

**APPOLOOSA GROUP HOME
REFERENCE MATERIAL
(LDC REVISIONS/CHANGES)**



U.S. Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section

SMM:TJM:CDJ:kb
DJ 175-13-153

U.S. Mail: 950 Pennsylvania Avenue, NW - G St.
Washington, DC 20530
Overnight: 1800 G Street, NW
Suite 7002
Washington, DC 20006
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February 28, 2017

Via Electronic Mail and First Class Mail

Diana K. May
Office of the County Attorney
El Paso County, Colorado
200 S. Cascade Avenue
Colorado Springs, CO 80903

Re: Courage to Change Recovery Ranch v. El Paso County HUD Case No:
08-13-0082-8

Dear Counsel:

This is to inform you that the Department of Justice has closed its investigation of the zoning and land use practices of El Paso County, Colorado ("the County") pursuant to the Fair Housing Act ("FHA"), 42 U.S.C. §§ 3601-3631.

The Department initiated an investigation on September 20, 2013 regarding the County's zoning practices as they relate to the Courage to Change Recovery Ranch ("CCRR"), located at 5485 Appaloosa Drive. In May 2014, the County enacted amendments to its Land Development Code ("LDC"). Based on your letter dated July 12, 2016, it appears that the Appaloosa Drive home, as it is currently operating, is a use by right under the LDC and that there are currently no outstanding issues or concerns on the part of the County regarding the operation of the home. In light of the above, no further action is warranted by the Department at this time, and the matter will be closed.

In your July 12, 2016, correspondence, you also informed us about recent interactions between Courage to Change and the County with respect to a home located at 18375 Spruce Road. The Spruce Road location was not the subject of the HUD complaint or our investigation and this letter should not be construed as expressing any opinion regarding that home.

Please let me know if you have any questions.

Sincerely,

Sameena Shina Majeed
Chief

By: 

Charla Jackson
Trial Attorney
Housing and Civil Enforcement Section

cc: Judith Miller

EL PASO COUNTY



OFFICE OF THE COUNTY ATTORNEY CIVIL DIVISION

Amy R. Folsom, County Attorney

Assistant County Attorneys

M. Cole Emmons
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Lisa A. Kirkman
Steven A. Klaffky

May 4, 2015

Charla Jackson
Trial Attorney
Housing & Civil Enforcement Section
Civil Rights Division
United States Department of Justice
950 Pennsylvania Ave, Northwest-G Street
Washington DC 20530

Re: Courage to Change Recovery Ranch
The El Paso County HUD Case No. 08-13-0082-8

Dear Ms. Jackson:

The purpose of this letter is to respond to questions you asked in an email dated March 11, 2015. Specifically, you inquired as follows:

Also, in your letter dated July 14 2014 to Judith at CCRR you enumerate the different possibilities for obtaining permission to run the group home for disabled and handicapped individuals. In the letter, you stated in 2) that where a special use permit would be required for occupancy by 6-10 people, the criteria for approval of such a permit would be determined either administratively or by hearing. I wanted to know what factors would be considered in making the determination of which type of decision-making forum to use.

Response:

First, I want to clear up what I believe may be issue confusion. There is no letter dated July 14, 2014 that the County sent to Judith Miller of Courage to Change Recovery Ranch. I believe that what you are referring to is a July 30, 2014 letter sent to Ms. Miller by Mr. Max Rothschild, Director of the Development Services Department, and Mr. Cole Emmons of the County Attorney's Office. Assuming that is the letter you are referring to, the language in that letter is misquoted. Paragraph 2 of the July 30 letter states:

200 S. CASCADE AVENUE
OFFICE: (719) 520-6485



COLORADO SPRINGS, CO 80903
FAX: (719) 520-6487

2. Group homes with an occupancy of six (6) – ten (10) handicapped or disabled persons are allowed in single family residential districts in the unincorporated area of the County upon approval of a Special Use application. This is done as a request for a reasonable accommodation pursuant to § 5.2.2.D, LDC, which is processed as a Special Use; however, the review criteria are based on requirements of the Fair Housing Amendments Act and not on standard Special Use review criteria. The application can be approved administratively or the Development Services Department Director can elevate consideration of the application to a public hearing by the Board. (Emphasis added).

I want to distinguish between the **criteria** for a special use permit (SUP) and the **process** by which an application for an SUP is processed. The review criteria were approved by the Board of County Commissioners (“Board”) on July 1, 2014, and made a part of the Regulations. These criteria are based on the Fair Housing Amendments Act (“FHAA”). Both the Director of the Development Services Department (“DSD”), in an administrative process and the Board of County Commissioners (the “Board”) in a public hearing process will apply the same criteria in reviewing and making a decision on an application for a special use for a group home for handicapped or disabled persons— criteria dictated by the revised Regulations based on the FHAA. While the DSD Director does have discretion to decide whether the application will be processed either administratively or by public hearing before the Board, the review criteria are the same in either case.

If what you are asking is what criteria are used by the DSD Director to decide whether an application for a special use for a group home is **processed** administratively or by public hearing, neither the FHAA nor guidance documents from the Department of Justice nor case law regarding group homes address this. All decisions on whether to review special use applications either administratively or by public hearing are made by El Paso County in a fair, consistent and in a non-discriminatory manner. El Paso County assures you that process will be followed concerning all requests made by Courage to Change, or other group homes. El Paso County does not believe the focus should be on whether the **process** is pursuant to an administrative decision or public hearing.

The focus should be on the criteria. This is especially true given the County’s land use Regulations which delegate authority to the DSD Director to use discretion on nearly all special use applications to decide whether those are reviewed and decided administratively or are elevated to a public hearing process. A special use application for a group home for handicapped or disabled persons is not treated any differently than a special use application for other uses— whether for a cell tower, or a greenhouse or a day care facility—they are all evaluated according to the DSD Director’s delegated discretion as to whether they will be considered administratively or by public hearing.

Notwithstanding the prior statement, a special use application for a group home is actually given advantageous treatment in two ways. First, pursuant to the County’s revised Regulations regarding group homes, if the decision is made to elevate the review and decision to

a public hearing process, the application for a special use for a group home, unlike all other special use applications, goes straight to the Board of County Commissioners for final decision rather than going first to the Planning Commission, which only has recommending authority, and then to the Board. This will give an applicant for a special use permit for a group home a quicker result, and one that is directly appealable to the El Paso County District Court. Second, the review criteria for an application for a special use for a group home is different than the review criteria for all other special use applications. That criteria for a group home is based on the FHAA and case law interpreting and applying the FHAA, and that criteria is applied whether the review and approval process is administrative or by public hearing.

There are procedural due process requirements for both an administrative decision and a public hearing by the Board. Under either procedure, both the applicant and the adjoining property owners are provided notice as to when an administrative decision will be made or when a public hearing will be held. The applicant has an opportunity to submit evidence and make their case to either the DSD Director or to the Board. Adjoining property owners and other interested persons have an opportunity to express their concerns to either the DSD Director or to the Board. The applicant has the right to appeal—in the case of an administrative decision the appeal is to the Board, and as indicated, for a decision by public hearing before the Board, the appeal is to the District Court.

The Regulations in the El Paso County Land Development Code (“LDC”) concerning group homes that the Board revised and approved in 2014 to be more consistent with federal law regarding group homes correctly identify the review criteria that is applied in matters related to such special uses. I will discuss that criteria below, but first I believe it will be helpful for you to understand the foundation for the County’s special use decisions and the DSD Director’s authority.

The Colorado state legislature has given boards of county commissioners authority and discretion in creating land use regulations: “The boards of county commissioners of the respective counties within this state are authorized to provide for the physical development of the unincorporated territory within the county and for the zoning of all or any part of such unincorporated territory. . . .” § 30-28-102, C.R.S. The Board may delegate its land use authority. “The BoCC may delegate powers, duties, and responsibilities to the . . . county staff to the extent permitted by law and provided that the delegation is made subject to specific instruction, criteria, and standards to guide the exercise of any delegated discretion.” § 2.2.1 (F), LDC.

By that authority, the Board delegated to the DSD Director authority to make certain land use decisions at § 2.2.4 (B) of the LDC:

(1) Render Interpretations

The DSD Director may render interpretations of all provisions of this Code.

(4) Review Applications

The DSD Director may review development applications and make recommendations to the BoCC, the Planning Commission, and the Board of Adjustment concerning compliance with this Code.

(6) Administer Standards and Regulations

The DSD Director may administer the provisions of this Code as they relate to the review and permitting of development.

(8) Make Administrative Decisions

The DSD Director may issue written administrative decisions concerning the application of this Code to specific property or development applications, including any grant of relief allowed by this LDC.

(9) Issue Administrative Permits

The DSD Director may review and issue administrative permits pursuant to the requirements and procedures of this Code.

(10) Sign Plats and Other Administrative Documents

The DSD Director may sign plats and other documents relating to the application of this Code to specific property or development applications.

The Board specifically delegated to the DSD Director the authority to make decisions on special use applications administratively, but also gave the Director discretion to elevate the application to a public hearing:

(G) Administrative Approval Authorized

Any special use may be acted upon by the DSD Director, except for those related to a CD request or mineral and natural resources extraction, which includes processing. The DSD Director, in his sole discretion, is authorized to elevate a special use application to a public hearing.

§ 5.3.2. (G), LDC (emphasis added). That discretion is for any special use permit, including those for a group home.

Colorado case law defines a special use as a zoning type action that by its nature is discretionary. Special use, also referred to as a use subject to special review or conditional use, is a zoning-type action. *Hillside Cmty. Church v. Olson*, 58 P.3d 1021, 1028 (Colo. 2002). A special use is not a use by right but is an allowed use in a given zone district; however, a permit is required in order to make sure any impacts of the use on the surrounding neighborhood are properly mitigated through conditions of the permit. *City of Colorado Springs v. Securcare Self Storage, Inc.*, 10 P.3d 1244, 1251-1253 (Colo. 2000). Zoning and special use determinations are largely discretionary in nature. *Hillside Cmty. Church v. Olson*, 58 P.3d 1021, 1028-29 (Colo. 2002).

In an effort to provide safeguards for applicants seeking a special use permit as a reasonable accommodation for a group home for handicapped or disabled persons with an occupancy of 6-10 persons, the revised Regulations direct the Director and the Board to apply FHAA review criteria and not standard special use criteria in making decisions related to group

homes and further restrict who will hear a special use application if it is elevated to a public hearing. The criteria for review of a special use reasonable accommodation for a group home for handicapped or disabled persons with 6-10 occupants are included in the revised Regulations, as follows:

(3) A group home for handicapped or disabled persons and state-licensed group homes for mentally ill or intellectually and developmentally disabled persons, all with six or more occupants/enrollees, may apply for a special use, which is considered as a request for reasonable accommodation pursuant to the following process:

(a) Pursuant to the Fair Housing Amendments Act ("FHAA"), discrimination includes a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford disabled or handicapped persons equal opportunity to use and enjoy a dwelling. 42 U.S.C. § 3604(f)(3)(B). Therefore, a reasonable accommodation is required whenever it may be necessary (or indispensable or essential) to achieving the objective of equal housing opportunities between those with disabilities and those without.

