall ~~promptly~~ proceed promptly to cause rates to be charged for the water supply and distribution services rendered which will adequately provide for the requirements set out herein. Within 30 days after the completion of such audit, a copy of the audit shall be filed with the county clerks of the various counties in which such water district is located, and such audit shall be open to public inspection.

(d) The water district board, by a majority vote of the members thereof, may contract for repairs, alterations, extensions or improvements of the water supply and distribution system and issue revenue bonds to pay the cost thereof without submitting to a vote of the electors of such water district the proposal to contract for the making of such repairs, alterations, extension and improvements and to issue revenue bonds to pay the costs thereof. All contracts for any construction of all or part of the water system, or for repairs, extensions, enlargements or improvements to any such water supply and distribution system created under this act, the cost of which exceeds $25,000 shall be awarded on a public letting by the water district board to the lowest responsible bidder, and in the manner provided by K.S.A. 19-214, 19-215 and 19-216, and amendments thereto, except that the required notice of letting contracts shall be seven days if the cost does not exceed $100,000 and 30 days if the cost exceeds $100,000. Whenever the board finds that an unforeseen occurrence or condition has created a public exigency requiring immediate delivery of materials or performance of services, it may declare an emergency and shorten or entirely dispense with the bidding procedure.

Sec. 3. K.S.A. 19-3519 is hereby amended to read as follows: 19-3519. All claims, accounts and necessary expenses of the water district lawfully incurred and approved shall be

paid from appropriate available funds in bank accounts of the water district by voucher check supported by an appropriate purchase order~~,--itemized--account~~ or statement of service ~~duly signed-and-certified-by-the-vendor,-claimant-or-other--person--to whom--the--amount--is--due--and-owing-and-is-to-be-paid~~. All such claims shall be presented in writing with a full account of the items and may be the usual statement of account of the vendor or party rendering a service or other written statement showing the required information. Any person who obtains money from the district by willfully making a fraudulent claim for a sum of ~~fifty-dollars-($50)~~ $50 or less shall be deemed guilty of a class A misdemeanor. Any person who obtains money from the district by willfully making a fraudulent claim for more than ~~fifty--dollars ($50)~~ $50 shall be deemed guilty of a class D felony. ~~Water district-voucher-checks-may-be-signed-by--the--treasurer--of--the water--district-board-and-countersigned-by-an-officer-or-employee designated-by-the-board.~~

The ~~treasurer-of-every-such~~ water district board shall ~~keep or~~ see that there is kept a correct record of all voucher checks issued showing the number, date and amount thereof and the name of the person or persons to whom such checks are made payable and with appropriate reference to the applicable purchase order or other claim, account or expense record, including payroll records. Any employee or officer authorized to sign or countersign voucher checks shall be covered by a surety bond in the form and amount as determined by the board. ~~At-the-close-of the-treasurer's-term-of-office,-such-treasurer-shall--deliver--to the--new--treasurer--all-district-books-and-all-other-records-and papers-together-with-all-district-moneys.~~

Sec. 4. K.S.A. 1986 Supp. 19-3521 is hereby amended to read as follows: 19-3521. Within 90 days after the end of each calendar year, the ~~treasurer--of-each-and-every-water-district created-hereunder~~ water district board shall publish or cause to be published in a newspaper of general circulation within the township or townships in which such water district is located, a

summary which shows totals for categories of the receipts, expenditures, liabilities, assets and bonded indebtedness of such water district as of the end of such calendar year. Such publication shall include a notice that a detailed statement of such receipts, expenditures and liabilities is available for public inspection at the county clerk's office. Copies of the report shall be made available upon request. Such statement shall be duly verified and after appropriate audit, such statement shall be certified by a licensed municipal public accountant or by a certified public accountant.

Sec. 5. K.S.A. 19-3519 and K.S.A. 1986 Supp. 19-3505, 19-3516 and 19-3521 are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the Kansas register.

HOUSE BILL NO. ______

By Committee on Local Government

AN ACT concerning boards of county commissioners; relating to powers and duties thereof with respect to certain public improvements; amending K.S.A. 19-216, 68-521 and 68-704, and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 19-216 is hereby amended to read as follows: 19-216. Before advertising for bids for any contract as provided in ~~the preceding section~~ K.S.A. 19-215, and amendments thereto, ~~said~~ the board of county commissioners shall cause plans and specifications of the proposed work or improvement to be prepared, which plans and specifications shall be displayed for the inspection of bidders~~,~~ at the office of the county clerk or at some other county office designated by the board at least ~~thirty~~ 30 days before the time for awarding the contract.

Sec. 2. K.S.A. 68-521 is hereby amended to read as follows: 68-521. The board of county commissioners ~~before~~, when awarding any contract for the construction, surfacing, repairing or maintaining of any road~~, under this act, when~~ as provided in K.S.A. 68-520, and amendments thereto, shall require documentation of competition if the county engineer's estimated cost of such improvement is more than ~~five hundred dollars ($500),~~ $2,000 but not more than $10,000. If the county engineer's estimated cost of such improvement is more than $10,000, the board of county commissioners shall have the estimate and the approved plans and specifications which have been adopted by order of ~~said~~ the board for such work filed in the county clerk's office or in some other county office designated by the board at least ~~twenty (20)~~ 20 days prior to the time of the letting.

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The county clerk or some other county officer designated by the board shall give not less than ~~twenty-(20)~~ 20 days' notice of the letting by publication in at least two ~~(2)~~ consecutive weekly issues of the official county paper, the first publication of such notice to be not less than ~~twenty-(20)~~ 20 days prior to such letting. ~~Said~~ The notice shall specify with reasonable minuteness the character of the improvement contemplated, where it is located, the kind of material to be used, the hour, date and place of letting of such contract, when the work is to be completed, and invite sealed proposals for the same. Such other notice may be given as the board may deem proper. All bids shall be made on the proposal blanks furnished by the county, signed by the bidder, sealed and delivered, or sent by mail, by the bidder, ~~his~~ or the agent or attorney ~~(or-sent-by-mail)~~ thereof, to the county clerk or to some other county officer designated by the board. The ~~board-shall-conduct-the~~ letting of all contracts shall be conducted in such manner as to give free, open competition, and all bidders shall be given an equal opportunity to bid upon the plans and specifications on file. Each bidder shall be required to accompany ~~his--proposal-with-a-certified-check-for five-percent-(5%)-of-his-bid,-payable--to--the--chairman--of--the board.--If--the-bidder-to-whom-the-contract-is-awarded-shall-fail to-accept-and-execute-the-contract-and-file-bond-as--provided--by law,--his--check--shall--be--forfeited--and--paid--to--the-county treasurer,~~ the submitted bid with a bid surety in an amount equal to 5% of the bid amount in the form prescribed by the board as a guarantee that, if the contract is awarded to the bidder, the bidder will enter into the contract with the board. If a bidder fails to enter into the contract when awarded to the bidder, the bid surety shall become the property of the county as its liquidated damages and shall be paid to the county treasurer for credit to the general fund of the county, and the board may award the contract to the next lowest responsible bidder. The bids shall be opened publicly by the board or a designee thereof at the place and hour named in the advertising notice, and all bids

shall be considered, and accepted or rejected.

In case the work is let at such public letting or thereafter, the contract shall be awarded to the lowest responsible bidder, or the board, if it deems the proposals too high, may reject all bids, and readvertise the work as before~~:~~ ~~Provided,--That~~. No such contract shall be let at an amount exceeding the county engineer's estimated cost ~~thereof~~ of the work. No such contract shall be considered as awarded unless the contractor shall within ~~ten-(10)~~ 10 days after the letting enter into contract and shall give the bond required by K.S.A. 60-1111, and amendments thereto, and a performance bond ~~unto~~ to the county in a penal sum equal to the amount of the contract price, conditioned upon the faithful performance of the contract, payable to the county upon failure to comply with the terms of ~~his-or-their~~ the contract~~:-Provided,~~. The contractor shall file with the county clerk ~~said~~ the bonds, which shall be approved by the ~~chairman~~ chairperson of the board and the county attorney by their signatures indorsed thereon.

The county attorney shall meet with and advise the board of county commissioners in all matters pertaining to letting and making of all contracts under this act. The board may make partial payments, on the written estimate of ~~their~~ its county engineer, upon any contract work as the same progresses, but not more than ~~ninety--percent--(90%)~~ 90% of the estimate of the materials furnished and work done, or of the contract price, shall be paid in advance of the full and satisfactory completion of ~~said~~ the contract~~:-Provided,-That~~. Final payment shall not be made on any such contract until the county engineer has inspected the work and certified in writing that it has been properly done and completed in accordance with the contract, plans and specifications, and ~~his~~ the county engineer's certificate to that effect has been filed in the office of the county clerk or some other county officer designated by the board.

Sec. 3. K.S.A. 68-704 is hereby amended to read as follows: 68-704. The board of county commissioners may conduct the

improvement of the road in conformity with the profile, plans and specifications as filed; may let contracts for the construction of any portions of the work required in making the improvements; or may let contracts for the labor only, or the labor and a portion of the material, and purchase any or all of the materials for the improvements of the highway and supply the same to the contractor or contractors. The price paid for such materials shall be approved by the secretary of transportation.

If the work is let by contract, notice shall be published in the official county newspaper once each week for two consecutive weeks ~~previous~~ prior to the letting. No bids shall be ~~received~~ accepted except in accordance with the profile, plans and specifications, and such contracts shall be let to the lowest responsible bidder, the board of county commissioners reserving the right to reject any or all bids. Each bidder must accompany the ~~bidder's~~ submitted bid with a ~~certified-check-for~~ bid surety in an amount equal to 5% of the amount of the ~~bidder's~~ bid payable to the chairperson of the board of county commissioners as a guarantee that, if the contract is awarded to the bidder, the bidder will enter into the contract with the board. If a bidder fails to enter into the contract when awarded to the bidder, the ~~amount-deposited-or-so-much-thereof-as-equals-5%-of the~~ bid surety shall become the property of the county as its liquidated damages and shall be paid ~~into~~ to the county treasurer for credit to the general fund of the county.

Each contractor shall give a good and sufficient performance bond in an amount fixed by the board of county commissioners, but not less than the contract price, and the bond required by K.S.A. 60-1111, and amendments thereto. The performance bond shall be filed and recorded in the office of the county clerk or some other county officer designated by the board of county commissioners and approved by the board of county commissioners and shall be conditioned on the contractor's faithful performance of the contract in every respect and secure the county against any and all loss or damage by reason of any default, failure or

miscarriage in the performance of the contract. The board of county commissioners, at any time before entering into a contract, may withdraw any or all proposals and take charge of and conduct the improvement.

No action shall be brought to restrain the making of the improvements, or payment therefor, or levy of taxes or special assessments or issuance of bonds therefor on the ground of any illegality or irregularity in advertising, receiving bids or awarding the contract, or any proceedings prior to the award of the contract or decision by the board to make such improvements by day labor, unless such action is commenced within 30 days after the date the contract is awarded or the board makes the decision to make the improvements by day labor.

The board of county commissioners, as required, shall issue~~,~~ warrants of the county drawn on a special fund for the improvements, the purchase of materials, the payment of wages, and other expenses incurred in making the improvement or for payment to the contractor of not to exceed 90% of the work done and accepted under the provisions of this act. If a person or company with whom a contract is made under the provisions of this act fails to fulfill the contract, the board of county commissioners may cause the work to be completed and material furnished in full as provided in such contract and recover the full cost thereof from such person or company and the sureties on any bonds given, less any amount unpaid on the contract.

In completing the work and furnishing the material, the board may award contracts or not, as it may elect. The board of county commissioners may purchase or lease any gravel pits, stone quarries or other native road material; open and improve the roads necessary to and from any gravel pits, stone quarries, or other native road material; and pay for such gravel pits, stone quarries, native road material or roads ~~when--approved--by--the county--engineer--and-the-secretary-of-transportation,~~ out of the county road fund of the county if the cost does not exceed $5,000, for each of such gravel pits, stone quarries, native road

materials or roads. If the board of county commissioners conducts the improvement of a road and undertakes the complete construction of the road, the board may issue and sell bonds of the county to purchase and pay for road machinery, tools and equipment that the board deems necessary to do the work or to pay for any such machinery, tools and equipment previously purchased. Before any machinery, tools and equipment are purchased, the county engineer shall prepare an estimate of the kind, quantity and cost of such machinery, tools and equipment, which estimate shall be approved by the state transportation engineer before the machinery is purchased. The bonds shall mature in not more than 20 years; shall bear interest at not to exceed the maximum rate of interest prescribed by K.S.A. 10-1009, and amendments thereto, payable semiannually; and shall be signed and registered as provided by law.

Upon the completion of any road in any project or benefit district, the board shall cause an estimate to be made by and with the approval of the state transportation engineer and the county engineer of the current cash value of the machinery, tools and equipment purchased and shall charge to the finished road project the value of such machinery, tools and equipment and the interest on the bonds issued therefor. Upon the completion of any other road project upon which such machinery, tools and equipment are similarly used, the board shall have an estimate made of the current cash value and charge to such road project the depreciation in such equipment below the estimated value at the time such road project was undertaken. The board of county commissioners may retain any part of the machinery, tools and equipment for general road work. If the machinery, tools and equipment are retained, the board shall estimate with the approval of the state transportation engineer and the county engineer the current cash value of the retained machinery, tools and equipment and shall charge to such road work the depreciation on the portion of the machinery, tools and equipment retained. The retained machinery, tools and equipment shall be the property

of the county, and the bonds issued therefor shall in proportion be redeemed by a special levy made for such purpose. When the county commissioners shall have no further use for such machinery, tools and equipment, the board shall sell the machinery, tools and equipment at the best price obtainable and use the funds secured from such sale in retiring the bonds issued for the purchase of the machinery, tools and equipment.

Sec. 4. K.S.A. 19-216, 68-521 and 68-704 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the Kansas register.

THE ASSOCIATION FOR
RETARDED CITIZENS OF KANSAS, INC.

Hope through understanding

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CAROL A. DUCKWORTH
President
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ROBERT ATKISSON
Vice President
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MARIE LEACH
Secretary
Wichita

VIRGINIA LOCKHART
Treasurer
Topeka

GINGER CLUBINE
Past President
Wichita

BRENT GLAZIER
Executive Director

January 28, 1987

To: Rep. Ivan Sand, Chairperson
Members of House Local Government

From: Lila Paslay, Chairperson
Legislative Affairs

Re; HB 2063

We have been pleased that over the past 25 years the legislators of Kansas have responded to so many needs of its citizens who are mentally retarded and developmentally disabled. You have responded to the need for improving the quality of life for those in our state institutions and for contributing to the development of community residential and day activity programs. We are here today to ask you once again to respond to our plea to allow the quality of life be the highest possible for our sons and daughters who, through no fault of their own, happen to be mentally retarded. We would ask you to make that quality of life available to all citizens of Kansas who are mentally retarded regardless of the community in which they live. We would ask you to represent them as well as your other constituents.

Our sons and daughters wish for many of the same things you and your children wish for. The opportunity to live as a family in a home and in a family type neighborhood is one of those things. And they wish for it for the same reasons you and I do.

The resistance of neighborhoods and zoning boards to allow the establishment of group homes in areas zoned for single family residences is most often based on fear, myths and misconceptions. We had hoped that through the process of education, those fears would be alleviated and in many instances they have. However, some of our citizens are not interested in learning the truth. That truth was made evident in a study done

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by Dr. Julian Wolpert and his colleagues from Princeton University at the request of the state of New York.

Wolpert's organization focused on 42 communities where the sales of 754 homes took place next door or across the street from homes for persons with developmental disabilities. At the same time they studied the sales of 826 homes in 42 similar communities that had no group residences. The research involved numerous contacts with neighbors, as well as the intensive study of documents and records of property transactions. Some remarkably clear findings came from that study:

* The presence of group homes had no impact on property values at all.
* The proximity of a house to a group home had no effect on the market value.
* There was no evidence of neighborhood "saturation".
* The group homes looked like other houses in the neighborhood.
* The function of the home was inconspicuous.
* The group homes had a better appearance than the average home.

We would ask you to consider HB 2063 in the light of what you would want for your own family member if you were faced with providing the most desirable living situation for them. We would hope you would want them to be able to live in a neighborhood of their choosing, not in a neighborhood selected for them by those who do not understand them.

We encourage you to vote this bill favorably out of your committee.

ANDERSON

THE NEWSPAPER

Volume 117, Number 24 4/17/86 Ten Pages

City gives "no go" to Tri-Ko

GARNETT-Garnett City Commissioners voted Monday night 2-1to turn down a city planning commission approved decision to re-zone a portion of land in Garnett, which would ultimately have been used to house a new facility for developmentally disabled adults.

The battle over the proposed re-zoning of the vacant lot at the corner of First and Lincoln Streets has raged since Tri-Ko, a joint-funded organization for the betterment of developmentally disabled adults, began pursuing the land for its new facility location. Funded through a federal housing and urban development grant, the proposed facility would have cost an estimated $160,000.

> *"I expected that given the information...we'd be approved."*
>
> **-Jack Sturman, Tri-Ko Director**

Jack Sturman, Tri-Ko director, said he was surprised the vote went the way it did. He presented information to the commissioners based on research done by Princeton University on group living facilities in New York State like the one proposed here. The study stated the advent of group living facilities of this type had no detrimental effect on property values, a concern voiced by many of the residents in the neighborhood of the proposed location. Sturman had also obtained information from an architect to counter the claim that development of the area would exceed it's current water run-off capability. In addition, Sturman presented to the commission a list of some 150 signatures of people in Garnett who supported the proposed move.

"I expected that given the information from the architect and the study done at Princeton University, and the fact that there were in excess of 150 people who were willing to put their names down in support of us, that we would be approved," said Sturman. "I was very surprised."

Sturman said he didn't believe the negative vote was whole-heartedly based on the question of zoning.

"The underlying reason was there were people from the neighborhood there who voiced their disapproval of our being there," said Sturman, but added, "I don't think enough was said about the rights of developmentally disabled people."

But the city commissioners said they reasoned against the re-zoning on the basis of sewer and streetlight facilities in the area. Mayor Brecheisen explained to the gathering his feelings that the inadequacies of the present sewer system in the area couldn't handle the addition of a group living facility.

