

Mapleton City Council Staff Report

Meeting Date: April 30, 2013

Applicant: George E. Harper

Location: 727 E 1100 S (Parcel # 46:274:0017)

Prepared by: Sean Conroy, Community Development Director

Public Hearing Item: Yes

Zone: A-2

REQUEST

Consideration of a request to convert an existing single family dwelling into a Residential Facility for Persons with a Disability located at 727 E 1100 S and a request for a reasonable accommodation to allow up to 16 residents in the proposed facility.

BACKGROUND AND PROJECT DESCRIPTION

The project site consists of a two acre lot that is developed with a single family residence. The residence has approximately 10,598 square feet of finished floor area and six covered parking spaces. The applicant is requesting to convert the existing residence to a Residential Facility for Persons with a Disability. The facility would include a maximum of 16 residents and five to six employees. The facility would provide treatment for individuals with past addiction to alcohol and drugs, but would focus primarily on prescription drug addictions. The applicant plans to offer 30, 60 and 90 day treatment programs (see attachment "1").

The applicant is also requesting a reasonable accommodation to allow more non-family related residents to occupy the building than would otherwise be allowed by City code. This project requires review by the Planning Commission and final approval by the City Council.

Planning Commission Review: The Planning Commission held a public hearing on March 14, 2013 and continued the application with a request for additional information. Attachment "2" includes a summary of the information requested by the Commission followed by a staff response. On April 11, 2013 the Planning Commission recommended approval of the project to the City Council. The Planning Commission meeting minutes are also included in attachment "2".

Public Comments: Numerous written and oral comments have been received regarding this application (see attachment "3"). One of the written comments included a list of 34 points. Staff has provided a response to each of these points (attachment "4"). Just prior to the final preparation of this staff report a substantial amount of new information was submitted by Mapleton Fair Care, LLC dated April 22, 2013. Staff will be prepared to comment on this new material at the hearing. Based on staff's review of this information, the recommendations in this report may change.

EVALUATION

Federal & State Code: The Federal Fair Housing Amendments Act of 1988 (FHA) prohibits discrimination based on race, color, religion, sex, national origin, disability or family status. Under the FHA, a person with a disability is *"any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such impairment; or is regarded as having such an impairment."* A physical or mental impairment includes drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

One type of discrimination that is prohibited is the refusal to make "reasonable accommodations" in rules, policies, practices, or services when such accommodations may be necessary to afford a person with a disability the equal opportunity to use and enjoy residential housing. The FHA does not allow exclusion of residential facilities based upon fear, speculation, or stereotype about a particular disability or persons with disabilities in general.

At the time the application was submitted Utah Code Section 10-9a-520 (attachment “6”) required each jurisdiction to adopt an ordinance for residential facilities for persons with a disability. Each ordinance must comply with Title 57, Chapter 21, Utah Fair Housing Act, and the FHA. Utah code also required that such facilities be allowed as a permitted use in any zone where residential dwellings are permitted.

All residential care facilities are required to obtain a license through the Utah Department of Human Services and comply with the regulations outlined in Rule R501-19 of the Utah Administrative Code (attachment “5”). These regulations include requirements for the management of the facility, the professional qualifications of employees, the physical environment of the facility, etc. Attachment “5” also includes an outline of the licensing process that the applicant would be required to follow with the state. The state requires an applicant to submit a policies and procedure manual that outlines how the facility will comply with Rule R501-19 and other applicable regulations. The state performs periodic audits to ensure that the facility is in compliance with the adopted policies and procedures manual, and has the authority to take enforcement action if violations occur.

City Code: Mapleton City Code (MCC) chapter 18.84.370 (see attachment “6”) was adopted in 2012 in accordance with Utah code and federal law. Residential facilities are listed as a permitted use in any zone where residential dwellings are allowed. Below is a summary of the review process outlined in the MCC followed by a brief staff response.

MCC 18.84.370.B(4)

b. Recommendation; Approval: Prior to commencing the maintenance or operations of a residential facility for persons with a disability, the owner/operator of such a facility must first obtain a recommendation from the planning commission and final approval from the city council. In order to obtain such approval, the owner/operator of the facility must establish that:

(1) The facility complies with existing zoning regulation for the desired location, including:

(A) Compliance with building, safety, and health regulations applicable to similar structures permitted within the zone, including obtaining permits relating thereto;

Response: The existing residence was issued a building permit in 1980. The applicant is proposing some renovations to bring the structure up to current building and fire code. The City’s Building Inspector and Fire Inspector have reviewed the proposed plans and determined that they are in substantial compliance with building, safety and health regulations. Some additional detail may be required when plans are actually submitted for a building permit. A special condition has been added requiring the applicant to obtain a building permit prior to operation.

(B) Compliance with site development standards including parking, traffic, landscape, utility use, and other standards applicable to similar structures permitted within the zone without structural or landscape alterations that would fundamentally change the structure's residential character and/or nature;

Response: MCC chapter 18.84.270 outlines the on-site parking requirements for various uses within the City. This chapter does not identify an on-site parking requirement for residential facilities. However, MCC Chapter 18.84.270.G states the following:

“Required Parking; Uses Not Mentioned: The required off street parking for any building, structure or use of land of a type which is not listed in this section shall be determined by the planning commission. The planning commission shall be guided as much as possible by comparison with similar uses which are listed.”

Staff is recommending that the requirements associated with a rest home be required, which are one space for each five patient beds and one space for each two employees. This would result in four spaces for the residents and three spaces for the employees, for a total of seven spaces. The site has six covered parking spaces and ample room on the crescent driveway and main driveway for additional parking. The applicant has indicated that the residents will not be permitted to have a vehicle. The applicant has also indicated the he is willing to accept a special condition that no employee or visitor will park on the street.

No changes to the structure are proposed or required that would fundamentally change the structure's residential character and/or nature. The structure will continue to appear as a single-family residence.

(C) Compliance with zoning requirements limiting the maximum number of unrelated occupants that are applicable to similar structures permitted within the zone.

Response: MCC chapter 18.08.145 allows up to three unrelated individuals, who live and cook together, to occupy a single family residence. However, Utah Municipal Code section 10-9a-505.5 has been recently amended and prohibits the City from establishing a maximum number of unrelated individuals that can occupy a single family dwelling to anything less than four. Therefore, if no accommodation is given to the applicant, up to four residents would be permitted, not three as currently stated in City code.

The applicant is requesting up to 16 unrelated individuals. The applicant is requesting a reasonable accommodation to allow this exception to the MCC. This issue is addressed in the "**Reasonable Accommodation**" section of the staff report below.

(2) The facility has obtained and maintains appropriate state agency licensure for the facility, as provided herein;

Response: The state requires business license and zoning approval from the City prior to issuing a state license for the facility. As mentioned previously, attachment "5" outlines the state licensing requirements. A special condition has been added to address this issue.

(3) Placement of disabled individuals in the facility shall be on a strictly voluntary basis and a part of, or in lieu of, confinement, rehabilitation, or treatment in a correctional facility;

Response: This requirement has been added as a special condition of approval.

(4) No individual shall be admitted to the facility as a resident who has a history of criminal conviction, is a convicted sex offender, has been convicted of selling or manufacturing illegal drugs, is currently using drugs or alcohol, and/or who is a direct threat to the health and safety of other individuals and/or of causing substantial physical damage to the property of others. In determining whether proposed residents are likely to represent a direct threat as outlined above, the planning commission and city council shall consider, on the basis of objective evidence:

(A) The nature, duration, and severity of the risk;

(B) The probability that potential injury will actually occur; and

(C) Whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk;

Response: The requirement outlined above that the facility will not admit individuals with a history of criminal conviction, convicted sex offenders, that have been convicted of selling or manufacturing illegal

drugs, or are currently using drugs or alcohol will reduce the potential of any public threat. Also, the strict policies and procedures requirements imposed by the Department of Human Services, and its oversight of the facility, will also help reduce the risk of health and safety threats.

The applicant has indicated that potential residents would be interviewed by a marketing director, clinical director, and others as deemed appropriate. The screening would include a background check. State law does not allow the City to perform background checks unless investigating a case against, or in the process of arresting a resident of the facility. Once a facility has been approved, it appears that most cities rely on the state to ensure that proper screening procedures are being followed.

Some cities do have procedures for ensuring that the facilities are in compliance with city code. Orem City for example requires the applicant to submit quarterly affidavits indicating that residents are being properly screened to meet city standards. Lindon City performs an annual review of its residential care facilities. If problems have occurred, the conditions associated with the facility can be modified to address those problems. Staff is supportive of the approach both Lindon and Orem have taken and has added a special condition to address this issue.

(5) The residential facility will not fundamentally alter the character and nature of the subject residential neighborhood.

Response: The surrounding neighborhood consists of large lots varying from approximately one acre to nearly five acres in size. The existing residence is approximately 10,598 square feet in size, is situated on a two acre lot, and has ample on-site parking. No substantial alterations to the existing residence are required, and the property will continue to appear as a single family residence. No changes are proposed that would commercialize the property such as surface parking lots, industrial lighting, outdoor facilities, etc.

Concerns have been raised by the public related to the impact of parking and traffic on the neighborhood and regarding how the proposed facility could fundamentally alter the zoning scheme of the A-2 Zone. The applicant anticipates that during normal business days that approximately six vehicles would be parked on site from employees with one van used to transport the residents. On visitor days, an additional eight vehicles are anticipated by the applicant. If these estimates are correct, the existing on-site parking would be more than adequate. Parking and traffic can be reviewed during the Council's annual review of this permit. If it is determined that the applicant's estimates were understated, the Council could amend the permit to address this issue further.

Reasonable Accommodation: MCC chapter 18.84.370.B(5)(b) indicates that *“Any person or entity who wishes to request a reasonable accommodation shall make a written request for the same to the planning commission for recommendations and city council for final approval.”* The purpose of a reasonable accommodation is to give individuals with a disability accommodation in rules, policies, procedures, etc. to ensure equal access to housing and to facilitate the development of housing for people with disabilities in accordance with federal and state statutes.

Mapleton City Code (MCC) Chapter 18.84.370.B(5)(b) requires the applicant to describe why the requested accommodation is necessary to afford the disabled an equal opportunity to use and enjoy residential housing. The applicant has stated that 16 residents are required to provide an ideal setting for group therapy as outlined in attachment 1. The applicant has also included a letter from a licensed clinical social worker (LCSW) and doctor or psychology (PsyD) supporting this claim (see attachment “1”). The Council should determine whether the applicant has submitted sufficient objective evidence to support the request for 16 residents.

The applicant has also stated that 16 residents are required in order for the facility to be profitable, and therefore provide access to housing for people with disabilities. This may be a legitimate reason to request an accommodation but should also be accompanied by objective evidence if it is the sole basis for granting the accommodation. The Planning Commission requested that the applicant provide information to support this claim. The applicant has not done so. However, staff notes that if the Council determines that the applicant has properly justified the requested accommodation based on nonfinancial reasons, the financial viability of the facility would not need to be justified in order to grant the accommodation.

Below is a summary of the criteria outlined in MCC chapter 18.84.370.B(5) for the review of reasonable accommodation requests followed by a brief staff response.

(1) In considering whether a proposed accommodation is reasonable and necessary, the planning commission and city council shall:

(A) Consider the impact of the requested accommodation on the neighborhood in light of existing zoning and use, including any impact on neighborhood parking, traffic, noise, utility use, safety, and other similar concerns, and whether any such impact fundamentally alters the character and/or nature of the neighborhood and/or existing zoning regulations;

Response: See response to (5) above on page 4.

(B) Consider whether, based on objective evidence and on an individualized basis, a particular accommodation would pose a direct threat to the health or safety of other individuals and/or would result in substantial physical damage to the property of others. In determining the likelihood of direct threat or substantial damage, the planning commission shall consider:

(i) The nature, duration, and severity of the risk;

(ii) The probability that the potential injury will actually occur; and

(iii) Whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk;

Response: See response to (4) above on page 3.

(C) Consider whether granting the accommodation would impose any significant or undue expense and/or administrative burden on the city.

Response: Staff has not identified any significant or undue expenses or administrative burdens that would result from the requested accommodation. Staff consulted with various City departments, as well as with other municipalities to ensure that undue financial expenses or administrative burdens were not anticipated. See attachments “2” for more information on this subject.

OPTIONS

1. Approve the application including the reasonable accommodation of 16 residents with special conditions.
2. Approve the application including the reasonable accommodation of less than 16 residents with special conditions.
3. Continue the application with a request for additional information.
4. Deny the application.

STAFF RECOMMENDATION

Approve the application for the conversion of an existing single family dwelling into a Residential Facility for Persons with a Disability located at 727 E 1100 S and a request for a reasonable accommodation to allow up to 16 residents in the proposed facility with the attached special conditions.

SPECIAL CONDITIONS

1. Prior to operation, the applicant shall obtain a building permit and comply with all building and fire code requirements related to the proposed facility.
2. Prior to operation, the applicant shall obtain a business license from the City.
3. Prior to operation, the applicant shall obtain a license from the Utah Department of Human Services. This license must remain active throughout the life of the facility.
4. Placement of disabled individuals in the facility shall be on a strictly voluntary basis and not part of, or in lieu of, confinement, rehabilitation, or treatment in a correctional facility.
5. No individual shall be admitted to the facility as a resident who has a history of criminal conviction, is a convicted sex offender, has been convicted of selling or manufacturing illegal drugs, is currently using drugs or alcohol, and/or who is a direct threat to the health and safety of other individuals and/or of causing substantial physical damage to the property of others. The owner or operator of the facility shall conduct an individualized assessment of each person who desires to become a resident of the facility to determine if such person would constitute a direct threat prior to allowing occupancy of the facility by such person. The assessment shall be performed and certified by an independent medical doctor, licensed clinical social worker (LCSW), licensed professional counselor (LPC), licensed psychologist or licensed psychiatrist through a facility that is licensed and approved by the Utah Department of Human Services Division of Licensing or other equivalent licensing board of another state as a provider for substance abuse. The person performing the assessment shall perform a background check for each potential resident.
6. Prior to the occupancy of the facility and at least quarterly thereafter, the person or entity licensed or certified by the applicable regulatory state agency shall certify in a sworn affidavit to the City that based on the individualized assessment performed for each resident, no person will or does reside in the facility whose tenancy would likely constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others. The affidavit will also state that no individuals have been admitted to the facility as a resident who has a history of criminal conviction, is a convicted sex offender, has been convicted of selling or manufacturing illegal drugs, and/or is currently using drugs or alcohol. Upon request by the City, the applicant shall provide documentation to support the affidavit(s).
7. The applicant shall immediately discharge any resident who uses illegal drugs or alcohol while residing at the facility.
8. The approval of this use is nontransferable and terminates upon transfer of ownership of the facility. The approval may also be revoked if any use other than that approved is operated on site and/or if the facility is not in compliance with Mapleton City Code chapter 18.84.370.B.
9. The property shall maintain the appearance of a single family residence.

10. The City Council shall review this permit on an annual basis to ensure that the facility is in compliance with city standards and the conditions of this permit. The Council may amend the conditions of the permit if it is determined that new conditions are needed to ensure compliance with city standards.

11. No on-street parking shall be permitted by the employees, residents or visitors of the facility.

ATTACHMENTS

1. Application materials.
2. Planning Commission summary and meeting minutes.
3. Public correspondence.
4. Response to public comments.
5. State licensing information.
6. City and State code citations.

Attachment “1”

Application Materials

G.E. (Bud) Harper
727 East 1100 South
Mapleton, Utah 84664

April 9, 2013

Mapleton City Corporation
125 West Community Center Way
Mapleton, Utah, 84664

Attn: Sean Conroy, Community Development Director:

The purpose of this letter is to provide the city with size comparisons for residential treatment facilities in Utah and Salt Lake counties. The square footage and lot size were determined from public county records. I believe the figures represent a fair sampling of facilities around the counties and the figures also reflect that having sixteen residents for the proposed facility is consistent with other cities. The proposed facility is approximately 10,586 sq. ft. on 2.0 acres.

- Beverly Taylor Sorensen Home –4388 Harvest Creek Way, Riverton
 - 8 beds – 4806 sq. ft. – 0.42 acres
- West Jordan Latency Home –4655 W. 8450 South, West Jordan
 - 8 beds – 4318 sq. ft.– 0.25 acres
- Northwest Passage –432 N. 300 West, Salt Lake City
 - 10 beds – 3872 sq. ft. – 0.18 acres
- Anthem House –376 S. 200 West, Orem
 - 12 beds - 2526 Sq. ft. – 0.28 acres
- Discovery Academy –1834 S. Sandhill Rd., Orem
 - 12 beds – 4260 sq. ft. – 0.88 acres
- Youth Health Associates –836 N. 1375 West, Provo
 - 16 beds - 4180 sq. ft. – 0.22 acres
- Willow Tree Recovery –145 S. 1300 West, Pleasant Grove
 - 16 beds - 8500 sq. ft. – 2.0 acres

- The Journey –8072 s. Highland Dr., Cottonwood Heights
 - 16 beds - 6643 sq. ft. – 0.98 acres

- Gateway –2487 S. 700 East, Salt Lake City
 - 16 beds – 5209 sq. ft. – 0.59 acres

- Helping Hand Association –974 E. South Temple, Salt Lake City
 - 16 beds –5278 sq. ft. – 0.31 acres

- The Ark of Little Cottonwood –2919 E. Granite Hollow Dr., Sandy
 - 16 beds – 8137 sq. ft. – 1.78 acres

- Wasatch Recovery –8420 Wasatch Blvd., Cottonwood Heights
 - 16 beds – 5642 sq. ft. – 3.39 acres

- Draper Home –13073 Wheatfield Way, Draper
 - 16 beds – 3617 sq. ft. – 1.09 acres

- Vista at Dimple Dell Canyon –10209 Dimple Dell Rd., Sandy
 - 16 beds – 9667 sq. ft. – 1.63 acres

I hope the above information is beneficial to those involved with this proposal. Please get back to me if you would like to further discuss anything addressed in this letter.

Sincerely,



G.E. (Bud) Harper

G.E. (Bud) Harper
727 East 1100 South
Mapleton, Utah 84664

March 21, 2013

Mapleton City Corporation
125 West Community Center Way
Mapleton, Utah, 84664

Attn: Sean Conroy, Community Development Director:

The purpose of this letter is to respond to concerns addressed during the March fourteenth, 2013 city Planning meeting in which the request to begin a residential treatment program at 727 E. 1100 South was discussed. Below is a list of the concerns and the responses:

- 1) What type of traffic impacts could be anticipated (food services, other deliveries, employees, visitors, etc.)?
 - a) FOOD SERVICE – Food service will not be required. All food supplies will be purchased and brought in by staff members. No outside food preparation is required.
 - b) OTHER DELIVERIES – No other deliveries are required. In addition, all residents will be using traditional tableware and a trash compactor will be used to compact trash. Therefore, no special needs are required for trash pick-up.
 - c) EMPLOYEES – Six employees during daytime hours. Two employees during the night.
 - d) VISITORS – Visitors could include contracted individuals such as a doctor or psychiatrist to see a resident. Family visitors could be expected on scheduled weekly family days. Not all residents will have visitors; residents in the first thirty days of the program are not allowed visitors for program purposes. Additionally, since some residents may come from out of state, their families may not be able to visit. The number of visitors' vehicles would likely be a maximum approximately eight. Therefore, the likely number of people visiting could be up to ten or twelve. In the unlikely scenario that the number of cars exceeded the capacity of the various driveways, no parking will be allowed on the street. Any additional vehicles would be required to park at a public parking area such as the church or school parking lot and be picked up. Contract employees will not be seeing residents on those appointed days.
 - e) RESIDENTS – From a community standpoint, it makes little difference as to the number of residents, as none are allowed to bring or drive their personal vehicles. In addition,

residents may not enter or leave the premises without being driven in a vehicle by a staff member.

- 2) How many people could be expected on a daily basis, including family visiting days?
Refer to 1 (d).
- 3) Method by which screening occurs?
 - a) Interviews will be conducted by the Marketing Director, Clinical Director, and others who are deemed as appropriate. The screening process includes a thorough assessment of the client, an interview, a questionnaire and a background check. Upon request, the city may receive patient information, in accordance with HIPAA guidelines.
- 4) What is the potential burden on the city regarding public safety and other staffing issues?
 - a) There are no additional burdens on the city regarding either public safety or other staffing issues.
- 5) Why are sixteen beds required?
 - a) The most commonly used approach for alcohol and substance abuse addiction is Group Therapy. The ideal size of an interactional therapy group is comprised of eight to twelve individuals. Groups commonly used in substance abuse treatment are as follows:
 - 1) Psychoeducational group - Teaching group. The ideal size for this group is fifteen to twenty individuals.
 - 2) Skills development group – Provides clients with the ability to identify triggers such as anger which may be their cause for using. This group assists clients to cope and deal with those issues. The ideal size for this group is eight.
 - 3) Cognitive behavior group – Thought process group. Helps individuals identify their thoughts and actions that may be the cause of their substance abuse. The ideal size for this group is eight to ten.
 - 4) Support group - Forum which allows individuals to discuss their abstinence and share personal experience with one another regarding how to manage substance free daily living. The ideal size for this group is eight.
 - 5) Interpersonal process group – This group focuses on major issues that contribute to addiction or interfere with recovery i.e. sexual abuse or cultural issues. This group would likely be a homogeneous group. Homogeneous groups are groups in which members are alike in the some way other than their dependency problem. Such groups may include individuals of a particular gender, age group or psychological issue. The ideal size for this group is eight.

This facility will consist of sixteen beds providing for eight women and eight men. This will allow the necessary diversity for the heterogeneous group (mixed on all levels i.e. by age, gender, culture, etc.). This also provides for the homogeneous group such as eight women dealing with sexual abuse issues or eight men dealing with anger management issues. Additionally, sixteen beds are ideal because some of the individuals will not be able to attend group for various reasons, for example, individual stage of recovery, medical appointment, personal crisis, not suited for particular group, etc. This information is based on information found in the following journal entries: "What Is The Ideal Size For A Therapy Group?" by Paul Grantham, Julia Budnick and Peter Musham and "Psychoeducational Group Therapy For Alcohol and Drug Dependent Recovery" by K. Chandiramani, MD; B.M. Tripathi, MD.

- b) Profitability – Sixteen beds are necessary for the following reasons:
 - 1) This facility is more than twice the size of other facilities having sixteen residents. The costs of running and maintaining a residence of approximately eleven thousand square feet on two landscaped acres far exceeds that of a much smaller residence on less acreage.

- 2) As the same with any business the facility must be profitable. Limiting the capacity of the facility to anything less than sixteen beds would place the profitability into question and would likely eliminate the interest of any investor (invited to offset construction costs associated with meeting ADA, fire and health requirements).
- 3) Because the residents enter and leave the program on random dates, there will often be gaps leaving less than sixteen residents in the facility at any given time, thereby limiting profitability. Limiting the facility to something less than sixteen beds would seriously impact the profitability and could make the facility unprofitable.
- c) Federal guidelines allow for sixteen beds in a residential treatment facility in a single family dwelling, providing minimal space and bathroom requirements for residents are met.
 - d) State guidelines allow for sixteen beds in a residential treatment facility in a single family dwelling, providing minimal space and bathroom requirements for residents are met.
 - e) State licensing guidelines allow for sixteen beds in a residential treatment facility in a single family dwelling, providing minimal space and bathroom requirements for residents are met.
 - f) Residential treatment programs in an industrial code building are not limited to any specific number, providing minimal space and bathroom requirements are met.
 - g) The courts have ruled that alcoholics and addicts benefit therapeutically from living in homes together in residential neighborhoods.
 - h) All of the various groups, regardless of how they are divided, benefit from the dynamic of having sixteen residents, as opposed to a smaller number.
 - i) There is a tremendous need for additional beds for residential treatment facilities. There are facilities that have as many as twenty people on waiting lists for a bed.
 - j) Having sixteen beds vs., fewer number, makes little difference to the community, since all offsite activities will be arranged as group outings, traveling in one single van.

Thank you for the opportunity to address these concerns. Please get back to me if you would like to further discuss anything addressed in this letter.

Sincerely,



G.E. (Bud) Harper

ROSEMONDE MALONEY, LCSW, PsyD

Mr. Bud Harper
727 E. 1100 South
Mapleton, Utah 84664

March 27, 2013

Dear Bud,

Per our conversation, below is information that you requested regarding the ideal size for group therapy:

1. *American Group Psychotherapy Association, (2007)* guidelines indicate the general size of group to be between seven to ten participants.
2. Irvin Yalom, PhD, *The Theory and Practice of Group, (2005)*
Studies with four or less members experience:
 - a) limited interaction
 - b) passivity
 - c) Negative group image
 - d) poor group development – groups should start out bigger to account for dropouts
3. Most research stipulates five to 15 members, with six to eight the ideal number for an effective group.
Battegay, (1974), Cole, (1998), and Howe & Schwartzberg, (1995).

If the group is too large clients may be reluctant or uncomfortable in expressing themselves and may not participate, and if too small, they become bored due to the lack of variety.

Six to eight group members can establish interpersonal relationships and remain interested in each other.

Stein & Cutler, *Psychosocial Occupational Therapy; A Holistic Approach*

Based on the above information, sixteen beds would be an ideal number for your residential treatment center. Although, it may appear that you would have sixteen residents participating,

the reality is this would allow for day to day activities that occur which may prevent residents from attending group on any particular day such as; discharges, admits, sick call or other miscellaneous appointments. In essence, the group size would be approximately ten to twelve members as determined to be an "ideal" number.

As discussed, your program will incorporate various types of groups to ensure a well-balanced program. One being, *homogeneous*, this particular group is composed of individuals who experience some sort of similarity, i.e., gender. If your facility was to be limited to less than sixteen, given credence to what is stated above regarding allowances for non-participation, the groups may not be successful because it would be difficult to facilitate with too few individuals. Should there be sixteen, (eight women and eight men), again taking into account those who aren't able to attend, the group process would be able to remain constant.

The literature on group size is limited and continues to be redirected to Yalom as the forerunner, and forefather of group psychotherapy. In his work, *The Theory and Practice of Group*, (2005), he clearly indicates that the most suitable number for the group process is eight members.

I hope you find this information to be beneficial. I wish you great success in the future development of your residential treatment center.

Sincerely,

R. Maloney, LCSW, PsyD

Rosemonde Maloney, LCSW, PsyD

G.E. (Bud) Harper
727 East 1100 South
Mapleton, Utah 84664

February 21, 2013

Mapleton City Corporation
125 West Community Center Way
Mapleton, Utah, 84664

Attn: Sean Conroy, Community Development Director:

The purpose of this letter is to provide the city with information regarding the proposed project. Below is a summary of how the facility will operate and a request for reasonable accommodation to allow up to 16 residents on the site.

1. Type of assisted living that is proposed.
 - Residential treatment for alcohol and drug addiction. Our primary focus will be related to prescription drug addiction.
2. Number of residents.
 - The maximum number of residents allowed in a single family residence for this purpose is sixteen, based on meeting state minimal size requirements. The proposal is for sixteen residents. This residence far exceeds minimal requirements for that number.
3. Type of treatment that clients will receive.
 - The program is 30, 60 or 90 days, based on the twelve step program and will be administered on an individual basis depending on individual needs. Treatment with appropriate medication, individual and group therapy, faith-based learning, experiential learning and brain retraining are some of the treatment components.
4. Number of employees.
 - Five to six daytime employees. Two nighttime employees, one male, one female.
5. Description of how residents will be vetted by the facility.
 - This residence is not equipped for detox. Therefore, all clients must successfully complete detox prior to entering the residence, as appropriate.
 - The proposal is for adult treatment only. Therefore, all clients must be at least eighteen years of age.
6. Request for Reasonable Accommodation to allow more than three unrelated individuals to occupy the structure.
 - Request to include items identified in code section.
 - A. The applicant shall identify the ordinance or regulation the applicant seeks to have waived or modified.
 - 18.84.370(C) – D.2.a.(3) – Compliance with zoning requirements limiting the maximum number of unrelated occupants that are applicable to similar structures permitted within the zone.
 - B. The applicant shall identify the nature of the disability requiring accommodation.
 - Recovering alcoholics and addicts. Recovering alcoholics and addicts are considered people with disabilities under federal and state fair

housing laws, and are thus entitled to a reasonable accommodation in zoning ordinances.

- C. The applicant shall describe the nature of the requested accommodation
- That a maximum of sixteen residents be allowed to reside in the residence during their recovery program, in accordance with state licensing guidelines.
- D. The applicant shall describe why the accommodation is necessary to afford the disabled an equal opportunity to use and enjoy residential housing.
- The accommodation affords the disabled an opportunity to live with others suffering from similar addictions in a home-like atmosphere where they can work on their individual recovery with the help of licensed professionals.
- E. The applicant shall describe what impact, if any, the applicant perceives that the requested accommodation shall have on the existing neighborhood and whether the requested accommodation is consistent with the character and neighborhood.
- The requested accommodation will have no impact on the neighborhood. Some of the reasons for this are as follows:
 - All clients will be pre-screened prior to acceptance into the program.
 - Clients enter the program of their own free will. Should a client wish to leave the program, the client will be provided transportation to a predetermined location.
 - Clients are not allowed off the property without a staff member.
 - This is an adult program. No minors will be admitted into the program.
 - There is garage parking for six cars. Therefore, most parking will be inside the garages.
 - Clients are not allowed to have a vehicle on the premise.
 - Since clients will be involved in activities tailored to their recovery most of the time, visiting periods are very limited and scheduled. Also, it is anticipated that many clients will be coming from areas outside the state of Utah and, therefore, would have seldom, if any visits.
- F. The applicant shall identify any burden or expense the accommodation would impose on the city.
- The accommodation will not impose any burden or expense to the city.

Item "E" above outlines many of the mitigation factors that will be incorporated into the facility to ensure that the residential character of the neighborhood is protected and maintained.

Thank you for considering this application.

Sincerely,

G.E. (Bud) Harper

Attachment “2”

Planning Commission Summary & Mtg. Minutes

Below is a summary of the information the Planning Commission requested as part of its continuance on March 14, 2013 followed by a staff response.

1. *What type of traffic impacts could be anticipated (food service, other deliveries, employees, visitors, etc.)*

Response: The applicant has indicated that the residents will not be permitted to have vehicles. Therefore, the primary traffic to and from the property will be from the employees. The applicant has indicated that there will be approximately five to six employees during the day and two employees at night. When the

residents are being taken off site for activities or other reasons, they will be transported in a van. It is not anticipated that traffic from the minimal number of employees and/or from the transport of the residents will create any significant traffic impacts in the neighborhood.

The site has six covered parking spaces and two large driveways. The applicant has indicated that all parking needs, even during family visiting days, would be adequately provided on site. In order to minimize any impacts on the neighborhood, the applicant is supportive of a condition prohibiting on-street parking by employees or visitors.

Staff has contacted some residential care facilities to request information on what might be expected as far as food service, maintenance, deliveries, etc. The Telos facility in Orem is a 48 bed facility (note, it is in a commercial zone, not a residential zone). They estimate that they have a carpet cleaning company that comes about once every two months, a company that comes in to clean the commercial oven about every three months and several UPS deliveries a week. Most of the food is purchased by the facility staff.

The Anthem House is a 12 bed facility in Orem that operates jointly with the Telos facility. This facility has no deliveries because of its connection to Telos. It is reasonable to assume that if the two facilities were not related that several UPS deliveries a week would likely occur.

2. *How many people could be expected at the facility on a daily basis, including family visiting days?*

Response: The applicant estimates that on the busiest days, such as family visiting days, that up to twelve visitors could be expected along with the residents of the facility and employees. The applicant has indicated that it is unlikely that every resident of the facility would have family visiting during each visiting day for several reasons. While not likely, it is conceivable that at least on some occasions all 16 residents could have visitors. If it was assumed that all 16 residents had two visitors, along with the six employees, that up to 54 people could be at the facility at one time. Again, the applicant has indicated that he would agree to a condition that no on-street parking would be permitted. The applicant has also indicated that if the existing on-site parking was going to be insufficient on a particular day, that a shuttle service would be arranged.

3. *Method by which screening occurs (both by the applicant and by the City)*

Response: The applicant has indicated that potential residents would be interviewed by a marketing director, clinical director, and others as deemed appropriate. The screening would include a background check. State law does not allow the City to perform background checks unless investigating a case against, or in the process of arresting a resident of the facility. In discussions with other cities, it appears that most cities primarily allow the state licensing process to handle this issue. Once a facility has been approved, most cities are not involved in the screening of residents.

Some cities do have procedures for ensuring that the facilities are in compliance with city code. Orem City for example requires the applicant to submit quarterly affidavits indicating that residents are being properly screened to meet city standards. Lindon City performs an annual review of its residential care facilities. If problems have occurred, the conditions associated with the facility can be modified to address those problems. Staff is supportive of the approach both Lindon and Orem have taken and has added a special condition to address this issue.

4. *Discussion of the potential burden on the city (public safety, other staffing issues)*

Response: The City's police chief contacted the police departments of several cities including Provo, Orem, Alpine, Spanish Fork and Sandy, all of which have residential care facilities within their city limits. None of the police departments for these cities have experienced any significant burden on city resources, nor could they document that facilities have impacted crime rates in the neighborhoods in which they are located. The most common problems that have occurred have been primarily with runaways from youth facilities. As mentioned in #3 above, it appears most cities primarily rely on the state to monitor the facilities once they have been approved.

