



445 Hamilton Avenue, 14th Floor
White Plains, New York 10601
T 914 761 1300
F 914 761 5372
cuddyfeder.com

November 29, 2016

BY HAND & E-MAIL

Supervisor Michael J. Schiliro and
Honorable Members of the Town Board
Town of North Castle
Town Hall – 15 Bedford Road
Armonk, New York 10504

Re: Application of Paradigm Treatment Centers LLC (“Paradigm”) to Operate
A Substance Abuse and Drug Rehabilitation Treatment Facility at
14-16 Cole Drive, Armonk, NY (the “Property”)

Dear Hon. Supervisor Schiliro and Honorable Members of the Town Board:

We respectfully write on behalf of The Davis Pond Conservancy, Inc. (the “Conservancy”) and its many supporters to stress the importance that on or before December 14, 2016 the Town Board file an objection to Paradigm’s notice (the “Notice”) to the Town purportedly provided under Mental Hygiene Law Section 41.34 (the “Padavan Law”). We also write to highlight the disenfranchisement that would be inflicted upon the entire community, including, in particular, the Conservancy, should the Town Board *not* object.

By way of background, and as the Board is no doubt aware, the Padavan Law was enacted in 1978 to: (i) promote deinstitutionalization of the mentally disabled residents of New York State and (ii) allow for the establishment of group homes for mentally disabled New York residents in their local home communities within the State. To facilitate the establishment of such group homes, the Padavan Law deems certain types of community residential facilities a “family unit” for purposes of local zoning laws. This classification allows for these community residences and treatment centers to be sited in residential zones throughout New York State from which they would otherwise be excluded under local zoning laws. The Padavan Law does ***not*** pre-empt any other zoning or environmental regulation or law (such as SEQRA). Rather, the designation of a community residence as a “family unit” for zoning purposes is the Padavan Law’s ***entire*** scope.

Now, as a threshold matter, for several reasons we do not believe that Paradigm’s proposed commercial, for-profit, Malibu-style Drug and Substance Abuse Facility (the “DSA Facility”) falls within the purview of the Padavan Law. Accordingly, we believe the



November 29, 2016

Page 2

DSA Facility is subject to local zoning regulations and hence not permitted to be established within the Town's R-2A residential zone where the Property is located.

I have previously represented clients in similar situations to the Conservancy and I note that it could not be a mere "coincidence" that here, Paradigm, exactly like other entities issuing similar notices, has chosen to issue its Notice just prior to Thanksgiving and smack in the midst of the very busy holiday season. Such timing is undoubtedly part of a concerted effort to escape examination and provide very limited information, while simultaneously professing interest in being "transparent" and meeting with the community to demonstrate its so-called neighborly intentions. Respectfully, this seasonal rush by Paradigm was so sloppily and hastily tossed together that Paradigm's Notice tells the community and Town Board absolutely nothing. It did, however, manage to falsely represent that "[t]he site has access to public utilities (water and sewer)." On this ground alone, an Objection should be filed and the truth vetted at the Commissioner's hearing level, as described below.

By this transmittal, I respectfully focus on the serious repercussions to the local community should the Town fail to object to Paradigm's Notice. The several factual grounds upon which the Town should object – such as overconcentration of facilities and serious safety and environmental issues – have already been referenced in a Petition filed with the Town and will be presented to the Town Board beginning at the November 30, 2016 hearing and on a continuous basis until December 14.

Procedurally, the Padavan Law provides that within 40 days of receiving a proper Padavan notice – and all rights with regard to Paradigm's Notice are reserved – the Town may: (i) object; (ii) propose one or more alternate sites for the facility; (iii) approve the facility; or (iv) be inert and allow the 40-day period to lapse which is the same as approval.

Should the Town object as the Conservancy and its many supporters have urged, Paradigm may either withdraw or, alternatively, appeal to the Commissioner of the Office of Mental Health (the "Commissioner"). There, in reviewing the objection, the Commissioner will consider: (i) "the need for such facilities in the municipality" (interpreted by caselaw as, at most, the County in which the municipality is located) and (ii) whether "the nature and character of the area in which the facility is to be based would be substantially altered as a result of establishment of the facility," the latter impact being self-evident herein.



