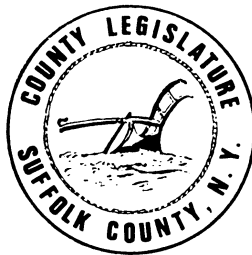


# Suffolk County Legislature



## WELFARE TO WORK COMMISSION

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May 24, 2010

TO: Members of the Suffolk County Legislature

During the past year, the Welfare to Work Commission has studied “sober homes” in Suffolk County. After conducting two public hearings, meeting with public and private stakeholders and reviewing existing policies and law, we are pleased to provide you with *Recovery For Whom? The Urgent Need for Safe and Effective Sober Homes in Suffolk County*. Currently, “sober homes” are subject to no government or professional regulation. Instead, greedy absentee landlords run many sober homes at the expense of their fragile residents, local communities and Suffolk taxpayers. The lack of sober-homes that support sobriety and recovery makes the plight of people who seek recovery a treacherous experience.

While the problem is wide-spread and serious, the Commission believes that steps can be taken to create safe, recovery-based sober homes that foster recovery. Toward that end, we offer the following recommendations which are detailed in the report:

1. Suffolk County State legislators introduce a bill granting the New York State Office of Alcohol and Substance Abuse Services (OASAS) regulatory authority over sober homes.
2. OASAS explores creating a residential treatment model for sober homes.
3. The Sober Living Network of Long Island – a new coalition of good sober-home providers – is encouraged by the State and County.
4. SCDSS provides an enhanced shelter-allowance for sober-homes that comply with yet-to-be released OASAS guidelines.
5. Sober-homes become either County or OASAS licensed and contracted agencies.
6. The “Florida day/night program” is explored as a possible sober-home model.
7. The County supports the OASAS 100 bed “community residence” initiative.
8. The County Executive convenes a conference of town supervisors and their code enforcement directors to address the problem of substandard housing.
9. The State adopts S4322, S4323 and A3146 granting SCDSS the power to utilize town and village health and safety ordinances.
10. State law is amended to allow SCDSS to withhold rent from landlords providing room and board who violate health and safety standards.
11. The County’s legal staff reviews the 2010 *Homeworks* court decision to determine if it is possible to draft a new law that does not violate federal statutes.

The Commission invites you to review the report and to attend the Health and Human Services Committee meeting on June 3<sup>rd</sup>, 2:00 PM for our presentation of the report.

Yours truly for the Commission,

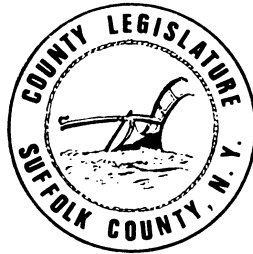
*Richard Koubek*

Richard Koubek, Ph.D., Chair

*Kathy Liguori*

Kathy Liguori, Vice Chair

**Suffolk County Legislature**



**Welfare to Work Commission**

**Recovery For Whom?**  
**The Urgent Need for Safe and Effective Sober Homes**  
**In Suffolk County**

**A Report to the Suffolk County Legislature**

**By**

**The Welfare to Work Commission of the Suffolk County Legislature**

**May, 2010**

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## **Acknowledgements**

This report was prepared by the Sober Homes Committee of the Welfare to Work Commission of the Suffolk County Legislature: Peggy Boyd (Family Service League) and Michael Stoltz (The Clubhouse of Suffolk) Co-Chairs; Legislator Kate Browning, Jack Caffey (for Presiding Officer Bill Lindsay); Bridget DePasquale (Catholic Charities); Rob Greenberger (FECS); Dr. Edward Hernandez, (SCDSS); Dr. Richard Koubek (Chair, Welfare to Work Commission); Ellen Krakow (Nassau/Suffolk Law Services); Kathy Liguori (Vice Chair, Welfare to Work Commission). The report was drafted by Dr. Richard Koubek. The report was outlined, critiqued and edited by the Sober Homes Committee and then reviewed and adopted by the full Welfare to Work Commission on May 21, 2010. The Commission is grateful to those whose names appear on page 35 below who participated in the hearings, focus groups and discussions that shaped this report. The Commission is especially grateful to the following persons who helped to shape the report: Kathy Ayers-Lanzellotta and David Cohen of the Quality Consortium of Suffolk County and LICAN who pointed the Sober Homes Committee in the right direction to ask the right questions of the right people and Dr. Edward Hernandez, Deputy Commissioner, Suffolk County Department of Social Services, who provided invaluable insights into the complexities of housing policies for low-income people.

## Introduction: “They’re Not Throw Away People”

“A recipe for disaster”<sup>1</sup> is how Dr. Stephen Dewey described the impact that “sober homes” where drugs and alcohol are openly used have on people recovering from substance-abuse problems. Dr. Dewey is an Investigator with the Center for Neuroscience at the Feinstein Institute for Medical Research of North Shore LIJ Hospital. He has spent years studying the physical effects of substance abuse on the brain and, in addition to his research, devotes countless hours providing anti-drug and anti-alcohol abuse lectures at schools throughout Nassau and Suffolk Counties.

Dr. Dewey was the keynote witness at the first of two public hearings, *Recovery for Whom? Creating a Network of Safe and Affordable “Sober Homes” for Suffolk Residents Who Are Chemically Dependent*, held on October 23<sup>rd</sup> and October 30<sup>th</sup>, 2009 by the Welfare to Work Commission of the Suffolk County Legislature. The Commission used quotation marks around the term “sober home” in the title of the hearings because, although widely used, the term “sober home” has no clearly acceptable legal definition and no legal standing. Therefore, sober homes are unregulated by government, providing conditions that range from deplorable to exemplary. The Commission would prefer to call them “recovery homes,” where residents are housed in an environment that promotes their journey to sobriety, but, unfortunately, too many of Suffolk’s unregulated sober homes promote relapse rather than recovery.

Consistent with Resolution 181-2003, the Welfare to Work Commission provides the Suffolk County Legislature with “recommendations of federal, State and County policies and procedures designed to move people from welfare to work.” The Commission took up the issue of sober homes in the spring of 2009 because a significant number of their residents are Suffolk County Department of Social Services (SCDSS) Public Assistance recipients who are in substance-abuse recovery. And, substance abuse is an important contributor to welfare dependency; 805 SCDSS Temporary Assistance (TA) and Safety Net (SN) clients, or 4.2% of all the Department’s TA and SN clients, self-identified as chemical or alcohol dependent; 683 of these clients are Safety Net singles who tend to be the prime candidates for placement in sober homes.<sup>2</sup> Finally, the Commission focused on sober homes as preliminary investigations revealed that the lack of village, town, County, State or federal regulations have created an untenable situation for too many of the fragile residents of sober homes who are seeking to become drug and alcohol free as well as for the neighbors and fragile communities within which problematic or “rogue” sober homes are located.

The sober-homes issue was brought to the Commission’s attention in the spring of 2009 by Legislator Kate Browning, a member of the Commission and Chair of the Legislature’s Health and Human Services Committee. In her opening statement at the October 23<sup>rd</sup> hearing, Legislator Browning, whose district contains numerous sober homes, captured the negative impact that problematic sober homes have on their neighbors and the residents who reside in these sober homes.

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<sup>1</sup> Dr. Stephen Dewey, testimony at the October 23<sup>rd</sup>, 2009 hearing, official transcript, p. 16.

<sup>2</sup> Roland Hampson, SCDSS Community Relations Director, e-mail report to Richard Koubek, May 12, 13, 2010.

“When I hear the word sober home, I think of a drug home because of the experiences I have had with them and my constant calls...from residents about illegal activity in and around the homes. Parents are afraid to allow their children to play in the street... Their property values have now dropped. The communities most affected are the working-class and low-income communities. A man ... who came to my office...sat across from me crying. He told me he couldn’t live in the sober home that he was in because ... the drugs were running rampant.... Why is government not treating this person in need of drug and alcohol rehabilitation like a human being? They’re not throw away people.”<sup>3</sup>

The two public hearings received over eight hours of testimony from 34 experts in the field of chemical-dependence treatment and housing, as well as town, County and State government officials who interface with sober homes, not-for-profit and for-profit providers of substance-abuse treatment programs and of sober homes, sober-home residents and community residents. In addition, the Commission received written testimony from several experts, including Karen Carpenter-Palumbo, Commissioner of the New York State Office of Alcohol and Substance Abuse Services (OASAS,) and it held three focus groups on January 29<sup>th</sup>, February 24<sup>th</sup>, and April 1<sup>st</sup>, 2010 with ten substance-abuse treatment practitioners, sober-homes providers and legal experts in the field of sober-homes. A full listing of the people who provided testimony or who appeared in focus groups can be found below, beginning on page 35. Throughout these proceedings, the Commission addressed the following questions:

1. What is a “sober home?”
2. Are “sober homes” doing their intended jobs?
3. How should “sober homes” properly fit in their community?
4. What types of “sober homes” do we need?
5. What is the ideal “sober home” for a community?
6. What can New York State, Suffolk County, town and village governments do to create, regulate and monitor this housing?

