

KENDRICK L. MOXON *
HELENA K. KOBRIN *
AVA M. PAQUETTE

* ALSO ADMITTED IN
THE DISTRICT OF COLUMBIA
* ALSO ADMITTED IN
FLORIDA

MOXON & KOBRIN

ATTORNEYS AT LAW
3055 WILSHIRE BOULEVARD
SUITE 900
LOS ANGELES, CALIFORNIA 90010
TELEPHONE (213) 487-4468
TELECOPIER (213) 487-5385

OF COUNSEL

BARBARA M. GAVIGAN

December 5, 2006

Mr. Jim Bell
Los Angeles County Regional Planning Commission
320 West Temple Street
Room 1348
Los Angeles, CA 90012

Re: Proposed Narconon at 36491 Bouquet Canyon Road (CUP 04-023)

Dear Mr. Bell:

We are writing on behalf on Narconon Southern California in connection with the application referenced above. This letter addresses the requirements for roadway improvements being requested by the Land Development Division of the Department of Public Works ("DPW LDD"). As discussed below, those requirements are improper for at least two reasons. First, the traffic study that has been done shows that there is no nexus between the actual conditions at the subject location and the requirements that have been recommended by the DPW. Second, as the proposed facility is for the treatment of recovering alcohol and drug addicts, who are a protected class under the Americans with Disabilities Act and other federal statutes, the requirements create a governmental burden on such users that is impermissible under those statutes.

Traffic Study

As you are aware, Narconon commissioned a traffic study by the traffic engineering firm of Hirsch/Green. A copy of that study is provided herewith. I will summarize the salient points here.

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The DPW LDD recommended requirements for the proposed Narconon facility are that it implement a new northbound left-turn lane and new southbound acceleration/deceleration lanes at the project driveway on Bouquet Canyon Road. The key factors cited for the DPW LDD recommendations were traffic volume, high speeds, and an above-average accident rate for Bouquet Canyon Road between Spunky Canyon Road and Elizabeth Lake Road (the segment containing the proposed project).

There are a number of reasons why the recommendations of the DPW LDD are flawed.

First, although their report cites 60 accidents within this segment of Bouquet Canyon Road, a review of those accidents reflects *only six* occurred within two miles of the proposed Narconon facility property. Moreover, *none of them* occurred adjacent to the proposed Narconon property. Of the six that were within two miles, five were at the intersection of Spunky Canyon Road and Bouquet Canyon Road, having nothing to do with the access to the driveway for the proposed Narconon property. The sixth one was nearly two miles north of the property on Bouquet Canyon Road. In addition, half of the total 60 were single vehicle accidents, in which the cause of the accident was an impaired or otherwise unsafe driver, and not road conditions.

Second, the DPW LDD's assessment letter only analyzed the daily traffic volumes and did not review either the peak traffic times, the times Narconon-related vehicles would be entering or leaving the premises, or the impact the Narconon-related vehicles would have at the particular hours they would be traveling. A review of the actual facts shows that the Narconon-related traffic would have a minimal impact on Bouquet Canyon Road.

The peak traffic volume times for Bouquet Canyon Road are from 6:00 to 7:00 a.m. and 5:00 to 6:00 p.m., carrying 286-294 average vehicles, while the Narconon peak traffic, occurring at staff shift changes and involving approximately a total of 22 vehicles entering or leaving the property, would be in the time segments right around 9:00 a.m. and 9:00 p.m., when Bouquet Canyon Road carries a much lighter, off-peak traffic volume (107 vehicles per hour in the a.m. and 45 in the p.m.). Thus, the peak traffic volumes do not

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coincide with the times when Narconon staff would be changing shifts, and the additional traffic engendered by Narconon, even at its peak times, still would only bring the total traffic at those hours to less than half the peak volume at the morning shift change and less than one quarter at the evening shift change. Furthermore, any traffic to or from the property other than the shift changes would be minor and sporadic, as students on the Narconon program are not permitted to have vehicles at the property with them and visitors are discouraged while students are on the Narconon program.

These factors establish that there is no nexus between the existing traffic conditions and the recommended roadway improvements. The specific traffic impacts projected to result from the Narconon facility are insignificant based on quantity, timing, and location. The roadway improvements recommended by the County are not located at or near any of the incident locations, and they do not provide improved roadway geometries or operations that would reduce the single-vehicle accidents predominant on this roadway. Thus, they contribute nothing to addressing the safety concerns voiced by residents, which have been presented as generalities related to Bouquet Canyon Road, but upon inspection, are found not to relate to the proposed Narconon property, its proposed usage, or the times of that usage.

Adverse Environmental Impact and Increased Road Hazards

What is alarming and should create concern is that the traffic engineers have identified significant road hazards that could result if recommendations in the DPW LDD's assessment letter were implemented. Most significantly, the traffic engineers noted environmentally problematic effects on drainage and vegetation, including several oak trees, in the area. The proposal for the roadway improvements that are not only not needed, but could cause more accidents and would have an adverse environmental impact is just ill conceived. The engineers have concluded that the proposed addition of turn lanes would create dangerous conditions that could lead to accidents in this location which has previously been accident-free. Rather than attempt to give a lawyer's interpretation of these engineering details, I will leave you with the traffic engineers' report for those specifics.

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Americans With Disabilities Act and Related Laws

Title II of the Americans with Disabilities Act ("ADA"), the federal Fair Housing Act ("FHA"), and the federal Rehabilitation Act ("RA") all contain provisions prohibiting discriminatory treatment of individuals with disabilities.