November 29, 2016

Page 3

After the Commissioner's hearing and Decision, either party (or affected community members like adjacent residents and the Conservancy) aggrieved by the Commissioner's decision may bring an Article 78 proceeding challenging the Commissioner's Decision, or intervene to defend the Decision.

It is absolute under New York law that a Town objection guarantees, preserves and protects our client's standing to judicially defend or challenge the Commissioner's determination, as the case may be.

Conversely, should the municipality not object (or propose an alternate site that is rejected by the entity), there is no route to a Commissioner's hearing – a development which could essentially disenfranchise the Conservancy and its hundreds of growing supporters who believe that the proposed "siting" of the DSA Facility is an unmitigated disaster replete with environmental and other ill-advised unique impacts, including a pond shared by seven common owners, as well as septic and related concerns, which will substantially alter the character of the community absent an objection.

In the coming days the Conservancy will continue to present more than ample grounds from its members, counsel and renowned local experts which will support the many bases for an objection.

However, should the Town fail to object despite the urgent pleas of its community (e.g., the Conservancy and hundreds of supporters), according to the caselaw, those most affected by the establishment of the DSA Facility – here, the Conservancy and Town residents with the greatest stake in the Board's failure to protect their rights by filing an Objection – may not be automatically entitled to challenge the failure of the Town to file an Objection to Paradigm's Notice. In this regard, while in virtually all other situations involving zoning a municipal board's action or inaction is reviewable under Article 78 of the NY CPLR, here the Town Board may literally hold the keys to the Commissioner's hearing door for review of, *inter alia*, whether a need exists in North Castle and Westchester County for the DSA Facility and, *inter alia*, whether, as the Conservancy and its supporters (and experts) respectfully assert, this commercial substance abuse and drug rehabilitation facility will result in a substantial alteration of neighborhood character existing in and around the Property. Simply stated, absent an Objection the very serious issues and concerns of the Conservancy community cannot be heard by the Commissioner. In turn, such inertia or, respectfully, laissez-faire approach by the Town Board, will preclude the Commissioner from analysis of the multiple factual and legal



November 29, 2016

Page 4

issues raised herein and will potentially deny the Conservancy et al. a forum for judicial review whether it be in defense of the Commissioner's Decision upon a challenge by Paradigm or otherwise.

Alternatively, should the Town Board object and Paradigm challenge the Town's objection before the Commissioner, it would automatically vest the Conservancy with the standing it seeks to invoke judicial defense or review of the Commissioner's decision on the Town's Objection. Because the Town Board's failure to object might affirmatively exclude the Association from judicial defense or review of a (i) determination on the purported "need" for the DSA Facility within the Town and Westchester County and (ii) self-evident substantial alteration of the character of the neighborhood which would ensue from the DSA Facility, the Conservancy asks that their respectful demand for the filing of an Objection not fall on deaf ears.

In sum, inaction here by the Board or an affirmative decision to not file an Objection will potentially disenfranchise the Conservancy's vast membership and its hundreds of supporters. Assuming the Town objects and Paradigm seeks Commissioner review, the Conservancy intends to pursue all available judicial remedies which could be foreclosed to it absent an Objection by the Town Board.

Please note that many other municipalities confronted with similar notices seeking to situate a vast commercial operation smack in the middle of a longstanding residential zone have protected their constituents and filed the requisite pro-forma Objection knowing that absent such action their own residents might be foreclosed from judicial review. In connection with recent applications, the Village of Scarsdale, City of New Rochelle, Village of Port Chester and many other municipalities have issued such Objections to protect the voice of their respective constituents.

The Conservancy and its supporters extend their thanks to the Town Board and Town Counsel for their collective consideration of the Conservancy's views and concerns as expressed hereinabove and in its prior transmittal.



November 29, 2016

Page 5

We thank you for your consideration.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joshua J. Grauer".

Joshua J. Grauer

cc: Roland Baroni, Esq., Town Attorney
Michelle Masucci, Esq., Counsel for Paradigm