

High Court sanctions group homes

By Marie Cheshney
staff writer

"It's a big day for the handicapped," said Detroit attorney Jon Garrett as news swept across the state Thursday that the Michigan Supreme Court had upheld lower court decisions on the placement of group homes in residential neighborhoods.

The unanimous, 58-page opinion dashed the hopes of cities such as Livonia and Southfield, which want to see local zoning restraints put on group homes, and brought victory cheers from state and local agencies dealing with the placement of institutionalized persons into neighborhoods. Justice Dorothy Comstock Riley abstained from participating in the decision.

Garrett, representing group home owners and operators, winning one of three attorneys who argued in support of the neighborhood group home concept in May 1984 before the state's highest court.

Standing beside him were Assistant Attorney General William Basinger, representing the state Department of Social Services, and Dolores Coulter of the Michigan Protective and Advocacy Services for the Developmentally Disabled, representing group home residents.

'We challenged our right to control zoning. We're not anti-group home. We want more control. We've tested it as far as we can go.'

— Edward McNamara,
Livonia mayor

OPPOSING THEM before the highest court was Livonia city attorney Harry Tatigian.

Even though the Supreme Court had agreed to hear consolidated group home appeals from both Livonia and Southfield, Tatigian right from the beginning viewed the two communities' hopes of winning as bleak.

Thursday's long-awaited decision, therefore, did not come as a surprise to him.

"I'm disappointed but not surprised," Tatigian said.

Mayor Edward H. McNamara acknowledged the city was at the end of the road in its quest to have the placement of group homes guided by zoning regulations.

"We challenged our right to control

zoning," the mayor said. "We're not anti-group home. We want more control. We've tested it as far as we can go."

THE ONLY recourse cities now have in restricting the placement of the homes, McNamara and Tatigian said, is to get legislators to change Public Act 218, which sets up and defines group home placement.

State Rep. Lyn Bankes, R-Livonia, said legislators are now researching how to change the legislation to make the placement of group homes in cities "more manageable."

"We don't want to do away with them, just change the (public act) language and give cities more participation in their placement," she said.

Bankes said one change which has widespread support is to space group homes farther apart. Current law mandates that group homes be at least 1,500 feet apart. She said the law could be changed to reflect a 3,000-foot separation.

Another option, Bankes said, is to have homes which receive a rate of return on their investment over 9 percent redefined as a business.

BASINGER was slated that the Su-

preme Court backed the group homes' side on all arguments made before the court.

"We won on every point," he said. "Our position on how the public act should be interpreted was upheld in every way."

Because of earlier appellate court rulings in their favor, Garrett said he fully expected the court's decision.

"What this means is that what appellate courts said all along is true. Handicapped people have the right to some foster-family type of living. They are not restricted in any way other than there can't be two facilities within 1,500 feet. They can have access to any neighborhood they desire."

The Livonia/Southfield appeal — consolidated at the request of the high court — involves four separate cases. Three were initiated by Livonia, the fourth by Southfield.

THE LIVONIA cases concentrated on the issues of zoning violations, building deficiencies, deed restrictions and state licensing procedures. Each of the Livonia cases involved a request by the DSS to license an existing home for use as an adult foster care, small group home. The three homes, on 28043 Stanmoor, 14368 Ellen Drive and 29709 Pickford, are in areas zoned for single-family use.

The Southfield suit was filed by Greentrees Civic Association and centered on the placement of mentally ill adults in group homes.

Tatigian consistently had called Livonia's challenge a "zoning" issue and not one involving rights of mentally handicapped or mentally ill. He also had asked the justices to consider that homeowners have a right to be heard.

THURSDAY'S DECISION brought a double cheer from West Bloomfield resident Harvey Tlaskov, owner of the group home at 14368 Ellen Drive. Tlaskov rents the home to its current operator, Ray Roberts.

