

STATE OF NEW YORK
OFFICE OF MENTAL HEALTH

In the Matter of the Determination of
THE OFFICE OF MENTAL HEALTH

To resolve the issue of the site selection for a proposed
Community Residence at 14-16 Cole Drive, Town of
North Castle, New York

**DETERMINATION OF
COMMISSIONER**

INTRODUCTION

Paradigm Treatment Centers, LLC, (“Paradigm”) has applied for an operating certificate for a Community Residence at 14-16 Cole Drive, North Castle, New York, that would provide mental health treatment for adolescents, including individual therapy, group therapy, family therapy, multi-family therapy, parenting classes, tutoring, medication management, expressive arts therapy, and experiential therapy. On January 30, 2017, the Office of Mental Health (“OMH”) received notice from the attorney for the Town of North Castle (“the Town”) of its objection to such a Community Residence at that site. Pursuant to section 41.34 of the Mental Hygiene Law (“MHL”), Paradigm has requested a hearing. Pursuant to that request, a hearing officer was appointed. The hearing officer held the requested hearing on March 13, 2017, and subsequently issued his recommendation. I have determined, based on that recommendation and as more fully described below, that the nature and character of the area in which the facility is proposed to be based would not be substantially altered as a result of establishment of the facility. However, Paradigm may not proceed with operating the proposed facility unless they receive an operating certificate pursuant to 14 NYCRR Part 551.

FACTS

The proposed residence is a single-family home of 12,000 square feet on 11 acres on a cul de sac. The property is fenced and gated, although visible from the road. The immediate area is heavily wooded with narrow roads. The residence, if established, would serve eight adolescents at a time. The minimum stay at the facility would be thirty days.

One other facility is proximate to the proposed facility, located on Thornwood Road in Armonk. Three other community residences, in Mount Kisco and Bedford, are between 1.8 and 3.5 miles away in terms of driving distance.

DISCUSSION

Applicable law and regulation articulate a two stage process for determining the site for facilities of this nature. At this first stage, while need is to be considered, the only ground on which the Town's objection can be sustained is a determination that the nature and character of the area in which the facility is to be based would be “substantially altered as a result of the establishment of the facility.” *Jennings v. N.Y.S. Office of Mental Health*, 90 N.Y.2d 227, 240 (1997). At this first stage, the Town bears the burden of demonstrating such substantial

alteration. *Town of Hempstead v. Comm'r, N.Y.S. Office of Mental Retardation and Developmental Disabilities*, 121 A.D.2d 388, 389 (2d Dep't 1986). The second stage evaluation will occur under the Prior Application Review ("PAR") process embodied in Title 14 NYCRR Part 551. This commissioner's determination focuses only on the first stage determination governed by the Mental Hygiene law.

The first stage determination is governed by MHL §41.34(c)(5) which provides that;

...[T]he need for such facilities in the municipality shall be considered as shall the existing concentration of such facilities and other similar facilities licensed by other state agencies in the municipality or in the area in proximity to the site selected and any other facilities in the municipality or in the area in proximity to the site selected providing residential services to a significant number of persons who have formerly received in-patient mental health services in facilities of the office of mental health or the office for people with developmental disabilities. *The commissioner shall sustain the objection if he determines that 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.* (Emphasis Added)

In this case, there was a hearing before a properly appointed hearing officer. After hearing relevant factual evidence, the hearing officer stated that the record before him did not support a finding of need but also noted that need could be demonstrated separately in Paradigm's PAR application. While need is considered under Mental Hygiene Law section 41.34, it is also one of the factors that OMH considers in a PAR application under 14 NYCRR § 551.7(a)(3). Furthermore, as discussed in the case law cited above, need is not determinative when making a decision under MHL §41.3.

The hearing officer found that the concentration of facilities would not be so great as to substantially alter the nature and character of the area in which the proposed facility would be sited, whether this area is defined more properly by physical boundaries such as parks or thoroughfares, or whether the area is coterminous with the Town's "Armonk" district boundary as set forth its Comprehensive Plan. The record supports this conclusion. Only one facility is nearby, a NYSARC residence in Armonk. Three other facilities are between 1.8 and 3.5 miles away, and none of these facilities are in the Town. This does not constitute a significant concentration of facilities that would substantially alter the nature and character of the area in which the facility is proposed to be based.

However, this finding does not mean that Paradigm is entitled to an operating certificate. Paradigm still has the burden of demonstrating in its PAR application that it meets all of the requirements for approval, including but not limited to need, consistency with local service plans, reasonable assurance that funds will be available to finance operating expenses, safety, appropriate service to the target population, and several other requirements. These are all issues for OMH to consider with regard to Paradigm's PAR application, once that application has been completed.

CONCLUSION

Based on the foregoing, I hereby determine that the nature and character of the area in which the facility is proposed to be based would not be substantially altered as a result of establishment of the facility. Upon Paradigm's PAR application being deemed complete, it will be reviewed pursuant to the process and criteria set forth in 14 NYCRR Part 551.

DATED: April 12, 2017



Anne Marie T. Sullivan, M.D.
Commissioner
New York State Office of Mental Health