MĀNOA SENIOR CARE

Facsimile: (808) 531-8865

Central Pacific Plaza
220 South King Street, Suite 2150
Honolulu, Hawai'i 96813
Phone: (808) 440-0560

E-Mail: ManoaSC@Hawaii.rr.com

February 7, 2008

Senator Suzanne Chun Oakland, Chair
Senator Les Ihara, Vice-Chair
Committee on Human Services and Public Housing

Opposition to SB 2793 and SB 2930, Relating to Adult Residential Care Homes

Chair Oakland, Vice-Chair Ihara, and Committee Members, I am Paul Dold, the President of Manoa Senior Care, which is comprised of seven Adult Residential Care Homes located in Manoa and Kaimuki, and I would like to present my strong opposition to Senate Bills 2793 and 2930.

As background, Manoa Senior Care began in 1994 with the renovation of a home at 2156 Lanihuli Drive in Manoa. Since then, we have built a total of four care homes in Manoa – at 2240 and 2250 Oahu Avenue in 1999, and 2870 and 2872 Oahu Avenue in 2001. In 2002, we built our first care home in Kaimuki and then added two more in 2004. I have sought other opportunities to find land in the Manoa area since the original homes were built, but have found nothing appropriate or affordable.

Manoa has approximately 5,000 residents and fewer than ten care homes serving the area. Since opening the first home in 1994, I have never received a complaint about any of our Manoa homes.

Our elderly citizens make wonderful neighbors, and most of our residents have been members of the Manoa community for decades. This bill is very likely in violation of the federal Fair Housing Act* and reflects an intolerance to elderly people and an out-dated attitude of shipping the elderly off to facilities in other areas. My belief is the opposition to care homes in certain East Oahu neighborhoods arose among wealthy individuals who are more interested in their property values than the plight of the elderly in our community.

I welcome the opportunity to tell you firsthand how appreciative our residents are that they can continue to reside in the same communities they spent most of their lives. Please accept my invitation for you and/or your staff to tour one of our homes so that you can see for yourself how care homes provide a truly needed service for Hawaii's elderly citizens. I can be reached by telephone at 440-0560 and I look forward to hearing from you.

* Attached for your reference and review is a portion of the Fair Housing Act, a federal District Court case from Nevada, and a joint statement by the Department of Justice and Housing and Urban Development about the interaction of local zoning laws and group homes.

FAIR HOUSING ACT

Sec. 804. [42 U.S.C. 3604] Discrimination in sale or rental of housing and other prohibited practices

As made applicable by section 803 of this title and except as exempted by sections 803(b) and 807 of this title, it shall be unlawful--

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.

(c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.

(d) To represent to any person because of race, color, religion, sex, handicap, familial status, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, handicap, familial status, or national origin.

(f)

(1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of--

(A) that buyer or renter,

(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(C) any person associated with that buyer or renter.

(2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of--

(A) that person; or

(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

(C) any person associated with that person.

(3) For purposes of this subsection, discrimination includes--

(A) a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises, except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.

(B) a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or

(C) in connection with the design and construction of covered multifamily dwellings for first occupancy after the date that is 30 months after the date of enactment of the Fair Housing Amendments Act of 1988, a failure to design and construct those dwelling in such a manner that--

(i) the public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons;

(ii) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

(iii) all premises within such dwellings contain the following features of adaptive design:

(I) an accessible route into and through the dwelling;

(II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(III) reinforcements in bathroom walls to allow later installation of grab bars; and

(IV) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

(4) Compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people (commonly cited as "ANSI A117.1") suffices to satisfy the requirements of paragraph (3)(C)(iii).

(5)

(A) If a State or unit of general local government has incorporated into its laws the requirements set forth in paragraph (3)(C), compliance with such laws shall be deemed to satisfy the requirements of that paragraph.

(B) A State or unit of general local government may review and approve newly constructed covered multifamily dwellings for the purpose of making determinations as to whether the design and construction requirements of paragraph (3)(C) are met.

(C) The Secretary shall encourage, but may not require, States and units of local government to include in their existing procedures for the review and approval of newly constructed covered multifamily dwellings, determinations as to whether the design and construction of such dwellings are consistent with paragraph (3)(C), and shall provide technical assistance to States and units of local government and other persons to implement the requirements of paragraph (3)(C).

(D) Nothing in this title shall be construed to require the Secretary to review or approve the plans, designs or construction of all covered multifamily dwellings, to determine whether the design and construction of such dwellings are consistent with the requirements of paragraph 3(C).

(6)

(A) Nothing in paragraph (5) shall be construed to affect the authority and responsibility of the Secretary or a State or local public agency certified pursuant to section 810(f)(3) of this Act to receive and process complaints or otherwise engage in enforcement activities under this title.

(B) Determinations by a State or a unit of general local government under paragraphs (5)(A) and (B) shall not be conclusive in enforcement proceedings under this title.

(7) As used in this subsection, the term "covered multifamily dwellings" means--

(A) buildings consisting of 4 or more units if such buildings have one or more elevators; and

(B) ground floor units in other buildings consisting of 4 or more units.

(8) Nothing in this title shall be construed to invalidate or limit any law of a State or political subdivision of a State, or other jurisdiction in which this title shall be effective, that requires dwellings to be designed and constructed in a manner that affords handicapped persons greater access than is required by this title.

(9) Nothing in this subsection requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

Sec. 816. [42 U.S.C. 3615] Effect on State laws

Nothing in this subchapter shall be constructed to invalidate or limit any law of a State or political subdivision of a State, or of any other jurisdiction in which this subchapter shall be effective, that grants, guarantees, or protects the same rights as are granted by this subchapter; but any law of a State, a political subdivision, or other such jurisdiction that purports to require or permit any action that would be a discriminatory housing practice under this subchapter shall to that extent be invalid.

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Slip Copy, 2007 WL 610640 (D.Nev.), 34 NDLR P 99
(Cite as: Slip Copy)

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Nevada Fair Housing Center, Inc. v. Clark County
D.Nev.,2007.

United States District Court,D. Nevada.
NEVADA FAIR HOUSING CENTER, INC., Plaintiff,
v.
CLARK COUNTY, a political subdivision of the State of Nevada, and Barbara Ginoulias, individually and in her capacity as Director of the Department of Comprehensive Planning, Defendants.
No. 02:05-CV-00948-LRH-PAL.

Feb. 23, 2007.

Christopher Brancart, Brancart & Brancart, Pescadero, CA, David A. Olshan, Las Vegas, NV, for Plaintiff.
Robert T Warhola, II, Clark County District Attorney's Office, Las Vegas, NV, C. Wayne Howle, Nevada Attorney General's Office, Carson City, NV, for Defendants.

ORDER

LARRY R. HICKS, United States District Judge.

*1 Presently before the court are cross-motions for summary judgment (29, 30). The parties have filed oppositions (37, 38) and replies (42, 43). Also before the court is Nevada Fair Housing Center's ("NFHC") motion to strike (# 55). Clark County has filed an opposition (# 56).

I. Factual Background

NFHC brought this action pursuant to the federal Fair Housing Act, 42 U.S.C. § 3601*et seq.*, to challenge a provision of the Clark County zoning ordinance. NFHC is a nonprofit Nevada corporation. One specific purpose of NFHC is to promote equal opportunity in the rental of housing and the elimination of all forms of illegal housing discrimination. Specific facts relating to the ordinance at issue and the relationship between the parties will be discussed below as necessary.

II. Legal Standard

Summary judgment is appropriate only when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law."Fed.R.Civ.P. 56(c). In assessing a motion for summary judgment, the evidence, together with all inferences that can reasonably be drawn therefrom, must be read in the light most favorable to the party opposing the motion. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *County of Tuolumne v. Sonora Cmty. Hosp.*, 236 F .3d 1148, 1154 (9th Cir.2001).

The moving party bears the burden of informing the court of the basis for its motion, along with evidence showing the absence of any genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U .S. 317, 323 (1986). On those issues for which it bears the burden of proof, the moving party must make a showing that is "sufficient for the court to hold that no reasonable trier of fact could find other than for the moving party."*Calderone v. United States*, 799 F.2d 254, 259 (6th Cir.1986).*See also Idema v. Dreamworks, Inc.*, 162 F.Supp.2d 1129, 1141 (C.D.Cal.2001). For those issues where the moving party will not have the burden of proof at trial, the movant must point out to the court "that there is an absence of evidence to support the nonmoving party's case."*Catrett*, 477 U.S. at 325.

In order to successfully rebut a motion for summary judgment, the non-moving party must point to facts supported by the record which demonstrate a genuine issue of material fact. *Reese v. Jefferson School Dist. No. 14J*, 208 F.3d 736 (9th Cir.2000). A "material fact" is a fact "that might affect the outcome of the suit under the governing law."*Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Where reasonable minds could differ on the

material facts at issue, summary judgment is not appropriate. *See v. Durang,* 711 F.2d 141, 143 (9th Cir.1983). A dispute regarding a material fact is considered genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party."*Liberty Lobby,* 477 U.S. at 248. The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient to establish a genuine dispute; there must be evidence on which the jury could reasonably find for the plaintiff. *See id*. at 252.

III. Discussion

*2 The primary issue that must be decided is whether various provisions of the Clark County Code violate the Fair Housing Act. However, Clark County has presented several defenses including mootness, standing, equitable estoppel, waiver, and res judicata. The court will address these issues first before determining whether the ordinance at issue is discriminatory.

A. Mootness

Clark County, in its reply points and authorities, argues that NFHC's claims are moot. Specifically, Clark County notes that it has recently enacted a new group home ordinance. "A claim is moot if it has lost its character as a present, live controversy. *American Rivers v. Nat'l Marine Fisheries Serv.,* 126 F.3d 1118, 1123 (9th Cir.1997). "A federal court does not have jurisdiction 'to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it.' " *Id.* (quoting *Church of Scientology v. United States,* 506 U.S. 9 (1992)). Here, NFHC is seeking, among other things, an award of damages. To the extent NFHC was damaged from the ordinance at issue in this case, it is entitled to seek relief. However, to the extent NFHC is seeking an injunction, such relief would be inappropriate in light of the fact that the allegedly discriminatory ordinance is no longer in place in Clark County. Therefore, the court finds that the present action is not moot.

B. Standing

Clark County argues that NFHC lacks standing to bring this action. Specifically, Clark County argues that "there is an obvious disconnect between the alleged discrimination and reason Plaintiff allegedly diverted resources."(Opp'n to Pl.'s Mot. for Partial Summ. Adjudication (# 37) at 17.) NFHC, on the other hand, argues that the evidence establishes that Clark County's enactment of the ordinance caused injury to NFHC.