(b) Reasonable accommodation requests will follow the applicable special use process and procedures pursuant to Sections 2.2.4, 5.3.2.G except that if the DSD Director elevates the application to a public hearing, that hearing shall be exclusively before the BOCC, and except that such requests will follow review criteria based on the FHAA for reasonable accommodations as follows rather than special use review criteria:

(i) An accommodation request must be reasonable and necessary. A necessary accommodation is reasonable unless it requires a fundamental alteration in the nature of a program or imposes undue financial and administrative burdens on the County. For example, an applicant could show that the group home is one way of ameliorating the effects of disabled persons' disabilities and that the request to locate in a given location is reasonable. Whether a requested accommodation is reasonable requires balancing the needs of the parties involved.

(ii) In order to impose special restrictions on either a special use or a reasonable accommodation approval, the County must show either: (1) that the restriction benefits the protected class or (2) that it responds to legitimate safety concerns raised by the individuals affected, and is not based upon stereotypes.

§ 5.2.2 (D)(3), LDC (emphasis added).

As stated earlier, an application for a special use for a group home does not follow the County's approval criteria for all other special use requests but is reviewed based on criteria derived from the FHAA. The DSD Director or the Board must find that the special use, as an accommodation, being a departure from the maximum number of persons permitted as of right, is both reasonable and necessary. It is the applicant's responsibility to establish justification for why the request is reasonable and necessary. If the special use is approved, in order to impose special restrictions on the special use, the County must show that any such restrictions benefit the restricted class or that the restrictions respond to legitimate safety concerns raised by the individuals affected and is not based upon stereotypes.

In the Minutes of a recent Early Assistance meeting that DSD had with Judith Miller of Courage to Change concerning a potential special use application for a reasonable accommodation for a group home for handicapped or disabled persons with an occupancy of 6-10 persons, County staff provided Ms. Miller with the following guidance on how the application could be considered either administratively or by public hearing (also see copy of entire Minutes attached):

- o Please see below for an overview of both the public and administrative process:

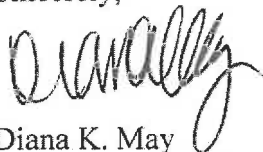
ADMINISTRATIVE:

- Prior to submitting the application packet, the applicant must notify adjacent owners of the proposed Special Use, which is the County's standard procedure for all Special Use applications and for either an administrative or a public hearing process. On page 8 of the application, you will find a diagram that shows how to determine who is an adjacent owner. If you are unsure of whom to notify please contact the Project Manager who will then provide you with a map for your specific property.
- Once the complete application is received, DSD will send the packet on referral to outside agencies for their review and comments. The agencies will be given 2 weeks to respond with comments/concerns. After this time, the comments will be compiled into a single word document that will be sent to the applicant. The applicant will then need to respond to all comments/concerns in the resubmittal. This referral-comment-resubmittal process may be repeated as many times as necessary to address the issues or concerns raised.
- DSD will notify the adjacent property owners of the anticipated decision date so that they may comment. The DSD Director will approve, deny, or approve with conditions. An appeal of that decision would be to the Board of County Commissioners.

PUBLIC HEARING

- Prior to submitting the application packet, the applicant must notify adjacent owners of the proposed Special Use, which is the County's standard procedure for all Special Use applications and for either an administrative or a public hearing process. On page 8 of the application, you will find a diagram that shows how to determine who is an adjacent owner. If you are unsure of whom to notify please contact the Project Manager who will then provide you with a map for your specific property.
- Once the complete application is received, DSD will send the packet on referral to outside agencies for their review and comments. The agencies will be given 2 weeks to respond with comments/concerns. After this time, the comments will be compiled into a single word document that will be sent to the applicant. The applicant will then need to respond to all comments/concerns in the resubmittal. This referral-comment-resubmittal

Sincerely,

A handwritten signature in black ink, appearing to read "Diana K. May". The signature is written in a cursive, flowing style with a large initial "D".

Diana K. May
Senior Assistant County Attorney

Enclosure

EL PASO



COUNTY

COMMISSIONERS:
DENNIS HISEY (CHAIR)
AMY LATHEN (VICECHAIR)

SALLIE CLARK
DARRYL GLENN
PEGGY LITTLETON

DEVELOPMENT SERVICES DEPARTMENT
MAX L. ROTHSCHILD P.E. EXECUTIVE DIRECTOR

July 9, 2014

Courage to Change Recovery Ranch
5655 Templeton Drive
Colorado Springs, Colorado 80923
Attention: Judith A. Miller

Re: Land Development Code Revisions and Operation at 5655 Templeton Drive

Dear Ms. Miller:

As you know, the Board of County Commissioners ("Board") adopted a Resolution approving revisions to the El Paso County Land Development Code ("LDC") regarding group homes for handicapped and disabled persons on July 1, 2014. I have attached a copy of the Resolution, to which is attached as Exhibit 1 the LDC revisions. Thank you for attending the hearings on June 24 and July 1 and addressing the proposed revisions.

The key features of what the Board approved through this Resolution are as follows:

1. Previously, the LDC required all group homes for handicapped and disabled persons to go through a Special Use process no matter how many handicapped or disabled residents would occupy the home. Now with the revisions, group homes (including those for recovering alcoholics and substance abusers) where the occupancy is five (5) or less handicapped or disabled persons have been made a use by right in single family residential districts in the unincorporated area of the County. No permit from the County is required for such use by right, and no special restrictions or conditions apply if the group home is in this use by right category.
2. Caregivers are permitted in addition to handicapped or disabled residents and are not counted toward the occupancy limit.
3. Group homes of six (6) – ten (10) handicapped or disabled persons are now required to request a reasonable accommodation pursuant to § 5.2.2.D of the LDC. Such requests will be processed as a Special Use; however, the review criteria are based on requirements of the Fair Housing Amendments Act as follows and not on standard special use review criteria:

(3) A group home for handicapped or disabled persons and state-licensed group homes for mentally ill or intellectually and developmentally disabled persons, all with six or

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WWW.ELPASOCO.COM

more occupants/enrollees, may apply for a special use, which is considered as a request for reasonable accommodation pursuant to the following process:

(a) Pursuant to the Fair Housing Amendments Act ("FHAA"), discrimination includes a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford disabled or handicapped persons equal opportunity to use and enjoy a dwelling. 42 U.S.C. § 3604(f)(3)(B). Therefore, a reasonable accommodation is required whenever it may be necessary (or indispensable or essential) to achieving the objective of equal housing opportunities between those with disabilities and those without.

(b) Reasonable accommodation requests will follow the applicable special use process and procedures pursuant to Sections 2.2.4, 5.3.2.G except that if the DSD Director elevates the application to a public hearing, that hearing shall be exclusively before the BOCC, and except that such requests will follow review criteria based on the FHAA for reasonable accommodations as follows rather than special use review criteria:

(i) An accommodation request must be reasonable and necessary. A necessary accommodation is reasonable unless it requires a fundamental alteration in the nature of a program or imposes undue financial and administrative burdens on the County. For example, an applicant could show that the group home is one way of ameliorating the effects of disabled persons' disabilities and that the request to locate in a given location is reasonable. Whether a requested accommodation is reasonable requires balancing the needs of the parties involved.

(ii) In order to impose special restrictions on either a special use or a reasonable accommodation approval, the County must show either: (1) that the restriction benefits the protected class or (2) that it responds to legitimate safety concerns raised by the individuals affected, and is not based upon stereotypes.


4. The application to request a reasonable accommodation now can be acted on administratively, and while it can be elevated to a public hearing, now that hearing will be directly by the Board rather than going first to hearing by the Planning Commission for a recommendation and then to hearing by the Board for final action.

As the County advised you by letter dated January 29, 2014, the County was beginning the process of revising the LDC, but meanwhile, Courage to Change Recovery Ranch ("CCRR") could continue to operate at this location without the requirement of a Special Use permit so long as the number of residents did not exceed 12 and those residents were recovering (not currently using) alcoholics and therefore handicapped or disabled within the meaning of the FHA. It is our understanding that CCRR at this location operates at an occupancy of greater than five (5) handicapped or disabled persons. Based on the LDC revisions described above, if CCRR desires to operate at a number greater than five (5) handicapped or disabled residents, you will need to request a reasonable accommodation.

I want to assure you that the Development Services Department will make best efforts to process any such request expeditiously, that we will assist CCRR in this process, and that customary fees for a Special Use application will be waived. I encourage you to call either me or Mark Gebhart, the Deputy Director of Development Services Department, at 520-6300 at your earliest convenience with any questions you may have or to begin the reasonable accommodation application process. We look forward to working with you on this matter.

Sincerely,


Max Rothschild, Director,
Development Services Department


M. Cole Emmons,
Senior Assistant County Attorney

Enclosure

cc: Mark Gebhart, Deputy Director, Development Services Department

Bocc

RESOLUTION NO. 14-243

BOARD OF COUNTY COMMISSIONERS
COUNTY OF EL PASO, STATE OF COLORADO

RESOLUTION AMENDING SECTIONS 5.2.2, TABLE 5-1, TABLE 5-3, AND DEFINITIONS OF THE EL PASO COUNTY LAND DEVELOPMENT CODE REGARDING GROUP HOMES FOR HANDICAPPED AND DISABLED PERSONS PURSUANT TO THE FAIR HOUSING ACT AMENDMENTS OF 1988, THE AMERICANS WITH DISABILITIES ACT, AND THE REHABILITATION ACT.