Having carefully reviewed the testimony, the Commission believes that all these questions were answered, with the exception of Question 5. Because sober homes and their occupants have garnered such an unpopular reputation, there was little testimony describing an “ideal sober home” that would be best suited “for a community.” Representatives from the California Sober Living Network attested that their 527 self-regulated sober homes were assets to the community; however, they gave no descriptions of an “ideal” neighborhood fit, other than to state that sober homes which comply with their regulations are a proper community fit.<sup>4</sup>

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<sup>3</sup> Testimony of Legislator Kate Browning, at the October 23<sup>rd</sup>, 2009 hearing, official transcript, p. 2.

<sup>4</sup> Jeffrey Christianson and Deborah Parker, testimony at the October 23<sup>rd</sup>, 2009 hearing, official transcript, pp. 42, 43, 45.

What follows are the Commission's responses to the remaining five questions, drawn from the transcripts of the two public hearings,<sup>5</sup> written testimony submitted to the Commission and focus groups that followed the hearings.

## **Housing Fragile People in Fragile Communities**

### **What is a Sober Home Supposed to Do?**

“Sober living homes are affordable, alcohol and drug free environments that provide a positive place for peer group recovery support. Sober housing promotes individual recovery by providing an environment that allows the residents to develop individual recovery programs and become self supporting....The residents are required to follow a strict set of house rules. Violation of the rules can result in assessment of minor financial fines, writing an essay, to immediate ejection from the house. The single most common rule is zero tolerance for drugs and alcohol.... All residents [are urged] to attend a minimum number of weekly 12 step meetings such as Alcoholics Anonymous....”<sup>6</sup>

This description provided by Scott McCann depicts one view of an ideal sober home. The typical stay for a sober-home resident should range from 90 days to one year. Violation of the zero-tolerance rule in most cases results in immediate ejection from the house. “The residents of sober living home are not considered tenants and as such are not protected under tenants’ rights laws. Hence a resident can be ejected at a moment’s notice [for violating the rules] without the due process of eviction procedures.”<sup>7</sup>

The Commission believes it is imperative that sober-home residents be deemed licensees with certain protections from false claims that could lead to their eviction. The Commission recommends that the operators of sober homes be required, in the event of a resident being accused of violating the zero-tolerance rule, (i.e., being in possession of or using drugs or alcohol in the residence,) to provide the resident with an opportunity to confront his or her accuser and the sober-home operators be required to have reliable evidence of the zero-tolerance violation prior to evicting the resident. The Commission believes it is imperative that the operator also be required to locate appropriate alternative housing or in-patient treatment for the offending resident, and not render that person homeless by simply evicting him or her.

This qualification regarding the limits that need to be placed on the eviction of sober-home residents who violate the zero-tolerance rule accentuates the need for responsible sober-home owners and managers, a situation the Commission found sorely lacking in Suffolk County. One

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<sup>5</sup> The official hearing transcripts can be accessed on line at: <http://legis.suffolkcountyny.gov/clerk/onlinedocs10.html>. Go down to “Meeting Transcripts” and under “Meeting Transcripts” go to “Boards and Commissions.” Next to “Boards and Commissions” drop down to 2009 and click “Go”. It will bring up all 2009 Boards & Commissions. Click on the blue highlighted line under “Welfare to Work Commission” and then click on the highlighted blue line “Minutes Available” under the October 23 and October 30 public hearing dates.

<sup>6</sup> *What is Sober Living?* By Scott McCann, [www.Anonymousone.com/frequentlyaskedquestions](http://www.Anonymousone.com/frequentlyaskedquestions).

<sup>7</sup> *Ibid.*, pp. 2, 3.

person recognized during the October 30<sup>th</sup> hearing as a responsible sober-home owner and manager is Carlos Rodriguez, who owned and managed 11 respected Long Island sober homes. Mr. Rodriguez provided this important caveat about how relapsed sober-home residents should be treated humanely when an eviction is required because they violated the zero-tolerance rule.

“First thing and foremost is if they relapse, they need treatment, not to be thrown in the street like a dog. I made sure I got them into a crisis center. If I couldn’t get them into a crisis center, I would drive them to a detox center or I would do whatever I had to do to get them into some sort of program. I never threw them into the street.... I was able to bring them back once they did their sobering up... Whatever recommendations the counselor ... would give, they would have to follow. Then I would give them the opportunity to move back into another home. I wouldn’t bring them back to [the original house] because it sends a wrong message.”<sup>8</sup>

While sober homes do not provide treatment, they are supposed to provide a safe haven for people who are in treatment. Typically, sober-home residents will spend their day at work and/or in treatment, and then return to the drug and alcohol free home in the evening where they will receive peer-support to avoid drugs and alcohol and to continue their healing and, hopefully, their journey to self sufficiency.

But, as Saul Spigel, Chief Analyst for the Connecticut Office of Legislative Research observed in his 2009 report on sober homes, because these homes “do not provide treatment, they typically are not subject to state regulation....” Only Hawaii, he found in his survey of all 50 states, has a law regulating sober homes. Spigel noted that “because people with substance-abuse disorders are covered by the Americans with Disabilities Act and Fair Housing Act, state and local zoning and other requirements meant to regulate them are subject to challenge.”<sup>9</sup>

In short, sober homes are supposed to serve a protected class of vulnerable citizens, but their protected status impedes the regulation of these homes. This lack of regulation, the Commission heard again and again, leaves too many of the fragile, chemically-dependent residents of sober homes open to exploitation and substandard conditions that impede their recovery, trigger relapses and actually encourage substance abuse.

Oxford House is a nationally-recognized umbrella organization that charters sober homes which are self-regulated by their residents. The Oxford House Manual reads: “Alcoholics and drug addicts by nature seem to dislike rules. There is only one rule applicable to all Oxford Houses; i.e., membership is conditional on not drinking.” Oxford Houses are democratically run by their residents, supervised by a House Coordinator elected by the residents, and governed by rules that “will tend to evolve from the membership of the House itself.” Oxford House provides

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<sup>8</sup> Carlos Rodriguez, testimony at the October 30<sup>th</sup>, 2009 hearing, official transcript, p. 35.

<sup>9</sup> *Sober Houses (2009-R-0316)* by Saul Spigel, Chief Analyst, Office of Legislative Research, State of Connecticut, September 2, 2009, p. 1.



guidelines for the regulation of money, alcohol and drug usage, the selection of officers and community relations.<sup>10</sup>

Again, ideally, the Oxford House approach to sober living is meant to empower the residents to take control of their lives and, through peer support, to move toward recovery and self sufficiency. Oxford Houses are controlled by a national charter system which presumably eliminates homes that impede recovery. However, there are literally hundreds of sober homes on Long Island – 600 alone in Suffolk County according to *Newsday*<sup>11</sup> – very few of which are Oxford Houses, all of which are not regulated and many of which are substandard and far removed from the ideals sought by responsible sober-home providers.

Safe and effective sober homes can change people’s lives. Mary Dinizio, a recovered substance abuser, who testified at the October 23<sup>rd</sup> hearing, summarized how she was helped by her sober home.

“The sober house has most definitely changed and saved my life. The sober house ... was a safe haven for me. It was very structured. It had rules.... I was homeless, helpless and penniless. I ended up living in abandoned cars. So I had to start all over. [The sober home] showed me how to wake up in the morning, to do what I needed to do ... to go into therapy.... I did [therapy] all day. And then I came home to the sober house. I had chores. I followed [the rules].... I was there for a year.... To me the sober house was a most wonderful experience. It taught me to go back to school ... get my confidence back and to ... start to live a normal, productive life.”<sup>12</sup>

Replicating and multiplying the positive sober-home experience of Mary Dinizio is the Welfare to Work Commission’s central goal in issuing this report on sober homes.