In determining whether NFHC has standing under the Fair Housing Act, the court must determine whether NFHC has "alleged such a personal stake in the outcome of the controversy as to warrant [its] invocation of federal court jurisdiction."*Havens Realty Corp. v.. Coleman,* 455 U.S. 363, 378 (1982) (citations and internal quotations omitted)."[A]n organization may satisfy the Article III requirement of injury in fact if it can demonstrate: (1) frustration of its organizational mission; and (2) diversion of its resources to combat the particular housing discrimination in question."*Smith v. Pacific Properties and Development Corp.,* 358 F.3d 1097, 1105 (9th Cir.2004). The expense of litigation alone is generally insufficient to constitute a "diversion of resources" under this test. *Id.*

NFHC's complaint alleges that it is a nonprofit Nevada corporation. "One of NFHC"s specific purposes and goals is the promotion of equal opportunity in the rental of housing and elimination of all forms of illegal housing discrimination." (First Am. Compl. (# 4) ¶ 4.) NFHC has presented evidence indicating that it has diverted resources to counteract the alleged discriminatory effect of the ordinance. (Pl.'s Mot. for Partial Summ. Adjudication (# 30), Decl. of Gail Burks, Ex. 1 ¶ 18.) According to the declaration of Gail Burks,

*3 NFHC has spent time and resources to (1) assist the [several] complainants in their efforts to become informed about and exercise their fair housing rights; (2) investigate, evaluate and determine the extent to which the County's zoning ordinance and enforcement of that ordinance violates the Fair Housing Act; (3) educate and perform out-

reach to the group home operators in Clark County to inform them of their fair housing rights; and, (4) protect the fair housing rights of their members, associates, and constituents from the continued discrimination by defendants based on disability. But for Clark County's discriminatory zoning ordinance, NFHC would not have diverted its resources to counteract that discrimination. The resources spent to perform these services were diverted from programs operated by NFHC.

Id. The court finds these allegations sufficient for purposes of standing. NFHC has alleged that the ordinance at issued caused it to devote resources to counteract the alleged discrimination. Such allegations demonstrate an injury beyond that of expenses incurred in the present litigation.

C. Equitable Estoppel

Defendants argue that NFHC's claims should be dismissed because of equitable estoppel. Specifically, Defendants argue that NFHC "must have known at the time it completed its Impediments Analysis in 2004 that the Clark County group home ordinance, Ordinance 2771, violated the Fair Housing Act, but failed to inform Clark County."(Clark County's Mot. for Summ. J. (# 29) at 26.) NFHC, in opposition, argues that Defendants have failed to establish the elements of a defense of equitable estoppel.

" 'Equitable estoppel functions to prevent the assertion of legal rights that in equity and good conscience should not be available due to a party's conduct.' " *In re Harrison Living Trust,* 112 P.3d 1058. 1061-62 (Nev.2005). The Nevada Supreme Court has identified four elements of equitable estoppel:

(1) the party to be estopped must be apprised of the true facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting estoppel has the right to believe it was so intended; (3) the party asserting the estoppel must be ignorant of the true state of facts; (4) he must have relied to his detriment on the conduct of the party to be estopped.

Id. at 1062.

With respect to this case, the court must determine whether NFHC's conduct in previously analyzing impediments to housing for Clark County should equitably estop NFHC from bringing this action. As part of NFHC's activities, it has provided policy research in the form of an analysis of impediments to fair housing to local jurisdictions. (Pl.'s Opp'n to Defs.' Mot. for Summ. J. (# 38), Decl. of Gail Burks ¶ 5.) "An analysis of impediments to fair housing is a report of impediments or barriers to fair housing opportunities in the community."*Id.* NFHC previously completed analysis of impediments studies for Clark County in 1995, 1997, and 1998 (revised July, 1998).*Id.* ¶ 6. In March, 2004, NFHC also completed a Regional Analysis of Impediments and Fair Housing Plan. *Id.* ¶ 7.

*4 The 1997 Impediments Analysis suggested that Clark County "[p]rovide recommendations for the dispersement of group homes concentrated in low to moderate income census tracts."(Exs. to Clark County's Mot. for Summ. J. (# 32), 1997 Fair Housing Impediments Analysis, Ex. B at 2520.) In 1997, Assembly Bill 118 ("A.B.118") was introduced in the Nevada Legislature. (Exs. to Clark County's Mot. for Summ. J. (# 32), Bill Summary.) A.B. 118 required the city or county to review an application for a group home if such home would be located within 660 feet of an existing group home. *Id.* On March 26, 1997, Gail Burks ("Burks"), President and CEO of NFHC, wrote a letter to Nevada Assemblywoman Chris Giunchigliani that stated, in part, "[w]e agree with the concept of A.B. 118 in that it seeks to insure that group homes are disbursed rather than clustered in certain areas of town."(Exs. to Clark County's Mot. for Summ. J. (# 32), March 26, 1997 Letter.) On May 1, 1997, Burks wrote a second letter to Assemblywoman Giunchigliani that attached proposed language for defining the concentration of group homes in a neighborhood. (Exs. to Clark County's Mot. for Summ. J. (# 32), May 1, 1997 Letter.) The letter concluded by stating, "[t]he proposed protections offered by AB 118 are sorely needed."*Id.* In support of the present litigation, NFHC has filed an

affidavit of Burks stating that her comments regarding A.B. 118 "did not suggest that a spacing requirement for group homes should be made part of the bill."(Pl.'s Opp'n to Defs .' Mot. for Summ. J. (# 38), Decl. of Gail Burks ¶ 13.)

A.B. 118 was not enacted. However, in 1999 it was reintroduced as Assembly Bill 62 ("A.B.62"). A.B. 62 was incorporated into Senate bill 391 and passed by the Nevada Legislature. Burks testified in favor of A.B. 62. As part of her testimony, Burks testified that a "spacing requirement can be allowed if a jurisdiction has a legitimate purpose for the requirement and if the requirement is not considered 'discriminatory on its face.' " (Exs. to Clark County's Mot. for Summ. J. (# 32), May 12, 1999, Minutes of the Senate Committee on Government Affairs at 401.) S.B. 391 amended section 278.021 of the Nevada Revised Statutes. The 1999 legislation provided that "if a subsequent application is submitted to operate an additional residential facility for groups at a location that is within 660 feet from an existing residential facility for groups, the governing body shall review the application based on applicable zoning ordinances." (Exs. to Clark County's Mot. for Summ. J. (# 32), Senate Bill No. 391.)

In 2001, the Nevada legislature amended Section 278.021 to mandate that "each governing body shall establish by ordinance a maximum distance between residential establishments that is at least 660 feet but not more than 1,500 feet."(Exs. to Clark County's Mot. for Summ. J. (# 32), Assembly Bill No. 395.) In June, 2002, Clark County increased the minimum distance between group homes to 1,500 feet.

*5 On April 25, 2002, Clark County and NFHC entered into a contract for development and delivery of the analysis of impediments to fair housing and a fair housing plan. (Exs. to Clark County's Mot. for Summ. J. (# 32), Contract for Analysis of Impediments to Fair Housing.) State and local governments are required to conduct such an analysis in order to receive certain federal funding. 24 C.F.R. § 570.487*et seq.* Pursuant to the contract, the analysis "shall be conducted in accordance with the recommendations set forth in the Fair Housing Planning Guide of the U.S. Department of Housing and Urban Development unless written direction is given otherwise by OWNER."*Id.* at 905.The Fair Housing Planning Guide includes zoning as a subject area for an analysis of impediments. (Exs. to Clark County's Mot. for Summ. J. (# 32), Fair Housing Planning Guide.)

The introduction to the Regional Analysis of Impediments identified one purpose of the report "to outline past successes and changes in policies ... that affect Fair Housing choice."(Exs. to Clark County's Mot. for Summ. J. (# 32), Regional Analysis of Impediments.) The Regional Analysis of Impediments concluded that Clark County met or exceeded Federal standards in all areas except those that were considered "under development." (Exs. to Clark County's Mot. for Summ. J. (# 32), Regional Analysis of Impediments.) NFHC has included an affidavit with its motion indicating that the Regional Analysis of Impediments was not "intended to be a comprehensive review of all local ordinances, activities and programs to guarantee that there have been/are no ongoing violations."(Pl.'s Mot. for Partial Summ. Adjudication (# 30), Decl. of Gail Burks ¶ 16.)

In the case sub judice, the court finds the above summarized evidence insufficient to establish a defense of equitable estoppel. Although NFHC's Regional Analysis of Impediments indicated that Clark County met or exceeded Federal standards, there is no evidence of detrimental reliance. The evidence shows that Clark County relied on NFHC's analysis to obtain federal funds. However, Defendants have failed to show how such reliance is detrimental. Clark County has indicated that it would have changed its regulations had NFHC identified the spacing requirement as an impediment. There is no evidence in the record to substantiate this position.

D. Waiver

On April 25, 2002, Clark County and NFHC

entered into a contract for development and delivery of the analysis of impediments to fair housing and a fair housing plan. (Exs. to Clark County's Mot. for Summ. J. (# 32), Contract for Analysis of Impediments to Fair Housing.) In that contract, NFHC agreed to "defend, indemnify, and hold harmless [Clark County] ... from any liabilities, damages, losses, claims, actions or proceedings, including, without limitation, reasonable attorneys' fees, that are caused by the negligence, errors, omissions, recklessness or intentional misconduct of [NFHC] in the performance of this Contract."*Id.* In light of this provision, Clark County argues that NFHC's claims should be dismissed due to waiver. The court finds this provision inapplicable to the case at bar. There are no allegations in this case involving any claim that allegedly resulted from the conduct of NFHC in the performance of the contract.

E. Res Judicata

*6 In its motion for summary judgment, Clark County argues that NFHC's claims are barred by claim preclusion and issue preclusion. In 2001, Clark County filed a declaratory action against several group home operators, including NFHC. On November 19, 2001, NFHC was dismissed from the case, before appearing, following a request from Clark County. On July 26, 2002, Clark County obtained a default judgment against the remaining defendants in the case who had failed to appear. In that order, the Nevada judge determined that neither the Nevada Revised Statutes nor the Fair Housing Act prohibit the Clark County Ordinance.

"Res Judicata 'prevents litigation of all grounds for, or defenses to, recovery that were previously available to the parties, regardless of whether they were asserted or determined in the prior proceedings.' " *Granite Constr. Co. v. Allis-Chalmers Corp.*, 648 F.Supp. 519, 521 (D.Nev.1986) (Quoting *Brown v. Felsen*, 442 U.S. 127, 131 (1979)). Res Judicata takes on two different forms: claim preclusion and issue preclusion.*Executive Mgmt., Ltd. v. Ticor Title Co.*, 963 P.2d 465, 473 (Nev.1998).

"Pursuant to the rule of claim preclusion, '[a] valid and final judgment on a claim precludes a second action on that claim or any part of it.' " *Id.* (citing *University of Nevada v. Tarkanian*, 879 P.2d 1180, 1191 (Nev.1994)). " 'Claim preclusion applies when a second suit is brought against the same party on the same claim.' " *Id.* (Quoting *In re Medomak Canning*, 111 B.R. 371, 373 n. 1(Bankr.D.Me.1990)). The doctrine prevents relitigation of both those issues actually decided and those issues that could have been decided.*Id.*

With respect to issue preclusion, "if an issue of fact or law was actually litigated and determined by a valid and final judgment, the determination is conclusive in a subsequent action between the parties."*Id.* (citations and internal quotations omitted). Issue preclusion only applies to matters that were actually decided. *Id.* The applicable test for issue preclusion is as follows:

(1) the issue decided in the prior litigation must be identical to the issue presented in the current action; (2) the initial ruling must have been on the merits and have become final; and (3) the party against whom the judgment is asserted must have been a party or in privity with a party to the prior litigation.

Executive Mgmt., LTD. v. Ticor Title Ins. Co., 823 P.2d 465, 835 (Nev.1998).