WHEREAS, pursuant to C.R.S §§ 30-11-101(1)(e), 30-11-103, and 30-11-107(1)(e), the Board of County Commissioners of El Paso County, Colorado (hereinafter "Board" or "County"), has the legislative authority to manage the business and concerns of the County and to exercise such other and further powers as are conferred by law when deemed by the Board to be in the best interests of the County and its inhabitants, and is further authorized by *inter alia*, C.R.S. § 30-28-101, *et seq.*, C.R.S. §§ 30-28-201, *et seq.*, and C.R.S. §§ 29-20-101, *et seq.*, to adopt regulations for the protection of the public health, safety, and welfare of the inhabitants of El Paso County; and

WHEREAS, the Board has specific authority to regulate group homes for handicapped and disabled persons through zoning regulations and resolutions to allow the same in residential districts in El Paso County pursuant to C.R.S. § 30-28-115(2)(c); and

WHEREAS, the Board has determined, based on advice from legal counsel, that its zoning regulations in the El Paso County Land Development Code ("LDC") need to be revised to bring the County into better compliance with federal law regarding group homes for handicapped and disabled persons including the Fair Housing Act (Title VIII of Civil Rights Act of 1968) as amended by the Fair Housing Act Amendments of 1988 ("FHAA"), 42 U.S.C. § 3601, *et seq.*; the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101 *et seq.*; and the Rehabilitation Act of 1973, 29 U.S.C. § 701 *et seq.*, which prohibit local governments like the County from discriminating against handicapped and disabled persons through zoning; and

WHEREAS, on May 20, 2014, after a public hearing was held on the matter, a majority of the El Paso County Planning Commission recommended approval of the proposed revisions to the LDC with modifications; and

WHEREAS, legal notice of the hearing, in conformance with the requirements of C.R.S. § 30-28-116, was published in the *El Paso County and Fountain Valley Advertiser and News* on May 28, 2014, and said notice and proposed revisions to the LDC, were made available online at the following web address: <http://adm.elpasoco.com/Development%20Services/Pages/default.aspx>. In compliance with statute, copies of the same were made available on May 28, 2014, for public examination at the El Paso County Development Services Department and at the Board of County Commissioners Office; and

WAYNE W. WILLIAMS El Paso County, CO
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WHEREAS, on June 17 and July 1, 2014, the Board conducted the public hearing to consider amending Sections 5.2.2, Table 5-1, Table 5-3, and definitions of the El Paso County Land Development Code regarding group homes for handicapped and disabled persons, at which hearing various witnesses were heard and exhibits were presented for the Board's consideration, and testimony was taken from the general public and any and all persons desiring to appear and give such testimony and present evidence (the Board also held a public Work Session on June 24, 2014); and

WHEREAS, based on the evidence, testimony, exhibits, and presentations by County representatives, the general public, any and all interested persons, and comments by the County Commissioners at the hearing, **THE BOARD DOES FIND AS FOLLOWS:**

1. That the proposed amendments to the LDC were properly submitted for consideration and approval by the Planning Commission.
2. That proper publication and public notice were provided as required by law for the hearing before the Board.
3. That the public hearing was extensive and complete, that all pertinent facts, matters, and issues were submitted, and that the general public and all interested persons were heard at the hearing.
4. That all exhibits were received into evidence.
5. That the Board incorporated by reference and received into evidence the documents and testimony of the public hearing on June 17 and July 1, 2014, which included the following:
 - a. Copy of the legal notice of the hearing.
 - b. Draft amendments and additional revisions to the LDC regarding Sections 5.2.2, Table 5-1, Table 5-3, and definitions of the El Paso County Land Development Code regarding group living facilities for handicapped and disabled persons.
 - c. Testimony and exhibits presented by the general public and all interested persons.
 - d. Presentation made by Gerald Dahl, special counsel hired by the Board to draft and advise the Board concerning the amendments proposed for the LDC, including any additional revisions identified during the public review and hearing process.
6. That this is a legislative action by the Board to amend its LDC reflective of public policy relating to matters of a general character, prospective in nature, and not restricted to identifiable persons or groups or properties.

7. That the standards in Section 5.2.2 benefit handicapped or disabled persons and respond to legitimate safety concerns of handicapped or disabled persons and are not based on stereotypes of this protected class of persons.
8. That the Board has taken into consideration the following:
 - a. All the testimony, evidence, and documents taken into evidence at the hearing; and
 - b. Reasons why the amendments to the LDC are in the best interest of the public health, safety, and welfare of the citizens of El Paso County, Colorado.
9. That based on the above considerations, the Board has determined that it would serve the best interests of the public and is in the best interests of the health, safety, and welfare of the citizens of El Paso County to approve and adopt the proposed amendments to Sections 5.2.2, Table 5-1, Table 5-3, and definitions of the LDC regarding group homes for handicapped and disabled persons pursuant to applicable federal laws indicated herein, and to make such amendments effective immediately.
10. That all requirements of law have been met.

NOW THEREFORE, BE IT RESOLVED AND ORDERED:

That Sections 5.2.2, Table 5-1, Table 5-3, and definitions of the LDC regarding group homes for handicapped and disabled persons are hereby amended, with Section 5.2.2 repealed and replaced, to read in their entirety as set forth on the attached **Exhibit 1**, which is attached hereto and incorporated herein by this reference.

That the said amendments to the LDC are hereby declared to be effective upon the effective date of this Resolution.

That the County Attorney's Office is authorized to make additional form and style revisions including but not limited to spelling, numbering, statutory references and other conforming and non-substantive corrections, prior to public distribution and recording.

That a copy of these amendments to the LDC shall be kept at the offices of the El Paso County Development Services Department and there made available for public inspection and further, that a copy of the same shall be filed for recording with the Office of the El Paso County Clerk & Recorder.

That the County Administrator may schedule a review of these amendments to the LDC during calendar year 2014 or 2015 or as otherwise needed to enable the Board to consider amendments responsive to the County experience with these amendments to the LDC as applied.

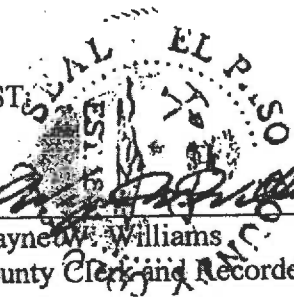

BE IT FURTHER RESOLVED, that Dennis Hisey, duly elected, qualified member and Chair of the Board of County Commissioners, or Amy Lathen, duly elected, qualified member

and Vice Chair of the Board of County Commissioners, be and is hereby authorized and appointed on behalf of the Board to execute any and all documents necessary to carry out the intent of the Board as expressed herein.

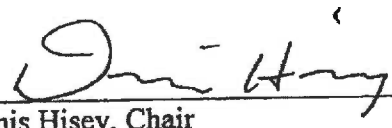
Upon motion duly made and seconded, the foregoing Resolution was adopted by the following vote:

- Commissioner Hisey Aye
- Commissioner Lathen Aye
- Commissioner Clark Aye
- Commissioner Glenn Aye
- Commissioner Littleton Aye

DONE AND EFFECTIVE this 1st day of July, 2014.

ATTEST 
By: 
Wayne Williams
County Clerk and Recorder

BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO

By: 
Dennis Hisey, Chair

Adult Care Home

~~A County-certified residential facility for the 24-hour care of no more than 15 residents in a non-medical facility for disabled adults, 18 years of age or over, who do not require 24-hour medical care and who are able to perform, with or without assistance, most activities of daily living.~~

Family

An individual, or 2 or more persons related by blood, marriage, adoption, or as guardian and ward, or a group of not more than 5 persons, excluding servants, who are not so related, living together in a dwelling unit. A family shall not include more than one person required to register as a sex offender pursuant to Section 18-3-412.5, C.R.S., as amended, unless related by blood, marriage or adoption; or in foster care.

Rehabilitation Facility

An institutional use-type facility, and not a group home, whether public, quasi-public, not-for-profit, providing accommodation, treatment and medical care for patients suffering from alcohol or drug-related illness.

Group Home

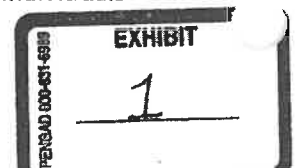
A home intended to provide a normal residential family setting for certain unrelated groups of people and limited to group homes for persons with mental illness, group homes for developmentally disabled persons, group homes for the aged, and group homes for handicapped or disabled persons.

Group Home for Handicapped or Disabled Persons

A group home for persons with mental or physical impairments which substantially limit one or more major life activities and including such additional necessary persons required for the care and supervision of the permitted number of handicapped or disabled persons. "Handicap" and "disability" have the same legal meaning. A person with a disability is any person who has a physical or mental impairment that substantially limits one of more major life activities; has a record of such impairment; or is regarded as having such an impairment. A physical or mental impairment includes, but is not limited to, hearing, visual, and mobility impairments, alcoholism, drug addiction, mental illness, mental retardation, learning disability, head injury, chronic fatigue, HIV infection, AIDS, and AIDS Related Complex. The term "major life activity" may include seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, speaking, or working. Group homes for handicapped or disabled persons, particularly as they relate to recovering (not currently using) alcoholics and persons with drug addictions, may also be known as sober living arrangements.

Group Home for the Aged (including Assisted Living Residences)

A group home for persons who are 60 years of age or older, do not need nursing facilities or skilled and intermediate care facilities, and who desire to live in normal residential surroundings. The criteria, requirements, and restrictions for group homes for the aged shall be those prescribed by C.R.S. §30-28-115(2) (b) (except for distance separations) and in this Code. Group homes for the aged include assisted living residences as defined in C.R.S. §25-27-102 (1.3). "Assisted living residence" means a residential facility that makes available to three (3) or more adults not related to the owner of such facility, either directly or indirectly through an agreement with the resident, room and board and at least the following services: personal services; protective oversight; social care due to impaired capacity to live independently; and regular supervision that shall be available on a twenty-four-hour basis, but not to the extent that regular twenty-four-hour medical or nursing care is required. The term "assisted living residence" does not include any facility licensed in this state as a residential care facility for individuals



with developmental disabilities, or any individual residential support services that are excluded from licensure requirements pursuant to rules adopted by the Department of Public Health and Environment.

Group Home for Developmentally Disabled Persons (including Intellectually and Developmentally Disabled Persons)

A State-licensed group home for persons with developmental disabilities or intellectual and developmental disabilities, as those terms are defined in C.R.S. §§ 27-10.5-102(11)(a) and 25.5-10-202(26)(a). "Developmental disability" has the same meaning as "intellectual and developmental disability." The criteria, requirements, and restrictions for group homes for developmentally disabled persons shall be those prescribed by C.R.S. §§ 30-28-115(2)(a), §27-10.5-109, and 25.5-10-214, and any regulations implemented by the Department of Public Health and Environment, the Department of Health Care Policy and Financing, and the Department of Human Services in support of this statutory provision, and elsewhere in this Code. This includes a community residential home as defined in C.R.S. § 25.5-10-202(5).

Group Home for Persons with Mental Illness

A State-licensed group home for persons with mental illness, as that term is defined in C.R.S. §27-65-102(14). The criteria, requirements, and restrictions for group homes for persons with mental illness shall be those prescribed by C.R.S. §30-28-115(2) (b.5) (except for separation requirements) and elsewhere in this Code. The term group home for persons with mental illness shall not include any facility licensed as a residential child care facility.

5.2.2. Child Care Centers, Family Care Homes, and Group Homes

The following standards apply, subject to the provisions and limitations of the County and State Department of Human Services and Department of Public Health and Environment.

