NIXON PEABODY

NIXON PEABODY LLP
ATTORNEYS AT LAW

NIXONPEABODY.COM
@NIXONPEABODYLLP

Robert N. H. Christmas
Partner
T 212-940-3103
rchristmas@nixonpeabody.com

437 Madison Avenue
New York, NY 10022-7039
212-940-3000

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Via E-Mail and Overnight Delivery

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: Proposed Establishment of a Community Residence Facility by Paradigm Treatment Centers LLC at 14-16 Cole Drive, Town of North Castle, New York

To Supervisor Schiliro and Members of the Town Board:

We write on behalf of Paradigm Treatment Centers LLC ("Paradigm") (a) to respond to certain questions that were raised at the public meeting before the Town Board (the "Board") on November 30, 2016, as well as to the letters dated November 28, 29, 30 and December 5, 2016 to the Board and our firm from the Cuddy & Feder firm, and (b) in further support of the establishment of a Community Residence at 14-16 Cole Drive, Town of North Castle, New York (the "Residence) by Paradigm.

As a preliminary matter, we reiterate that the Residence will only be for youth suffering from mental health disorders.

i. Clients served will be those struggling with mental health issues, such as anxiety, depression, post-traumatic stress disorder, and grief issues.

ii. Paradigm does not serve clients with primary substance abuse disorders. The application to operate that Paradigm will be filing with the State of New York is to the Office of Mental Health, and not to any authority governing addiction treatment. Therefore, the Residence will not be an addiction treatment center, nor does Paradigm have any intention to ever apply for such a license from the State of New York for the Residence.

iii. Paradigm does not serve youth with a history of conduct disorders.

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iv. Paradigm does not provide services to youth with histories of violence, histories of sexual acting out, or histories of fire starting.

v. Approximately 40% of the youth Paradigm serves are from the LGBT community. This is in large part because of Paradigm's ability to create a safe treatment atmosphere.

vi. Clients who are in immediate danger to themselves or others, are chemically dependent upon drugs or alcohol, or have acute medical needs that require on-site medical supervision would not be permitted to reside in the Residence.

vii. Clients are expected to come from Westchester County and other locations throughout New York State. It is also expected that some admissions may be from out-of-State residents.

A. The Applicable Standard for the Board's Review

Section 41.34 of the New York Mental Hygiene Law, known as the *Padavan Law* (the "Padavan Law" or "Padavan"), and its legislative history, provides the procedural framework and substantive foundation for the establishment of the Residence in the Town. The foundational reason that a residential home is the appropriate setting for this facility is that, in the legislative process of enactment of Padavan, the state legislature found that individuals with disabilities have the right to be in normal residential surroundings, and that their needs should be met in facilities placed in normal community settings. *See, e.g.*, NY Laws 1978, ch. 468, § 1.

As to the proper frame of this proceeding, and the nature of what is before the Board, the Padavan Law is very clear. "The municipality . . . may either approve of the recommended site, suggest alternatives within the jurisdiction, or outright object to the proposal." *Jennings v. N.Y. State Office of Mental Health*, 90 N.Y.2d 227, 240 (1997). Ultimately, at the point of Office of Mental Health or judicial-level of review of any objection to the Residence,

> the only ground provided in the statute to justify sustaining the objection is if the Commissioner 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' (Mental Hygiene Law § 41.34[c][5]).

Jennings, 90 N.Y.2d at 240. The Court of Appeals thus held that "while over concentration is certainly relevant, whether the nature and character of an area will be substantially altered by the establishment of the proposed facility is the dispositive inquiry." *Jennings*, 90 N.Y.2d at 240-241. In other words, an

> objection directed to the placement of a residential facility based on the number or proximity of similar facilities may not be upheld in the absence of clear and convincing evidence that the proposed facility would cause an 'overconcentration' of similar facilities in the area to such an extent that 'the nature and character of the areas within the municipality would be altered'[.]

Town of Gates v. Commissioner of New York State Office of Mental Retardation & Developmental Disabilities, 245 A.D.2d 1116, 1117 (App. Div. 4th Dep't 1997)(citations omitted, emphasis added).

B. The Residence Will Not Oversaturate the Applicable Area Such That Its Nature and Character Would be Substantially Altered

Turning to the question of "area," the Court of Appeals has been very clear that it is only the "immediately surrounding community" that is relevant. *Jennings*, 90 N.Y.2d at 240. In *Jennings*, the City of Albany's proposal of a three-fourths mile radius was rejected, in favor of the Commissioner of Mental Health's consideration of the actual neighborhood, demarcated by physical features (main roads and parks, in that case) that would likely not be traversed by residents on foot. Thus, the Court of Appeals sustained the Commissioner's determination, and overruled the Appellate Division's consideration of adjacent areas, saying "the Commissioner may properly focus on the potential impact upon direct 'neighbors'" in making the determination of whether there is oversaturation such that the nature and character of the area would be substantially altered. *Jennings*, 90 N.Y.2d at 241 (citing *Governor's Approval Mem.*, 1978 McKinney's Session Laws of NY, at 1821).

Turning to this sole relevant area of inquiry, the neighborhood of the Residence, the discussion properly commences with the location of the proposed Residence. The immediate neighborhood is bordered on the west, at a relative small distance, by Interstate Highway 684. Accordingly, it would be proper to eliminate from the analysis, of "the area in which the facility is to be based" as provided in the Padavan Law, any facilities that are to the west of Interstate 684, as that highway unquestionably is the western end of the neighborhood of the proposed Residence and physically severs it from areas to the west of the Highway. To the north, the neighborhood effectively ends at Chestnut Ridge Road, and certainly no further north than the Westmoreland Sanctuary. To the South and East, the neighborhood could be considered to end at Armonk Bedford Road (Route 22), but even if, *assuming arguendo*, the neighborhood extends beyond Route 22 to Route 12 to the east, there are still no other Community Residences in this area of the Town. And, in that same vein, if the "neighborhood" were expanded to include areas further south, there are no other Community Residences east of Interstate 684, for miles, all the way to the Connecticut State border.