Here, the court finds that this action is not barred by either issue preclusion or claim preclusion. It is undisputed that NFHC was not a party to the state court judgment. Furthermore, there is no evidence that NFHC was in privity with any party to the state court proceeding or had a relationship of substantial identity with a party to those proceedings. *See Paradise Palms Community Ass'n v. Paradise Homes*, 505 P.2d 596, 599 (Nev.1973) (With respect to claim preclusion, "[a] privy is one who, after rendition of the judgment, has acquired an interest in the subject matter affected by the judgment through or under one of the parties, as by inheritance, succession, or purchase.").

F. Clark County's New Ordinance

*7 As previously mentioned, Clark County has recently enacted a new group home ordinance. Clark County is seeking summary judgment on its Counter-Claim for a judgment declaring the new group home regulations in compliance with the Fair Housing Act. However, at this time, Clark County has not demonstrated an actual controversy relating to the recently enacted ordinance that would warrant declaratory relief.

G. Clark County's Group Home Ordinance

NFHC is seeking partial summary adjudication arguing that the Clark County group home ordinance is facially discriminatory because "it provides that six non-disabled, unrelated adults may live together at *any* location without acquiring any permit, while *no* group of three to six disabled, unrelated adults may live together within 1500 feet of an existing group home without obtaining a special use permit."(Pl.'s Mot. for Partial Summ. Adjudication (# 30) at 10.) Therefore, according to NFHC, groups of three to six disabled, unrelated adults are treated differently by the terms of the code than groups of three to six non-disabled, unrelated adults. As a result, NFHC argues that the ordinance violates 42 U.S.C. §§ 3604(f)(1) and 3604(c). Defendants Clark County and Barbara Ginoulias ("Defendants") oppose NFHC's motion arguing that NFHC misinterprets the county ordinance at issue. Alternatively, Defendants argue that a legitimate non-discriminatory reason exists for Clark County's group home regulations. In addition, Defendants argue that NFHC lacks standing to assert a discrimination claim.

Pursuant to Section 278.021(4) of the Nevada Revised Statutes, a county whose population is 100,000 or more is required to "establish by ordinance a minimum distance between residential establishments that is at least 660 feet but not more than 1,500 feet."Nev.Rev.Stat. § 278.021(4). A "residential establishment" is defined as "a home for individual residential care in a county whose population is 100,000 or more, a halfway house for recovering alcohol and drug abusers or a residential facility for groups."Nev.Rev.Stat. § 278.021(7)(d).

On January 17, 2001, Clark County enacted zoning restrictions on the location of group homes. At the time relevant to this litigation, Section 30.44.020 of the Clark County Code provided that a group home "[m]ust maintain a minimum separation of 1500 feet (measured radially) from any existing group home ... (See NRS 278.021). If a special use permit is submitted to waive this standard, the Commission or Board shall approve the use permit if" several requirements are met. Clark County Code § 30.44.020. Section 4 of the group home ordinance provides that group homes "[m]ust be licensed or certified by the Nevada State Department of Human Resources prior to commencing the use if required. A business license and/or building permit may be issued prior to state approval ."*Id.* Section 30.08.030 defines group home as,

> a dwelling unit in which more than two disabled adults (unless the disabled adults are related within the third degree of consanguinity) reside, which may include house parents or guardians and persons related to the house parents or guardians within the third degree of consanguinity, who need not be related to any of the disabled adults.

*8 Clark County Code § 30.08.030. According to the code,"[d]isabled" means, with respect to a person, a physical or mental impairment that substantially limits one (1) or more of such person's major life activities, having a record of such an impairment and/or being regarded as having such an impairment. This term does not include current illegal use or of addiction to a controlled substance (see "Family").

Id. The Clark County Code further states that, "[i]n no case shall more than six adults occupy a dwelling."Clark County Code § 30.56.130. However, "[t]he Commission or Board may consider increasing the occupancy standards for handicapped adults with the approval of a special use permit, subject to the standards listed in Table 30.44-1 for group homes."*Id.* Section 3 of the group home ordinance discusses the occupancy standard and provides, "there will be adequate parking based

on the number of occupants physically or mentally capable of operating an automobile as well as automobiles expected to be utilized by staff regularly managing or serving the occupants."Clark County Code § 30.44.020.

The Fair Housing Act provides, in part,

it shall be unlawful ... [t]o discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of-(A) that buyer or renter, (b) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or (C) any person associated with that buyer or renter.

42 U.S.C. § 3604(f)(1).Section 3604(c) provides,it shall be unlawful ... [t]o make, print, or publish or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.

42 U.S.C. § 3604(c). The act defines "handicap" to meanwith respect to a person-(1) a physical or mental impairment which substantially limits one or more of such person's major life activities, (2) a record of having such an impairment, or (3) being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance.

42 U.S.C. § 3602(h).

In the present motion, NFHC is making a facial challenge to the Clark County ordinance. A facially discriminatory policy is one which on its face applies less favorably to a protected group." *Community House, Inc. v. City of Boise, Idaho,* 468 F.3d 1118, 1123 (9th Cir.2006) (citing *Frank v. United Airlines, Inc.,* 216 F.3d 845, 854 (9th Cir.2000))."With regard to facially discriminatory housing policies, ... 'a plaintiff makes out a prima facie case of intentional discrimination under the [Fair Housing Act] merely by showing that a protected group has been subjected to explicitly differential-i.e. discriminatory-treatment.' " *Id.* at 1125 (citing *Bangerter v. Orem City Corp.,* 46 F.3d 1491, 1501 n. 16 (10th Cir.1995)). "To allow the circumstance of facial discrimination ..., a defendant 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, rather than being based on stereotypes." *Id.* (citations omitted).

*9 In the case at bar, the court finds that Clark County's group home ordinance is facially discriminatory. The ordinance explicitly discriminates against disabled adults by implementing a spacing requirement that does not apply to similarly situated non-disabled adults. As discussed above, the ordinance defines a "group home" as a dwelling unit in which more than two unrelated disabled adults reside. Clark County Code § 30.08.030. Therefore, the express terms of the group home ordinance prevents more than two unrelated-disabled adults, without a use permit, from living together within 1,500 feet of another dwelling in which more than two other unrelated-disabled adults reside. Clark County Code § 30.44.020. There is no provision, however, that would prevent more than two unrelated non-disabled adults from living within 1,500 feet of a dwelling in which more than two other unrelated non-disabled adults reside.

In opposition to the motion, Clark County argues that the ordinance applies only to "group home operators, that is, establishments in the business of providing housing and services to dependent disabled persons."(Clark County's Opp'n to Pl.'s Mot. for Partial Summ. Adjudication (# 37) at 2.) The court disagrees. Although Section 30.44.020 makes a reference to Section 278.021 of the Nevada Revised Statutes, there is nothing in the ordinance that limits its application to establishments in the business of providing housing and services to dependent disabled persons. Moreover, Section 278.021 of the Nevada Revised Statutes does not define the term "group home" nor does the Clark County ordinance incorporate any provision of the Nevada Revised Statutes.

Similarly, the court finds no support for Clark County's position in either section 3 or 4 of the ordinance. Section 4 of the group home ordinance provides that the group home "[m]ust be licensed or certified by the Nevada State Department of Human Resources prior to commencing the use *if required.*"Clark County Code § 30.44.020 (emphasis added). Thus, section 4 of the ordinance does not mandate the licensing of all group homes. Section 4 only mandates that the group home be licenced or certified "if required." Finally, the court finds that the language of section 3, providing that adequate parking is available for staff regularly managing or serving the occupants, does not limit the scope of the ordinance to a group home business. There is nothing in Section 4 that requires group homes to employ staff members. *See* Clark County Code § 30.44.020.

Because the ordinance at issue is facially discriminatory, summary judgement is appropriate unless Clark County can show that the restriction benefits the disabled or that it responds to legitimate safety concerns raised by the individuals affected. *Community House, Inc.*, 468 F.3d at 1125. Clark County argues that the spacing requirement is justified in order to comply with the mandate of the state of Nevada. In addition, Clark County argues that the group home ordinance promotes the goel of preventing the clustering of group homes in certain areas. The court finds neither justification sufficient to show that the ordinance benefits the disabled or that it responds to a legitimate safety concern.

***10** With respect to the Nevada mandate, the court notes that the issue of whether Section 278.021 of the Nevada Revised Statutes complies with the Fair Housing Act is not before the court. Nevertheless, the Clark County Ordinance does not track the language of Section 278.021. In fact, Section 278.021 does not refer to the term "group home." Nev.Rev.Stat. § 278.021. Moreover, Section 278.021 does not require Clark County to treat more than two unrelated disabled adults living together differently from more than two unrelated non-disabled adults living together. Finally, Clark County has not presented evidence that its ordinance promotes deinstitutionalization.

H. NFHC's Request for Judicial Notice

NFHC has filed a request for judicial notice of a Clark County ordinance, Clark County Code, and sections of the Nevada Revised Statutes. Rule 201 of the Federal Rules of Evidence provides for judicial notice of adjudicative facts. Fed.R.Evid. 201. "A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."Fed.R.Evid. 201(b). While the court appreciates courtesy copies of the ordinance at issue, "the manner in which law is fed into the judicial process is never a proper concern of the rules of evidence but rather the rules of procedure."Fed.R.Evid. 201 advisory committee's note. Therefore, NFHC's request is denied. Nevertheless, the court will determine and apply the applicable law relevant to this case.

IV. Conclusion

Based on the foregoing discussion, the Clark County Code provisions at issue in this case violate the Fair Housing Act by discriminating against individuals with disabilities.

IT IS THEREFORE ORDERED that NFHC's Motion for Partial Summary Adjudication (# 30) is hereby GRANTED.

IT IS FURTHER ORDERED that Clark County's Motion for Summary Judgment (# 29) is hereby DENIED.

IT IS FURTHER ORDERED that NFHC's motion to strike (# 55) is hereby DENIED.

IT IS FURTHER ORDERED that the parties shall have thirty (30) days from the date of this order within which to lodge with the court a proposed written joint pretrial order.

IT IS SO ORDERED.

D.Nev.,2007.
Nevada Fair Housing Center, Inc. v. Clark County
Slip Copy, 2007 WL 610640 (D.Nev.), 34 NDLR P 99

END OF DOCUMENT

JOINT STATEMENT OF THE DEPARTMENT OF JUSTICE AND THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

GROUP HOMES, LOCAL LAND USE, AND THE FAIR HOUSING ACT

Since the federal Fair Housing Act ("the Act") was amended by Congress in 1988 to add protections for persons with disabilities and families with children, there has been a great deal of litigation concerning the Act's effect on the ability of local governments to exercise control over group living arrangements, particularly for persons with disabilities. The Department of Justice has taken an active part in much of this litigation, often following referral of a matter by the Department of Housing and Urban Development ("HUD"). This joint statement provides an overview of the Fair Housing Act's requirements in this area. Specific topics are addressed in more depth in the attached Questions and Answers.

The Fair Housing Act prohibits a broad range of practices that discriminate against individuals on the basis of race, color, religion, sex, national origin, familial status, and disability.[1] The Act does not pre-empt local zoning laws. However, the Act applies to municipalities and other local government entities and prohibits them from making zoning or land use decisions or implementing land use policies that exclude or otherwise discriminate against protected persons, including individuals with disabilities.