"This is the best way we can handle the people like this, and we can't live on prejudice," Brecheisen said on the need for facilities of this type. "If it comes up again in the proper place, I'll vote for it," he said.

"I think the people who live in an area of this type carry more weight than people who live across town," said Commissioner Robert Boots. He also said he was against spot zoning in any case.

"A lot of work went into zoning this city. I don't think it should be changed at the snap of a finger," Boots said.

It was Boots' motion that ended the official discussion on the topic at the meeting, sending the issue back for planning commission consideration. City officials said since motion was approved by the planning commission but turned down by the city commission, the chances for its revival and re-submission are slim.

"There isn't really too much they're likely to do now," said City Attorney Terry Solander. "For all practical purposes it's dead," he said.

Sturman said a meeting of the Tri-Ko directors was upcoming to decide their next move toward a new Garnett location. He said there were still questions as to whether the available HUD funds could be re-routed to the consideration of a new lot.

> *"We haven't seen the end of this yet. I'm convinced we can help them find an alternate site."*
>
> **-Commissioner Robert Boots**

"We would not discontinue the program," said Sturman, "we would look for another lot in Garnett."

"We as a commission can find a more suitable location the city can live with," said newly-elected commissioner Mike Norman.

"We haven't seen the end of it ye said Boots, "I'm convinced we help them find an alternate site can satisfy HUD. We can those people right here."

RESIDENTIAL ALTERNATIVES, inc.

... a levels approach to providing housing for disabled persons.
Dr. Gary Condra, President
2204 Crossgate Drive
Lawrence, KS 66046

(913) 843-3643

Subject: House Bill No. 2063

I have been involved in group home development for the mentally retarded in Lawrence, Kansas, and in Johnson County, Kansas, for over 15 years. Currently, I operate six group homes serving 25 mentally retarded adults in Lawrence.

I believe that significant new group home development in Kansas will not take place without the enactment of H.B. 2063. Where it has been possible to develop group homes, they have been developed. However, in too many instances, it has not been possible to develop group homes because of continual rejections of local planning and city commissions. Community providers and potential providers of group homes are "burned out" by the continual denials of these local commissions.

Meanwhile, community waiting lists for residential services continue to grow. Likewise, the list of potential community placements from Kansas' four state institutions for the mentally retarded also continues to grow. Therefore, I repeat, in my opinion, H.B. 2063 is necessary if any significant development of new group homes is to take place.

Finally, while I am not currently asking that H.B. 2063 be amended in anyway, at some future time, I would like the law (H.B. 2063 passed into law) amended to include our largest "special population" group, the ELDERLY. The elderly need community housing alternatives as well as the mentally retarded.

Respectfully,

Gary Condra

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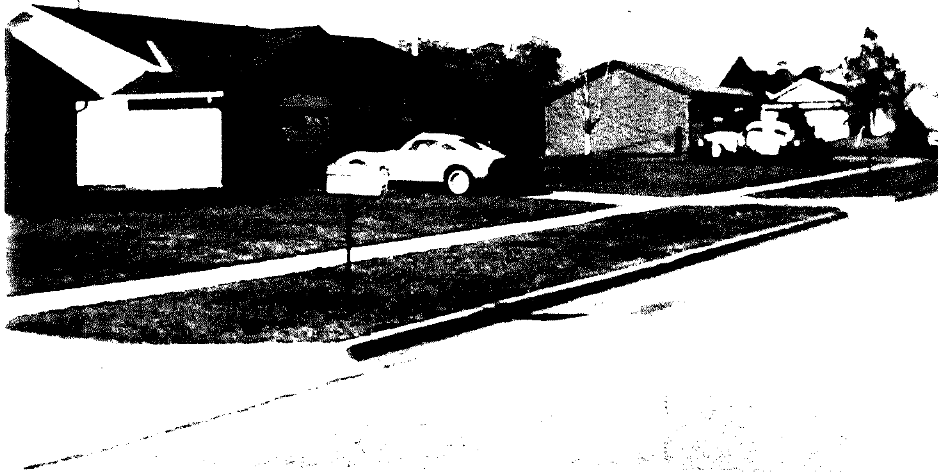
RESIDENTIAL ALTERNATIVES, inc.

... a levels approach to providing housing for disabled persons.
Dr. Gary Condra, President
2204 Crossgate Drive
Lawrence, KS 66046

(913) 843-3643

New duplex. Owners live on left side and 4-5 residents live on the right side (note the stationwagon on the resident's side.)(corner lot)



Two group homes located side by side. Four residents in each home. Staff are only at one of the pair of homes. Meals are provided for both homes, but served for both at the home where staff reside. Residents divided by levels.

Two other group homes which are located across the street from the two homes pictured above. Same staffing and meals arrangement as above.

Residential Alternatives, Inc., has developed a levels approach to providing Congregate Living. In other words, each residence is geared for a different level (functioning) of resident.

Level I - Group Home — Capacity - 7 men

This level is for residents who need close supervision. Staff are in the residence all the time that residents are there. This is basically a "maintenance" level where everything is done for the resident that they can not do for themselves (food prepared, laundry and cleaning done, baths and hygiene monitored, etc.). These are DEPENDENT residents.

* Level II - Duplex — Capacity - 4 or 5

This level is for residents who need less supervision, but who do need continual monitoring. In this situation, staff (owners of Residential Alternatives, Inc.) reside in one side of a large, new duplex and four residents reside in the adjoining side. Most meals (except some easy-to-fix breakfasts on weekends) are prepared and served by staff. Electronic monitoring can be implemented whereby staff can hear "night sounds" in the residents' side, through an intercom arrangement. At other times, residents can "call" staff by (1) walking next door, or (2) by picking up the phone and dialing a single digit number which will ring the phone on the staff side. These are SEMI-DEPENDENT residents.

* Level III - Private Home #1 — Capacity - 4 or 5

This level is for residents who require even less supervision than Level II residents. The private home they occupy is approximately 70 yards from the Duplex (Level II). As in Level II, Level III residents have their meals prepared by staff. Likewise, Level III residents can call staff by dialing a single digit on the telephone. Staff stay with the residents at night.

Most Level III residents have previously lived semi-independently or completely independently in the past or demonstrate high potential for being able to do so now. These are SEMI-INDEPENDENT residents.

* Level IV - Private Home #2 — Capacity - 4 or 5

This level is for residents who graduate from Level III. They live fairly independently in a new home located next door to the Level III home. These residents prepare their own breakfast, are responsible for their own laundry, house cleaning and hygiene needs. However, they do not cook. They receive their noon and evening meals in the Level III home. These are FAIRLY-INDEPENDENT residents.

Level V - Private Home #3 or Apartment Living — Capacity - open

This level has not been developed, but will be for residents who have learned sufficient cooking and other self help skills to graduate from Level IV. These residents may live in private homes in the area of Levels I-IV or may live in regular apartments.

* additional units of this level are being planned

University of Kansas
Lawrence, Kansas
April 13, 1983

Residents secure hopes in new home

By JEAN MANN
Staff Reporter

Frank 55, thin and slight, his hands buried deep in the pockets of his baggy trousers, laughed as he planned his garden. He surveyed farm land on the edge of Lawrence and talked of sweet corn, beans and potatoes.

This will be his first garden in a long time.

Although born on a Kansas farm, institutions have housed him for most of his life. is mentally retarded.

The only cloud on a warm spring afternoon was the thought of his last nursing home.

"No sir, I sure don't want to go back there," Frank said.

Frank is one of 11 mentally retarded, middle-aged persons who have been living since mid-January in a test setting that its organizer hopes will prove a less costly alternative to nursing homes and mental institutions.

"IF YOU DIDN'T HAVE anything wrong before you went into a nursing home, you

See HOME page 5

Home

From page 1

would after you came out," said Gary Condra, director of the project. "My opinion of nursing homes is high, but they're for people who need constant medical attention.

"They're filled with elderly people, some senile, who sometimes yell and are not always enjoyable companions. It's not the right setting for the mentally retarded."

Condra's idea for the project developed during the 10 years in which he directed Cottonwood Inc., a Lawrence social service agency that provides vocational workshops and housing for the mentally handicapped.

His chance to try a new program came when the state decided a year ago that mentally handicapped people should not live in nursing homes.

Some persons who were to be evicted from the nursing homes, Condra said, would have had no other place to live in Douglas County.

But new legislation enabled Condra to set up his living home.

THE 10 MEN who all have rural backgrounds, are housed at the O'Connell Youth Ranch, a mile southeast of Lawrence. The ranch opened in 1976 as a foster home for troubled boys.

The Kansas Department of Social and Rehabilitation Services supervises the project.

Condra and his staff, including his wife and 19-year-old daughter, supervise work and play within the multi-roomed brick ranch house, set upon 140 acres of wooded land.

The goal of the project is to help its residents re-enter the community in as full a manner as possible.

For some, that could mean moving into an apartment with only minimal supervision. For a larger percentage, Condra said, that could mean part-time jobs. Yet there are others, he said, who would need the full support of the congregate program for the rest of their lives.

CONDRA SAID HE hoped his program could be extended to other groups, such as the elderly.

He said that not everyone needed a nursing home, and that his type of living provided a halfway solution between dependency and independence.

Randy Kitchens, a staff member, said the program had yielded good results already.

"Everyone here is happier and more relaxed," he said. "There's no substitute for a warm family setting where people's complete social needs can be cared for instead of just keeping them barely alive."

But training the residents, said Kitchens, is only part of a larger problem.

"The men at the ranch need to be educated in some ways, but society needs to be educated to know they're human beings," he said.

Society, however, has been a slow learner.

BEFORE 1970, FOR instance, the mentally handicapped still were generally denied access to public education; they could be kept in institutions with little hope of release. And 10 years ago, programs like Cottonwood were still experimental.

Today, many of the mentally handicapped are leaving institutions, enrolling in schools and moving into group homes such as the one outside Lawrence and others.

In all of this, said Elaine Oruch, director of the Douglas County Association for Retarded Citizens, the mentally handicapped are beginning to batter down harmful stereotypes that have separated them from society.

"Loneliness and lack of support is a big problem for those with a disability," she said.

"THE ONLY WAY THESE people are handicapped is by us. They're people first, with all the human feelings — love, enjoyment of films and the ability to appreciate a fine spring day."

Frank was still thinking about the Lawrence farm land and making his plans.

"Maybe we could get horses too," he said.

mental health association in kansas
1205 harrison • topeka, kansas • 66612
913/357-5119 800/432-2422
Affiliate of the National Mental Health Association

January 28, 1987

Testimony regarding HB 2063

Mr. Chairman and members of the Local Government Committee:

I am Bryce Miller, President of the Mental Health Association in Kansas, composed of over 4,000 members statewide.

I am here to request that the mentally disabled be added to HB 2063 as one of the groups to be covered.

I think we need to get into the 20th century and realize mentally ill persons are no more harmful than any other part of the general population. In fact, in working over 12 years with recovering mentally ill persons, I have not even been verbally assaulted. I wish I could say the same for the general population including some store clerks.

I cannot understand how the taxpayers of the State of Kansas spend millions of dollars each year providing treatment programs in community mental health centers and state psychiatric hospitals, yet deny recovering patients a decent place to live in the community. It just doesn't make good economic sense.

Several years ago here in Topeka, I visited a house several times where two discharged patients from Topeka State Hospital were living together. They were placed in that house by their guardian because no other housing was available.

Because of a lack of medication supervision, before long one of the recovering patients was soon back in Topeka State Hospital. When the residents were moving out, the people

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assisting in the move found a rat swimming in the bathtub. It was necessary to kill the rat in the bath tub in order to clean the place up.

I don't call this decent community housing for mentally disabled persons. Yet this is the sort of living conditions you are encouraging by leaving this group out of HB 2063.

I strongly urge you to amend HB 2063 to include mentally disabled persons.

STATE DEPARTMENT OF SOCIAL & REHABILITATION SERVICES
Statement Regarding House Bill 2063

1. Title - This Bill would allow the establishment of group homes for physically handicapped, mentally retarded, and other developmentally disabled persons in single family residential areas, notwithstanding local zoning ordinances to the contrary.

2. Purpose - Many disabled persons are physically segregated from community living arrangements because of local legal barriers which prevent their movement into normal residential areas. Regardless of a growing awareness among health professionals that disabled persons should be provided normal living surroundings to the greatest possible extent, local government officials and residents are not always convinced. There continues to be a shortage of community residential beds for these disabled individuals who need assistance with community living but not hospitalization. The needed residential settings must be available in reasonably close proximity to treatment/ training sites.

3. Background - This Bill will ensure the right of disabled persons to live in residential communities throughout Kansas because zoning would be uniformly applied by all cities. With this legislation, county and municipal zoning ordinances, and administrative interpretation thereof, would not deny disabled persons their right to benefit from normal residential life in group homes. Limitations on the number of group homes in a given area are made to avoid any claims of excessive concentration.

4. Effect of Passage - Passage of this Bill would ensure that mentally retarded and other disabled individuals have the same right to live in single family areas as others.

5. SRS Recommendations - The Department of Social and Rehabilitation Services strongly supports this Bill and feels that its provisions should be made available to persons developmentally disabled, physically handicapped, or mentally retarded.

Robert C. Harder, Secretary
Social & Rehabilitation Services
296-3271

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KANSAS DEPARTMENT OF HUMAN RESOURCES

ADVISORY COMMITTEE ON EMPLOYMENT
OF THE HANDICAPPED
1430 S.W. Topeka Avenue, Topeka, Kansas 66612-1877
913-232-7828 (V/TDD) 567-0828 KANS-A-N

John Carlin, Governor

Larry E. Wolgast, Secretary

Testimony regarding House Bill 2063

House Local Government Committee

Ray Petty, Legislative Liaison, KACEH

January 28, 1987

This is the third year I have followed proposed legislation which would eliminate housing discrimination against disabled persons due to zoning restrictions. House Bill 2063 is substantively the same bill as the version of the House Bill 2275 which passed this committee and the House by a vote of 92-32 in March of 1985. Frankly, I was surprised last year when the Senate Local Government Committee voted that bill down - after a year's delay - substituting instead a Concurrent Resolution (S. 1644) which urged cities and counties to exercise responsible home rule concerning zoning restrictions on group homes.

In states with a home rule constitution, local governments are given wide berth in handling local affairs except in situations where there exists a compelling statewide interest in enacting laws which restrict local latitude. The normalization of disabled persons into community settings throughout the state is quite clearly a situation wherein a demonstrated statewide concern ought to prevail. In the remainder of my brief comments, I will address this home-rule issue head on and then conclude with two recommendations for changes in the bill.

To my way of thinking, the bottom line here is whether or not this is an issue of statewide concern. In the case of zoning restrictions, once a problem of sufficient magnitude is demonstrated in several localities it begins to rise to the level of a statewide concern. Where one community acts in a progressive, constructive manner to permit and encourage community homes, the probability rises that it will become a magnet for larger numbers of these homes. And that is particularly true when close-by communities are repelling group homes by whatever means, for whatever reasons.

The result of the interaction between accepting and rejecting communities is that officials in other political subdivisions misperceive the phenomena of group-home buildup in the accepting community as a "rush" of sorts - thereby reinforcing their conviction to exclude community homes. It is my belief then that continuing to deal with this issue at the level of local decision making virtually guarantees undesirable results - because some communities will exclude group homes entirely or will only permit them conditionally in a few zones.

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Apparently there are others who agree - for it is the case (as of 1985) that in no less than thirteen of the thirty-nine home-rule states there is already a law which precludes exclusionary zoning against community homes (AZ,CA,CO,MD,MI,MN,MT,NM,OH,RI,SC,TN,WI). This does not count the states which do not have a home rule constitution. In all, over half of the states in our country do not allow group homes to be zoned out of single-family neighborhoods.

A second good reason to establish a state policy on the integration of group homes is to prevent localities from permitting group homes only in a few zones. Such a policy results in ghettoization - which for disabled persons is just a new version of institutionalization. A heavy concentration of group homes in limited areas is also unfair to those areas and the people who live there because the character of the neighborhood is changed, which undercuts the very purpose behind normalization - the human right to live in the least restrictive setting possible.

A final reason for passing this bill is to let local officials off the hook. I don't believe anybody here intends to characterize local officials as ogres. They are on the front line and must face their neighbors, who sometimes are ogres, in the local government arena. Statewide agreement on reasonable criteria to be used in determining the location of group homes will focus local debate, while at the same time stifling the expression of ugly and bigoted motives, which often parade in other guises.

There are two changes in the bill which I would recommend. First, there does not appear to be any particularly compelling reason to limit the number of residents of group homes to six, and I know that such a limitation will place a burden upon the operators of group homes due to marginal economies of scale. In light of the other guarantees that the home will "fit in", allowing eight or fewer residents seems quite reasonable to me. Second, and technically speaking, it seems to me that "(4)" in line 48 ought to be "(E)" under the definition of developmental disability.

Thank you for this opportunity to testify in favor of House Bill 2063. I have attached an editorial from The Kansas City Times which should be of interest.

a:zone1-28

The Kansas City Times

Friday, November 1, 1985

A Home of Their Own

The situation is unnecessarily complicated for many mentally retarded citizens of Kansas. There's a long line waiting for group homes. State support is increasingly inadequate to pay for living facilities. Private money is available. But folks don't want these people in their neighborhoods.

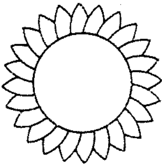
It's inevitably the response when some respectable and compassionate group locates a house for sale: Nearby residents protest against "such people living next door." The L'Arche organization, for example, is now ready to open several group homes, but zoning regulations block them. It's not a single family dwelling, opponents argue, but a multi-family dwelling that doesn't come within the proscriptions of local zoning laws.

Caring friends of mentally retarded adults are told, in effect, to go some place else with their bleeding heart ideas. And that often after they've spent months trying to educate and persuade would-be neighbors that retarded people are neither dangerous nor particularly irrational. The trouble is, there usually is no place else which is both a legitimate residential area and welcoming. The whole point of developing the least restrictive facilities outside monolithic public institutions is that retarded people have rights, chief among which is the right to be as independent as possible and to be allowed to grow to their full individual capacity.