### **The Problem: Suffolk County’s Unregulated Sober Homes**

Sober homes in Suffolk County have no legal status. No government agency regulates or licenses sober homes. Because sober homes are unlicensed and unregulated, there is no formal directory of sober homes in Suffolk County nor is there a listing of sober-home residents. And, as will be discussed below, local town and village governments have difficulty enforcing existing health and safety codes and laws on sober homes.

In addition, there is difficulty categorizing the health-status of the residents who need to live in a sober home. Reports and testimony received by the Commission from sober-home residents, providers, emergency responders, and community representatives identify the presence of people in these homes who have a myriad of disorders and disabilities including physical, developmental, and psychiatric. Individuals in recovery from substance-abuse disorders reported

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<sup>10</sup> *Oxford House Manual, Basic Edition*, Oxford House World Services, pp.11, 26, 27.

<sup>11</sup> *After “Sober Home” Deaths, State Panel Weighs Regulation* by Mike Amon, *Newsday*, December 28, 2008.

<sup>12</sup> Mary Dinizio, testimony at the October 23<sup>rd</sup>, 2009 hearing, official transcript, p.77.

that residents with those disorders are at all different phases of sobriety – from active substance users to people just returning from intensive care to everywhere in between.

This is the problem. Hidden from public view, many sober homes are operated by unscrupulous landlords who have no interest in fulfilling the mission of a responsible sober home outlined above. SCDSS cannot identify sober homes or their residents because the shelter allowance used to pay the rent must be issued to the client who then has the legal right to decide on his or her place or residence. Towns and villages that control zoning and code enforcement have no way of identifying sober homes. Neither can the Suffolk County Department of Health identify sober homes because they have no legal standing that would bring them under the aegis of the Department. The same is true for OASAS, the New York State office that has responsibility for programs that serve chemically-dependent people but whose officials claim, according to *Newsday*, that “they do not know how many sober homes exist because they have no authority over them.”<sup>13</sup>

Claire Olsen, Director of Inpatient Services for St. Charles Hospital, said that the term “sober home is an oxymoron.” Describing many as “ramshackle, Ms. Olsen said that she refers chemically-dependent patients who need housing to sober homes by word of mouth, acting as a “real-estate agent” without a definitive listing of decent sober homes.<sup>14</sup> Similarly, Kathy Ayers-Lanzillata, Director of Chemical Dependence Programs for Catholic Charities, former President of the Quality Consortium of Suffolk chemical-dependence treatment providers, and a member of the OASAS workgroup that is addressing sober homes, testified that, while there is a range of sober homes from being positive living environments for people struggling with or recovering from alcohol and drug addictions, “too many of them are run poorly with deplorable conditions, which only increase the likelihood of a person relapsing into the disease of addiction.”<sup>15</sup>

While the number and location of Suffolk County sober homes is difficult, if not impossible, to determine, the problem of unregulated sober homes has been documented anecdotally by people who have experienced a “deplorable” sober home. Steven Wolfe, who has been in the recovery process for 17 years, testified:

“In my first sober house in 1998...I learned how to use heroin. I had never touched the stuff.... You have no idea how devastating [it is] to people...to leave a treatment center or a hospital ... and then live in a house where a bunch of people are using chemicals. I mean, it’s unbelievable. It totally defeats the purpose of what we are trying to do... The stuff that is going on in these houses, it doesn’t promote recovery.... To define a sober house, we can use Oxford House as a good model.... I can show you documentation of models of sober homes that work very well.... But, what’s going on right now, it’s not even close.”<sup>16</sup>

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<sup>13</sup> *Newsday*, December 28, 2008, Op. Cit.

<sup>14</sup> Claire Olsen, sober homes focus group, February 24, 2010.

<sup>15</sup> Kathy Ayers-Lanzillata, testimony at the October 30<sup>th</sup>, 2009 hearing, official transcript, pp. 8-9.

<sup>16</sup> Steven Wolf, testimony at the October 23<sup>rd</sup>, 2009 hearing, official transcript, p. 28-29.

Eliminating the “deplorable” sober-home experience of Steven Wolfe and others is another important goal of the Commission’s report.

### **The Impact of Unregulated Sober Homes on Fragile Communities**

Legislator Browning’s concern that bad sober homes tend to be “targeted” to and have very negative impacts on working-class and lower-income communities such as Mastic and Shirley in her district (LD 3) was shared by Legislator Ed Romaine, (LD 1) whose district includes Riverhead and Legislator Duwayne Gregory, (LD 15) whose district encompasses Wyandanch and North Amityville.<sup>17</sup> These communities attract sober homes because home values are lower there, making properties “affordable” to unscrupulous landlords whose primary goal is to collect the rents – often paid by SCDSS – without providing any supervision or any services to the residents.

Thomas MacGilvary, who served Suffolk County for 31 years in mental health, alcohol and substance-abuse programs, was Director of the County’s Office of Community Mental Hygiene Services within the Department of Health. Noting that sober homes are often sited in poorer communities, he testified that “over the years my office has received and attempted to deal with numerous calls from residents complaining about the conditions and the activities of [sober-home] residents.”<sup>18</sup>

Similarly, SCDSS Commissioner Gregory Blass captured the negative community impacts of poorly-run sober homes with this graphic testimony.

“Many sober homes operate as rooming houses or boarding houses ... It is immoral and reprehensible to literally condemn individuals who are struggling through recovery to languish in substandard, overcrowded homes where there is no structure for recovery and where it is detrimental to their sobriety as well as to their health and safety. Poorly run sober homes also create misery for the communities where they operate. Twenty or more individuals living in a single family home, which is an all too frequent scenario, invariably creates destructive blight which forever changes for the worse the character of suburban neighborhoods. Dishonest, amoral landlords will benefit from these substandard, crowded, unregulated, unsupervised rooming houses with no concern for their unfortunate tenants and the ill-fated surrounding community.”<sup>19</sup>

John Sicignano, President of the Mastic Park Civic Association and Second Vice President of the Affiliated Brookhaven Civic Associations (ABCO) said that “Many communities are burdened

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<sup>17</sup> Legislators Ed Romaine and Duwayne Gregory, testimony at the October 23<sup>rd</sup>, 2009 hearing, official transcript, pp. 53-54, 84.

<sup>18</sup> Thomas MacGilvary, testimony at the October 30<sup>th</sup>, 2009 hearing, official transcript, p. 46.

<sup>19</sup> SCDSS Commissioner Gregory Blass, testimony at the October 23<sup>rd</sup>, 2009 hearing, official transcript, p. 62.

with an over saturation of these sober houses... We need to share the services that are needed and required to help people ... in need” like recovering addicts and alcoholics.<sup>20</sup>

Deborah Parker, Project Director of the Solutions for Treatment Expansion Project in California, whose testimony was teleconferenced into the October 23<sup>rd</sup> hearing, stated that there is a “startling lack of evidence” proving that group homes threaten health and safety, or property values, based on national studies she cited.<sup>21</sup> It should be noted however, that Ms. Parker referenced the American Planning Association’s summary of studies in which group homes are defined as “owned or operated under the auspices of a nonprofit association, private care provider, government agency, or other legal entity, other than the residents themselves or their parents or other individuals who are their legal guardians.”<sup>22</sup> Hence the studies of “group homes” referenced by Ms. Parker likely encompassed government-regulated homes for mentally or physically disabled people across the nation that in no way resemble the underground, unregulated, unlicensed sober homes in Suffolk County.

A striking example of the negative impact of a poorly-run sober home in Shirley was provided in an April 12, 2010 letter to Legislator Browning by Robert Lambert, Chief of the Shirley Community Ambulance, in which Chief Lambert reported that “from January 1, 2010 to April 1, 2010 there were 17 documented calls for assistance” from this home for problems such as “respiratory disease followed by chest pain and abdominal pain. Also, several times they admitted or appeared to be using alcohol and drugs. The cost of these calls... comes out to over \$650 a call.”<sup>23</sup> Simply put, during this four month period, the Shirley sober home cost the community of Shirley \$11,050 in ambulance calls, a cost that weighed heavily on the fragile residents of the home as well as the struggling, working-class residents of Shirley who pay for their community’s ambulance service.