The City anticipates a slight increase in police patrol activity due to the proposed facility, but nothing that would be classified as a burden. The level of burden on administrative staff would ultimately depend on the conditions imposed by the City Council if the project is approved. Staff is currently recommending that the applicant submit quarterly affidavits indicating compliance with city standards and an annual review of the permit with the City Council. Staff time will be required to follow up on the quarterly affidavits and in preparing reports and information for the annual City Council meeting. However, these responsibilities do not appear to be a significant burden on staff.

5. *More information from the applicant on why 16 is needed*

Response: Mapleton City Code (MCC) Chapter 18.84.370.B(5)(b) requires the applicant to describe why the requested accommodation is necessary to afford the disabled an equal opportunity to use and enjoy residential housing. The applicant has outlined why 16 residents is an appropriate request based on the benefits of group therapy. The applicant has also included a letter from a licensed clinical social worker (LCSW) and doctor or psychology (PsyD) outlining why a request for 16 residents is appropriate (attachment "1"). The applicant has submitted objective evidence that support the request for 16 residents.

The applicant has also stated that 16 residents are required in order for the facility to be profitable, and therefore provide access to housing for people with disabilities. This is a legitimate reason to request an accommodation but should also be accompanied by objective evidence if it is the sole basis for granting the accommodation. The Commission could request that the applicant provide a business pro-forma to support this claim. However, staff notes that if the Commission determines that the applicant properly justifies the requested accommodation based on nonfinancial reasons, the financial viability of the facility would not need to be justified in order to grant the accommodation.

MAPLETON CITY
PLANNING COMMISSION MINUTES
March 14, 2013

PRESIDING AND CONDUCTING: Jared Bringhamst

Commissioners in Attendance: John Gappmayer
Rich Lewis
Golden Murray
Keith Stirling

Staff in Attendance: Sean Conroy, Community Development Director
Brian Tucker, Planner I
Rick Hansen, Chief Building Official
Eric Johnson, City Attorney

Minutes Taken by: April Houser, Executive Secretary

Chairman Bringhamst called the meeting to order at 6:30pm. John Gappmayer led the Pledge and Keith Stirling gave the invocation.

Alternate Commissioner Golden Murray was seated as a voting member this evening.

Items are not necessarily heard in the order listed below.

Item 1. Planning Commission Meeting Minutes – February 28, 2013.

Motion: Commissioner Lewis moved to approve the February 28, 2013 Planning Commission Minutes.
Second: Commissioner Gappmayer
Vote: Unanimous

Item 2. Consideration of a request to convert an existing single family dwelling into a residential facility for persons with a disability located at 727 East 1100 South and a request for a reasonable accommodation to allow for up to 16 residents in the proposed facility.

Sean Conroy, Community Development Director, went over the Staff Report for those in attendance. This request is to convert an existing home into a Residential Care Facility, focusing mainly on drug addictions. They will offer 30, 60 and 90 day intervals. There will be a prescreening before individuals are allowed to enter the facility. This part of the city consists of mainly large estate lots. The residence has 2 covered parking spaces attached to the home, with a 3 car detached garage in the rear of the home. The Federal Fair Housing Act prohibits discrimination based on disability, and drug and alcohol addiction is considered a disability. The State's Department of Human Services requires an extensive Policies and Procedures Manual to ensure these types of facilities meet all state standards, allowing for employment by licensed individuals only. The City Ordinance is in line with the Federal and State statutes for these types of facilities. All building codes would need to be met. The current ordinance allows for 3 unrelated individuals to occupy a home, and the applicant is requesting that to be increased to 16. The applicant

will need to justify if 16 individuals is a reasonable number to have on the property. The Commission is not allowed to discriminate based on the idea that these individuals may be a threat to the surrounding residents. The City has a similar facility called Discovery Ranch which is located in the A2 Zone on Highway 89. Some examples of other facilities similar to this were shown to those in attendance.

Eric Johnson, City Attorney, wanted to address disabilities. Federal laws do not discriminate against disabilities. As a preliminary matter, this is an issue where there can be some very strong feelings. The Commission is to sit as a neutral body this evening. If any members feel strongly one way or the other they should recuse themselves. **Commissioner Lewis** asked if Drug Addiction was a disability, and Eric stated that it was. **Chairman Bringham** stated that because of the sensitive nature of the meeting they would not like any outbursts and would like to keep the meeting professional.

Bud Harper, the applicant, stated that he is aware there is a lot of speculation mixed with fact and fiction. He would like to talk about some of the issues around the facility. The Program Description they will have is an adult program, so no one under the age of 18 would be admitted. All residents will have to complete a detox program before entering the facility. No one is forced to come to this facility, therefore there will be no convicted individuals allowed. The program will be offered for 30, 60 and 90 days, with focus on the 90 day program, since the 90 day program is much more affective. They will open with a variety of addictions and move to a more specific prescription drug addiction facility over time. No one in the program will be walking through the neighborhood. All activities will take place on the property or with the transportation in a van. Drug testing will be administered regularly. If a person knows they are not clean they would self discharge, at which point they would be removed from the program and taken to a predetermined location. No visibility to those in the facility would be seen unless those at the facility were participating in activities outside (i.e. gardening). No vehicles are allowed on the property from the residents at the facilities. There is garage parking for 6 cars; therefore all workers will be parking in these locations. There are two garage spaces on the home and a 4 car detached garage in the rear. Visitation will be limited, and all visitors must be preapproved. Visitation is also limited to family days, and would have visitors around the same time. At any given time there is probably going to be 5 patients with black out days where no one would be able to have visitors or receive phone calls. Contract personnel will not be available during family visits. 16 individuals is the current maximum that is allowed in Residential Treatment Facilities assuming building code regulations are met. The courts have ruled that alcoholics and drug addicts do well in these types of facilities. All groups benefit from the dynamics of a 16 resident facility. There is a tremendous need for these types of facilities from a community standpoint. In reality it makes no difference in traffic since the number of individuals coming to the facility is so spread out. Bud listed a number of similar facilities that have 16 beds located in surrounding areas. He recognizes there is a lot of emotion regarding this issue. He sincerely invites everyone to go visit these facilities and he knows they will feel comfortable with his request. **Commissioner Lewis** asked what the prescreening process is. Bud stated that both a clinical and marketing director will meet with each possible resident and they will have to disclose if they have been arrested. Background checks will be done as well. **Commissioner Stirling** asked what additional work load will be required by the City to ensure all the guidelines are being met with regards to this facility. He stated that one document stated the City Council and staff would be involved in screening, and wondered if that were true. Bud stated that is not the case on an individual basis but they are allowed to visit the facility and do inspections at any time. Sean stated that the Commission and Council are the ones deciding what recommendations and limitations are put on the facility. There would be a doctor that would visit with each patient, and would prescribe any medications that may help with their recovery. Bud Harper would not be allowed to live in the home if this facility is put in. In the future Bud would like to possibly move this facility, allowing him to move back into his home. The success of the business would determine this. **Commissioner Murray** asked what the staff to patient ratio is. Bud stated that there would be one staff member to 8 residents, with one male and one female individual on site during the night hours. This facility would also accommodate

handicap individuals. There will be an electronic means for individuals to get from one level to the other. No employees will live in the home.

Chairman Bringham opened the Public Hearing. **Larry Haines** stated that he is part of Mapleton Fair Care group. This started with individuals who live around Bud Harper's home. It is a non-profit organization. The Federal Government requires all cities to accept drug and alcohol facilities in residential areas. Most communities would act to ensure these facilities are in appropriate locations. Bud Harper sent a letter out to his neighbors last fall. No one in the neighborhood was in favor of it. He told them he would like to take in 16 residents, charging approximately \$10-\$16 thousand per month. It is obvious Bud is looking to make a lot of money. What is wrong with this is consideration for those who are going to live next to this facility. Similar facilities have had higher crime rates in these areas. This type of facility could also affect property values. Neighbors with children would worry about the safety having this facility next to them. Mapleton Fair Care feels strong compassion for drug addicts. They feel sufficient strength in the City Ordinances lacks in regards to these facilities. They want to help the City build the strongest statute possible. They think the City Staff are competent and trying their best for the City. They have carefully studied the situation and sought advice from many individuals. A monster working in the background is always a possibility of a lawsuit. Naturally staff has adopted the most conservative approach. They would ask the Commission deny the proposal allowing time for this type of facility to meet Federal Law. If they do not do this Bud will be operating under a weak law that would not do a sufficient job of protecting the citizens. It is going a little too fast as far as they are concerned.

Rick Maingot submitted to the City some discussion points which speak to a lot of what their questions and concerns are. They understand the Commission has a predicament here. They are not trying to put the City in a bad light. Through their research they feel the city has a way to do this properly. They request denial, feeling 16 individuals are far too many for this neighborhood and situation. The reasonable accommodations are what they are discussing. The need for 16 individuals has to be proven necessary. They feel the burdens the city will take on administratively and financially is an issue. Fundamental character changes to the neighborhood are reasons for denial of these types of facilities. Regulations state they can not be biased based on disability, but it allows the Commission to address if these individuals are a risk. Individually staff can screen those coming in. Rick does not know how the city can do this, but it is listed as something that can take place. Rick feels that Bud does need to have a vision, and that what is being proposed needs to be regulated. Trying to mitigate concerns should take place now, and not made as a direct threat in the future. In conclusion Rick Maingot stated that they have nothing against drug addicts. They do not want to limit their ability to get well. This facility is based off of a financial gain, so obviously Mr. Harper wants the maximum number of residents allowed. Are we allowing equal opportunity to allow equal housing to those adjacent property owners, as we are trying to allow to the applicant. The City needs to protect its citizen. A lower number of residents could still live in the facility. **Deborah Herbert** does not know Bud Harper and is totally independent of anyone here. She is appalled that one man would be allowed to bully them into an amendment to the Residential Care Facility ordinance. She does not feel Mr. Harper's request is considered a reasonable accommodation. Reasonable accommodations might allow for twice the amount of an average single family home, which are currently 4.8 individuals. The Planning Commission should consider the reasonable accommodations to 10 individuals. She lives in a 5,000 square foot home and she could apply tomorrow to put 16 individuals in her home. She referred to this request as a business, which Eric Johnson stated that he did extensive legal research into the Mapleton City Ordinance, and he is not sure that he reads the word business as being a fundamental change from the Utah State Code. He does not know that the one word change fundamentally changes anything. He does not have a problem looking into this, and does not see how this would alter the request before the Commission this evening. **Tara Jacobsen** is located across the street from the proposed facility. She recommends the Planning Commission deny this proposed facility. She does not feel the city has looked into the burden this will add to the city. Mr. Harper's policies only amount to promises and not what is relevant this evening. The increased traffic flow requires additional public safety officers in this area. Parking is also an issue. Increased traffic leads to

increase crime. The city has very minimal criminal activity in this area. One administrative burden to the city is administrative enforcement of code at the proposed facility. Further costs will be incurred by the city for emergency services, along with possible legal burden on the city. The city must consider the possible legal liability. They request the City Planning Commission recommendation denial until a stricter set of restrictions can be provided. **Leola Christensen** would like clarification to disability statement as to if drug addicts are considered disabled only if they have received treatment for their addictions. **Chairman Bringhurst** stated that her statement was true. She would hate to see her agricultural neighborhood change due to this facility. She wonders what would happen if Bud were to sell his home. Sean stated that the business could not be transferred if the home were sold. Mrs. Christensen stated that there will be constant changes of those individuals at the facility. Leola had a concern if the facility started to go downhill after it had been opened and approved. She feels there is a lot that could happen beyond what is being presented by the applicant at this meeting tonight. She wonders what happens to keep things in the same spirit they started with. Eric Johnson asked how long she has lived in her home, which she stated about 17 years. Most property owners in the area have lived there longer than her. **Tyler Jensen** urges the approval of this request. State and Federal Laws required approval of this. He does not want the City to lose a lawsuit. **Denise Maingot** wanted to start by saying she has no issue with Bud on a personal basis. She sat with Bud in his home for over an hour last night. She expressed her concerns as a woman, mother and neighbor. She gave him a list of individuals around her as well. That is the perspective she comes to the Commission with this year. She feels Bud is taking a very casual approach to this facility. Denise does not feel this is the approach the city should take. Mapleton City Code states that no one with any type of criminal history shall be allowed into the facility. She talked with Bud about a year ago. She had mixed feelings about it then, but was willing to listen and learn. She has not had great feedback regarding these types of facilities. She wants to state that she is compassionate to the addicts and those this will affect in the City. Residents will not be on lock down, which Mrs. Maingot felt to be a concern. She felt that 16 people being cared for by 2 individuals is also concerning. The bigger the facility the more risk there is. There is no guarantee that Bud will follow the procedures he lists in his application. She does not believe the city can take this request. She recommends the Commission recommend denial. **Randy Herbert** would like some type of line item for biohazard. He stated there will be biohazard, and Mapleton will be responsible for this. **Marianne Stephens** stated that her comment is based on 19 years of addiction. She lost a son who was addicted to opiate pain killers which led to heroine and other addictions. She observed scores of addicts as they were treated. She volunteers with substance abuse addictions. Addiction is recognized as a disease. It has personalities and characteristics. People who come to treatment centers have progressed to the point treatment are needed in order to contribute the community. Typically they will not be paying for admission to these types of facilities. This money will likely come from other individuals. Most of these individuals will come from desperate parents, and family members desperate to help these individuals. Occasionally an employer will help with these types of costs. Many are given the option to come to these types of facilities rather than going to jail. After the detox they are taken right to treatment. Most of the time these individuals have already set up a meeting location with their dealer and a stash of drugs to get them through their treatment times. These individuals lie, cheat and steal because they must have the drug they feel they need to survive. They are not stable mentally, physically or emotionally. They can not be trusted. At least 90% of them have a diagnosable mental illness along with their addiction. Group homes are not a lock down facility, and a common trick of addicts is to make contact with their dealer. A certain percentage will be using drugs while in the home. The ADA regulations states that only a clean addict is considered disabled. Who is going to monitor them at any one moment in that center? Then those in living in the area are forced to live next to these individuals. The individuals will go to any extent to befriend others. They will manipulate with elaborate stories, and loitering. You will find drug paraphernalia anywhere they can hide things. It is not something to be taken lightly. She is not opposed to high quality drug rehab centers. It typically takes years to help these individuals. Please turn down this accommodation and find a better place in the City or County that will be appropriate and do not approve it because we are afraid of legalities. **Diane Child** has great concerns of having a drug rehab

center in our city. She is fully aware that our community is in great need of these types of facilities that can help individuals dependent upon drugs or alcohol. She is speaking from a point of personal interest. She is the mother of a recovering addict. She is following the learning of her son's addiction. She went to college to get her license as a substance abuse counselor. During this time she did a one year internship with addicts. She has worked for these types of facilities for 6 years. She became burned out with these types of individuals, both the patients and staff. She compares this to working in the ER, ICU and Psych Ward all at the same time. Those she has known for the most part are the most gifted, talented and loving people she has ever experienced. These drugs however destroy the chemistry of the brain. It takes months of being free of these chemicals, which could take 3 months to a year or more, before the brain can start to function normally. She does not believe a 30-90 day facility will be able to cure these individuals of their addictions. These individuals routinely violate the ways of society. They will violate the personal rights of others. These individuals typically had other problems in addition to the addictions such as voyeurism, rapists, etc. They also are more prone to have HIV, Hepatitis, etc. They will destroy the property of the facility as well as near by neighbors. There are no exceptions. Being a resident of this community and a former resident of this neighborhood she would plead with the Commission not to approve this type of facility. She has great respect for those who have beat this disease. **Skip Tandy** feels there are some different options. The Planning Commission can approve this request, along with the City Council. The Planning Commission can recommend denial and the City Council can over ride it. O the Commission could also continue it. Skip does not agree with what Bud Harper would like to do. If this gets approved it will be approved forever. He would like this item to be continued so the neighbors and he can come up with some more ideas. Skip would like the Police Chief to look at his budget and the possibility of putting more patrol in this area. He feels the City Council and Planning Commission should know that if there are problems in the area the police need to crack that. If these problems persist the City needs to be able to revisit this. He asked Eric Johnson if that is possible. Eric stated that he is not aware of any precedence considering that one way or another. He would like it to be continued for at least a month. **Don Duncan** lives about 4-5 homes from Bud. He has lived in his home for about 6 months. Prior to purchasing his home he visited with Cory Branch regarding this area. From his perspective everything was okay for him to buy this property and that there would be no changes. He relied upon the A2 zoning when purchasing the property. He understands that the Commission must have some regulations dealing with these types of facilities. He asked if an ordinance had been adopted for such use, which Eric told him there has been one on the books for a long time and was amended last year. This is in a separate ordinance section that pertains to all property within the City. State Law mandates that all cities must allow for this type of facility to be allowed residential zones. Mr. Harper is bound by the zoning ordinance for which the property is part of. He is allowed however to request reasonable accommodation for a maximum for 16 individuals instead of the 3 which the current zone would allow. The zone has not changed, this is considered a use within the zone. Under this ordinance no variance is required. Mr. Duncan feels he did his due diligence before purchasing the property, and wondered what he should have done differently. **Chairman Bringhurst** stated that these types of facilities could be allowed anywhere within the city. **Marilyn Mower** has lived in Mapleton for 6 years. She lives here with her teenage daughter. Her home is now for sale and feels this should be denied based on the considerations outlined in the fair housing act. She does not feel Mr. Harper has provided substantial information as to the level of rehabilitation he will be providing. The change in appearance will only diminish her property values and ability to sell her home. The City and the neighbors will be subjected to whoever Mr. Harper admits to his program. The only recourse will be to submit the concerns to the State Licensing Program and hope they take the initiative to deal with these issues. A 16 person facility directly impacts the neighborhood. Potential increase to city services is real. More significant is that the proposed use will alternate the current zoning scheme. **Rich Trussell** supports recovery and feels rehab is important. He is a recovering drug addict for 10 years. Studies show that recovery is very low. Residents in the community need to be protected. During intense therapy it brings out a lot of resentment and anger. It brings up hard issues and family issues. Families are not safe, and drugs can be brought in. The outside community needs to be protected from the unstable individuals coming to these types of

facilities. Addicts inside the community need to be protected from themselves. It was said that they would do a background check. Thing is, these individuals have not been sober long enough to show they have no legal history. The joke in the addict community is “when do you believe an addict....when they stop talking”. Addicts will do whatever they need to do to get that drug. It would be enough to make him worry if it were his wife and children living in the area of these people. Most of these individuals volunteer to go to these types of facilities instead of jail. He feels these types of facilities are just a money maker for a couple individuals. **Brian Laefson** has lived here for over 15 years. They moved to Mapleton for the same reason as everyone else. His big concern is that these applicants are going to make their home into a rehab facility and the parking is an issue. They have family meetings. There is a narrow asphalt road with dirt on both sides. He wonders if people are going to park on the grass, and feels there will be a major mud bog there. If they are going to increase the population there he needs to increase the parking in this area so people have a place to park. He asked if Bud Harper has shown he filed as an LLC, and Sean stated that his application has shown his personal name as the one listed. Mr. Laefson feels that Mr. Harper should at least have a bond in case anything goes awry. He was told if there are 16 individuals at the facility there would be a minimum of 4 employees required on site. Brian also wondered if the City has walked through the home. **Rick Hansen**, City Building Official, stated that he has walked through the home. These types of rehab facilities have been known to have multiple meetings a day. He feels these individuals could possibly be outside this facility smoking and wondered what the distance from the home these individuals would have to be by law from the facility. He wonders who from the City is going to go there and check to make sure that those there do not have a criminal history, and wonders who will incur these costs. This type of business will need a fire sprinkling system, which has been shown on the plans. The impact on the city will be 18-20 individuals at any time. They will have a minimum of 18 people that will be fed daily. He wonders how they will contain garbage as well as food delivery vehicles and other types of individuals visiting the home. Mr. Laefson wonders what type of experience does individuals need to have in order to open up these types of facilities. His biggest issue here is that the neighbors do not want to be part of the learning curve. The issues should have been brought up and addressed. He does not feel this type of major impact has been addressed. He would ask that the Commission take a breath and make good decisions and not do something they would regret. He would like this to be something that is safe for everyone. **Lori Allen** is impressed by the demeanor tonight. She does not feel this will ultimately be approved as Mr. Tandy had stated in his comments. She has sat on councils before and realizes the implications that are here. Because of her experience she understands the influence of the Commission on the City Council. She feels this should be denied. Mrs. Allen feels they need to understand why it needs to be 16 individuals. She supports the fact that these are just proposals. She wonders if Mr. Harper’s proposals are part of a written document. Sean stated that this is not being deemed a business. The reasonable accommodation is what takes it from a residential home to a residential care facility. Lori would like to know which City employee would approve these screenings and where they get the ability to do that from. She would be interested to see what discussions were taken place with other cities when approving these types of facilities. She also stated that just because a similar facility was put in next to a school does not make it right. Sean stated that it was not what staff was implying. She does not feel this should be approved even with recommendations. **Andy Compass** stated that he moved to Mapleton from Spanish Fork four years ago. Everyone has a story and he knows statistics matter. He moved here because of the community and this place he believed in. He is very disappointed that this home could be taken over by something with fear and intolerance. He is not fearful of the people. He stated that we all need to love each other. We need to tell our stories and our law protects one over many. He wonders when one person’s voice became louder than many. Mr. Compass loves Bud Harper as a person and feels he needs some help financially. Why is this facility necessary and why is it necessary here. He read a letter from someone who would like to remain anonymous. It stated that this individual learned more about drugs in these types of facilities than he learned outside. He does not oppose this type of facility, but does not feel this is the right location for it or reason to open the home to these individuals. This individual did not feel this facility would be run by the right individuals. Whoever this is stated that the City required a snake farm

to leave the City because it was considered unsafe, yet we would consider allowing for this type of facility. **David Hill** moved to Mapleton about 6 months ago. The comments tonight are wrapped with a lot of unanswered question. He has personally served on both Planning Commission and City Councils. He knows that the Commission has to look at items based on clear principles. If requirements are met without question or biased these items should be approved. He does not feel any of these items or concerns have been met. The impact is noticeable. He feels the recommendation should be based upon good judgment and faith of the community. **Isaac Jacobsen** has lived all over the world. When his family made their final move, they wanted to make it in Mapleton. The individuals in this neighborhood are life time residents. He wondered if the employees were considered in this 16 number occupant request. Mr. Jacobsen feels it is up to the city to determine the best number of residents. Isaac stated that Bud had stated that 8 individuals were ideal, so he wondered why he would want to double that number. He feels this was Bud's way of saving his home because he has experience hard times. If drugs are found on the facility Mr. Jacobsen wonders if it will be reported as a crime. He believes the city should make this an absolute requirement. This type of facility will create an undo burden in the area. He is going to create a mountain of evidence to bring to the city when these types of things happen. What he really sees here is the minimum of care with the maximum residency. No additional comments were given and the public hearing was closed.

Bud Harper asked the commission not to continue the item because the City Council has over a month before they will meet to review it.

Chairman Bringhurst feels that under the law these types of things are valid. The only thing they can really discuss is the accommodation of more occupants in the home. Unfortunately you are not a criminal until you commit a crime. We cannot assume they are a criminal because they are in this type of facility. **Commission Lewis** asked about the Mapleton Fair Care statement that 6 was an appropriate number. He also wondered if we had any historical negative issues with Discovery Ranch. Sean stated that he is not aware of any, but could look into this before the item moves on to the City Council. **Commission Murray** stated his concern with the 2 employees at night being responsible for 16 individuals in a facility that is not on lock down. **Eric Johnson** stated that it is difficult to assume a person checking in here would become a direct threat. **Commission Gappmayer** asked if the number of employees to residents was mandated by the state. Eric stated they would have to meet that code in order to have this facility. Commissioner Lewis feels 16 residents is too high to allow the facility to keep the character of the neighborhood. **Commissioner Stirling** is concerned about the time and cost factor that the City will incur when supporting this facility. He feels Mr. Harper should have told them what the success rate of these facilities has been. There has been a lot of testimony tonight that this is a hard habit to break. Commissioner Stirling is not sure that this design is capable to making the necessary changes in people's lives. Commissioner Murray would like some statistics from the other facilities about any possible increase in crime. This would allow them to look at historical information in other facilities. Chairman Bringhurst does not like the occupancy set at 16, and feels that is way too high. Commission Gappmayer asked what is done to ensure those coming to the facility meets the criteria. Eric Johnson stated that it is a state agency that would police this. This is a Land Use body, not a drug rehab board. Eric stated that both the Planning Commission and City Council can ask that all approved applicants be reported to the Police Department for criminal history, etc. That would be a potential condition. Commissioner Murray had a concern with handling the commercial vehicles coming in to the facility. Sean stated that the Commission can make recommendations in regards to this. The problem is there is no hard evidence. As outlined in the beginning there are 3 options open to the commission. Commissioner Stirling feels there is a need for this type of facility but does not feel this proposal will work. Sean stated they can not judge if they feel the applicant is capable of running this type of facility. Commissioner Lewis would recommend continuance, feeling there are plenty of unanswered questions. Eric Johnson stated that he did not want to sway the Commission one way or another. He feels there has been enough evidence given tonight that all of the options in front of them could be defended.

Motion: Commissioner Lewis moved to recommend continuance of a request to convert an existing single family dwelling into a residential facility for persons with a disability located at 727 East 1100 South and a request for a reasonable accommodation to allow for up to 16 residents in the proposed facility, desiring more clarification on the below items:

1. Traffic concerns are addressed regarding food, medical, mail, etc. services visiting the facility.
2. Proposed density of the residency is addressed as to what is considered reasonable.
3. Plan of how many people would be expected to be there at any one time, including family visit days to determine if parking is adequate.
4. Methodology as to how it is determined who can be there.
5. The potential burden on all public services (i.e. public safety required to support a facility like this).
6. Provide case studies showing success rates of similar facilities (police reports stating if there were increases in crime rates etc. in these areas). The Commission would like these studies to take place from the other facilities Bud Harper listed in his presentation this evening.

Second: Commissioner Gappmayer

Vote: Unanimous

Item 3. Adjourn.

Motion: Commissioner Gappmayer moved to adjourn the meeting at 9:38pm.

Second: Commissioner Murray

Vote: Unanimous

April Houser, Executive Secretary

Date:

MAPLETON CITY
PLANNING COMMISSION MINUTES

April 11, 2013

To be provided under separate cover. Minutes to be approved by the Planning Commission on April 25, 2013.

*Letter from Planning Commission Chair:

Council Members,

I would like to make clear my understanding of the motion for the Bud Harper treatment facility. In the past when a commission member would make a motion he would restate the description from the staff report and then add any conditions etc. When Rich made the motion for the Bud Harper treatment facility I assumed he was just reading the description and NOT adding a special consideration for 16 people. Some of the public have noted that the motion sounded like we were approving the special consideration for 16 members. Had this been the case I would not have voted affirmative. I wanted to leave the number of occupants up to your collective discretion.

Thank you

Jared Bringhurst

Planning Commission Chairman

801-471-4238

Attachment “3”

Public Correspondence

McDONALD FIELDING PLLC
175 W. CANYON CREST ROAD, SUITE 205
ALPINE, UTAH 84004
PHONE: 801-610-0010

DANIEL J. McDONALD

E-MAIL: dan@mcdonaldfielding.com

April 22, 2013

Mapleton City Council
c/o Cory Branch
City Administrator
Via Email: cbranch@mapleton.org

RE: Group Home Application of George E. "Bud" Harper

Dear Honorable Members of the City Council:

This firm represents Mapleton Fair Care, LLC, a group of citizens living in the same neighborhood as Applicant George E. "Bud" Harper, who is seeking to convert his home into a residential treatment facility for 16 recovering addicts and substance abusers.

The purpose of this letter is to give you an executive summary of the materials that are submitted herewith in opposition to Mr. Harper's application and explain to you what the City's obligations are and—more importantly—what Mr. Harper's obligations are under federal law. We request that you include this letter and the accompanying information in the City Council's packet for its April 30, 2013, meeting.

To begin, I have represented and currently represent multiple cities and counties throughout the State of Utah with regard to the Fair Housing Act and residential treatment facility ("RTF") issues. I routinely give training presentations to various groups of attorneys, counties and governmental organizations throughout the state and the intermountain region with regard to the FHA and RTFs. I have represented developers and private parties throughout the western United States with regard to reasonable accommodation issues. For example, at the application stage, I represented the developer in *Alamar Ranch, LLC v. County of Boise*, Civil No. 1:09-cv-004-BLW (U.S. Dist. Idaho), which obtained a \$5.4 million judgment that bankrupted Boise County for its intentional and deliberate discrimination against the RTF in that case. I also defended the City of St. George, Utah, against claims that it failed to make a reasonable accommodation in *Cinnamon Hills Youth Crisis Center, Inc. v. Saint George City*, 685 F.3d 917, 923 (10th Cir. 2012). In that case, all of the claims against the City were thrown out by the district court and the district court's decision was affirmed by the United States Court of Appeals for the Tenth Circuit. In Utah County, alone, I am currently involved in or have recently been consulted in group home cases in Alpine City, Elk Ridge City, Highland City and Eagle Mountain. After the Duchesne County case (which I did not participate in), I was retained

by the Utah Counties Indemnity Pool to be its hotline attorney for FHA issues for the entire state of Utah.

I have reviewed the information on Mapleton City's website regarding "Residential Facilities for People with Disabilities" and am concerned that some of the information is outdated and, therefore, does not accurately describe the City's obligations and Mr. Harper's duties under federal law, which is something that could later come back to haunt the City. For example, the statement, "In addition, each city ordinance must treat residential facilities as a permitted use in any zone where any '*traditional*' residential dwellings are allowed" is inaccurate. That is not what the state statute says. That is not what federal courts governing Utah have held. The same can be said about this statement on the City's website: "As a permitted use in any of the city's residential zones, federal and state law requires that (with very limited exceptions) these facilities be treated no differently than '*traditional*' residences."

The July, 2012, decision in the *Cinnamon Hills* case changed the landscape of FHA law in Utah. The *Draper City* case was decided two years prior to *Cinnamon Hills*, is an unpublished decision, and its rationale has been subsequently overturned by *Cinnamon Hills*, as explained in the enclosed Brief of Mapleton Fair Care, LLC in Opposition to Request for Accommodation.

I have been on the frontlines of this issue for many years and here is what I can tell you about the law in your situation (which is elaborated in the accompanying brief):

- Courts continue to give substantial deference to local zoning laws and local zoning authorities, who are entitled to enforce their laws so long as enforcement does not result in discrimination.
- The United States Supreme Court has recognized the difference between "traditional" single family dwellings and congregate living arrangements of unrelated people and does *not* require the City to "treat apples like oranges." The law only requires "equal" housing opportunities, which means the City is *not* required to treat Mr. Harper's RTF (an apple) like a single family residence of individuals related by blood or marriage (an orange). Instead, the City is required to treat Mr. Harper's RTF like any other congregate or group living arrangement where *groups of unrelated*, non-disabled people live together (*i.e.*, boarding houses, dorms, frat houses, etc.). If no such housing opportunities exist for similarly situated groups of unrelated, non-disabled people, under the *Cinnamon Hills* rationale, the City is under no obligation to create such housing opportunities for Mr. Harper and give him preferential treatment. The FHA only requires equal treatment.
- In order to get an exception to the law, Mr. Harper has the burden of proof to demonstrate that the accommodation is "necessary." It is not the City's job to hold his hand through this process and tell him what he needs to present. It is a matter of readily ascertainable federal law. Mr. Harper has the duty to educate himself on what federal law requires and to present sufficient evidence to the City to meet that burden.

- To show that an accommodation is “necessary” Mr. Harper has to show much more than simply claiming that he needs a certain magic number in order for his particular business to be profitable. And under *Cinnamon Hills*, he has to show much more than the simple fact that an accommodation might help or ameliorate a handicap. He has to prove that his clients’ disabilities are the cause in fact of their inability to obtain or enjoy housing and that the four-person rule hurts disabled people by virtue of their disabilities and not by virtue of what they have in common with other, non-disabled people. Mr. Harper has failed to even approach the requisite showing of necessity.
- The Fair **Housing** Act does not mandate the availability of therapy. It mandates the availability of equal *housing*. This is a rather large and important distinction that Mr. Harper overlooks. The case law has recognized that not all recovering addicts need group living. Mr. Harper has claimed that his residents need group therapy. But he has not proved that his residents need group living. Moreover, Mr. Harper has not proved that, even if they do need group living, that group living is *not* available to them without an accommodation. He has not proved that group living in a residential neighborhood is necessary, either.
- The City shouldn’t even get to the analysis of what is “reasonable” unless and until Mr. Harper demonstrates necessity first.
- Even if Mr. Harper can show that an accommodation is necessary to avoid discrimination in housing opportunities—which he cannot show—the City is under no duty to make an accommodation that would result in a fundamental alteration to the goals and objectives of its zoning scheme or that would fundamentally alter the character and nature of the subject residential neighborhood.
- Like any other congregate living arrangement of unrelated people, regardless of disabilities, Mr. Harper’s facility will fundamentally alter the residential character of the neighborhood by, among other things, injecting a decidedly commercial use into a residential neighborhood, increasing traffic patterns by more than fourfold, increasing population densities by more than 500% percent, increasing parking congestion and introducing transiency.