Isolation in an old house next to the city dump, for example, is no integration into society. It's hardly better than the regimentation of a state "school" but in some cases seems the only place safe from fearful neighbors.

A state law has been proposed to correct this. It would simply define small group homes as a single family dwelling. Thus automatic discrimination against the retarded would be eliminated. The weary days and months given by supporters to convince mercurial residents to accept a group home could be spent much more productively.

It is true this is an issue of blindness as much as segregation was. The mandate for change then came from higher authorities. Justice demands it do the same in this case.



Johnson County
Kansas

HOUSE LOCAL GOVERNMENT COMMITTEE
WEDNESDAY, JANUARY 28, 1987
HEARING ON HOUSE BILL 2063
TESTIMONY OF GERRY RAY, INTERGOVERNMENTAL COORDINATOR
JOHNSON COUNTY BOARD OF COMMISSIONERS

MR. CHAIRMAN. MEMBERS OF THE COMMITTEE. MY NAME IS GERRY RAY, REPRESENTING THE JOHNSON COUNTY BOARD OF COMMISSIONERS, AND I THANK YOU FOR THE OPPORTUNITY TO SPEAK ON HOUSE BILL 2063.

THE JOHNSON COUNTY COMMISSION COMMENDS AND SUPPORTS THE GROUP HOME CONCEPT. HOWEVER, DUE TO SERIOUS CONCERNS ABOUT THE PRECEDENT BEING ESTABLISHED IN HOUSE BILL 2063, THE COMMISSIONERS HAVE TAKEN A POSITION OPPOSING THE BILL.

THE FIRST CONCERN IS THE DIMINISHED AUTHORITY OF LOCAL OFFICIALS TO EXERCISE SELF DETERMINATION IN MATTERS OF ZONING. IN ORDER TO PROVIDE CITIZENS AN ORDERLY PLANNED COMMUNITY, THE LOCAL OFFICIALS MUST HAVE THE AUTHORITY TO ADOPT AND ENFORCE LOCAL ZONING REGULATIONS. TO EXEMPT A PARTICULAR GROUP FROM THE ZONING PROCESS WILL SET A PRECEDENT, THUS OPENING THE POSSIBILITY FOR ADDED EXEMPTIONS IN THE FUTURE. TO SEE HOW SUCH ACTIONS MULTIPLY, YOU NEED ONLY LOOK AT THE NUMBER OF EXISTING AND PROPOSED TAX EXEMPTIONS. ALL OF THE EXEMPTIONS TO TAXATION EXIST ONLY BECAUSE THE FIRST ONE WAS GRANTED FOR WHAT WAS NO DOUBT VERY GOOD REASONS.

OUR SECOND CONCERN IS THE RIGHT OF THE COMMUNITY TO BE HEARD. PUBLIC HEARINGS ALLOWING CITIZENS AN OPPORTUNITY TO EXPRESS THEMSELVES TO THEIR ELECTED OFFICIALS IS A BASIC DEMOCRATIC RIGHT THAT SHOULD NOT BE DENIED BY LAWS AT ANY LEVEL. GRANTED THE HEARING PROCEDURES CAN BE SLOW AND MANY TIMES FRUSTRATING, BUT IT IS THE PRICE WE PAY TO RETAIN OUR FORM OF GOVERNMENT. IF THERE IS ANY ANGER, HOSTILITY OR PREJUDICE IN THE PEOPLE OF THE NEIGHBORHOOD, IS IT NOT BETTER TO HAVE THOSE EMOTIONS OR ATTITUDES VENTED IN A PUBLIC HEARING THAN TO BE DIRECTED TOWARD THE PEOPLE WHO WILL LIVE IN A GROUP HOME IN THAT NEIGHBORHOOD.

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AGAIN, I WOULD EXPRESS THE JOHNSON COUNTY COMMISSIONERS' SUPPORT OF GROUP HOMES, AS EVIDENCED BY SUCH HOMES THAT ARE A PART OF THE COUNTY'S MENTAL RETARDATION PROGRAM. NEVERTHELESS, ZONING REGULATIONS ARE A PROTECTION FOR ALL CITIZENS, INCLUDING THOSE THAT ARE CURRENT OR FUTURE RESIDENTS OF GROUP HOMES. BECAUSE THE LOCAL ZONING AUTHORITY MUST BE SUSTAINED TO SERVE THE ENTIRE COMMUNITY, THE COMMITTEE IS ASKED TO CAREFULLY CONSIDER ALL THE RAMIFICATIONS BEFORE REACHING A DECISION ON HOUSE BILL 2063.

TESTIMONY FOR

HOUSE LOCAL GOVERNMENT

JANUARY 28, 1987

BY

JANET STUBBS, EXECUTIVE DIRECTOR

HOME BUILDERS ASSOCIATION OF KANSAS

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE: MY NAME IS JANET STUBBS AND I AM THE EXECUTIVE DIRECTOR FOR THE HOME BUILDERS ASSOCIATION OF KANSAS.

WE APPEAR TODAY IN OPPOSITION TO HB 2063. OUR OPPOSITION IS NOT BASED UPON THE PROPOSED INHABITANTS OF THE GROUP HOMES, BUT RATHER ON THE STRONG BELIEF IN HOME RULE POWERS CURRENTLY AFFORDED LOCAL UNITS OF GOVERNMENT.

AS A GROUP WHICH MUST SEEK APPROVAL AND WORK WITH LOCAL OFFICIALS BEFORE BEING PERMITTED TO DEVELOP AND CONSTRUCT A PROJECT IN ACCORDANCE WITH PLANS AND RESTRICTIONS ESTABLISHED BY THE GOVERNING BODY OF THE CITY, WE BELIEVE PROPERTY OWNERS OF LAND ADJACENT TO A PROJECT SHOULD HAVE THE OPPORTUNITY TO VOICE THEIR CONCERN, OPPOSITION OR APPROVAL OF A ZONING MATTER WHICH AFFECTS THEIR NEIGHBORHOOD AND PROPERTY. HB 2063 REMOVES THAT RIGHT FROM PROPERTY OWNERS OF THE AREA WHEN A DEVELOPER FOR A GROUP HOME DECIDES

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TO LOCATE HIS PROJECT IN A NEIGHBORHOOD. THIS IS THE VERY RIGHT SO STRONGLY PROTECTED IN THE ANNEXATION LEGISLATION OF 1986.

IN THE PAST, PROPONENTS OF SIMILAR LEGISLATION HAVE STATED IT IS NECESSARY IN ORDER TO PREVENT TIME DELAYS CAUSED BY NEIGHBORHOOD HEARINGS WHICH ARE USUALLY TENSE AND SOMETIMES HOSTILE. IT HAS BEEN FURTHER STATED THAT NEIGHBORHOOD RESENTMENT SUBSIDES AFTER A GROUP HOME IS LOCATED IN A NEW RESIDENTIAL AREA.

HOWEVER, MANY OTHER DEVELOPERS BELIEVE IT IS BENEFICIAL TO HAVE AN OPEN FORUM WITH RESIDENTS OF AN AREA IN WHICH THEY PLAN TO LOCATE A PROJECT. IF A DEVELOPER DOES HIS HOMEWORK PRIOR TO HEARINGS AND CONDUCTS HIMSELF PROPERLY DURING A HEARING, IT IS ADVANTAGEOUS TO EVERYONE INVOLVED. IN THE INSTANCE OF GROUP HOMES, ESPECIALLY TO THE FUTURE RESIDENTS OF THE HOME.

ARE THERE CITIES IN KANSAS WHICH WILL NOT PERMIT A GROUP HOME? OR ARE YOU BEING ASKED TO ACT BECAUSE THE CITIES ARE EXERCISING THEIR HOME RULE POWER AND GOVERNING THEMSELVES AND A DEVELOPER DOES NOT BELIEVE HIS PROJECT SHOULD BE SUBJECT TO THE SAME REQUIREMENTS OF OTHER PROJECTS DUE TO THE PROPOSED INHABITANTS.

PROPONENTS OF HB 2063 SEEK TO LOCATE IN A SINGLE FAMILY ZONED AREA WHEREAS THEY MAY ALREADY LOCATE A FACILITY IN A MULTI-FAMILY ZONED AREA. LIVING IN A MULTI-FAMILY ZONED AREA IS NOT CONSIDERED INFERIOR OR ABNORMAL LIVING CONDITIONS BY THOUSANDS OF KANSAS RESIDENTS. LIVING IN A MULTI-FAMILY ZONED AREA DOES NOT MEAN THAT

YOU MUST RESIDE IN AN APARTMENT BUILDING. MANY AREAS ARE ZONED MULTI-FAMILY AND CONTAIN STRUCTURES IN WHICH ONLY ONE (1) FAMILY RESIDES AND SHOULD NOT IMPLY AN INFERIOR OR DIFFERENT LIFESTYLE WHICH IS LESS DESIRABLE FOR THE MENTALLY OR PHYSICALLY HANDICAPPED.

IN CONCLUSION, WE URGE YOU TO RECOGNIZE THIS AS A ZONING DISPUTE WHICH YOU ARE BEING ASKED TO RESOLVE AT THE STATE LEVEL BECAUSE IT INVOLVES AN EMOTIONAL SOCIAL ISSUE.

WE BELIEVE THERE ARE OTHER SOCIAL ISSUES AND ZONING ISSUES WHICH YOU WILL BE ASKED TO ADDRESS IN A SIMILAR MANNER, IF YOU TAKE THIS ACTION ON GROUP HOMES FOR THE PHYSICALLY AND MENTALLY HANDICAPPED. AS AN EXAMPLE, WE BELIEVE INDIVIDUALS WHO BELIEVE STRONGLY THAT THERE IS A NEED FOR HOUSING FOR INDIVIDUALS BEING REHABILITATED FOR ALCOHOL AND DRUG ABUSE WILL ASK YOU TO INTERVENE ON THEIR BEHALF WITH CITIES AND COUNTIES SO THEY CAN LOCATE FACILITIES WITHOUT PRIOR LOCAL AUTHORIZATION. THERE WOULD PROBABLY BE OTHERS SUCH AS THOSE ATTEMPTING TO LOCATE SHELTER FOR INDIVIDUALS WHO HAVE BEEN RELEASED FROM A PENAL FACILITY.

ONCE AGAIN, I WOULD LIKE TO REITERATE OUR POSITION ON HB 2063:

1. WE SUPPORT THE HOME RULE POWERS OF THE CITIES TO PLAN AND ZONE THEIR COMMUNITIES WITHOUT STATE INTERVENTION.

2. WE SUPPORT QUALIFIED CARE OF THE HANDICAPPED, AS WELL AS COMFORTABLE AND PLEASANT LIVING ACCOMMODATIONS FOR THESE INDIVIDUALS.

3. WE BELIEVE AN EXEMPTION WILL ONLY BRING THE SAME REQUEST FROM OTHER GROUPS. SHOULD THE STATE MANDATE LOCATION OF GROUP HOMES IN SINGLE FAMILY RESIDENTIAL AREAS FOR BOTH JUVENILE AND ADULTS BEING REHABILITATED FROM PRISON AS WELL AS INDIVIDUALS BEING REHABILITATED FROM DRUG AND ALCOHOL ABUSE?

4. WE SUPPORT LOCAL LEADERSHIP ADDRESSING THE NEEDS OF THEIR OWN COMMUNITY AND IT'S CITIZENS.

WE OPPOSE PASSAGE OF HB 2063

KANSAS ASSOCIATION OF REALTORS®

Executive Offices:
3644 S. W. Burlingame Road
Topeka, Kansas 66611
Telephone 913/267-3610

TO: HOUSE LOCAL GOVERNMENT COMMITTEE

FROM: KAREN MCCLAIN, DIRECTOR, GOVERNMENTAL AFFAIRS

DATE: JANUARY 28, 1987

SUBJECT: HB 2063, GROUP HOMES

On behalf of the Kansas Association of **REALTORS®**, I appear here today in opposition to HB 2063.

I do not come here with the claim that group homes decrease the value of property. I am not here because **REALTORS®** will somehow be personally injured by the effects of this bill. **REALTORS®** have long stood for the protection of the rights of private property owners in this state and country. It is for that protection that I appear today.

The Kansas Association of **REALTORS®** recognizes the need for housing for the handicapped in communities. However, this need must be balanced by another factor. Historically, it has been within the decision making powers of cities and their property owners to decide how the city should be arranged and zoned. The piece of legislation proposed here is in direct circumvention of those powers.

HB 2063 would take away a property owner's right to participate in the decision of whether a group home should be placed in their neighborhood. Currently those desiring to build group homes must obtain a variance of the zoning laws in order to have a home for up to eight persons. This may create an inconvenience. However, this process protects the right and need for property owners to participate in the decision about changing the way homes are occupied in their neighborhood.

Attachment 10
1-29-87

REALTOR®—is a registered mark which identifies a professional in real estate who subscribes to a strict Code of Ethics as a member of the NATIONAL ASSOCIATION OF REALTORS.

The proper placement of the group homes within a city can only increase the benefits of the homes for both its occupants and the community; therefore the property owners and the city should be involved in this decision making process. Under the current system they are. Under HB 2063 they would not. A state statute, rather than a city ordinance, will determine the outcome.

Again, we agree with the purpose trying to be accomplished here. However, we do not agree that this is the appropriate means by which to achieve the purpose.

It is stated by group home advocates that the people who are trying to place group homes within the community often provide educational, informational programs for the potential neighbors who speak in opposition to the variance. This is done because of the current public hearing process which is required for a zone variance. If the requirement for hearing is removed, a group home can go into a neighborhood without any educational process for the neighbors, and it is likely that even more prejudice by the neighbors will be present.

What would be the benefit of placing group homes in neighborhoods where they are clearly not wanted? Surely that is not conducive to a healthy environment for the home or its residents.

The current system does not absolutely prevent group homes from being placed in single family residential neighborhoods. There is a process which must be followed before that can happen. Acceptance of the value of group homes won't happen overnight if this state statute is passed. The current process provides time for the education of neighbors whose property is effected, and time for property owners to participate in a public hearing. It seems that such a process is a fair balance between all property owners.

Accordingly, the Kansas Association of REALTORS® asks that the current zoning rules be kept in tact and unaltered. Thank you.

League of Kansas Municipalities

PUBLISHERS OF KANSAS GOVERNMENT JOURNAL/112 WEST SEVENTH ST., TOPEKA, KANSAS 66603/AREA 913-354-9565

TO: House Committee on Local Government
FROM: E.A. Mosher, Executive Director
DATE: January 28, 1987
SUBJECT: HB 2063--Group Homes, Zoning and Restrictive Covenants

By action of a League committee, we take the position of "No Position" on HB 2063. This committee action is consistent with a new convention-adopted League Statement of Municipal Policy provision, which states as follows:

> I-8d. **Group Homes.** We recognize the social and psychological value of the location of group homes for the handicapped and developmentally disabled persons in residential neighborhoods. We encourage cities to review their regulations and eliminate provisions which unreasonably and unnecessarily restrict the location of group homes. Cities should not be prohibited from requiring conditional use permits for the use of dwellings for group homes and other non-single family uses in areas zoned exclusively for single family uses.

We call to your special attention the last sentence of the above quote. Our "No Position" on HB 2063 assumes that the provisions relating to "special or conditional use permit regulations or other nondiscriminatory regulations" on lines 61 and 62 remain in the bill.

We hope the Committee does not interpret this position of "No Position" as a departure from our long, strong and continued support of municipal home rule, conferred by the people of Kansas, through the Constitution, to locally-elected governing bodies. We acknowledge that the thrust of HB 2063 is that the state, not local governments nor locally-elected governing bodies, makes the decision as to where group homes may be located. We do have concerns as to whether this change from local decision making to state decision making in local planning and zoning matters may extend to other areas in the future.

There are three amendments that we would suggest for Committee consideration, as follows:

(1) The bill relates to restrictive covenants, as well as zoning; see lines 23-24 and line 55. It appears appropriate for the title of the act to reflect this fact.

(2) In the definition of "municipality," line 35, the word "township" should be inserted after the word "city." There are a few townships in Kansas which have the statutory authority to enact zoning regulations, and have done so.

(3) The Committee may want to consider changing the phrase "For the purpose of protecting the development of the area," beginning on line 62. Perhaps a more appropriate phrase is: "For the purpose of preserving the single family residential character of the area." The word "development" is used, although the area may well be fully developed. The words "single family residential character" (see line 22) appears more consistent with the intent of this act and will make the bill less vague.

Attachment 11
1-28-87

President: John L. Carder, Mayor, Iola • **Vice President:** Carl Dean Holmes, Mayor, Plains • **Past President:** Ed Eilert, Mayor, Overland Park • **Directors:** Robert C. Brown, Commissioner, Wichita • Robert Creighton, Mayor, Atwood • Irene B. French, Mayor, Merriam • Frances J. Garcia, Commissioner, Hutchinson • Donald L. Hamilton, City Clerk/Administrator, Mankato • Paula McCreight, Mayor, Ness City • Jay P. Newton, Jr., City Manager, Newton • John E. Reardon, Mayor, Kansas City • David E. Retter, City Attorney, Concordia • Arthur E. Treece, Commissioner, Coffeyville • Deane P. Wiley, City Manager, Garden City • Douglas S. Wright, Mayor, Topeka • **Executive Director:** E.A. Mosher

My name is Elton Burner,
a resident of Johnson County Kansas for the last
38 years —

My wife and I are parents
of a retarded young man of 31 years —

We have had our son's name on
a waiting list for appropriate
community living facilities for
approximately 7 years
His name is still on that waiting
list —

The existing zoning is a big stumbling
block in our area and is
~~prohibiting~~ making it very difficult
to establish more group homes —

I support HB 20-63 and the position
that SRS is taking on this issue

Elton Burner, 5312 W 69 Terr P.V. Ks. 66208

Attachment 12 1-29-87

B.M. ZILLMAN
AMERICAN CYANAMID COMPANY
3519 WEST 92ND TERRACE, LEAWOOD, KANSAS 66206
913-381-0796

Hon. Rept. Sands 1-28-87

I am the President of Red Wing Homes, Inc. in Johnson County Kansas. This is a non-profit group that is attempting to start a group home for semi-independent retarded living.

I support the SRS position on this bill. It is imperative ~~that~~ that this bill pass to help relieve the overload of the homeless mental-retarded.

