

N.D.A.G. Letter to Van de Streek (April 21, 1988)

April 21, 1988

Mr. Nevin Van de Streek
City Attorney
P.O. Box 1697
Minot, ND 58701

Dear Mr. Van de Streek:

Thank you for the copy of your March 4, 1988, memorandum to Jeff Roedacker, Minot city planner, concerning a December 9, 1987, letter I sent to David A. Snyder, director, North Dakota Central Human Service Center. The final paragraph of that memorandum contains a request that I clarify my opinion, as expressed in the final paragraph of the Snyder letter. That paragraph provided:

In answer to your specific question, a licensed group home serving six or fewer mentally ill persons is a permitted use in a single-family or equivalent density residential zone provided that at least one of those mentally ill persons is also developmentally disabled. A licensed group home serving eight or fewer mentally ill persons is a permitted use in any other area zoned for residential use if at least one of the residents is also a developmentally disabled person.

The statute in question is N.D.C.C. § 25-16-14(2) which provides as follows:

[A] licensed group home serving six or fewer developmentally disabled persons shall be considered a permitted use in a single family or equivalent least density residential zone, and a licensed group home serving eight or fewer developmentally disabled persons shall be considered a permitted use in any area zoned for residential use of greater density than single family use.

(Emphasis supplied.)

Your memorandum to city planner Roedacker suggests the more appropriate interpretation of this statute would state that the reference to six or fewer and eight or fewer developmentally disabled persons requires all persons in the group home to be developmentally disabled and does not include necessary staff persons.

I certainly appreciate your position and understand your argument in this matter. However, I do believe that the Legislature's use of the phrase "or fewer" within N.D.C.C. § 25-16-14(2) does not support the arguments you have outlined in your memorandum. Furthermore, the statute itself does not mention staff persons and whether they are to be

counted in the six or eight figure that is provided for.

In the final paragraph of my letter to David A. Snyder, dated December 3, 1987, I interpreted N.D.C.C. § 25-16-14(2) to state that a licensed group home serving six or fewer mentally ill persons is a permitted use in a single-family or equivalent density residential zone provided that at least one of those mentally ill persons is also developmentally disabled. By the very words of the statute, I believe this conclusion is accurate and must stand. Your position is reasonable and worthy of consideration. However, I do believe that legislative amendment would be required before your conclusion could be accepted.

I want to thank you for this opportunity to clarify my previous letter on this issue.

Sincerely,

Nicholas J. Spaeth

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