To support our position we have enclosed the following materials for your consideration and invite you and your legal counsel to review them carefully before you make a decision:

1. Brief of Mapleton Fair Care, LLC in Opposition to Request for Accommodation
2. Declaration of Bruce W. Parker, AICP and Mr. Parker’s resume
3. A survey showing the demographics of this particular neighborhood compiled through research done by Mapleton Fair Care, LLC’s members
4. Official U.S. Census Data

5. An analysis of Mr. Harper's "comparables" undertaken by Mapleton Fair Care, LLC's members

It appears from the City's website and other information that my client has gleaned that the City is concerned about litigation from Mr. Harper if it denies his application. We fully realize what the City's obligations are under federal law and can assure you that the information presented in this packet concerning the law is fully consistent with the information presented to the *Cinnamon Hills* court and that we have helped other cities and governmental entities navigate these waters without incurring liability. Additionally, the City also needs to consider that it is well-established that "any person adversely affected" by a land use authority's decision has the right to appeal that decision.

Put simply, the citizens of Mapleton have the right to be heard and to have their zoning laws applied in a manner that is consistent with their investment-backed expectations and in accordance with federal law. Accordingly, Mapleton Fair Care, LLC will appeal any decision that is materially adverse to its members' interests and that is not strictly required by the FHA. Consequently, the City Council needs to consider the fact that Mr. Harper is not the only party with rights and that he is not the only litigation risk to the extent the City fails to follow its own ordinances and misapplies state or federal law.

Thank you for consideration.

MCDONALD FIELDING



Daniel J. McDonald

Enclosure

C: Sean Conroy
sconroy@mapleton.org

Eric Johnson, Esq.
eric@bcjlaw.net

family dwelling at 727 East 1100 South (“Property”) into a residential treatment center for 16 recovering alcoholics, drug addicts and substance abusers.

STATEMENT OF THE CASE

The Property is located in an A-2 “Agricultural-Residential Zone, One Dwelling Unit Per Two Acres.” There is nowhere in the A-2 zone where more than four unrelated persons, regardless of disability, may live together in a single dwelling unit as a permitted use. Hence, if a group of 18 missionaries without disabilities wanted to live together at the Property they could not. If a group of 18 college freshman or a group of 18 friends without disabilities wanted to live together at the Property they could not.² What Mr. Harper is asking for, then, is truly preferential—rather than equal—treatment.

State law requires—only “to the extent required by federal law”—municipal ordinances to “provide that a residential facility for persons with a disability is a permitted use in any zone where *similar* residential dwellings that are not residential facilities for persons with a disability are allowed.” Utah Code Ann. § 10-9a-520(2)(b) (emphasis added). However, there are no similar group living arrangements for unrelated, non-disabled people allowed as a permitted use in the A-2 zone.³ Despite the fact that all congregate living arrangements exceeding four persons

² Conversely, any group of four unrelated people could live together in a single dwelling unit anywhere they wanted in the City so long as single dwelling units are a permitted use. Mr. Harper could house a facility for four disabled persons without any need for an accommodation or waiver of the City’s ordinances.

³ Residential healthcare facilities are identified as a conditional use. *See* Mapleton City Code § 18.28.040. The definition of residential healthcare facilities references section 18.84.370 of the City Code, which, in turn, defines “Residential Facilities for Persons With a Disability” and creates an entirely different approval process for such facilities than the normal conditional use process. *See* Mapleton City Code § 18.84.370.B. While it is unclear whether “Residential Facilities for Persons With a Disability” are required to go through the conditional use process, what is clear is that the Mapleton City Code creates a housing opportunity for groups of disabled persons that does *not* exist for groups of unrelated, non-disabled persons, which gives the disabled preferential—not discriminatory—treatment.

are banned as permitted uses in the A-2 zone, and despite the fact that federal and state law only require the City to provide *equal* housing opportunities—opportunities that would be on par with those available to similarly situated groups of unrelated, non-disabled persons—the Mapleton City Planning Commission felt that it was obligated to accommodate Mr. Harper’s request and recommended approval to the City Council.

However, as the following analysis shows, the Planning Commission was wrong. Mr. Harper has failed to meet his burden—imposed by federal law—of demonstrating that the requested accommodation is both necessary and reasonable, as those terms are defined by federal law. And this group home *will* “fundamentally alter the character and nature of the subject residential neighborhood.” Mapleton City Code § 18.84.370.B.4.b.(5). As explained below, the City Council should deny his request for accommodation and may do so without fear of incurring liability.

BURDEN OF PROOF

Under the federal Fair Housing Act, it is the applicant’s burden “to demonstrate its ... need for the accommodation to the City.” *Keys Youth Servs., Inc. v. City of Olathe*, 248 F.3d 1267, 1275 (10th Cir. 2001). The United States Court of Appeals for the Tenth Circuit—the federal appeals court with jurisdiction over Utah—has made it very clear that a City “cannot be liable for refusing to grant a reasonable and necessary accommodation if the City never knew the accommodation was in fact necessary.” *Id.* Mr. Harper is charged with responsibility for understanding his burdens and obligations under federal law. It is his responsibility to seek out and study the requirements of federal law and then present sufficient evidence to the City that complies with those requirements.

ANALYSIS

I.

OVERVIEW OF THE FAIR HOUSING ACT

Because Mr. Harper’s request for accommodation and the City’s reasonable accommodation ordinance is driven and governed by federal law, it is critical to understand the basic contours of the federal Fair Housing Act.⁴ The FHA prohibits discrimination against persons with handicaps and provides that discrimination includes “a refusal to make reasonable accommodations . . . when such accommodations may be necessary to afford such person *equal* opportunity to use and enjoy a dwelling,” 42 U.S.C.A. § 3604(f)(3)(B) (emphasis added). However, the FHA is not some omnipotent trump card that renders cities and counties impotent to enforce their zoning laws and that automatically waives local zoning laws whenever a person with a disability asks for an accommodation.

The United States Supreme Court and federal appellate courts continue to recognize that “[l]and use planning and the adoption of land use restrictions constitute some of the most important functions performed by local government.” *Bryant Woods Inn, Inc. v. Howard County*, 124 F.3d 597, 603 (4th Cir. 1997) (citing *FERC v. Mississippi*, 456 U.S. 742, 768 n. 30, 102 S.Ct. 2126, 2141 n. 30, 72 L.Ed.2d 532 (1982) (“regulation of land use is perhaps the quintessential

⁴ The Americans with Disabilities Act also applies. The ADA provides (similarly to the FHA) that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132. Although differences exist between the two acts, *see, e.g., Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1212 n.6 (11th Cir. 2008), it should be noted that the definition of “disability” and “handicap” under each of the acts is the same. *See Bragdon v. Abbott*, 524 U.S. 624, 644-45 (1998). Thus, courts construing each of the acts have generally applied the same analytical framework. *See, e.g., Gamble v. City of Escondido*, 104 F.3d 300, 305 (9th Cir. 1997) (applying the *McDonnell Douglas/Burdine* test to claim under FHA and FHAA); *Durley v. APAC, Inc.*, 236 F.3d 651, 657 (11th Cir. 2000) (applying the *McDonnell Douglas* framework for ADA claim).

state activity")). These courts continue to recognize that local land use ordinances may legitimately be enforced “to preserve ‘the character of neighborhoods, securing “zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people.””” *Id.* (quoting *City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725, 732-33, 115 S.Ct. 1776, 1780, 131 L.Ed.2d 801 (1995) (quoting *Village of Belle Terre v. Boraas*, 416 U.S. 1, 9, 94 S.Ct. 1536, 1541, 39 L.Ed.2d 797 (1974))).

For example, in *Bryant Woods Inn, Inc. v. Howard County*, a Fourth Circuit decision heavily relied upon by the Tenth Circuit in its most recent Fair Housing Act decision, *Cinnamon Hills Youth Crisis Center, Inc. v. Saint George City*, 685 F.3d 917, 923 (10th Cir. 2012), the court emphasized:

In enacting the FHA, Congress clearly did not contemplate abandoning the deference that courts have traditionally shown to such local zoning codes. And the FHA does not provide a “blanket waiver of all facially neutral zoning policies and rules, regardless of the facts,” *Oxford House, Inc. v. City of Virginia Beach*, 825 F.Supp. 1251, 1261 (E.D.Va.1993), which would give the disabled “carte blanche to determine where and how they would live regardless of zoning ordinances to the contrary,” *Thornton v. City of Allegan*, 863 F.Supp. 504, 510 (W.D.Mich.1993). Seeking to recognize local authorities' ability to regulate land use and without unnecessarily undermining the benign purposes of such neutral regulations, Congress required only that local government make “reasonable accommodation” to afford persons with handicaps “equal opportunity to use and enjoy” housing in those communities. 42 U.S.C. § 3604(f)(3)(B).

Bryant Woods Inn, 124 F.3d at 603.

In short, the anti-discrimination laws are *not* federal zoning laws. They are laws designed to prevent discrimination in housing, which only occurs when similarly situated groups of disabled people are deprived of housing opportunities that are available to similarly situated groups of non-disabled people. The City may enforce its zoning laws so long as it does not

result in discrimination. Moreover, Fair Housing Act law *changed*—quite dramatically—in July, 2012, when the *Cinnamon Hills* decision was published. That case, among others, is discussed at length below.

A. Definition of “handicapped”

The FHA definition of a “handicap,” does not include current, illegal use of or addiction to a controlled substance (as defined in section 802 of Title 21). 42 U.S.C.A. § 3602(h). However, the federal regulations promulgated under the FHA list “drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism” as qualifying for a “handicap.” 24 C.F.R. § 100.201(a)(2) (emphasis added).

B. What is an “accommodation”?

As the Tenth Circuit has identified, “the thrust of a reasonable accommodation claim is that a defendant must make an affirmative change in an otherwise valid law or policy.” *Bangerter v. Orem City Corp.*, 46 F.3d 1491, 1501-02 (10th Cir. 1995).

C. When is an accommodation “necessary”?

The goal of housing discrimination laws is to afford *equal* housing opportunities to persons with disabilities. As the Tenth Circuit most recently explained in *Cinnamon Hills*, 685 F.3d at 923:

the FHA's necessity requirement doesn't appear in a statutory vacuum, but is expressly linked to the goal of “afford[ing] ... equal opportunity to use and enjoy a dwelling.” 42 U.S.C. § 3604(f)(3)(B). And this makes clear that the object of the statute's necessity requirement is a level playing field in housing for the disabled. Put simply, the statute requires accommodations that are necessary (or indispensable or essential) to achieving the objective of equal housing opportunities between those with disabilities and those without.

Id. According to the Tenth Circuit, “the point of the reasonable accommodation mandate” is “to require changes in otherwise neutral policies that preclude the disabled from obtaining ‘the *same* ... *opportunities* that those without disabilities automatically enjoy.’” *Id.* However,

while the FHA requires accommodations necessary to ensure the disabled receive the *same* housing opportunities as everybody else, it does not require *more* or *better* opportunities.

Id.

As the Eleventh Circuit explained in *Schwarz*, 544 F.3d at 1216-17:

The word “equal” is a relative term that requires a comparator to have meaning. In this context, “equal opportunity” can only mean that handicapped people must be afforded the same (or “equal”) opportunity to use and enjoy a dwelling as non-handicapped people, which occurs when accommodations address *the needs created by the handicaps*. If accommodations go beyond addressing these needs and start addressing problems not caused by a person's handicap, then the handicapped person would receive not an “equal,” but rather a better opportunity to use and enjoy a dwelling, a preference that the plain language of this statute cannot support.

Id. at 1226.

Consequently, in determining whether an accommodation is necessary, the relevant inquiry is whether failure to grant the requested accommodation “hurts handicapped people *by reason of their handicap*, rather than . . . by virtue of what they have in common with other people.” *Wisconsin Cmty. Servs., Inc. v. City of Milwaukee*, 465 F.3d 737, 752 (7th Cir. 2006) (*en banc*) (alterations in original). The *Wisconsin Community Services* causation analysis was expressly adopted by the Tenth Circuit in *Cinnamon Hills* and has been applied consistently and uniformly by appellate courts throughout the country.⁵

⁵ See, e.g., *Cinnamon Hills*, 685 F.3d at 924; *Lapid-Laurel, LLC v. Zoning Bd. of Adjustment*, 284 F.3d 442, 459 (3d Cir. 2002) (“[T]he plaintiff in [a] . . . reasonable accommodations case must establish a nexus between the accommodations that he or she is requesting, and their necessity for providing handicapped individuals an ‘equal

In sum, the causation requirement found in these cases essentially asks the following three interrelated questions to help guide courts and decisions makers in determining whether an accommodation is “necessary” under the statute:

- (1) Is there a comparable housing opportunity to begin with?⁶
- (2) Does the failure to accommodate the rule in question hurt handicapped people by reason of their handicap, rather than by virtue of what they have in common with other people?⁷
- (3) Will the requested accommodation ameliorate the effect of the plaintiff’s disability so that he or she may compete equally with the non-disabled in the housing market?⁸

D. When is an accommodation “reasonable”?

“An ‘[a]ccommodation is not reasonable if it either (1) imposes undue financial and administrative burdens on a [city] or (2) requires a fundamental alteration in the nature of [a] program.’” *Schwarz*, 544 F.3d at 1220 (quoting *Sch. Bd. of Nassau Cty. v. Mr. Harperine*, 480 U.S. 273, 288 n. 17, 107 S.Ct. 1123, 94 L.Ed.2d 307 (1987) (quotation marks, alteration, and

opportunity’ to use and enjoy housing.”); *Bryant Woods Inn*, , 124 F.3d at 604 (“The ‘necessary’ element ... requires the demonstration of a direct linkage between the proposed accommodation and the ‘equal opportunity’ to be provided to the handicapped person. This requirement has attributes of a causation requirement.”); *Smith & Lee Assoc. v. City of Taylor*, 102 F.3d 781, 795 (6th Cir. 1996) (“Plaintiffs must show that, but for the accommodation, they likely will be denied an equal opportunity to enjoy the housing of their choice.”)

⁶ See *Forest City Daly Housing, Inc. v. Town of North Hempstead*, 175 F.3d 144, 152 n.9 (2d Cir. 1999) (holding that, “if there were no concurrent housing opportunities for non-disabled individuals, then defendants were not required to make reasonable accommodations in order to create such opportunities for disabled persons.”)

⁷ See *Wisconsin Cmty. Servs.*, 465 F.3d at 754 (reversing district court’s summary judgment in favor of an inpatient treatment facility, reasoning that the treatment program’s “inability to meet the City’s special use criteria appears due not to its client’s disabilities but to its plan to open a non-profit health clinic in a location where the City desired a commercial, taxpaying tenant instead”).

⁸ See *Bronk v. Ineichen*, 54 F.3d 425, 429 (7th Cir. 1995) (“[T]he concept of necessity requires *at a minimum* the showing that the desired accommodation will affirmatively enhance a disabled plaintiff’s quality of life by ameliorating the effects of the disability.” (emphasis added).)

citations omitted)). In assessing whether an accommodation is reasonable, “a court may consider as factors the extent to which the accommodation would undermine the legitimate purposes and effects of existing zoning regulations” *Bryant Woods Inn*, 124 F.3d at 604. The basic purpose of zoning is to bring complementary land uses together, while separating incompatible ones. *See Vill. of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 388, 47 S.Ct. 114, 71 L.Ed. 303 (1926) (“A nuisance may be merely a right thing in the wrong place, like a pig in the parlor instead of the barnyard.”). “Thus, ordering a municipality to waive a zoning rule ordinarily would cause a ‘fundamental alteration’ of its zoning scheme if the proposed use was incompatible with surrounding land uses.” *Schwarz*, 544 F.3d at 1221. “On the other hand, if the proposed use is quite similar to surrounding uses expressly permitted by the zoning code, it will be more difficult to show that a waiver of the rule would cause a ‘fundamental alteration’ of the zoning scheme.” *Id.* Under the City Code, the relevant inquiry is whether the accommodation will “fundamentally alter the character and nature of the subject residential neighborhood.” Mapleton City Code § 18.84.370.B.4.b.(5).

II.

MR. HARPER HAS FAILED TO CARRY HIS BURDEN OF SHOWING THAT THE REQUESTED ACCOMMODATION IS “NECESSARY”

The foregoing general FHA principals will be applied in this section of the brief. As mentioned, Mr. Harper claims that 16 patients are necessary to make the developer’s project financially and therapeutically viable and that, without an accommodation, his group home residents will be deprived of an equal housing opportunity. This contention is without merit because (a) Mr. Harper has not shown any comparable housing opportunities for the non-

disabled in the A-2 zone, (b) Mapleton City has no duty to bend its zoning laws to accommodate Mr. Harper's individual financial needs, (c) establishing that group *therapy* is needed does not establish that group *living* is necessary, and (d) Mr. Harper has failed to provide the City with the information required to approve the accommodation.

A. There are no comparable housing opportunities

“The law requires accommodations overcoming barriers, imposed by the disability, that prevent the disabled from obtaining a housing opportunity others can access.” *Cinnamon Hills*, 685 F.3d at 923. “But when there is no comparable housing opportunity ***for non-disabled people***, the failure to create an opportunity for disabled people cannot be called necessary to achieve equality of opportunity in any sense.” *Id.* (emphasis added). Groups of non-disabled people are not allowed to live in congregate living arrangements of groups of more than four unrelated people anywhere the A-2 zone as a permitted use. While Mr. Harper may complain that comparing its group living arrangement with other group living arrangements, such as boarding houses and dorms (rather than, say, traditional single families), is unfair, that is the comparison that the Tenth Circuit has always drawn. That's the comparison the law requires.

For example, in *Bangerter*, 46 F.3d at 1502, the Tenth Circuit held, “If Bangerter cannot show that group homes ***for the non-handicapped*** are permitted in Orem ... he will have failed to show that he has suffered differential treatment when compared to a similarly situated group, and his claims will fail under the FHAA.” *Id.* (emphasis added). The *Bangerter* case and its group-home-to-group-home comparison rule was expressly reaffirmed in *Cinnamon Hills* where the court held that there was no discrimination because no other group living arrangements for the

non-disabled were allowed on the top floor of a motel where the treatment facility in that case desired to locate. *See Cinnamon Hills*, 685 F.3d at 920-21.

Mr. Harper is seeking preferential treatment. He is trying to get the City Council to compare apples (congregate living arrangements of unrelated people) with oranges (single family dwellings) when the law in this jurisdiction requires a group-home-to-group-home comparison. The group-home-to-group-home comparison rule makes sense because it is grounded in the long-settled reality that groups of unrelated people that live together create different urban impacts than single family uses. Indeed, to pretend that congregate living arrangements (regardless of disability) are “just like” single family dwellings is to deny reality and long-established United States Supreme Court precedent, which has clearly demarcated the differences between congregate living arrangements and single family arrangements.

For example, in upholding the definition of a “family” that limited the number of unrelated people who could live together at two, the United States Supreme Court, in *Village of Belle Terre*, 416 U.S. at 9, recognized the problems that congregate living arrangements create (regardless of disability), explaining:

The regimes of boarding houses, fraternity houses, and the like present urban problems. More people occupy a given space; more cars rather continuously pass by; more cars are parked; noise travels with crowds.

A quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land use project addressed to family needs. This goal is a permissible one The police power is not confined to elimination of filth, stench, and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people.

Id.

In sum, if Mr. Harper can demonstrate that other congregate living arrangements of non-disabled, unrelated people in excess of four are allowed as permitted uses in the A-2 zone then the FHA would require the City to accommodate his request to the extent it is reasonable. On the other hand, as in *Bangerter*, “If [Mr. Harper] cannot show that group homes for the *non-handicapped* are permitted in [Mapleton] ... he will have failed to show that he has suffered differential treatment when compared to a similarly situated group, and his claims will fail under the FHAA.” *Bangerter*, 46 F.3d at 1502 (emphasis added). In short, because there are no comparable housing opportunities for groups of unrelated, non-disabled people to live together in this zone, the City should deny Mr. Harper’s request and it will have no liability for doing so.⁹

B. Individual financial necessity is an invalid consideration

The type of individual financial viability analysis that Mr. Harper has invited the City Council to engage in has been rejected by the Tenth Circuit and is completely irrelevant and inappropriate. Just as the Utah Provo Mission or a group of 18 college kids that wanted to live together at the Property could not obtain a waiver of the four-person limitation simply by demonstrating that 18 was the magic number for making the mortgage payment and landscaping affordable, the City is under no obligation to rewrite its zoning laws to conform to Mr. Harper’s undisclosed business plan and attendant financial realities.

As *Cinnamon Hills* clarified, in order to demonstrate necessity there must be evidence “that the disabled, *because of* their disabilities, are ... less able to take advantage” of housing

⁹ The fact that one residential treatment facility for the disabled exists in this zone—albeit in an entirely different neighborhood—is irrelevant to the discrimination analysis, which requires comparisons between groups of disabled and non-disabled persons. See, e.g., *Wisconsin Cmty. Servs.*, 465 F.3d 737, 752 (7th Cir. 2006) (en banc) (where the accommodation-requesting treatment facility wanted to locate its facility in a zone that already allowed “foster homes, shelter care facilities, community living arrangements and animal hospitals either as ‘permitted’ or ‘limited’ (no special approval required) uses”).

opportunities “than the non-disabled.” *Cinnamon Hills*, 685 F.3d at 924. In adopting this rule of causation, the Tenth Circuit expressly adopted the *en banc* analysis of the Seventh Circuit in *Wisconsin Community Servs.*, 465 F.3d 737, which is important because that case (and, more accurately, its progeny) expressly rejected the type of individualized financial viability analysis Mr. Harper urges.

In the *Wisconsin Community Services* case, the treatment facility wanted to locate its facility in a zone that allowed “foster homes, shelter care facilities, community living arrangements and animal hospitals either as ‘permitted’ or ‘limited’ (no special approval required) uses,” *id.* at 741, and essentially asked that it be treated the same as these facilities by having the City of Milwaukee waive the “special use”¹⁰ conditions contained in its zoning ordinance. The City refused. *Id.* at 744. The treatment facility’s desire for this particular site was motivated largely by economic concerns rather than any linkage between the physical attributes of the desired site and its patients’ disabilities.

For example, the record indicated that the treatment facility (“WCS”) needed the space because its current space was overcrowded, a remodel of its current space would be too costly, *id.* at 741, and “suitably zoned” alternatives “were either unavailable or too costly,” *id.* at 744. Understandably, then, WCS cited cases espousing the individual economic viability analysis in its briefing to the Seventh Circuit. *Id.* at 754 (citing *Giebeler v. M&B Assocs.*, 343 F.3d 1143 (9th Cir. 2003)). But these economic realities were not caused by the residents’ disabilities. Hence, the evidence that WCS’s disabled residents needed housing, that this particular location

¹⁰ It appears that a “special use” in Milwaukee is akin to the more familiar “conditional use” concept utilized in Utah, which is a more highly-regulated use than a permitted use. It should be noted that Mr. Harper has not asked for a waiver of the conditional use rule found in the A-2 zone, itself.

was what WCS could afford, and that a waiver of the zoning regulations would “ameliorate overcrowding, a condition that particularly affects its disabled clients,” was deemed irrelevant “because the mental illness of WCS’ patients is not the cause-in-fact of WCS’ inability to obtain a suitable facility” and, therefore “does not hurt persons with disabilities ‘*by reason of their handicap.*’” *Id.* (citing *Hemisphere Bldg. Co. v. Vill. of Richton Park*, 171 F.3d 437, 440 (7th Cir. 1999) (emphasis in original)).

After noting WCS’ reliance on the individual economic viability line of cases used by other jurisdictions, the Seventh Circuit stated, “WCS’ view ... is inconsistent with the ‘necessity’ element as it has been defined under the Rehabilitation Act, the FHAA and Title II of the ADA.”

Id. The court also clarified:

The “equal opportunity” element limits the accommodation duty so that not every rule that creates a general inconvenience or expense to the disabled needs to be modified. Instead, the statute requires only accommodations necessary to ameliorate the effect of the plaintiff’s disability so that she may compete equally with the non-disabled in the housing market. We have enforced this limitation by asking whether the rule in question, if left unmodified, hurts “handicapped people *by reason of their handicap*, rather than . . . by virtue of what they have in common with other people, ***such as a limited amount of money to spend on housing.***” See *Hemisphere Bldg. Co. v. Vill. of Richton Park*, 171 F.3d 437, 440 (7th Cir. 1999) (emphasis in original).

Id. at 749 (bold, italics added).

The *Wisconsin Community Servs.* decision relied on a prior Seventh Circuit decision explaining how disruptive and absurd it would be if accommodations turned on the individual financial situation of the handicapped applicants (or the businesses that support them) rather than a causal analysis of whether the rule in question (*i.e.*, a no elevator policy) hurts handicapped people by virtue of their handicap (*i.e.*, being wheelchair bound):

To require consideration of handicapped people's financial situation would allow developers of housing for the handicapped to ignore not only the zoning laws, but also a local building code that increased the cost of construction, or for that matter a minimum wage law, or regulations for the safety of construction workers. Anything that makes housing more expensive hurts handicapped people; but it would be absurd to think that the FHAA overrides all local regulation of home construction. This is true whether the argument is made in the name of accommodation or--what for all practical purposes is the same thing, though it is confusingly treated as separate in some FHAA cases....

....

The result that we have called absurd is avoided by confining the duty of reasonable accommodation in “rules, policies, practices, or services” to rules, policies, etc. that hurt handicapped people by reason of their handicap, rather than that hurt them solely by virtue of what they have in common with other people, ***such as a limited amount of money to spend on housing.***

Hemisphere Bldg. Co., 171 F.3d at 440 (emphasis added).

These cases recognize the practical reality that everyone—regardless of disability—has a limited amount of money to spend on housing. This is not a condition unique to the disabled or operators of group homes for the disabled. These cases also recognize that “the law addresses the accommodation of handicaps, not the alleviation of economic disadvantages that may be correlated with having handicaps.” *Salute v. Stratford Greens Garden Apartments*, 136 F.3d 293, 301 (2d Cir. 1998). So demonstrating that large homes in Mapleton are expensive, that landscaping is expensive, that doctors (which all of us need) are expensive or that maintaining the residents’ desired lifestyles (transportation, food choices, etc.) is expensive does not demonstrate that an accommodation is necessary to avoid discrimination because these are burdens everyone—regardless of disability—bears.

Making the scope of accommodations turn on the particular financial exigencies of particular projects would place City Councils in the role of financial arbiters and CFOs, deciding

which costs and expenses are necessary and which are not. It would lead to absurd results where frugal group homes end up with fewer allowed residents than those group homes that choose to live in upscale neighborhoods where expenses are higher. For example, in *Bryant Woods Inn*, 124 F.3d 587, the Fourth Circuit, in affirming the county's denial of a requested expansion of a group home from 8 to 15 residents, exposed the inherent flaws with such a rationale as having no limits and being completely incompatible with the goal of achieving *equal* housing opportunities:

If [the group home's] position were taken to its limit, it would be entitled to construct a 10-story building housing 75 residents, on the rationale that the residents had handicaps.

The only suggestion in the record of advantage from the proposed expansion is that it will financially assist [the group home operator] as a for-profit corporation. But the proper inquiry is not whether "a particular profit-making company needs such an accommodation Otherwise, by unreasonably inflating costs, one business would get such an accommodation while another, better run, did not."

....

Were we to require Howard County to grant a zoning variance to allow Bryant Woods Inn to expand its group home from 8 to 15 residents ... and not to require the county to grant a similar waiver for group homes not involving handicapped persons, the benefit would advantage Bryant Woods Inn on a matter unrelated to the amelioration of the effects of a handicap. This would provide not an equal opportunity to Bryant Woods Inn's residents but a financial advantage to Bryant Woods Inn. Yet, the FHA only requires an "equal opportunity," not a superior advantage.

Id. at 605 (citations omitted).

Unfortunately, there is a lingering misconception among some local municipalities that individual financial necessity is a valid consideration in this jurisdiction. The most recent genesis for this appears to be the unpublished decision in *Lewis v. Draper City*, Civil No. 2:09-CV-589TC (D. Utah, Sept. 21, 2010). In that case, Judge Campbell, citing *Keys*, 248 F.3d at 1275, stated:

If an applicant for an accommodation from a maximum-occupant limitation shows that an increased number of residents is necessary for a facility for disabled residents to be financially successful, the requested accommodation is necessary.

Lewis, Civil No. 2:09-CV-589TC at p. 3.

However, the *Keys* case cited by the *Lewis* court actually does not expressly endorse or adopt any particular financial viability test for determining “necessity” under the FHA. Without saying what, if any, financial viability analysis existed, the *Keys* court merely assumed that *if* such a test existed the applicant in that case wouldn’t have met that test in any event.

In *Keys*, a group home operator “purchased a house in an Olathe neighborhood zoned for single family residential use for the purpose of establishing another group home for ten troubled adolescent males.” *Keys*, 248 F.3d at 1269. The Planning Commission and City Council denied the group home operator’s request for a variance from the city’s limiting definition of a single “family,” which capped the number of unrelated people that can live together at eight. *Id.* at 1269 & 1275. Far from adopting, let alone defining, a financial viability test, the Tenth Circuit held—“punted” might be more accurate—as follows:

The crux of *Keys*’ argument is that it must house no less than ten youths in order to generate enough funds to survive. Following the bench trial, the court stated that the ten-resident minimum may be “necessary,” but nevertheless ruled for Olathe because *Keys* had failed to demonstrate its economic need for the accommodation to the City.... The Court based its decision on the principle that Olathe cannot be liable for refusing to grant a reasonable and necessary accommodation if the City never knew the accommodation was in fact necessary. We agree. . . . *Keys* does not point to any evidence suggesting that its economic need argument was presented to the Planning Commission or the City council.

Id. at 1275-76.

In other words, the Tenth Circuit merely assumed, without expressly deciding, that if financial viability was a relevant consideration the applicant had, nonetheless, failed to produce

any evidence to meet that standard at the relevant juncture. So *Keys* neither created nor endorsed any type of individual financial viability analysis for determining when an accommodation is “necessary.” To the contrary, it is telling that in the very same paragraph of *Keys* quoted above, the Tenth Circuit cited to *Bryant Woods Inn*, which contains perhaps the most scathing rejection of *individual*¹¹ financial viability analysis that can found in the published decisions.

Moreover, *Keys* is more than a decade old. And a careful examination of the Tenth Circuit’s most recent decision in this area, *Cinnamon Hills*, reveals that it expressly followed *Bryant Woods Inn* and the Seventh Circuit’s *en banc* decision in *Wisconsin Cmty. Servs.*, which the *Cinnamon Hills* court said “is entirely consistent with our disposition.” 248 F.3d at 924.

By adopting the *Wisconsin Community* rationale, the Tenth Circuit rejected the financial necessity line of cases, including *Lewis*.¹² Its heavy reliance on *Bryant Woods Inn* also shows that it rejects any type of *individual* financial necessity analysis. That is clear. The only thing that remains unclear is whether the Tenth Circuit would prefer the *Bryant Woods Inn* “market viability” analysis, which will be discussed later, or the Seventh and Second Circuit’s broader rejection of *any* economic viability analysis. However, as explained below, this type of

¹¹ The distinction between individual financial viability and market viability will be discussed later in this brief.

¹² The Seventh Circuit’s rejection of this analysis was recognized by the Ninth Circuit in *Giebeler v. M&B Assocs.*, 343 F.3d 1143 (9th Cir. 2003), which took a decidedly more liberal approach. In that case, John Giebeler, a northern California man, became disabled by AIDS and could no longer work. Because he could not work, “his former apartment became too expensive for him.” *Id.* at 1144. “[H]e could not meet the minimum financial qualifications of the apartment complex where he sought an apartment. Giebeler’s mother, however, did meet those standards, and offered to rent the apartment so that her son could live in it.” *Id.* “The owners of the apartment complex refused to rent either to Giebeler or to his mother, citing a management company policy against cosigners.” *Id.* The Ninth Circuit held that the landlord failed to make a reasonable accommodation when it refused to bend its “usual *means* of testing a prospective tenant’s likely ability to pay the rent over the course of the lease.” *Id.* at 1148. The *en banc* Seventh Circuit in *Wisconsin Community Services* discussed *Giebeler* and expressly rejected its rationale. See *Wisconsin Community Servs.*, 465 F.3d at 754-55.

speculation is not necessary for present purposes because Mr. Harper has failed to produce any relevant evidence to support his claim under any theory of necessity.

C. The Fair Housing Act does not guarantee the availability of group therapy

The second and remaining ground for an accommodation claimed by Mr. Harper is his contention that a waiver of the four-person limitation is necessary in order to have viable group therapy sessions. To support this contention, Mr. Harper presents a two-page letter of Rosemond Maloney, LCSW, PsyD, which claims that “six to eight [is] the ideal number for an effective group” therapy session. While this may be true, it is wholly beside the point and reflects a fundamental misunderstanding of the Fair Housing Act. The Fair *Housing* Act does not mandate the availability of therapy. It mandates the availability of equal *housing*. This is a rather large and important distinction that Mr. Harper overlooks.