Billy M Zillman

Attachment 13
1-29-87

AUREOMYCIN® Chlortetracycline • ROBENZ® Anticoccidial • CYTHIOS® Feed Phosphate • CYCAL® Calcium Carbonate
• AUREO S·P 250® Hog Feed Additive • AUREO S700® Cattle Feed Additive

KANSAS PLANNING COUNCIL

on DEVELOPMENTAL DISABILITIES SERVICES

JOHN KELLY
Executive Secretary

Fifth Floor North
State Office Building
Topeka, Kansas 66612-1570
VOICE-TTY
(913) 296-2608

House Committee on Local Government
concerning House Bill 2063

January 28, 1987

Thank you Representative Sand and members of the House Committee on Local Government for the opportunity to appear before you concerning House Bill 2063.

My name is John Kelly and I am the Executive Secretary to the Kansas Planning Council on Developmental Disabilities. The Council is a 15-member body whose members are appointed by the Governor under K.S.A. 74-5501. The Council's mission is to improve the quality of life, maximize the developmental potential, and assure the participation of citizens who are developmentally disabled in the privileges and freedoms available to all Kansans. We support House Bill 2063 as introduced by Representative Douville.

In spite of the changes in philosophy, technology, and "best practice" for individuals with severe disabilities, state law still contains an "institutional bias" and thereby continues to exclude persons with developmental disabilities from the benefits of single family residential living option.

Persons who oppose this legislation indicated last year that state law does not specifically restrict this population from community group home living. However, without a clear state policy, which this bill provides, to not exclude persons with disabilities from residing in certain zoned areas, there will continue to be ordinances, resolutions, regulations or restrictive covenants that impede integrating persons with disabilities to community settings. In addition conferees made comment that the property values would be affected, that the stability of the neighborhood would somehow be unduly altered and the danger of criminal activity would be increased.

Attachment 14
1-29-87

A recent study undertaken in Illinois, which is in the mail on the way to me, shows that there is no effect on property values, that the stability of the neighborhood is not affected by the placement of a group home in a community and that there is little to no participation by the residents of a group home in criminal activity.

Presently, the number of persons seeking community residential placement far exceeds the available community placements. (See attachments provided by Mental Health and Retardations Services). Parents in their sixties, seventies, and eighties who have always had their son/daughter with disabilities living at home are being told they may need to wait three to five years for a community living arrangement. Concurrently, Mental Health and Retardation Services has proposed and is working to reduce the institutional residential population and the community waiting list by the year 1991. (See attachment). Additionally, Rehabilitation Services was given the lead role in coordinating a transition system assisting persons with severe disabilities from special education into the realm of employment which most assuredly includes housing.

Where are these people going to go if the community does not presently have the capacity to accept their greater responsibility?

The Council understands that all will not be corrected with the passage of this bill, but encourages your favorable recommendation out of committee of a bill that will provide the opportunities to achieve the benefits of single family residential living, encourages the dispersion of group homes within a municipality and limits the occupancy of group homes to six or fewer persons. This bill will also bring the state in line with the thirty-six other states which have enacted state zoning laws. I call your attention to the attached January 1985 state zoning legislation survey undertaken by the State of Wisconsin. A January 1986 update of that survey will be distributed to you as soon as it becomes available. Reducing the institutional population, reducing the number of persons on community waiting lists and the transition of persons into independence will greatly strain the present overburdened system. The passage of this bill will assist in providing needed community options especially when assisted by the adoption of the recommendations provided by the Special Committee on Public Health and Welfare concerning Proposal No. 25. Which among other issues seeks increased resources for community residential living.

I encourage the members of this committee to approve House Bill 2603 and as members of the whole, to take a close look at the special committee recommendations which would move this state closer toward addressing the hard realities now facing persons with disabilities who are not able to live in the community without assistance.

John F. Kelly
Kansas Planning Council on
Developmental Disabilities
Services
296-2608

Wednesday, January 1987

Overview of Reduction of Average Resident Population at State Mental Retardation Institutions FY 1987 - 1991

Office of the Secretary
March 1986
Kansas Department of Social and Rehabilitation Services

Attachment 14 Cont.
1-29-87

Summary of Plan to Reduce State MR Institutions
(State General Fund Only)

	1987	1988	1989	1990	1991	TOTAL
# Resident Moved	118	110	65	25		318
Institutional Cost Savings	0	$382,607	$840,108	$1,111,697	$1,520,988	$3,855,400
Additional Community Costs	$1,062,050	$2,701,999	$4,010,316	$4,759,657	$5,035,166	$17,569,188

PROPOSED REDUCTION IN BUDGETED ADC ACROSS MR INSTITUTIONS

ASSUME NO REDUCTION IN ADC: ADC

Institution	FY 1987	FY 1988	FY 1989	FY 1990	FY 1991
KNI	390	390	390	390	390
Norton	141	141	141	141	141
Parsons	285	285	285	285	285
Winfield	490	490	490	490	490
TOTAL	1,306	1,306	1,306	1,306	1,306

ASSUME A 218 REDUCTION IN ADC: ADC

Institution	FY 1987	FY 1988	FY 1989	FY 1990	FY 1991
KNI	390	390	358	326	301
Norton	141	120	108	108	108
Parsons	285	285	285	285	285
Winfield	490	427	394	394	394
TOTAL	1,306	1,222	1,145	1,113	1,088

PROPOSED REDUCTION IN ADC: ADC REDUCTIONS

Institution	FY 1987	FY 1988	FY 1989	FY 1990	FY 1991	TOTAL
KNI	0	0	32	32	25	89
Norton	0	21	12	0	0	33
Parsons	0	0	0	0	0	0
Winfield	0	63	33	0	0	96
TOTAL	0	84	77	32	25	218

PROPOSED REDUCTION IN BUDGETED ADC ACROSS MR INSTITUTIONS

ASSUME NO REDUCTION IN ADC: EXPENDITURES REQUIRED

Institution	FY 1987	FY 1988	FY 1989	FY 1990	FY 1991
KNI	$16,545,396	$17,372,666	$18,241,299	$19,153,364	$20,111,032
Norton	$6,526,615	$6,852,946	$7,195,593	$7,555,373	$7,933,141
Parsons	$11,811,467	$12,402,040	$13,022,142	$13,673,249	$14,356,912
Winfield	$19,316,415	$20,282,236	$21,296,348	$22,361,165	$23,479,223
TOTAL	$54,199,893	$56,909,888	$59,755,382	$62,743,151	$65,880,309
SGF ONLY	$27,744,085	$28,454,944	$29,877,691	$31,371,576	$32,940,154

ASSUME A 218 REDUCTION IN ADC: EXPENDITURES REQUIRED

Institution	FY 1987	FY 1988	FY 1989	FY 1990	FY 1991
KNI	$16,545,396	$17,372,666	$17,816,521	$18,248,180	$18,453,175
Norton	$6,526,615	$6,259,828	$6,271,530	$6,585,107	$6,914,362
Parsons	$11,811,467	$12,737,914	$13,727,478	$14,413,852	$15,134,544
Winfield	$19,316,415	$19,774,265	$20,259,637	$21,272,619	$22,336,250
TOTAL	$54,199,893	$56,144,673	$58,075,167	$60,519,758	$62,838,332
SGF ONLY	$27,744,085	$28,072,336	$29,037,583	$30,259,879	$31,419,166

PROPOSED REDUCTION IN ADC: EXPENDITURE SAVINGS
(CUMMULATIVE)

Institution	FY 1987	FY 1988	FY 1989	FY 1990	FY 1991
KNI	$0	$0	$424,778	$905,184	$1,657,857
Norton	$0	$593,118	$924,063	$970,266	$1,018,779
Parsons	$0	($335,874)	($705,335)	($740,602)	($777,632)
Winfield	$0	$507,971	$1,036,711	$1,088,546	$1,142,973
TOTAL	$0	$765,215	$1,680,216	$2,223,394	$3,041,977
SGF ONLY	$0	$382,607	$840,108	$1,111,697	$1,520,988

NOTE: Figures in parenthesis represent increases rather than decreases.
Assume a 5% inflation rate per year.
State General Fund (SGF) at 50%.

PROPOSED REDUCTION IN BUDGETED ADC ACROSS MR INSTITUTIONS

ASSUME NO REDUCTION IN ADC: FTE REQUIRED

Institution	FY 1987	FY 1988	FY 1989	FY 1990	FY 1991
KNI	748.5	748.5	748.5	748.5	748.5
Norton	283.0	283.0	283.0	283.0	283.0
Parsons	478.5	478.5	478.5	478.5	478.5
Winfield	855.0	855.0	855.0	855.0	855.0
TOTAL	2,365.0	2,365.0	2,365.0	2,365.0	2,365.0

ASSUME A 218 REDUCTION IN ADC: FTE REQUIRED

Institution	FY 1987	FY 1988	FY 1989	FY 1990	FY 1991
KNI	748.5	748.5	723.5	697.5	665.5
Norton	283.0	248.0	232.0	232.0	232.0
Parsons	478.5	498.5	518.5	518.5	518.5
Winfield	855.0	823.0	793.0	793.0	793.0
TOTAL	2,365.0	2,318.0	2,267.0	2,241.0	2,209.0

PROPOSED REDUCTION IN ADC: FTE REDUCTIONS

Institution	FY 1987	FY 1988	FY 1989	FY 1990	FY 1991	TOTAL
KNI	0.0	0	25	26	32	83
Norton	0.0	35	16	0	0	51
Parsons	0.0	(20)	(20)	0	0	-40
Winfield	0.0	32	30	0	0	62
TOTAL	0.0	47.0	51.0	26.0	32.0	156

NOTE: Figures in parentheses represent increases rather than decreases.

RESIDENTIAL/DAY PROGRAM/MEDICAL

	Institutional Release						Community Placements					
	1987	1988	1989	1990	1991	Total	1987	1988	1989	1990	1991	Total
ICF-MR	*											
Cost	--	314,068	705,803	1,087,586	1,218,160	3,325,617						
Persons	29	20	17	16	--	82						
Group Living												
Cost	611,100	1,431,349	1,677,394	1,727,726	1,780,245	7,227,814	294,300	707,480	1,145,108	1,286,685	1,286,685	4,720,258
Persons	50	47	--	--	—	97	25	25	25	--	--	75
Supervised Apartment												
Cost							108,000	185,400	292,808	327,821	337,653	1,251,682
Persons							9	8	8	--	--	25
Theraputic Foster Care												
Cost	60,650	250,213	580,141	916,751	1,067,781	2,875,536						
Persons	5	10	15	9	—	39						
Total Cost	671,750	1,995,630	2,963,338	3,732,063	4,066,186	13,428,967	402,300	892,880	1,437,916	1,614,506	1,624,338	5,971,940
Total Persons	84	77	32	25	--	218	34	33	33	--	--	100
SGF	659,750	1,809,119	2,572,400	3,145,151	3,410,828	11,597,248	402,300	892,880	1,437,916	1,614,506	1,624,338	5,971,940

*Includes medical costs at $50 per month in 1987, then 3% per year increase each year thereafter.

Office of the Secretary
Social and Rehabilitation Services
February 27, 1986

COSTS: ANNUAL AND CUMULATIVE
(RESIDENTIAL SERVICE ONLY)

	Institutional Release					Community Placements				
	1987	1988	1989	1990	1991	1987	1988	1989	1990	1991
ICF-MR										
--87	No Cost	-	-	-	-	-	-	-	-	-
--88	(See 33)	$ 304,798	$ 418,144	$ 430,700	$ 443,621	-	-	-	-	-
--89	-	-	266,810	366,095	377,077	-	-	-	-	-
--90	-	-	-	258,656	354,899	-	-	-	-	-
Group Living										
--87	$588,600	808,548	832,806	857,790	883,524	$294,300	$404,274	$416,403	$428,895	$428,895
--88	-	570,026	782,838	806,323	830,512	-	303,206	416,403	428,895	428,895
--89	-	-	-	-	-	-	-	312,302	428,895	428,895
Supervise Apartment										
--87	-	-	-	-	-	108,000	111,240	114,577	118,015	121,555
--88	-	-	-	-	-	-	74,160	101,846	104,903	108,049
--89	-	-	-	-	-	-	-	76,385	104,903	108,049
Therapeutic Foster Care										
--87	59,150	122,184	125,852	129,630	133,517	-	-	-	-	-
--88	-	121,849	251,704	259,260	267,034	-	-	-	-	-
--89	-	-	188,261	388,889	400,551	-	-	-	-	-
--90	-	-	-	116,347	240,331	-	-	-	-	-
Total	**$647,750**	**$1,927,405**	**$2,866,415**	**$3,613,690**	**$3,930,549**	**$402,300**	**$892,880**	**$1,437,916**	**$1,614,506**	**$1,624,338**

Assumptions:
1. In the first year of placement, the actual length of placement will average 9 months, except in Therapeutic Foster Care, where it will average 6 months.
2. 9 months = 274 days; 6 months = 182 days.
3. The 29 ICF placements for 1987 are already in the 1987 base cost budget and therefore, no costs are added for these in any year.

Office of the Secretary
Social and Rehabilitation Services
February 27, 1986

NUMBER OF PLACEMENTS AND RATES

Placed to		Institutional Releases FY 87	FY 88	FY 89	FY 90	Total	Community Placement FY 87	FY 88	FY 89	FY 90	Total
ICF-MR	N	29	20	17	16	82					
	R/D	54.00	55.62	57.28	59.00	XXXX					
Group Living	N	50	47			97	25	25	25	--	75
	R/M	1308.00	1347.58	1388.01	1429.65	XXXX	1308.00	1347.58	1388.01	1429.65	XXXX
Supervise Apartments	N						9	8	8	--	25
	R/M	1000.00	1030.00	1060.90	1092.73	XXXX	1000.00	1030.00	1060.90	1092.73	XXXX
Therapeutic Foster Care	N	5	10	15	9	39					
	R/D	65.00	66.95	68.96	71.03	XXXX					
Total	N	84	77	32	25	218	34	33	33	--	100

N = Number of placements
(R/M) Rate/month
(R/D) Rate/day
Rates assume 3% inflation per year

Office of the Secretary
Social and Rehabilitation Services
February 27, 1986

State of Wisconsin \ DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF COMMUNITY SERVICES

1 WEST WILSON STREET
P.O. BOX 7851
MADISON, WISCONSIN 53707

January, 1985

To: Executive Directors
Developmental Disabilities Councils

From: Marion Bates, Staff
Wisconsin Council on Developmental Disabilities

Re: STATE ZONING LEGISLATION SURVEY

This report has been revised to include legal challenges to group homes in Texas and Virginia (p.29); attitude change in the District of Columbia (p. 31); and a statewide media campaign in New Jersey to increase public understanding and acceptance of group homes for persons with developmental disabilities.

With the Developmental Disabilities Councils as the instigators, movers, and shakers, thirty-one states (62 percent) and the District of Columbia achieved state zoning laws, more than half since 1977. This brings into sharp focus the progress made in the past decade in integrating persons with developmental disabilities into the mainstream of society by making community residential opportunities available in residential areas, thereby enhancing the quality of their lives and the communities in which they reside.

Attachment 14 cont.
1-29-87

ACKNOWLEDGEMENTS

I would like to express appreciation for the assistance received in preparing this report. Laws, bills, and court decisions came from the fifty state Councils on Developmental Disabilities, as well as considerable verbal background and information from the Council executive directors and Council staffs.

The Regional Developmental Disabilities Information Center (RDDIC), Madison, Wisconsin, provided a wide array of studies in books, monographs, and pamphlets. The RDDIC houses the largest developmental disabilities collection in the country.

The National Center for Law and the Handicapped, Inc., South Bend, Indiana, generously shared their legal monograph, "Community Living: Zoning Obstacles and Local Remedies."

Above all, a special credit and thanks is due the Project Director of the American Bar Association's Developmental Disabilities State Legislative Project, Washington, D.C. for permission to excerpt invaluable material from their study.

STATE ZONING LEGISLATION: A PURVIEW

WISCONSIN COUNCIL ON DEVELOPMENTAL DISABILITIES

Madison, Wisconsin

Marion V. Bates

January, 1985

"Nothing that is a matter of statewide concern can be a municipal affair.[1] Altered conditions of society can change what once was a municipal affair into a matter of general state concern."[2]

The present decade has witnessed a dramatic shift in social, legal, and political views of handicapped persons. The historic approach to residential services through custodial supervision in an institutional setting has been supplanted by a declared public policy of integration into the mainstream of society through the normalization process.

Successful deinstitutionalization, however, is dependent upon the availability of appropriate community living arrangements; and the supply has been incommensurate to the need.

Exclusionary zoning ordinances are a major hurdle on the obstacle course to implementing public policy. Moreover, the lack of facilities in suitable locations deprives the handicapped of opportunities for services, employment, social activities, and association with others.

As noted by Youngblood and Bensberg,[2a] 250,000 mentally retarded persons now reside in public institutions at an annual cost to taxpayers of more than $1 billion. Probably half of these could be returned to the community. Many would eventually be able to enter competitive employment, earning an average $3,000 per year, and supporting themselves either fully or partially. Moreover, community residences provide income to the community when residents spend for food, clothing, furniture, and recreation.[2b]

Hurdles

Local zoning ordinances have expressly barred group homes from single-family residence zones,[3] though these areas would be the most desirable setting for normalization. A narrow definition of 'family' as a housekeeping unit related by blood, marriage, or adoption, or a limit on the number of unrelated persons allowed in a housekeeping unit may also exclude a group home from single-family neighborhoods."[4] Occasionally, local zoning boards designate group homes, particularly if state-operated and funded, as a business use of land, thus limiting them to commercial and industrial zones.[5] "Elsewhere group homes are allowed only in areas where hospitals or nursing homes are permitted."[6]

Another restrictive device may be the "special or conditional use" permit. It is discretionary administrative permission for uses compatible with the prescribed zone, which may be subject to regulation for the health and welfare of their residents. Its purpose is to enable a municipality to exercise some measure of control over the extent of certain uses which, "although desirable in a limited number, could have a detrimental effect on the community in large numbers."[8] Generally, before a special use permit is granted, all neighbors are invited to attend a public hearing. Substantial opposition can defeat the permit.