(A) Separation Requirements

No family care homes, child care centers, or group homes, excluding group homes for handicapped or disabled persons, shall be located on an adjacent lot or parcel or within 500 linear feet along the same road from the lot or parcel boundary lines as another family care home, child care center, or applicable group home except for those facilities that: (1) qualify as a single-family dwelling and have an occupancy in the family care home, child care center, or group home of fewer than 6; or (2) where the family care home, child care center, or group home is located within a commercial zone district.

(B) Parking, Screening and Buffering

The facility shall comply with the parking standards of the Land Development Code. All commercial components, such as parking lots and playgrounds, shall be screened and buffered from neighboring residences and uses. For family care homes, child care centers, or group homes, excluding group homes for handicapped or disabled persons, the County may request a transportation plan showing how the operators of the facility intend to meet the transportation needs of the residents of the facility. The sufficiency of the transportation plan may be considered by the County in reviewing an application but may not, by itself, constitute grounds for denying the application. See, C.R.S. § 30-28-115(2.5).

(C) Facility Allowances and Applicable Review Processes

(1) A family care home, child care center, or group home shall be considered an allowed use or may require a special use permit depending on the specific facility type and number of

residents/enrollment as shown in Table 5.3 when located within a forestry, agricultural or residential zone district, and shall not be considered a second principal use when operated in conjunction with or within a residence on the property. Additional necessary persons required for the care and supervision of the permitted number of handicapped or disabled persons are allowed.

- (2) A family care home, or group home shall not include any person required to register as a sex offender pursuant to C.R.S. § 18-3-412.5, as amended, unless related by blood, marriage or adoption or in foster care.
- (3) A family care home, child care center, or group home shall maintain compliance with any building codes, fire codes, and health codes based upon the occupancy classification and number of residents and necessary persons for care of the residents.
- (4) Copies of any applicable current state or local certifications, licenses or permits for the group home shall be maintained on the premises.
- (5) All existing family care homes, child care centers, and group homes shall meet these standards, except separation requirements at Section 5.2.2(A), by December 31, 2014, regardless of pre-existing circumstances, and no nonconforming rights are hereby established.

(D) Standards Applicable Only to Group Homes

The Colorado General Assembly has declared that state-licensed group homes for no more than 8 intellectually and developmentally disabled persons is a matter of statewide concern and is a residential use of property for zoning purposes, specifically including single-family residential zoning. C.R.S. § 30-28-115(2)(a). The Colorado General Assembly has declared that state-licensed group homes for no more than 8 persons with mental illness is a matter of statewide concern and is a residential use of property for zoning purposes. C.R.S. § 30-28-115(2)(b.5). The following standards apply to group homes for handicapped or disabled persons and state-licensed group homes for mentally ill or intellectually and developmentally disabled persons, all with six or more occupants/enrollees:

- (1) A group home for handicapped or disabled persons shall quarterly (by March 31, June 30, September 30 and December 31 of each year), and otherwise upon request by the County, provide evidence and/or demonstrate to the Development Services Department that the residents in the group home are handicapped individuals and entitled to protection under the FHAA, ADA, or the Rehabilitation Act.
- (2) Meetings or gatherings on-site at a group home for handicapped or disabled persons that are consistent with a normal residential family setting shall be allowed and shall only be for residents, family of residents, and necessary persons required for the support, care and supervision of the handicapped or disabled persons. This does not permit conducting ministerial activities of any private or public organization or agency or permit types of treatment activities or the rendering of services in a manner substantially inconsistent with the activities otherwise permitted in the particular zoning district. See, C.R.S. § 30-28-115(2)(c).
- (3) A group home for handicapped or disabled persons and state-licensed group homes for mentally ill or intellectually and developmentally disabled persons, all with six or more

occupants/enrollees, may apply for a special use, which is considered as a request for reasonable accommodation pursuant to the following process:

(a) Pursuant to the Fair Housing Amendments Act ("FHAA"), discrimination includes a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford disabled or handicapped persons equal opportunity to use and enjoy a dwelling. 42 U.S.C. § 3604(f)(3)(B). Therefore, a reasonable accommodation is required whenever it may be necessary (or indispensable or essential) to achieving the objective of equal housing opportunities between those with disabilities and those without.

(b) Reasonable accommodation requests will follow the applicable special use process and procedures pursuant to Sections 2.2.4, 5.3.2.G except that if the DSD Director elevates the application to a public hearing, that hearing shall be exclusively before the BOCC, and except that such requests will follow review criteria based on the FHAA for reasonable accommodations as follows rather than special use review criteria:

(i) An accommodation request must be reasonable and necessary. A necessary accommodation is reasonable unless it requires a fundamental alteration in the nature of a program or imposes undue financial and administrative burdens on the County. For example, an applicant could show that the group home is one way of ameliorating the effects of disabled persons' disabilities and that the request to locate in a given location is reasonable. Whether a requested accommodation is reasonable requires balancing the needs of the parties involved.

(ii) In order to impose special restrictions on either a special use or a reasonable accommodation approval, the County must show either: (1) that the restriction benefits the protected class or (2) that it responds to legitimate safety concerns raised by the individuals affected, and is not based upon stereotypes.

Table 5-3 Use Table and Occupancy Limits for Family Care Home, Group Home and Child Care Facilities in Forestry, Agricultural, and Residential Zone Districts

Use Type	Allowed Use (Max. Occupancy/ Enrollment)	Special Use (Occupancy/ Enrollment)
Family Care Home		
Family Foster ²	8	NA
Day Care Home ²	12	13 or more
Adult Day Care	8	9-12
Specialized Group Facility ²	8	9-12
Child Care Center ¹		
Large Day Care Center ²	NA	13 or more
Small Day Care Center ²	NA	12 or fewer
Nursery ²	NA	As Established by State
Day Camp ³	NA	As Established by State
Center for Developmentally Disabled ²	8	9 or more
Crisis Center ²	8	9 or more
Residential Camp ²	NA	5 or more
Trip Camp ²	NA	5 or more
Day Treatment Center ²	8	9 or more
Residential Child Care Facility ²	8	9 or more
Group Homes		
Persons with Mental Illness ²	5	6-10 ³
Developmentally Disabled ²	5	6-10 ³
Aged (Assisted Living Residence) ²	8	9 or more
Group Home for Handicapped or Disabled Persons	5	6-10 ³
<p>Notes: ¹ Child care centers are allowed as an accessory use when operated in the same building as a religious institution. ² As defined by State law and rules and regulations. ³ To the extent non-handicapped or disabled family members are resident within the group home, such persons count toward the maximum occupancy/enrollment limits. Special use applications are to be considered as requests for reasonable accommodation and shall be processed pursuant to Section 5.2.2.D.(3).</p> <p>The enrollment or occupancy numbers in this table do not include additional necessary persons required for the care and supervision of the enrollees or occupants. Enrollment or occupancy numbers may be affected by licensing or building code requirements.</p>		

Table 5-1. Principal Uses.

Use Type	Residential Zoning Districts										Industrial Zoning Districts				Subject to Specific Standards?		Site Development Plan Required to Initiate Use?		Site Plan Required to Initiate Use?											
	T-5	A-3.5	A-5	R-R-5	RR-2.5	RR-0.5	RS-20000	RS-6000	RS-6000	RS-6000	RM-12	RM-30	RT	MHD	MHS	MHPR	RVP	CC	CR	CS	I-2	I-3	I-4	C-1	C-2	M	R-1	Subject to Specific Standards?	Site Development Plan Required to Initiate Use?	Site Plan Required to Initiate Use?
Add Manufacturing																						S				S		YES	YES	
Agricultural Business		S																										YES	YES	
Agricultural Stand		A	A	A																							YES		YES	
Artists, Personal		S																										YES	YES	
Amusement Center, Indoor																		S	A	A								YES	YES	
Amusement Center, Outdoor		S	S	S ³													S	S	B									YES	YES	
Animal Day Care Facility																			A	A	A						YES	YES	YES	
Animal Refuge		S	S	S	S																							YES	YES	
Audition Facility			S	S														S	A								YES	YES	YES	
Automobile and Boat Storage Yards																		S	A	A	A						YES	YES	YES	
Automobile and Trailer Sales																		S	S	A	S						YES	YES	YES	
Battery, Retail																		A	A	A								YES	YES	
Bakery, Wholesale																		A	A	A	A							YES	YES	
Bar																		A	A	A								YES	YES	
Barber/Beauty Shop																		A	A	A								YES	YES	
Batch Plant																													YES	YES

Notes:

- *A = Allowed Use, *S = Special Use, *T = Temporary Use
- ¹Minimum lot area of 5 acres irrespective of nonconforming lot or parcel status
- ²Minimum lot area of 10 acres irrespective of nonconforming lot or parcel status
- ³Minimum lot area of 35 acres irrespective of nonconforming lot or parcel status
- ⁴Use may be an allowed use or special use depending on size and other criteria. See specific use criteria.
- ⁵A minimum of 1 acre is required for a private stable.

Chapter 5 Use and Dimensional Standards
 REVISION (2) 4/02/2007 thru 02/06/2013
 Table 5-1 Principal Uses

Use Type	Residential Zoning Districts										Industrial Zoning Districts				Subject to Specific Use Standards?		Site Development Plan Required to terminate Use?	Site Plan Required to terminate Use?											
	F-5	A-5	R-5	RN-2.5	RN-0.5	RS-20000	RS-6000	RS-5000	RM-12	RM-20	RT	MHP	MHS	MHR	RVP	CC			CR	CS	I-1	I-2	I-3	O-1	O-2	O-3	R-4	Specific Use Standards?	Site Development Plan Required to terminate Use?
Petroleum Refining																						S			S		YES		
Pleasant Manufacturing																							S			S		YES	
Prison, Privates		S																				S			S		YES		
Proprietary School																											YES		
Public Building, Way or Space	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	YES		
Public Park and Open Space	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	YES		
Publishing Companies																											YES		
Race Track		S ²	S ²																								YES		
Ranch	A ³	A ³	A ³	A ³																									
Recreation Camp	S	S	S	S																							YES		
Recreational Vehicle and Boat Storage																											YES		
Recycling Facility																											YES		
Rehabilitation Facility																											YES		
Religious Housing		S																									YES		
Religious Institution	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	YES		
Rending Plant		S	S ²																								YES		
Rental Services																													

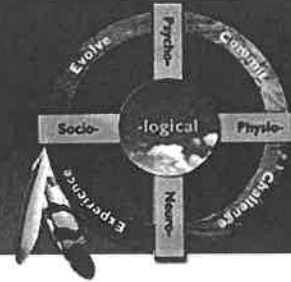
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- ⁴Minimum lot area of 35 acres irrespective of nonconforming lot or parcel status
- ⁵Use may be an allowed use or special use depending on size and other criteria. See specific use criteria.
- ⁶A minimum of 1 acre is required for a private stable.

