**Group Homes—Fair Housing Act**

As with religious uses, the U.S. Congress has entered the arena of local land use regulation when housing for those with disabilities is involved. The federal Fair Housing Act provides that it is unlawful to discriminate in the sale or rental, or to otherwise make unavailable or deny a dwelling to any buyer or renter because of a handicap.

A person is handicapped if he or she has a mental or physical impairment. This could include a wide range of limitations on a person’s life and health, including the effects of recovering from drug and alcohol addiction.

A local regulation may be found in violation of the act if it is shown to have a “disparate impact” on a particular group of people that the act was enacted to protect. Another standard in the act is that local rules are in violation if they fail to make “reasonable accommodations,” in allowing people with disabilities an equal opportunity to live in a dwelling.

When these rules are applied, the local government must balance the interests of the person with a disability against the demands of public health, safety, and welfare. What is forbidden is for local policies or practices to have a discriminatory effect. A group which claims discrimination must establish that others in a similar situation are treated differently even if that discrimination is unintentional.

If all group homes in a community are treated the same, then no violation of the Fair Housing Act would occur. But if homes for recovering substance abusers are not given the same allowances as sorority houses, for example, then the red flags of the act may be triggered.

The other issue is whether or not the community is making a reasonable accommodation of a proposed group home use. “Reasonable accommodation” has been interpreted to mean that the city or county must change any rule that is not justified by a compelling state interest so that the rule does not place onerous burdens on handicapped individuals.

Remember, of course, that the word “reasonable” is used here. The community must only adjust the rules if to do so is reasonable under the circumstances. Factors such as traffic, congestion, and cost may be used to review what is reasonable, but they may only be applied to limit dwelling units for the disabled if there are no less burdensome options available to offset the impact of group living. The characteristics of a proposed group home that are used to consider what accommodations are reasonable cannot include those that would only apply to a group home for the disabled.

Of course the analysis involved in these cases is an administrative one and any conclusions drawn must be based on substantial evidence on the record. To deny or overly burden a proposed group home with only the complaints of neighbors as a basis will surely run afoul of the act.

The act also has been interpreted to impose the burden of making accommodations on the local government, not on the applicant. If the community determines the use does not fit in a certain area, for purely empirical reasons, it still may bear the burden of suggesting some options that would allow the group home to locate in town. In a Utah case, the court held “the responsibility rested with the city to initiate and make the accommodation.”

The obvious discomfort this places on local political office holders is predictable. There could hardly be anything in the land use arena more unpleasant than to tell the neighbors rallying against a home for those recovering from substance abuse that they must not only endure the placement of the home in their neighborhood but “accommodate” it. Despite the belief of this author that many of the negatives associated with some land uses are more perceived than real, it would be unrealistic to discount the strong reaction that neighbors have when such uses are proposed in their own back yards.

**Case Law — Episcopal Church v. West Valley City**

An example of this comes from West Valley City where the Episcopal Church of Utah is affiliated with a residential treatment facility for recovering drug addicts and alcoholics known as The Haven. The proposal was to meet the increasing need for such a facility by using the vacant lot adjacent to St. Stephen’s Church at 4615 South 3200 West in West Valley City.

The work of the Episcopal Church in Utah is legendary, and there is no way to really over-praise the tremendous efforts made for the homeless and disadvantaged in our state that the church has achieved. But when they proposed a group home next door to the playground at Harry S Truman Elementary School, the local residents objected. They objected strongly and they objected long and loudly.

Ironically, there was no forum for them to voice that objection formally because the prospective group home, as proposed under the West Valley zoning ordinances, did not need any approvals that required a public hearing.

The premises were zoned R-1-8, which allowed residential uses. The group home is a residential use and, under the Fair Housing Act, it must be allowed in any residential zone just like a single family home.

Since someone proposing to build a single family home just needs to get a building permit, then a building permit is all the act says is needed for a group home. West Valley City was understandably reluctant to grant the approval as casually as a building permit for a home is handled, so a lawsuit resulted.

The federal court in Salt Lake City held that the church had not established that the denial of the permit was discriminatory, because no evidence was offered by the church that other group homes were treated differently than theirs. But the church won on the “reasonable accommodations” test.

While the city claimed to have offered help in the location of the group home, the court held that:

In the present case, no evidence whatsoever has been established other than the complaints of neighbors. Regardless of who bears the burden here, it is clear that the City has made no attempt to accommodate this facility. In fact, a decision was made to deny the permit for the facility before the application was even received.

On the other hand (the church) has asserted that there is a great need for Haven West to be a group facility located in a residential neighborhood. Those recovering from addiction have been shown to benefit from living with others in similar situations, and their presence in residential neighborhoods allows the recovering individuals to re-integrate into the community at large. It thus appears that there is currently no other way for recovering addicts who require this facility to receive housing in West Valley City.

The church won the case and is now working with West Valley City to design “reasonable accommodations” that will allow this facility to be built. Like the federal act related to religious uses, the Fair Housing Act has teeth, allows for immediate access to federal courts, and for legal fees for successful plaintiffs. Those who must deal with proposed group homes in a community would do well to understand the broad provisions of the Fair Housing Act as they make the “reasonable accommodations” necessary to allow such uses and comply with the act.