### **The Impact of Unregulated Sober Homes on Fragile People Struggling with Addictions**

People who are addicted to alcohol and drugs can be found in every community and in every economic stratum on Long Island. The effects of this disease are especially harmful on poor people and poor communities. People struggling with substance abuse garner little sympathy or empathy from their neighbors or from the general public. No neighborhood wants them and certainly no neighborhood welcomes them. Their disease weighs heavily on them, their families and the larger community, causing divorce, abuse, welfare dependency, economic losses, crime and even the loss of life in dreadful DWI incidents. Typically viewed as moral failures, people struggling with chemical addictions are in fact the victims of a medically-diagnosed disease that destroys their lives. They are more fragile than criminal.

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<sup>20</sup> John Sicignano, testimony at the October 23<sup>rd</sup>, 2009 hearing, official transcript, p. 59.

<sup>21</sup> Deborah Parker, testimony at the October 23<sup>rd</sup>, 2009 hearing, official transcript, pp. 42, 43.

<sup>22</sup> *Policy Guide on Community Residences*, American Planning Association, September 22, 1997, p. 1.

<sup>23</sup> Letter to Legislator Kate Browning’s aide, Joshua Slaughter, from Chief Robert Lambert, Shirley Community Ambulance, April 12, 2010.

The fragility of people struggling with substance abuse was the subject of Dr. Stephen Dewey's keynote testimony at the October 23<sup>rd</sup> hearing. Having studied the physical effects of substance abuse, using brain scans and other technologies, Dr. Dewey made these points about the impact of this disease.

1. Alcohol and drugs alter brain function to create a "new normal" for substance abusers. "If you ever asked alcoholics why they drink, the number one answer you'll receive is 'It makes me feel normal.' That is exactly what we see in the PET scan. In the presence of alcohol ... the brain is functioning normally." This "new normal" is particularly unique to alcoholics who have higher incidences of depression manifested as apathy and withdrawal. With alcohol, their depression lifts, "they are more energetic ... engaging, happy to talk about things ... more integrated into the work process and their surroundings." In effect, they seek normalcy through abnormal behavior.<sup>24</sup>
2. Alcohol and drugs destroy dopamine in the brain which is "the chemical that allows us to feel pleasure from normal events." This loss of dopamine triggers the addictive process since alcohol and drugs destroy the ability to feel pleasure, yet give the false sense of pleasure. "If you can't feel pleasure, then you will seek other ways to do so that can include abusing more drugs ... going to places where you did abuse drugs ... seeking out persons with whom you've abused drugs, because all of these environmental triggers will raise dopamine levels that you have left to make you feel a little better."<sup>25</sup>
3. Another chemical impact of substance abuse on the brain is the loss of executive function. The frontal cortex of the brain controls the ability "to make the right decision, being able to say yes or no." Drugs and alcohol – especially cocaine – interfere with this brain function. "It actually removes the individual's ability to make proper decisions ... that include yes and no ... to know the difference between right and wrong" and the ability to "act on what's right and wrong ... to evaluate a series of data, evaluate an environment ... evaluate a potential outcome ... to think ahead ... think of consequences.... They don't even think one hour ahead" and in this condition are easily led by others.<sup>26</sup>

Dr. Dewey's findings were corroborated by Carlos Rodriguez, who testified that in the 11 sober homes he ran he saw situations where "if one person would relapse, normally one to three would relapse at a time."<sup>27</sup> Dr. Dewey emphasized the environmental triggers that cause relapse: sight; smell; taste. Anyone who has tried to stop smoking will recognize these triggers in the smell of brewing coffee. These environmental triggers are the main reason that unsupervised sober homes are, in his view, "a recipe for disaster."

"In many of these places drugs [and alcohol] get in, and before long [the residents] start to associate some of these ... homes with substance abuse.... When they go back to

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<sup>24</sup> Dewey, Op. Cit, pp. 9, 15-16.

<sup>25</sup> Ibid., p. 11.

<sup>26</sup> Ibid., pp. 11-12.

<sup>27</sup> Rodriguez, Op. Cit., p. 20.

these homes [after a day at a treatment center] they are not supervised ... they're not monitored.... You're virtually asking for the impossible; you're asking for a person to go back to a place where drugs [or alcohol] are abused and not abuse them.... The number one cue is smell.... So you can imagine if you have somebody going back [to an unsupervised sober home] and they're smelling alcohol or they're smelling the heating up of a crack pipe or they're smelling the melting of heroin.... These powerful cues ... are a very, very big problem."<sup>28</sup>

Or, as Carlos Rodriguez described the tragedy of poorly-run sober homes, "This is what hurts me: Good people, good hard working people have died. They have died because they don't have the proper housing. They don't have the government backing them."<sup>29</sup>

## **Regulating Housing for a Protected Population**

### **The Parameters of Federal Law: Regulating Without Discriminating**

The federal Americans with Disabilities Act (ADA) and federal Fair Housing Act (FHA) recognize substance abuse as a disease and substance abusers as disabled people who deserve government protection from discrimination as well as access to government programs and services to treat their disability. As a result, the ADA and FHA prohibit housing discrimination against people who are alcohol or drug dependent. Both federal statutes define persons with disabilities ("handicaps") as "individuals with mental or physical impairments which substantially limit one or more major life activities." Among these recognized disabilities are "alcoholism" and "drug addiction." The ADA and FHA therefore make it unlawful to:

- Utilize land use policies or actions that treat groups of persons with disabilities less favorably than groups of non-disabled persons.
- Take action against, or deny a permit, for a home because of the disability of individuals who live or would live there.
- Refuse to make reasonable accommodations in land use and zoning policies and procedures where such accommodations may be necessary to afford persons and groups of persons with disabilities an equal opportunity to use and enjoy housing.<sup>30</sup>

The Fair Housing Act "does not protect persons who currently use illegal drugs."<sup>31</sup> Nevertheless, the law provides broad protection for people struggling with alcohol or chemical addictions and seriously restricts the ability of local governments to limit their housing options. Thus, the ADA and FHA prohibit "local zoning and land use laws that treat groups of unrelated persons with

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<sup>28</sup> Dewey, Op. Cit. p. 16.

<sup>29</sup> Rodriguez, Op. Cit., p. 23.

<sup>30</sup> *Joint Statement of the Department of Justice and the Department of Housing and Urban Development*, August 18, 1999, p.1.

<sup>31</sup> *Ibid.*

disabilities less favorably than similar groups of unrelated persons without disabilities.” Any attempt to restrict housing for unrelated persons must be “imposed on all such groups,” not solely on the persons or groups with disabilities. Similarly, local government attempts to restrict the “saturation” of communities with housing for disabled persons – density restrictions – “are generally inconsistent with the Fair Housing Act” as decided in numerous Department of Housing and Urban Development (HUD) and Department of Justice decisions as well as court rulings<sup>32</sup> including the 2010 federal court decision, *Homeworks v. Suffolk County*, striking down Suffolk County’s 2003 sober-homes law that will be discussed in detail below. Thus, Saul Spigel’s Connecticut Office of Legal Research report concluded, “local governments often try to restrict the establishment of sober houses through zoning and housing codes, but federal law limits their ability to do so.”<sup>33</sup>

Deborah Parker elaborated on these protections in her testimony, pointing out that the courts have divided housing discrimination against disabled people into three areas. One is discriminatory intent, where an action or ordinance by a local government is aimed at a disabled population rather than “the type of house” they are living in. This would include a local law that singles out sober homes because they house individuals with substance addictions. Local governments can impose some restrictions on housing where there is a legitimate community interest to do so such as reducing crime or alleviating traffic, but these restrictions cannot be imposed on houses for disabled people based simply on anecdotal evidence or presumptions by community residents that the housing will have a negative impact on the community. “Fair housing laws require that you show evidence that the particular provider” under consideration for a restriction “is a threat. There has to be objective evidence, not conjecture.”<sup>34</sup> The opinions of angry neighbors opposing a sober home will not suffice; a restriction can only be imposed if there is empirical evidence that the sober home has had or will have an actual negative impact on a neighborhood such as a measurable increase in crime or other degradations of neighborhoods.

Although not addressed by Ms. Parker, in the recently-decided federal court case, *Homeworks v. Suffolk County* (discussed in detail below,) the court pointed out that even where there is a verifiable justification for the law, the law can still be struck down by the courts for violating the FHA or ADA if the law’s housing restriction was not the *least* discriminatory means of furthering that verifiable community interest.<sup>35</sup>

Another form of illegal housing discrimination, Ms. Parker testified, is when the effect of the ordinance has a “discriminatory impact” on the disabled population.<sup>36</sup> For example, while the intent of confining all sober homes to industrial parks may be to protect their residents from

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<sup>32</sup> Ibid, pp.2-3.