Courage to Change Addiction Recovery Ranch

Integrating **Holistic** Modalities in **Addiction Recovery**

Use Your Brain for a Change



DATE: June 18, 2014
TO: Mr. Dahl
El Paso County Commissioners
FROM: Judith Miller
RE: Use By Right Permit Process

As the hearing came to a close yesterday, I realized that our Commissioners did not realize that there is a required process and procedure for issuing and monitoring a "Use by Right" allocation. I have obtained such permits from other counties and hereby share my experiences:

Procedure for Obtaining a Use by Right Permit:

- **Process** - Most counties delegate the use by right permitting process to the Planning Department.
- **Application** - There is an actual extensive application procedure that requires a full and accurate description of the proposed program. This application closely resembles that of the application for a Special Use Permit.
- **Licensure** - All programs must be licensed by the Colorado State Office of Behavioral Health (OBH). This licensure assures adequate certified staffing, adequate living facility including health, safety and fire codes. OBH assures that all clients are accounted for electronically from entry to discharge. OBH assures that all clients have an extensive treatment (service) plan as well as an approved exit plan. OBH assures that all programs are insured for liability. Each licensed program has a Field Supervisor who visits and monitors program records and procedures on a regular basis. OBH insists upon random and monitored drug testing. OBH assures infectious disease testing. If infectious disease

Courage to Change Addiction Recovery Ranch

Integrating **Holistic** Modalities in **Addiction Recovery**

Use Your Brain for a Change



DATE: June 16, 2014

TO: El Paso County Commissioners

FROM: Judith Ann Miller, Ph.D., CACIII
Courage to Change

RE: El Paso County Land Development Code Amendment Chapter 5.2.2,
Table 5-1, and Definitions as they pertain to group living facilities for
handicapped or disabled persons (Legislative).

The approval of this new code amendment will be a progressive act for El Paso County. Several other Colorado Counties have already created such codes to accommodate disabled persons and especially those disabled by addiction. It has long been determined that addiction is a brain disease and El Paso County should be proud to provide quality care for addicted persons.

The filing of the complaint that has led to this action was not done out of disrespect to El Paso County authority. All of you county commissioners have my greatest respect. The complaint was filed because the Courage to Change program was not well respected in this county, and was targeted with great discrimination, as indicated by the script of our special use hearing. This program is not dangerous, but is safe and successful.

To date the Courage to Change program has reached national and international acclaim and is now being replicated in several states and British Columbia as a state-of-the-science model for sustainable addiction recovery.

We are pleased to announce that a new recovery program specifically for prescription medication misuse will open in Woodland Park in July. Prescription med misuse is the greatest killer in the US today and last year Colorado ranked 2nd worst in the nation. The City of Woodland Park has granted our use permit and we are currently initiating the marketing effort and hiring staff.

Thank you for your consideration of this matter and I encourage you to follow suit of the other progressive Colorado counties.

Cole will introduce.

LDC-14-001 Verbal Presentation

Jim Egbert 6/17/2014

My name is Jim Egbert. I am here as a concerned citizen.

I want every handicapped person to live in quality, medically supportive housing without any discrimination because of their disability. I support the Federal Fair Housing Act. I also believe that most of my fellow citizens agree with me. However, they won't support preferential treatment mandated in their neighborhoods.

I have some experience with neighborhoods. I know what builds a stronger community and what doesn't.

I am currently the president of the Cypress Ridge HOA – a 126-home community in Briargate. I have also served as president of the Greencrest HOA (170+ homes) in Colorado Springs and the Broken Arrow HOA (77 homes) in Sun City West, AZ.

If you approve the proposed allowed limit of 12 unrelated persons plus their caregivers in all residential zoning districts I believe you will:

- 1) Go beyond what is required by the Federal Fair Housing Act,
- 2) Create a new, unregulated, group home residential classification that will be open for abuse, and
- 3) Unnecessarily provide the potential to create problems for what, are now successful, neighborhoods.

For purpose of illustration, let's assume I am a business investor. I discover that I can make a good living by operating unlicensed group homes in desirable neighborhoods.

I find a large house and obtain a long term lease. I make sure the lease clearly states I will be operating the house and grounds as a group home for handicapped residents. I obtain all required permits and I do the necessary modifications to house 6 to 12 residents. The landlord will be happy, since I'm paying above market rent. If the values I offer my residents are good enough to generate the revenue, I can hire a live-in chef, a maid, a gardener. I can also maintain a tax deductible residence and office in the facility if I want. You get the idea. I can live well at the expense of forcing an unintended land use on my neighbors!

If my neighbors complain because we are taking a lot of on-street parking spots, etc, I'll just explain that my residents have a non-visible handicap. Because of HIPPA, I can't give any specifics. If the County discovers my group home, I'll find a friendly health provider who will quarterly certify that each resident has some difficult-to-diagnose handicap.

Or, I could just as easily operate a budget-priced group home with substandard, but legal, housing amenities. It won't matter to me if my "disabled" residents have a different social-economic value system than my neighbors. Their music may be strange and loud. Their vehicles may leak a little oil, etc. They really don't need to fit in with the neighbors.

Is this what you would want for your next door neighbor? If not, why would you sign off on the legislation needed to force it on every residential property owner in unincorporated El Paso County?

I have provided you with a 1-page handout with 13 points that I would like to cover very quickly.

...

Thank you for your consideration. Please limit the maximum occupancy to 5 unrelated individuals in all residential zone districts with less than 5-acre lots. I believe this will regulate group home businesses in higher density neighborhoods while still providing reasonable accommodations with Special Use permits obtained via public hearings or as an Allowed Use (no public hearing required) in 5-acre, or larger parcels. With a Special Use permit, appropriate, quantifiable conditions can be established and required.

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Comments re: Group Homes for the Disabled

Jim Egbert 6/14/14

1. In my judgment, the proposed increase of the maximum occupancy of unrelated persons from 5 to 12 in a Group Home for Handicapped or Disabled Persons in all single family Residential Zone Districts creates a fundamental change to the County's land use and zoning scheme and should be denied!
2. LDC 1.4 states:
"it is the purpose of this Code to:
 - * Promote predictability, consistency and efficiency in the land development process for residents, neighborhoods
 - * Ensure appropriate opportunities for participation and involvement in the development process by all affected parties.
 - * Be fair to all by ensuring due consideration is given to protecting private property rights, the rights of individuals and the rights of the community as a whole.
3. The County's long-standing, predictable definition of a Family is "a group of not more than 5 persons, excluding servants, who are not so related, living together in a dwelling unit." Mark Gebhart testified in open session (Planning Commission on May 20th) this has not changed during his career.
4. Implementing the proposed increased occupancy to 12 does not qualify as a predicable event to current residential property owners.
5. Existing affected residential property owners will have no opportunity to participate in the decision to create and operate a neighborhood group home for up to 12 unrelated disabled persons plus their caregivers.
6. In fact the County will have no advance knowledge and will be largely divorced from regulating the creation and operation of such a group home. However, the County does have a limited ability to require evidence that residents are really handicapped if, after the fact, the County should discover the existence of the group home.
7. The property rights of neighboring residential property owners will have no protection!
8. The last 6 to 12 disabled persons living in the group home will receive preferential, not equal, treatment and rights.
9. Expanding the maximum occupancy to 12 unrelated, disabled persons in a 5 acre or larger Zone Districts will provide a defensible, reasonable accommodation. Any potential harm to neighboring property owners will be mitigated by the existence of a larger separation from other property owners.
10. The allowed maximum occupancy of 8 persons in State-licensed group homes is not equivalent since they are regulated and their existence, location and operating standards are a matter of public record.
11. One might consider the "equivalence" of an unlicensed Group Home for the Aged with an allowed maximum occupancy of 8 persons. However, the "60 years or older" requirement is easily quantified. If an instance of this group home creates neighborhood problems, it is easy to verify that each of the unrelated residents is 60 years of age or older.
12. In contrast, the definition of "handicapped or disabled" is broad and very subjective in practice. A neighborhood would be required to prove that unrelated residents are not disabled, in order to "evict" an incompatible Group Home for Handicapped or Disabled Persons. The difficulty and expense to prove that any individual is not disabled, constitutes a very high bar (and if any particular resident is judged not disabled, they can often simply be replaced by a different resident). For these reasons alone, the establishment of such a group home deserves a locally defined and regulated approval process. The proposed LDC amendment removes apriori regulation for the 6th and additional residents.
13. Just remember, it is difficult to imagine a Group Home for Handicapped or Disabled Persons with an occupancy of 6 to 12 persons that is not either a for-profit or non-profit business endeavor. The County has a long established practice of regulating commercial activities in a residential neighborhood. The proposed LDC amendment is inconsistent with this established County practice!

Date: Sat, 24 May 2014 17:22:33 -0600

To: Darryl Glenn <darrylglenn@elpasoco.com>, Amy Lathen <amylathen@elpasoco.com>, Sallie Clark <sallieclark@elpasoco.com>, Dennis Hisey <dennishisey@elpasoco.com>, Peggy Littleton <PeggyLittleton@elpasoco.com>

From: Jim Egbert <jim@the-egberts.com>

Subject: LDC-14-001 Group Home for Handicapped or Disabled Persons

Cc: Tim Trowbridge <tim.trowbridge@CenturyLink.net>, Mark Gebhart <MarkGebhart@elpasoco.com>, Max Rothschild <MaxRothschild@elpasoco.com>, Cole Emmons <ColeEmmons@elpasoco.com>, Marc Smith <Msmith@springsgov.com>

Dear El Paso County Commissioners:

The Planning Commission heard the subject Land Development Code amendment on May 20th. As the president of a Home Owners Association, I am troubled by the proposal to allow a 12-person group home for disabled persons in any single family residential zoning district without notice or redress from the neighborhood.

Consequently, I have done more than my normal amount of homework on this legislative policy proposal.

Housing for the disabled is very important. According to the American Community Survey (2012), 37.6 million out of a 309.9 million total population reported one or more disabilities. In Colorado, 8.7% of our non-institutionalized working-age population is disabled and only 42.0% are employed vs 79.6% without disabilities being employed.

HUD and DOJ's definition of disabled is extremely broad. Consequently, the ACS numbers are likely to understate the number of handicapped & disabled persons who qualify for Fair Housing Act protections.

Group homes for the disabled are a business, some operated as 501(c)(3) and others for-profit. You could correctly think of them as our emerging cottage industry.

Your policy decision will be very important and not only for unincorporated El Paso County. It will be the DOJ's reference for the City of Colorado Springs and all Home Owner Associations. As Colorado's most populous county, it will extend beyond county lines.

If you feel like you are in the DOJ's cross hairs, it's probably because you are.

Attached is my proposed solution. It retains the existing 5-person allowed limit for unrelated persons in higher density residential zone districts. It provides a 12-person allowed limit for disabled persons in 5-acre (and greater) zone districts in order to better address the Fair Housing Act's reasonable accommodation requirement

Thank you for your consideration.