By any analysis, there are no Community Facilities in the neighborhood of the Residence.

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Even using the entirety of the Town as the "neighborhood" for the sake of discussion (though far outside the appropriate geographic area of analysis, as held in the governing case law, and thus without conceding its relevance[1]), there are only two (2) Facilities in the Town, and the result is thus the same. The other Community Residences in the Town are located a minimum of approximately three miles from Cole Drive. To be clear, the Padavan Law only considers as relevant other similar community residences licensed for use by persons with mental disabilities, and similar residential facilities of fourteen or fewer residents operated or licensed by another state agency, so nursing homes, hospitals, day treatment facilities, outpatient facilities and the like are excluded.[2] Again, even with this greater hypothetical "neighborhood," there is no overconcentration to the extent that the nature and character of the area would be substantially altered as a result of the establishment of the Residence.

At the broadest conceivable concept of "community," from the county-wide State Registry data we delivered to the Board on December 8, 2016[3] we have extracted the names and locations of all facilities listed by the State, including community residences, in the Towns of North Castle, Pound Ridge, Mount Pleasant, New Castle, and Bedford, which are set out in Appendix A to

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[1] *Town of Mt. Pleasant v. Toulon*, 292 A.D.2d 615, 616 (App. Div. 2d Dep't 2002) ("in evaluating whether the establishment of the proposed facility would result in an overconcentration of the same or similar facilities so as to substantially alter the nature and character of the area, the Commissioner was not required to consider the entire town. Rather, 'the Commissioner may properly focus on the potential impact upon direct 'neighbors'"")(quoting *Jennings*, 90 N.Y.2d at 241).

[2] As the court in *Matter of Town of Eden v. Delaney* held:

> Cases construing the statutory scheme hold that, in order for an existing facility within the municipality to be deemed 'similar' to the proposed new facility, and thus to be considered as part of the siting process, that existing facility must be a "[c]ommunity residential facility for the disabled'" (§ 41.34 [a] [1]; *see Matter of City of Mount Vernon v OMRDD*, 56 A.D.3d 771, 772, 868 N.Y.S.2d 248; *Matter of City of Newburgh v Webb*, 124 A.D.2d 371, 372, 507 N.Y.S.2d 314; *see also Matter of Village of Newark v Introne*, 84 A.D.2d 936, 937, 446 N.Y.S.2d 689; *Matter of Town of Onondaga v Introne*, 81 AD2d 750, 750, 438 N.Y.S.2d 407). We conclude that the additional facilities highlighted by petitioner, a senior assisted-living residence, one or more nursing homes, a drug treatment facility, and a day habilitation center, were not similar to the community residence under consideration and were not among those required to be considered by respondent[.]

2016 N.Y. App. Div. LEXIS 7667, at *2, 2016 NY Slip Op 7810, 2016 NY Slip Op. 07810 (App. Div. 4th Dep't Nov. 18, 2016).

[3] The New York State Community Facilities Registry for the entirety of Westchester County (maintained by the New York State Office of Information Technology Services).

this letter.[4] As noted above, Paradigm does not concede that the area beyond the immediate neighborhood of the Residence is relevant to the statutory inquiry, but we provide this information to show that there is no over-concentration of facilities even if a very broad swath of surrounding areas is included.

Moreover, even if there were oversaturation, the nature and character of the area would not be substantially altered as a result of the establishment of the Residence. The Residence was and will be a residential home indistinguishable from the others on the street, as in *Gates*, 245 A.D.2d at 1117 ("[t]he proposed site is a one-story ranch house that will remain a single-family unit and will not be distinguished in any way from the other one-and two story homes on the street").

C. Fair Housing Law

In this process, the Town must be mindful of the rights of the youth in need to be served by the Residence, under the Fair Housing Act ("FHA") and the Americans with Disabilities Act ("ADA"). The FHA's definition of "handicapped" includes persons with a mental illness, and the ADA likewise includes mental illness as a disability. 42 U.S.C. § 3602(h) (defining "handicap" under FHA); 42 U.S.C. § 12102(1) (defining "disability" under the ADA) ; s*ee also, e.g., Valley Hous. LP v. City of Derby*, 802 F.Supp.2d 359, 385 (D. Conn. 2011) ("Mental illness is also recognized as a handicap and disability").

Under the FHA, it is unlawful "[t]o discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap …." 42 U.S.C. § 3604(f)(1). The FHA further provides that it is unlawful to "discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap …." § 3604(f)(2). *See Step by Step, Inc. v. City of Ogdensburg*, 176 F. Supp. 3d 112, 135-36 (N.D.N.Y 2016). Likewise, the ADA provides that "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,

[4] Given the over-inclusive nature of the State's list, Paradigm does not stipulate or otherwise admit that all the facilities in Appendix A are either (a) in the requisite community for purposes of Padavan Law analysis or (b) the type of facility to be considered under Padavan.

or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132; *see, e.g., Innovative Health Sys. v. City of White Plains*, 117 F.3d 37, 44-45 (2d Cir. N.Y. 1997).

Respectfully submitted,

Robert N. H. Christmas
Partner

cc: Joshua J. Grauer, Esq.