Zoning barriers are not the only ones, of course. Related deterrents include a lack of suitable dwellings and insufficient allocation of funds to the communities to implement the public policy.

Three corrective or preventive remedies for zoning obstacles have been applied throughout the nation: municipal zoning code revision, judicial action, and state zoning legislation.

In recent years some municipalities have revised their zoning codes in order to treat community living arrangements more appropriately.[9] The piecemeal approach, however, has evident limitations. In some communities, resistance precludes change; and disparate policies and regulations are the hodgepodge result.

Judicial Action

In using the judicial process to overturn adverse zoning board decisions, advocacy groups have been successful with two arguments:

1. Community residences function as single housekeeping units, operate similarly to traditional families, and therefore should be considered families for zoning purposes.[10]

2. Local zoning codes cannot contravene an overriding state policy that explicitly or implicitly supports the establishment of community residences.[11]

States operating under the constitutional home rule usually have constitution provisions limiting the authority of the legislature to intervene in municipal affairs.[12] The California Supreme Court has ruled, however, that general law prevails over chartered city enactments where the subject matter of the general law is of statewide concern.[13] This is to be determined from the legislative purpose of the state law.

Zoning restrictions have been challenged successfully under the "due process" and "equal protection" clauses of the 14th Amendment to the United States Constitution[14] and under similar guarantees in state constitutions.[15]

Adjudication can be expensive in time and dollars. Furthermore, decisions often are not so definitive or final that issues are resolved permanently. Hence, a growing number of states are turning to the third remedy: state preemptive legislation allowing community residential facilities in residential areas.

State Zoning Roundup

Thirty-one states and the District of Columbia (62 percent) now have state zoning laws.

Laws were enacted in California, Colorado, Minnesota, Montana, and New Jersey prior to 1977. Michigan, New Mexico, Ohio, Rhode Island, and Virginia joined the ranks in 1977. Arizona, Maryland, New York, South Carolina, Tennessee, Vermont, and Wisconsin followed in 1978, and New Jersey strengthened its law in 1978. The roster added Connecticut and Idaho in 1979; Delaware, Florida, Indiana, Nebraska, and West Virginia in 1980; Louisiana, Nevada, North Carolina, Utah, and the District of Columbia in 1981; Hawaii and Maine in 1982; Iowa, South Carolina amendments, and strengthened legislation in Louisiana in 1983.

Nineteen states have no state zoning laws or legislation pending: They are:

Alabama	Massachusetts	Pennsylvania
Alaska	Mississippi	South Dakota
Arkansas	Missouri	Texas
Georgia	New Hampshire	Washington
Illinois	North Dakota	Wyoming
Kansas	Oklahoma	
Kentucky	Oregon	

Georgia, Illinois, and Kentucky are home rule states in which zoning is a local issue. Similarly, it is a local issue in Arkansas, Connecticut, Indiana, New Hampshire, and South Dakota.

Alabama has 20 group homes, some operated by the state, and some on state property in association with the Development Center. In Arkansas state zoning legislation for group homes has not yet developed as an issue, and a creditable number of group homes have been established. Four counties revised their laws to permit group homes in residential areas.

Low key is New Hampshire's strategy. Quietly, key community leaders are contacted--the mayor, town manager, police. Their support and influence is instrumental in gaining community acceptance of group homes.

Mississippi and Oklahoma indicated that zoning is not an issue. In Mississippi, group homes were started by the Department.

Group homes are neither encouraged nor discouraged under Delaware law. Wilmington has a group home for adult working males.

Kansas stated that the issue will be brought to its Council on Developmental Disabilities within the next two planning years. South Dakota opted not to seek state legislation, since the harm would outweigh any benefit.

Missouri has no state zoning legislation. The St. Joseph city attorney ruled that, according to city ordinance, group homes are illegal.

North Dakota (600,000 population) has ten group homes. The per capita developmentally disabled population is above the national average.

In Texas a bill of rights for the mentally retarded and a guarantee of equal housing opportunity rights are embodied in state law.

The Superior Courts

In Massachusetts, the judicial rather than the legislative approach has proved more effective. Two bills (House Nos. 2025 and 4282, January 1977) were amended beyond recognition to the extent that advocacy groups preferred to turn to the courts than to support a sham measure. In fact, they worked successfully to have the bills die in committee.[16]

* For Chart of Statutory and Bill Citations, see Appendix p.1
Local Hegemony

Legislation, in effect, was rendered moot by the decision of the Massachusetts Appeals Court in Harbor Schools v. Board of Appeals of Haverhill[17] on August 19, 1977. A community residence for the mentally disabled, the court ruled, is a "public educational use" and therefore exempt from local zoning regulation under state law (General Laws, Chapter 40A).

The Appeals Court adopted a broad view of the term "education," reaffirming a judicial definition first expressed almost 100 years ago. Rejecting the contention that the facility provided "rehabilitation" but not "education," the court declared the terms not mutually exclusive and rehabilitation one aspect of education. Any aspect of a program that seeks to "develop and train the powers and capabilities" and the "mental, moral or physical powers and faculties" constitutes an educational purpose.[18] The decision of this state intermediate appellate court is binding on all lower courts.

Cases are now awaiting decision before the Massachusetts Supreme Court of Appeals.

New York has also fared well in the courts. In City of White Plains v. Ferraioli (1974), the New York Court of Appeals upheld the right of a group home for developmentally disabled persons to locate in a single-family residential area as long as the family unit was a relatively permanent household and not a framework for transient living.[19] Nor was the New York Supreme Court, Appellate Division, 2nd Department in The Little Neck Community Associations et al. v. Working Organization for Retarded Children, May 3, 1976, persuaded that a group home for retarded children would alter the quality of life or character of the neighborhood. Rather, it would provide a stable environment in which the children would have a real opportunity to develop their full potential.

The State Laws

Arizona

State zoning legislation became law on June 7, 1978 (see Article 2, Title 36, Chapter 5, Arizona Revised Statutes).

A residential facility serving six or fewer developmentally disabled persons, and providing twenty-four hour daily care, is a permitted use in areas zoned for single-family residences. The total, including the operator, members of his family, or staff, may not exceed eight.

"Residential facility" is defined as a home in which persons with developmental disabilities live, and which is licensed, operated, supported, or supervised by the Department.

"Developmental disability" is defined to include autism, cerebral palsy, epilepsy, and mental retardation.

No residential facility may be established within a 1,200 foot radius of an existing one in a residential area.

Prior to establishing a facility, the Department must give at least sixty days' written notice to the affected local government unit, which has a right to file written objection within thirty days and to request and administrative hearing.

Residential facilities serving seven or more persons are permitted use in any zone in which buildings of similar size are rented as apartments or rooms. Conditional use permits for residential facilities may not impose conditions more restrictive than those applicable to similar dwellings in the zone.

California

The California Welfare and Institutions Code (Sec. 5116) provides that a state authorized, certified, or licensed family care home, foster home, or group home serving six or fewer handicapped children shall be considered residential property for zoning purposes, if care is provided on a 24-hour-a-day basis. The homes are permitted in all residential zones, including single-family zones. Use permits may be required, but conditions more restrictive than those on similar dwellings may not be imposed, unless necessary to protect the health and safety of the residents.[20]

This statute was upheld by the California Superior Court in City of Los Angeles v. California Department of Health,

Colorado

Two different sections of the Colorado statutes were amended in 1976: Section 30-28-115, declaring group homes for the aged to be a residential use of property; and Section 27-10.5-102, concerning group homes for the developmentally disabled.

The first declares the establishment of group homes for the exclusive use of not more than eight persons age 60 or older per home to be a matter of statewide concern. It further attests to a state policy of assisting those who do not need skilled or intermediate care facilities to live in normal residential surroundings, including single-family units, if they so choose.

Municipal zoning ordinances are required to provide for group homes for the elderly. The homes must be located at least 750 feet apart unless the municipality opts otherwise.

The second statutory amendment defines a group home for the developmentally disabled as a nonmedical residence providing supervision and training, and capable of housing no more than ten developmentally disabled persons.

Homes for more than ten established prior to January 1, 1976 are grandfathered.

"Developmental disability" is defined as a disability attributable to mental retardation, cerebral palsy, epilepsy, autism or neurological impairment, which may have originated during the first 18 years of life, can be expected to continue indefinitely, and constitutes a substantial handicap. It

includes, but is not limited to, a disability of a person who has a permanent physical handicap requiring substantial supervision and training.

Connecticut

Chapter 124, Sec. 8-3e prohibits any zoning regulation from treating a community residence licensed by the state and housing six or fewer mentally retarded persons and two staff in a manner different from a single-family residence.

A provision was added in May, 1984, that allows any resident of a municipality in which such a residence is located, with the approval of the municipal legislative body, to petition the Commissioner of Mental Retardation to revoke the license of the residence on the grounds of noncompliance with any statute or regulation concerning the operation of these residences.

An elating victory was achieved on May 9, 1984 with passage by a precarious 15-vote margin of state zoning legislation covering community living for mentally ill adults (Substitute Senate Bill No. 533). The favorable margin, in large measure, was the result of the Governor's strong support and last-minute arm twisting by his staff.

Under the new law no zoning regulation can prohibit a community residence in an area zoned to allow structures containing two or more dwelling units. After July 1, 1984, there is a 1,000-foot dispersal requirement for all new community residences. If more than one community residence is proposed in a municipality, a total density limit of 1/10th of 1 percent of the population applies.

"Community residence" is defined as a facility licensed by the Commissioner of Health Services, that houses 8 or fewer mentally ill adults plus staff and that provides supervised, structured group living activities and psychosocial rehabilitation and other support services to mentally ill adults discharged from a state-operated or licensed facility or referred by a licensed psychiatrist or psychologist.

"Mentally ill adult" is defined as an adult who has a mental or emotional condition that has substantial adverse effects on his/her ability to function and who requires care and treatment. Not included are adults dangerous to self or others, alcoholic, drug dependent, or placed by court order in a community-based residential home, released by the Department of Corrections to a community-based residential home, or any person found not competent to stand trial for a crime.

Any resident of a municipality in which a residence is or will be located may, through the chief executive officer or legislative body of the municipality, petition the Commissioner of Health Services to deny a license application on the grounds that the residence would violate the density and/or dispersal limits.

A license applicant must mail a copy of the application addressed to the Department of Health Services to the Regional Mental Health Board, the Regional Mental Health Director, and the governing board of the

municipality. The applications must specify the number of community residences in the community, the address and number of residents in each residence, the address of the proposed residence, and population and occupancy statistics reflecting compliance with the dispersal and density limits.

The Health Services Commissioner cannot issue a license until the applicant has submitted proof that the required mailing has been made and 30 days have elapsed after receipt by all recipients.

A community residence must be evaluated twice a year by the Department of Mental Health. Evaluations must include a review of individual client records and must be sent, upon request, to the Department of Health Services.

Any resident of a municipality in which a residence is located may, with the approval of the municipal legislative body, petition the Health Services Commissioner to revoke the license on grounds of noncompliance with any statute or regulation concerning their operation.

The Department of Health Services, with the advice of the Department of Mental Health, is charged with adopting regulations that include standards for safety, maintenance and administration; protection of human rights; staffing requirements; administration of medication; program goals and objectives; services to be offered; and population to be served.

Delaware

A 1980 law (Chapter 390, Laws of 1979, approved July 11, 1980, amending Title 9, Chapters 26, 49, and 68, and Title 2, Chapter 3 of the Delaware Code) declared it to be state policy that the use of property for the care and housing of ten or fewer persons with developmental disabilities is a residential use of property for zoning purposes.

For purposes of all county zoning ordinances, a residential facility licensed or approved by a state agency serving ten or fewer developmentally disabled persons on a 24 hour per day basis is considered a permitted single-family residential use of the property.

A 5,000 foot-radius requirement is imposed.

A developmental disability is defined as a disability resulting in substantial functional limitations in major life activities, (1) attributable to mental retardation, cerebral palsy, epilepsy, or autism, (2) attributable to any other condition found to be closely related to mental retardation because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of mentally retarded persons, or requires similar treatment and services, or (3) attributable to a physical impairment.

District of Columbia

Pursuant to its authority under the District of Columbia Zoning Act (D.C. Code, Sec. 5-413 et seq.), the District of Columbia Zoning Commission issued

amended zoning regulations, effective July 9, 1981, defining and regulating community-based residential facilities.

Community residential facilities are defined to include, as one subcategory, group homes for the mentally retarded, housing one or more presons not related by blood or marriage to the residence director, and who are also allowed as a matter of right provided there is no other facility in the same square or within a 1,000 - foot radius.

Under the new regulations, community-based residential facilities housing up to four persons, not including the resident supervisor and family, are allowed as a matter of right in R-1 districts. Facilities for 5-8 persons are also allowed as a matter of right provided there is no other facility in the same square of within a 1,000 - foot radius.

The same provision applies for facilities with 5-8 persons in R-2 districts with the provision that:

(1) There is no similar facility in the same square to within a 1,000 - foot radius;

(2) There is adequate, appropriately located, and screened off-street parking for occupants, employees, and visitors;

(3) The facility meets all code and licensing requirements;

(4) The facility will not have an adverse neighborhood impact because of traffic, noise, operations, or number of similar facilities in the area.

The Zoning Board may approve more than 1 facility in a square or within a 1,000 - foot radius only if it finds that the cumulative effect will not have an adverse neighborhood impact.

The special exception applies to facilities for 9-15 persons in R2-R4 districts on the same terms with the exception of a 500 - foot radius dispersal limit.

The Zoning Board may approve facilities for more than 15 persons in R2-R4 districts only if it finds the program goals and objectives of the District of Columbia cannot be achieved by a smaller facility and there is no other reasonable alternative.

The Board must submit the application to the Assistance City Administrator for Planning and Development for coordination, review, report, and impact assessment along with written reports of all relevant District departments and agencies, including the Department of Transportation, Human Services, and Corrections, and, if an historic district or landmark is involved, of the State Historic Preservation Officer.

Florida

Florida amended its Local Government Comprehensive Planning Act, [Chapter 163 Florida Statutes at section 163.3177(6)(f)(4)]. One of the required

elements of the Comprehensive Plan is a housing element. The amendment (Chapter 80-154, Laws of Florida, 1980) requires counties and municipalities to include standards, plans, and principles for providing adequate sites for group home and foster care facilities in the housing element of their land use plan. If the State objects to the plan because it fails to make such provisions, the local governing authority must respond in writing to the State regarding the objection. It is required that the objection and the response be recorded in the minutes of a public meeting specifically called for the purpose of acting on the comprehensive plan.

The Department of Community Affairs is responsible for administering the act. The Department of Health and Rehabilitative Services assists by reviewing housing elements of the comprehensive plans.

A strong home rule state, Florida maintained this principle by allowing communities to determine how group and foster care facilities will be provided, but the clear legislative intent was to provide for the development of group and foster homes throughout the state.

Georgia

Although Georgia is a home-rule state, the Georgia Council on Developmental Disabilities took the initiative in obtaining a declaration of public policy from the legislature that would advise local communities of the state's commitment to equal opportunity for handicapped citizens and thus make local communities more sensitive to the problems related to inappropriate zoning.

In its resolution (L.R. 54, Act No. 9, April 14, 1981), the legislature, noting that many handicapped persons are unable to live in conventional single-family homes because of the nature of their handicaps, declared it to be state public policy that there should be no discrimination against handicapped persons, and that the laws of the state and its political subdivisions should be enacted with a view toward "making it as easy as possible for handicapped persons to live in a manner similar to other citizens of the state with particular emphasis on residences for handicapped citizens."

Hawaii

A law (Chapter 46, Hawaii Revised Statutes), effective September 1, 1982, allows group living for a maximum of eight unrelated persons and two managers in residential zones. The facility must be licensed by the Department of Social Services and Housing. Previously, county zoning laws prohibited more than five unrelated adults in a residential facility. The law applies to the developmentally disabled, elderly, handicapped, and the totally disabled.

Idaho

The legislature in 1979, by an eighty-percent affirmative vote, passed a law (676-6430-6532, Idaho Code), declaring it to be a state policy that use of property for the care of eight or fewer mentally and/or physically handicapped persons is a residential use for zoning purposes.

Initiated by the Idaho Developmental Disabilities Council, the law provides that the classification "single-family dwelling" includes any home in which eight or fewer unrelated mentally and/or physically handicapped persons reside, and which is supervised. A maximum of two resident staff can live in the home.

The Department of Health and Welfare may require licenses and set minimum standards for providing services or operations. The licensure may be under regulations for shelter homes, intermediate care facilities for mentally retarded or related conditions, or specifically written for these residences.

Conditional use permits, zoning variances, or other zoning clearances not required of single-family dwellings in the same zone are prohibited. The same prohibition applies to local ordinances or other local restrictions.

Indiana

Code Section 16-10-2.1 was amended in 1980 to provide that zoning ordinances may not exclude a group home from a residential area solely because the group home is a business, or because the persons residing therein are unrelated, unless the home is located within 3,000 feet of another group home, as measured between lot lines. The group home may be required to meet all other zoning requirements, ordinances, and laws. Covenants prohibiting the use of property for group homes for persons with developmental disabilities are void as against public policy.

"Group home" is defined as a residential facility licensed by the Developmental Disabilities Residential Facilities Council for not more than eight developmentally disabled persons, none of whom has a history of violent or antisocial behavior, and staff, not to exceed two at any one time, necessary to adequately manage the home.

The requirement does not apply to a county, city, or town planning authority, or a person planning to establish a group home in an area designated for residential use that is under the planning authority's land use control, if, before May 1, 1981, the planning authority develops an alternative plan, approved by the Council, governing the placement of a group home in an area designed for residential use that is under the planning authority's land use control.

The Council must approve an alternative plan submitted by a planning authority, after holding a hearing, if the alternative plan (1) excludes group homes from residential areas that possess unique qualities that would be adversely affected by placing group homes in the area, and (2) demonstrates that there are sufficient placement opportunities in other residential areas under the planning authority's land use control to meet the local need for group homes.

An area does not possess a unique nature solely because it consists of single-family dwellings.

Iowa

Iowa amended its Code in 1983 (Sections 385A.25 and 414.22) to provide that a county, county board of supervisors, or county zoning commission shall consider a family home a residential use of property for zoning purposes and must treat a family home as a permitted use in all residential zones or districts, including single-family. Conditional or special use permits, special exceptions, or variances are not permitted. A density limit of one-fourth of a mile applies to all new family homes.