Just before the court handed down its decision, Tlaskov found out he had just won a \$120,000 settlement from Livonia over a lawsuit he filed against the city two years ago.

In the suit, Tlaskov charged the city with harassing him and his family

while he was in the process of turning the home into a group home. The Ellen Drive home is one of the first launched in the city.

"I can't believe both happened the same day," Tlaskov said. "Ninety-nine percent of my happiness is from the court's decision. One percent of it comes from settling this lawsuit."

Garrett, Tlaskov's attorney, and the city's insurance company reached the

\$120,000 settlement. Both Tatigian and McNamara questioned the company's judgment in settling the suit out of court.

"I'm flabbergasted the insurance company would knuckle under. No wonder our insurance rates are so high," McNamara said. Tatigian said the company didn't need the city's permission to settle.

Farmington DDA sought

Continued from Page 1

It holds powers, similar to a corporation, to own, buy, sell and lease property and to engage in economic activity. A DDA's annual budget must be approved by city council. Revenues to fund a DDA are commonly obtained through tax increment financing or revenue bonds issued by the city.

FARMINGTON'S CITY council has traditionally supported activity supporting downtown development, according to Deadman. "This goes back to the 1950s when the city ac-

cumulated land which is now the downtown center."

The DFDC was formed in April of this year following a March meeting between council, planning commissioners and members of the city's Economic Development Corp., where architect Christopher Wacny spoke. Wacny was retained by the city for a flat fee of \$12,720 for an approximate nine-month study.

Wacny will present his summary recommendation Jan. 14, at a regular DFDC meeting. His report will detail recommendations for future development in downtown Farmington.

DDA goals are outlined

The Downtown Farmington Development Committee's steering group is proposing a Downtown Development Authority (DDA) be formed for Farmington's central business district.

Committee members foresee a DDA:

- stabilizing the business environment.
- promoting the downtown as a "place."
- improving shopper access.
- ensuring personal and property security.
- allowing preparation of a plan.
- improving parking.

A summary of the ruling

The Michigan Supreme Court ruled that state-licensed adult foster care homes are exempt from local zoning ordinances.

The 6-0 ruling was a defeat for the city of Livonia and a homeowners group in Southfield.

Winners were the defendants — the state Department of Social Services, which licenses group homes for developmentally disabled adults, and Victory Wisdom Nonprofit Housing Inc. The cases were consolidated because of the similarity of issues.

In a 47-page opinion written by Justice Michael F. Cavanagh, the high court upheld rulings for the defendants by Wayne Circuit Judge Roland L. Olzak and Oakland Circuit Judge Robert Webster. Justice Dorothy Comstock Riley didn't take part in the proceedings.

AN UNOFFICIAL court summary of

the 12-question case made these major points:

• "Adult foster care facilities remain exempt from local zoning ordinances." The court said local zoning could not be used to defeat an important purpose of the licensing act.

• "An adult foster care facility providing care and supervision for six or less persons is engaged in a residential use of property."

• A challenged section of the state zoning act "does not impermissibly divert home rule cities of constitutional and statutory authority." Local ordinances must give way to conflicting constitutional and statutory provisions.

• The state licensing and zoning acts "do not unconstitutionally delegate legislative authority to the DSS..." as charged in the suit.

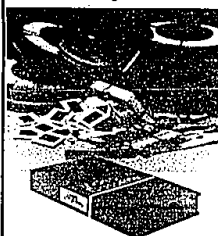
• The state laws "provide for adequate notice and for an opportunity for

a hearing prior to licensure of adult foster care facilities, and provide for a fair and impartial decisionmaker." The decisionmaker is the DSS director and hearing officers.

• "All adult foster care facilities may provide foster care to mentally ill persons," though in practice not every mentally ill person is a "proper candidate" for placement.

• Deed restrictions were not violated by adult foster care small group homes. "Any increase in traffic and parking problems with regard to all the homes is no greater than that which could have arisen had a large traditional family occupied the homes."

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