Jim Egbert



[Comment to BOCC re LDC-14-001.pdf](#)

Jim & Marlis Egbert
2632 Marston Heights
Colorado Springs, CO 80920-5115
(719) 574-0570
(719) 331-9808 (cell)
jim@the-egberts.com

May 23, 2014

El Paso County Board of County Commissioners

Re: LDC-14-001 – El Paso County Land Development Code Amendment Chapter 5.2.2, Table 5-1, and definitions as they pertain to Group Living Facilities for Handicapped or Disabled Persons (Legislative)

I support each of the new 5.2.2 definitions as recommended by the Planning Commission at the May 20, 2014 Hearing.

In Table 5-1, I do not believe a Maximum Allowed Use of 12 unrelated persons in all Residential Zoning Districts is the right policy.

I believe it creates preferential rather than equal treatment for handicapped or disabled persons.

It also enables a new, completely unlicensed group home, housing up to 12 residents plus an unspecified number of caregivers to simply pop up in a single family neighborhood, with no notice to and no opportunity for redress by adjacent property owners. In fact, the EPC Development Services Department would have no knowledge that it had happened. EPC would only be able to monitor code compliance in response to a complaint.

I request the BOCC approve only an Allowed Use number of 5 in the Zoning Districts of RR-2.5, RR-0.5, RS-20000, RS-6000, and RS-5000; with a Special Use number of 6 or more.

In order to provide an easy path for larger group homes, I also request the BOCC approve an Allowed Use number of 12 only in the Zoning Districts of F-5, A-35, A-5, RR-5, RT, RM-12, and RM-30; with a Special Use number of 13 or more.

In LDC Chapter 5.2.2, a single family has long been defined as a group of not more than 5 unrelated persons. I consider a larger group to be potentially more disruptive in a high density neighborhood of single-family residences. I consider a neighborhood of 5-acre or larger residential parcels to be more suited for larger group living.

A key legal issue is whether equality should be discerned between any group of unrelated persons without disabilities and a group of unrelated disabled persons, or whether equality is only achieved in comparison with a large family of related persons.

In other words, since the County would not require a 2-parent family with 7 children to obtain a special use permit, does this mean that the County must allow a 9-person group of unrelated handicapped or disabled adults to live in a single-family residence without a permit? I think not!

On May 20th, Cole Emmons, Senior Assistant County Attorney, and outside Counsel Gerald Dahl advised us that the County would risk not being in DOJ compliance in the above 9-person situation if

the County required a permit. However, I am not persuaded by the statutes and case law they presented to support this advice.

The following is the guidance provided by DOJ and HUD for Group Homes, Local Land Use and the Fair Housing Act:

Q. What kinds of local zoning and land use laws relating to group homes violate the Fair Housing Act?

Local zoning and land use laws that treat groups of unrelated persons with disabilities less favorably than similar groups of unrelated persons without disabilities violate the Fair Housing Act. For example, suppose a city's zoning ordinance defines a "family" to include up to six unrelated persons living together as a household unit, and gives such a group of unrelated persons the right to live in any zoning district without special permission. If that ordinance also disallows a group home for six or fewer people with disabilities in a certain district or requires this home to seek a use permit, such requirements would conflict with the Fair Housing Act. The ordinance treats persons with disabilities worse than persons without disabilities.

A local government may generally restrict the ability of groups of unrelated persons to live together as long as the restrictions are imposed on all such groups. Thus, in the case where a family is defined to include up to six unrelated people, an ordinance would not, on its face, violate the Act if a group home for seven people with disabilities was not allowed to locate in a single family zoned neighborhood, because a group of seven unrelated people without disabilities would also be disallowed. However, as discussed below, because persons with disabilities are also entitled to request reasonable accommodations in rules and policies, the group home for seven persons with disabilities would have to be given the opportunity to seek an exception or waiver. If the criteria for reasonable accommodation are met, the permit would have to be given in that instance, but the ordinance would not be invalid in all circumstances.

I don't believe this guidance supports the staff proposal to allow 12-person occupancy for disabled group homes in all residential zone districts.

However the subsequent DOJ/HUD guidance states that whether a particular accommodation request is reasonable depends on the facts, and must be decided on a case-by-case basis.

In El Paso County, the transparent process of case-by-case examination is via a public hearing where potential neighbors are properly noticed and all interested parties are invited to participate and speak prior to a decision.

My notion is that by allowing a 12-disabled-person group home on any 5-acre parcel without the requirement for a permit (no hearing), will provide a path for reasonable accommodation. It would have avoided the Courage to Change Ranch complaint because their property is located in an A-5 Zoning District.

Thank you for your consideration,



Jim Egbert

RESOLUTION NO. _____

BOARD OF COUNTY COMMISSIONERS
COUNTY OF EL PASO, STATE OF COLORADO

RESOLUTION AMENDING SECTIONS 5.2.2, TABLE 5-1, TABLE 5-3, AND DEFINITIONS OF THE EL PASO COUNTY LAND DEVELOPMENT CODE REGARDING GROUP HOMES FOR HANDICAPPED AND DISABLED PERSONS PURSUANT TO THE FAIR HOUSING ACT AMENDMENTS OF 1988, THE AMERICANS WITH DISABILITIES ACT, AND THE REHABILITATION ACT.

WHEREAS, pursuant to C.R.S §§ 30-11-101(1)(e), 30-11-103, and 30-11-107(1)(e), the Board of County Commissioners of El Paso County, Colorado (hereinafter “Board” or “County”), has the legislative authority to manage the business and concerns of the County and to exercise such other and further powers as are conferred by law when deemed by the Board to be in the best interests of the County and its inhabitants, and is further authorized by *inter alia*, C.R.S. §§ 30-28-101, *et seq.*, C.R.S. §§ 30-28-201, *et seq.*, and C.R.S. §§ 29-20-101, *et seq.*, to adopt regulations for the protection of the public health, safety, and welfare of the inhabitants of El Paso County; and

WHEREAS, the Board has specific authority to regulate group homes for handicapped and disabled persons through zoning regulations and resolutions to allow the same in residential districts in El Paso County pursuant to C.R.S. § 30-28-115(2)(c); and

WHEREAS, the Board has determined, based on advice from legal counsel, that its zoning regulations in the El Paso County Land Development Code (“LDC”) need to be revised to bring the County into better compliance with federal law regarding group homes for handicapped and disabled persons including the Fair Housing Act (Title VIII of Civil Rights Act of 1968) as amended by the Fair Housing Act Amendments of 1988 (“FHAA”), 42 U.S.C. § 3601, *et seq.*; the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12101 *et seq.*; and the Rehabilitation Act of 1973, 29 U.S.C. § 701 *et seq.*, which prohibit local governments like the County from discriminating against handicapped and disabled persons through zoning; and

WHEREAS, on May 20, 2014, after a public hearing was held on the matter, a majority of the El Paso County Planning Commission recommended approval of the proposed revisions to the LDC with modifications; and

WHEREAS, legal notice of the hearing, in conformance with the requirements of C.R.S. § 30-28-116, was published in the *El Paso County and Fountain Valley Advertiser and News* on May 28, 2014, and said notice and proposed revisions to the LDC, were made available online at the following web address: <http://adm.elpasoco.com/Development%20Services/Pages/default.aspx>. In compliance with statute, copies of the same were made available on May 28, 2014, for public examination at the El Paso County Development Services Department and at the Board of County Commissioners Office; and

WHEREAS, on June 17, 2014, the Board conducted the public hearing to consider amending Sections 5.2.2, Table 5-1, Table 5-3, and definitions of the El Paso County Land Development Code regarding group homes for handicapped and disabled persons, at which hearing various witnesses were heard and exhibits were presented for the Board's consideration, and testimony was taken from the general public and any and all persons desiring to appear and give such testimony and present evidence; and

WHEREAS, based on the evidence, testimony, exhibits, and presentations by County representatives, the general public, any and all interested persons, and comments by the County Commissioners, **THE BOARD DOES FIND AS FOLLOWS:**

1. That the proposed amendments to the LDC were properly submitted for consideration and approval by the Planning Commission.
2. That proper publication and public notice were provided as required by law for the hearing before the Board.
3. That the public hearing was extensive and complete, that all pertinent facts, matters, and issues were submitted, and that the general public and all interested persons were heard at the hearing.
4. That all exhibits were received into evidence.
5. That the Board incorporated by reference and received into evidence the documents and testimony of the public hearing on June 17, 2014, which included the following:
 - a. Copy of the legal notice of the hearing.
 - b. Draft amendments to the LDC regarding Sections 5.2.2, Table 5-1, Table 5-3, and definitions of the El Paso County Land Development Code regarding group living facilities for handicapped and disabled persons.
 - c. Testimony and exhibits presented by the general public and all interested persons.
 - d. Presentation made by Gerald Dahl, special counsel hired by the Board to draft and advise the Board concerning the amendments proposed for the LDC, including any additional minor revisions identified during the public review and hearing process.
6. That this is a legislative action by the Board to amend its LDC reflective of public policy relating to matters of a general character, prospective in nature, and not restricted to identifiable persons or groups or properties.
7. That the standards in Section 5.2.2 benefit handicapped or disabled persons and respond to legitimate safety concerns of handicapped or disabled persons and are not based on stereotypes of this protected class of persons.

8. That the Board has taken into consideration the following:
 - a. All the testimony, evidence, and documents taken into evidence at the hearing; and
 - b. Reasons why the amendments to the LDC are in the best interest of the public health, safety, and welfare of the citizens of El Paso County, Colorado.
9. That based on the above considerations, the Board has determined that it would serve the best interests of the public and is in the best interests of the health, safety, and welfare of the citizens of El Paso County to approve and adopt the proposed amendments to Sections 5.2.2, Table 5-1, Table 5-3, and definitions of the LDC regarding group homes for handicapped and disabled persons pursuant to applicable federal laws indicated herein, and to make such amendments effective immediately.
10. That all requirements of law have been met.

NOW THEREFORE, BE IT RESOLVED AND ORDERED:

That Sections 5.2.2, Table 5-1, Table 5-3, and definitions of the LDC regarding group homes for handicapped and disabled persons are hereby amended, with Section 5.2.2 repealed and replaced, to read in their entirety as set forth on the attached **Exhibit 1**, which is attached hereto and incorporated herein by this reference.

That the said amendments to the LDC are hereby declared to be effective upon the effective date of this Resolution.

That the County Attorney's Office is authorized to make additional form and style revisions including but not limited to spelling, numbering, statutory references and other conforming and non-substantive corrections, prior to public distribution and recording.

That a copy of these amendments to the LDC shall be kept at the offices of the El Paso County Development Services Department and there made available for public inspection and further, that a copy of the same shall be filed for recording with the Office of the El Paso County Clerk & Recorder.