A restriction, reservation, condition, exception, or covenant in a subdivision plan, deed, or other instrument pertaining to the transfer, sale, lease, or use of property in a county that permits residential use of property but prohibits the use of property as a family home for developmentally disabled persons is void against public policy.

"Family home" is defined as a community-based residential home, licensed as a residential care facility or child foster care facility to provide room and board, personal care, habilitation services, and supervision in a family environment exclusively for not more than eight developmentally disabled persons and necessary support personnel. It does not include an individual foster family home.

"Developmental disability" is defined as a disability that has continued, or can be expected to continue, indefinitely and is attributable to mental retardation, cerebral palsy, epilepsy, or autism; to any other closely related condition that results in similar impairment of general intellectual functioning or adaptive behavior or requires similar treatment and services; to dyslexia resulting from any of these conditions; or to a mental or nervous disorder.

Louisiana

The legislature in the summer of 1981 passed a law (R.S. 28: 475-478) establishing a statewide public policy that community homes for mentally and physically handicapped persons are permitted in all residential areas zoned for multiple family dwellings.

"Handicapped person" is given the functional definition used in the federal developmental disabilities law (P.L. 95-602).

"Community home" is defined as a facility certified, licensed, or monitored by the Department of Health and Human Resources to provide resident services and supervision to six or fewer persons, plus two supervisory personnel. There is a 1,000-foot radius dispersal requirement.

A strong home-rule state, Louisiana requires site approval by the local governing authority. The local sponsor must notify the local governing authority of intent to file an application with the Department to open a community home. In any area over which a local planning commission has jurisdiction, the site selection must first be submitted to the local planning commission, which recommends approval or disapproval. The local governing authority, within 45 days of the original notice to the local

planning commission, must affirm or reverse by a majority vote of the members.

In an area in which there is no local planning commission, the local governing authority must approve or disapprove the site within 45 days of the original notice. If the local governing authority disapproves the site, the local sponsor and the Department may develop an alternate site selection that is acceptable to the local sponsor, the local governing authority, and the Department.

The Louisiana legislature in 1983 amended its Mental Retardation and Developmental Disability Law (R.S. 28: 381) to declare that community homes providing for six or fewer mentally retarded or developmentally disabled individuals, with no more than two live-in staff, are considered single-family units having common interests, goals, and problems, whereas a community home providing residential living options for seven to fifteen persons is referred to as a group home.

The law was invoked in two 1983 zoning cases with mixed results. In one case, the district judge upheld the municipality, and the decision was appealed by the local Association for Retarded Citizens. In the second case, the district judge ruled that the legislation allowed the establishment of three community homes in single-family zones. (See Constitutional Challenges, pp. 26-28.)

Maine

A new law (Chap. 640, Laws of 1982, approved April 6, 1982) permits 8 or fewer persons with mental handicaps or developmental disabilities to live in group homes in areas zoned for single-family use. The statute expressly provides that small residential homes are considered single-family households for zoning purposes.

Homes are subject to a 1,500 foot dispersal limit and may not locate in a way that contributes to excessive concentration of group living arrangements within the zone or community.

An application must be submitted to the municipality were the group home, foster home, or intermediate care facility for the mentally retarded is to be located. The municipality reviews the application and notifies residents whose property lines are within a 1,500 foot radius of the proposed site.

A public hearing must be conducted by the body authorized by the municipality to act as a Zoning Board of Appeals to obtain comments on the proposed community living use.

The Board can modify or disapprove the application only upon a finding of one or more of the following:

1. That the proposed use would create or aggravate a traffic hazard;
2. That the proposed use would hamper pedestrian circulation;
3. That the proposed use would not permit convenient access to commercial shopping facilities, medical facilities, public transportation, fire or police protection;

4. That the proposed use would not be in conformance with applicable building, housing, plumbing and other safety codes, including minimum lot size and building set-back requirements for new construction; or
5. That the proposed use would not be consistent with the density limit.

Maryland

Amendments to Maryland's Mental Health Act (Article 59A, Ann. Code), enacted in April, 1978, provide that a public group home and a private non-profit group home shall be permitted in all residential zones, including single-family, and are not subject to a special exception, conditional use permit, or procedure different from that required for a single-family dwelling.

A group home is defined as a community-based residential type facility that admits at least four but not more than eight mentally retarded persons requiring specialized living arrangements and provides for them a home under the care and supervision of responsible adults.

A private group home may not be established until a certificate or approval has been obtained from the Department of Health and Mental Hygiene. Factors to be considered are the nature and character of the area, availability of utilities, and access to transportation, shopping, recreations, and public facilities.

Michigan

"In order to implement the policy of this state that persons in need of community residential care shall not be excluded by zoning from benefits of normal surroundings, a state licensed residential facility providing supervision or care or both, to six or fewer persons shall be considered a residential use of property."[22]

The homes are permitted in all residential zones and may not be subject to a special use of conditional use permit or procedure different from those required of similar density in the same zone.

The amendments to the zoning foster care licensing laws, initially introduced by the Department of Mental Health in 1971, became effective April 2, 1977. Other of its provisions include:

- Homes must provide 24-hours-per-day supervision.
- No licenses may be granted to new residential facilities if another state-licensed facility is located within a 1,500 foot radius, unless permitted by local zoning ordinances.
- No licenses may be granted in the City of Detroit if another home is located within a 3,000 foot radius.
- Local governments are provided with specific criteria for judging quality of care and are authorized to request that licenses be suspended or revoked if a facility violates zoning laws or ordinances.

- The state licensing agency (Department of Social Services) is mandated to resolve complaints with 45 days. Failure to do so would block issuance or continuation of a license.

The amendments are expected to ameliorate a dilemma common to most states--a plethora of local zoning ordinances, all treating facilities inconsistently. Michigan tallied almost 600 zoning commissions and nearly 700 planning commissions, some of which performed the zoning function. The crazy quilt result was such that within a single county, a foster care facility might be permitted in one residential district but excluded from another a mere mile away.

Minnesota

Minnesota's law expressly affirms state policy that mentally retarded and physically handicapped person shall not be excluded by municipal ordinances from residential areas. State-licensed group or foster homes serving six or fewer persons are considered single-family dwellings for zoning purposes. Facilities serving seven to 16 persons are permitted in multi-family zoned areas, but a local conditional use or special use permit may be required in order to assure property maintenance and operations. No more restrictive conditions may be imposed than those on other conditional uses in the same zones, unless the additional conditions are necessary to protect the health and safety of the residents.

No new license may be granted if it would substantially contribute to an excessive concentration of community residential facilities in a town, municipality or county.

The Commissioner of Public Welfare must consider the population, size, land use plan, availability of community services, and number and size of existing public and private residential facilities in the community. The Commissioner may not newly license a facility within 300 feet of an existing one, unless the local zoning authority grants a conditional or special use permit.

Montana

A community residential facility serving eight or fewer persons is considered a residential use of property for zoning purposes if the home provides 24-hour daily care. The homes are permitted in all residential areas.

A community residential facility is defined to include: (1) a group, foster, or other home provided as a residence for developmentally disabled or handicapped persons who do not require nursing care; (2) a district youth guidance home; (3) a halfway house for rehabilitation of alcoholics or drug dependent persons; or (4) a licensed adult foster family care home.

The Montana statute was challenged in 1975 in State ex rel. Thelen v. City of Missoula.[23] A Missoula zoning ordinance defined "family" so as to prohibit the owners of property in a single-family zone from selling it to a group that intended to use it as a community residential facility.

The Montana Supreme Court spoke: "The legislature having determined that the constitutional rights of the developmentally disabled to live and develop within our community structure as a family unit, rather than be segregated in isolated institutions, is paramount to the zoning regulations of any city, it becomes our duty to recognize and implement such legislative action."[24]

Nebraska

A group home serving four to eight persons, not including resident managers or houseparents, may be located in any residential zone subject to dispersal and density limits. The eligible occupants are persons receiving therapy, training, or counseling for purposes of adapting to living with, or undergoing rehabilitation from, autism, cerebral palsy, or mental retardation.

The state may not license a new home within 1,200 feet of an existing one unless the governing body of a municipality grants a conditional or special use permit. A metropolitan-class city by ordinance may prohibit a new home within one-half mile of an existing facility. These dispersal requirements apply also to correctional homes and those serving persons recuperating from the effects of drugs of alcohol, mental illness, or physical disability.

Density limits are as follows:

Population	Number of Homes
1,000 or fewer	1
1,001 - 9,999	1 for every 2,000
10,000 - 49,999	1 for every 3,000
50,000 - 249,999	1 for every 10,000
250,000 -	1 for every 20,000

A municipality's governing body may issue a variance to allow additional group homes.

Nebraska's law (S. 18-1744-1747, Neb. Rev. Stat., 1980 Suppl.) became effective July 19, 1980.

Nevada

A law enacted in May, 1981 (Chapter 154, Laws of 1981) is designed to remove obstacles imposed by zoning ordinances that prevent mentally retarded persons from living in normal residences.

In any ordinance adopted by a city or county, the definition of single-family residence must include a home in which six or fewer unrelated mentally retarded persons live with one or two additional persons as houseparents or guardians, who also need not be related to each other or any of the retarded persons.

The law does not prohibit a definition that allows more persons to live in the house, nor does it prohibit regulation of commercially operated homes.

New Jersey

Under a new law (Chapter 159, Section 40:55D, Laws of 1978), passed November 21, 1978, community residences for the developmentally disabled are a permitted use in all residential districts.

A conditional use permit may be required if the community residence houses more than six persons, excluding staff.

A conditional use permit may be denied if the proposed residence would be located within 1,500 feet of an existing residence; or if the number of developmentally disabled and mentally ill persons living in existing community residences exceeds 50 persons or 0.5 percent of the municipality, whichever is greater.

A community residence for the developmentally disabled is defined as a facility licensed under P.L. 1(&&, Chapter 433 (C. 30:11B-1 et seq.) providing food, shelter and personal guidance under such supervision as required, to not more than fifteen developmentally disabled or mentally ill persons who require temporary or permanent assistance in order to live in the community.

These residences include, but are not limited to, group homes, half-way houses, intermediate care facilities, supervised living arrangements, and hostels.

New Mexico

All state-licensed or state-operated community residences for the mentally ill or developmentally disabled serving ten or fewer persons now are considered a residential use of property for zoning purposes and permissible in all residential zones, including single-family particularly.

New York

A procedure for site selection of community residential facilities became effective on September 1, 1978. The provisions are found in new section 41.24 of the mental hygiene law (Chapter 468, Laws of 1978), enacted July 6, 1978.

The law covers any community facility operated or subject to licensure by the Office of Mental Health or Office of Mental Retardation and Developmental Disabilities that provides a supervised residence for four to fourteen mentally disabled persons.

Consistent with the legal precedent established in City of White Plans v. Ferraioli (1974), a community residential facility is defiend as a "family unit."[19]

1. A sponsoring agency that plans to establish a facility must send a written notice of intent to the municipality's chief executive officer.

   The agency may recommend one or more sites that meet the requirements of the program.

The notice must describe the nature, size, and community support requirements of the program.

The notice of intent is a condition precedent to issuance of an operating certificate. A certificate issued without compliance with the notice of intent requirement is null and void, and continued operation may be enjoined.

2. The municipality has 40 days after receiving the notice to (1) approve one of the sites recommended by the sponsoring agency; (2) suggest one or more suitable sites, or an area; or (3) object on the basis of overconcentration that would substantially alter the nature and character of the area.

   Prior to responding, the municipality may hold a public hearing.

   The response is sent to the sponsoring agency and the commissioner.

   If the municipality does not respond within 40 days, the sponsoring agency may establish a residence at a site recommended in its notice; or, if none is recommended, at site it selects.

3. If the municipality approves a site recommended by the sponsoring agency, the sponsoring agency must try to establish a facility at the approved site.

   If the sites or areas suggested by the municipality are satisfactory as to nature, size, and community support, and are not already overly concentrated with community residential facilities, the agency must try to establish its facility at one of the sites or within the area designated by the municipality.

   If the sponsoring agency notifies the municipality that the suggested sites are unsatisfactory, the municipality has 15 days to suggest alternative sites or areas.

4. If the municipality objects to establishing a facility therein on grounds of overconcentration, or the sponsoring agency objects to the area(s) suggested by the municipality, or if the municipality and agency cannot agree upon a site, either one may request an immediate hearing before the commissioner to resolve the issues.

   The hearing must be conducted within 15 days of the request.

5. The commissioner must make a determination within 30 days of the hearing.

   The commissioner must sustain the objection if he determines that the nature and character of the area would be substantially altered.

6. The commissioner's decision is subject to review if sought within 30 days of the determination.

North Carolina

Chapter 168 of the General Statutes was amended, effective June 12, 1981, to allow family care homes for handicapped persons in all residential districts of all political subdivisions.

"Handicapped person" is defined as one with a temporary or permanent physical, emotional, or mental disability including, but not limited to, mental retardation, cerebral palsy, epilepsy, autism, hearing and vision impairments, emotional disturbances, and orthopedic impairments. Mentally ill persons who are dangerous to others, as defined in General Statutes 122-58.2(1)b, are not included.

"Family care home" is defined as a home with support and supervisory personnel that provides room and board, personal care, and habilitation services in a family environment for not more than 6 resident handicapped persons.

Political subdivisions may not require a conditional or special use permit, special exception, or variance from a zoning ordinance.

However, they may prohibit a family home from locating within a one-half mile radius of an existing family care home.

Any restriction, reservation, condition, exception, or covenant in any subdivision plan, deed or other instrument pertaining to the sale, lease, or use of property that would allow residential use of the property, but prohibit its use as a family care home, is expressly declared void as against public policy.

Ohio

Family care homes of no more than eight persons with developmental disabilities are permitted in all residential zones.

Group homes for nine to sixteen persons with developmental disabilities who require personal care and supervision may locate in all residential zones, except they may be excluded from planned unit development districts. A special exception or use permit may be required.

"Developmental disability" is defined as the federal law, the Developmentally Disabled Assistance and Bill of Rights Act (Public Law 94-103).

> "Developmental disability" means one that originated before age 18, can be expected to continue indefinitely, constitutes a substantial handicap to the person's ability to function normally in society, and is attributable to mental retardation, cerebral palsy, epilepsy, or autism, and any other condition closely related to mental retardation because it results in similar impairment of general intellectual functioning or adaptive behavior or requires similar treatment or services.

Rhode Island

Whenever six or fewer retarded children or adults reside in any type of residence in the community, they are to be considered a family and all local zoning requirements are waived. This law was approved May 13, 1977.

South Carolina

Under Act 449 of 1978 (April 4, 1978), homes approved or licensed by a state agency or department providing twenty-four hour care to no more than nine mentally handicapped persons shall not be excluded by local zoning ordinances from residential areas. These homes are construed to comprise a natural family.

No new license can be granted by the department if it would contribute substantially to an excessive concentration of facilities within the municipality or county. In determining whether to issue a license, the department must consider the population, size, land use plan, availability of services, and number and size of existing facilities in the jurisdiction.

The zoning law (Act 653 of 1976) was again amended by legislation effective June 13, 1983. The amendment requires the appropriate state agency or department, or the private entity operating the home under contract, to give prior notice to the local governing body administering the zoning laws of the exact site of the proposed home and the individual representing the agency, department, or private entity for site selection purposes.

If the local governing body objects to the selected site, it must, within 15 days of receiving notice, notify the site selection representative and appoint a representative to assist in selecting a comparable alternate site and/or structure.

The two representatives select a third mutually agreeable person. The three have 45 days to make a finding final site selection by majority vote. If no selection has been made within the time limit, the entity establishing the home shall select the site without further proceedings. No variance or special exception is required. Furthermore, no one may intervene to prevent the establishment of such a community residence without reasonable justification.

Prospective residents of the homes must be screened by the licensing agency to insure that placement is appropriate, and the licensing agency must conduct reviews of the homes at least every six months to promote the rehabilitative purposes of the homes and their continued compatibility with their neighborhoods.

Tennessee

Senate Bill 894 (and its companion House Bill 777), which became law in April, 1978, expressly declares it the legislative purpose to remove any zoning obstacles that prevent mentally retarded or physically handicapped persons from living in normal residential surroundings.

A single-family residence includes any home in which eight or fewer unrelated mentally retarded or physically handicapped persons reside, and may include two additional persons acting as houseparents or guardians who need not be related to each other or to any of the physically handicapped or mentally retarded persons living in the home.

Utah

Under a law passed by the legislature in March 1981, a residential facility for handicapped persons is permitted in any municipal or county zoning district, subject to a conditional review process, except a district zoned exclusively for "single - family dwelling use." This term means that occupancy by more than one family is prohibited.

The facility must conform to all applicable health, safety, and building codes and be capable of use without structural alteration that changes the residential character of the structure. The use permitted is nontransferable and terminates if the structure is devoted to another use, or if it fails to comply with relevant health, safety, and building codes.

The governing body of each municipality and county, under locally adopted criteria, is required to adopt zoning ordinances that allow, through conditional use permits, residential facilities for handicapped persons within districts zoned exclusively for single-family dwelling use. The ordinances may establish a 1-mile dispersal limit.

Persons being treated for alcoholism, illness, or drug abuse are ineligible for placement in a residential facility for handicapped persons. Placement is voluntary and shall not be part of, or in lieu of, confinement, rehabilitation, or treatment in a custodial or correctional type institution.

"Handicapped person" is given the functional definition of the federal developmental disabilities law (P.L. 95-602).

A "residential facility for handicapped persons" is defined as a single-family dwelling structure that is occupied on a 24-hour daily basis by 8 or fewer handicapped persons in a family-type arrangement under the supervision of houseparents or a manager.

Vermont

By virtue of a new law (24 V.S.A. 4409(d)), effective March 24, 1978, it is public policy in Vermont that developmentally disabled and physically handicapped persons shall not be excluded by municipal zoning ordinances from the benefits of normal residential surroundings. Additionally, it is state policy to avoid excessive concentration of group residences for developmentally disabled or physically handicapped persons with in a municipality, or any part of it.