<sup>33</sup> Spigel, Op. Cit., p. 4.

<sup>34</sup> Parker, Op. Cit., pp 39-40

<sup>35</sup> *Human Resource Research and Management Group, Inc. D/B/A, Homeworks, and Oxford House, Inc. v. Suffolk County and Vincent Reynolds, Et. Al. v. Suffolk County Department of Social Services, and Suffolk County Department of Health Services, February 17, 2010.*

<sup>36</sup> Parker, Op. Cit., p. 40.

presumed-to-be hostile neighbors, the unintended impact may be to deny substance abusers the benefits of living in a residential neighborhood, thereby discriminating against the disabled residents.

Ms. Parker noted that the third type of discrimination is the failure of a local government to provide “reasonable accommodations.” In such situations, the local governments will avoid ordinances that apply to the occupants of the housing, or to a type of housing, but rather will “ratchet up the zoning and land use restrictions” for the entire village or town or county. Here, the local government must “provide flexibility” or “reasonable accommodations” to meet the needs of the disabled population. The *Joint Statement* put it this way: “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.”<sup>37</sup> Each accommodation must be decided on a case by case basis, depending on the facts of the case. For example, a town might restrict all residences to four or more unrelated people, but it would have to make an accommodation for disabled persons who could show that their group home might benefit from more than four residents and would not negatively affect parking, traffic, noise or utility usage.

### **The 2010 Federal Court Ruling Overturning Suffolk County’s Sober Homes Law**

The clash between the rights of the disabled and the powers of local governments to regulate their housing came to the fore with the 2010 federal court decision in *Homeworks v. Suffolk County*<sup>38</sup> overturning Suffolk County’s *Resolution No. 279 -2003 Adopting a Local Law No. 19 - 2003, A Local Law Establishing a Site Selection Procedure for Substance Abuse Houses*. This law, never enforced due to the court challenge, sought to restrict poorly-run sober homes by: (1) limiting them to six persons, regardless of the size of the home; (2) establishing a site-selection process in each neighborhood where a sober home was to be sited; (3) requiring a state-certified site manager at the sober home, 24 hours a day; and (4) establishing a licensing requirement including an annual fee and an inspection process. Judge Joseph Bianco struck down the 2003 Suffolk County law, finding that each of its four provisions violated the Americans with Disabilities Act and Fair Housing Act, citing the principles of fairness described above by Deborah Parker.

In examining the 2003 Suffolk County law, Judge Bianco applied what is referred to as the “heightened scrutiny” legal standard of review. Judge Bianco explained that this “heightened scrutiny” standard of review must be used in all legal challenges to laws brought in federal court that are based on the ADA and FHA. Under this test, in order for a law to survive a court challenge, the government must prove, using reliable evidence, (1) that the specific provisions in the law further a legitimate public/government interest and (2) that there are no alternative means of furthering that public interest that are less negatively impacting on the targeted disabled population. This heightened scrutiny test is a very high level of judicial review and makes any

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<sup>37</sup> *Joint Statement*, Op. Cit., p. 3

<sup>38</sup> *Homeworks v. Suffolk County*, Op. Cit.



additional regulation of sober homes by the County highly susceptible to further judicial challenge.

On the initial question of whether the 2003 Suffolk County law either intentionally or consequentially discriminated against people with disabilities, Judge Bianco explained, “This law facially discriminates against a group of disabled individuals (namely, individuals recovering from substance abuse) and subjects them to burdens on housing that do not apply to others.”<sup>39</sup>

As to each of the 2003 law’s provisions (site selection, licensing, occupancy maximum, site manager) Judge Bianco found the County failed to produce reliable evidence that any of these four requirements actually furthered a legitimate public interest (e.g., failed to produce reliable evidence that higher concentrations of sober homes increased crime in the neighborhoods, failed to produce reliable evidence that higher concentrations of sober homes in certain towns, and not in others, caused harm either to those needing sober homes or the communities.) Judge Bianco noted that much of the evidence produced by the government relied on anecdotal statements by neighbors that appeared to be based largely on prejudicial notions and biases against residents of sober homes. Judge Bianco also found that the County failed to prove that there were no less discriminatory alternatives for the County to achieve its goals. Judge Bianco wrote:

“The County has failed to put forth any studies or other evidence to demonstrate how these restrictions further any legitimate governmental interest... rather than being based on sweeping generalizations, anecdotal stories from a few members of the public, and stereotypes – none of which provide a legally sufficient basis to support a facially discriminatory law.”<sup>40</sup>

Judge Bianco added:

“Although the County invokes some legitimate public-safety interests – such as preventing crime, overcrowding, and excessive littering ... the County has put forth woefully insufficient evidence ... to show that any of these legitimate interests are furthered by [the law.] In addition, there is no evidence that the restrictions will benefit the protected class of disabled persons.... But there is evidence that these restrictions may even undermine [legitimate community interests] by hindering the continuing recovery of former substance abusers.”<sup>41</sup>

Furthermore, Judge Bianco explained that even if the County had submitted more reliable evidence supporting the communities’ need for these housing restrictions, the 2003 law would still violate the FHA because “these sweeping restrictions are not the least discriminatory means of furthering these purported [community] interests – which the Federal Housing Act requires in this situation.”<sup>42</sup>

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<sup>39</sup> Ibid, p.2.

<sup>40</sup> Ibid., p. 3.

<sup>41</sup> Ibid.

<sup>42</sup> Ibid.

As a consequence of the *Homeworks* decision invalidating the 2003 County law and the failure of the State to provide any relevant regulations, sober homes in Suffolk County continue unregulated, with some unscrupulous landlords exploiting fragile people struggling with substance-abuse problems and the fragile neighborhoods within which these homes are located. One existing area of local legislation that could provide some regulation of sober homes is town and village codes and ordinances that are applicable to all housing in that municipality. For the reasons discussed below, the application of these general local housing codes and town ordinances to sober homes needs to be further analyzed.

### **Lack of OASAS Oversight of Sober Homes**

The “heightened scrutiny” test laid out by the federal court in the *Homeworks* case for determining the legality of sober-housing restrictions by a county government does not preclude all government regulation of sober homes. In New York State, there are group homes for mentally or physically disabled people that are governed by regulations issued by the State office that has responsibility for these homes, such as the New York State Office for Mental Retardation and Developmental Disabilities (OMRDD.) The New York State Office of Alcohol and Substance Abuse Services (OASAS) oversees certain types of residential and other treatment programs for people in recovery and is empowered by State statute to set regulations for these programs. Sober homes, as previously indicated, do not provide treatment services. Their residents are often enrolled in the program of a treatment provider, but the sober home itself does not provide treatment. Claiming that sober homes are strictly a form of housing, OASAS does not have, and apparently has not sought, statutory authority to regulate them.

According to Section 819.2 of the New York State Mental Hygiene Law (amended February 18, 2009,) “Standards applicable to all residential services,” OASAS holds authority over three levels of residential services:

1. Intensive Residential Rehabilitation Services;
2. Community Residential Services;
3. Supportive Living Services.<sup>43</sup>

According to information provided by the Suffolk County Division of Community Mental Hygiene Services,<sup>44</sup> there are currently the following numbers of OASAS-regulated beds/proposed beds available to Suffolk County residents within those categories:

Intensive Residential Services:	331 current	0 proposed beds
Community Residential Services:	102 current	70 proposed beds
Supportive Living Services:	0 current	20 proposed beds

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<sup>43</sup> 14 N.Y.C.R.R. § 819.2

<sup>44</sup> Art Flescher, Acting Director of the Suffolk County Office of Community Mental Hygiene Services in an e-mail exchange with Michael Stoltz, May 11, 2010.

According to the regulations, the first two levels of care – with Intensive and then Community Residential the most intensive – are supervised and fully-staffed levels of care while the Supportive level is intended to bridge an individual in early recovery from the more intensive levels with independent community living.