That the County Administrator may schedule a review of these amendments to the LDC during calendar year 2014 or 2015 or as otherwise needed to enable the Board to consider amendments responsive to the County experience with these amendments to the LDC as applied.

BE IT FURTHER RESOLVED, that Dennis Hisey, duly elected, qualified member and Chair of the Board of County Commissioners, or Amy Lathen, duly elected, qualified member and Vice Chair of the Board of County Commissioners, be and is hereby authorized and appointed on behalf of the Board to execute any and all documents necessary to carry out the intent of the Board as expressed herein.

Upon motion duly made and seconded, the foregoing Resolution was adopted by the following vote:

Commissioner Hisey _____
Commissioner Lathen _____
Commissioner Clark _____
Commissioner Glenn _____
Commissioner Littleton _____

DONE AND EFFECTIVE this 17th day of June, 2014.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO

By: _____
Wayne W. Williams
County Clerk and Recorder

By: _____
Dennis Hisey, Chair

EL PASO COUNTY



OFFICE OF THE COUNTY ATTORNEY CIVIL DIVISION

Amy R. Folsom, County Attorney

Assistant County Attorneys

M. Cole Emmons
Lori L. Seago
Diana K. May
Kenneth R. Hodges
Steven A. Klaffky

CONFIDENTIAL & PRIVILEGED ATTORNEY-CLIENT COMMUNICATION

TO: Board of County Commissioners

FROM: Amy Folsom, County Attorney and
Gerald Dahl, Special Counsel

DATE: January 27, 2014

RE: **Courage to Change Recovery Ranch Complaint and Recommended Action**

As you may be aware, in January of 2013 the operators of the Courage to Change Recovery Ranch ("CCRR") filed a complaint with the Department of Housing & Urban Development (HUD) claiming the County violated the federal Fair Housing Act, Rehabilitation Act and Americans with Disabilities Act by requiring, and not granting, a special use permit for the CCRR operation at 5485 Appaloosa Drive. This complaint has been referred to the U.S. Department of Justice (DOJ), which has opened an investigation file. (See attached letter). The DOJ has given the County until February 11, 2014 to respond.

The purpose of this memorandum is to describe the requirements of the FHA, RA and ADA in this case and to recommend an approach by the County to comply with those laws and avoid any further action by DOJ. We will go over these points in the January 28 executive session.

The Fair Housing Act and related legislation

- The Fair Housing Act (FHA) (as amended in 1988) prohibits discrimination on the basis of handicap or familial status.
- Handicap is defined broadly by 42 USC 3602(h), to include:
 - "A physical or mental impairment which substantially limits one or more of a person's major life activities;
 - A record of having such an impairment; or



- Being regarded as having such impairment...but such term does not include current, illegal use of or addiction to a controlled substance.”
- Recovering (not currently using) drug addicts and alcoholics are considered to be handicapped under the Act itself by its legislative history, case law decided under the Act, the ADA and the Rehabilitation Act (which latter two statutes have been interpreted to contain a similar standard on this issue), and the federal regulations implementing the Act at 24 CFR 100.201(a)(2).
- The FHA, ADA and Rehabilitation Act apply to local government actions, including the application of El Paso County’s Land Development Code to CCRR.
- Local governments are required to make “reasonable accommodation” within their laws, or by exceptions, variances or modifications of the same, to address the needs created by the handicap in affording such individuals the same opportunity to housing as those who are without disabilities.
- There is a growing body of case law addressing special use permit requirements under the FHA, Rehabilitation Act and the ADA. Some of the key features of these cases include:
 - A special use or variance process is generally, though not universally, held not to be a reasonable accommodation, in that it is likely to subject the handicapped individuals to scrutiny that is subjective and discriminatory and not what a natural family experiences, particularly in the context of public hearings.
 - Restrictions predicated on public safety cannot be based on blanket stereotypes, but must be tailored to particularized concerns about individual residents.
 - It is permissible to apply requirements that serve to insure that the residents of the facility are in fact handicapped, and that the facility has any required state certification to operate.
 - It is permissible to impose an upper limit on the number of unrelated handicapped persons who may occupy a residence in the same zone districts as other families.

The Courage to Change Recovery Ranch facility

- The residents in the CCRR operation, at least as described, likely qualify as handicapped persons who may claim protection under the Act:
 - They are recovering (not currently using) drug addicts and alcoholics, up to eight in number, served by 4 full time staff and 3 part time staff.
 - They live (and wish to continue living) in a single family home in the RR-5 district, where detached single family homes are a use by right.
- The fact that a commercial treatment facility, and not the handicapped individuals themselves, is making the claim is irrelevant. In fact, most of the case law involves challenges brought by the care facilities, not by individual residents.

The County's Land Development Code

- The LDC addresses a limited set of group homes (Adult Care Homes) for mentally ill, developmentally disabled and the aged, permitting them as allowed uses in all zone districts where single family dwellings (detached, attached, and multifamily) are permitted, subject to some additional requirements in Section 5.2.2 and Table 5-3:
 - Spacing 500 feet apart;
 - consistent with residential uses in intensity – screening of parking lots and playgrounds, etc.; and
 - number of residents limited to 8; above that a SUP is required (Table 5-3)
- The LDC lists Rehabilitation Facilities (for drug and alcohol patients), simply as a special use in these same residential districts, thus subjecting these facilities to the SUP process and review criteria at Section 5.3.2 – an individualized and discretionary review/approval.
- The LDC definition of “family” is a “capped” definition; that is, it limits to 5 the number of unrelated individuals who qualify as a family and thus are permitted to occupy a dwelling unit as a matter of right in any zone district where dwelling units are permitted. The definition does not limit the number of persons related by blood, marriage, adoption or ward of the court who may live together and qualify as a family.
- Conclusion: The LDC likely violates the FHA, RA and ADA by failing to reasonably accommodate group homes for recovering (not currently using) alcoholics and drug addicts.

Recommended response to DOJ request (due approx. February 11)

We have prepared and will provide the additional requested documents to the DOJ. We recommend that these be supplied with a cover letter making the following points:

- The County has concluded CCRR is, as presently configured and operated, entitled to protection under the FHA as operating a group home for disabled persons.
- The County has not acted to enjoin or otherwise prevent CCRR from operating at the Appaloosa address since they commenced operations.
- The County is in the process of amending its LDC to incorporate a reasonable accommodation in the form of *[describe; depending upon which of the alternatives listed below, or other approach, is decided upon]*.
- In the meantime, the County does not intend to enforce the present LDC requirement (of a SUP) against CCRR, although it may make reasonable efforts to confirm that CCRR continues to house only qualified individuals with a disability and the necessary persons required to care for such persons in a residential setting.

The County should provide CCRR with a letter mirroring these statements.

Alternative LDC amendments (in approximate order of increasing breadth)

We will elaborate on the following available options for amending the LDC to comply with the FHA and related laws in the executive session.

Option 1

Simply allow the CCRR operation to continue to function, without any LDC amendment or other County enforcement apart from the requirements of state certification and that residents are bona fide recovering addicts or alcoholics. This option is not recommended, since the County's regulations would remain in violation of the Act and the County would be subject to additional complaints and federal investigation.

Option 2

Address Rehabilitation Facilities in the LDC by incorporating them into Section 5.2.2 as Adult Care Homes, with similar restrictions to the other listed types of homes. Eliminate the SUP category for such additional persons and simply impose an upper limit at 12-15 persons. This presumes the LDC provision that unlisted uses are not permitted will apply to such facilities with a greater number than allowed by right.

In addition:

- Specifically permit additional necessary persons required for the care and supervision of the permitted number of handicapped persons.
- Consider revising the Section 5.2.2 "additional requirements" on group homes to ensure these requirements achieve a legitimate government purpose and are the least restrictive means for doing so. These present requirements include a spacing limitation. Spacing requirements are legally suspect, and have been overturned in a variety of cases.
- Add requirement of state certification and/or demonstration that residents are handicapped individuals.
- Provide that a permitted Adult Care Home, as revised, shall not include more than one (1) person required to register as a sex offender pursuant to 18-3-412.5, C.R.S., as amended, unless related by blood, marriage or adoption.
- In adjusting the upper number of persons permitted in Adult Care Homes, bear in mind the LDC imposes no such limit on natural families (related by blood, marriage, etc.) other than the occupancy limitations contained in the Building Code. The FHA and case law recognize that such limitations are valid in that they do not discriminate on the basis of handicap. We will look at the practical effect of the County's present Building Code occupancy limitations, since it may be that they impose a defensible upper limit in any case.

Option 3

- *Amend the LDC definition of "family" to include "Notwithstanding the foregoing, a family shall be deemed to include (6) or more persons that are not related by blood, marriage, adoption or legal custody occupying a single family dwelling unit and living as a single housekeeping unit if the occupants are handicapped persons as defined in title VII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, or disabled persons as defined by Section 24-34-301, CRS. A family shall not include more than one (1) person required to register as a sex offender pursuant to 18-3-412.5, CRS, as amended, unless related by blood, marriage or adoption. A household that includes six (6) or more persons identified above shall not be excluded from the definition of "family" by the residence in the household of additional necessary persons employed in the care and supervision or such handicapped or disabled persons." Note: this will necessitate eliminating LDC Section 5.2.2 and amending Table 5-3 to delete references to group homes for mentally ill and developmentally disabled.*

We recommend Option 2 and will elaborate in the executive session.

Mark Gebhart

From: Roger Lovell <roger@pprbd.org>
To: Monday, January 27, 2014 8:01 AM
Mark Gebhart
Subject: Fwd: Congregate Care
Attachments: image001.jpg; image002.png

Peak Review
5250 Pleasant Valley

to zone

CRS 25 - Act 1 Part 3

PL7

Sent from my iPhone

Begin forwarded message:

From: "Matz, Sue" <SMatz@springsgov.com<mailto:SMatz@springsgov.com>>
Date: January 17, 2014 at 10:05:15 AM MST
To: Roger Lovell <roger@pprbd.org<mailto:roger@pprbd.org>>
Subject: RE: Congregate Care

It does...thanks!

Sue Matz
Analyst II / Revocable Permit Coordinator City of Colorado Springs
30 S. Nevada Ave, #105
Colorado Springs, CO 80903
Phone: (719) 385-5355
Fax: (719) 385-5167

From: Roger Lovell [mailto:roger@pprbd.org]
Sent: Friday, January 17, 2014 9:01 AM
To: Matz, Sue
Subject: RE: Congregate Care

Sue:

The building code uses the square footage of the building to establish an occupant load for means of egress purposes. For a "residential" facility which this most closely resembles the occupant load factor is 1/200. That is the gross square footage of the home divided by 200 = number of occupants.

Does that help?

