
ADMINISTRATIVE HEARING
OF THE CITY OF HOLLADAY, STATE OF UTAH

IN RE: .
 .
 APPLICATION FOR A . FINDINGS,
 BUSINESS LICENSE . CONCLUSIONS AND ORDER
 BY .
 FUTURES THROUGH CHOICES .

This matter came before Randy G. Fitts, City Manager of the City of Holladay, Utah (the “City”) pursuant to notice given to the applicant, Futures Through Choices, a Utah non-profit corporation (“FTC”), to the State of Utah, Office of Juvenile Justice and to Concerned Citizens for Safety in Holladay, LLC (“CCS”), on the 4th day of November, 2004.

The State of Utah (the “State”) declined the invitation to participate in the hearing. FTC appeared by and through its Chief Executive Officer, Jerry Jeffries. Aaron Murdock of Ray Quinney & Nebeker appeared on behalf of CCS.

For purposes of this Order, a synopsis of the process undertaken by my office and other City employees is appropriate.

(1) An application for a business license was filed by FTC on May 10, 2004. A copy of the Application is attached as *Exhibit A*. The request was for the operation of a residential facility of youth with disabilities to be located at 2180 Sunnybrook Way, Holladay, Utah. This application for a business license was made as required by Request for Proposal #90276 (the “RFP”) issued by Utah Department of Human Services and awarded to FTC. A copy of the RFP is attached as *Exhibit B*.

(2) Pursuant to questions raised by City staff, FTC was asked to supplement the application by written letter dated June 23, 2004 (the “*Letter*”). A copy of the Letter is attached as *Exhibit C*.

(3) The response to the Letter was received on July 14, 2004. A copy of the response is Attached as *Exhibit D*.

(4) A public meeting was held on July 27, 2004, to allow members of the public to ask questions regarding the application. Informed individuals from FTC and other service providers were asked to present information and respond to questions. Individuals who served on the panel represented FTC, Granite School District, the Disability Law Center, the Office of Juvenile Justice and CCS. A copy of the transcript of the meeting is attached as *Exhibit E*.

(5) Subsequent to an offer by the Office of Juvenile Justice made at the July 27, 2004 meeting to modify the proposed contract with FTC for the group home, a request was sent to the Utah State Attorney General’s Office concerning the ability of the Department of Human Services to modify the scope of services to be rendered by FTC. A copy of the Letter is attached as *Exhibit F*.

(6) On September 9, 2004, the Attorney General informed the parties that the requested contract modification could not be made. (See Exhibit G for the text of the response.)

(7) On or about October 1, 2004, my office requested that FTC, the Office of Juvenile Justice and CCS submit any additional information by October 26, 2004 that would clarify the application or the law.

(8) Supplemental information was submitted by FTC and CCS. A copy of each of which is attached hereto as *Exhibit H* and *Exhibit I*, respectively.

(9) Pursuant to written notice, a business license hearing was held on November 4, 2004. FTC and CCS made oral presentations.

I have personally reviewed all information received including all exhibits referred to in this order.

Based on the written information received and presentations heard, I issue the following Findings, Conclusions and Order.

FINDINGS OF FACT

(1) The application for a group home for youth with disabilities is intended to serve a youth population pursuant to the State issued RFP and subsequently awarded contract between the State and FTC.

(2) As identified in the RFP, the population to be served may include: “(1) Cognitively impaired adolescent juvenile sex offenders with a broad range of sexual offenses and/or sexually reactive behavior. This includes adolescents with patterned, repetitious sexual offenses and acting out behavior. They may have displayed predatory or fixated patterns of offending, use of force or weapons in committing their offenses, and/or a propensity to act out with same aged peers besides their victims. They often have a prior treatment history and *present a significant risk to the community.*” (RFP pg. 3, italics added).

(3) All of the potential youth residents are under the jurisdiction and custody of the juvenile justice system.

(4) All of the youth have been adjudicated of at least “six to seven misdemeanors” up to and including four Felony Episodes including one Person Felony Episode. See *Exhibit H-A, page 12 Sentencing Matrix* for definitions.) See *Exhibit H-B* of the supplemental information submitted by CCS on October 26, 2004 lists all of the felony offenses that are included as potential reasons for an individuals’ adjudication. As represented, the projected residents all have been adjudicated for having committed crime(s) against persons.

CONCLUSIONS

(1) A group home for persons with disabilities only is a permitted use at 2180 Sunnybrook Way, Holladay, Utah.

(2) Many individuals and groups have expressed concern for the safety of the group home residents and the neighborhood because of an irrigation canal located at the rear of the property. The physical location of the home, and its proximity to the irrigation canal is not a factor in my conclusions and order.

The physical condition of the home and property is a licensing and contractual issue for the State of Utah and not the City.

(3) I have assumed that all of the prospective residents of the proposed business would be considered “disabled” under applicable State and federal laws. If the residents are not disabled and are merely adjudicated youth felons, the proposed use is not allowed at the intended location.

Present City Ordinance 13.04.230 limits the number of unrelated family members living together to no more than 3. This restriction is contrary to the intent of the Fair Housing Act. Such restriction has no bearing in my decision.

(4) The placement in this facility is not a voluntary decision of the resident. The resident will be confined to the residence. The resident population constitutes a substantial public safety risk to themselves, other residents of the proposed home and the surrounding neighborhood. This conclusion is reached as a result of the language contained in the RFP, the sentencing matrix used by the juvenile court and list of relevant offenses, written materials submitted and oral testimony heard. It is my conclusion that the prospective residents present a direct threat to the neighborhood, not because of their disabilities, but because of their history in committing multiple violent felony criminal offenses.

(5) The prospective residents will not be placed in this proposed home because of their disabilities. They will be placed at this location because of their commission of and adjudication for multiple criminal felony offenses. A municipality has the obligation to provide for the health and welfare of its citizens. It must also provide to the extent possible, safety for its residents as a whole. This

affirmative obligation for safety conflicts directly with the “substantial public risk” presented by the intended residents of the facility.

ORDER

Based on the foregoing Findings and Conclusions, the Application for a Business License for a group home for youth with disabilities at 2180 Sunnybrook Lane, Holladay, Utah submitted by FTC is denied.

This Order is final unless an appeal is filed pursuant to Section 5.11.050 Code of Ordinance of the City of Holladay within thirty (30) days of the date of this Order.

Dated this 6th day of December, 2004.

Randy G. Fitts
City Manager

MAILING CERTIFICATE

I hereby certify that I mailed by certified mail, return receipt requested, a true and correct copy of the foregoing Findings, Conclusions and Order and Exhibits to the following parties on this 6th day of December, 2004:

Futures Through Choices
406 N. Main Street
Bountiful, Utah 84010
Attn: Jerry Jefferies

Concerned Citizens for Safety in Holladay, LLC
N. Aaron Murdock
Ray, Quinney & Nebeker
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Stephanie N. Carlson
Holladay City Recorder
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Holladay, Utah 84117

HCH/msp