The closest model to a sober home that OASAS does regulate is “Supportive Living Services” which, according to Section 819.2 (a) (3) of OASAS regulations:

“Promote independent living in a supervised setting for individuals who have completed another course of treatment, are making a transition to independent living, and whose need for services does not require staffing on site on a twenty four hour a day basis. These treatment services are for individuals who either require a long-term supportive environment following care in another type of residential service for an undetermined length of stay, or who are in need of a transitional living environment prior to establishing independent community living.”<sup>45</sup>

The Commission has been informed that OASAS-funded “Supportive Living Services” homes exist in other parts of the State and may be providing the same critical services that a good sober-home provides, but none of these OASAS “Supportive Living Services” homes exist in Suffolk County. This requires further study, as recommended below on pages 30-31.

LI Congregations, Association and Neighborhoods (LICAN,) a community organizing not-for-profit organization that has been working on the sober-homes issue for more than five years, submitted a proposal to OASAS in 2008 for the establishment of “sober homes regulations.” Rob Kent, General Council for OASAS responded that “certifying sober homes as residential service providers would require changes in current residential services regulations [14 N.Y.C.R.R. §819], and possibly other regulations.”<sup>46</sup> OASAS has not sought these regulatory changes and instead has offered Long Island 100 community residences beds. These 100 beds are “Community Residential Services” which, as noted above, are OASAS regulated, “supervised” residential services for “persons making the transition to abstinent living” who “require ongoing clinical support.”<sup>47</sup>

Marcia Lukas of Madonna Heights, a Suffolk treatment center, said that while OASAS has offered 100 additional beds for “Community Residential Services,” Suffolk really needs supportive housing. She believes that OASAS “Supportive Living Services” could apply to sober homes, and would thereby provide more supervision and case management.<sup>48</sup> The Commission has questions regarding the components of Supportive Living Services and their attendant costs which may make this form of OASAS licensed housing cost prohibitive given the demand for sober homes in Suffolk County. As indicated below, the Commission is recommending that this issue be further studied.

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<sup>45</sup> Section 819.2 (OASAS) Standards applicable to residential service providers, (a) (3)

<sup>46</sup> Letter to Beth Brockland, LI CAN, from Rob Kent, Chief Counsel, OASAS, November 6, 2008.

<sup>47</sup> Section 819.2, Op. Cit, (a) (2).

<sup>48</sup> Marcia Lukas, sober homes focus group, January 29, 2010.

SCDSS Commissioner Blass addressed this issue of OASAS regulations in his testimony.

“We would seriously recommend that OASAS amend its regulations...as soon as possible to create a residential treatment model. This would be a logical, effective starting point for reform. It is critical that OASAS be the lead agency given that they have the expertise, the resources and the authority to ensure that quality [sober] homes are developed and maintained. OASAS is in a position to enforce penalties on a uniform basis against sober homes which do not meet State standards. And uniformity in enforcement is critical.”<sup>49</sup>

However, Richard Buckman, who is President of the LICAN/Sober Living Network of Long Island composed of sober-home providers, stated that OASAS will probably never agree to regulate sober homes because “they don’t want the responsibility.”<sup>50</sup> This argument is premised on the fact that OASAS regulation of sober homes will require additional resources in staffing and other costs that the agency does not have. Further, even when it has regulatory authority, OASAS may still lack the resources needed for adequate oversight. Thomas MacGilvary, the Suffolk County official who administered drug and alcohol programs, testified that when he approached the former OASAS Commissioner, Marguerite Saunders, regarding problems with licenses being inappropriately granted to incompetent treatment centers, Ms. Saunders replied, “There’s really not much we can do about it. We just simply don’t have the legal staff.” Mr. MacGilvary noted, “What happens sometimes with State bureaucracies is that they don’t have the funding, the resources to properly enforce their own regulations.”<sup>51</sup>

The call for OASAS regulations was not uniformly supported. John Haley, Chief Operating Officer of Seafield Center, a respected sober-home provider, testified that he had been an early proponent of OASAS regulation of sober homes. But he now feels that such regulations are “not going to solve” the problem and will only require decent sober-home providers to submit to “additional inspections.” He added, “Don’t make it harder for somebody who is doing the right thing to continue doing the right thing just so you can close down 15 people – five houses.”<sup>52</sup> Haley prefers County licensing of sober homes as contract agencies, a concept that is discussed below on page 32. This view was shared by Claire Olsen of St. Charles Hospital who stated that OASAS regulations are a “burden” because they are “costly.” Any residential program that requires 24 hour supervision, she said, may be “prohibitive” because of the financial cost.<sup>53</sup>

And so, there is no doubt that OASAS, like OMRDD and other agencies, could seek the statutory authority to regulate sober homes. Apparently they have chosen not to for a perceived and/or real lack of the resources OASAS would need to enforce these regulations.

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<sup>49</sup> Blass , op. cit., p. 63.

<sup>50</sup> Richard Buckman, sober homes focus group, February 24, 2010.

<sup>51</sup> MacGilvary, Op. Cit., p. 55.

<sup>52</sup> John Haley, testimony at the October 30<sup>th</sup>, 2009 hearing, official transcript, pp. 146, 157.

<sup>53</sup> Olsen, Op. Cit.

## SCDSS Oversight of Sober Homes

In other parts of the country, sober homes tend to be occupied by recovering addicts who are on their way to self sufficiency. Scott McCann’s description of “sober living” above noted that “each resident is required to be financially self supporting, paying their own rent, and purchasing their own food. The residents are required to work, actively seek employment, or be a student enrolled in an accredited academic or trade school.”<sup>54</sup> A similar point was made by Jeffrey Christianson of the California Sober Living Network, whose testimony was also teleconferenced into the October 23<sup>rd</sup> hearing. “The vast majority of our [sober] homes receive no government assistance.... One of the tenets of our homes is you bring in the newly sober or the recent parolee and you incorporate them into the community of sober people ... where they are responsible for their own lives; they’re responsible to get jobs; they’re responsible to pay their bills.”<sup>55</sup>

According to information the Commission has gathered, Suffolk County sober-home residents have significantly lower levels of self sufficiency than sober-home residents in other parts of the country, such as those living in California Sober Living Network homes. Because sober homes are not a legal entity and the Sober Living Network of Long Island (discussed below) is in its formative stages, there is no directory of Suffolk County sober homes or their residents and therefore no way to definitively establish a profile of Suffolk sober-home residents. Some of the more established sober homes, such as Oxford House, appear to have residents who are similar to those described above by Mr. McCann and Mr. Christianson. However, a significant number, perhaps majority, of Suffolk sober-home residents may be much less self sufficient, having experienced homelessness, unemployment, underemployment and reliance on Public Assistance. SCDSS Commissioner Blass testified that, “very often in the public’s perception, the responsibility for sober homes and all the problems associated with them are placed on ... the Department.” He continued, “DSS is actually an agent of the State and federal governments” in the delivery of housing and other services to individuals in recovery who receive Public Assistance.<sup>56</sup>

SCDSS is responsible for paying the shelter-allowance benefit to clients who are on Public Assistance. This shelter-allowance rate for single Public Assistance clients who comprise the sober-home residents supported by SCDSS, a rate set by the New York State Office of Temporary and Disability Assistance (OTDA) that has been increased by only a few dollars over the last 30 years, is \$309 a month without food and \$467 with food. A number of witnesses testified that this rate is too low to cover the costs of running a sober home. Kathy Ayers-Lanzellotta, for example, testified that:

“Catholic Charities operated a female sober home for just two years from January 2006 through December 2007. We found the Department of Social Services Public Assistance housing reimbursement rate does not provide adequate funding to run a quality sober

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<sup>54</sup> McCann, Op. cit., p. 2.

<sup>55</sup> Jeffrey Christianson, testimony at the October 23<sup>rd</sup>, 2009 hearing, official transcript, p. 53.

<sup>56</sup> Blass, Op. Cit., p. 61.

home, and we could not incur additional deficits.”<sup>57</sup> [Catholic Charities subsequently closed this sober home.]

It appeared to the Commission that the low shelter allowance provided by SCDSS may cause unscrupulous landlords to pack 20 to 30 residents into sober homes in order to make a profit.

However, regulations established by OTDA provide little opportunity for SCDSS to intervene when residences in which Public Assistance recipients reside become substandard, including poorly-run sober homes. Under New York State Social Services Law, Section 143-b, local DSS agencies can withhold rent, but, as Commissioner Blass testified to the Commission, only when “there is an actual threat to the recipient’s health and safety.” Commissioner Blass also explained that under Section 143-b, this threat to health and safety must further be verified by the local municipality’s code enforcement officials before the Department can take action”<sup>58</sup>

Dr. Edward Hernandez, SCDSS Deputy Commissioner, said that Public Assistance recipients have the right to choose where they want to live. Dr. Hernandez explained that SCDSS itself will inspect a home only when it has helped a client find that home. SCDSS inspections, however, can only utilize State housing codes. During these SCDSS inspections, OTDA does not permit local DSS agencies to use the housing codes of the town or village in which the houses are located. These local codes are often more stringent than the State code (e.g., they may require Certificates of Occupancy or allow for smaller occupancies than the State code.)