Like the group home operator’s interpretation in *Cinnamon Hills*, Mr. Harper’s interpretation of the FHA “overlooks the statute's language linking a defendant's accommodation obligations to the goal of providing ‘equal opportunity to enjoy a *dwelling*.’” 685 F.3d at 924 (emphasis added). Under Mr. Harper’s view, “defendants would be required to ameliorate *any* effect of a disability—even if doing so only affects the disabled person's chances of getting a job or playing a sport and has nothing to do with enjoying a home.” *Id.* Getting a job, playing a sport and getting therapy are all goals that are outside the purview of the Fair *Housing* Act, which is focused on making *dwellings* available on equal footing with the non-disabled.¹³ To

¹³ It should be noted that while it might greatly enhance the learning environment for missionaries to work in groups of 6-8 and while it might greatly enhance college students’ ability to have effective group study sessions, the City is, in no way, obligated to waive its four-person limitation on housing to accommodate the activities of those groups of non-disabled people.

interpret the Fair Housing Act the way Mr. Harper urges would expand the FHA from a statute designed “to accommodate disabilities affecting *housing* opportunities” to “a sort of clinic seeking to cure all ills.” *Id.* (emphasis added).

In sum, group therapy is a distinct concept from group housing. Mr. Harper is confusing the issues and wants the City to make the inferential and somewhat illogical leap that an equal *housing* opportunity will be denied if his patients cannot have on-site group therapy with the same people that they live with. While this may affect a *therapy* opportunity¹⁴, it does not affect a *housing* opportunity.

D. Mr. Harper has not presented sufficient evidence to demonstrate necessity

As explained in part II.B., *supra*, individual financial necessity is not a valid consideration in this jurisdiction. However, it is possible, but unlikely, that the Tenth Circuit could adopt the market viability approach utilized in *Bryant Woods Inn*. Therefore, out of an abundance of caution, Mapleton Fair Care will analyze Mr. Harper’s financial necessity claims under a financial viability approach and show that even under these approaches—which have been rejected by the Tenth Circuit—his claims fail. Also, he cannot demonstrate that group living is necessary for group therapy.

1. Market viability

Under the market viability approach, “the proper inquiry is not whether ‘a particular profit-making company needs such an accommodation, but, rather do such businesses as a whole need this accommodation.’” *Bryant Woods Inn*, 124 F.3d at 605. Even under this approach,

¹⁴ Even this is highly questionable, as explained below, due to the availability of successful outpatient programs such as AA.

(which Mapleton Fair Care believes the Tenth Circuit has likely rejected by virtue of *Cinnamon Hills*) Mr. Harper has, again, failed to carry his burden of demonstrating necessity.

Under this approach, courts focus on the larger needs of the market rather than the individualized needs of the proposed group home operator and thus evidence of market conditions and the effect those market conditions have on housing opportunities must be presented. Thus, in *Bryant Woods Inn*, it was fatal to the group home operator's request for accommodation that the market could absorb group home residents that could not be accommodated at Bryant Woods Inn due to the 8-person zoning limitation in that case:

A handicapped person desiring to live in a group home in a residential community in Howard County can do so now at Bryant Woods Inn under existing zoning regulations, and, if no vacancy exists, can do so at the numerous other group homes at which vacancies exist. The unrefuted evidence is that the vacancy rate was between 18 to 23% within Howard County. We hold that in these circumstances, Bryant Woods Inn's demand that it be allowed to expand its facility from 8 to 15 residents is not "necessary," as used in the FHA, to accommodate handicapped persons.

Id. at 605.

In *Smith & Lee Assocs.*, another prominent case applying the market viability approach, evidence was introduced of a market shortage. *Smith & Lee Assocs., Inc.*, 102 F.3d at 789. Evidence was introduced that a competing facility had a waiting list for potential disabled residents. *Id.* There was also "expert testimony that, over the next thirty-five years, the number of older adults living in the State ... who suffer from dementia would increase by seventy-seven percent." *Id.* In *Smith & Lee* there was also a finding that group homes for the elderly, in general "are not economically viable when limited to six residents ... because such AFCs do not receive state subsidies to cover operating costs." *Id.* The testimony of the group home's expert

witness in that case was that “it is no longer economically feasible for AFC homes for the elderly disabled to operate with fewer than nine residents.” *Id.*

Even if the market viability approach is a legitimate approach (which it does not appear to be in the Tenth Circuit) Mr. Harper has failed to produce the type of financial necessity evidence that courts adopting the market viability approach have required. Hence, his application should be denied.

2. Individual economic necessity

As previously mentioned, the individual economic necessity approach was endorsed in *Giebeler*, by the Ninth Circuit, which does *not* have jurisdiction over Utah. Importantly, however, even the *Giebeler* decision did not reject the “but for” causal analysis that requires the one seeking an accommodation to show that the accommodation is “necessary to meet the *disability-created* needs of a disabled person.” *Giebeler*, 343 F.3d at 1150. For example in a subsequent Ninth Circuit decision, *Budnick v. Town of Carefree*, 518 F.3d 1109 (9th Cir. 2008), the court held that a residential treatment facility applicant, in seeking a reasonable accommodation, would need to “set forth sufficient evidence to establish that the [facility’s] amenities were necessary to house disabled seniors....” *Id.* at 1119. The court criticized the applicant, saying that it “only summarily concluded that the ... amenities are necessary for the disabled *and has not delineated for the court why each of the ... amenities are necessary in the first place.*” *Id.* at 1120 (emphasis added).

In other words, even in the more liberal Ninth Circuit, courts cannot simply *assume* that group living is always required in the first instance and that specific group living amenities (which create expense) are actually disability-related and, therefore, necessary. Instead, the

applicant must demonstrate the need for group living and then show how each required amenity is “disability-created.”

Under this analysis, Mr. Harper has failed, in the first place, to demonstrate that his patients need group living. But, even assuming he has shown that group living is a “disability-created” need, Mr. Harper has failed to demonstrate how each amenity of his proposed program is a “disability-created” amenity, as required by *Budnick*. Without any spreadsheets, pro formas, expense ledgers, business plans or market data—let alone back up or documentary evidence—Mr. Harper asserts in a March 21, 2013, letter that the accommodation to 16 is necessary because, “The costs of running and maintaining a residence of approximately eleven thousand square feet on two landscaped acres far exceeds that of a much smaller residence on less acreage.” (Letter of 3/21/2013 at p.2, ¶ 5(b)(1).) He adds, “As the same with any business the facility must be profitable. Limiting the capacity of the facility to anything less than sixteen beds would place the profitability into question and would likely eliminate the interest of any investor.” (*Id.* at p.3, ¶ 5(b)(2).) That is the sum total of Mr. Harper’s financial viability analysis and evidence.

Consequently, the City is left completely in the dark, having no way to verify if, in fact, the expenses of Mr. Harper’s business are, in fact, disability-created or if they are expenses that are wholly unrelated to any disability and more related to Mr. Harper’s personal financial situation and the need for profit. It has no way of doing its own math and evaluating all of the moving parts to determine whether Mr. Harper’s claims of expense have merit or are exaggerated or whether Mr. Harper can be accommodated at a lower number. Simply put, even under the individual economic necessity rationale (which is not the law in this jurisdiction) Mr.

Harper has failed to produce any evidence (other than his own conclusory assertions) to demonstrate that an accommodation is needed at 16 in order to be financially viable. Therefore, he has failed to carry his burden of proof and his application should be denied.

3. Therapeutic necessity

Courts don't just discriminatorily assume that the disabled have to live in group living arrangements. Rather, they require applicants to demonstrate (usually by expert testimony) "substantial evidence of their need to live in a group home setting in a residential neighborhood, in order to facilitate their continued recovery from alcoholism and drug addiction," and that this need for group living is not shared by "non-handicapped persons" to the same degree." *Tsombanidis v. West Haven Fire Dept.*, 352 F.3d 565, 575 (2d Cir. 2003). *Id.* at 576. This is because—as many courts have recognized—"not all recovering[] [addicts] need group living" *Id.* at 578. There has been no showing that group living is necessary for effective group therapy. As the success of AA attests, group therapy can be effective on an outpatient basis. Therefore the claim that this treatment facility needs 16 residents to be therapeutically viable is simply not supported by the evidence.

IV.

MR. HARPER HAS NOT SHOWN THAT HIS REQUESTED ACCOMMODATION IS REASONABLE

Mr. Harper gets sidetracked with analysis of the size of the home and its undeniable suitability to accommodate a lot of people. That is only partially relevant to the issue as framed by the FHA case law, which holds that "ordering a municipality to waive a zoning rule would ordinarily cause a 'fundamental alteration' of its zoning scheme if the proposed use was

incompatible with *surrounding land uses.*” *Schwarz*, 544 F.3d at 1221 (emphasis added). If the proposed *use* (not building) is not similar to surrounding uses expressly permitted by the zoning code it likely causes a “‘fundamental alteration’ of the zoning scheme” and is not reasonable under the FHA. *Id.* Mr. Harper takes a microscopic view that focuses on how many bodies can comfortably fit inside his large home. But the law requires a satellite view of whether the use—not the size of the building—is compatible with surrounding uses. As the City Code states, he must show that the accommodation will not “fundamentally alter the character and nature of the *subject residential neighborhood.*” Mapleton City Code § 18.84.370.B.4.b.(5) (emphasis added).

As explained more fully in the Declaration of Bruce W. Parker, AICP, PIA, Mapleton Fair Care’s urban planning expert, the four-person limitation is an essential attribute of the General Plan, the City’s zoning scheme and to preserving the character of residential neighborhoods. Waiver of that limitation will fundamentally alter the nature of the subject residential neighborhood. Consequently, even if the City Council finds that Mr. Harper has carried his burden of demonstrating necessity it would be unreasonable to accommodate him at 16 patients.

CONCLUSION

In sum, there are no comparable housing opportunities for groups of unrelated, non-disabled people and, therefore, no duty to accommodate. To waive the rule in question for Mr. Harper but not for other groups of unrelated, non-disabled people would give Mr. Harper, preferential, not equal, treatment. Mr. Harper’s personal financial situation is not relevant after the *Cinnamon Hills* decision. Even if it was, he cannot simply claim that 16 is the magic number

needed without producing substantial evidence to justify the economic exigencies of his project. His application falls far short of what has been required in other cases. The FHA does not mandate the availability of therapy. It mandates the equal availability of housing. Mr. Harper has claimed his residents need group therapy but he has failed to demonstrate that group therapy requires group living in this instance. Moreover, he has failed to demonstrate that group living is not available to recovering substances abusers without an accommodation (*i.e.*, there is no evidence of a market shortage or necessity, etc.). Finally, like other congregate living arrangements of unrelated people, regardless of disabilities, Mr. Harper's facility will fundamentally alter the residential character of the neighborhood by, among other things, injecting a decidedly commercial use into a residential neighborhood, increasing traffic patterns by more than fourfold, increasing population densities by more than 500% percent, and increasing parking congestion and transiency, among other things.

Based upon the foregoing, Mapleton Fair Care respectfully submits that Mr. Harper has not carried his burden of demonstrating that his requested accommodation was necessary and reasonable and requests that the City Council deny his request.

DATED this 22nd day of April, 2013.

MCDONALD FIELDING, PLLC

/s/ Daniel J. McDonald
Daniel J. McDonald
Kyle C. Fielding
Attorneys for Mapleton Fair Care, LLC

5. I am a doctoral student at the University of Utah pursuing the degree of Doctor of Metropolitan Planning, Policy and Design.

6. I am an Adjunct Professor at the University of Utah where I teach undergraduate and graduate students in the courses of Urban Ecology Internship, Professional Planning Internship, and Metropolitan and Regional Planning. In addition, I am also the coordinator for the University of Utah's College of Architecture + Planning's Planning Mentor Program.

7. I am a member in good standing of the American Planning Association ("APA") since 1984.

8. I am a certified planner with the American Institute of Certified Planners ("AICP") and have maintained my AICP certification since 1990.

9. AICP certification requires that I maintain professional certification. A certified planner must have an appropriate combination of relevant education and professional experience, must pass an examination that tests skills and knowledge, and must be a member of the APA in good standing.

10. To maintain my AICP certification, I remain current on contemporary planning practice and earn a specified number of continuing education credit hours that include courses in planning law and ethics. AICP certification is recognized throughout the United States as the mark of a professional planner and AICP members pledge to adhere to a Code of Ethics and Professional Conduct.

11. It is my full-time profession and vocation to consult with municipalities, counties and private organizations on matters related to community planning and plan implementation and administration, including zoning, subdivision, development applications, and capital facilities planning throughout the State of Utah.

12. I have served as an expert witness in land use matters on various occasions.
13. A true and correct copy of my curriculum vitae is attached herewith.
14. I have reviewed the Mapleton City General Plan, Land Use Element and applicable provisions of the Mapleton City Development Code.
15. The Mapleton City General Plan, Land Use Element, identifies it is provided to “promote sound land use decisions.” (Mapleton City General Plan Land Use Element, Introduction). Further, the Land Use Element identifies that the Utah Code allows municipalities to “provide standards of *population density* (emphasis added) and building intensity” (Ibid.).
16. The Mapleton City General Plan provides; “Mapleton desires to protect and encourage residential and commercial agriculture through appropriate zoning and density development.”
17. In 2010, the Average Household size for Mapleton City was 3.89 occupants per household (2010 Census, US Census Bureau, retrieved April, 2013 at www.factfinder2.census.gov).
18. The General Plan identifies a policy of the Rural Residential (RR) category (equivalent to A-2 and PRC zones). “Single family residential development is allowed at a minimum of 2 acres per dwelling (exclusive of roads). Densities higher than 2 acres/unit, but not higher than 1 unit/acre may be allowed pursuant to a development agreement or with the use of Transferable Development Rights” (Mapleton City General Plan Land Use Element, Land Use Designations).
19. General Plan, “Goal #3: Preserve the integrity of the Land Use Element by requiring all developments and zone changes to be consistent with the General Plan. Policy A: The Planning Commission will not recommend approval of any development or zone change

which is inconsistent with the General Plan, nor will the City Council approve any zone change inconsistent with the General Plan” (Mapleton City General Plan, Land Use Element).

20. For the purposes of defining neighborhoods, the General Plan provides; “Goal #9, Policy B: “Neighborhoods should be bounded by major thoroughfares or natural features such as agricultural open space” (Ibid.).

21. Mapleton City utilizes a land use regulatory program that includes a zoning scheme (as allowed by Utah law) that divides the City into various zoning districts each with permitted, conditional, and prohibited uses and accompanying development standards.

22. The Mapleton City Development Code (“Development Code”) provides various definitions for the efficient and equitable interpretation and administration of the Development Code. “Family” is defined to include; “3. Up to three (3) related or unrelated individuals who live and cook together as a single housekeeping unit” (§18.08.145, Development Code). I understand, after reviewing Mapleton City Planning Staff materials that the City has amended or is in the process of amending this definition (which is not yet available online) to four (4) related or unrelated individuals. "Single-family dwelling" means one dwelling unit contained within a single structure intended to be occupied by a "family" (Ibid.).

23. Chapter 18.28, A-2 Agricultural-Residential Zone establishes a maximum density of one-dwelling unit (single-family dwelling) per two (2) acres (Ibid.). The purposes of the A-2 Agricultural-Residential Zone are:

- a. To provide areas in which agricultural pursuits can be encouraged and supported.
- b. To protect agricultural uses from encroachment of typical urban development.
- c. Insure that uses permitted in the A-2 zone, in addition to agricultural and residential uses, are incidental and should not change the basic agricultural character of the zone; and

d. Development should be accomplished in an orderly and progressive manner. (§18.28.010, Development Code).

24. Recognizing the purposes and standards of the A-2 Agricultural Residential Zone, the City has expressly determined a maximum population density of four (4) unrelated persons per two (2) acres for the A-2 zone (1-dwelling unit/2 acres x 4 persons/single-family dwelling). The purposes of establishing a maximum population density in the A-2 Agricultural Residential Zone is to protect the character and nature of the city's residential communities and insure uses and activities permitted in the zone do not alter the “*character and nature of the subject residential neighborhood*” (§18.84.370(B)(1)(a)(3), Development Code).

25. Mr. George E. Harper (“Applicant”) has now presented a land use application to the City for the approval of a residential facility for persons with a disability, proposed to be located at 727 East 1100 South, Parcel # 46:274:0017 (“Property”).

26. The Property is located within the A-2 Agricultural-Residential zone, allowing a maximum density of one (1) dwelling unit per two (2) acres and a population density of four (4) unrelated persons per two (2) acres.

27. Under the Development Code’s “Reasonable Accommodation” standards the Applicant is also requesting that Mapleton City waive the population density requirements for the A-2 Agricultural-Residential Zone and the definition of “family” and allow up to 16 unrelated people to live together on the Property and convert the existing residential dwelling into a residential facility for persons with a disability.

28. The Applicant, in requesting the identified waivers, must present materials sufficient, among other things, to “describe what impact, if any, the applicant perceives that the requested accommodation shall have on the existing neighborhood and whether the requested

accommodation is consistent with the character and nature of the neighborhood” (§18.84.370(B)(5), Development Code).

29. The Applicant has provided material in support of the requested reasonable accommodation based on the benefits of group therapy.

30. In considering the Applicant’s reasonable accommodation application the Planning Commission and the City Council shall “consider the impact of the requested accommodation on the neighborhood in light of existing zoning and use, including any impact on neighborhood parking, traffic, noise, utility use, safety, and other similar concerns, and whether any such impact fundamentally alters the character and/or nature of the neighborhood and/or existing zoning regulations” (Development Code).

31. In addition, the procedures for approval of a residential facility for persons with a disability require, among other things, a two-pronged planning test. These two (2) tests are:

- a. *Avoids discrimination against the disabled; and*
- b. *Protects the character and nature of the city's residential communities*” (emphasis added, 18.84.370(B)(1)(a)(3), Development Code).

32. In considering a land use application for a residential facility for persons with a disability, and application for reasonable accommodation, the Planning Commission and the City Council must also apply a third planning test. This third test requires that the Planning Commission and City Council find; “the residential facility will not fundamentally alter the *character and nature of the subject residential neighborhood.*” (§18.84.370(B)(5), Development Code). The spatial context for this test is the *subject residential neighborhood.*

33. For the purposes of the Applicant's land use and reasonable accommodation application(s) the subject residential neighborhood, consistent with the General Plan, is bounded by 1600 East-South Main-East Maple Streets.

34. The subject residential neighborhood is located in an A-2 Agricultural-Residential zone district with a maximum population density of 4 unrelated persons per 2 acres.

35. From information provided to me during April 2013, the existing population density of the subject residential neighborhood is approximately 3 persons per 2 acres.

36. The Applicant is proposing to increase the population density for the Property to 16 clients, plus staff, over four-times (4x) that allowed by the Development Code and approximately five-times (5x) the actual existing population density of the subject residential neighborhood.

37. The Institute of Transportation Engineers (ITE) identifies a trip generation rate of approximately 9.6 vehicle trips per day per single-family residential dwelling. While ITE does not provide a specific trip generation rate for a residential facility for persons with a disability a conservative comparable exists. ITE identifies the trip generation for an Assisted Living facility (ITE Land Use 254) as 2.7 trips per day per bed or 3.93 trips per day per employee. Based on the Applicant's materials and accepted traffic engineering practice vehicle trips in the subject residential neighborhood will increase significantly.

38. The Applicant is proposing to greatly intensify the existing use and increase the trip generations for the Property. As a comparison, the population density increase proposed by the Applicant would be akin to requesting a 4-lot residential subdivision on the Property.

39. The combined effects of these large increases in the population density and trip generations for the Property is to:

- a. *Undermine the character and nature of the city's residential communities*
(§18.84.370(B)(1)(a)(3), Development Code).
- b. Fundamentally alter the existing zoning regulations of the A-2 Agricultural-Residential zone;
and
- c. *Fundamentally alter the character and nature of the subject residential neighborhood*
(§18.84.370(B)(5), Development Code).

40. The significantly increased population density and trip generation rates for the Property will set an unwarranted land use precedent that may precipitate a wave of subsequent land use changes in the subject residential neighborhood.

41. Based upon my review of all of the foregoing information, it is my professional opinion that the required land use planning tests (as required by the Development Code) have not been met.¹ The adopted four-person limit on the number of unrelated people that may live together in a single-family dwelling is consistent with applicable Utah land use law, reality (in terms of the maximum population density allowed in the A-2 Agricultural-Residential zone and existing in the subject residential neighborhood), the goals and policies of the General Plan, and the purposes of the Development Code.

42. It is my opinion, based on objective evidence; the Applicant has presented applications to the City that request approval for a population density and the intensification of a use at levels much greater than that created by other residential uses allowed in the A-2 Agricultural-Residential zone.²

¹ Information identifying the benefits of onsite group therapy are not relevant and do not provide information relevant to the applicable tests and necessary for matters related to the subject residential neighborhood and other established review criteria.

² §18.28.050: LOTS, BUILDINGS, YARDS, AND OPEN SPACES: Each lot or parcel of property in the A-2 zone shall meet all of the following requirements: A. Lot Size And Area Per Dwelling: The minimum lot size in the A-2 zone shall be not less than two (2) acres or eighty seven thousand one hundred twenty (87,120) square feet. Not

43. Based on the objective evidence included herein, including but not limited to, a population density and trip generation analysis, the Application(s) of Mr. George E. Harper would:

- a. Compromise the character and nature of the city's residential communities.
- b. Fundamentally alter the character and/or nature of the neighborhood and/or existing zoning regulations.
- c. Fundamentally alter the character and nature of the subject residential neighborhood.
- d. Violate the Goals and Policies of the General Plan, Land Use Element.
- e. Change the basic agricultural character of the A-2 Agricultural-Residential zone.

I declare under criminal penalty of the State of Utah that the foregoing is true and correct.

DATED this 22nd day of April, 2013.



Bruce W. Parker, AICP

more than one single-family dwelling may be placed upon a legally created lot or parcel of land in the A-2 zone. When part of a TDR receiving site, the minimum lot size shall not be less than one (1) acre or forty three thousand five hundred and sixty (43,560) square feet.

BRUCE W. PARKER, AICP

3007 EAST CRUISE WAY ☐ SALT LAKE CITY, UTAH, USA 84109

USA (801) 277-4435 ☐ pds@utahplanning.com

QUALIFICATIONS SUMMARY

Project manager for a variety of planning and implementation initiatives including planning, development, and infrastructure projects with a local, regional, intrastate, or interstate purpose. Possesses a full understanding of the day-to-day administrative issues, detail, and actions necessary to successfully carry out and achieve goals, objectives, and results. Advise state and local officials, including the Utah State legislature, and draft statutory law revisions affecting planning and intergovernmental communication and collaboration. Extensive experience in urban, suburban, rural, and resort planning including development review and permitting processes. A regular speaker at local, state, national, and international planning conferences.

TYPICAL PROJECT RESPONSIBILITIES

- Community and special purpose development and project planning, including utility and energy corridor planning for local, state, and federal agencies, including the US Department of the Interior, Bureau of Land Management.
- Project manager for special local government cooperation activities, including linking public education with local governments.
- Litigation support and expert witness on major community planning and development activities.
- Manager of negotiation and resolution of controversial development projects with the associated formulation and drafting of various development agreements.
- Formulation of planning requirements and standards for planning implementation activities, including housing and land use policies and ordinances.
- Developed project and infrastructure investment evaluation tools for state and local project decision-making.

EDUCATION

Bachelor of Urban and Regional Planning (Honors) _____ University of New England

- | Awards;
 - The Anthony Bernard Cunningham Memorial Prize (academic achievement).
 - The Australian Association of Consulting Planners Prize (best thesis).

Master of City and Metropolitan Planning _____ University of Utah

- | Awards;
 - College of Architecture + Planning – Leadership Award.
 - Outstanding Academic Performance (academic achievement; GPA – 4.0).

Doctoral Candidate, Ph.D. Metropolitan Planning, Policy, and Design _____ University of Utah

EMPLOYMENT

Principal, Planning and Development Services, LLC _____ 1992–Present

As the Principal of Planning and Development Services, LLC (PDS), a Utah-based planning consultancy, I possess extensive experience providing services to public and private sector clients. This experience includes community general plans, planning implementation strategies (including zoning and subdivision regulations), environmental assessments, infrastructure planning and financing, fiscal analysis, planning administration, and project management. I provide development review and permitting for a variety of projects with an interstate, intrastate, regional, or local purpose.

Lecturer/Adjunct Professor, University of Utah _____ 2010–Present

As Lecturer and the Instructor of Record, responsible for all course instruction, administration, and requirements including course syllabus, lectures, and other student instruction, assignments and grading. Courses taught;

- | Metropolitan and Regional Planning (CMP 5270 and CMP 6270 – Fall Semester, 2011 & 2012).
- | Professional Planning Internship (CMP 6954 – Fall Semester 2011, Spring & Fall Semester 2012).
- | Internship in Planning (CMP 4954 – Fall Semester 2011, Spring & Fall Semester 2012).
- | University of Utah, College of Architecture + Planning's – Planning Mentor Program Supervisor.

Community Development Director, Summit County, Utah _____ 1989–1992

Responsible for the management of all planning, engineering, and building inspection services with complete firing and employee supervisory authority for 20 employees and department budget authority. Responsible for the provision of quality and responsive customer and client services including the communication, collaboration, and cooperation with various federal, state, and local government agencies on various planning and infrastructure projects. Authority for the management and oversight of preparatory work associated with provision of various winter Olympic sites and environmental reviews.

Planning Programs Supervisor, Salt Lake City Municipal Corporation, Utah _____ 1986–1989

Managed city's long-range planning initiatives and other activities for planning areas and city neighborhoods. Responsible for coordination with various citizen organizations and the provision of quality planning services. Managed planning consultants and complex urban planning projects.

Long-Range City Planner, City of West Jordan, Utah _____ 1983–1986

Fully responsible and accountable for the formulation of the city's first comprehensive master plan, and all plan amendments. City representative for planning coordination matters with federal, state and local agencies. Received the City of West Jordan Community Achievement Award.

CERTIFICATIONS AND PROFESSIONAL ASSOCIATIONS

- | American Institute of Certified Planners (AICP), 1990 – Present. Certification No. 052210.
- | American Planning Association;
 - o President, Utah Chapter (1994 – 1996).
 - o Past President, Utah Chapter (1996 – 2000).
 - o Secretary, Utah Chapter (1991 – 1996).

COMPETENCIES AND OTHER SKILLS

- § Excellent verbal and written communication skills.
- § Superior customer service and client relation skills.
- § Proficient in;
 - Microsoft Office Suite software.
 - Statistical Package for the Social Sciences (SPSS) and STATA.

PRESENTATIONS AND PUBLICATIONS

- Utah Local Governments Trust Citizen Planner Training Series 1997 – 2008. Presenter at training sessions for over 1,200 professional and citizen planners. Topics include “The General Plan,” “The Planning Commission,” “The Division of Land (Subdivision Policy and Regulations),” and “Land Use Regulation (zoning ordinance formulation and implementation to achieve land use policy).”
- American Planning Association National Conference, April 2011, Boston Massachusetts. *“Getting the Message Out” The Importance of Effective and Efficient Planner Communications.*
- Virginia Tech. Alexandria Virginia. Visiting Lecture Series, April 2011. “Planning and Permitting of Renewable Energy Systems: Experiences and Lessons from Millard County, Utah.
- Joint National Congress of the Planning Institutes of New Zealand and Australia, April 2006, Surfers Paradise, Queensland, Australia, *“What Type of State Legislation Best allows the “Imagine” to be Achieved? “Top-Down” or “Bottom-Up?” What Provides the Best Results? The Bottom-up Approach.*
- Planning Institute of Australia National Congress, Creative & Sustainable Communities, April, 2005 Melbourne, Australia, *“The Role of Planning Commissions in the United States in Local Government Planning Policy and Plan Implementation Decision-Making.”*
- Parker, B.W. (2007). “All the Details for Doing it Correctly - Subdivision Development – A Guide on How to Legally Subdivide Land in Utah,” Utah League of Cities & Towns – Subdivision of Land.
- Parker, B.W. (2005). “Subdivisions in Utah’s Cities & Towns,” Utah League of Cities & Towns Conference, St. George, Utah.
- Parker, B.W. (2006). “Culinary Water Authorities and Sanitary Sewer Authorities.” Utah Rural Water Users Association, St. George, Utah.
- Parker, B.W. (2004) “The Division of Land in Utah – State and Local Standards and Requirements” State of Utah Department of Environmental Quality, Division of Drinking Water, Salt Lake City, Utah.
- Parker, B.W. (2006) “Culinary Water Authorities – who are they and what do they do?” State of Utah Department of Environmental Quality, Division of Drinking Water, Salt Lake City, Utah.
- Parker, B.W., and J. Perrin (2002) “Public Safety and Residential Street Design” Envision Utah, 2002.
- Presenter to Envision Utah, conference presentations including “Public Safety and Residential Street Design” and “Community Walkability” 2002.
- Presenter to Southwest Legal Foundation, Dallas, Texas.
- Presenter to University of Wisconsin – Madison, Professional Development Program in Planning and Zoning Department Management, Madison, Wisconsin and Lakewood/Denver, Colorado.

State & County QuickFacts

Mapleton (city), Utah

People QuickFacts	Mapleton	Utah
Population, 2011 estimate	8,198	2,814,347
Population, 2010 (April 1) estimates base	7,979	2,763,885
Population, percent change, April 1, 2010 to July 1, 2011	2.7%	1.8%
Population, 2010	7,979	2,763,885
Persons under 5 years, percent, 2010	8.2%	9.5%
Persons under 18 years, percent, 2010	38.8%	31.5%
Persons 65 years and over, percent, 2010	9.5%	9.0%
Female persons, percent, 2010	50.1%	49.8%

White persons, percent, 2010 (a)	95.0%	86.1%
Black persons, percent, 2010 (a)	0.3%	1.1%
American Indian and Alaska Native persons, percent, 2010 (a)	0.3%	1.2%
Asian persons, percent, 2010 (a)	0.5%	2.0%
Native Hawaiian and Other Pacific Islander, percent, 2010 (a)	0.4%	0.9%
Persons reporting two or more races, percent, 2010	2.5%	2.7%
Persons of Hispanic or Latino origin, percent, 2010 (b)	3.5%	13.0%
White persons not Hispanic, percent, 2010	93.0%	80.4%

Living in same house 1 year & over, percent, 2007-2011	83.3%	82.3%
Foreign born persons, percent, 2007-2011	4.8%	8.2%
Language other than English spoken at home, percent age 5+, 2007-2011	12.3%	14.3%
High school graduate or higher, percent of persons age 25+, 2007-2011	98.1%	90.6%
Bachelor's degree or higher, percent of persons age 25+, 2007-2011	36.1%	29.6%
Veterans, 2007-2011	338	147,944
Mean travel time to work (minutes), workers age 16+, 2007-2011	22.6	21.4

Housing units, 2010	2,125	979,709
Homeownership rate, 2007-2011	89.6%	70.7%

Housing units in multi-unit structures, percent, 2007-2011	3.1%	21.3%
Median value of owner-occupied housing units, 2007-2011	\$359,900	\$221,300
Households, 2007-2011	1,986	871,358
Persons per household, 2007-2011	3.90	3.06
Per capita money income in the past 12 months (2011 dollars), 2007-2011	\$24,222	\$23,650
Median household income, 2007-2011	\$73,294	\$57,783
Persons below poverty level, percent, 2007-2011	2.5%	11.4%

Business QuickFacts	Mapleton	Utah
Total number of firms, 2007	520	246,393
Black-owned firms, percent, 2007	F	0.5%
American Indian- and Alaska Native-owned firms, percent, 2007	F	0.6%
Asian-owned firms, percent, 2007	F	1.9%
Native Hawaiian and Other Pacific Islander-owned firms, percent, 2007	F	0.3%
Hispanic-owned firms, percent, 2007	F	3.7%
Women-owned firms, percent, 2007	S	24.9%

Manufacturers shipments, 2007 (\$1000)	NA	42,431,657
Merchant wholesaler sales, 2007 (\$1000)	134,103	25,417,368
Retail sales, 2007 (\$1000)	2,095	36,574,240

Retail sales per capita, 2007	\$274	\$13,730
Accommodation and food services sales, 2007 (\$1000)	1,066	3,980,570

Geography QuickFacts	Mapleton	Utah
Land area in square miles, 2010	12.58	82,169.62
Persons per square mile, 2010	634.4	33.6
FIPS Code	47950	49
Counties		

(a) Includes persons reporting only one race.

(b) Hispanics may be of any race, so also are included in applicable race categories.

D: Suppressed to avoid disclosure of confidential information

F: Few er than 100 firms

FN: Footnote on this item for this area in place of data

NA: Not available

S: Suppressed; does not meet publication standards

X: Not applicable

Z: Value greater than zero but less than half unit of measure shown

Source U.S. Census Bureau: State and County QuickFacts. Data derived from Population Estimates, American Community Survey, Census of Population and Housing, County Business Patterns, Economic Census, Survey of Business Owners, Building Permits, Consolidated Federal Funds Report, Census of Governments
Last Revised: Thursday, 10-Jan-2013 10:48:32 EST

G.E. (Bud) Harper
727 East 1100 South
Mapleton, Utah 84664

April 9, 2013

Mapleton City Corporation
125 West Community Center Way
Mapleton, Utah, 84664

Attn: Sean Conroy, Community Development-Director:

The purpose of this letter is to provide the city with size comparisons for residential treatment facilities in Utah and Salt Lake counties. The square footage and lot size were determined from public county records. I believe the figures represent a fair sampling of facilities around the counties and the figures also reflect that having sixteen residents for my facility is clearly consistent with other cities.

