DATE: April 1, 1987

TO: Patrick Lowe, Planning Department
FROM: City Attorney
SUBJECT: CUP 86-1024 - 14-Bed Group Home for Homeless Mentally Disabled

The attached letter from Attorney Roger Krauel contains a contention that the City cannot prohibit the proposed project in the proposed zone because of a ruling by the California Supreme Court.

It appears that the property in question is in the RCX zone and is subject to limitations contained in the Centre City East Planned District. (103.1600 et seq. M.C.) The Supreme Court case relied upon by Mr. Krauel involved a multi-family residential zone and the court held, in effect, that a City could not discriminate against the project which would otherwise generally be approved in the zone based upon the mere fact that the people to be served are mentally disabled. A copy of the court decision is attached for your information.

Also attached for your information are copies of Sections 5115, 5116 and 5120 of the State Welfare and Institutions Code. As you probably know, the effect of Sections 5115 and 5116 is to allow homes for six or fewer mentally disordered or otherwise handicapped persons in all residential zones as a matter of right. Section 5120 is supplementary to the other sections and provides, in effect, that no city shall discriminate against a health facility on the basis that the health facility provides psychiatric care for its patients. Section 5120 requires that if a city zone allows hospitals and nursing homes either as a matter of right or with a requirement for a conditional use permit, the City must treat psychiatric care facilities similarly.

While the attached case, for some inexplicable reason, failed to address the necessity of the public hearing and findings required in connection with conditional use permits, it is our position that Section 5120 of the Welfare and Institutions Code

does not require cities to allow either hospitals or psychiatric care facilities in all zones as a matter of right but merely requires that cities not discriminate against psychiatric care facilities through the zoning process.

In our fact situation, the zoning for the subject property requires a conditional use permit for hospitals and similar types of care facilities. The City has not discriminated by allowing hospitals as a matter of right and requiring conditional use permits for psychiatric care facilities. Therefore, we must

conclude that the City is not mandated to allow the proposed psychiatric care facility to be established but is simply mandated to provide a fair hearing and make a decision based upon the requirements of the Municipal Code relating to conditional use permits, i.e., after a public hearing, it must be found that:

a. The proposed use will not adversely affect the neighborhood, the General Plan, or the Community Plan, and, if conducted in conformity with the conditions provided by the permit, will not be detrimental to the health, safety and general welfare of persons residing or working in the area; and

b. The proposed use will comply with all the relevant regulations in this Code.

It is quite clear from the statutory and case law, however, that in considering the above findings the City must not base a decision to deny approval of a conditional use permit on the fact that the proposed facility provides psychiatric care to patients. In other words, any denial of a conditional use permit must be based upon the factors normally considered in approving or denying such permits, such as, for example, potential parking problems, traffic congestion, noise and similar factors.

You should discuss this issue with Fred Conrad of this office before the April 7 hearing before the City Council.

JOHN W. WITT, City Attorney
By
Harold O. Valderhaug
Deputy City Attorney

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Attachments
cc Fred Conrad
ML-87-32