The Fair Housing Act makes it unlawful --

- To utilize land use policies or actions that treat groups of persons with disabilities less favorably than groups of non-disabled persons. An example would be an ordinance prohibiting housing for persons with disabilities or a specific type of disability, such as mental illness, from locating in a particular area, while allowing other groups of unrelated individuals to live together in that area.

- To take action against, or deny a permit, for a home because of the disability of individuals who live or would live there. An example would be denying a building permit for a home because it was intended to provide housing for persons with mental retardation.
- To refuse to make reasonable accommodations in land use and zoning policies and procedures where such accommodations may be necessary to afford persons or groups of persons with disabilities an equal opportunity to use and enjoy housing.

- What constitutes a reasonable accommodation is a case-by-case determination.
- Not all requested modifications of rules or policies are reasonable. If a requested modification imposes an undue financial or administrative burden on a local government, or if a modification creates a fundamental alteration in a local government's land use and zoning scheme, it is not a "reasonable" accommodation.

The disability discrimination provisions of the Fair Housing Act do not extend to persons who claim to be disabled solely on the basis of having been adjudicated a juvenile delinquent, having

a criminal record, or being a sex offender. Furthermore, the Fair Housing Act does not protect persons who currently use illegal drugs, persons who have been convicted of the manufacture or sale of illegal drugs, or persons with or without disabilities who present a direct threat to the persons or property of others.

HUD and the Department of Justice encourage parties to group home disputes to explore all reasonable dispute resolution procedures, like mediation, as alternatives to litigation.

DATE: AUGUST 18, 1999

Questions and Answers

on the Fair Housing Act and Zoning

Q. Does the Fair Housing Act pre-empt local zoning laws?

No. "Pre-emption" is a legal term meaning that one level of government has taken over a field and left no room for government at any other level to pass laws or exercise authority in that area. The Fair Housing Act is not a land use or zoning statute; it does not pre-empt local land use and zoning laws. This is an area where state law typically gives local governments primary power. However, if that power is exercised in a specific instance in a way that is inconsistent with a federal law such as the Fair Housing Act, the federal law will control. Long before the 1988 amendments, the courts had held that the Fair Housing Act prohibited local governments from exercising their land use and zoning powers in a discriminatory way.

Q. What is a group home within the meaning of the Fair Housing Act?

The term "group home" does not have a specific legal meaning. In this statement, the term "group home" refers to housing occupied by groups of unrelated individuals with disabilities.[(2)] Sometimes, but not always, housing is provided by organizations that also offer various services for individuals with disabilities living in the group homes. Sometimes it is this group home operator, rather than the individuals who live in the home, that interacts with local government in seeking permits and making requests for reasonable accommodations on behalf of those individuals.

The term "group home" is also sometimes applied to any group of unrelated persons who live together in a dwelling -- such as a group of students who voluntarily agree to share the rent on a house. The Act does not generally affect the ability of local governments to regulate housing of this kind, as long as they do not discriminate against the residents on the basis of race, color, national origin, religion, sex, handicap (disability) or familial status (families with minor children).

Q. Who are persons with disabilities within the meaning of the Fair Housing Act?

The Fair Housing Act prohibits discrimination on the basis of handicap. "Handicap" has the same legal meaning as the term "disability" which is used in other federal civil rights laws.

Persons with disabilities (handicaps) are individuals with mental or physical impairments which substantially limit one or more major life activities. The term mental or physical impairment may include conditions such as blindness, hearing impairment, mobility impairment, HIV infection, mental retardation, alcoholism, drug addiction, chronic fatigue, learning disability, head injury, and mental illness. The term major life activity may include seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, speaking, or working. The Fair Housing Act also protects persons who have a record of such an impairment, or are regarded as having such an impairment.

Current users of illegal controlled substances, persons convicted for illegal manufacture or distribution of a controlled substance, sex offenders, and juvenile offenders, are not considered disabled under the Fair Housing Act, by virtue of that status.

The Fair Housing Act affords no protections to individuals with or without disabilities who present a direct threat to the persons or property of others. Determining whether someone poses such a direct threat must be made on an individualized basis, however, and cannot be based on general assumptions or speculation about the nature of a disability.

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.

Q. What is a reasonable accommodation under the Fair Housing Act?

As a general rule, the Fair Housing Act makes it unlawful to refuse to make "reasonable accommodations" (modifications or exceptions) to rules, policies, practices, or services, when

such accommodations may be necessary to afford persons with disabilities an equal opportunity to use or enjoy a dwelling.

Even though a zoning ordinance imposes on group homes the same restrictions it imposes on other groups of unrelated people, a local government may be required, in individual cases and when requested to do so, to grant a reasonable accommodation to a group home for persons with disabilities. For example, it may be a reasonable accommodation to waive a setback requirement so that a paved path of travel can be provided to residents who have mobility impairments. A similar waiver might not be required for a different type of group home where residents do not have difficulty negotiating steps and do not need a setback in order to have an equal opportunity to use and enjoy a dwelling.

Not all requested modifications of rules or policies are reasonable. Whether a particular accommodation is reasonable depends on the facts, and must be decided on a case-by-case basis. The determination of what is reasonable depends on the answers to two questions: First, does the request impose an undue burden or expense on the local government? Second, does the proposed use create a fundamental alteration in the zoning scheme? If the answer to either question is "yes," the requested accommodation is unreasonable.

What is "reasonable" in one circumstance may not be "reasonable" in another. For example, suppose a local government does not allow groups of four or more unrelated people to live together in a single-family neighborhood. A group home for four adults with mental retardation would very likely be able to show that it will have no more impact on parking, traffic, noise, utility use, and other typical concerns of zoning than an "ordinary family." In this circumstance, there would be no undue burden or expense for the local government nor would the single-family character of the neighborhood be fundamentally altered. Granting an exception or waiver to the group home in this circumstance does not invalidate the ordinance. The local government would still be able to keep groups of unrelated persons without disabilities from living in single-family neighborhoods.

By contrast, a fifty-bed nursing home would not ordinarily be considered an appropriate use in a single-family neighborhood, for obvious reasons having nothing to do with the disabilities of its residents. Such a facility might or might not impose significant burdens and expense on the community, but it would likely create a fundamental change in the single-family character of the neighborhood. On the other hand, a nursing home might not create a "fundamental change" in a neighborhood zoned for multi-family housing. The scope and magnitude of the modification requested, and the features of the surrounding neighborhood are among the factors that will be taken into account in determining whether a requested accommodation is reasonable.

Q. What is the procedure for requesting a reasonable accommodation?

Where a local zoning scheme specifies procedures for seeking a departure from the general rule, courts have decided, and the Department of Justice and HUD agree, that these procedures must ordinarily be followed. If no procedure is specified, persons with disabilities may, nevertheless, request a reasonable accommodation in some other way, and a local government is obligated to grant it if it meets the criteria discussed above. A local government's failure to respond to a

request for reasonable accommodation or an inordinate delay in responding could also violate the Act.

Whether a procedure for requesting accommodations is provided or not, if local government officials have previously made statements or otherwise indicated that an application would not receive fair consideration, or if the procedure itself is discriminatory, then individuals with disabilities living in a group home (and/or its operator) might be able to go directly into court to request an order for an accommodation.

Local governments are encouraged to provide mechanisms for requesting reasonable accommodations that operate promptly and efficiently, without imposing significant costs or delays. The local government should also make efforts to insure that the availability of such mechanisms is well known within the community.

Q. When, if ever, can a local government limit the number of group homes that can locate in a certain area?

A concern expressed by some local government officials and neighborhood residents is that certain jurisdictions, governments, or particular neighborhoods within a jurisdiction, may come to have more than their "fair share" of group homes. There are legal ways to address this concern. The Fair Housing Act does not prohibit most governmental programs designed to encourage people of a particular race to move to neighborhoods occupied predominantly by people of another race. A local government that believes a particular area within its boundaries has its "fair share" of group homes, could offer incentives to providers to locate future homes in other neighborhoods.

However, some state and local governments have tried to address this concern by enacting laws requiring that group homes be at a certain minimum distance from one another. The Department of Justice and HUD take the position, and most courts that have addressed the issue agree, that density restrictions are generally inconsistent with the Fair Housing Act. We also believe, however, that if a neighborhood came to be composed largely of group homes, that could adversely affect individuals with disabilities and would be inconsistent with the objective of integrating persons with disabilities into the community. Especially in the licensing and regulatory process, it is appropriate to be concerned about the setting for a group home. A consideration of over-concentration could be considered in this context. This objective does not, however, justify requiring separations which have the effect of foreclosing group homes from locating in entire neighborhoods.

Q. What kinds of health and safety regulations can be imposed upon group homes?

The great majority of group homes for persons with disabilities are subject to state regulations intended to protect the health and safety of their residents. The Department of Justice and HUD believe, as do responsible group home operators, that such licensing schemes are necessary and legitimate. Neighbors who have concerns that a particular group home is being operated inappropriately should be able to bring their concerns to the attention of the responsible licensing agency. We encourage the states

to commit the resources needed to make these systems responsive to resident and community needs and concerns.

Regulation and licensing requirements for group homes are themselves subject to scrutiny under the Fair Housing Act. Such requirements based on health and safety concerns can be discriminatory themselves or may be cited sometimes to disguise discriminatory motives behind attempts to exclude group homes from a community. Regulators must also recognize that not all individuals with disabilities living in group home settings desire or need the same level of services or protection. For example, it may be appropriate to require heightened fire safety measures in a group home for people who are unable to move about without assistance. But for another group of persons with disabilities who do not desire or need such assistance, it would not be appropriate to require fire safety measures beyond those normally imposed on the size and type of residential building involved.

Q. Can a local government consider the feelings of neighbors in making a decision about granting a permit to a group home to locate in a residential neighborhood?

In the same way a local government would break the law if it rejected low-income housing in a community because of neighbors' fears that such housing would be occupied by racial minorities, a local government can violate the Fair Housing Act if it blocks a group home or denies a requested reasonable accommodation in response to neighbors' stereotypical fears or prejudices about persons with disabilities. This is so even if the individual government decision-makers are not themselves personally prejudiced against persons with disabilities. If the evidence shows that the decision-makers were responding to the wishes of their constituents, and that the constituents were motivated in substantial part by discriminatory concerns, that could be enough to prove a violation.

Of course, a city council or zoning board is not bound by everything that is said by every person who speaks out at a public hearing. It is the record as a whole that will be determinative. If the record shows that there were valid reasons for denying an application that were not related to the disability of the prospective residents, the courts will give little weight to isolated discriminatory statements. If, however, the purportedly legitimate reasons advanced to support the action are not objectively valid, the courts are likely to treat them as pretextual, and to find that there has been discrimination.

For example, neighbors and local government officials may be legitimately concerned that a group home for adults in certain circumstances may create more demand for on-street parking than would a typical family. It is not a violation of the Fair Housing Act for neighbors or officials to raise this concern and to ask the provider to respond. A valid unaddressed concern about inadequate parking facilities could justify denying the application, if another type of facility would ordinarily be denied a permit for such parking problems. However, if a group of individuals with disabilities or a group home operator shows by credible and unrebutted evidence that the home will not create a need for more parking spaces, or submits a plan to provide whatever off-street parking may be needed, then parking concerns would not support a decision to deny the home a permit.