- Beverly Taylor Sorensen Home -4388 Harvest Creek Way, Riverton
 - 8 beds - 4806 sq. ft. - 0.42 acres
- West Jordan Latency Home -4655 W. 8450 South, West Jordan
 - 8 beds - 4318 sq. ft.- 0.25 acres
- Northwest Passage -432 N. 300 West, Salt Lake City
 - 10 beds - 3872 sq. ft. - 0.18 acres
- Anthem House -376 S. 200 West, Orem
 - 12 beds - 2526 Sq. ft. - 0.28 acres
- Discovery Academy -1834 S. Sandhill Rd., Orem
 - 12 beds - 4260 sq. ft. - 0.88 acres
- Youth Health Associates -836 N. 1375 West, Provo
 - 16 beds - 4180 sq. ft. - 0.22 acres
- Willow Tree Recovery -145 S. 1300 West, Pleasant Grove
 - 16 beds - 8500 sq. ft. - 2.0 acres
- The Journey -8072 s. Highland Dr., Cottonwood Heights
 - 16 beds - 6643 sq. ft. - 0.98 acres
- Gateway -2487 S. 700 East, Salt Lake City
 - 16 beds - 5209 sq. ft. - 0.59 acres
- Helping Hand Association -974 E. South Temple, Salt Lake City
 - 16 beds -5278 sq. ft. - 0.31 acres
- The Ark of Little Cottonwood -2919 E. Granite Hollow Dr., Sandy
 - 16 beds - 8137 sq. ft. -1.78 acres
- Wasatch Recovery -8420 Wasatch Blvd., Cottonwood Heights
 - 16 beds - 5642 sq. ft. - 3.39 acres
- Draper Home -13073 Wheatfield Way, Draper
 - 16 beds - 3617 sq. ft. -1.09 acres
- Vista at Dimple Dell Canyon -10209 Dimple Dell Rd., Sandy
 - 16 beds - 9667 sq. ft. -1.63 acres

I hope the above information is beneficial to those involved with this proposal. Please get back to me if you would like to further discuss anything addressed in this letter.

Sincerely,

G.E. (Bud) Harper

The above list was submitted by Bud Harper to the Planning Commission as comparable facilities with no supporting data that these were relevant comps to his proposed adult rehab in Mapleton. In no way do these facilities and their surrounding neighborhoods represent the Mapleton neighborhood. All of these facilities would drastically alter the nature of the neighborhood where Mr. Harper's proposed facility is located. His very submission does just the opposite. It makes the case that these facilities are commonly located in commercial/business zoning and found on major highways or roads. Parking is consistently an issue and the density and nature of each area is drastically different from the Mapleton City neighborhood. At least half of the submitted properties are for children and young adults with completely different guidelines for controls, such as lock down restrictions. The youth facilities were most commonly found on high traffic, multi lane roads, in commercial/business areas. One of the facilities lost its license for abuse of the children. Another had significant issue with the city of Pleasant Grove for multiple violations. There was no research done by Bud Harper, other than number of beds and square footage. The Mapleton City Planning commission only looked into one of the facilities and found that there were significant complaints about parking. The body of information clearly shows that Bud has not met the burden of proving that his facility will not negatively affect the city or change the current nature of the neighborhood.

Beverly Taylor Sorenson Home - 4388 Harvest Creek Way, Riverton, UT on .42 acres. This home is an 8 bed home for children ages 5 to 13. Higher density neighborhood. This was actually a foster home with elementary age children. Note the playground equipment in the backyard. A home with parents and foster children is significantly different than an adult treatment facility.



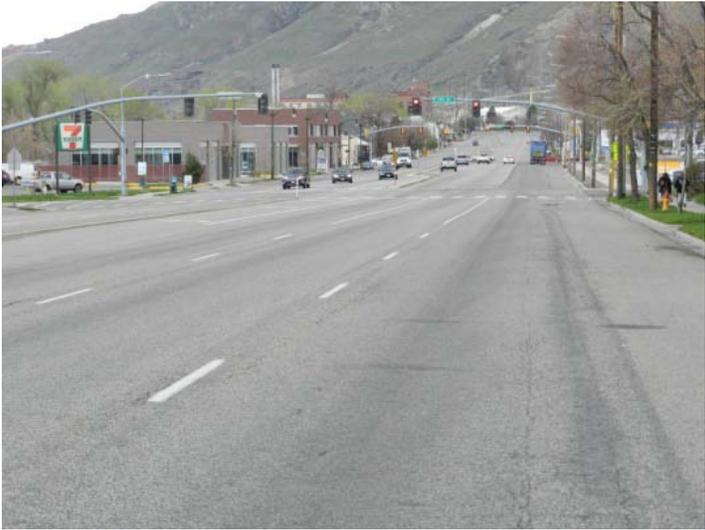
West Jordan Legacy Home - 4655 W 8450 South West Jordan UT. Zone R1-10D (One unit per 10,000 sq ft on property)

This is an 8 bed home, 4318 sq ft on .25 acre. This home is a home for children ages 5 to 13. This home is actually a foster home with elementary age children. Please note the playground equipment in the backyard. Higher density neighborhood. Also, a foster home with parents is not comparable to an adult treatment facility with 16 beds plus staff.



North West Passage -432 N 300 W, Salt Lake City, UT. Zone CB (Commercial Business)

10 bed facility 3,872 sq ft .18 acre High density commercial area. Located on Hwy 89 - an 8 lane major arterial road. 18 cars in the parking lot for the facility. Located next to several business and the 15 Fwy.



Anthem House – 376 S. 200 W., Orem, UT Zone R-8

Entrance to property is a flag lot type private street. 3 parking space driveway with 3 space parking lot to the east of the house. Teenage boys ages 13 to 18. I spoke to one of the neighbors who said the boys are extremely well supervised. Mapleton city planning commissioner, Richard Lewis, spoke to the 4 neighbors - all of whom complained of parking issues. The flag lot drive is directly off of 400 S - which is a high traffic road.



Discovery Academy - 1834 Sandhill Rd., Orem Zone R-8

12 bed facility, 4260 sq ft on .88 acre. This is an all boys home and boarding school for troubled teens with Discovery Academy school. Completely fenced. Large driveway leading to parking lot. Busy commercial street. Commercial property behind the facility as shown in aerial and ground pictures. It is located next to Interstate I5 with several commercial businesses surrounding the facility with freeway billboards.



Youth Health Associates - 836 N. 1375 West, Provo UT.

16 Bed facility, 4180 square ft on .22 acres. This facility is for juvenile sex offenders ages 12-21 years old. The facility is located in a commercial/business area with some residential housing. Provo College parking lot is directly across the street. Heavily traveled road with large roundabout. Across the street is all commercial businesses.



Willow Tree Recovery - 145 South 1300 West, Pleasant Grove, Utah.

16 bed adult facility, 8500 sq ft on 2 acres. Newly built (not converted from a home) Parking lot in front and also in back. Street improvements include curb, gutter, sidewalk. Privacy wall surrounding facility. Neighbor to the North has an extra tall privacy wall of approximately 9 feet. The immediate neighborhood (1300 W) consists of a few older homes on farmland, a large church building (stake center), several newly built condo complexes, and apartment buildings. The street has changed from farmland to a high density neighborhood.



The Journey - 8072 S. Highland Drive, Cottonwood Heights.

16 bed, 6643 sq ft on .98 acres. The facility is surrounded by several business (A1 Driving School, a restaurant, a counseling facility, etc.) It is also on Highland Drive and Cottonwood Creek Road - both heavily traveled thoroughfares. Notice their website photo showing a group therapy session of 7 (we will assume 1-2 of those being therapists).



Gateway - 2487 South 700 East, Salt lake City, UT. Zoned RMF-30 (Residential Multi-family)

16 bed facility, 5209 sq ft on .31 acres. This facility is for teenage boys and is a lock down facility. Again this does not compare to the adult rehab facility that is proposed. This facility is on Hwy 71 - a heavy traffic area with commercial properties and businesses across the street. 18 cars in the parking lot at 1:30pm. The neighborhood is high density with some multi unit apartments.



Helping Hand Association (The Haven)- 974 South Temple, Salt Lake City. Zoned R-2

18 bed mixed adult , 5278 sq ft on .31 acres. This is a treatment facility and half way house. The residents are supported by a staff of 4 clinical case managers, a supervision ratio of 1 manager to 4 clients. This facility is in a heavily traveled, primarily commercial and business location and is surrounded by care facilities with minimal residential housing.



The Ark of Little Cottonwood - 2919 E Granite Hollow Dr, Sandy, UT Zoned R1-10

This facility was closed and relocated to 299 E 900 S, Provo, UT. Zoned Commercial. They reside in the upstairs of the Food and Care Coalition. When I visited this facility the front desk of the Food and Care Coalition had to call upstairs for a person to come let me in due to the facility being locked (it was the middle of the day). This is a co-ed facility for adults - treating people with mental health problems, mood disorders, all addictions, etc. The area is commercial/industrial completely surrounding the facility with businesses such as Taco Bell, Maaco Body Shop, and the Post Office; along with the railroad tracks being to the East. The Sandy facility had multiple violations and is covered in the Deseret News and a KSL News article and their license was revoked in January. The Provo facility is not comparable in any way – due to it being above the Food and Care Coalition, in an industrial area.



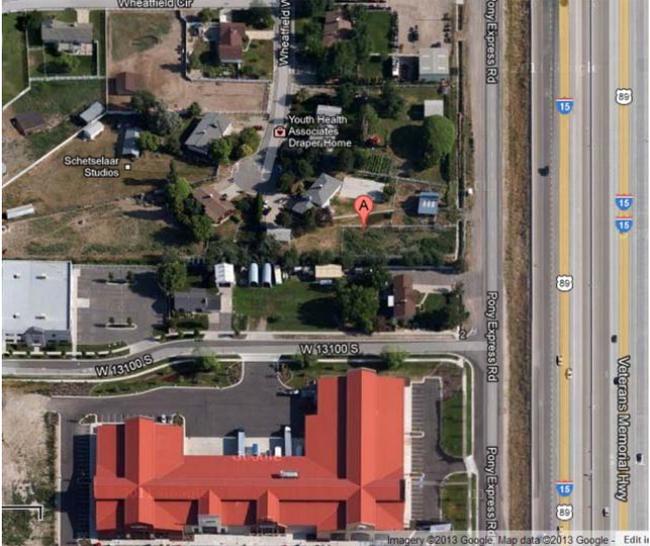
Wasatch Recovery - 8420 Wasatch Blvd, Cottonwood Heights

This is a fully fenced, private, youth facility with 16 beds. It is on 3.39 acres, surrounded by trees in a rural area next to the mountains in Cottonwood Heights. It backs a canyon. The entrance is on a busy road with constant traffic. The property has many activities – volleyball, basketball, large garden, barn, corral, etc. all behind a perimeter privacy fence. There is a parking lot on the property of this 16 bed facility – which also has several garages.



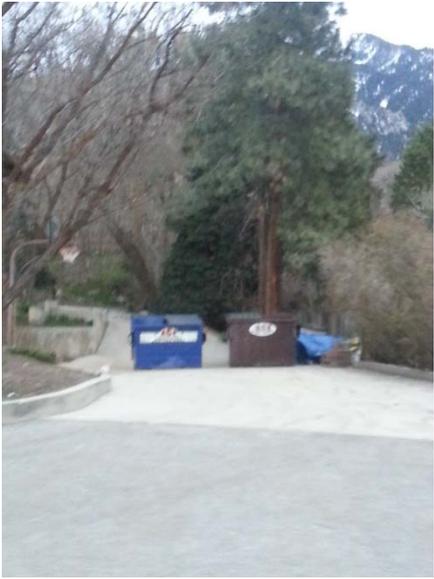
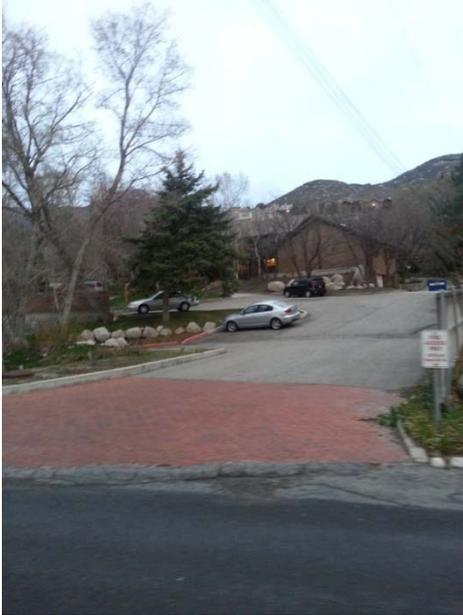
Draper Home (Draper Youth Ranch) - 13073 Wheatfield Way, Draper, UT.

15 beds, 3,618 sq ft on 1.09 acres. This facility treats boys ages 13-19 with sexual behavioral problems, anti-social behavior, autism spectrum disorder, intellectual impairments. The clients can expect to graduate from the program in 10-12 months with outpatient care of 6-12 months. This home is at the end of a cul-de-sac backing the frontage road of the freeway. This is in an old residential area being overtaken by commercial/business properties and right next to Interstate 15. As you can see in the pictures – this 15 bed youth facility requires several city trashcans along with a commercial trash dumpster. Cars were parked in the driveway and all along the end of the cul-de-sac. At the time these pictures were taken the boys were in the back yard playing basketball (leading us to believe that this was not a family visit day)



Vista at Dimple Dell Canyon - 10209 Dimple Dell Rd, Sandy, UT.

16 bed, 9667 sq ft on 1.63 acres. This facility is for girls ages 13-18. This is a rural setting on a canyon road. Nothing backs up to the facility. There is an old abandoned home directly across the street. There are 2 large driveways with striped parking spaces. Note the two commercial trash dumpsters.

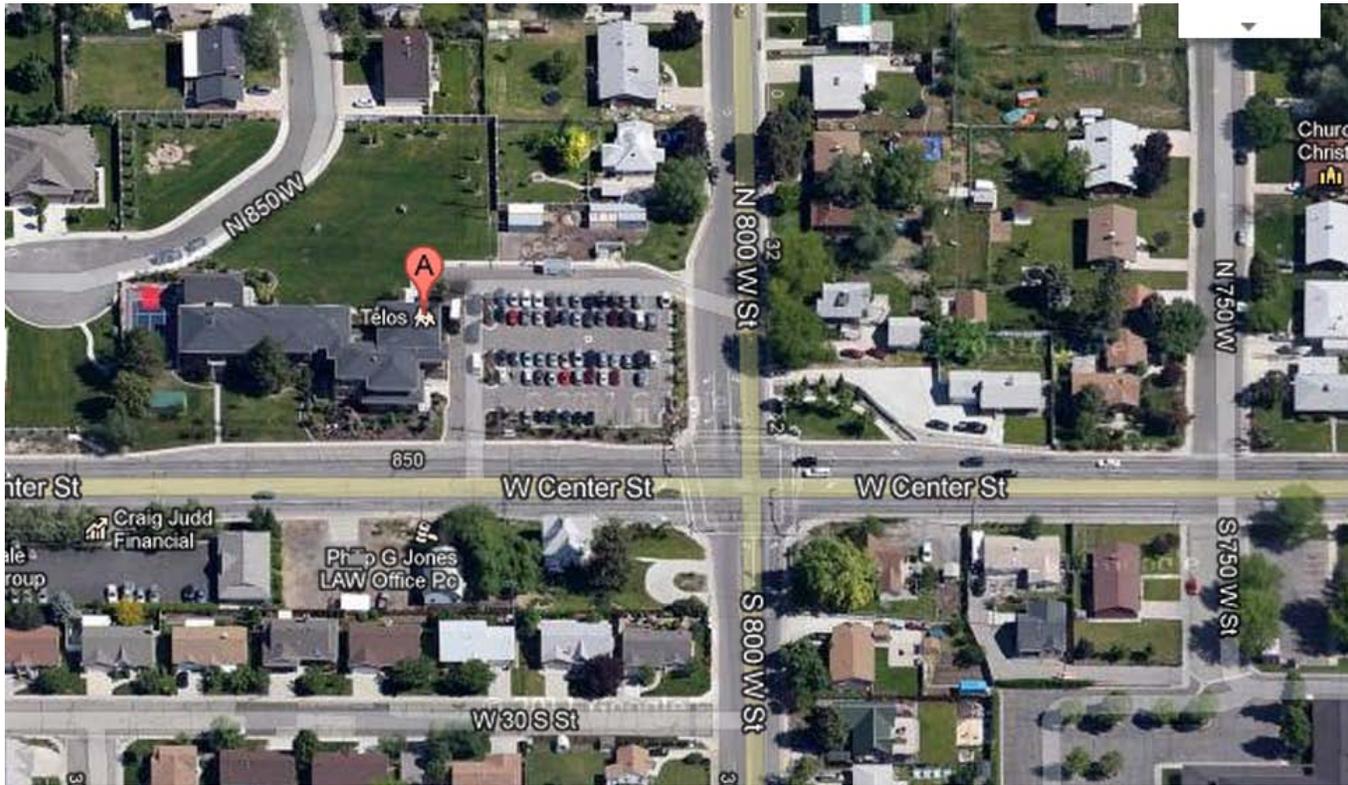


Telos –870 W. Center St, Orem, UT

This facility was submitted by Mapleton City staff, in their staff report, to the Planning Commission as an example. The following is what was included by the staff:

“Staff has contacted some residential care facilities to request information on what might be expected as far as food service, maintenance, deliveries, etc. The Telos facility in Orem is a 48 bed facility (note, it is in a commercial zone, not a residential zone). They estimate that they have a carpet cleaning company that comes about once every two months, a company that comes in to clean the commercial oven about every three months and several UPS deliveries a week. Most of the food is purchased by the facility staff.”

This facility is for teenage boys with depression, anxiety, and behavioral issues – currently housing 48 boys. Large parking lot which had 60 cars at the time of the aerial picture. 5 large transportation vans. Please note: **Food Service semi truck pulling out of parking lot.** Several businesses surrounding Telos. Center Street in Orem is a main street heavily traveled.





New Haven – Spanish Fork, UT

Residential treatment program and boarding school for teen girls, ages 12-18. The staff to student ratio is 1 to 2.6 - Their website states “The large size of our team allows for constant supervision and safety”. It consists of 3 houses each with 16 beds. New Haven is on a 26 acre “campus” with 3 homes, 1 classroom, swimming pond, and equestrian. This facility is located in a rural area with no residential neighbors nearby.



Discovery Ranch – 1308 S 1600 W, Mapleton, UT

Residential treatment program for boys and girls ages 13-18 with emotional/behavioral issues. 20 acre ranch sits on a main, high traffic road – Hwy 89.



Mapleton neighborhood

Narrow street in front of Mr. Harper's house. Surrounded by neighbors on all sides.



Entire street is a narrow, residential road. No curb, gutter, sidewalk.



Address	Current # of people in home	Years in neighborhood
1100 S		
152 E	3	3.5
230 E	5	6
255 E	3	8
270 E	1	6
366 E	5	12
355 E	2	1
465 E	2	31
466 E	2	15
573 E	2	3.5
558 E	2	4
665 E	2	22
736 E	2	7
727 E	3	7
900 S		
42 E	2	17
99 E	3	33
156 E	4	12
266 E	7	6
279 E	5	5
339 E	2	18
346 E	4	20
457 E	5	2
490 E	8	2
590 E	4	21
675 E	5	17
690 E	4	4
750 E	2	16
763 E	1	31
827 E	3	30
420 E Maple	5	20
1200 E		
468 S	7	20
572 S	2	14
634 S	7	8
696 S	4	8

Hawks Rest Dr

1086 S	2	13
1034 S	1	9
	2	7
941 S	2	11
856 S	1	10
887 E	3	4
856 E	2	8
705 S	2	15

800 E

765 S	3	15
925 S	7	23
1005 S	2	41
1143 S	5	7
1295 S	2	45

400 E

1245 S	2	13
1333 S	2	7
1362 S	4	9

1400 S

544 E	4	8
589 E	2	1

1300 S (new street)

101 E	4	4
210 E	6	4

250 E (new street)

1301 S	4	29
1375 S	6	3

Sierra View Dr

753 E	4	7
705 E	2	1
1276 S	2	6
649 E	2	7

Petersen Ln (1000 E)

1295 S	8	16
1361 S	2	32
1331 S	3	33
1350 S	2	33
1265 S	5	8
1255 S	2	15
1120 S	7	6
1000 S	2	14
750 S	0	11
950 S	2	15

1600 S

1155 E	2	14
1306 E	2	15
1395 E	6	11

1500 E

1255 S	3	3
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1500 S

1317 E	7	13
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North Pond Cr

1378 E	3	11
1414 E	2	13
1179 S	6	10
1187 S	4	3
1190 E	3	15

1250 E

834 S	3	12
875 S	2	9
930 S	7	10

Falcon Circle

1190 E	7	8
1112 E	5	1
1117 E	5	13
1090 E	2	15

903 S 1250 E	3	1.5
<hr/>		
40 N 1900 E	4	10
	3	16
	2	7.5
542 S 1330 E	4	8.5
315 S Aspen Dr	7	10
	4	11
	3	9
	2	14
Average	3.5	12.5
Median	3.0	10.0
Highest	8	45
Lowest	1	1

Total years in Mapleton

3.5

6

22

6

12

1

31

15

3.5

4

22

54

7

Applicant

17

33

12

6

5

18

20

2

14

21

17

13

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31

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ISSUES RELATED TO THE NUMBER OF PERSONS THAT SHOULD BE ALLOWED IN A
RESIDENTIAL TREATMENT FACILITY IN MAPLETON

*1. Number of Unrelated Persons Allowed in Single Family Residences that are NOT
Treatment Facilities*

States and Cities throughout the US almost universally set some restrictions on the number of unrelated persons allowed to live in a single family residence. Based upon current Utah State Law, the number of unrelated persons allowed to live in a single family residence in Utah must be no less than 4. The reasons for such historical and generally pervasive restrictions don't appear to be specifically codified. However, it appears that cities desire to preserve a family friendly environment in neighborhoods and are concerned that large, non related groups in a single family residence would result in altering the nature of the neighborhood. For example, properties may not be maintained like surrounding homes, friends and other outsiders may cycle through the home, members may be temporary, and so forth.

If 16 persons of any race, religion, or group who are not disabled wanted to live together in a single family house in Mapleton they would not be allowed to. Why not? If those 16 people have a disability, should they be allowed to exceed the limit imposed on surrounding homes? Why?

An excerpt from the Justice Department's website: (http://www.justice.gov/crt/about/hce/final8_1.php)
"A local government may generally restrict the ability of groups of unrelated persons to live together as long as the restrictions are imposed on all such groups. Thus, in the case where a family is defined to include up to six unrelated people, an ordinance would not, on its face, violate the Act if a group home for seven people with disabilities was not allowed to locate in a single family zoned neighborhood, because a group of seven unrelated people without disabilities would also be disallowed."

2. Reasonable Accommodation

Persons requesting group homes must be allowed reasonable accommodation – in this instance, **the burden is on Harper to justify his request for 16 residents rather than the 4 allowed to surrounding homes.**

Another excerpt from the same Justice Dept. website: "Not all requested modifications of rules or policies are reasonable. Whether a particular accommodation is reasonable depends on the facts, and must be decided on a case-by-case basis. The determination of what is reasonable depends on the answers to two questions: First, does the request impose an undue burden or expense on the local government? Second, does the proposed use create a fundamental alteration in the zoning scheme? If the answer to either question is "yes," the requested accommodation is unreasonable."

There are a number of legal cases that indicate an accommodation **must be directly linked to the disability** and must show that unless the accommodation is made the residents wouldn't be able to enjoy their right on an equal basis with non disabled persons.

3. *Group Therapy Size*

Our research shows that the number of people that are required for group therapy ranges from 3 to 8 or more. According to one survey of therapists there was a wide range of “optimum” group sizes, and it varied greatly based up on the type of problem that was being treated. Orem limits treatment facilities to 6 residents – have their residents been denied the right to enjoy housing on the same basis as the non disabled because they can’t have a larger group for therapy?

The Kaysville treatment facility of Cold Creek says:

“Individualized treatment is most achievable in smaller facilities that treat 10 clients or less. At Cold Creek we maintain a ratio of twelve staff to eight clients and insure plenty of interaction, attention, individual counseling, and insures that no one gets lost in a crowd. Our clients know there is always someone available to help.”

Nowhere does the Fair Housing law require a city to base its accommodation on some theory of optimum group therapy size, but rather on whether the number is a burden on the city or changes the nature of the surrounding neighborhood.

4. *Nature of the Neighborhood*

People in this portion of Mapleton are very stable and have mostly been here for several years. The median length of time the neighbors have been in the area exceeds 10 years. Most families have moved into the neighborhood as a final home. Family and friends typically visit them for short periods of time.

Harper’s residents will be transient, typically staying for periods ranging from a few days to ninety days. Friends and family will typically visit them at least weekly.

On the surrounding streets, the average number of persons per household is 3.1:

1100 S - 13 Homes 2.8 Ave

900 S - 13 homes 3.4 ave

800 E (from 900 S to 1600 S) - 6 homes 3.5 Ave

Sierra View Dr. - 5 Homes 2.6 Ave

Allowing Bud to have 16 residents will require between 5 and 24 staff, depending on the level of treatment that will be provided (however, no one is sure at this point what levels of treatment **will** be provided at this facility). These staff numbers are based on information derived from other facilities. Add traffic from friends, family, food service deliveries, trips to doctors, etc. and the nature of this neighborhood will be substantially changed.

5. *A Precedent Will be Established in This Case*

Once a specific number of residents is allowed it will be extremely difficult to lower that number for any applications in the future. Any number greater than 4 should be justified by Harper based on the legitimate needs of residents **related directly to their disabilities**.

6. *Burden on the City*

Mapleton code states “No individual shall be admitted to the facility as a resident who has a history of criminal conviction, is a convicted sex offender, has been convicted of selling or manufacturing illegal drugs, is currently using drugs or alcohol...” Therefore, Mapleton will have the responsibility to ensure proper drug testing and background checks. If the city chooses to have those tests/checks performed by others, the city will need at least one qualified staff member to review, monitor, and follow up on the submitted results.

Any structure in the city housing 16 unrelated individuals would necessitate additional police patrolling, regardless of the disability, or lack thereof, of the residents. Due to the nature of the neighborhood and the change this request will cause, residents will naturally burden the city staff with requirements of monitoring, policing, and reviewing. Mapleton City has a small staff and a small budget – thereby being more easily burdened by this size of a group home. And the city will not be compensated by any considerate increased tax revenue from the facility. The city will also open itself up to liability to the neighborhood residents by not being able to adequately fulfill the responsibilities mentioned above.

Without reviewing the full policies and procedures manual, the city is not prepared to understand and/or predict the potential burdens to the city, administratively nor financially. The applicant has injected numerous possibilities of how the facility is to operate. However, these statements are neither binding nor fixed – as they continue to change based on the questions asked of the applicant.

7. *Increased Traffic and Parking*

The overall traffic and parking impact is also difficult to ascertain due to the continual change in operational theory and lack of specific binding procedures given by the applicant. However, research of other facilities shows a large increase in traffic and an arduous requirement of onsite parking.

Steps Recovery in Payson has visitor night twice per week. A visit to the facility on one of these evenings showed 24 cars parked in front of the facility. Additional cars were coming and going during that time. See attached photos. This facility has 20 patients. The facility stated that they usually have 5 staff at any given time.

Cold Creek in Kaysville has 8 residents and Google maps shows 8 parked cars on a seemingly ordinary day. See attached photos.

The facilities above and others surveyed indicate a high traffic count in and out of the proposed facility as well as a need for numerous parking spaces. The mere fact of having this increased traffic will fundamentally alter the character of the neighborhood. Street parking is not a reasonable option due to the narrow street as well as the negative effect this would have on the neighbors. And street parking is not even legal during the winter. The parking lot that will be created at the facility is completely out of character for the neighborhood.

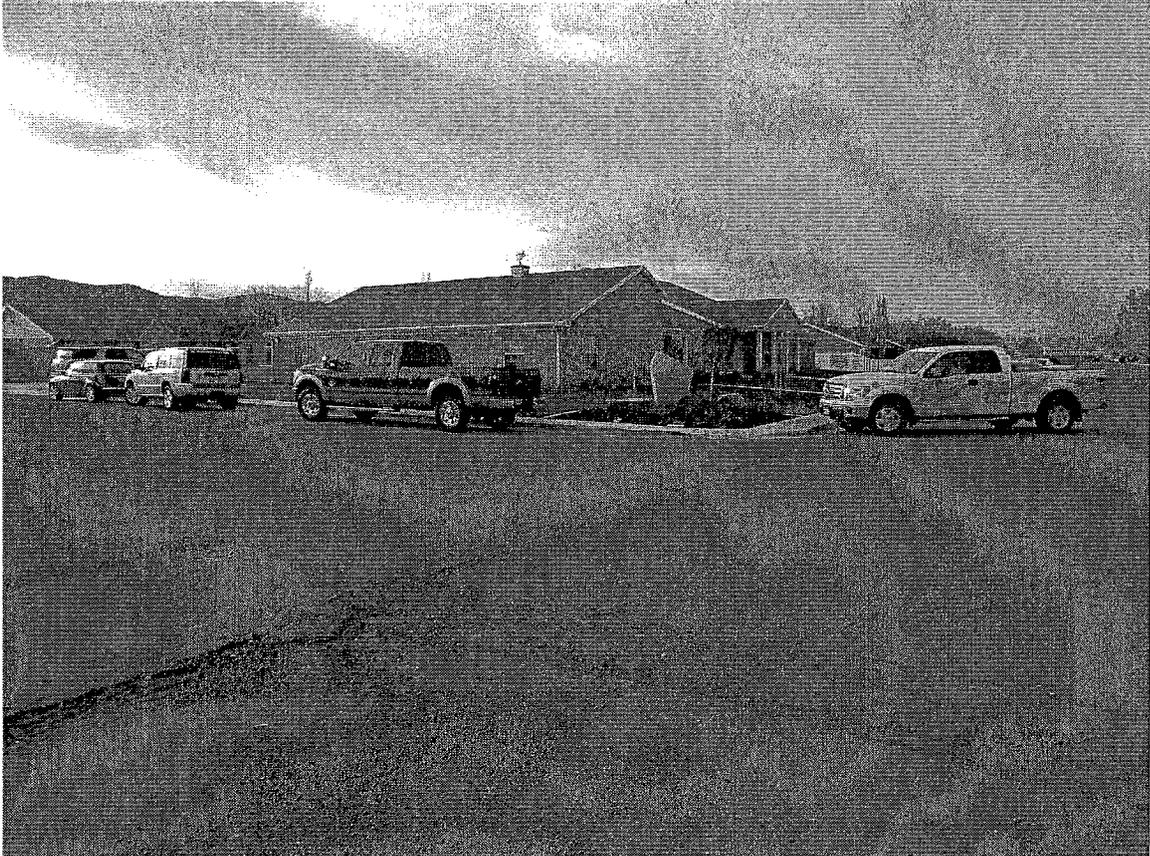
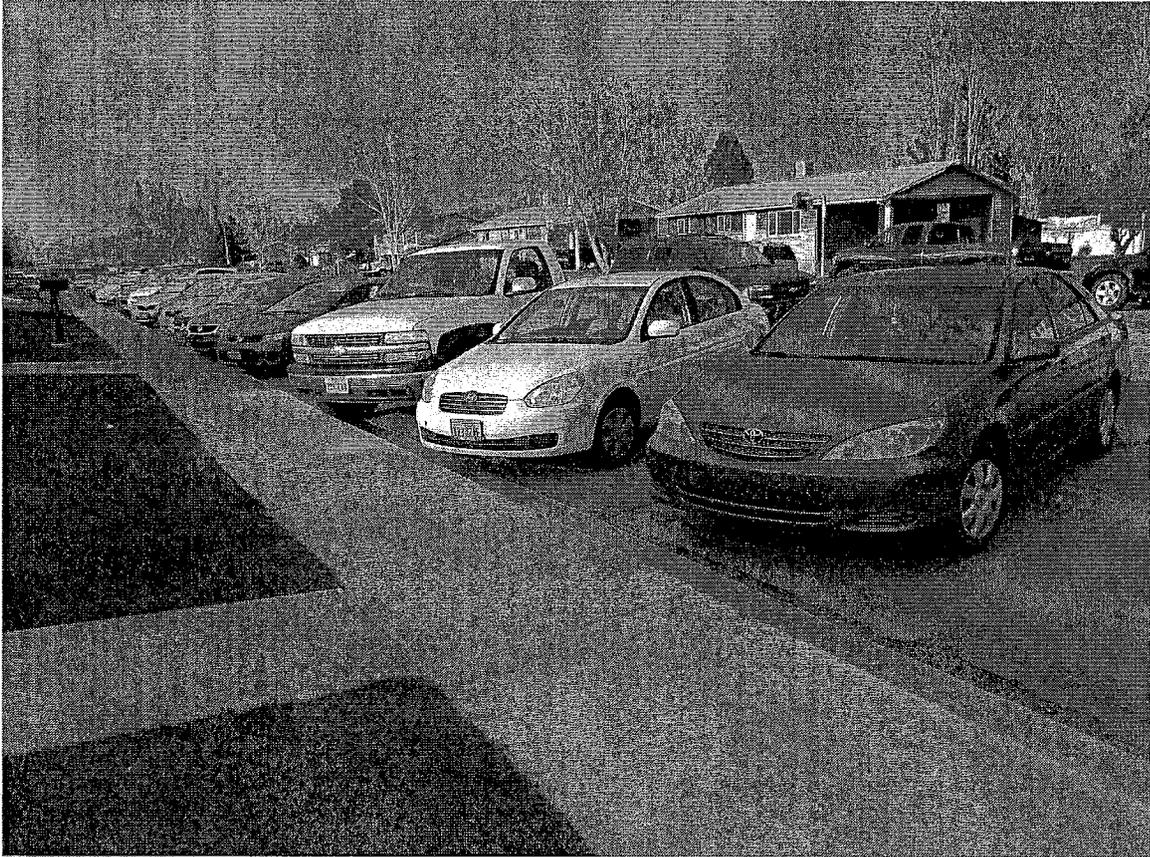