A state licensed or registered community care or group home serving not more than six developmentally disabled or physically handicapped person is a permitted single-family residential use of property subject to the qualification that it cannot locate within 1,000 feet of another such home.

Virginia

The Virginia statute (s.15.1-486.2, Code) declares it to be state policy that the mentally retarded and other developmentally disabled persons should not be excluded by local zoning ordinances from the benefits of normal residential surroundings.

It is also state policy to encourage and promote dispersion of residences for these persons to achieve optimal assimilation and mainstreaming. To this end, the number of group homes and their location must be proportional to the population and population density within the state.

The statute states that local zoning regulations shall provide for family care, foster, or group homes serving the mentally retarded or other developmentally disabled persons, not related by blood or marriage, in appropriate residential zoning districts. Group homes for eight or fewer persons are permitted in all residential neighborhoods.

Conditions imposed to insure compatibility with other permitted uses may not be more restrictive than those on other dwellings in the same zone, unless the conditions are necessary to protect the health and safety of the residents.

West Virginia

A group residential facility for eight or fewer persons with developmental disabilities, and not more than three supervisors, may be located in all but single-family or duplex-family zones. Conditional or special use permits, special exceptions, or variances are prohibited except in single-family or duplex-family zones.

Only one facility may be located on the same block face within a municipality or within 1,200 feet, measured from front door to front door, in areas outside a municipality. The facility must be licensed by the Department of Health.

"Developmental disability" is functionally defined, as in the federal developmental disabilities law (P.O. 95-602).

The West Virginia law (Chapter 8, Section 24-50b, and Chapter 27, Section 17, Code 1931, as amended, effective June 30, 1980) declares void as against public policy and restrictions, conditions, exceptions, reservations, or covenants in any subdivision plan, deed, or other instrument relating to the transfer, sale, lease, or use of property that would prohibit its use as a group residential facility.

A bill (S.B. 381) was introduced in the Senate on February 1, 1984, which would permit group homes for the developmentally or behaviorally disabled of up to 8 residents and 3 staff in single-family or duplex zoning districts. "Behavioral disability" is defined as a disability attributable to a severe or persistent mental illness, emotional disorder, or chemical dependency, and that results in substantial functional limitations in self-direction, capacity for independent living, or economic self-sufficiency.

Wisconsin

Wisconsin's law (Chapter 205, Laws of 1977, effective March 28, 1978) applies to all community living arrangements, defined as a facility licensed, operated, or permitted by the Department of Health and Social Services and classified as a child welfare agency, group foster home for five to eight children, or community-based residential facility. Day care centers, nursing homes, general and special hospitals, and prisons and jails are not covered.

The law sets both dispersal and density limits. However, the agents of a facility may apply for an exception to either requirement, which may be granted at the discretion of the municipality. The dispersal requirement is 2,500 feet. Two facilities may be adjacent if the municipality authorizes it and if both comprise essential elements of the same program.

Community living arrangements are permitted in any city, town, or village up to a total capacity of 25 persons, or one percent of the municipality's population, whichever is greater. In cities of the 1st through 4th classes, the density limit applies by aldermanic district. Existing facilities are "grandfathered," but count in the total.

Community living arrangement with a capacity of from one to eight persons may locate in any residential zone. Arrangements with a capacity of from nine to fifteen persons are permitted in all but single- or two-family zones. A facility of this capacity may apply for special permission to locate in a single- or two-family zone; municipalities must make procedures available to enable facilities to request permission. Living arrangements with a capacity of sixteen or more persons may apply for special permission to locate in residential zones.

A licensed foster family for from one to four children, which is the primary domicile of a foster parent, is a permitted use in all residential zones and is not subject to the dispersal or density limit. Foster homes operated by corporations, child welfare agencies, churches, associations, or public agencies, however, are subject to these limits.

Community living arrangements are subject to the same building and housing ordinances, codes, and regulations of the municipality or county as similar residences in the area.

A municipality may make an annual determination of the effect of the living arrangement on the health, safety, or welfare of the residents of the community. If it finds that a threat is posed, it may order the operation to close unless special zoning permission is obtained. The order is subject to judicial review. At the determination, the community living arrangement may be represented by counsel, present evidence, examine and cross-examine witnesses. It is entitled to thirty days' notice of the hearing.

A licensee must attempt to resolve complaints informally. If efforts fail, the licensee must inform the party of the formal complaint procedure. Formal complaints are filed with the county public welfare department unless the county designates the Department of Health and Social Services to receive them.

Wisconsin successfully defeated four attempts to erode its law. Amendments would have exempted community living arrangements housing more than two offenders, or persons on probation or work release from prison, or facilities operated directly or indirectly by the Division of Corrections.

A caveat: an abortive effort to circumvent the law was made by using contracting to control the location of facilities. A community board attempted to require applicants to obtain the approval of the county supervisor before it would issue the purchase of service contract. This was subsequently modified to limit the county supervisor before it would issue the purchase of service contract. This was subsequently modified to limit the county supervisor's power to prior review and comment.

Comparison and Contrast**

The statutes of Arizona, California, Colorado, Delaware, Maryland, Maine, Michigan, Tennessee, and Wisconsin all provide that state-licensed group home for a limited number of handicapped persons are to be considered a residential use of property for zoning purposes, and a permitted use in all residential zones, including single-family.[25]

New Mexico's law differs in that the above provision is permissive rather than mandatory. Group homes "man be considered in residential use of property for zoning purposes and may be (a) permitted use in all districts in which residential uses are permitted generally..."[26]

Arizona, Minnesota, and Ohio differentiate between two categories of group homes according to the number of residents. The smaller are a permitted single-family residence; the larger are a multi-family use, to be located in areas designated for multi-family dwellings, such as apartments.[27]

Wisconsin also differentiates among categories of community living arrangements, according to capacity. Those with a capacity of eight or fewer may locate in any residential zone; none to fifteen, in all but single- or two-family zones, but may apply for special permission to locate in these zones; sixteen or more, may apply for special permission to locate in residential zones.

The Virginia law requires local zoning regulations to provide for group homes in appropriate residential zoning districts, but does not define the work appropriate. Arizona, Rhode Island, and South Carolina's statutes designate group home residents a family. New Jersey's law prohibits discrimination between children who are members of single families by virtue of blood, marriage, or adoption and nonrelated children placed in single-family dwellings known as group homes.[28]

Louisiana permits community homes for six or fewer persons, plus two supervisory staff, in residential districts zoned for multiple-family living, but not in single-family zones. Similarly, West Virginia allows group homes for persons with developmental disabilities in all zones except single-family and duplex-family districts. In Utah, a residential facility for handicapped persons is permitted in any municipal or county zoning district except districts zoned exclusively for single-family dwelling use.

Disability Categories

Eight state statutes expressly refer to developmentally disabled persons. The Colorado law defines developmentally disabled persons as those with cerebral palsy, multiple sclerosis, mental retardation, autism, and epilepsy. Under New Mexico law, a developmental disability is one

** For Chart comparing and contrasting provisions of state zoning laws, see Appendix p. 4.

attributable to mental retardation, cerebral palsy, autism, or neurological dysfunction that requires treatment or habilitation similar to mental retardation. Delaware adds physical impairment to New Mexico's definition. Arizona, Louisiana, Ohio, Utah, and West Virginia adopt the definition in the federal developmental disabilities law.[29]

Maine's law covers persons with mental handicaps or developmental disabilities, as does the Virginia statute, which refers to "mentally retarded and other developmentally disabled persons" without defining "developmentally disability."[30]

The Maryland law applies to mentally retarded persons only. West Virginia's law refers to persons with autism, cerebral palsy, and mental retardation.

Vermont's statute applies to "developmentally disabled and physically handicapped persons" without defining "developmentally disabled."

Conditional Use Permits

Nine of the state zoning laws (California, Colorado, Montana, Minnesota, New Jersey, Utah, Virginia, and West Virginia) allow some local control over placement of group homes by permitting local governments to require operators to obtain conditional use permits.[31]

Montana's law does not restrict a municipality or county from requiring a conditional use permit to maintain a group home. Colorado allows regulation of group homes by local zoning boards as long as the regulations did not exclude group homes from any residential district.[32]

Because conditional use permits may be a means of avoiding the intent of state law to allow group homes in residential neighborhoods, Arizona and Michigan allow only conditional use permits that do not differ from those required of dwellings of similar density in the same zone.[33]

California, Minnesota, and Virginia allow more restrictive conditions on group homes by ordinance and regulation only where necessary to protect the health and safety of the residents.[34]

In Utah, a residential facility for handicapped persons is permitted in any municipal or county zoning district, subject to the conditional review process, except a district zoned exclusively for single-family dwelling use. The governing body of each municipality or county, under locally adopted criteria, is required to adopt zoning ordinances that allow, through conditional use permits, residential for handicapped persons in districts zoned exclusively for single-family dwelling use.

West Virginia prohibits conditional use permits in all but single-family and duplex-family residence zones.

In Louisiana, some local control is allowed by requiring site approval by the local planning commission and/or the local governing authority.

Dispersal Requirements

Eighteen (or 60 percent) of the 28 state zoning laws and that of the District of Columbia contain dispersal requirements. Minnesota's is the smallest: 300 feet between facilities unless a conditional use permit is granted. Colorado requires 750 feet between facilities; Louisiana and Vermont, 1,000 feet; Arizona, a 1,200 foot radius, and North Carolina a one-half mile radius.

Maine and New Jersey imposes a 1,500 foot radius limit. In Michigan the 1,500 foot limit prevails unless permitted by local ordinance, except in cities over 1 million population where the limit is 3,000 feet. Wisconsin requires 1,500 feet between facilities unless permitted by local exception.

The District of Columbia sets a limit of 1,000 feet or 500 feet, subject to special exceptions, differentiating on the basis of type of zone and number of occupants of the facility.

Nebraska sets a limit of 1,200 feet unless the municipal governing body grants a conditional or special use permit. A metropolitan class city may establish by ordinance a one-half mile limit.

Delaware imposes a 5,000 foot radius requirement.

West Virginia's limit is one per block in a municipality, and 1,200 feet, from front door to front door, in areas outside a municipality.

Utah allows municipalities or counties, by ordinance, to establish a 1-mile dispersal limit.

Density Limits

In New Jersey density is restricted to 50 persons or .5 percent of the municipality's total population.

Wisconsin's limit is 25 persons, or 1 percent of the population, whichever is greater.

Nebraska controls density as follows:

Population	Number of Homes
fewer than 1,000	1
1,001 - 9,999	1 for every 2,000
10,000 - 49,999	1 for every 3,000
50,000 - 249,999	1 for every 20,000 population

The municipal governing body may issue a variance to allow additional group homes.

Restricted Covenants

Indiana (code Section 16-10-21) and Carolina (Section 168-23, General Statutes) expressly declare restrictive covenants void as against public policy.

The "Site Selection of Community Residential Facilities" law (New York Mental Hygiene Law, Section 41,34, Laws of 1978, Chapter 468) established the right of mentally disabled citizens to form family units and to live in single-family residence in residential areas.

Increasingly, restrictive covenants have been used in attempts to circumvent the Site Selection Law. The New York Supreme Court, Appellate Division, 2nd Department, in Crane Neck Association, Inc. v. N.Y.C./Long Island County Services Group (March 7, 1983) held that restrictive covenants used against community residences for the disabled are invalid as against public policy, including the Site Selection Law.

The case arose out of the establishment of a community residence for eight mentally disabled adults in Crane Neck, Long Island, by the Office of Mental Retardation and Developmental Disabilities. The land that was going to be leased had a restrictive covenant in the deed stating that the premises or any building could not be used for other than single-family dwellings and outbuildings. The issue before the court was whether the community residence was a single-family.

In Tufell v. Kaen, the Appellate Division, 1st Department (June 4, 1979, aff'd 77 AD 2d 519) ruled that group residences for the mentally disabled, although deemed statutory single families for purposes of the Site Selection Law, were not single families for purposes of restrictive covenants. It is expected that these contrary holdings will be submitted to the New York Court of appeals for decision on the enforceability of restrictive covenants.

The New York General Obligations Law (Section 5-331 forbids the use of restrictive covenants to discriminate in the occupancy or ownership of property on the basis of race, creed, color, national origin, or ancestry. The New York State Commission on Quality of Care for the Mentally Disabled has advocated an amendment that would add language including community residential facilities for the mentally disabled, as defiend in the Site Selection Law, to the prohibited discriminations. This would obviate a decision by the New York Court of Appeals.

Words to the Wise

The following blueprint for legislative drafters is recommended by Chandler and Ross.[35]

1. A brief declaration of the need for normalizing the lives of developmentally disabled persons.

2. A description of how integration in residential zones meets this need.

3. A statement emphasizing that uniform integration can occur only through state legislation and that, therefore, the matter is one of statewide concern. (The relevant constitutional provisions and preemption cases of the appropriate jurisdiction should be consulted for suggested language.)

4. A provision making the statuted expressly applicable to charter cities. (The home rule provisions of the state constitution should be consulted.)

5. A requirement that the foster home be a permitted use in all residential zones, including, but not limited to, single-family zones.

6. A grant of authority to the local entity to impose reasonable conditions on use.

7. The type of community residential facility referred to in the statute, including the number of residents served and the range of handicaps which they possess, should be based on the licensing classification of small group homes in the particular jurisdiction.

I would add to this list a caveat that negates overconcentration.

Constitutional Challenges

The Ohio State Supreme Court dealt a death blow to Ohio's 1977 zoning law in Garcia v. Siffrin Residential Association, July 30, 1980. The zoning law prohibited political subdivisions from developing zoning ordinances that would discriminate against family homes for eight or fewer persons in single-family residential areas or group homes for eight or fewer persons in single-family residential areas or group homes for nine to sixteen persons in multiple-family residential districts.

The court ruled that the proposed facility could not be included in the definition of "family" in the Canton zoning code, since it was not a single housekeeping unit for the sharing of rooming, dining, and other facilities, but was primarily for the purpose of training and educational life skills.

Moreover, the zoning ordinance was a reasonable exercise of police power granted to municipalities by the Ohio constitution and could not be preempted by state law.

In a related decision, Brownfield v. State of Ohio, the Ohio Supreme Court reversed a court decision that a privately operated, state-owned facility is automatically exempt from municipal zoning restrictions.

The state had purchased a single-family residence to use as a halfway house for patients discharged from a state psychiatric facility. The house was to serve as a home for five residents who would do their own shopping, cooking, and household chores. Daily supervision would be provided by a nonprofit agency, but the state would be responsible for furnishing and maintaining the home.

Neither the state nor the nonprofit agency had sought zoning approval for the proposed halfway house, located in a single-family residential district. Unless a direct statutory grant of immunity exists, the court held, the condemning or landowning authority must make a reasonable attempt to comply with the zoning restrictions of the political subdivision.

In a third case (Carroll v. Washington Township Zoning Commission), the court held that a home in an area zoned for agricultural and single-family residential use would violate township zoning ordinances if it continued to be used as a foster home for five or six adolescents.

Plaintiffs, foster parents, renovated a thirteen-room house to accommodate several foster children in addition to their own. During the first year plaintiffs averaged seven children living with them at a time for periods reneging from six months to a year. The Ohio Youth Commission arranged a separate contract for each child.

Ruling that plaintiffs' home was not a "one family residential dwelling unit," the court declared that the children were transients rather than an integrated family. Other factors influencing the decision were the separate contracts and the rules and regulations of the Ohio Youth Commission and those of the plaintiffs.

A dissenting opinion pointed out that the factors relied upon by the majority could serve to bar any foster family, even with only one foster child, from an R-1 district. Furthermore, any foster care program is temporary, since it is a means of caring for children until they can return to their maternal parents, or an adoptive home can be found.

Louisiana

The 1983 amendment to the Mental Retardation laws (LSA 28: 381(5), was challenged in a suit by four residents of a Baton Rouge subdivision to enjoin Special Children's Foundation, Inc. and Special Children's Village, Inc., from operating a group home for the mentally retarded at a residence purchased by the foundation. The plaintiffs alleged violation of building restrictions placed on the property in 1962. The restrictions limited buildings on the lots to one detached single-family dwelling not exceeding two and one-half stories in height and a private garage or carport for not less than two nor more than three cars.

Louisiana's Mental Retardation Law, Chapter 4 of Title 28 (LSA R.S. 28: 380-444), was amended and re-enacted by Acts 1982, No. 538, effective August 1, 1983). As amended, LSA 28: 381(5) provided that "community homes for six or fewer mentally retarded persons, with no more than two live-in staff, shall be considered single-family units having common interests, goals, and problems."

The Children's Foundation contended that Chapter 4 of Title 28 is a valid exercise of the state's police power and thus supersedes the building restriction. On the other hand, plaintiffs argued that to apply the statutory definition of community home to the building restriction impaired the obligation of their contract in violation of the state constitution.

Reversing the lower court, the appellate court held that the legislative definition of community homes is reasonably related to the protection and promotion of a public good and thus within the police power of the state. The court specifically declared that "the public at large will be greatly benefitted by the integration of handicapped individuals into the mainstream of society."

Connecticut

A Norwich, Connecticut citizens group challenged the 1979 state zoning law requiring community-based residences for six or fewer retarded persons to be treated as single-family homes for zoning purposes. The citizens group seeks to halt efforts of the State Department of Mental Retardation to establish a group home in a large Norwich residence, alleging that the state zoning law is an invalid exercise of legislative power with respect to the home-rule doctrine.

Other Legal Challenges

Alabama

Two court contests have halted construction of group homes for persons with developmental disabilities in the communities of Huntsville and Hartselle.

In Board of Adjustment, City of Huntsville vs. Civitan Care, Inc. and Huntsville Group Homes, Inc., the city contested two co-located group homes, one supported by developmental disabilities funds. Huntsville contended that the group homes were not single-family dwellings and were transitory in nature.

Civitans Care, Inc., leased two buildings to a nonprofit corporation established to provide handicapped and mentally retarded persons with housing and other services. The lessees proposed to establish for developmentally disabled citizens two residential programs designed to provide a family-like occupancy. Residents would receive training and participate in day programs to acquire community living skills. Each duplex, one for women and one for men, would house six developmentally disabled adults plus resident managers. Funding would be provided by the state and, when possible, by the residents themselves. Meals would be furnished by staff with help from the residents.