From: Matz, Sue [mailto:SMatz@springsgov.com]
Sent: Thursday, January 16, 2014 9:02 AM
To: Roger Lovell
Subject: RE: Congregate Care

Thanks again for the info! In checking with some of the other Cities on the front range, it appears that they are tying their maximum number of residents in Drug and Alcohol Recovery homes to building code square footages.

Is there a required square footage amount per person in the IBC for residential dwellings? If so, what does that square footage refer to...bedroom space or total gross square footage within a home? Aurora has a 150 square foot limitation per person from their building code but I'm not sure how to calculate that in a home; is the 150 sq.ft. number just for their 'bedroom space' or does that limitation include the bathroom, hallways, living room, kitchen, etc.?

I try to be such a pest on this; I'm trying to make sure I don't give out information on what is or isn't permitted and then have to go back and retract the statement(s).

The Drug and Alcohol Recovery homes have turned in a meeting request form and we plan to meet with them to find out what they are doing. I will then schedule a meeting with all of the City Departments involved including RBD to make sure that the statements given to the providers is in accord with all applicable requirements and Codes.

Sue Matz
Analyst II / Revocable Permit Coordinator City of Colorado Springs
30 S. Nevada Ave, #105
Colorado Springs, CO 80903
Phone: (719) 385-5355
Fax: (719) 385-5167

From: Roger Lovell [mailto:roger@pprbd.org]
Sent: Wednesday, January 15, 2014 9:47 AM
To: Matz, Sue
Subject: RE: Congregate Care

Sue:

The International Building Code (IBC) and International Fire Code (IFC) do address this type of use. For your information City of Colorado Springs has adopted the 2009 IBC and IFC. RBD administers the IBC and Springs Fire administers the IFC. I have attached a pdf of section 310.

Section 310.1 of the IBC is the start point. We must first determine the length of the typical stay. Transient is defined as "Occupancy of a sleeping or dwelling unit for not more than 30 days".

If the use is Transient and the building in question contains sleeping units the use would be considered an R-1 occupancy (Boarding House). Assuming this was a congregate living facility and had less than 10 occupants it would be considered an R-3 occupancy.

If the length of stay exceeds the 30 days (non transient) the use would be considered a R2 occupancy (Boarding House). Similar to R1, if this is a congregate living facility with 16 or fewer occupants it would be considered an R-3 occupancy.

Depending upon the number of occupants and how the facility is arranged the space would be considered an R1, R2, or R3 occupancy. Of note, these are all considered "commercial" as they fall under the IBC. The International Residential Code (IRC) is limited to "One and Two Family Dwellings" and does not include R occupancies.

Clear as mud I trust. Please let me know if I can assist, this is a very difficult section of the code.

Roger Lovell, P.E.
Deputy Building Official
Development Coordinator

[Description: Description: cid:image001.png@01CA741E.4A5C3C00]

2880 International Circle
Colorado Springs, CO. 80910
(719) 327-2994
www.pprbd.org

From: Matz, Sue [mailto:SMatz@springsgov.com]
Sent: Tuesday, January 14, 2014 3:54 PM
To: Roger Lovell
Subject: Congregate Care
Importance: High

Roger: We have a few what under the City Code for land use classifies as 'drug and alcohol treatment facilities' in residential areas however the two companies are pushing what they claim the US Supreme Court allows with no restrictions on the number of residents in a single family dwelling because the drug and alcohol residents are protected due to their 'disability'.

Based on the requirements for any other protected class i.e. elderly, developmentally disabled, physically disabled or mentally ill, if the residence houses more than five (5) residents, they fall under a different occupancy type and therefore have to meet certain housing requirements per building and fire codes.

Would that also be the case under these 'disability' types? I just want to make sure before we tell these corporations that they are required to meet all occupancy type codes for building and fire.

Sue Matz
Analyst II / Revocable Permit Coordinator City of Colorado Springs
S. Nevada Ave, #105
Colorado Springs, CO 80903
Phone: (719) 385-5355
Fax: (719) 385-5167



4 p.m. Tuesday
CAO

U.S. Department of Justice
Civil Rights Division
Housing and Civil Enforcement

SHR:TJM:CDJ:ec
DJ# 175-13-153

U.S. Mail: 950 Pennsylvania Avenue, NW - G St.
Washington, DC 20530
Overnight: 1800 G Street, NW
Suite 7002
Washington, DC 20006
Telephone: (202) 514-4713
Facsimile: (202) 514-1116

November 12, 2013

RECEIVED

Via Federal Express

NOV 14 2013

Diana K. May
Office of the County Attorney
El Paso County, Colorado
200 S. Cascade Avenue
Colorado Springs, CO 80903

El Paso County
Attorney's Office

Re: Courage to Change Recovery Ranch v. El Paso County HUD Case No: 08-13-0082-8

Dear Counsel:

This is to inform you that the Department of Justice has initiated an investigation of the zoning and land use practices of El Paso County, Colorado pursuant to the Fair Housing Act ("FHA"), 42 U.S.C. §§ 3601-3631. As you know, on January 2, 2013, Judith Miller, Executive Director, on behalf of the Courage to Change Recovery Ranch, filed a complaint with the Department of Housing and Urban Development ("HUD") alleging that El Paso County Board of Commissioners of El Paso, Colorado, discriminated against her and the disabled residents of the sober-care facility that she operates through the application of its zoning and land use laws. HUD referred this matter to the Department of Justice pursuant to 42 U.S.C. § 3610(g)(2)(C). Our investigation is preliminary in nature and we have not made any determination as to whether El Paso County violated the Fair Housing Act ("FHA").

This office enforces the FHA, which prohibits discrimination in housing on the basis of race, color, national origin, religion, sex, familial status, or disability. The FHA authorizes the Attorney General to commence a civil action whenever she has reasonable cause to believe that any person or group of persons has engaged in a pattern or practice of housing discrimination, or that a group of persons has been denied any of the rights granted by the FHA and that such denial raises an issue of general public importance. See 42 U.S.C. § 3614(a).

We believe that the public interest and the interest of El Paso County will be best served by our having complete and accurate information about the issues we are investigating. Accordingly, we request that you provide the following information within thirty (30) days of your receipt of this letter:

1. A description of the jurisdiction, functions, and duties of the El Paso County Administrator, the El Paso County Development Services Department, the El Paso County Planning Commission/Division, and the El Paso County Board of Commissioners as they relate to land use, and in particular determinations of whether a particular land use will require a Special Use Permit and whether an application for a Special Use Permit will be granted. This request seeks information regarding whether the above-listed entities act as agents of El Paso County when make determinations regarding land use applications originating in unincorporated El Paso County.
2. A statement of the identities of the person(s) responsible for producing the minutes for the bodies listed in request 2, above.
3. A copy of all correspondence, electronic mail, letters, notes, agendas, minutes of meetings and hearings, notices, resolutions, decisions, video and audio recordings, staff recommendations, computer records, and other documents maintained by the county of El Paso its entities listed in Number 2 above, from January 1, 2010 to December 31, 2013 related to the Courage to Change Addiction Recovery Ranch and/or the property located at 5485 Appaloosa Drive, El Paso County, Colorado. This request includes documents originated by County personnel as well as documents, information, or complaints provided to County employees, agencies, or departments from third parties.
4. Copies of any city or state provision on which the County relied (or relies) for any contention that the Courage for Change Addiction Recovery Ranch required a Special Use permit to operate its sober-home facility at 5485 Appaloosa Drive, El Paso County, Colorado.
5. A copy of the County's current policies regarding requests for reasonable accommodations to the County's zoning and land use laws relating to housing for disabled persons, as well as any prior version of such policies in effect after January 1, 2010.
6. A statement indicating whether the County ever granted Courage for Change Addiction Recovery Ranch a "reasonable accommodation" to the County's zoning and land use regulations that would permit operation of the sober-home facility located at 5485 Appaloosa Drive, El Paso, Colorado. If the County did not grant a reasonable accommodation, provide a statement of the basis for the denial(s).
7. Copies of any and all requests made by housing providers for persons with disabilities other than Courage for Change Addiction Recovery Ranch since January 1, 2010, for reasonable accommodations, Special Use Permits, or other entitlements under the County's zoning and land use laws. For each request, provide copies of all records relating thereto, including the County's response(s) or decision(s).

Steve + Karin

Edie + Jy

don't

*state guide
going into
colony*

*policy
plan
chap 6*

*VA of use
BDA +
Special
Use permit
denied*

*Admin + Hearing based. See para 2 pg 1
dealing with physical disability
alcohol + drug " J
age 2
mental*

Just notes + then another meeting.

*asking
how or more
days.*

8. A copy of all correspondence, electronic mail, letters, notes, agendas, minutes of meetings and hearings, notices, resolutions, decisions, video and audio recordings, staff recommendations, computer records, and other documents maintained by the County and its entities regarding any complaint received by any County employee, agency, or department regarding an alleged violation of the El Paso County Land Development Code ("LDC") based on, or in any way related to, the definitions of "family," "assisted living," or "group home."
9. A statement indicating whether the County currently receives federal housing or community-development grants or subsidies, the amounts and sources of such federal grants or subsidies, and the address(es) of the properties benefitting therefrom.

*Mark Segal
Jerry
Edie & Eileen*

In responding to the United States' requests, please indicate the number of the request to which each explanation and document relates. All requested documents should be sent via overnight mail to my attention at the U.S. Department of Justice, Civil Rights Division, Housing & Civil Enforcement Section, 1800 G Street NW, Suite 7121, Washington, D.C., 20006.

We have attempted to limit the areas of inquiry to expedite the initial phase of this investigation and are willing to work with you to minimize any burdens that would be imposed on you or your staff in obtaining this information. In addition to providing us with the requested information, we invite you to provide us with any other information that you believe may be relevant to our inquiry. We may want to interview certain County employees, agents, or officials, and will let you know of any need to interview such persons.

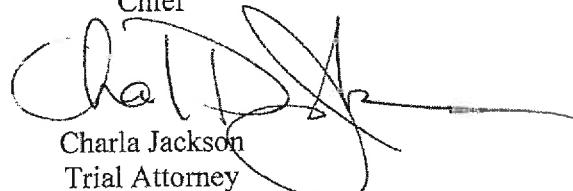
Finally, we request that the County maintain in their current form any and all records, documents, files, or tapes that could be relevant to this investigation. To the extent that such records are contained in a computer system, computer files should not be altered or destroyed pending completion of our investigation. If there is a need to discard any information or documentation, we request that you notify me prior to taking such action.

If you have any questions or concerns, or would like to discuss this matter, please contact me at (202) 353-9705 or (202) 514-4713. Thank you for your cooperation.

Sincerely,

Steven H. Rosenbaum
Chief

By:



Charla Jackson
Trial Attorney

Housing and Civil Enforcement Section