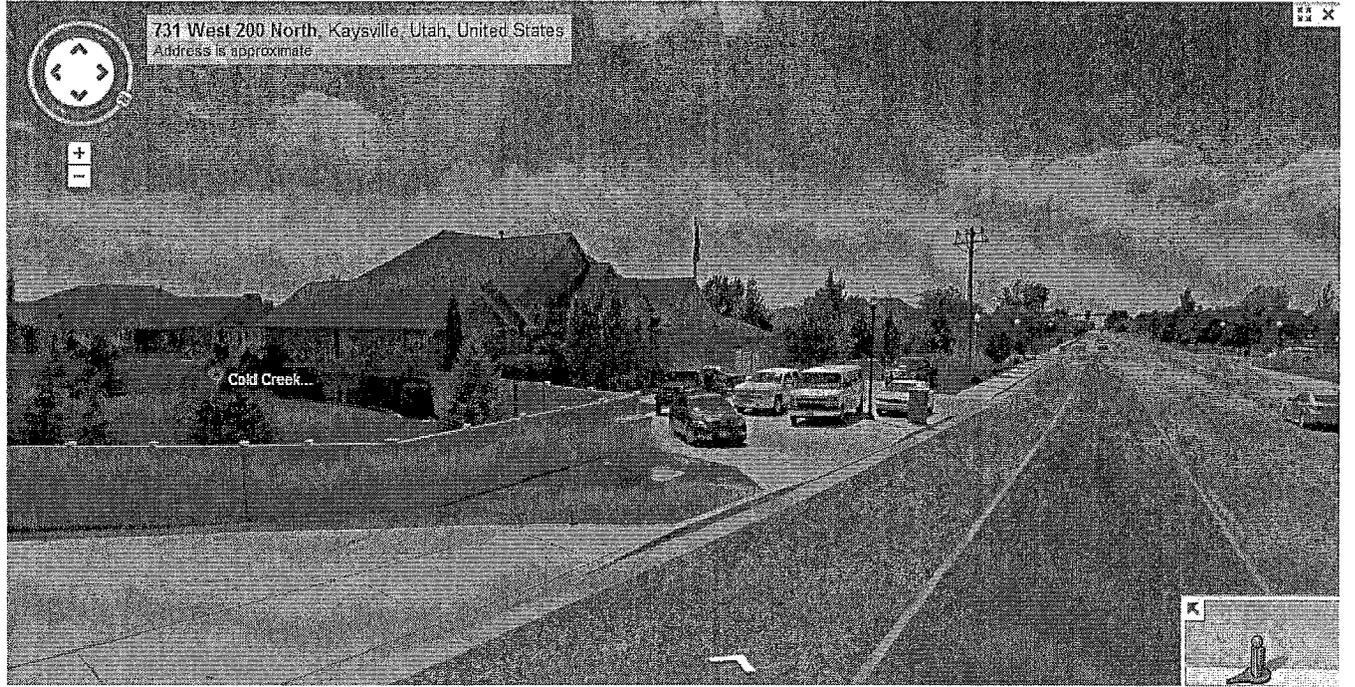
STEPS
Recovery Center

CLOSED CAMPUS

All Visitors Must Use Front Entrance
(East Side of Main Building)







March 28th, 2013

**To: Mayor Wall, Planning and Zoning Commission, and City Council Members
Regarding: George "Bud" Harper's Application for Business License at his home at 727 East 1100 South, Mapleton.**

Dear Mapleton City Administration:

We, as property owners of 99 East 900 South, 795 South Main, and 833 East 1600 South (11 acres of A-2 farmland) request City Denial of the above Harper application for the following reasons:

- 1. His Business would totally change the present character of our quiet neighborhood.**
- 2. We have lived in our present location since 1980 (33 years). We chose SE Mapleton because of it's quiet, safe, and rural area where we could raise crops and children.**
- 3. We chose this area because there was little traffic and it was zoned A-2 Agriculture. We have been able to drive our tractor, truck and farm equipment back and forth from 900 South to 800 East to 1600 South to farm our land at three locations.**
- 4. We specifically left our former home in Tucson, Az because of heavy traffic congestion and crime. (We were burglarized five times) and came to Mapleton for it's quiet rural area.**
- 5. Allowing a Business in Bud's home would increase traffic of delivery trucks, many visitors vehicles , and additional employees cars. At the present time the roads on both sides of Bud's home are narrow with no curb, gutter or sidewalks. The additional vehicles coming and going to his home would create a potential parking on street hazard for children, pedestrians, farm equipment and horses using these roads.**
- 6. His request for 16 Non-Related patients is excessive! To preserve our present neighborhood, no more than three non-related people should be allowed. (as our present Mapleton City Code mandates for all of us to live by.)**
- 7. Additionally for safety of the neighborhood the applicant should be required to widen both 800 East and 1100 South including the Equestrian facility Bud presently leases and plans to use located on 1100 South west and across the street from his home. He should also be required to install, curb, gutter, sidewalk and storm drains as we were required to do so on 900 South from 800 East to Main Street. No on street parking for his business should be allowed.**
- 8. If a license is issued to Bud to run his business from his home, it should stipulate the license will cease upon any change of ownership and/or if Bud no longer lives on site or in the city of Mapleton. He said at the meeting he couldn't live in the home but he could make an accessory apt above his three car garage where he could reside. No other business in this area is allowed to operate without the property owner living on site. We expect the city to enforce the same rules for all residents.**

Thank you for using wisdom in your vote to preserve our present quiet neighborhood that we have enjoyed for 33 years.

Sincerely,

**Mel and Grace Huffaker
99 East 900 South
Mapleton, Ut 84664
Phone - 801-874-4755**

Sean Conroy

From: ajmurillo <
Sent: Thursday, March 28, 2013 3:34 PM
To: Sean Conroy
Cc: 'robin'
Subject: Proposed facility

Sean,

Thank you for your letter concerning the proposed facility in my neighborhood. I will not be able to attend because of prior commitments, but, nevertheless, I would like to comment on this matter.

I purchased my home in 1990 when I relocated my family from Honolulu, Hawaii. The home is in a wonderful neighborhood and is ZONED RESIDENTIAL. The proposed facility would be directly in back of my house and this proposal is a business and should be in a COMMERCIAL ZONE.

I am flabbergasted and is incomprehensible, someone would actually consider a business proposal of this particular type in a residential neighborhood.

There could be culpable liability if the city would approve such a business facility in a residential area and one of the "patients" in this proposed facility commits a horrific crime in the neighborhood because of city approval for this facility.

Anybody and any city or corporation can try and "bullet proof" a specific matter but anyone can still be sued for liability for just about anything in our litigious society.

I would hope the City declines and disapproves this proposed facility

If you would like to contact me, please feel free to reach me at 801.404.5200

Appreciate you,

Alex Murillo
590E 900 S
Mapleton, UT 84664

_____ Information from ESET Endpoint Security, version of virus signature database 8173 (20130328)

The message was checked by ESET Endpoint Security.

<http://www.eset.com>

Mapleton Fair Care Opening Presentation to Planning Commission

Organization *Mapleton Fair Care* is an organization of a few citizens who have recognized a problem and have banded together to attempt to give some help to the City of Mapleton with the current and future problems. It is a non-profit group of people who are willing to donate some time and money to be of help to the community. Initially these people have come from an area near to the identified problem, but others are beginning to join in from around the whole city as it is seen that the problem is likely to come to other areas.

The Problem The beginnings of this problem started as the Federal Government created two laws which require all communities in the nation to accept the location of rehabilitation facilities including drug and alcohol facilities at any place they want to in a community regardless of any local zoning or laws. While such facilities are obviously needed, most communities, left to their own devices, would act to insure their placement in appropriate places that fit with the communities zoning restrictions.

What Happened Bud Harper has decided to take advantage of the new laws and locate such an operation in his home. At the end of May last year, after working with the City for a year and a half unbeknown to the neighbors, he announced in a letter to his neighbors what he wanted to do. As you might imagine his neighbor's initial response was complete rejection of the idea of a drug rehab facility so close to their homes. We could not find anyone in the neighborhood in favor of this.

What Did He Want to Do? He subsequently told us he wanted to take in some 16 drug and alcohol addicts for whom he expects to charge about \$10,000 to \$20,000 each per month. While that seems an enormous amount of money, up to a third of a million dollars a month, we are told such fees are not unusual in first class facilities. It is obvious Bud is looking to make a lot of money.

What Is Wrong With This? As you may imagine, there are several things that seem obvious to concerned neighbors.

1. In a close neighborhood the potential for theft and life threatening involvement of people who are in serious lack of the drug or alcohol they need, would always be a worry. Despite Bud's assurances to the contrary, we have received ample evidence of such problems from other facilities. Local houses broken into and things stolen to get money for the habit. Drug and alcohol providers roam the area ready to sell.
2. Local residents can expect property devaluations since potential buyers would have some concern, or even complete reluctance to live in close proximity. We already know of one such rejection.

3. Neighbors with children would always be in serious worry about the safety of their children.
4. Increased traffic of people coming and going including the supporting staff at all hours of the day and night, making an otherwise peaceful neighborhood into a business location.

What Is The Position Of Mapleton Fair Care? We all feel strong compassion for drug addicts and recognize help for them must be provided. We believe the existing City ordinance is real and legal. But we think it lacks sufficient strength to avoid some problems. We have hired an attorney with experience in these laws to carefully consider the statute and help us find ways to add strength to the law. We are working on these things. We want to help the city build the strongest statute possible under the Federal and State mandates so that we and others who may encounter this around the city will have the maximum protection available.

We think the city's staff, including Sean Conroy, City Planning Director and Cory Branch, City Administrator, are competent experienced young men trying to their best for the city. They have carefully studied the situation with Bud's application, sought advice from various sources including the cities attorney and made their suggestions to the Planning Commission. The monster lurking in the background is always the possibility of a suit by those who might think their actions illegal. Naturally they have adopted the most conservative approach.

What Do We Want You To Do? We ask that you Deny this application, to permit time to modify the statute to give the maximum protection for the city and its citizens while assuring meeting the federal laws. If we do not, Bud will be operating under a weaker law to our and his detriment. With sufficient time to work out accurate and legal modifications we are convinced we can help the city to do a better job of protecting the people. Then Bud can reapply, with more protection for himself, and for the rest of us. This is just going a little too fast!

Rick Maingot will outline the points that need consideration and several of us will try to make them plain.

March 13, 2013

Mr. Sean Conroy
Director Community Development, Mapleton City
125 West 400 North
Mapleton, Utah 84664

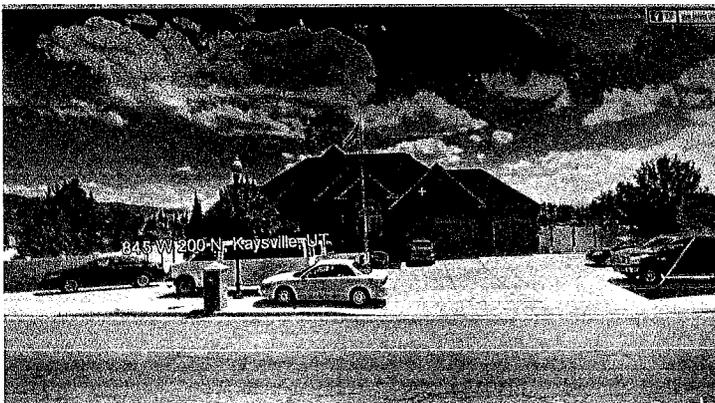
Dear Mr. Conroy:

After reading many of the references on the Mapleton Website regarding Residential Facilities for People with Disabilities, including a number of the litigated cases, it appears that, at this point, any objection to the granting of the Residential Facility could be classified as "speculation" because The Market has not yet had a chance to let it succeed or fail. However, with this caveat in mind, I still have two issues that concern me.

1) The amount of parking that is going to be required, vs. the amount of parking that is available. On the site plan it shows five indoor parking spaces available, however on the detail plan it appears that the front garage has been designated as a bedroom for three residents. Thus there are only three indoor parking spaces, and all other cars will have to be parked on the circular driveway on or the street.

2) I am not an expert in addition therapy, but the number of staff-to-residents does not seem adequate. I found on the Internet a Residential Home in Kaysville that appears substantially similar to the Harper residence called "Cold Creek", owned in part by Mr. Tyler Dallas. *Cold Creek has 8 residents and a staff of 15*, if the various consultants are included the staff is 18. Mr. Dallas says that he deals only with residents from Utah as this allows previous residents who may be starting to have subsequent problems to "drop in" for short term help and counseling. This keeps their recidivism rate low as compared to facilities that deal with non-Utah residents. He confirmed that the recidivism rate for other types of facilities is generally in the 50% range. Mr. Harper states that his residents will come mostly from out-of-state.

Below are pictures of the Cold Creek facility taken from Google Earth. Please note the number of vehicles required for the staff to treat 8 residents.



From these pictures you can estimate the number of vehicles that will be required for the staff required to treat 16 residents in the same manner as Cold Creek. The van is used to transport residents for shopping and other group activities.

It would seem that even the State and Federal Government has some "fear" of addiction facilities, as compared to other disabilities, because they restrict them from being closer than 500 feet to a school.

Also the many requirements for due-diligence, regulatory oversight and possible increased policing that will be the responsibility of the City, certainly may be a burden on the City.

For my part, I am concerned that these issues (plus others that will be the result of the law of unanticipated consequences) will *fundamentally* change the nature of our neighborhood(s) and community.

I again, commend you as a Committee for your efforts on behalf of the Citizens of Mapleton, and I empathize with the conundrum in which you find yourselves in deciding this issue.

Thank you for your consideration.

Sincerely:



Lowell M. Jones

Mapleton Fair Care Talking Points

After careful research, community input and legal support we believe there is sufficient data to support Mapleton City in placing restrictions on a Residential Facility for the Disabled based upon legitimate, non-discriminatory concerns. Such restrictions are stated in our legal review Memorandum and can include:

- 1) A limitation on the number of unrelated individuals living together
 - a. The City can deny the current Harper application based upon the 16 persons he has filed for occupancy. Harper then can file a new application based upon a reasonable number.
 - b. Research shows Six is a reasonable number given Mapleton's average family size is 4.02 and is also adopted by other surrounding cities. *(Page 1-2, Sec 1)*
- 2) Off-street parking requirements that don't change residential character of neighborhood;
 - a. Harper has stated 7 vehicles will occupy the residence; however the City needs to consider the visiting families parking and traffic, as well as the professional services and other inbound and outbound traffic. *(Page 3 Sec 4)*
- 3) Limitations on new construction and alterations to existing construction and landscaping to preserve residential character; *(Page 2-3 Sec 2)*
- 4) Reporting requirements for facilities to ensure safety of neighborhood; *(Page 3, Sec 3)*
- 5) Business licensure and other permit and safety regulations compliance, including ADA requirements. *(Page 2, Section 2)*

MEMORANDUM

To: Mapleton Fair Care Group

From: Blake Hamilton

Date: March 11, 2013

Re: Mapleton Fair Care Group Concerns with Residential Facility for Disabled Persons Ordinance – Talking Points for Meeting with Mayor

You asked me to prepare a memorandum offering analysis of the March 9, 2010 Highland City Planning Commission Minutes¹ and the Orem City ordinances governing residential facilities for disabled persons (“facilities”) in light of Mapleton Fair Care (“MFC”)’s concerns as expressed in the documents you provided to me so that you can make some recommendations to the Mayor regarding proposed language for Mapleton’s Ordinance.

I have divided the memo according to MFC’s main concerns, and have combined some that deal with the same subject matter. Some of the issues require much more research to form an authoritative opinion on matters of FHA and ADA case law and application to, for instance, limitations on the numbers of unrelated individuals living together. But I tried to provide enough authority to answer your questions.

1. Controlling the Number of Residents.

It is not unconstitutional or discriminatory for a City to limit the number of individuals living together in a residence. The Fair Housing Act includes an exemption stating that it does not limit the applicability of “reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.” 42 U.S.C. 3607(b)(1). However, this provision has been interpreted to only apply to total occupancy limits based on overcrowding. *See Oxford House-C v. City of St. Louis*, 77 F.3d 249, 251-52 (8th Cir. 1996). Limitations in numbers based on familial status are still subject to the FHA, and must be rational, and be based on a legitimate interest in a neutral, non-discriminatory goal, like reducing congestion, traffic, and noise in residential areas. *See id.* at 251-52.

Highland City considered these concerns during its March 9, 2010 Minutes, during which Lonnie Crowell determined that providing a group home for the disabled the opportunity to allow up to eight unrelated individuals would most likely be considered a reasonable accommodation. *See id.* at 3-4. The Orem City Ordinance limits Sober Living Homes to six residents. *See Orem Ord.* § 22-6-9(D)(3).

The appropriate number for Mapleton depends on the legitimate, neutral concerns the City has about the impact of having that particular number of individuals living under one roof given Mapleton’s unique characteristics. The City should keep this in mind when determining what number is reasonable given the specific circumstances.

¹ Highland City’s Ordinance was not included in the materials sent to me, and it is not currently available online, as it is apparently being renumbered.

With regard to the issue of whether it is a reasonable accommodation to request a higher number of residents, it may be, that the purpose of requesting more residents is motivated by purely financial concerns. However, that may not be the case, and pursuant to Federal Fair Housing law, it is up to the person requesting a reasonable accommodation to show that the request is necessary to obtain an equal opportunity to use and enjoy a dwelling. Whether the number of residents is four or fourteen, it is up to the applicant to prove that the requested number will grant them an equal opportunity.

Federal case law does indicate that courts are persuaded by the argument that group living is beneficial to disabled individuals, including those recovering from addiction. *See, e.g., Jeffrey O. v. City of Boca Raton*, 511 F.Supp.2d 1339, 1356 (S.D.Fla. 2007) (stating that evidence supported that recovering addicts often need group living arrangement to reduce the possibility of relapse and increasing supervision due to the accountability present when people live together). However, the number of residents is a question that depends on the circumstances, and given Mapleton's circumstances (average family size of 4.02), a restriction to 8 residents is reasonable.

2. Requiring ADA Building Compliance, Including Elevators for Multi-Levels

It appears that a business like the facility involved here would be considered a public accommodation under the Americans with Disabilities Act and would be subject to the building requirements of that Act. *See* 28 C.F.R. §§ 36.102 and 36.104. The ADA regulations even provide for public accommodations that are located in private residences, requiring that those parts of the residence that are used exclusively or partially for the operation of the place of public accommodation must meet ADA requirements, including restrooms. *See* 28 C.F.R. § 36.207.

The ADA requires modifications to existing facilities that are not ADA compliant, but the ADA Guide for Small Businesses explains that the removal of physical barriers (like stairs) is limited to when it is "readily achievable," which means "easily accomplishable without much difficulty or expense." *See* ADA Guide for Small Businesses, *available at* www.ada.gov/smbusgd.pdf. While these businesses are still required to remove more expensive barriers, those can be either "reduced or delayed" but the obligation to remove them remains "ongoing." *Id.* That ongoing process of ADA compliance is guided by the suggestion that the business first make those alterations necessary to provide access to the business. *Id.* Then, after those barriers are removed, then a later step would be to provide access to public bathrooms. *Id.*; *see also* 28 C.F.R. § 36.304(c).

The regulations also provide for alternatives to barrier removal, which would include "relocating activities to accessible locations." 28 C.F.R. § 36.305(b). For the purposes of this facility, that could include the eventual installation of a main floor bathroom.

When alterations are made to an existing facility, the alterations must be made in a way that will make the altered portions accessible under the ADA. 28 C.F.R. § 36.402. Note, however, that the alterations requirement is subject to the Elevator Exemption provision, which does not require the installation of an elevator in an altered facility when the facility is less than

three stories or has less than 3,000 square feet per story, unless the facility houses a “professional office of a health care provider. 28 C.F.R. § 36.404.

Based on these provisions, it appears that the facility would be required to comply with ADA, but immediate compliance, and the installation of an elevator, are likely not required.

3. City Obligations to Monitor and Approve Residents – Costs, Procedures, Expertise, etc.

The Orem Ordinance provides a good option for ensuring that residents of the facility comply with certain requirements. The Ordinance requires that, in order to keep their permit (which is essentially their business license) the facility must comply with certain requirements, and must “maintain and provide sufficient documentation and other evidence reasonably required by the City to establish compliance with the requirements.” Orem Ord. § 22-6-9(D)(15). The City maintains the right to inspect those documents to verify compliance at any time, which certainly would allow the City to confirm compliance whenever the business license is renewed, for instance.

With regard to concerns of cost and expertise involved in monitoring the facility’s compliance with regard to residents, the Orem Ordinance required that compliance be documented with certifications from licensed professionals. This allows the City to rely on the opinions of those with expertise necessary to make the determination, without having to hire their own experts.

4. Off-street Parking Needs for Staff, Family, Doctors, Therapists, Etc.

Off-street parking is of obvious concern when a facility is located in a residential area. Some residents might find off-street parking desirable in that it would hopefully reduce congestion and parking on the street around the facility. However, it may also be a concern as a parking lot would detract from the residential feel of the area, and even create water runoff problems for immediate neighbors.

Orem City required that a Sober Living Home have “[a]t least four off-street parking stalls,” but also required that if the facility would be located in an existing residential dwelling the building “shall be capable of use as a sober living home without structural or landscaping alterations that would change the structure’s residential character.” If the facility was going to be in a new structure, that building “shall be of a size, scale, and design that is in harmony with other residential uses in the vicinity.” See Orem Ord. § 22-6-9(D)(12-13).

While these residential character provisions are far from clear, one could interpret them to require that any off-street parking be located behind the building, or that if complying with the off-street parking requirement requires tearing up the front yard (a “landscaping alteration”) the facility could not be located at that property. Mapleton could use similar language to address the off-street parking needs while at the same time preserving the residential character of the neighborhood.

5. Disability Definition and Current Addicts/Users

Federal and Utah definitions of disability expressly do not include the current, illegal use of or addiction to a controlled substance as defined in the Federal Controlled Substances Act. *See* 42 U.S.C. § 3602(h); Utah Code Ann. § 10-9a-103(9)(b).² However, if the person is no longer using or addicted the controlled substance, but rather is “recovering” from addiction, that recovery could be considered a disability if it substantially impairs a major life function.

Determining whether or not someone is currently addicted or recovering from addiction is difficult if not impossible to determine. However, the Controlled Substances Act defines an “addict” as “any individual who habitually uses any narcotic drug so as to endanger the public morals, health, safety, or welfare, or who is so far addicted to the use of narcotic drugs so as to have lost the power of self-control with reference to his addiction.” *See* 21 U.S.C. § 802(1). Since both the Utah and Federal definitions of disability make reference to the definitions of the Controlled Substance Act, it would make sense that the term “addiction” is meant to invoke this definition.

Judging by that definition, it appears that Congress considered the term “addict” to be interchangeable with “abuser,” rather than the broad term that some may use to refer to someone who no longer uses drugs but will spend their entire life craving them. *See U.S. v. Southern Management Corp.*, 955 F.2d 914, 922-23 (4th Cir. 1992).

Highland City addressed the issue of the definition of disability in its March 9, 2013 Minutes. That discussion does not answer the question in any conclusive way, although it makes clear that the potential for liability for discrimination is present despite the Federal and State definitions.

Orem City’s ordinance addresses this issue by defining criteria for all occupants of permitted “Sober Living Homes.” *See* Orem Ordinance § 22-6-9(D)(4). That language requires that occupants have been “diagnosed with an addiction to alcohol or a controlled substance,” “are unable to abstain from the use of alcohol or a controlled substance without the structured supportive setting offered by the sober living home” and “have completely and voluntarily abstained from the use of alcohol and all controlled substances for a continuous period of at least thirty (30) days immediately prior to becoming a resident of the home.” The Ordinance requires that the permit holder verify compliance with these criteria by obtaining written certification from a qualified doctor or other professional (i.e. Licensed Clinical Social Worker).

Orem’s criteria is helpful, as it does not overstep the parameters of disability laid out by the Federal and Utah definitions, and offers a clear way for cities to determine whether an individual living at the home is a “recovering addict” such that they could be considered “disabled.” It also takes the burden off of the City to grapple with whether an individual is “recovering,” and allows the City to rely on the certification of a professional.

² Note that alcohol is not a controlled substance.

Finally, regarding the validity of the Federal definition, the City does not have to restate the definition of disability given in the Federal and State statutes, but it should operate within those parameters to avoid State and Federal discrimination lawsuits.

6. Failure to Comply with Ordinance Terminates Use

Immediate termination of the permit after one violation of the ordinance may be seen as unusually harsh, especially since most businesses do not lose their business license the first time they violate an ordinance. However, it would be a good idea to include a scale of penalties depending on the number of violations or the nature of the violations.

For instance, the Orem City Ordinance imposes a \$500 fine for the first violation within an 18 month period, \$2,000 for the second violation, and revocation upon the third violation within that period. *See* Orem Ord. § 22-6-9(D)(17). The City could also consider providing different penalties depending on the severity of the violation, so that a facility could stay open if its violation is merely clerical (like failing to provide an update the address of an employee) but may suffer more severe repercussions if the violation involves the housing a continuing user of heroin, for example.

7. Appeal Provision

Utah law requires that municipal land use ordinances establish an opportunity for appeal from decisions applying the ordinance. *See* Utah Code Ann. § 10-9a-701(1)(b).

**Mapleton City Drug Rehab Residential Facility
Community Discussion Points**

- 1) This is an important and far-reaching issue for our city. It needs to be dealt with carefully and with full consideration. The planning commissioners and city councilmen must do their homework.
- 2) Did the city give appropriate notice to the residents, regarding the inclusion of this ordinance? It may have been legal, but was it appropriate and in the best interest of the community?
- 3) Should this business venture be held to the same strict requirements of a home-based business?

The following is from the Fair Housing Act regarding group homes:

- 4) The Fair Housing Act does not allow us to treat persons of disabilities less favorably. However, it does not require us to treat them **more favorably**.
- 5) We cannot refuse to make reasonable accommodations for persons of disabilities to enjoy housing. Higher density living is not required for them to **enjoy housing**. It is only a means for profit. The Act is not about protecting an individual's profit. It is about protecting the rights of the disabled. They do not require the special accommodations from the City that the applicant is requesting. They only require reasonable access to housing, similar to that of the other neighbors in the area.
- 6) The Fair Housing Act says reasonable accommodation is a case-by-case determination. The applicant must present **compelling evidence** to show discrimination against reasonable accommodation for his residents.
- 7) The Act says that not all requested modifications of zoning laws are reasonable. They cannot impose an undue **financial or administrative burden** on the City. What burdens would this put on our City? Public safety (police, ambulance, fire), administration (code enforcement, resident qualification screening and enforcement), financial.
- 8) The Act says it is not a reasonable accommodation if it creates a fundamental **alteration** in a local government's land use and **zoning** scheme. This new commercial business venture will alter the land use scheme of this ultra low-density, rural area. (Huge contrast). Zoning:
 - a) The A-2 zone is established to provide areas in which agricultural pursuits can be encouraged and supported within the municipality. The A-2 zone is designed and intended to protect agricultural uses from encroachment of typical urban development. Uses permitted in the A-2 zone, in addition to agricultural and residential uses, must be incidental thereto and should not change the basic agricultural character of the zone.
 - b) A. The A-2 agricultural-residential zone has been established as a zone in which the primary use of the land is for agricultural and livestock raising purposes. Land within this zone is characterized by residential estates, open fields, ranches, and farms devoted to the production of food, fiber, animals, and general agricultural uses.

B. Representative of the use within this zone are large residential estates, barns, corrals, row crops, and the raising of livestock.

C. The objectives in establishing the A-2 agricultural-residential zone are:

1. To protect and encourage the continued use of agricultural land within the zone for agricultural purposes and to discourage the preemption of agricultural land for nonagricultural purposes;
 2. To discourage commercial and industrial uses, and any other use which tends to thwart or mitigate the use of the land for agricultural purposes;
 3. To prevent the soil from becoming polluted.
- 9) Persons who “**currently**” use **illegal drugs** are not protected under this law. What constitutes “current”? How long do they have to be “clean”? 1 day, 2 weeks, 6 months? How will the City enforce this? Will they screen the new patients? Will they do drug testing?
- 10) Persons who have been **convicted** of the manufacture or sale of illegal drugs are not protected. What if they were selling “legal” drugs (medicine cabinet prescription drugs)?
- 11) Persons who present a **direct threat** to the persons or property of others are not protected. Who decides this? What are the criteria? Who does the background check? How will the City monitor this? The Act states “Determining whether someone poses such a direct threat must be made on an individualized basis.” That is a lot of demand on the City.
- 12) The Act says that local government has primary power and is not preempted by the Act. The City just can’t be discriminatory to the handicapped (drug addicts). They can still **regulate housing** of this kind.
- 13) The Act states that we cannot treat groups of unrelated persons with disabilities (aka - drug addict group home) less favorably than similar groups of unrelated persons (aka – residential home with more than one unrelated residents). So our requirements for the business can be as strict as those on homes. How many **unrelated persons** are allowed in one home in Mapleton? What restrictions are placed on such a residence?
- a) 3 unrelated persons
 - b) Have to count the staff and the owner
- 14) To supersede the above requirement, the group home could get an exception or waiver if they meet the criteria for **reasonable accommodations**. It must be decided on a case-by-case basis, the Act says. 1. Does it impose an undue burden or expense on the City? 2. Does the use create a fundamental alteration in the zoning scheme? Those questions were answered above.
- 15) To qualify for the exception, it must show that it will have no **more impact** on parking, traffic, noise, utility use, and other typical concerns of that zoning. What are the effects of the commercial venture in this particular rural zoning that are out of line with what a normal residence would create?
- a) A. Each home located on a lot or parcel in the A-2 zone shall have on the same lot or parcel two (2) off street enclosed parking spaces.
 - i) Zone calls for 2+ but facility would require much larger amount

- b) How many staff will be needed per patient? How many off-street parking spaces will be required for staff, visitors (family, friends, doctors, therapists, etc.), and residents?
 - i) (B) Compliance with site development standards including parking, traffic, landscape, utility use, and other standards applicable to similar structures permitted within the zone **without structural or landscape alterations that would fundamentally change the structure's residential character and/or nature**
 - (1) The large # of additional off-street parking required would fundamentally change the character.
- 16) The Act asks “Would the rural character of the neighborhood be **fundamentally altered?**” If the answer is yes – then he should not receive the exception.
- 17) The DOJ and HUD say “a **50-bed nursing home** would not ordinarily be considered an appropriate use in a single-family neighborhood, for obvious reasons...but it might not create a fundamental change in a neighborhood zoned for multi-family housing.” With the same logic, this statement would suggest that a 16-bed addict home would not be appropriate in a rural neighborhood either. It would be better suited in a higher density area.
- 18) “The scope and magnitude of the modification requested, and the features of the **surrounding neighborhood** are among the factors that will be taken into account”
- 19) Appropriate **health and safety requirements** can be imposed on a group home specific to the welfare of their residents. What requirements should be imposed on this home?
- 20) The City needs to be willing to fight for what is right for the community – not cower due to the threat of a lawsuit/fight. Citizens and municipalities must take a stand and push back at the Fed’s overreaching arm. If we have non-discriminatory reasons to reject the request – then the City should **stand firm** on the merits of the situation.
- 21) Does not fit with the **City’s vision statement**
- 22) What can we do if a potential resident has been arrested for a crime, but not convicted? How will it be determined if someone is a “threat” (as stated in the ordinance)?