In addition, Section 143-b does not apply to boarding houses. Its rent-withholding provision applies only to landlords receiving the \$309 rent allowance. Local DSS agencies are not permitted to assert their 143-b powers against a landlord if the tenant/Public Assistance recipient is paying both room and board (\$467.)

State Senator Brian Foley has introduced two bills (S4322 and S4323) that would allow SCDSS to require that the homes in which Public Assistance recipients reside – including sober homes – comply with all building codes, rules, and laws of the local municipality (town or village) in which the home is located. This would include requiring a Certificate of Occupancy which the State does not require.<sup>59</sup> Assemblyman Fred Thiele has introduced similar legislation in the Assembly. In 2009, a Suffolk delegation including Legislator Browning, then SCDSS Commissioner Janet DeMarzo and Suffolk County Executive Steve Levy visited Albany to lobby for adoption of these bills, which to date, have not been enacted.

One possible downside to using the more stringent municipal housing codes, however, is that they might lead to increased homelessness and reliance on motels to house Public Assistance recipients since, presumably, the tougher municipal codes would eliminate some of the housing stock currently utilized by SCDSS. Additionally, Deputy Commissioner Hernandez noted that “a

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<sup>57</sup> Ayers Lanzellotta, Op. Cit., p. 9.

<sup>58</sup> Ibid.

<sup>59</sup> Press release issued by Senator Brian Foley, Assemblyman Fred Thiele and Legislator Kate Browning, 2009.

municipality may ultimately pass more restrictive codes in order to limit access to housing by social service clients.”<sup>60</sup>

Finally, as noted above, SCDSS does not record which Public Assistance clients are living in sober homes because these homes have no legal standing and each client has the right to choose his or her place of residence. Additionally, SCDSS does not have the resources or the authority to monitor how sober homes are affecting the treatment and recovery of residents who receive Public Assistance. Therefore, while many sober-home residents are SCDSS clients, and their rent is paid by SCDSS, State regulations limit the ability of SCDSS to oversee these homes. And, as described above, OASAS does not oversee sober homes because they do not provide treatment to the recovering residents.

### **Town and Village Oversight of Sober Homes**

As discussed above, the ADA and Fair Housing Act limit the ability of local municipalities to regulate sober homes because their residents are members of a protected class. A number of town officials expressed frustration with sober homes. For example, Barbara Blass, a Riverhead Councilwoman and Deputy Supervisor, testified:

“Our experiences with sober homes in Riverhead, I’m sure, are similar to those found in other towns: poor supervision, overcrowding and lack of maintenance of buildings and grounds. There is a concern for the safety and welfare of the people who live in these homes as well as those who live near them. Further, the uneven distribution of these homes in a community begins to define the neighborhood and actually change its character.... We all believe some reform is necessary and that’s why we’re here today.”<sup>61</sup>

New York State Senator Brian Foley, formerly Brookhaven Town Supervisor, took a positive tone, stating that there are “already mechanisms in place” for town inspectors to identify code violations or to notify County and State officials of code violations. But he also said:

“It’s really just a question of paying attention to and following through ... It really ... will require administrative focus from the town, the County and the State.... Now there’s a challenge, of course, with budgets and the like that a number of departments have suffered through attrition ... not filling vacant positions, if not elimination of vacant positions, so that would be a bit of a problem.”<sup>62</sup>

The Commission’s preliminary analysis of the law has led to the conclusion that, as long as town or village officials do not single out sober homes for special scrutiny, they are permitted under the Fair Housing Act and Americans with Disabilities Act to enforce their building codes and nuisance abatement ordinances on sober homes. But Senator Foley identified another potential impediment that the Commission believes requires further study: town housing departments may

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<sup>60</sup> Hernandez e-mail, Op. Cit.

<sup>61</sup> Barbara Blass, testimony at the October 30<sup>th</sup>, 2009 hearing, official transcript, p.95.

<sup>62</sup> New York State Senator Brian X. Foley, testimony at the October 30<sup>th</sup>, 2009 hearing, official transcript, pp. 82-83.

not have sufficient staff or funds to vigorously enforce their own codes. And, as noted above, doing so might lead to homelessness if poor people or SCDSS clients are found to be living in homes that violate the town code which are then subject to closure.

This lack of adequate staffing was confirmed by Bruce Richard, Director of Public Safety for the Town of Huntington, who reported that he employs 11 Ordinance Inspectors (code enforcement inspectors,) each of whom has to deal with 45 to 50 cases a month, ranging from littering to illegal housing. These 11 inspectors, Mr. Richard said, are “not enough” to handle the number of violations they must deal with. The County, he pointed out, only provides \$35,000 a year to help Huntington hire inspectors, an amount less than one full-time salary.<sup>63</sup>

Additionally, the Commission was told that town code-enforcement inspectors, by law, cannot enter a home to conduct an inspection unless invited in by the owner or when a warrant has been issued by a judge. David J. Moran, Deputy Attorney for the Town of Brookhaven, testified as to town housing inspectors’ difficulty gaining entry to houses which seem to be in violation of the Town code.

“Houses we do have trouble getting into [don’t allow us] to show up ... and be invited in to do a code compliance inspection. For those instances, we would need probable cause through the courts to obtain a warrant to [get] access. Now, when you’re talking about probable cause... it’s an almost impossible burden to overcome.”<sup>64</sup>

On the other hand, Mr. Moran observed that responsible sober homes will allow inspectors to “walk in” and they will have access to every part of the home. These sober homes, he said, are “models of compliance.”<sup>65</sup> This observation may have been corroborated by an affidavit submitted by Emily Sussman in connection with the *Homeworks v. Suffolk County* law suit challenging the 2003 Suffolk County sober-homes law. Ms. Sussman reviewed the record of 173 inspections of sober homes conducted by Suffolk County between 2000 and 2008. Of these, 145 passed, 28 were incomplete and had no determination and none failed the inspection. Most of these inspections were done at recognized sober homes such as Seaford Resources or Focus House,<sup>66</sup> homes presumably of the type that generally are in compliance as described above by Mr. Moran. Conversely, it can be reasonably assumed that the “underground” or “rogue” sober homes which are operated by unscrupulous landlords avoided inspection or denied the inspectors access to the sober home.

An alternative town or village remedy to eliminate substandard housing – including sober housing – might be the enforcement of their nuisance abatement laws. These laws generally proscribe actions and activities that threaten a neighborhood’s quality of life, such as un-mowed grass, noise or trash pollution. Such laws apparently can be enforced by an inspector observing

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<sup>63</sup> Bruce Richard interview with Richard Koubek, May 11, 2010.

<sup>64</sup> David Moran, testimony at the October 30<sup>th</sup>, 2009 hearing, official transcript, p.p. 131-132.

<sup>65</sup> *Ibid.*, p. 131.

<sup>66</sup> *Affidavit of Emily Sussman* submitted as evidence in Vincent Reynolds, Et. Al., vs. Suffolk County, Suffolk County Department of Social Services, Suffolk County Department of Health Services, May 28, 2009.



the “nuisance” from the outside of the home, thereby bypassing the need to gain entry to the home. Jeffrey Christianson of the California Sober Living Network testified:

“When you have an unscrupulous landlord [who] is taking ... general relief [DSS payments] and packing ... [residents] in like sardines .. and if there is obvious drug use or obvious drinking in a house, we talk to local authorities and we tell them that these houses are not protected [by federal law and we tell them to implement] the full force of your nuisance abatement procedures.”<sup>67</sup>

But Brookhaven Deputy Attorney David Moran, when asked about the enforcement of nuisance abatement laws and building code requirements against substandard sober homes, said, “the nuisance abatement code is very specific” and, in the end, if the Town of Brookhaven enforced its nuisance abatement code against poorly-run sober homes “the State is going to trump us ... the State is going to step in” and tell the town that State regulations forbid the enforcement of the Town’s code against, for example, a sober home with SCDSS residents, because OTDA only permits the application of the State building code.<sup>68</sup> Huntington’s Director of Public Safety also felt that nuisance abatement laws would be of minimal value because “nuisance abatement does not address the problem of overcrowding and code violations inside the home.”<sup>69</sup> The issue of State regulations potentially preempting local building codes and applicability of local nuisance abatement laws to sober homes remains cloudy to the Commission and deserves further attention.