Q. What is the status of group living arrangements for children under the Fair Housing Act?

In the course of litigation addressing group homes for persons with disabilities, the issue has arisen whether the Fair Housing Act also provides protections for group living arrangements for children. Such living arrangements are covered by the Fair Housing Act's provisions prohibiting discrimination against families with children. For example, a local government may not enforce a zoning ordinance which treats group living arrangements for children less favorably than it treats a similar group living arrangement for unrelated adults. Thus, an ordinance that defined a group of up to six unrelated adult persons as a family, but specifically disallowed a group living arrangement for six or fewer children, would, on its face, discriminate on the basis of familial status. Likewise, a local government might violate the Act if it denied a permit to such a home because neighbors did not want to have a group facility for children next to them.

The law generally recognizes that children require adult supervision. Imposing a reasonable requirement for adequate supervision in group living facilities for children would not violate the familial status provisions of the Fair Housing Act.

Q. How are zoning and land use matters handled by HUD and the Department of Justice?

The Fair Housing Act gives the Department of Housing and Urban Development the power to receive and investigate complaints of discrimination, including complaints that a local government has discriminated in exercising its land use and zoning powers. HUD is also obligated by statute to attempt to conciliate the complaints that it receives, even before it completes an investigation.

In matters involving zoning and land use, HUD does not issue a charge of discrimination. Instead, HUD refers matters it believes may be meritorious to the Department of Justice which, in its discretion, may decide to bring suit against the respondent in such a case. The Department of Justice may also bring suit in a case that has not been the subject of a HUD complaint by exercising its power to initiate litigation alleging a "pattern or practice" of discrimination or a denial of rights to a group of persons which raises an issue of general public importance.

The Department of Justice's principal objective in a suit of this kind is to remove significant barriers to the housing opportunities available for persons with disabilities. The Department ordinarily will not participate in litigation to challenge discriminatory ordinances which are not being enforced, unless there is evidence that the mere existence of the provisions are preventing or discouraging the development of needed housing.

If HUD determines that there is no reasonable basis to believe that there may be a violation, it will close an investigation without referring the matter to the Department of Justice. Although the Department of Justice would still have independent "pattern or practice" authority to take enforcement action in the matter that was the subject of the closed HUD investigation, that would be an unlikely event. A HUD or Department of Justice decision not to proceed with a zoning or land use matter does not foreclose private plaintiffs from pursuing a claim.

Litigation can be an expensive, time-consuming, and uncertain process for all parties. HUD and the Department of Justice encourage parties to group home disputes to explore all reasonable alternatives to litigation, including alternative dispute resolution procedures, like mediation. HUD attempts to conciliate all Fair Housing Act complaints that it receives. In addition, it is the Department of Justice's policy to offer prospective defendants the opportunity to engage in pre-suit settlement negotiations, except in the most unusual circumstances.

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1. The Fair Housing Act uses the term "handicap." This document uses the term "disability" which has exactly the same legal meaning.

2. There are groups of unrelated persons with disabilities who choose to live together who do not consider their living arrangements "group homes," and it is inappropriate to consider them "group homes" as that concept is discussed in this statement.

February 6, 2008

AINA HAINA COMMUNITY ASSOCIATION -1966-

Aina Haina Library
5246 Kalaniianaole Highway
Honolulu, HI 96821

Via Fax (808) 586-6659

Senator Suzanne Chun-Oakland, Chair
Senator Les Ihara, Jr, Vice-Chair
Senate Committee on Human Services & Public Housing
State Capitol, 415 So. Beretania St.
Honolulu, Hawaii 96813

Dear Senators Chun-Oakland, and Ihara:

Re **Support for SB 2930 and SB 2793**
Relating to Adult Residential Care Homes (ARCHs)
Date: Thursday, February 7, 2008
Time: 1:15 pm.
Place: State Capitol, Conference Room 016

I am writing to **strongly support SB 2793 and SB 2930**, on behalf of the **Aina Haina Community Association (AHCA)** which represents nearly 1600 Aina Haina households, in East Oahu, for the past four decades.

First of all, the Aina Haina Community Association recognizes and supports the statewide policy of decentralizing Adult Residential Care via Adult Residential Care Homes (ARCHs), Type 1 in residential communities. We are proud that many Aina Haina ARCH Type 1 (resident-owner) residential care home resident-owners have and continue to provide safe, and loving community based long term health care for our many kapuna, our physically and mentally challenged neighbors, beyond the confines of large institutional settings.

Secondly, the Aina Haina Community Association endorses and supports the language in both SB 2793 and SB 2930 regarding balancing the substantial need for community-based residential care versus the unintended consequences of the pending wave of ARCHs approaching single family residentially zoned neighborhoods.

Thirdly, the AHCA supports the proposed legislative amendments regarding Adult Residential Care Homes-Licensing described in Hawaii Revised Statutes (H.R.S.) Sec. 321-15.6(b)(3) proposing a one thousand foot zone between group living facilities, applying to ARCH type I and ARCH type II homes as carefully allowing and balancing the various ARCH and Residential uses with R-7 urban zones within the State of Hawaii.

Lastly, the legislative committee history surrounding adoption of Sec. 321-15.6 reflects former City Department of Land Utilization director John Whalen (1985-1989) supported a minimum distance standard among group facilities and ARCHs. As a consequence, former State Department of Health's director Elizabeth Anderson promised to promulgate and adopt minimum distance standards via administrative agency rules. Despite Director Anderson's oral promises to concerned State legislators, no minimum distance standards were ever adopted by the State Department of Health.

In summary, the **Aina Haina Community Association supports and strongly urges your Committee's passage of SB 2793 and SB 2930.**

If additional information is needed, please feel free to contact me by phone 599-8844 or by email waysonc@aol.com, at any time.

Sincerely,

Wayson Chow

Wayson Chow, President
Aina Haina Community Association

testimony

From: Jackie Scott [jnscott@punahou.edu]
Sent: Wednesday, February 06, 2008 12:58 PM
To: testimony
Subject: SB2930

Senate Committee on Human Services & Public Housing

Dear Chairperson Suzanne Chun-Oakland, Vice Chairperson Les Ihara & Committee members,

Although I am in favor of ARCHs in neighborhoods, to preserve that neighborhood atmosphere and harmony, I urge you to support SB2930 to create distance standards between these facilities.

Please Pass SB2930.

Thank you and Aloha,

Jackie Scott
2743 Ferdinand Avenue
Honolulu, HI 96822
Feb. 6, 2008

Transmittal Cover - Saari
testimony@Capitol.hawaii.gov

Testifier's Name: James T. Saari, Resident

Committee: COMMITTEE ON HUMAN SERVICES & HOUSING

Date/Time of Hearing: February 7, 2008, 1:15 pm Conference Room 016

Measure #: SB 2930

Number of copies committee requesting: 1

Testimony:
Senators Oakland and Ihara and other members of the Hawaii State Senate, Committee on Human Services and Public Housing.

Thank you for the opportunity to testify in support of SB 2930, which clarifies requirements for Adult Residential Care Homes.

I firmly support this bill providing that licenses shall not be granted to type I and type II adult residential care homes that are located within 1000 feet of a type I or type II adult residential care home or a group living facility as defined by county ordinance.

I also support the concept of setting a limit on the impact and density of such ARCH facilities on residential neighborhoods. I would point out that our neighborhood on Maunalani Circle in Kaimuki already has Maunalani Nursing and Rehabilitation Center with 101 approved beds at 5113 Maunalani Circle, This is less than 1000 feet from the proposed new ARCH(s).

Sincerely,
James T. Saari

testimony

From: Linda LeGrande [mohalaway@hawaii.rr.com]

Sent: Wednesday, February 06, 2008 7:11 AM

To: testimony

Cc: Rep. Kirk Caldwell; Kirk Caldwell (a&w); Sen. Sam Slom; Sen. Suzanne Chun Oakland; Sen. Les Ihara, Jr.; Sen. Colleen Hanabusa; Sen. Brian Taniguchi; akobayashi@co.honolulu.hi.us

Subject: testimony on SB2930, relating to ARCHs on 2/7/08

Senate Committee on Human Services & Public Housing
Senate Bill 2930, Relating to Adult Residential Care Homes
Thursday, February 7, 2008 at 1:15 pm, Conference Room 016, State Capitol

Dear Chairperson Suzanne Chun Oakland, Vice Chairperson Les Ihara and Committee members,

I urge you to support SB 2930 because there should be a distance standard between ARCH facilities in neighborhoods.

Having grown up in Foster Village in a military family, I have watched the proliferation of care homes in that neighborhood for over 40 years. A brother still lives in the family home and when visiting, I observe an uncomfortable density there in what used to be a nice, single family neighborhood with trees and gracious setbacks of the houses. Now there are oversized homes, lot line to lot line concrete parking areas and cars, cars, cars. Many of these homes are care facilities and they have changed the character of the neighborhood in a very detrimental way.

Another brother is 60% disabled and lives in a group home in Kalihi where the presence of care homes is also widely felt. The density of homes, concrete parking and parked cars is apparent throughout Kalihi Valley. With a family member in a group home, the need for facilities for our aging population is very personal for me.

I live in Manoa on a very narrow street that used to be a service alley and which has parking on only one side of the street. In 2002 an ARCH for 5 patients began operating right across the street from me and we now have density and traffic disrupting our lives on a daily basis. The owners of this facility are now adding 5-8 additional beds and I can only imagine what this will do to the tranquility of the neighborhood.

Less than 2 blocks from this Manoa ARCH are 3 contiguous lots, each with a care facility for 8 patients. The owner of these 3 lots has already approached at least one of her neighbors to buy their property should they ever want to sell. Just within the past couple of months, right across the street from that complex, a neighbor has reconstructed his home as another facility. And two blocks away, a lot was subdivided and 2 homes, each housing 8 patients, have operated as an ARCH for over 5 years.

I understand and support the need for care homes and group living facilities in our state. But at the same time it is important to recognize the long-range effects of a narrow, property-by-property interpretation of the planning and permitting laws. Such an interpretation will undoubtably promote the negative proliferation of ARCHs if some master planning is not implemented soon as the disappearance of traditional residential neighborhoods will certainly result.

John Whalen, past director of the Department of Land Utilization, testified at the legislature in 1986 or 1987 (in hopes of amending the statute) that there should be minimum distance standards between these care homes because they tend to be larger than a typical single-family residence. At that time, the adverse effects of having a concentration of ARCHs on residential streets was already beginning to be evident in certain neighborhoods of Waipahu and Kalihi. The head of licensing of DOH appeared at the same hearing and convinced the committee that her department would develop distance standards through administrative rules, so the statute was not amended. THIS WAS NEVER DONE !! (The DOH official left the position within a year of the hearing.)

Nobody thought that these care home developers would build contiguous mega-complexes on one block when the land use rules were created to house and care for our seniors in our neighborhoods. It is a sad day when people aren't allowed the quiet enjoyment of their own homes because private commercial activities are densely operating 24/7. My issue is with the unplanned concentration of these facilities. I feel a 1000 foot distance standard would address some of the resultant problems of these (much needed) facilities being operated in our residential neighborhoods.

I respectfully ask that you pass SB2930 ...