The following is from the Mapleton code regarding group homes:

- 23) Mapleton code says “Disability does not include **current illegal use** of, or addiction to, any federally controlled substance, as defined in section 102 of the controlled substances act, 21 USC 802.” How does the City regulate whether or not they are still addicted?
- 24) Mapleton code recommends approval if: There is compliance with zoning requirements limiting the maximum number of unrelated occupants that are applicable to similar structures permitted within the zone.
 - a) This would be **3 occupants**

- 25) Wording of Mapleton code requires the occupants to only be **court-sentenced addicts**. “Placement of disabled individuals in the facility shall be on a strictly voluntary basis and a part of, or in lieu of, confinement, rehabilitation, or treatment in a correctional facility;”
- a) Is this worded poorly and was intended to mean that they can be there in lieu of being sentenced to a correctional facility? Or does it mean the business can only accept people who are coming in lieu of treatment in a correctional facility?
- 26) Mapleton City code calls for the Planning Commission and City Council to weigh the **evidence of the individuals** to determine if they are a direct threat. How will this be accomplished?
- 27) Proposed use is a **profit center**. Owner stands to gain substantially in recurring income, as well as the ability to sell for a large gain (new ownership would just apply and receive the same permit and/or accommodation). This is not the intent of the zoning ordinance for this area.
- 28) Failure to comply with the requirements of the code **terminates** the use. There should be strict conditions applied to this business that can be easily monitored and measured, at the business’ expense.
- 29) Why is this listed in the City code?:” Any decision of the city council may be **appealed** to the district courts within thirty (30) days of the council's written decision.” Is that statement required to be in there or is it an invitation for litigation?
- 30) For an accommodation, “The applicant shall describe why the accommodation is necessary to afford the disabled an **equal opportunity** to use and enjoy residential housing;”. There is no need to the drug addicts to have that high of density. The accommodation only serves to increase profitability. The City’s job is not to make individuals profitable – it is to serve and protect the members of the city as a whole, while not discriminating. Approval of this accommodation would be similar to approving an apartment building in a low density zone only because a developer wanted a higher profit.
- 31) To get approval from the City, the establishment must show that it has obtained state licensure. City should require the Policies and Procedures manual for this facility.
- 32) What ADA requirements will have to be met? If the application is protected under the ADA laws – then it should comply with all of the requirements for a business.
- 33) What fire code requirements will be imposed on the home?
- 34) Does the street have the width for fire trucks with parking on both sides?

LOWELL M JONES, MD

1331 S 1000 E, MAPLETON, UT 84664

March 2, 2013

Mr. Sean Conroy
Director Community Development, Mapleton City
125 West 400 North
Mapleton, Utah 84664

Dear Mr. Conroy:

I am responding to the letter sent out by you on Feb. 28 regarding the conversion of a single family dwelling at 727 E 1100 S to group home for up to 16 disabled residents.

After doing considerable reading on the internet regarding the many Utah and Federal Laws regulating such a home, I can understand the mine field that you have to maneuver; between the many laws on one hand and the wishes of the Mapleton citizens on the other.

The matter which concern me most is discussed at length in a presentation by the law firm of *Chapman and Cutler* before the *Utah League of Cities and Towns* in September 2006.

The relevant paragraph reads: *"Thus, the Bryant Woods case held that the denial of a special use permit that would have allowed a developer to house fifteen people instead of eight in a facility for the disabled was not a failure to make a reasonable accommodation. The court reasoned that allowing such a facility in a residential neighborhood would change the character of the neighborhood and set a precedent that would undermine residential planning. The Utah Legislature incorporated this standard into the Utah Act, which provides that "a residential facility for person with a disability that would likely create a fundamental change in the character of a residential neighborhood may be excluded from a zoning area."³⁴ Nonetheless, these findings must be adequately supported by factual findings in the public record supporting this conclusion."*

The whole presentation can be accessed at: <http://www.ulct.org/ulct/docs/GroupHomes.pdf>

A summary of my objections are:

- 1) The number of people asking to be housed is nowhere near the average household size of Mapleton which is 4.02, and average family size of 4.25, not 16!
- 2) The nature of the residents offenses, i.e., the significant risk or recidivism (as high as 52% in one study I read) of the drug offender residents, and the significant risk of those kinds of residents engaging in other types of crime, these are very real risks that would have a *profound* impact on the quiet and peaceful neighborhood(s) of Mapleton.

3) The need for extra parking and other facilities for staff and residents, most of whom would have to be present 24/7.

4) The need for a business license, certainly \$3,000/mo/resident is a business.

5) Also in the present government climate (sequester, etc.) the likelihood of getting the anticipated government subsidies to adequately house, treat and staff the group residents is substantially less. As is the likelihood of getting investor money, which Mr. Harper says is not yet available and he would then open his home for this venture on a "temporary" basis. I doubt he could comply with all the needed infrastructure/staffing needs of such a facility on a temporary basis. A likely scenario is that in 2-3-4 months the neighborhood is left a derelict home.

6) The need for the facility to renovate at considerable cost to meet fire code (refer to #5 and the questionable financial situation).

7) The fact that any resident who was using illegal drugs or alcohol *while in* the facility would *have* to be removed, sometimes forcefully.

I have lived in Mapleton for 33 years, and we moved here, as did most residents, to have a quiet, peaceful home in a rural setting, undisturbed by the commercialism and clutter of more urbanized Utah Valley. I know there are laws that you have to follow, but I strongly feel that the establishment of a treatment home (group home, halfway house, or whatever it may be called) will *fundamentally* change the character of our neighborhood and community. I hope that it will not be allowed.

Sincerely:



Lowell M. Jones

PS: another useful reference is Highland City's struggle with this problem at:
<http://www.highlandcity.org/archives/39/PC%203-9-10%20FINAL.pdf>

Attachment “4”

Response to Comments

Mapleton City Drug Rehab Residential Facility

Community Discussion Points

(Staff responses shown in underline)

- 1) This is an important and far-reaching issue for our city. It needs to be dealt with carefully and with full consideration. The planning commissioners and city councilmen must do their homework.

Response: Staff agrees.

- 2) Did the city give appropriate notice to the residents, regarding the inclusion of this ordinance? It may have been legal, but was it appropriate and in the best interest of the community?

Response: When the Council considered the ordinance, proper legal notice was provided. If the Council determines that the ordinance should be reevaluated, it could do so, but not as part of the review of this application.

- 3) Should this business venture be held to the same strict requirements of a home-based business?

Response: The proposed residential facility is not considered a home occupation per CMC Chapter 18.84.380. Home occupations are not required by state law to be a permitted use in all residential zones like residential facilities for the disabled are.

The following is from the Fair Housing Act regarding group homes:

- 4) The Fair Housing Act does not allow us to treat persons of disabilities less favorably. However, it does not require us to treat them **more favorably**.

Response: The FHA does require that requests for reasonable accommodation from rules, policies, procedures, etc. be considered.

- 5) We cannot refuse to make reasonable accommodations for persons of disabilities to enjoy housing. Higher density living is not required for them to **enjoy housing**. It is only a means for profit. The Act is not about protecting an individual's profit. It is about protecting the rights of the disabled. They do not require the special accommodations from the City that the

applicant is requesting. They only require reasonable access to housing, similar to that of the other neighbors in the area.

Response: Applicants are allowed to make a request for reasonable accommodation to rules, polices, procedures, etc. The applicant is required to demonstrate why the accommodation is necessary. The recognized benefit of group therapy is a common reason for allowing more unrelated occupants than typically allowed for a standard single family dwelling.

- 6) The Fair Housing Act says reasonable accommodation is a case-by-case determination. The applicant must present **compelling evidence** to show discrimination against reasonable accommodation for his residents.

Response: Staff agrees.

- 7) The Act says that not all requested modifications of zoning laws are reasonable. They cannot impose an undue **financial or administrative burden** on the City. What burdens would this put on our City? Public safety (police, ambulance, fire), administration (code enforcement, resident qualification screening and enforcement), financial.

Response: See staff report.

- 8) The Act says it is not a reasonable accommodation if it creates a fundamental **alteration** in a local government's land use and **zoning** scheme. This new commercial business venture will alter the land use scheme of this ultra low-density, rural area. (Huge contrast). Zoning:
- a) The A-2 zone is established to provide areas in which agricultural pursuits can be encouraged and supported within the municipality. The A-2 zone is designed and intended to protect agricultural uses from encroachment of typical urban development. Uses permitted in the A-2 zone, in addition to agricultural and residential uses, must be incidental thereto and should not change the basic agricultural character of the zone.

Response: As required by state law, the proposed use is permitted in any residential zone, including the A-2 zone. Therefore, it cannot be argued that the use itself would fundamentally alter the zoning scheme, especially when there is already a residential facility in the A-2 zone in the City. It could be argued that the reasonable accommodation (request for 16 residents) could alter the zoning scheme of low density development and the non-transient nature of neighborhoods in the A-2 zone if it is accompanied by objective evidence.

- b) A. The A-2 agricultural-residential zone has been established as a zone in which the primary use of the land is for agricultural and livestock raising purposes. Land within this zone is characterized by residential estates, open fields, ranches, and farms devoted to the production of food, fiber, animals, and general agricultural uses.

B. Representative of the use within this zone are large residential estates, barns, corrals, row crops, and the raising of livestock.

C. The objectives in establishing the A-2 agricultural-residential zone are:

1. To protect and encourage the continued use of agricultural land within the zone for agricultural purposes and to discourage the preemption of agricultural land for nonagricultural purposes;

2. To discourage commercial and industrial uses, and any other use which tends to thwart or mitigate the use of the land for agricultural purposes;

3. To prevent the soil from becoming polluted.

Response: See response to “a” above.

9) Persons who “**currently**” use **illegal drugs** are not protected under this law. What constitutes “current”? How long do they have to be “clean”? 1 day, 2 weeks, 6 months? How will the City enforce this? Will they screen the new patients? Will they do drug testing?

Response: See staff report.

10) Persons who have been **convicted** of the manufacture or sale of illegal drugs are not protected. What if they were selling “legal” drugs (medicine cabinet prescription drugs)?

Response: If a person has “a history of criminal conviction”, regardless of the nature of the conviction, they shall not be permitted in the facility.

11) Persons who present a **direct threat** to the persons or property of others are not protected. Who decides this? What are the criteria? Who does the background check? How will the City monitor this? The Act states “Determining whether someone poses such a direct threat must be made on an individualized basis.” That is a lot of demand on the City.

Response: See staff report.

12) The Act says that local government has primary power and is not preempted by the Act. The City just can’t be discriminatory to the handicapped (drug addicts). They can still **regulate housing** of this kind.

Response: Staff agrees. However, any requirements, such as limiting occupancy, must be accompanied by objective evidence.

- 13) The Act states that we cannot treat groups of unrelated persons with disabilities (aka - drug addict group home) less favorably than similar groups of unrelated persons (aka – residential home with more than one unrelated residents). So our requirements for the business can be as strict as those on homes. How many **unrelated persons** are allowed in one home in Mapleton? What restrictions are placed on such a residence?
- a) 3 unrelated persons
 - b) Have to count the staff and the owner

Response: Utah state code was recently amended to prohibit cities from establishing a maximum number of unrelated individuals to less than four (10-9a-505.5). If no accommodation is granted, the maximum number of unrelated persons should be four. Again, the applicant can request a reasonable accommodation to allow for more unrelated persons than is typically permitted. If the staff is not sleeping/living in the facility, they would not be counted in the total occupancy number.

- 14) To supersede the above requirement, the group home could get an exception or waiver if they meet the criteria for **reasonable accommodations**. It must be decided on a case-by-case basis, the Act says. 1. Does it impose an undue burden or expense on the City? 2. Does the use create a fundamental alteration in the zoning scheme? Those questions were answered above.

Response: The applicant has a responsibility to justify the need for the reasonable accommodation. If the city denies, or limits the request, the decision must be based on objective evidence.

- 15) To qualify for the exception, it must show that it will have no **more impact** on parking, traffic, noise, utility use, and other typical concerns of that zoning. What are the effects of the commercial venture in this particular rural zoning that are out of line with what a normal residence would create?
- a) A. Each home located on a lot or parcel in the A-2 zone shall have on the same lot or parcel two (2) off street enclosed parking spaces.
 - i) Zone calls for 2+ but facility would require much larger amount

Response: The ordinance does not state that in order to qualify for the reasonable accommodation that the facility cannot have more impacts on parking, traffic, noise, utility use, and other zoning concerns when compared with a typical single family dwelling. The ordinance does state that the City can **consider** the impact of the requested accommodation on the neighborhood and whether the impact fundamentally alters the character and/or nature of the neighborhood and/or existing zoning regulations [CMC Chapter 18.84.370.B(5)(c)(1)(A)].

The A-2 zone requires a minimum of two off-street enclosed parking spaces, it does not establish a maximum. The proposed facility complies with the required off-street parking standards.

- b) How many staff will be needed per patient? How many off-street parking spaces will be required for staff, visitors (family, friends, doctors, therapists, etc.), and residents?
 - i) (B) Compliance with site development standards including parking, traffic, landscape, utility use, and other standards applicable to similar structures permitted within the zone **without** structural or landscape **alterations that would fundamentally change the structure's residential character and/or nature**
 - (1) The large # of additional off-street parking required would fundamentally change the character.

Response: The applicant is not proposing any modifications to the existing site to accommodate the required parking. The applicant has indicated that he would be supportive of a condition prohibiting employees and visitors from parking along the street. It is important to note that the A-2 zone does allow uses such as commercial greenhouses and equestrian riding centers associated with a single family residence that could result in similar traffic and parking impacts as the proposed facility. While equestrian riding centers are limited to no more than six off-street parking spaces (in addition to the two required for the residence), commercial greenhouses may be required to provide much more. On February 13, 2013 the Planning Commission approved a conditional use permit for a greenhouse in the A-2 zone and required 16 off-street parking spaces.

- 16) The Act asks “Would the rural character of the neighborhood be **fundamentally altered**?” If the answer is yes – then he should not receive the exception.

Response: Correct, as long as there is objective evidence to support the conclusions.

- 17) The DOJ and HUD say “a **50-bed nursing home** would not ordinarily be considered an appropriate use in a single-family neighborhood, for obvious reasons...but it might not create a fundamental change in a neighborhood zoned for multi-family housing.” With the same logic, this statement would suggest that a 16-bed addict home would not be appropriate in a rural neighborhood either. It would be better suited in a higher density area.

Response: The DOJ and HUD statement does not indicate what type of single family neighborhood the statement was addressing. It would be speculative to assume that they would apply the same logic to a 16-bed facility in a residential agricultural zone.

- 18) “The scope and magnitude of the modification requested, and the features of the **surrounding neighborhood** are among the factors that will be taken into account”

Response: Staff agrees.

19) Appropriate **health and safety requirements** can be imposed on a group home specific to the welfare of their residents. What requirements should be imposed on this home?

Response: The building is classified as an R-4 occupancy according to the International Building Code. All applicable building, fire and accessibility requirements will apply.

20) The City needs be willing to fight for what is right for the community – not cower due to the threat of a lawsuit/fight. Citizens and municipalities must take a stand and push back at the Fed’s overreaching arm. If we have non-discriminatory reasons to reject the request – then the City should **stand firm** on the merits of the situation.

Response: No comment.

21) Does not fit with the **City’s vision statement**

Response: The vision statement is meant to help inform long-range planning decisions generally for the city. It is not meant to address specific projects. While it can be argued that the proposed facility could be inconsistent with some of the principles of the vision statement, the vision statement does not supersede state and federal law.

22) What can we do if a potential resident has been arrested for a crime, but not convicted? How will it be determined if someone is a “threat” (as stated in the ordinance)?

Response: See staff report.

The following is from the Mapleton code regarding group homes:

23) Mapleton code says “Disability does not include **current illegal use** of, or addiction to, any federally controlled substance, as defined in section 102 of the controlled substances act, 21 USC 802.” How does the City regulate whether or not they are still addicted?

Response: The City will rely primarily on the state licensing process and enforcement for this issue. See also staff report special conditions.

24) Mapleton code recommends approval if: There is compliance with zoning requirements limiting the maximum number of unrelated occupants that are applicable to similar structures permitted within the zone.

a) This would be **3 occupants**

Response: See #13 above.

25) Wording of Mapleton code requires the occupants to only be **court-sentenced addicts**.

“Placement of disabled individuals in the facility shall be on a strictly voluntary basis and a part of, or in lieu of, confinement, rehabilitation, or treatment in a correctional facility;”

a) Is this worded poorly and was intended to mean that they can be there in lieu of being sentenced to a correctional facility? Or does it mean the business can only accept people who are coming in lieu of treatment in a correctional facility?

Response: This is a typo in the ordinance the “and” in the ordinance should read “and not part of...”.

26) Mapleton City code calls for the Planning Commission and City Council to weigh the **evidence of the individuals** to determine if they are a direct threat. How will this be accomplished?

Response: See staff report.

27) Proposed use is a **profit center**. Owner stands to gain substantially in recurring income, as well as the ability to sell for a large gain (new ownership would just apply and receive the same permit and/or accommodation). This is not the intent of the zoning ordinance for this area.

Response: The City does not get involved in regulating profits or losses. There is no guarantee that a new owner would be granted the same accommodation.

28) Failure to comply with the requirements of the code **terminates** the use. There should be strict conditions applied to this business that can be easily monitored and measured, at the business’ expense.

Response: See staff report.

29) Why is this listed in the City code?:” Any decision of the city council may be **appealed** to the district courts within thirty (30) days of the council's written decision.” Is that statement required to be in there or is it an invitation for litigation?

Response: The statement simply outlines the process if an appeal is filed.

30) For an accommodation, “The applicant shall describe why the accommodation is necessary to afford the disabled an **equal opportunity** to use and enjoy residential housing;”. There is no need to the drug addicts to have that high of density. The accommodation only serves to increase profitability. The City’s job is not to make individuals profitable – it is to serve and

protect the members of the city as a whole, while not discriminating. Approval of this accommodation would be similar to approving an apartment building in a low density zone only because a developer wanted a higher profit.

Response: The applicant is required to demonstrate the need for the reasonable accommodation. Unless the applicant is basing the request for accommodation on finances, the City does not get involved in determining whether a business will or will not be profitable.

31) To get approval from the City, the establishment must show that it has obtained state licensure. City should require the Policies and Procedures manual for this facility.

Response: The policies and procedures manual is reviewed, approved and monitored by the state. The City does not play a role in the adoption or enforcement of this manual.

32) What ADA requirements will have to be met? If the application is protected under the ADA laws – then it should comply with all of the requirements for a business.

Response: See #19 above.

33) What fire code requirements will be imposed on the home?

Response: See #19 above.

34) Does the street have the width for fire trucks with parking on both sides?

Response: The paved street is approximately 20' wide, but the right-of-way is approximately 56' wide and has space for vehicles to park along the street. However, the applicant has indicated that employees and visitors will not be parking along the street. If vehicles are parked along the street so as to block the travel lane, the police department should be contacted so the vehicles could be ticketed or towed.

Attachment “5”

State licensing procedure and requirements

Licensing Process for
Day Treatment, Intermediate Secure Care, Outdoor Youth programs, Outpatient Treatment, Residential Support, Residential Treatment, Social Detoxification, and Therapeutic Schools

1. Submit application, fee, and Policy and Procedure manual to the Office of Licensing. Office management will assign a licensor. The Policy and Procedure Manual must address the specifics of how the program will comply with the Core Rules (R501-2) and with the Categorical Rules for the applicable category of service to be provided. The manual must be reviewed and approved by the assigned licensor. Be sure to include program statement of purpose; description for services to be provided; description of clients to be served.
2. Submit Office of Licensing Background Screening Application forms on all employees 18 years or older who will have direct access to clients (Adult only Substance Abuse programs are exempt from this). An Office of Licensing background screen must be completed annually.
3. Prepare the following documents:
 - Business license / zoning approval
 - Fire Inspection Clearance (not required for Outdoor Youth Program)
 - Health Inspection Clearance (not required for Outpatient Treatment or Outdoor Youth Program)
 - Evidence of Insurance (General Liability with fire, Professional Liability, Vehicle, and Worker's Compensation)
 - Evidence of Business Registration with the Department of Commerce
 - Sole Proprietorship = Registration
 - Partnership = Partnership Agreement
 - Limited Partnership = Certificate of Limited Partnership
 - Corporation = Articles of Incorporation
 - Limited Liability Company = Articles of Organization
 - List of members of the program's Governing Body
 - Organization Chart
 - School Accreditation Certificate for programs serving clients under age 18 (not required for Outpatient Treatment or Social Detoxification).
 - Completed Youth Education Coordinating Form for programs serving clients under age 18 (not required for Outpatient Treatment or Social Detoxification).
 - For Residential Treatment - evidence of notification provided to the Governing Body of the local government having jurisdiction, in accordance with 62A-2-108.2(3)
 - Any other licenses/inspections required by the city, county or other state agency
4. Licensor will contact you to complete a site inspection.

DEPARTMENT OF HUMAN SERVICES
OFFICE OF LICENSING
RESIDENTIAL TREATMENT
RULES CHECKLIST

Licensing Staff: _____ Date: _____

Program: _____

Director: _____

Address: _____

Licensed Capacity: _____ Number of Consumers Enrolled: _____

Provider Signature: _____ Fee: _____

*Effective May 4, 1998, (62A-2-106), Divisions will enforce the following Rules for licensees under contract.

COMPLIANCE REQUIREMENTS	Y E S	N O	N / A	CONT RACT	COMMENTS
R501-19					
The following is on file: 1. application 2. current staff information (org. chart, staff list) 3. background clearance screening form when required					
R501-19-3. Definition. Program meets definition of residential treatment.					
R501-19-4. Administration. A. Program complies with R501-2, Core Standards.					
B. A current list of enrollment of all registered consumers is on-site at all times.					
R501-19-5. Staffing. A. Program has an employed manager who is responsible for the day to day resident supervision and operation of the facility. Responsibilities of the manager are clearly defined. Whenever the manager is absent there is a substitute available.					
B. Program has a staff person trained, by a certified instructor, in first aid and CPR on duty with the consumers at all times.				*	
C. If program utilizes students and volunteers, they provide screening, training, and evaluation of volunteers. Volunteers are informed verbally and in writing of program objectives and scope of service.				*	
D. Professional staff include the following individuals who have received training in the specific area listed below: 1. Mental Health a. a licensed physician, or consulting licensed physician, b. a licensed psychologist, or consulting licensed psychologist, c. a licensed mental health therapist, d. a licensed advanced practice registered nurse-psychiatric mental health nurse specialist, or a consulting advanced practice registered nurse-psychiatric mental health nurse specialist, and e. if unlicensed staff are used, they are supervised by a licensed clinical professional. 2. Substance Abuse a. a licensed physician, or a consulting licensed physician, b. a licensed psychologist, or consulting licensed psychologist, c. a licensed mental health therapist, or consulting licensed mental health therapist, d. a licensed substance abuse counselor, or unlicensed staff who work with substance abusers are supervised by a licensed clinical professional.				* * * * * * * * * *	

COMPLIANCE REQUIREMENTS R501-19	Y E S	N O	N / A	CONT RACT	COMMENTS
<p>3. Children and Youth</p> <ul style="list-style-type: none"> a. a licensed physician, or consulting licensed physician, b. a licensed psychologist, or consulting licensed psychologist, and c. a licensed mental health therapist, or consulting licensed mental health therapist, to provide a minimum of one hour of service to the program per week per consumer enrolled. d. A licensed medical practitioner, by written agreement, is available to provide, as needed, a minimum of one hour of service per week for every two consumers enrolled. e. Other staff trained to work with emotionally and behaviorally disturbed, or conduct disordered children and youth are under the supervision of a licensed clinical professional. f. A minimum of two staff on duty and, a staff ratio of no less than one staff to every four consumers exists at all times, except nighttime sleeping hours when staff ratios may be reduced. g. A mixed gender population has at least one male and one female staff on duty at all times. <p>4. Services for People with Disabilities programs have a staff person responsible for program supervision and operation of the facility. Staff person is adequately trained to provide the services and treatment stated in the consumer plan.</p>				* * * * * * * *	
<p>R501-19-6. Direct Service. Treatment plans are reviewed and signed by the clinical supervisor, or other qualified individuals for DSPD services. Plans are reviewed and signed as noted in the treatment plan.</p>				*	
<p>R501-19-7. Physical Facilities.</p> <p>A. Program provides written documentation of compliance with the following items as applicable:</p> <ul style="list-style-type: none"> 1. local zoning ordinances, 2. local business license requirements, 3. local building codes, 4. local fire safety regulations, 5. local health codes, and 6. local approval from the appropriate government agency for new program services or increased consumer capacity. 					
<p>B. Building and Grounds</p> <ul style="list-style-type: none"> 1. Program ensures that the appearance and cleanliness of the building and grounds are maintained. 2. Program takes reasonable measures to ensure a safe physical environment for consumers and staff. 					
<p>R501-19-8. Physical Environment.</p> <p>A. Live-in staff have separate living space with a private bathroom.</p>					
<p>B. Program has space to serve as an administrative office for records, secretarial work and bookkeeping.</p>					
<p>C. Indoor space for free and informal activities of consumers is available.</p>					
<p>D. provision is made for consumer privacy.</p>					
<p>E. Space is provided for private and group counseling sessions.</p>					

COMPLIANCE REQUIREMENTS R501-19	Y E S	N O	N /	N A	CONT RACT	COMMENTS
<p>F. Sleeping Space</p> <ol style="list-style-type: none"> 1. No more than four persons, or two for DSPD programs, are housed in a single bedroom. 2. A minimum of 60 square feet per consumer is provided in a multiple occupant bedroom. Storage space is not counted. 3. A minimum of 80 square feet per individual is provided in a single occupant bedroom. Storage space is not counted. 4. Sleeping areas have a source of natural light, and are ventilated by mechanical means or equipped with a screened window that opens. 5. Each bed, none of which are portable, is solidly constructed, and is provided with clean linens after each consumer stay and at least weekly. 6. Sleeping quarters serving male and female residents is structurally separated. 7. Consumers are allowed to decorate and personalize bedrooms with respect for other residents and property. 						
<p>G. Bathrooms</p> <ol style="list-style-type: none"> 1. Program has separate bathrooms for males and females. These are maintained in good operating order and in a clean and safe condition. 2. Bathrooms accommodate consumers with physical disabilities as required. 3. Bathrooms are properly equipped with toilet paper, towels, soap, and other items required for personal hygiene. 4. Bathrooms are ventilated by mechanical means or equipped with a screened window that opens. 5. Bathrooms meet a minimum ratio of one toilet, one lavatory, and one tub or shower for each six residents. 6. There are toilets and baths or showers that allow for individual privacy. 7. There are mirrors secured to the walls at convenient heights. 8. Bathrooms are located to allow access without disturbing other residents during sleeping hours. 						
<p>H. Furniture and equipment is of sufficient quantity, variety, and quality to meet program and consumer needs.</p>						
<p>I. All furniture and equipment is of sufficient quantity, variety, and quality to meet program and consumer needs.</p>						
<p>J. If program permits individuals to do their own laundry they provide equipment and supplies for washing, drying, and ironing.</p>						
<p>K. If program provides for common laundry of linens and clothing, they provide containers for soiled laundry separate from storage for clean linens and clothing.</p>						
<p>L. Laundry appliances are maintained in a clean and safe condition.</p>						
<p>R501-19-9. Food Service.</p>						
<p>A. One staff is responsible for food service. If this person is not a professionally qualified dietitian, regularly scheduled consultation with a professionally qualified dietitian is obtained. Meals are served from dietitian-approved menus.</p>						
<p>B. Staff responsible for food service maintain a current list of consumers with special nutritional needs and record in the consumer's service record information relating to special nutritional needs and provide for nutrition counseling where indicated.</p>						
<p>C. Program establishes and posts kitchen rules and privileges according to consumer needs.</p>						
<p>D. Consumers present in the facility for four or more consecutive hours are provided nutritious food.</p>						
<p>E. meals may be prepared at the facility or catered.</p>						
<p>F. Kitchens have clean, operational equipment for the preparation, storage, serving, and clean up of all meals.</p>						
<p>G. Adequate dining space is provided for consumers. Dining space is maintained in a clean and safe condition.</p>						
<p>H. If meals are prepared by consumers there is a written policy to include the following:</p>						

COMPLIANCE REQUIREMENTS R501-19	Y E S	N O	N /	CONT RACT	COMMENTS
<ol style="list-style-type: none"> 1. rules of kitchen privileges, menu planning and procedures, 2. nutritional and sanitation requirements, and 3. schedule of responsibilities. 					
R501-19-10. Medication.					
A. Program has locked storage for medications.					
B. Program has locked storage for hazardous chemicals and materials, according to the direction of the local fire authorities.					
C. Prescriptive medication is provided as prescribed by a qualified person, according to the Medical Practices Act.					
D. Program has designated qualified staff, who is responsible to: <ol style="list-style-type: none"> 1. administer medication, 2. supervise self-medication, 3. record medication, including time and dosage, according to prescription, and 4. record effects of medication. 					
R501-19-11. Specialized Services for Substance Abuse.					
A. Program does not admit anyone who is currently experiencing convulsions, in shock, delirium tremens, in a coma, or unconscious.					
B. At a minimum the program documents that direct service staff complete standard first aid and CPR training within six months of being hired. Training is updated as required by the certifying agency.					
C. Before admission, consumers are tested for Tuberculosis. Both consumers and staff are tested annually or as directed by local health authority.					
R501-19-12. Specialized Services for Programs Serving Children and Youth.					
A. Provisions are available for adolescents to continue their education with a curriculum approved by the State Office of Education.					
B. If program provides their own school it is recognized by an educational accreditation organization, i.e., State Board of Education or the National School Accreditation Board.					
C. Individual, group, couple, and family counseling sessions or other appropriate treatment, including skills development, is conducted at least weekly, or more often if defined by the treatment plan. The consumer's record documents the time and date of the service provided with signature of the counselor.					
D. An accurate record is kept of all funds deposited and withdrawn with the residential facility for use by a consumer. Consumer purchases of over \$20.00 per item, are substantiated by receipts signed by consumer and appropriate staff.					
R501-19-13. Specialized Services for Division of Services for People with Disabilities.					
A. Rules governing the daily operation and activities of the facility are available to all consumers and visitors, and applies to family members, consumers, and staff that come into the facility.					
B. Program has policy specifying the amount of time family or friends may stay as overnight guests.					
C. All consumers have an individual plan that addresses appropriate day treatment.					
D. A monthly schedule of activities is shared with the consumer and available on request. Schedules are filed and maintained for review.					
E. Record of income, earned, unearned, and consumer service fees, is maintained by the provider.					
F. Facility is located where school, church, recreation, and other community facilities are available.					
G. An accurate record is kept of all funds deposited with the facility for use by a consumer. The record contains a list of deposits and withdrawals. Consumer purchases of over \$20.00 per item, is substantiated by receipts signed by consumer and professional staff. A record is kept of consumer petty cash funds.					
H. Program, in conjunction, with parent or guardian and DSPD support coordinator, applies for unearned income benefits for which a consumer is entitled.					

UTAH DEPARTMENT OF HUMAN SERVICES
OFFICE OF LICENSING
CORE RULES CHECKLIST

Licensing Staff: _____ Date: _____

Program: _____

Director: _____

Address: _____

Maximum Licensed Capacity: _____ Number of Consumers Enrolled: _____

Provider Signature: _____ Fee Charged: _____

* Effective May 4, 1998, (62A-2-106) For programs contracted to a DHS Division listed in 62A-1-105, these rules will be reviewed by contract monitors in coordination with the Office of Licensing

COMPLIANCE REQUIREMENTS	Y	N	N	CONT	COMMENTS
R501-2	E	O	/	RACT	
	S		A		
R501-2-2. ADMINISTRATION					
A. Program has written statement of purpose, including the following: 1. program philosophy, 2. description of long and short term goals, (this does not apply to social detoxification or child placing adoption agencies) 3. description of services provided, population to be served, 4. fee policy, 5. participation of consumers in activities unrelated to treatment plans, and, 6. program policies and procedures shall be submitted before issuance of an initial license.					
B. Copies of above are available at all times to the Office, and general program information is available to the public.					
C. Program has written quality assurance plan; implementation is documented.					
D. Program has clearly stated guidelines and procedures, to include the following: 1. program management, 2. maintenance of complete, accurate and accessible records, and 3. record retention.					
E. Governing body, program operators, management, employees, consultants, volunteers and interns have read, understand, follow and signed a copy of the current DHS Provider Code of Conduct.					
F. Program complies with state and federal laws regarding abuse reporting, and has posted a copy of the laws in a conspicuous place within the facility.					
G. If program serves minors or vulnerable adults, they submit information for background screening of all persons associated with the license that have access to clients.					
H. Program complies with all applicable interstate Compact laws.					
I. Substance abuse programs shall complete the National Survey of Substance Abuse Treatment annually and comply with confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR Part 2.					
J. Program license shall be posted in a conspicuous place on the premises. Program posts Civil Rights, Notice of Agency Actions, Abuse and Neglect Reporting, and ADA notices as applicable					
K. Program does not handle any major personal business affairs of a consumer, without written request by consumer or legal representative.					