The local zoning board denied a request that the two homes be considered "family-only occupancy" and also rejected an alternative request for a variance. The lower court upheld the zoning board.

The Alabama Civil Court of Appeals affirmed, citing the ruling in City of Guntersville v. Shull, 335 So. 2d 361 (Ala. 1978) as controlling. In the Shull case, a comparable living arrangement in a town with a similar zoning ordinance was held to be a rooming or boarding house and thus not a permissible use within a family-only zone. The applicable ordinance defined a boarding home as a place where "for compensation meals are provided for three or more persons." The fact that compensation for residents would be received was a factor in deciding that the group home residents would not

constitute a family (Civitans Care, Inc. v. Board of Adjustment of the City of Huntsville, 437 So. 2d 540 (Ala. Civ. App. 1983).

Volunteers of America, a nonprofit organization, was ready to proceed with construction of a $225,000 HUD Section 202-funded group home on a vacant lot in Hartselle, a site once occupied by a church. The group home, one of five to be built across the state, was to be part of a program operated and managed by the Volunteers of America through contracts with the Department of Mental Health and Medicaid. The plan was for a home that would also serve as a training center for nine developmentally disabled adults, who would receive 24-hour daily supervision by professional staff.

Unable to decide whether the home met P-3 zoning ordinances, the City Planning Commission referred the matter to the Zoning and Adjustment Board, which is responsible for ruling on zoning questions and considering variances. At issue was whether the center could be defined as an "apartment complex."

Louisiana

The Mental Retardation and Developmental Disability Law (R.S. 28: 381) was invoked in two 1983 zoning cases with mixed results. The law declares that community homes providing for six or fewer mentally retarded or developmentally disabled individuals, with no more than two live-in staff, are considered single-family units having common interests, goals, and problems.

In one case, the district judge upheld the municipality, and the decision is being appealed by the local Association for Retarded Citizens. In the second case, the district judge ruled that the legislation allowed the establishment of three community homes in single-family zones.

Texas

The City of Cleburne, Texas has contested the right of Cleburne Living Centers, which operates group homes for persons who are mentally retarded, to open a home for 13 people. The home is located on property zoned to permit development of a hospital, nursing home, apartment, fraternity or sorority house, but excludes a "hospital for the feeble-minded" or for alcoholics, drug addicts, or the "insane."

When the property owner applied to the city council for a special use permit for the home, she was told that the home would be classified as a "hospital for the feeble-minded" because it would be providing 24-hour care. Cleburne Living Centers, which operates three smaller homes in neighboring communities, and the property owner appealed the decision, contending that it was discriminatory. The U.S. District Court refused to hear the case, holding that the city's ordinance was rational.

On appeal, the U.S. Circuit Court, Fifth Circuit, reversed, declaring that laws affecting people with mental retardation discriminate as do those that treat the sexes differently. Noting that persons who are mentally retarded have been subjected to a history of unfair and often grotesque mistreatment,

the court pointed out that the ordinance did not require a special use permit for supervised nursing homes for the elderly.

Cleburne city officials have appealed to the U.S. Supreme Court, which is expected to rule by July, 1985. Thirty-one states (62 percent of the nation) and the District of Columbia have state zoning legislation that allow small group homes to be treated as single-family residences. Texas does not have state zoning legislation.

Virginia

Home owners in two Chesterfield County communities sought to block construction of two homes for mentally retarded adults. Each home was designed for four adults and one full time counselor. Omega Corporation, a nonprofit agency, owned the two lots and planned to build the homes.

The home owners argued that their subdivision covenants restricted housing to single-family residences. The Omega Corporation, on the other hand, contended that the covenants dealt with the type of buildings to be constructed and whether they were used for residential purposes. Omega further argued that "family" should be interpreted broadly; otherwise three unrelated school teachers or a family with a live-in maid would not be allowed to live in the neighborhood.

A 7-1 decision of the Virginia Supreme Court affirmed the lower court's ruling for the home owners, declaring that group homes for mentally retarded adults cannot qualify as single-family housing if a counselor lives with the group. Though the court agreed that "family" should be interpreted broadly, it stated that the presence of counselors and their supervision of the occupants would convert what might otherwise have been a single-family use into a facility.

Property Value: Up or Down?

Establishment of a group home often encounters neighborhood resistance, the fear being that it will adversely affect property values and alter the character of the neighborhood. Numerous studies (Columbus, Ohio; Decatur, Illinois; Green Bay, Wisconsin; Lansing, Michigan; Philadelphia; San Francisco; Washington, D.C.; White Plains, New York, and New York State) allay this fear.[36]

The studies were conducted in upper middle class, single-family, multiple family, low income housing, apartment complexes, and in white, black, aged, and mixed neighborhoods. In Lansing, Michigan, the average sales price after the group home was established was equal to or higher than for the control neighborhood.[37] Of 365 Philadelphia property transactions tracked in a six-block radius of a number of facilities, 59 percent occurred before the facility opened and 41 percent after. There was no decline in property values; but there was some indication that property values increased less as distance from the facility increased, suggesting that a facility may be a positive factor in upgrading a neighborhood.[38]

An Ohio study found that property values in neighborhoods with group homes had the same increase or decrease in market price as homes in similar neighborhoods; that close proximity to a group home did not significantly alter the market value of a property, nor did adjacent properties decline in value; and that group homes did not generate more neighboring property turnover than in other similar neighborhoods.[39]

None of the variables altered the fact that the facilities contributed to the economic stability of the neighborhood. The facilities were quiet, well-maintained homes. There was no evidence of neighborhood saturation, incompatibility with neighboring properties, visible or annoying residents, or decline in neighborhood character.

Community Acceptance

The factors were identified in another Ohio study[40] that indicated the degree of acceptance that may be anticipated when opening a group living arrangement in a residential area. These factors are:

1. Number of similar homes in a neighborhood

   Group homes located close to other group homes given an appearance of saturation.

2. Transience of the neighborhood

   Homes located in semi-transient neighborhoods are less likely to encounter opposition than those in more stable neighborhoods.

3. Amount of traffic

   Homes located on streets, avenues, or boulevards with moderate traffic experience less opposition then those on lightly or heavily traveled streets.

4. Previous use of home

   Homes previously occupied by a nuclear family are more likely to be opposed than those previously used in another manner, or homes constructed by the operator.

5. Age of neighbors

   Younger neighbors are apt to exhibit a more positive attitude toward the group living arrangement and the people living there.

6. Number contributing to household income

   Households with one economic provider are more apt to view the group home negatively than those with more than one provider.

7. Length of time in neighborhood

   Those who have lived longest in a neighborhood are more apt to view the group home negatively.

8. Parking

   Group homes with parking lots on the property are more likely to encounter opposition than those that use on-street parking.

9. Resident Gender

   Group homes with all females or both males and females encounter less opposition than all-male homes.

10. Staffing

    The more staff employed, the more positive the attitude of neighbors.

Hundreds attended a day long District of Columbia City Council oversight hearing in the fall of 1984 to determine how the city's three-year-old experiment with community-based facilities was working. Neighbors expressed strong support for group homes in their communities and recommended creating more of them.

Attitude change was evident on the part of Cleveland Park residents, who had vigorously opposed the opening of a home for retarded persons in their neighborhood three years earlier. They attended the hearing to voice support for and goodwill toward their group home neighbors.

Community Education

A Neighborhood Opinion survey conducted by the University of Dayton[40] in neighborhoods with and without group homes found general agreement that mentally retarded persons have a right to live in the community and that a group home is preferable to an institution. Almost 85 percent were uncertain how well the home would be maintained, and 70 percent whether property values would be affected; over 80 percent were undecided about staff quality; and 75 percent did not know whether residents would have a negative effect on the neighborhood. More than 40 percent thought staff and residents should have more contact with people in the neighborhood, but more than 41 percent were undecided.

This survey underscores the need for greater community education. "A Kit for Community Acceptance of Group Homes," prepared by the Wisconsin Council on Developmental Disabilities, has proved very effective in fostering successful community living arrangements.

The New Jersey Developmental Disabilities Council and the New Jersey Division of Mental Retardation have initiated a statewide media campaign to increase public understanding and acceptance of group homes for persons with developmental disabilities. Laddin and Company, Inc., New York, a private advertising agency, will donate its time and talent to develop the campaign.

The campaign is the result of a White House initiative to encourage cooperation between the public and private sectors. New Jersey is one of the first states to pioneer the use of a model based on the arrangement existing between federal agencies and the National Advertising Council since World War II. Production costs for the New Jersey group home campaign will be paid by the New Jersey Development Disabilities Council and the Division of Mental Retardation.

Wind Up

The richness of America's diversity is one of its strengths. Humankind's goals will be achieved through divergent means. Courts have paved the way for the Solons. The torch is returned now to the advocates who must select from this experience the appropriate actions to translate public policy into the reality of a finer society.

FOOTNOTES

1 City of Pasadena v. Charleville, 215 Cal. 384, 10 P. 2d 745 (1932); Horwirth v. City of Fresno, 74 Cal. App. 2d 44d, 168 P. 2d 767 (1946).

2 Pacific Tel. and Tel. Co. v. City and County, 51 Cal. 2d 766 336, P. 2d 514, 517 (1959); Hellmer v. Superior Court, 48 Cal. App. 140, 191 P. 1001 (1920).

2a Grace Strano Youngblood and Gerard J. Bensberg, Planning and Operating Group Homes for the Handicapped, Research and Training Center in Mental Retardation, Texas Tech. University, Lubbock, Texas (1983), p. 72.

2b Ibid.

3 American Bar Association, Developmental Disabilities State Legislative Project, (Washington D.C., 1978). See also R. Hopperton, Zoning for Community Homes: A Handbook for Local Legislative Change 3 (Ohio State University Law Reform Project 1975).

4 American Bar Association, Developmental Disabilities State Legislative PRoject, (Washington, D.C., 1978). See also Comment, "Exclusionary Zoning and Its Effect on Group Homes in Areas for Single-Family Dwellings," 24 Kan. L. Rev. 677, 679 (1976). See also Belle Terre B. Boraas, 416 U.S. 1, 94 S. CT. 1535 (1974) (Dictum).

5 American Bar Association, Developmental Disabilities State Legislative Project, (Washington D.C., 1978). See also J.A. Chandler and S. Ross, Jr., "Zoning Restriction and the Right to live in the Community," note 7, at 313 in M. Kindred, ed., The Mentally Retarded Citizen and the Law (1976).

6 Ibid.

7 D. Hagman, California Zoning Practice 299 (1969)

8 Van Sicklen v. Browne, 15 Cal. App. 3d 122 126, 92 Cal. Rptr. 786, 788 (1971)

9 P. Stickney, ed., Gaining Community Acceptance: A Handbook for Community Residence Planners 24 (1976).

10 Ibid, p. 21

11 Ibid.

12 Colo. Const. Act. 20, 6

13 Professional Firefighters, Inc. v. City of Los Angeles, 60 Cal. 2d 176, 191, 384 P. 2d 158, 168, 32 Cal. Rptr. 830, 840 (1953).

14 Berger v. State of New Jersey, 71 N. J. 206, 364 A. 2d 993 (1976); Nectow v. City of Cambridge, 277 U.S. 183 (1928); Village of Euclid v. Ambler Realty Co., 272 U.S. 365 (1926).

15 So. Burlington County N.A.A.C.P. v. Tp of Mt. Larel, 322 So. 2d 571 (Fla. App. 1975), aff'd 332 So. 2d 610 (1976).

16 Letter of October 26, 1977 from Mary C. McGee, Legal Counsel, Massachusetts Developmental Disabilities Council.

17 Mass. Adv. Sh. (1977) 1022.

18 Ibid.

19 34 N.Y. 2d 30, 357 N.Y.S. 2d 449 (1974).

20 National Center for Law and the Handicapped, Community Living: Zoning Obstacles and Legal Remedies (South Bend, Indiana, 1978).

21 Ibid.; No. 116571 (Calif. Super. Ct., 1975).

22 Public Act Nos. 394-396, Public Acts of 1976 (January 3, 1977)

23 543 P. 2d 173 (1975).

24 Ibid.

25 American Bar Association, Developmental Disabilities State Legislative Project (Washington, D.C., 1978).

26 Ibid.

27 Ibid.

28 Ibid.

29 Ibid.

30 Ibid.

31 Ibid.

32 Ibid.

33 Ibid.

34 Ibid.

35 J. Chandler and S. Ross, Jr., "Zoning Restrictions and the Right to Live in the Community" in the President's Committee on Mental Retardation, The Mentally Retarded Citizen and the Law (1976) 336.

36 Michael Dear, "Impact of Mental Health Facilities on Property Values," Community Mental Health Journal (1977).

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37 The Influence of Halfway Houses and Foster Care Facilities upon Property Values, City of Lansing Planning Department (Lansing, Michigan: 1976).

38 Michael Dear, "Impact of Mental Health Facilities on Property Values," Community Mental Health Journal (1977).

39 Community Acceptance: A Realistic Approach, Montgomery County Board of Mental Retardation and Developmental Disabilities (Dayton, Ohio: 1981).

40 Community Acceptance of Group Homes in Ohio, Association for the Developmentally Disabled (Columbus, Ohio: 1981).

41 Community Acceptance: A Realistic Approach, op. cit.

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APPENDIX

STATE ZONING LEGISLATION

STATE	LAW (31)
Arizona	Title 36, Chap. 5.2, Revised Statutes
California	Welfare and Institution Code 5115-5116
Colorado	Revised Statutes, 30-28-115, 27-10.5-133
Connecticut	Chapter 124, Sec. 8-3e, Conn. Code
Delaware	Chapter 390, Laws of 1979, amending Title 9, Chaps. 26, 49, 68 and Title 2, Chap. 3, Delaware Code
District of Columbia	Zoning Comm. Regs., 7/9/81, pursuant to D.C. Code Sec. 5-413 et seq.
Florida	Section 163, 3177(6)(f), Fla. Stats.
Hawaii	Chapter 46, Hawaii Rev. Stat., 1982 Suppl.
Idaho	Chapter 65, Title 67, Sections 6530-6532
Indiana	Section 16-10-2.1, Ind. Code
Iowa	Chapters 358A.25 and 414.22, Code of 1983
Louisiana	Chapter 4, Title 28, Sections 381, 475-478, Rev. Stats.
Maine	Chapter 640, Laws of 1982
Maryland	Art. 50A, Ann. Code, 1977 Replacement Vol. and 1977 Suppl.
Michigan	Public Act Nos. 394-396 Public Acts of 1976 (January 3, 1977)
Minnesota	Chapter 60 11.2702
Montana	Revised Code 11.2702
Nebraska	Section 18-1744-47, Revised Statutes, 1980 Suppl.
Nevada	Chapter 154, Laws of 1981

STATE ZONING LEGISLATION -- Continued

STATE	LAW (31)
New Jersey	Chapter 159, 40:55D, Laws of 1978
New Mexico	House Bill 472 (April 7, 1977)
New York	Chap. 468. Sec. 41.34, Laws of 1978
North Carolina	Chapter 168 of General Statutes, as amended by Senate Bill 439, 1981 Session (June 12, 1981)
Ohio	Senate Bill 71 (August 1, 1977)
Rhode Island	Senate Bill 918 (May 13, 1977)
South Carolina	Section 1A of Act 653 of 1976, as added by Act 449 of 1978 (April 4, 1978) as amended June 13, 1983
Tennessee	Senate Bill 894 and House Bill 777 (April 1978)
Utah	Sections 10-9-2.5 and 17-27-11.5, Utah Code Ann. 1953
Vermont	H. 698 (March 24, 1978) 24 V.S.A. 4409(d)
West Virginia	Chapter 8, Section 24-50b and Chapter 27, Section 17, Code, 1931 as amended
Virginia	Chapter 648, Laws of 1977; Code 15.1-486.2
Wisconsin	Chapter 205, Laws of 1977 (March 28, 1977)

STATE ZONING LEGISLATION

STATE	NONE
Alabama	
Alaska	Not presently an issue
Arkansas	
Georgia	Home rule; local issue
Illinois	Home rule
Kansas	
Kentucky	Home rule
Massachusetts	
Mississippi	Not an issue
Missouri	
New Hampshire	Local level
North Dakota	
Oklahoma	Not an issue
Oregon	
Pennsylvania	
South Dakota	Local level. Opted not to-more harm than good
Texas	Equal housing opportunities; mental retardation bill of rights
Washington	
Wyoming	

KANSAS PLANNING COUNCIL

on DEVELOPMENTAL DISABILITIES SERVICES

JOHN KELLY
Executive Secretary

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State Office Building
Topeka, Kansas 66612-1570
VOICE-TTY
(913) 296-2608

January 29, 1987

To: Representative Ivan Sand, Chairperson
Members of the House Committee on
Local Government

From: John Kelly, Executive Secretary
Kansas Planning Council on
Developmental Disabilities Services

Re: House Bill 2063

Attached is a letter from Kathy Pendergast of Olathe, Kansas, who cannot be here to testify on behalf of House Bill 2063. She is employed, lives in a group home and asks for your favorable recommendation out of committee on House Bill 2063.

/bls

cc: Representative Vincent Snowbarger

Attachment 14
Cont.
1-29-87

January 27, 1987
751 N. Nelson
Olathe, Kansas 66061

Members of Kansas Legislature

Dear Sir:

My name is Kathy Pendergast. I am 34 years old, and have lived in a group home in Olathe for 3½ years. Before that I lived at home with my parents and four brothers, three of whom are retarded also.

We need more group homes in Johnson County for people like myself and my brothers. I want to continue to live in a group home because I like the family atmosphere, and will always need guidance, support and companionship.

I have worked since 1971, and for the past 5½ years have been employed as a Home Aide at Juvenile Hall in Olathe. I can not drive a car, so transportation is a big problem for me. Being in a group home in Olatne makes it possible for me to get to and from work.

A group home provides me with shelter, food, guidance and security. I am getting older and feel I need this type of living place. I am paying my own way because I work, but I will always need the extra support this kind of home gives me.

I ask you to vote Yes for Bill #2063 - Group Home Zoning, so I can continue to contribute to my community because I have the home environment I need, and so homes can be provided for others who need them.

I would like you to come and visit my home in Olathe.

Sincerely Yours,

Kathy Pendergast