Thank you,

Linda LeGrande
2243 Mohala Way, Honolulu, HI 96822
947-7400
2/5/08

College Hills' historic and residential character, not to say its safety, will become less and less sustainable with the increase in clustered ARCHs. Remember the original point about aging in place in a RESIDENTIAL community? This is completely undermined by the creation of a complex of buildings that one of our neighbors has called "Queen's Hospital East." From the corner of McKinley Street and Linohau Way, there are three adjoining ARCHs on one side and diagonally across from these another ARCH is in the making. These care-home owners have also approached several other adjacent neighbors about selling their homes for acquisition and conversion into yet more side-by-side care homes. Where is the tipping point? When will some balance be created by our elected officials?

Not only has the residential character of the neighborhood been steadily eroded against the onslaught of greedy ARCH owners, but the health and safety of our kupuna is also at risk. Imagine an emergency evacuation on a substandard street with eight aged residents needing to flee a fire. Now multiply that by two or three (or more!) and the magnitude of the danger becomes clear. Or try this: imagine an epidemic of bird flu and how quickly shared staff, materials and common grounds would allow this public health menace to spread to other, more vulnerable, elderly patients with devastating impact.

Let's be honest here: the only reason that the ARCH owners cluster their Adult Residential Care Homes is to create an economy of scale. When ARCH owners are confronted with letters to the editor or petitions that ask ONLY for a distance standard (not the elimination of care homes in residential areas), they charge the College Hills community with being selfish, anti-elderly, and Not-In-My-Back-Yard (NIMBY). What a creative distortion of the truth! Their economy of scale allows the same ARCH support staff to work in all of the owner's properties. Even though shared staff is clearly against the DPP's published rules; it has been observed repeatedly and with impunity in College Hills. DPP's enforcement of these rules has been, in a word, non-existent. The DPP itself acknowledged in a rare meeting with concerned residents that it does not have the staff to inspect these ARCHs regularly, if at all. That is now. What happens when even more care homes are further concentrated in the neighborhood?

It's simple, really: the institution of a distance standard both protects our kupunas' health and safety AND it preserves the residential character of all of O'ahu's neighborhoods. Furthermore, such a standard will protect the safety of property. In fact, a distance standard of 3,000 feet might be more appropriate for safety and health reasons. We urge legislators to consider an even greater distance standard.

There is currently no legislation in place that protects residential neighborhoods in Hawaii from the greed of ARCH owners who place our beloved kupuna at risk. Nor is there a law that establishes a balance of well-managed care homes nestled in a **sustainable** way among residents who value truly good neighbors. Let's have the foresight as a community to protect our elderly and our residential way of life on this beautiful island.

Please do the pono thing. **Please pass SB 2930.**

Sincerely,
Eugene P. Vricella
2885 Kalawao St. (Manoa)
Honolulu, HI 96822

Senate Committee on Human Services and Public Housing
Senate Bill 2930 Relating to Adult Residential Care Homes
1:15 pm, Thursday, February 7, 2008; Conference Room 016 of the Hawai'i State Capitol

Dear Chairperson Suzanne Chun Oakland, Vice Chairperson Les Ihara, and Committee Members,

I am testifying in favor of SB 2930.

As a Manoa resident, I am deeply concerned about public health and safety of the elderly in these homes, and how rapidly the character of historic Manoa has been deteriorating because of the clustered growth of adjacent Adult Residential Care Homes (ARCHs), without public hearings or community input.

Many neighbors of the College Hills tract have been meeting over the past year with growing alarm. All of the Manoa neighbors with whom I have spoken, and the more than 100 people who signed the petitions I took from house to house last year in favor of further study of the ARCH question, have overwhelmingly embraced the concept that Hawaii's elderly should have the option, indeed the right, to age in place in a residential community. No one feels that they should be simply warehoused in an institutionalized setting. We care deeply about our kupuna and respect them, which is why we believe they deserve to be protected from unscrupulous ARCH owners, one of whom, for example, purchased three adjoining houses in one block to convert them into maximum-capacity, type II Adult Residential Care Homes.

The original intent of allowing a single-family residence to be converted into an ARCH was to enable the elderly to age in place in a residential setting. When local officials first met to establish the rules for single-family homes to be converted into care homes, where eight non-related individuals could legally live along with a resident manager, John Whalen, who was then director of the Department of Land Use (the predecessor of the current Department of Permitting and Planning [DPP]), suggested that a minimum distance be instituted between these homes in recognition of their increased impact on the neighborhood. This impact includes Handivan pick-ups and drop-offs, staff arriving and departing for their shifts, delivery of food, medicine, and other supplies to the ARCH, family visitors, and unfortunately, frequent ambulance and other emergency vehicle visits. Elizabeth Anderson, who was then the director of the Department of Health (DOH), suggested that setting a distance standard was unnecessary because that could be addressed by administrative rules. Creating the administrative rule that would establish a distance standard between ARCHs was never accomplished. This failure has led to the loophole that allows unscrupulous ARCH owners in College Hills to acquire house after house, creating clusters of ARCHS that have already had a tremendous negative impact on the historic neighborhood.

There are substandard streets, such as Linohau Way and Mohala Way, which were designed to be alleyways, not major thoroughfares where two cars cannot pass each other in opposite directions. Yet on Linohau Way, there are three ARCHs clustered together (8 residents x 3 = 24 patients!), which create too much traffic for that narrow alley. There is also an over-sized ARCH on Mohala Way, the traffic for which has at times blocked residents from leaving their homes. That same ARCH has generated medical waste that has been found on neighbors' properties in what was once a clean and safe neighborhood.

Senate Committee on Human Services and Public Housing Senate Bill 2930 Relating to Adult Residential Care Homes.
Thursday, February 7, 2008 at 1:15 p.m., in Conference Room 016 of the State Capitol.

Dear Chairperson Suzanne Chun Oakland, Vice Chairperson Les Ihara, and Committee Members,

I am testifying in favor of SB 2930.

I first moved to Manoa in 1966. I was drawn to the lush green and calm of the valley, the residential nature of the neighborhood, and its sense of community. I was also drawn to the outstanding architecture of the College Hills area and the rich sense of history embedded in and conveyed through the homes of this unique district of Honolulu.

I still live in College Hills, but as I look out my window today I see a much different sight than I did as recently as two years ago. An ARCH opened at 2035 Kamehameha several years ago, but was relatively discreet. Although the owner built up the rear of the lot into an un-attractive two-story structure, the front was not imposing. I was glad that our kupuna could find a safe and secure environment in a neighborhood where I was sure they would enjoy the green and calm as much I as did. Unfortunately, the family whose house was adjacent to this care home was not quite as happy. The nightly moans of ailing patients in pain and the late hour television habits of wakeful elders disturbed the family's sleep, the screams of an elderly women who refused to be diapered pierced the calm evening, the long outdoors chats of ARCH workers when they changed shifts in the wee hours together with the wafting smoke of employee cigarette breaks left the neighbors feeling considerably
less charitable about the business that had set up operation a mere ten feet from their bedroom windows. Yes, ARCHs are allowed by law, but they are far from being the same as having a family next door.

More recently, an immense concrete structure has replaced the simple house on the neighboring lot at 2039 Kamehameha. No longer a normal family home, this is an imposing two-story building that stretches to the very limits of the allowed footprint and one that does not talk to its older neighbors in terms of either architecture or landscaping. Instead of the lush green of the valley's beautiful Kamehameha Avenue, an immense concrete edifice with five feet of land around it is echoed by a concrete driveway that leaves little room for anything green. The same owener had opened a second ARCH. Not only is it visually overwhelming for the small CPR lot, it is now physically connected to the earlier, neighboring ARCH.

In recent months and just one lot away on McKinley Street, another yard has been completely up-rooted for a parking lot for multiple cars and another two-

story structure, also owned by the same person. The rear of this structure is once again an imposing, concrete, institutional-looking monster so that the owner can once again maximize the number of patients in her care home. Workers reported putting in 10 bedrooms and 10 baths—certainly far beyond the normal size and function of this historic area and a far cry from any other house in the vicinity! Existing legislation has, thus, allowed for this increased density and the replacement of what was a simple unassuming one-story home for a family—not multiple patients. And this new building is now connected by a deck to the two previous ARCHs. How can our residential neighborhood be commercialized in this way with no public hearing or community input at all? This is not a family simply opening its doors to help the elderl
y in our state and to allow them a chance to age in a residential environment. This is a full-on expanding business that is knowingly and purposely using loopholes in the law for personal gain and with little regard for the existing neighborhood, its unique history, or its current residents. At what point do three connecting ARCHs defeat the notion of "residential" and become an institution? Also, the corner lot is now surrounded by large ARCHs, which should prompt some reflection for all of us about the very real potential impact of this uncontrolled situation..

A fourth ARCH is now opening across the street from the most recent structure. And one block to the other side of my house is yet another ARCH on Mohala Way that is having a similar negative impact on the surrounding residents. Mohala Way is not a typical city street; it is a small lane, even by Manoa standards. Several years ago Fire Department personnel stood across from my house on the intersection of Mohala Way bemoaning the fact that their fire trucks could not access the homes on this narrow street; they subsequently banned parking on it because of its atypical width. Yet this lane is now the access route for delivery trucks, Handi-Vans, ARCH worker drop-offs, and all kinds of traffic for which it was never intended. A five-patient facility opened in what was originally the garage of the home as the owner assuring her anxious neighbors that deliveries would be via Beckwith Street. This simply has not been the case. Trucks that stop in the middle of Mohala Way t o unload ARCH deliveries or pick up wheel-chair patients block traffic completely and keep neighbors from being able to get out of their garages while they wait for deliveries to be made. This is not a big deal for the occasional residential delivery of a pur-chase or package. However when this is a multiple, daily occurrence or when Handi-Vans take considerable time to fetch and load passengers everyday, it becomes a quality of life issue. Now she intends to put an additional nine patients in her home—but the neighbor-hood is still struggling to deal with the impact of the five she has already installed!

The real shame here is that all of this is happening with no public input whatsoever. Our neighborhood is already changing radically; any family can potentially find itself completely surrounded by ARCHs, and unconcerned profiteers can continue to gobble up one property after another to construct

abnormally large buildings in residential areas that were never intended to become mini-hospital zones or sprawling elderly care districts. I beg you to consider measures that would preserve the neighborhoods we treasure, that would allow our homes to be welcome environments for families, and that would allow us to care for the elderly while not creating complexes of care facilities next to each other. A 1000-foot limit presently exists for extended care facilities. I urge you to consider laws that would apply reasonable limits to ARCHs as well. I also urge you to create protocols that would allow for neighbors to be informed of impending changes that affect residential life an
d would require public hearings whenever atypical usage is being proposed for a property. We shouldn't be hearing about this through the grapevine.

Sincerely,

Jane Moulin
Jacques Moulin
Jean-Philippe Moulin
Marie-Chantal Moulin
2318 Beckwith St, Honolulu 96822

Testimony- Flynn

Members of the Hawaii State House of Representatives, Committee on Human Services and Housing.

Thank you for the opportunity to testify in support of SB 2930, Clarifies requirements for Adult Residential Care Homes.