COMPLIANCE REQUIREMENTS R501-2	Y E S	N O	N /	A A	CONT RACT COMMENTS
R501-2-3. Governance					
<p>A. Program has a governing body that is responsible and has authority over the policies, training and monitoring of staff and consumer activities for all phases of the program. They include the following:</p> <ol style="list-style-type: none"> 1. ensure program policy and procedure compliance. 2. ensure continual compliance with relevant local, state and federal requirements, 3. notify the Office within 30 days of changes in program administration and purpose, 4. ensures that program is fiscally and operationally sound, (The program is a "going concern") 5. ensures program has adequate staffing as identified on the organizational chart, 6. ensures program has general liability insurance, professional liability insurance as appropriate, vehicle insurance for transport of consumers, and fire insurance, and 7. If program serves youth, program director or designee meets with the Superintendent or designee of the local school district at the time of initial licensure, and then again each year as the program renews it's license to complete the necessary student forms, including youth education forms. 					
<p>B. The governing body shall be one of the following:</p> <ol style="list-style-type: none"> 1. a Board of Directors in a non-profit organization; or 2. commissioners or appointed officials of a governmental unit; or 3. Board of Directors or individual owners of for-profit organization. 					
<p>C. Program has a list of members of the governing body indicating name, address, and term of membership.</p>					
<p>D. Program has organization chart that identifies operating units of program, their inter-relationships. Chart defines lines of authority/ responsibility for all staff, and identifies by name the staff who fills each position on the chart.</p>					
<p>F. If the governing body is composed of more than one person, written by-laws have been established, formal meetings are held at least twice a year, (child placing agencies meet quarterly). Written minutes are kept, which are available for review by the Office. They include the following:</p> <ol style="list-style-type: none"> 1. attendance, 2. date, 3. agenda items, and 4. actions. 					
R501-2-4. STATUTORY AUTHORITY					
<p>A. If program is publicly operated, it documents statutory basis for existence.</p>					
<p>B. If program is privately operated, it documents ownership and incorporation</p>					
R501-2-5. RECORD KEEPING					*
<p>Program has a written record for each consumer which includes the following:</p>					*
<p>A. Demographic information, including Medicaid number as required.</p>					*
<p>B. biographical information,</p>					*

COMPLIANCE REQUIREMENTS R501-2	Y E S	N O	N /	CONT RACT	COMMENTS
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<p>C. pertinent background information, including the following:</p> <ol style="list-style-type: none"> 1. personal history, including social, emotional, psychological and physical development, 2. legal status, 3. emergency contact, including name, address and telephone number, and 4. photo, as needed 				*	
<p>D. health records of consumers, including:</p> <ol style="list-style-type: none"> 1. immunizations, (this is not applicable to adult programs), 2. medication, 3. records of physical exams, dental and visual exams, and 4. other pertinent health records and information, 				*	
<p>E. signed consent forms for treatment and signed Release of Information form,</p>					
<p>F. copy of consumer's individual treatment or service plan,</p>				*	
<p>G. summary of family visits and contacts, and</p>				*	
<p>H. summary of attendance and absences.</p>				*	
R501-2-6. DIRECT SERVICE MANAGEMENT					
<p>A. Not applicable to social detoxification. Program has a written eligibility policy and procedure, approved by a licensed clinical professional which includes the following:</p> <ol style="list-style-type: none"> 1. legal status, 2. age and sex of consumer, 3. consumer needs or problems best addressed by program, 4. program limitations, and 5. appropriate placement. 					
<p>B. Program has written admission policy and procedure to include the following:</p> <ol style="list-style-type: none"> 1. appropriate intake process, 2. age groupings are approved by the Office of Licensing, 3. pre-placement requirements, 4. self-admission, 5. notification of legally responsible person, and 6. reason for refusal of admission, including a written, signed statement. 					
<p>C. Intake Evaluation:</p> <ol style="list-style-type: none"> 1. At the time of intake an assessment is conducted to evaluate health and family history, medical, social, psychological and, as appropriate, developmental, vocational, and educational factors. 2. In emergency situations, which necessitate immediate placement, the intake evaluation is completed within seven days of admission. 3. All methods used in evaluating a consumer consider, cultural background, dominant language, and mode of communication. 					
<p>D. Written consumer agreement is developed with consumer, and the legally responsible person, if applicable, signed by all parties, kept in consumer's record, with copies available to involved persons, It includes the following:</p> <ol style="list-style-type: none"> 1. rules of program, 2. consumer and family expectations, 3. services to be provided, and cost of service, 4. authorization to serve and to obtain emergency 					

COMPLIANCE REQUIREMENTS R501-2	Y E S	N O	N / A	CONT RACT	COMMENTS
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<p>developed with consumer's participation, or legally responsible party if necessary. The plan shall include the following:</p> <ol style="list-style-type: none"> 1) reason for discharge or transfer, 2) adequate discharge plan, including aftercare planning, 3) summary of services provided, 4) evaluation of achievement of treatment goals or objectives, 5) signature and title of staff preparing summary, and 6) date of discharge or transfer. <p>d. The program has a written policy concerning unplanned discharge.</p> <p>8. Incident or Crisis Intervention records:</p> <ol style="list-style-type: none"> a. Program has written policies and procedures which includes: reporting to program management, documentation and management review of incidents such as deaths of consumers, serious injuries, fights, or physical confrontations, situations requiring the use of passive physical restraints, suspected incidents of abuse or neglect, unusual incidents, and other situations or circumstances affecting the health, safety, or well-being of consumers. b. Records include the following: <ol style="list-style-type: none"> 1) summary information, 2) date, time of emergency intervention, 3) action taken, 4) employees and management responsible and involved, 5) follow up information, 6) list of referrals, 7) signature and title of staff preparing report, and 8) records are signed by management staff. c. Report is maintained in individual consumer records. d. When an incident involves abuse or neglect, serious injury or illness, violation of the Provider Code of Conduct, or death of a consumer, the program shall: <ol style="list-style-type: none"> 1) Notify the Office of Licensing, legally responsible person and any applicable agency which may include law enforcement. 2) A preliminary written report shall be submitted to the Office of Licensing within 24 hours of the incident. 					
<p>R501-2-7. Behavior Management</p> <p>A. Program has on file for public inspection, a written policy and procedure for the methods of behavior management. They include the following.</p> <ol style="list-style-type: none"> 1. definition of appropriate and inappropriate behavior of consumers, 2. acceptable staff responses to inappropriate behaviors, and 3. consequences. 					
<p>B. Policy is provided to all staff, and staff receives training relative to behavior management at least annually.</p>					

COMPLIANCE REQUIREMENTS R501-2	Y E S	N O	N / A	CONT RACT	COMMENTS
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C. No management person authorizes or uses, and no staff member uses, any method designed to humiliate or frighten a consumer.					
D. No management person authorizes or uses, and no staff member uses or permits the use of physical restraint with the exception of passive physical restraint. Passive physical restraint is used only as a temporary means of physical containment to protect the consumer, other persons, or property from harm. Passive physical restraint is not associated with punishment in any way.					
E. Staff involved in an emergency safety intervention that results in an injury to a resident or staff must meet with the clinical professional to evaluate the circumstances that caused the injury and develop a plan to prevent futures injuries.					
<p>F. Programs using time out or seclusion methods shall comply with the following:</p> <ol style="list-style-type: none"> 1. The program will have a written policy and procedure which has been approved by the Office of Licensing to include: <ol style="list-style-type: none"> a. Time-out or seclusion is only used when a child's behavior substantially interferes with their ability to participate appropriately, or to function appropriately with other children or the activity. It shall not be used for punishment or as a substitute for other developmentally appropriate positive methods of behavior management. b. Time-out or seclusion shall be documented in detail and provide a clear understanding of the incident which resulted in the child being placed in that time out or seclusion. c. If a child is placed in time out or seclusion more than twice in any twenty-four hour period, a review is conducted by the clinical professional to determine the suitability of the child remaining in the program. d. Any one time out or seclusion shall not exceed 4 hours in duration. e. Staff is required to maintain a visual contact with a child in time out or seclusion at all times. f. If there is any type of emergency such as a fire alarm, or evacuation notification, children in time out or seclusion shall follow the safety plan. g. A child placed in time out or seclusion shall not be in possession of belts, matches, weapons or any other potentially harmful objects or materials that could present a risk of harm to the child. 2. Time out or seclusion areas shall comply with the following: <ol style="list-style-type: none"> a. Time out or seclusion rooms shall not have locking capability. b. Time out or seclusion rooms shall not be located in closets, bathrooms, or unfinished basement, attics or locked boxes. c. A time out or seclusion room is not a 					

COMPLIANCE REQUIREMENTS R501-2	Y E S	N O	N /	CONT RACT	COMMENTS
<p>bedroom, and temporary beds, or mattresses in these areas are not allowed. Time out and seclusion shall not preclude a child's need for sleep, or normal scheduled sleep period.</p> <p>d. All time out or seclusion rooms shall measure at least 75 square feet with a ceiling height of at least 7 feet. They shall have either natural or mechanical ventilation and be equipped with a break resistant window, mirror or camera that allows for full observation of the room. Seclusion rooms shall have no hardware, equipment, or furnishings that obstruct observation of the child, or that present a physical hazard or a suicide risk. Rooms used for time out or seclusion shall be inspected and approved by the local fire department.</p>					
<p>G. The program's licensed clinical professional shall be responsible for supervision of the behavior management procedure.</p>					
<p>R501-2-8. Rights of Consumers</p> <p>A. Program has a written policy for consumer rights to include the following:</p> <ol style="list-style-type: none"> 1. privacy of information for current and closed records, 2. reasons for involuntary termination and criteria for re-admission to the program. 3. freedom from potential harm or acts of violence to consumers or other, 4. consumer responsibilities, tasks, privileges, and rules of conduct, 5. service fees and other costs, 6. grievance/complaint procedures, 7. freedom from discrimination, 8. right to be treated with dignity, 9. the right to communicate by telephone or in writing with family, attorney, physician, clergyman, counselor, or case managers, except when contraindicated by the licensed clinical professional. 10. a list of people whose visitation rights have been restricted through courts, 11. the right to send and receive mail providing that security, general health, and safety requirements are met, 12. defined smoking policy in accordance with the Utah Clean Air Act, and 13. statement of maximum sanctions and consequences reviewed and approved by the Office. 					
<p>B. Consumer is informed of this policy to his or her understanding verbally and in writing. A signed copy is maintained in consumer record.</p>					
<p>R501-2-9. Personnel Administration</p> <p>A. Program has written personnel policies and procedures including the following:</p> <ol style="list-style-type: none"> 1. employee grievances. 2. lines of authority, 3. orientation and on-going training, 4. performance appraisals, 5. rules of conduct, and 6. sexual and personal harassment. 					

COMPLIANCE REQUIREMENTS R501-2	Y E S	N O	N /	N A	CONT RACT COMMENTS
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B. Program has a director, appointed by the governing body, who is responsible for management of the program and facility. The Director or designated management person shall be available at all times during operation of the program.					
C. Program shall maintain a personnel file on site for each employee including the following: 1. application for employment, 2. applicable credentials and certifications, 3. initial medical history if directed by governing body, 4. tuberculin test if directed by governing body, 5. food handler permit, where required, by local health authority, 6. training record, 7. annual performance evaluations, 8. I-9 Immigration Form completed, as applicable, 9. documentation of compliance with R501-14 and R501-18 for background screening, and 10. signed copy of the current DHS Provider Code of Conduct.				*	
D. The program follows a written staff to consumer ratio, which meets specific consumer and program needs. Staff to consumer ratio meets or exceeds requirements set forth in categorical rules, R501-17, R501-19, R501-20, R501-21, R501-22, and R501-16.				*	
E. Program employs or contracts with trained or qualified staff to perform following functions: 1. administrative, 2. fiscal, 3. clerical, 4. housekeeping, maintenance, and food service, 5. direct consumer service, and 6. supervisory.					
F. Program has written job description for each position, which includes specific statement of duties and responsibilities, and minimum level of education, training, and work experience required.					
G. Treatment is provided or supervised by licensed professional staff, whose qualifications are determined or approved by the governing body, in accordance with State law.					
H. Governing body ensures that all staff are certified and licensed as legally required.					
I. Program has access to a medical clinic or a physician licensed to practice medicine in the State of Utah.					
J. Program provides interpreters for consumers, or refers consumers to appropriate resources as necessary to communicate with consumers whose primary language is not English.					
K. Program retains personnel file of an employee after termination of employment in accordance with accepted personnel practices.					
L. If program uses volunteers, substitutes, or student interns, the program has a written plan to include the following: 1. direct supervision by a program staff, 2. orientation and training in philosophy of program, needs of consumers and methods of meeting those needs, 3. background screening, 4. record is maintained with demographic					

COMPLIANCE REQUIREMENTS R501-2	Y E S	N O	N /	CONT RACT	COMMENTS
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<p>5. information, and signed copy of the current DHS Provider Code of Conduct.</p>					
<p>M. Staff Training:</p> <ol style="list-style-type: none"> 1. Staff members are trained in all policies of the program including the following: <ol style="list-style-type: none"> a. philosophy, objectives, and services, b. emergency procedures, c. behavior management, d. current program policy and procedures, and e. other relevant subjects. 2. Staff has completed and remains current in a certified first aid and CPR such as or comparable to American Red Cross. 3. Staff has current food handler permit as required by local health authority. 4. Training is documented and maintained on site. 					
<p>R501-2-10. Infectious Disease Program has policies and procedures designed to prevent or control infectious and communicable diseases in the facility in accordance with local, state and federal health standards.</p>					
<p>R501-2-11 Emergency Plans</p> <p>A. Program has a written plan of action for disaster and casualties to include the following:</p> <ol style="list-style-type: none"> 1. designation of authority and staff assignments, 2. plan for evacuation, 3. transportation and relocation of consumers when necessary, and 4. supervision of consumers after evacuation or relocation. 					
<p>B. Program educates consumers how to respond to fire warnings and other instructions for life safety, including evacuation.</p>					
<p>C. Program has written plan which personnel follows in medical emergencies and arrangements for medical care, including notification of consumers' physician, and nearest relative or guardian.</p>					
<p>R501-2-12. Safety</p> <p>A. Fire drills, in non-outpatient programs, are conducted at least quarterly and documented. Notation of inadequate response is documented.</p>					
<p>B. Program provides access to an operable 24-hour telephone service. Telephone numbers for emergency assistance are posted.</p>					
<p>C. Program has an adequately supplied first aid kit in the facility, such as recommended by the American Red Cross.</p>					
<p>D. All persons associated with the program having access to children or vulnerable adults who have firearms or ammunition shall assure that they are inaccessible to consumers at all times. Firearms and ammunition that are stored together shall be kept securely locked in security vaults or locked cases, not in glass fronted display cases. Firearms that are stored in display cases shall be rendered inoperable with trigger locks, bolts removed, or other disabling methods. Ammunition for those firearms shall be kept securely locked in a separate location. This does not restrict constitution or statutory rights regarding concealed weapons permits, pursuant to UCA 53-5-701 et seq.</p>					

COMPLIANCE REQUIREMENTS R501-2	Y E S	N O	N / A	CONT RACT	COMMENTS
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R501-2-13. Transportation					
A. Program has a written policy and procedure for transporting (or non-transporting) consumers.					
B. Each program or staff vehicle used to transport consumers has emergency information, which includes at a minimum, the name, address and telephone number of the program or facility or an emergency telephone number.					
C. Program has means, or has made arrangements for transportation in case of emergency.					
D. Drivers of vehicles have a valid driver license and follow safety requirements of the State.					
E. Each vehicle is equipped with an adequately supplied first aid kit, such as recommended by the American Red Cross.					

Attachment “6”

City and State Code Sections

Mapleton City Code 18.84.370.B

B. Residential Facilities For Persons With A Disability:

1. Purpose And Policy:

a. The purpose of this subsection is to:

- (1) Comply with Utah Code Annotated section 10-9a-520;
- (2) Provide clear direction to citizens and applicants regarding the necessary requirements and procedure for establishing residential facilities for persons with a disability; and
- (3) Establish an application process for locating residential facilities for persons with a disability in a residential community that both avoids discrimination against the disabled and protects the character and nature of the city's residential communities.

b. Pursuant to Utah Code Annotated section 10-9a-520(2)(a), this subsection is intended to comply with the Utah fair housing act of title 57, chapter 21 and the federal fair housing amendments act of 1988, 42 USC, section 3601 et seq.

2. Definitions: For purposes of this regulation, the following definitions shall apply:

DISABILITY: A physical or mental impairment that substantially limits one or more of a person's major life activities, including a person having a record of such an impairment or being regarded as having such an impairment.

a. "Physical or mental impairment" includes:

- (1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or
- (2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, human immunodeficiency virus infection, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

b. "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

Disability does not include current illegal use of, or addiction to, any federally controlled substance, as defined in section 102 of the controlled substances act, 21 USC 802.

RESIDENTIAL FACILITIES FOR PERSONS WITH A DISABILITY: A twenty four (24) hour group living environment with one or more individuals unrelated to the owner or provider that offers room or board and specialized treatment, behavior modification, rehabilitation, discipline, emotional growth, and/or habilitation services for persons with

emotional, psychological, developmental, or behavioral dysfunctions, impairments, or chemical dependencies, and that is licensed or certified by the department of human services under title 62A, chapter 2, licensure of programs and facilities, or is licensed or certified by the department of health under title 26, chapter 21, health care facility licensing and inspection act. Residential treatment does not include a boarding school or foster home.

3. State Regulation Of Residential Facilities:

- a. Prior to commencing operation, all applicants and operators of residential facilities for persons with a disability shall obtain a license from the department of health under title 26, chapter 21 ("health care facility licensing and inspection act") and/or the department of human services under title 62A, chapter 2 ("licensure of programs and facilities"), as is appropriate and required for the nature of the facility's operations and services.
- b. All residential facilities for persons with a disability shall maintain a current license from the department of health and/or the department of human services as a condition for their continued operation.

4. Municipal Approval Process For Residential Facilities:

- a. Permitted Use: A residential facility for persons with a disability is a permitted use in any zone where similar residential dwellings that are not residential facilities for persons with a disability are allowed.
- b. Recommendation; Approval: Prior to commencing the maintenance or operations of a residential facility for persons with a disability, the owner/operator of such a facility must first obtain a recommendation from the planning commission and final approval from the city council. In order to obtain such approval, the owner/operator of the facility must establish that:

(1) The facility complies with existing zoning regulation for the desired location, including:

- (A) Compliance with building, safety, and health regulations applicable to similar structures permitted within the zone, including obtaining permits relating thereto;
- (B) Compliance with site development standards including parking, traffic, landscape, utility use, and other standards applicable to similar structures permitted within the zone without structural or landscape alterations that would fundamentally change the structure's residential character and/or nature; and
- (C) Compliance with zoning requirements limiting the maximum number of unrelated occupants that are applicable to similar structures permitted within the zone.

(2) The facility has obtained and maintains appropriate state agency licensure for the facility, as provided herein;

(3) Placement of disabled individuals in the facility shall be on a strictly voluntary basis and a part of, or in lieu of, confinement, rehabilitation, or treatment in a correctional facility;

(4) No individual shall be admitted to the facility as a resident who has a history of criminal conviction, is a convicted sex offender, has been convicted of selling or manufacturing illegal

drugs, is currently using drugs or alcohol, and/or who is a direct threat to the health and safety of other individuals and/or of causing substantial physical damage to the property of others. In determining whether proposed residents are likely to represent a direct threat as outlined above, the planning commission and city council shall consider, on the basis of objective evidence:

- (A) The nature, duration, and severity of the risk;
- (B) The probability that potential injury will actually occur; and
- (C) Whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk; and

(5) The residential facility will not fundamentally alter the character and nature of the subject residential neighborhood.

c. Granting Permit: If the city council determines that the residential facility for persons with a disability is in compliance with these requirements, the city shall grant the requested permit to that facility.

d. Use Nontransferable: The use granted and permitted by this subsection is nontransferable and terminates upon:

- (1) Transfer of the ownership of the facility;
- (2) Any use other than that approved by the city council in the process outlined above; and/or
- (3) Failure of the structure, its management, and/or any of its residents to comply with any aspect or provision of this subsection.

e. Denial Of Permit: If the city council determines that the residential facility for persons with a disability is not in compliance with these requirements, the city shall deny the requested permit to that facility, and the city council shall provide a written explanation outlining the bases for the denial. Any decision of the city council may be appealed to the district courts within thirty (30) days of the council's written decision.

5. Reasonable Accommodation And Related Procedure:

a. Interpretation: None of the requirements in the municipal approval process outlined above shall be interpreted to limit any reasonable accommodation necessary to allow the establishment or occupancy of a residential facility for persons with a disability.

b. Written Request: Any person or entity who wishes to request a reasonable accommodation shall make a written request for the same to the planning commission for recommendations and city council for final approval. Within such a request:

- (1) The applicant shall identify the ordinance or regulation the applicant seeks to have waived or modified;
- (2) The applicant shall identify the nature of the disability requiring accommodation;
- (3) The applicant shall describe the nature of the requested accommodation;

- (4) The applicant shall describe why the accommodation is necessary to afford the disabled an equal opportunity to use and enjoy residential housing;
- (5) The applicant shall describe what impact, if any, the applicant perceives that the requested accommodation shall have on the existing neighborhood and whether the requested accommodation is consistent with the character and nature of the neighborhood; and
- (6) The applicant shall identify any burden or expense the accommodation would impose on the city.

c. Reasonable And Necessary Accommodation: The planning commission and city council shall make a reasonable accommodation to any aspect of the municipal approval process outlined above where it receives a written request for accommodation and the city council determines that such an accommodation is reasonable and necessary in order that a disabled individual may have an equal opportunity to use and enjoy residential housing.

(1) In considering whether a proposed accommodation is reasonable and necessary, the planning commission and city council shall:

(A) Consider the impact of the requested accommodation on the neighborhood in light of existing zoning and use, including any impact on neighborhood parking, traffic, noise, utility use, safety, and other similar concerns, and whether any such impact fundamentally alters the character and/or nature of the neighborhood and/or existing zoning regulations;

(B) Consider whether, based on objective evidence and on an individualized basis, a particular accommodation would pose a direct threat to the health or safety of other individuals and/or would result in substantial physical damage to the property of others. In determining the likelihood of direct threat or substantial damage, the planning commission shall consider:

(i) The nature, duration, and severity of the risk;

(ii) The probability that the potential injury will actually occur; and

(iii) Whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk; and

(C) Consider whether granting the accommodation would impose any significant or undue expense and/or administrative burden on the city.

(2) The city council shall draft a written opinion letter explaining its findings, indicating whether the requested accommodation is granted and detailing any related conditions that may be imposed therewith.

d. Appeals Process: Any party that requests a reasonable accommodation that is denied by the city council may appeal to the district courts within thirty (30) days of the council's written decision. (Ord. 2012-01, 2-21-2012, eff. 3-18-2012)

Utah Municipal Code

10-9a-520. Residences for persons with a disability.

(1) Each municipality shall adopt an ordinance for residential facilities for persons with a disability.

(2) Each ordinance under Subsection (1) shall:

(a) comply with Title 57, Chapter 21, Utah Fair Housing Act, and the federal Fair Housing Amendments Act of 1988, 42 U.S.C. Sec. 3601 et seq.; and

(b) to the extent required by federal law, provide that a residential facility for persons with a disability is a permitted use in any zone where similar residential dwellings that are not residential facilities for persons with a disability are allowed.

(3) Subject to Subsection (2), an ordinance under Subsection (1) may:

(a) require residential facilities for persons with a disability:

(i) to be reasonably dispersed throughout the municipality;

(ii) to be limited by number of occupants;

(iii) for residential facilities for persons with a disability that are substance abuse facilities and are located within 500 feet of a school, to provide, in accordance with rules established by the Department of Human Services under Title 62A, Chapter 2, Licensure of Programs and Facilities:

(A) a security plan satisfactory to local law enforcement authorities;

(B) 24-hour supervision for residents; and

(C) other 24-hour security measures; and

(iv) to obtain permits that verify compliance with the same building, safety, and health regulations as are applicable in the same zone to similar uses that are not residential facilities for persons with a disability; and

(b) provide that a residential facility for persons with a disability that would likely create a fundamental change in the character of a residential neighborhood may be excluded from a zone.

(4) The responsibility to license programs or entities that operate facilities for persons with a disability, as well as to require and monitor the provision of adequate services to persons residing in those facilities, shall rest with:

(a) for programs or entities licensed or certified by the Department of Human Services, the Department of Human Services as provided in Title 62A, Chapter 5, Services to People with Disabilities; and

(b) for programs or entities licensed or certified by the Department of Health, the Department of Health under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

Utah Administrative Code

Rule R501-19. Residential Treatment Programs.

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R501-19-1. Authority.

Pursuant to Section 62A-2-101 et seq., the Office of Licensing shall license residential treatment programs according to the following rules.

R501-19-2. Purpose.

Residential treatment programs offer room and board and provides for or arranges for the provision of specialized treatment, rehabilitation or habilitation services for persons with emotional, psychological, developmental, or behavioral dysfunctions, impairments, or chemical dependencies. In residential treatment programs, consumers are assisted in acquiring the social and behavioral skills necessary for living independently in the community in accordance with Subsection 62A-2-101(15).

R501-19-3. Definition.

Residential treatment program means a 24-hour group living environment for four or more individuals unrelated to the owner or provider in accordance with Subsection 62A-2-101(15).

R501-19-4. Administration.

A. In addition to the following rules, all Residential Treatment Programs shall comply with R501-2, Core Standards.

B. A current list of enrollment of all registered consumers shall be on-site at all times.

R501-19-5. Staffing.

A. The program shall have an employed manager who is responsible for the day to day resident supervision and operation of the facility. The responsibilities of the manager shall be clearly defined. Whenever the manager is absent there shall be a substitute available.

B. The program shall have a staff person trained, by a certified instructor, in standard first aid and CPR on duty with the consumers at all times.

C. Programs which utilize students and volunteers, shall provide screening, training, and evaluation of volunteers. Volunteers shall be informed verbally and in writing of program objectives and scope of service.

D. Professional staff shall include the following individuals who have received training in the specific area listed below:

1. Mental Health

a. a licensed physician or consulting licensed physician,

b. a licensed psychologist, or consulting licensed psychologist,

c. a licensed mental health therapist,

d. a licensed advanced practice registered nurse-psychiatric mental health nurse specialist, or a consulting advanced practice registered nurse-psychiatric mental health nurse specialist, and

e. if unlicensed staff are used, they shall be supervised by a licensed clinical professional.

2. Substance Abuse

a. a licensed physician, or a consulting licensed physician,

b. a licensed psychologist or consulting licensed psychologist,

c. a licensed mental health therapist or consulting licensed, mental health therapist, and

d. a licensed substance abuse counselor or unlicensed staff who work with substance abusers shall be supervised by a licensed clinical professional.

3. Children and Youth

a. a licensed physician, or consulting licensed physician,

b. a licensed psychologist, or consulting licensed psychologist, and

c. a licensed mental health therapist or consulting licensed mental health therapist, to provide a minimum of one hour of service to the program per week per consumer enrolled.

d. A licensed medical practitioner, by written agreement, shall be available to provide, as needed, a minimum of one hour of service per week for every two consumers enrolled.

e. Other staff trained to work with emotionally and behaviorally disturbed, or conduct disordered children and youth shall be under the supervision of a licensed clinical professional.

f. A minimum of two staff on duty and, a staff ratio of no less than one staff to every four consumers shall exist at all times, except nighttime sleeping hours when staff may be reduced.

g. A mixed gender population shall have at least one male and one female staff on duty at all times.

4. Services for People With Disabilities shall have a staff person responsible for program supervision and operation of the facility. Staff person shall be adequately trained to provide the services and treatment stated in the consumer plan.

R501-19-6. Direct Service.

Treatment plans shall be reviewed and signed by the clinical supervisor. Treatment plans shall be reviewed and signed by the clinical supervisor, or other qualified individuals for Division of Services for People With Disabilities services. Plans shall be reviewed and signed as noted in the treatment plan.

R501-19-7. Physical Facilities.

A. The program shall provide written documentation of compliance with the following items as applicable:

1. local zoning ordinances,

2. local business license requirements,
3. local building codes,
4. local fire safety regulations,
5. local health codes, and
6. local approval from the appropriate government agency for new program services or increased consumer capacity.

B. Building and Grounds

1. The program shall ensure that the appearance and cleanliness of the building and grounds are maintained.
2. The program shall take reasonable measures to ensure a safe physical environment for consumers and staff.

R501-19-8. Physical Environment.

- A. Live-in staff shall have separate living space with a private bathroom.
- B. The program shall have space to serve as an administrative office for records, secretarial work and bookkeeping.
- C. Indoor space for free and informal activities of consumers shall be available.
- D. Provision shall be made for consumer privacy.
- E. Space shall be provided for private and group counseling sessions.
- F. Sleeping Space
 1. No more than four persons, or two for Division of Services for People With Disabilities programs, shall be housed in a single bedroom.
 2. A minimum of sixty square feet per consumer shall be provided in a multiple occupant bedroom. Storage space will not be counted.
 3. A minimum eighty square feet per individual shall be provided in a single occupant bedroom. Storage space will not be counted.
 4. Sleeping areas shall have a source of natural light, and shall be ventilated by mechanical means or equipped with a screened window that opens.

5. Each bed, none of which shall be portable, shall be solidly constructed, and be provided with clean linens after each consumer stay and at least weekly.
6. Sleeping quarters serving male and female residents shall be structurally separated.
7. Consumers shall be allowed to decorate and personalize bedrooms with respect for other residents and property.

G. Bathrooms

1. The program shall have separate bathrooms for males and females. These shall be maintained in good operating order and in a clean and safe condition.
2. Bathrooms shall accommodate consumers with physical disabilities as required.
3. Each bathroom shall be properly equipped with toilet paper, towels, soap, and other items required for personal hygiene.
4. Bathrooms shall be ventilated by mechanical means or equipped with a screened window that opens.
5. Bathrooms shall meet a minimum ratio of one toilet, one lavatory, and one tub or shower for each six residents.
6. There shall be toilets and baths or showers which allow for individual privacy.
7. There shall be mirrors secured to the walls at convenient heights.
8. Bathrooms shall be located as to allow access without disturbing other residents during sleeping hours.

H. Furniture and equipment shall be of sufficient quantity, variety, and quality to meet program and consumer needs.

I. All furniture and equipment shall be maintained in a clean and safe condition.

J. Programs which permit individuals to do their own laundry shall provide equipment and supplies for washing, drying, and ironing.

K. Programs which provide for common laundry of linens and clothing, shall provide containers for soiled laundry separate from storage for clean linens and clothing.

L. Laundry appliances shall be maintained in a clean and safe operating condition.

R501-19-9. Food Service.

A. One staff shall be responsible for food service. If this person is not a professionally qualified dietitian, regularly scheduled consultation with a professionally qualified dietitian shall be obtained. Meals served shall be from dietitian approved menus.

B. The staff responsible for food service shall maintain a current list of consumers with special nutritional needs and record in the consumers service record information relating to special nutritional needs and provide for nutrition counseling where indicated.

C. The program shall establish and post kitchen rules and privileges according to consumer needs.

D. Consumers present in the facility for four or more consecutive hours shall be provided nutritious food.

E. Meals may be prepared at the facility or catered.

F. Kitchens shall have clean, safe, and operational equipment for the preparation, storage, serving, and clean up of all meals.

G. Adequate dining space shall be provided for consumers. The dining space shall be maintained in a clean and safe condition.

H. When meals are prepared by consumers there shall be a written policy to include the following:

1. rules of kitchen privileges,
2. menu planning and procedures,
3. nutritional and sanitation requirements, and
4. schedule of responsibilities.

R501-19-10. Medication.

A. The program shall have locked storage for medications.

B. The program shall have locked storage for hazardous chemicals and materials, according to the direction of the local fire authorities.

C. Prescriptive medication shall be provided as prescribed by a qualified physician, according to the Medical Practices Act.

D. The program shall have designated qualified staff, who shall be responsible to:

1. administer medication,

2. supervise self-medication,
3. record medication, including time and dosage, according to prescription, and
4. record effects of medication.

R501-19-11. Specialized Services for Substance Abuse.

A. The program shall not admit anyone who is currently experiencing convulsions, in shock, delirium tremens, in a coma, or unconscious.

B. At a minimum, the program shall document that direct service staff complete standard first aid and CPR training within six months of being hired. Training shall be updated as required by the certifying agency.

C. Before admission, consumers shall be tested for Tuberculosis. Both consumers and staff shall be tested annually or as directed by the local health authority.

R501-19-12. Specialized Services for Programs Serving Children and Youth.

A. Provisions shall be available for adolescents to continue their education with a curriculum approved by the State Office of Education.

B. Programs which provide their own school shall be recognized by an educational accreditation organization, i.e., State Board of Education or the National School Accreditation Board.

C. Individual, group, couple, and family counseling sessions or other appropriate treatment, including skills development, shall be conducted at least weekly, or more often if defined by the treatment plan. The consumer's record shall document the time and date of the service provided and include the signature of the counselor.

D. An accurate record shall be kept of all funds deposited and withdrawn with the residential facility for use by a consumer. Consumer purchases of over \$20.00 per item, shall be substantiated by receipts signed by the consumer and appropriate staff.

R501-19-13. Specialized Services for Division of Services for People With Disabilities.

A. Rules governing the daily operation and activities of the facility shall be available to all consumers and visitors, and shall apply to family members, consumers, and staff that come into the facility.

B. The program shall have policy specifying the amount of time family or friends may stay as overnight guests.

C. All consumers in residential programs shall have an individual plan that addresses appropriate day treatment.

D. A monthly schedule of activities shall be shared with the consumer and available on request. Schedules shall be filed and maintained for review.

E. A record of income, earned, unearned, and consumer service fees, shall be maintained by the provider.

F. Residential facilities shall be located where school, church, recreation, and other community facilities are available.

G. An accurate record shall be kept of all funds deposited with the residential facility for use by a consumer. This record shall contain a list of deposits and withdrawals. Consumer purchases of over \$20.00, per item, shall be substantiated by receipts signed by the consumer and professional staff. A record shall be kept of consumer petty cash funds.

H. The program, in conjunction with the parent or guardian and the Division of Services for People With Disabilities support coordinator, shall apply for unearned income benefits for which a consumer is entitled.