These Laws Protect Recovering Alcoholics and Drug Addicts

Alcoholism and drug addiction are an "impairment" under the definitions of a disability set forth in the FHA, the ADA and the RA. *Regional Economic Community Action Program, Inc. v. City of Middletown*, 294 F.3d 35, 47 (2nd Cir. 2002). *Buckley v. Consol. Edison Co.*, 155 F.3d 150, 154 (2d Cir.1998) (en banc) (recovering drug addict may be considered to have a "disability" under the ADA); *Teahan v. Metro-North Commuter R.R. Co.*, 951 F.2d 511, 518 (2d Cir.1991) (discrimination against substance abusers illegal under the RA); *Rodgers v. Lehman*, 869 F.2d 253, 258 (4th Cir.1989) (holding that "[a]lcoholism is a handicapping condition within the meaning of the [Rehabilitation] Act"); *Sullivan v. City of Pittsburgh*, 811 F.2d 171, 182 (3d Cir.1987) ("Case law establishes that alcoholics are handicapped within the meaning of [the RA]."). Legislative history also supports this conclusion. See H.R.Rep. No. 101-485(II), at 51 (1990) (noting that "physical or mental impairment" includes "drug addiction and alcoholism") (internal punctuation omitted).

Discrimination Against Impaired Individuals Is Prohibited

The ADA provides that: "[s]ubject to the provisions of this subchapter, 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.

Likewise, 42 U.S.C. §§ 3604(f)(1) and (f)(3)(B) of the Fair Housing Act state:

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(f)(1) 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 of--

- (A) that buyer or renter,
- (B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
- (C) any person associated with that buyer or renter.

* * *

(3) For purposes of this subsection, discrimination includes--

- (A) a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford [a handicapped] person equal opportunity to use and enjoy a dwelling."

The Rehabilitation Act contains a similar provision:

"No otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance"

29 U.S.C. § 794(a). Section 794(b)(1)(A) defines a "program or activity" covered by the Rehabilitation Act as "a department, agency, special purpose district, or other instrumentality of a State or of a local government . . . any part of which is extended Federal financial assistance."

The United States Court of Appeals for the Ninth Circuit has held that the ADA and the RA apply to zoning. *Bay Area Addiction Research and Treatment, Inc. v. City of Antioch*, 179 F.3d 725, 730 (9th Cir. 1999). In *Bay Area*, plaintiffs were the operators, the executive director, and individual patients of a methadone clinic. They sued the City of Antioch for discrimination after it adopted a zoning ordinance barring methadone clinics within 500 feet of

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residential areas. A primary issue in the case was whether the ADA and the RA applied to zoning. In holding that they do, the *Bay Area* court, adopting the "persuasive reasoning" of the Second Circuit in *Innovative Health Systems, Inc. v. City of White Plains*, 117 F.3d 37 (2d. Cir. 1997), held that "[t]he Rehabilitation Act and the ADA apply to zoning because zoning is a normal function of a governmental entity" and "applies to anything a public entity does." *Id.* at 731-732. Congress' goal in enacting the ADA was to "provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." *Id.* at 731; 42 U.S.C. § 12101(b)(1).

A Public Entity Cannot Base Land Use Decisions for Drug Rehabilitation
Facilities on Presumed Risks or Generalized Fears

Courts apply the "significant risk test" as outlined by the Supreme Court in order to evaluate whether individuals are qualified for statutory protection based upon their disability. *School Board of Nassau County, Florida v. Arline*, 480 U.S. 273, 107 S.Ct. 1123 (1987). The reason for the test is to protect the disabled from "deprivations based on prejudice, stereotypes, or unfounded fear, while giving appropriate weight to such legitimate concerns . . . as avoiding exposing others to significant health and safety risks." *Id.* at 287. As the courts have noted, this is particularly important where persons are recovering from substance abuse problems because, "[f]ew aspects of a handicap give rise to the same level of public fear and misapprehension as the challenges facing recovering drug addicts." *Bay Area Addiction Research and Treatment, Inc.*, 179 F.3d at 736, citing to *Arline*, 480 U.S. at 284.

However, "[a]lthough [a] city may consider legitimate safety concerns in its zoning decisions, it may not base its decisions on the perceived harm from . . . stereotypes and generalized fears." *Innovative Health Systems, Inc. v. City of White Plains*, 117 F.3d 37, 49 (2nd Cir. 1997). Thus, it is not permissible to prohibit zoning for individuals who are disabled as a result of drug addiction or alcoholism on the grounds that these "individuals pose a hypothetical or presumed risk." *Bay Area Addiction Research and Treatment, Inc. v. City of Antioch*, 179 F.3d 725, 737 (9th Cir. 1999). "Instead, the evidence must establish that an

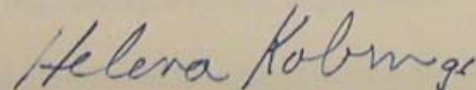
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individual does, in fact, pose a significant risk. Further, it should be emphasized that the risk must be of a serious nature." *Bay Area*, at 737.

Conclusion

The Hirsch/Green report demonstrates that there is no nexus between the recommendations of the DPW LDD and the actual conditions on Bouquet Canyon Road next to the proposed Narconon facility. It therefore appears that these recommendations are being made out of a prohibited discriminatory purpose of rendering it so onerous on Narconon that it will abandon its plans and not establish a drug rehabilitation facility at the subject property. However, recovering drug addicts and alcoholics are handicapped persons under the provisions of the ADA, RA, and FHA. Those statutes therefore prohibit the County from engaging in discrimination against such persons, and it is impermissible for the County to adopt the traffic recommendations, when their adoption can only be for the purpose of promoting discrimination.

Very truly yours,



Helena K. Kobrin

HKK:gs