My quiet Kaimuki neighborhood on Maunalani Circle is the latest residential (R-10 zoned) community to be targeted as the site of one or more Adult Residential Care Homes (ARCH). I am opposed to the approval of any business in a residential community without the opportunity for citizen input or density. The proposed statutory material will provide that licenses shall not be granted to type I and type II adult residential care homes that are located within 1000 feet of a type I or type II adult residential care home or a group living facility as defined by county ordinance.

Lest you think this is a "Not In My Backyard" NIMBY response, please note that we already have Maunalani Nursing and Rehabilitation Center on one end of the circle. We all try to be good neighbors, but enough is enough without private homes also being converted to similar businesses so close to this facility. My neighbors and I feel very frustrated that these ARCH facilities can presently be approved without any need for compliance with county zoning laws or public hearing. The only approval presently needed is from the Department of Health that addresses just the health and safety of patients, not neighborhoods.

The proposed commercial Alzheimer's care facilities are businesses and should not be allowed in residential neighborhoods at all. They benefit a few and cause irreparable harm to neighbors. These care homes are tremendously lucrative to the operators. If 8 clients are served at $7000 to $8000 per client, the business owners could gross from half to three quarters of a million dollars per year from clients. In addition, there are tax breaks and other funding that may push their profits even higher.

The houses in our neighborhood are single-family homes. Converting them to accommodate disabled unrelated clients will necessitate construction inside and out which will change the character of the house and yard from a family home to an institution. In addition to visitors, these business facilities will require hired attendants, service providers, supply trucks, ambulances, all of which will bring more traffic, parking problems, noise and unrelated people to our quiet neighborhood. Property values are potentially depressed; anyone selling a home must disclose the presence of such a business operating in the neighborhood.

As a physician and senior citizen I am also all too aware of the dearth of long-term care facilities in Hawaii. However, allowing disruptive businesses to be opened all over the islands in private neighborhoods without regard to density is a passive, not an active, planned solution to this shortage.

Sincerely,
Mary M. Flynn, MD

Senate Committee on Human Services and Public Housing
Senate Bill 2930 Relating to Adult Residential Care Homes.
Thursday, February 7, 2008 at 1:15 p.m., in Conference Room 016 of the State Capitol.

Dear Chairperson Suzanne Chun Oakland, Vice Chairperson Les Ihara, and Committee Members,

I am testifying in favor of SB 2930

We had several meetings at my home over the past year with about 20 residents of the historic College Hills tract in Manoa Valley. We discussed at length, the commercialization of our residential neighborhood by ARCHs that have been licensed by the Department of Helath. I know of 6 adult residential care homes (ARCHs) within a three to four block area of my home. Our major concern was the subtle but steady expansion of three ARCHs side by side (on the same block) and possibly a fourth ARCH (in the future) now that the adjacent land seems to have been purchased by the same owner. We agree that there is a need and a place for ARCHs. And Manoa is a great location for them. But the spirit of the law was never to take over huge blocks in a residential area and build a mega-complex of care facilities that share staff, ramps, decks, patients, parking, employee rosters and other amenities.

We have photos of an ARCH on the narrow street, Mohalaway, where neighbors are blocked out for varied periods of time by visitors, repairmen, handivans and suppliers. No adjacent neighbor should ever have to suffer through 3 homes situated side by side!!! This makes NO sense at all. When the concept of the ARCH was formulated, it allowed them to operate independently without many restrictions in a residential neighborhood, along the same line as churches. I am sure this mega-complex (as is occurring at Kamehameha Avenue and McKinley Street) is not what was originally intended. We are in contact with Senator Brian Taniguchi and Representative Kirk Caldwell and did feel it was necessary for them to pass a new law requiring a certain distance between these homes. We have decided that Health Department can quickly take the initiative to promulgate these rules without legislative action. The 1000-foot distance between ARCHs seems to us as quite reasonable. The Health Department is determined NOT to take any action concerning distance standards. they state they are responsible for licensing and not monitoring distance standards.

According to Mr. John Whalen, this has been a long-standing issue. State law exempts ARCHs for up to 8 residents from County zoning requirements. They are subject only to State Department of Health (DOH) licensing. When he was the head of the DLU, he testified at the Legislature that there should be some minimum distance standard between these homes because, as you well know, they tend to be larger than a typical single-family residence (sometimes 8 bedrooms large). At that time, the adverse effects of having a concentration of ARCHs on a residential street (with the resultant medical waste, handivans, pickups, dropoffs, staff traffic, overflow parking, family, visitors, strain on the infrastructure, traffic, noise, etc) was already beginning to be evident in certain neighborhoods of Waipahu and Kalihi. The head of licensing at DOH (Elizabeth Anderson) appeared at the same hearing as Mr. Whalen and convinced the legislative committee (that a law was not needed) that her department would develop distance standards through administrative rules, so the statute was not amended. No distance standards were ever promulgated.

According to a Dept. of Permitting and Planning member at our last meeting, the DOH does the licensing, while DPP does the checking of the structure and the permitting of construction. The members of our neighborhood would be happy to sit down with your committee to discuss the process that needs to be started to develop these rules so that DPP can enforce them. Our time is short as the owner of the 2 care homes (2035 and 2039 Kamehameha Avenue) is already applying for building permits and licensing of this third care home. And as I mentioned, a fourth is perhaps waiting in the wings.

We residents want to protect the future of our infrastructure and character of our historical residential neighborhood. As you probably know, we all have aging parents and we feel strongly that ARCHs are a vital part of our society. But here in Honolulu as throughout the State, there has to be a fair balance when it comes to care home densities in residential neighborhoods. We are willing and ready to participate in any discussions that will lead to a fair balance between residents and ARCH developers!

Finally, the distance standards will protect the health and safety of staff and elderly persons. Adjacent ARCHs are never independent and share staff, ramps, common areas and cooking. An infectious disease, influenza or tuberculosis, can spread rapidly in this way. Many outbreaks go unreported. And if a fire were to spread, getting 8 people out of a burning structure would be far more effective than evacuating 16 elderly handicapped patients, if two ARCHs were located side by side! I urge your committee to act now to provide greater health and safety in our neighborhoods. **Please pass SB 2930**.

Thank you for your prompt attention to this matter.

With warm regards,

Jeremy Lam, M.D.
Joshua Lam
Jesse Lam
Helen Lam
Misha Lam
Erica Lam
2230 Kamehameha Avenue
Honolulu, HI 96822

This supercedes all previous emailed testimony' - Sharon Schneider

Senate Committee on Human Services and Public Housing
Senate Bill 2930 Relating to Adult Residential Care Homes.
Thursday, February 7, 2008 at 1:15 p.m., in Conference Room 016 of the State Capitol.

Dear Chairperson Suzanne Chun Oakland, Vice Chairperson Les Ihara, and Committee Members,

My name is Sharon Schneider and I am testifying in favor of SB 2930.

I am one of the concerned citizens on Maunalani Circle where a proposed ARCH facility threatens to change the character of our neighborhood. A neighbor who owns five houses on contiguous lots will be applying for a license to run an ARCH facility in one or more of their houses. There is much consternation of the impact of a possible mega-ARCH in our residential neighborhood (with the resultant medical waste, handivans, pickups, dropoffs, staff traffic, overflow parking, family, visitors, and general strain on the infrastructure). We already support and are impacted by the Maunalani Rehabilitation Hospital on our street which has approximately 100 beds.

As one who was born and raised here, I fully appreciate the strong cultural and family ties of Hawaii's people. It was devastating to me when my mother had to move to a home while I was living on the mainland. My father could no longer care for her and could not afford the support for her to live at home. I am very sympathetic to the need for small scale facilities within a community.

Under current law there is nothing to prevent a potential ARCH owner from buying several adjoining parcels for use as such facilities – resulting in a de facto hospital. Any one or any commercial entity from out of state or a foreign country could start an ARCH facility in any residential neighborhood with no commitment to the community. We believe that through neighborly input and cooperation we can retain the character of our neighborhoods and still accommodate the needs and ensure the safety of our families, both the younger and the elder.

It is time for the state to re-evaluate the laws governing these facilities and give weight to the input of the neighborhoods and consideration of the topography of the proposed location of an ARCH. The density of these facilities within a community should also be a factor in licensure. As an ARCH owner testified last week, ARCHes should serve the immediate community. Residential care homes should be one part of a comprehensive plan, not the only option for the elderly. Institutions need not be unpleasant. Together we can insure that our elders are safe and our communities are pleasant places to live.

Please pass SB 2930 as a first step to help our neighborhoods retain their residential character and ensure the safety of our elders.

Committee on Human Services and Public Housing
Chair: Senator Suzanne Chun-Oakland
Vice-chair: Senator Les Ihara
Measure: SB2930
Hearing Date: 2-7-08
Room: 016
Time: 1:15PM

Dear Senators Chun-Oakland and Ihara,

I urge you to pass SB2930 requiring a distance of 1,000 feet between ARCH type I and type II facilities in residential neighborhoods.

I am very supportive of finding alternative ways to help care for our senior citizens as they begin to require assistance, however I do believe that residents have a right to expect that the state will guide the process of licensing care facilities with much better oversight.

This need not be an "either/or" situation; both the safety of patients in ARCH homes and the interests of long time residents should be considered in the licensing process. As it stands right now, there is no limit to the number of care homes that can be clustered together in one area. I have lived on Limu Place with my family for some forty years, and care very much about my neighborhood.

Now is the time to implement a reasonable plan for the future.
Please support SB2930.

Sincerely,

Shelly Lock

Shelly Lock
5331 Limu Place
Honolulu, Hawaii 96821

Committee on Human Services and Public Housing
Chair: Senator Suzanne Chun-Oakland
Vice-chair: Senator Les Ihara
Measure: **SB2930**
Hearing Date: 2-7-08
Room: 016
Time: 1:15PM

Dear Senators Chun-Oakland and Ihara,

I urge you to pass SB2930 requiring a distance of 1,000 feet between any ARCH facilities in residential neighborhoods.

While the concept of the ARCH facility is a promising solution to a growing need, the state must regulate the number of ARCH facilities that will be permitted in residential areas. In this way, both the needs of our seniors and the rights and interests of home-owners and community residents will be considered and respected.

Right now there is absolutely no reason why someone couldn't buy up several homes in a row for the purposes of creating a commercial ARCH II business opportunity. ARCH II operators aren't even required to live in these homes, which opens the door for absentee investors as well.

I believe that the distance requirement will help to address these issues and create a better situation for all involved. **I ask that you support SB2930.**
Thank you.

Sincerely,

Garrett K. Miyake
5325 Limu Place
Honolulu, HI 96821
808-216-6041

Senate Committee on Human Services and Public Housing
Senate Bill 2930 Relating to Adult Residential Care Homes
Hearing Date: Thursday, Feb. 7, 2008, 1:15 p.m., Conf. Room 016 of the State Capitol

Dear Chairperson Suzanne Chun Oakland, Vice Chairperson Les Ihara, and Committee Members:

I am submitting written testimony in favor of Senate Bill 2930.

I am a keiki o ka aina ha'aheo, born and raised in Manoa. I am concerned about the well-being, safety and public health of our precious Kupuna. I embrace the concept that our Kupuna should have the option to age in place in a residential community. No one feels that they should be warehoused in institutions.

Also, important, is our dedication to protecting our aina, which includes our residential neighborhoods - malama pono o ka aina. If we are not proactive in taking care, finding balance, there will be abuse and more misuse, which our finite resources **cannot sustain.** Accordingly, as a resident I seek to protect the future of the infrastructure and character of the neighborhood. We all have aging parents and feel strongly that ARCHs are a vital part of our society. But there must be a fair balance when it comes to care home facility densities in residential neighborhoods. A fair balance is needed.

I support this Bill because it promotes a balance between the various uses within residential and urban zoned property in the State of Hawaii. Also, the distance standards will protect the health and safety of our Kupuna and ARCH staff. Adjacent ARCHs are never independent. They share staff, ramps, common areas and cooking. An infectious disease, influenza or tuberculosis can spread rapidly in this way. Many outbreaks go unreported. Further, if a fire were to spread, getting 8 people out of a burning structure would be far more effective than evacuating 16 or more elderly handicapped patients, if two ARCHs were located side by side! I urge your committee to act now to provide greater health, safety and balance in our neighborhoods. Please pass SB 2930.

Mahalo a nui loa for the opportunity to give some input on this important bill.

Sincerely,
Marlene Kaipukailaiokamehameha Styan Alvey

To: Committee on Human Services and Public Housing
Hearing date: February 7, 2008
Time: 1:15PM
Room: 016
Re: SB2930

Dear Senators Chun-Oakland and Ihara,

I respectfully ask that you pass SB2930, requiring a distance of 1,000 feet between ARCH facilities. It is certainly important that we find solutions for elder-care and create the opportunity for seniors to age within their own communities whenever possible. That said, the steady proliferation of ARCH I and IIs has demonstrated that there needs to be much better oversight on where ARCH facilities will be permitted within residential neighborhoods.

People who choose to live in residential settings rather than those zoned for mixed-use, have an expectation that the character of the neighborhood will be maintained. The current laws, allowing for ARCH II commercial enterprises to operate within residential communities without any notice to residents, clearly show that some specific standards must be set regarding ARCHes.

At this time, there is no stipulation to prevent three, four, five or more homes to be built and operated by the same person right next to one another, creating more of an institutional setting, and allowing that staff, services and facilities be shared as well. This was certainly not the intent of the original law, and may bring about issues concerning care and safety for the patients residing within these homes.

Further, the fact that another bill currently before the legislature asks that a "hospital or medical services association" be allowed to operate an ARCH Type I expanded facility in a residential community, speaks to the continued and increased intent to build additional ARCHes in our neighborhoods.

Let's find ways to care for our seniors while respecting the homeowners and residents of our communities. It is my hope, that the legislature will seriously consider the consequences of Hawaii's run away permitting process by inserting reasonable requirements into the law. Mahalo for your efforts and time.
I ask that you pass SB2930.

Sincerely,

Susan Killeen
5325 Limu Place
Honolulu, HI 96821
808-373-2288
2/04/08

FEB. 5,2008

LEGISLATURE

FAX 586-6659
DATE: 2/7/08
TIME: 1:15 pm
RE: SB 2930

LEGISLATORS,

PLEASE GIVE YOUR SUPPORT TO THIS BILL. THE PRACTICE OF PEOPLE PLACING ARCH II FACILITIES WHERE EVER THEY PLEASE, NEEDS TO BE GIVEN SERIOUS CONSIDERATION.

AGAIN, WE URGE YOU TO GIVE YOUR SUPPORT TO THIS BILL.

MAHALO

JOE AND SHARI ANTHONY
227 E. HIND DR.
HONOLULU, HI. 96821
(808) 373-9167

Joe and Shari Anthony

FEB.5, 2008

LEGISLATURE
FAX 586-6659
DATE: 2/7/08
TIME: 1:15 PM
RE: SB2793

LEGISLATORS,

MY WIFE AND I URGE YOU TO SUPPORT THIS BILL. WE SPEAK FROM FIRST HAND EXPERIENCE THE PROBLEMS CAUSED BY LOCATIONS THAT DON'T HAVE NEIGHBORHOOD INPUT CAUSES.

PLEASE SUPPORT THIS MEASURE.

MAHALO

JOE AND SHARI ANTHONY
227 E. HIND DR.
HONOLULU, HI. 96821

(808) 373-9167

Joe and Shari Anthony

Committee: Human Services and Public Housing
Hearing Date: 2/7/08
Time: 1:15PM
Room: 016
Bill number: SB2930

Dear Senators Chun-Oakland and Ihara,

I ask that you support SB2930

ARCH facilities are increasing in our neighborhood and need better regulation. We have had 3-4 homes within 3 blocks of each other, bought by individuals within the past year whose intent is to open ARCHs. One home in particular has converted a single family home into a home with 8-10 bedrooms. The owner has no intent on living in the home. The added traffic by workers to care for the residence of the home not to mention the parking issues is worrisome. Safety issues regarding the increase in traffic and parked cars blocking emergency and community access is also a concern.

The preservation of our community and neighborhood is vital.

Please help us in looking forward and planning for the future and support these bills. "The bill provides that licenses shall not be granted to type I and type II adult residential care homes that are located within 1000 feet of a type I or type II residential care home or group living facility, as defined by county ordinance."

Please help us as we strike a balance between caring for our elderly and sustaining communities that our children and their families can thrive in.

Aloha,

Polly A. Ai
Aina Haina Community Member

testimony

From: Jeannine Johnson [jeannine@hawaii.rr.com]

Sent: Tuesday, February 05, 2008 8:33 PM

To: testimony

Cc: killeens@hawaii.rr.com; Rep. Barbara Marumoto; zbolt@hawaii.rr.com; bertha.leong@pruhawaii.com; bchuck@ch2m.com; cdjou@co.honolulu.hi.us; chrisbhi@aol.com; Cindy.S.Inouye@hawaii.gov; hihaven@hotmail.com; schellj001@hawaii.rr.com; casen@hawaii.edu; gbruce@honolulu.gov; heatherwood@hawaii.rr.com; jschn@lava.net; jamallster@yahoo.com; jeannine@hawaii.rr.com; kho4@honolulu.gov; Kquinn@hawaii.rr.com; Linda.w.starr@hawaii.gov; Rep. Lyla B. Berg; melvyn.yap@morganstanley.com; mparke@hawaii.edu; peter.reply@flatearthventures.com; sbh@lava.net; Hawaii.film@hawaiiantel.net; sroig@HonoluluAdvertiser.com; bearstp@yahoo.com; 'Donna Wong HTF'; 'Elizabeth Reilly'; 'Masuda, Chase'; 'Chase & Kate Masuda'; 'Douglas Wong (E-mail)'; 'Shari Anthony'; 'SCOT MURAOKA'; 'Sharon'; 'lynn k'; 'Garrett Miyake'; 'Wayson Chow'; 'Jeanne Ohta'

Subject: NB#2 Testimony in Strong Support of SB2930 re ARCH homes

Attachments: image001.jpg

Jeannine Johnson, Legislative Sub-Committee Chair

Kuli'ou'ou / Kalani Iki Neighborhood Board #2

5648 Pia Street, Honolulu, Hawai'i 96821

Phone: 373-2874 (h) / 523-5030 (w)

February 5, 2008

Via email to testimony@capitol.hawaii.gov

COMMITTEE ON HUMAN SERVICES AND PUBLIC HOUSING
Senator Suzanne Chun Oakland, Chair
Senator Les Ihara, Jr., Vice Chair

RE: SB 2930 RELATING TO ADULT RESIDENTIAL CARE HOMES

Hearing on Thursday, February 7, 2008, at 1:15 pm in Conf. Room 016

Dear Chair Chun Oakland and Vice Chair Ihara:

As Committee Chair of the **Kuli'ou'ou / Kalani Iki Neighborhood Board #2** Legislative Sub-Committee, I am pleased to inform you Neighborhood Board #2 supports SB2930 which clarifies licensure requirements for adult residential care homes (ARCH). **Neighborhood Board #2** represents over 6,000 households, with a population of almost 20,000 people (State of Hawaii Data Book 2002) in East Honolulu.

At its March 1, 2007, meeting, the **Neighborhood Board #2** was informed of the eight-bed Adult Residential Care Home (ARCH Type II) proposed to be built at 5304 Limu Place. It was also informed of the serious physical limitations of Limu Place, a small dead-end street in 'Āina Haina, and its residents' concerns about increased traffic, lack of adequate parking and safety issues. As a result, the **Neighborhood Board #2** voted unanimously to oppose an eight-bed Adult Residential Care Home

(ARCH Type II) at 5304 Limu Place.

At its November 1, 2007, meeting, the **Neighborhood Board #2** recognized that the proliferation of adult residential care home (ARCH) in residentially zoned areas was becoming a major concern and voted unanimously, again, to require any ARCH II facility with more than five (5) patients in a residential neighborhood to give notice of its proposed permit application to the surrounding residents as well as provide them with an opportunity to be heard at a presentation at their neighborhood board whose geographic area contains the proposed ARCH II facility. Therefore, I'm positive that **Neighborhood Board #2** would also support SB2930 to clarify that county building codes, specifically, the 1,000 foot zone between group living facilities, apply to type I and type II ARCH facilities.

Because I am unable to testify in person, Chair Robert Chuck has authorized Limu Place resident Susan Killeen to represent **Neighborhood Board #2** and present its testimony at the hearing.

Mahalo,

Jeannine Johnson

Legislative Sub-Committee Chair

Kuli'ou'ou / Kalani Iki Neighborhood Board #2

cc: Chair Robert Chuck
Sen. Sam Slom (via email)
Rep. Lyla Berg (via email)
Rep. Barbara Marumoto (via email)
Ms. Susan Killeen

To The Honorable Members of the Senate Committee on Human Services and Public Housing, who have scheduled a public hearing on Thursday, February 7, 2008 @ 1:15 p.m. in Room 016

Aloha mai kakou,

I am in support of S.B. 2930, which clarifies licensure requirements for Adult Residential Care Homes. As a member of a jurisdiction that is "under-bedded" for the type of residential care option ARCH's provide, I believe clarification of the licensure process, even making it more "friendly", will support not only current ARCH providers, but also encourage potential providers to complete their licensure and get into the business. I know of two very committed individuals who wanted to become ARCH providers, but stopped the process because they became frustrated and disillusioned.

Mahalo for your support of this bill, important to the nurturance of a continuum of care for frail elders in our communities.

Me ka mahalo pono,

John A. H. Tomoso, MSW, ACSW, LSW
Maui County Executive on Aging
808-270-7350
john.tomoso@mauicounty.gov

February 5, 2008

Human Services and Public Housing
Hearing 2/7/08
Time: 1:15 pm
Rm 016
Bill #: SB2930

Dear Senators Chun Oakland and Ihara,

We ask for your support on bill SB2930. We the residents of our neighborhood have spent many generations to create a high quality of life for our neighbors. To maintain this, we will need to have restrictions calling for a 1,000 distance between ARCH homes. ARCH II's are generally run as businesses with 8 patients and several support staff. Along with visitors for each patient, the issues of traffic, parking crowded streets, increased access in and out of streets will affect our quality of life., and create issues over safety of our elderly and young on the streets. Lacking of this restriction is evidenced by a business owner who has 3 ARCH II homes side by side in Manoa with another purchased lot awaiting for ARCH II permitting.

Chase & Kate Masuda
5316 Limu Place