Finally, Dr. Edward Hernandez, Deputy Commissioner for SCDSS, stated that the New York State regulations provide leeway for landlords to place numerous residents in the homes occupied by SCDSS clients – including sober homes. He noted that the State has bedroom square footage requirements which some landlords adhere to by transforming dens and other rooms into bedrooms. As long as there is a kitchen, dining room and common gathering space such as a living room, the law permits multiple bedrooms to be created in finished basements and elsewhere. Dr. Hernandez pointed out that one of the most notorious sober homes in Shirley has never been found in violation of the State’s square footage requirement for bedrooms. This was confirmed by Bruce Richard who noted that the courts have struck down laws that limit “unrelated people” from living in a home and that the New York State Property Management Code requires 50 square feet of bedroom space per person in a room occupied by two people. Thus a four bedroom home could have eight occupants.<sup>70</sup> More residents could be added by creating bedrooms in a finished basement or elsewhere in the house.

The Commission’s examination of town and village ordinances, laws and codes being used to regulate substandard housing – including sober homes – proved frustrating. In addition to the

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<sup>67</sup> Christianson, Op. Cit., pp. 45-46.

<sup>68</sup> Moran, Op. Cit., pp. 129-130.

<sup>69</sup> Richard, Op. Cit.

<sup>70</sup> Edward Hernandez at a Welfare to Work Sober Homes Committee meeting, May 10, 2010 and Richard, Op. Cit.

possibility of State regulations preempting local laws, and access issues where sober-home owners and managers will not let code inspectors in the homes, there is also the question as to whether town building departments have sufficient staff or funds to enforce their own codes. And, although SCDSS can issue a 143-b to stop the rent payment (but not in cases where clients are receiving both rent and food) to an unscrupulous landlord where a town or village has determined that there is a danger to health and safety, these situations will remain limited unless the modifications recommended by Commissioner Blass are implemented thereby allowing the 143-b to be used for landlords receiving both rent and food payments.

### **Self-regulation of Sober Homes**

Because of the legal complexities related to government regulation of sober homes, there has been a movement within the sober-homes community to self-regulate through the creation of provider networks that set and enforce standards for their members. Homes that comply with these standards are then placed on a network “approved list” which is circulated to substance-abuse treatment provider agencies that are looking to place their clients in decent sober homes.

Jeffrey Christianson, Project Director of the California Sober Living Network testified by telephone conference call that over 25,000 people in southern California “find safety and support in the network’s quality sober living homes each year.” Using the same basic definition of a sober home that was used by Scott McCann above, Mr. Christianson stated that there are 527 network sober homes:

“All of which adhere to the Sober Living Network requirements and procedures. They pass an annual inspection, they agree to abide by a stringent code of ethics, they carry sufficient, required liability insurance, they practice good neighbor policies and they attend regular network meetings and trainings. One of the requirements of all network homes is to attend a four-hour [initial] training.... In addition to this initial training, the network also offers two leadership trainings for house managers and senior residents.... The network sets quality assurance requirements in the areas of health, safety, management and conducts voluntary annual inspections of every home every year.”<sup>71</sup>

Management of the network’s sober homes appears to follow the Oxford House model of democratic leadership selected from the residents. The California Sober Living Network is, in Mr. Christianson words, “a trade association of quality sober living homes. Our approved members receive what we like to say is the Better Business Bureau Seal of Approval.” The network has a complaint and grievance process for members and residents. “Homes that are found in violation of the code of ethics are immediately removed from our approved member list.... You can count on one hand the number of homes that ... seem not to obey ... the rules.”<sup>72</sup>

LICAN in conjunction with the Long Island Recovery Association (LIRA – which represents sober-home providers) and the Quality Consortium of Suffolk County (QCSC – which represents not-for-profit chemical dependence treatment and prevention providers) has formed the Sober

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<sup>71</sup> Christianson, Op. Cit., pp. 34-36.

<sup>72</sup> Ibid., pp. 35, 45-46.

Living Network of Long Island. Still in their formative stage, this network appears to be a replication of the California network. Richard Buckman, LIRA Board member, a LICAN leader and the network's President, believes that OASAS or some government entity should, but will not agree to, regulate sober homes thereby necessitating a self-regulating system. "Let's do whatever we can without OASAS" he said, setting standards voluntarily, opening the homes to inspection. The Long Island network has had initial conversations with SCDSS and its Nassau counterpart to create an enhanced reimbursement rate, perhaps as high as \$500-\$700 a month, for sober homes that comply with the network's standards. This rate would be one of the incentives for membership in the network and for compliance with its standards.<sup>73</sup>

The Sober Living Network of Long Island meets regularly and has created a "New Member House Inspection Form" that has a six-page checklist of 14 specific quality-control standards in these categories: sobriety; sufficient space; safety; residents; staffing; record keeping.<sup>74</sup> Mr. Buckman suggested and other LICAN members have argued that OASAS should have applied a significant portion of the \$26.6 million it designated for 100 Long Island community residence beds to the upgrading and expansion of quality sober homes while also creating a broader continuum of residential housing options including: supportive living service beds and other needs-based, county specific, specialized community residence beds (e.g., beds for men in Nassau County, women with children, MICA, etc.). These funds, he believes, might have been better used by OASAS to foster creation of the Sober Living Network of Long Island, perhaps by providing enhanced reimbursements to approved network members.

Voluntary sober living networks seem to offer promise for elevating the quality of sober homes on Long Island and simultaneously navigating the complex government regulations, or the absence of regulations, that have stymied the creation of quality sober homes. However, LICAN did report that government regulations, enhanced payments and increased enforcement of existing codes should also be part of the solution.<sup>75</sup> These issues will be taken up in the next section that includes the Commission's recommendations.

## **Recommendations for Creating Safe and Effective Sober Homes in Suffolk County**

### **"Good, Safe" Sober Homes: An Elusive Goal**

Mastic civic leader John Sicignano captured a central goal of the Commission with regard to sober homes when he testified:

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<sup>73</sup> Buckman, Op. Cit.

<sup>74</sup> *Sober Living Network of LI New Member House Inspection Form*, November, 2009.

<sup>75</sup> *Strategy for Improving Recovery Housing ("Sober Housing") on Long Island, June 1, 2009*, written testimony submitted by LICAN to the Commission for the October 23<sup>rd</sup> hearing.

“We need to share the services that are needed and required to help people in need, especially a vulnerable class of people in recovery. Let’s work with the State and local governments to set standards for all these sober houses to be run by... so as to send people for recovery that is ... real recovery: licensed, regulated, inspected, insured.... We should not be ... warehousing people in sober houses because [we] have no other place to put them.”<sup>76</sup>

As fully detailed above, the Commission found that regulation of sober homes has proven elusive. However, while there are legal constraints on the ability of governments to single out sober homes for regulation, OASAS oversight of the sober homes in Suffolk County does appear legally permissible, depending on the services offered to the residents in these homes. OASAS Commissioner Karen Carpenter-Palumbo’s testimony to the Commission, received on April 15<sup>th</sup>, 2010, states that the Commission and OASAS “share a common goal of ensuring that good, safe housing is developed for individuals *who have completed chemical dependence treatment* [Italics added] so they can maintain their recovery.”<sup>77</sup> (The full text of the Commissioner’s statement can be found below on page 38 as Appendix A.)

Herein lies the core of the regulatory roadblock. OASAS has statutory authority to regulate housing in which substance abuse treatment occurs. Commissioner Carpenter-Palumbo believes people in sober homes have “completed chemical dependence treatment.” Presumably, having completed treatment, these individuals would not fall under the aegis of OASAS.

However, the Commissioner’s observation that sober-home residents have completed treatment is contradicted by the testimony of numerous Long Island professionals, residents and former residents cited above and others who spoke at the hearings and focus groups, who definitively stated that Suffolk County sober-home residents are in treatment. In fact, the premise behind the self-regulation model described above and endorsed by OASAS Commissioner Carpenter-Palumbo is that treatment providers will refer their clients to sober homes that qualify to be on the approved list of the Sober Living Network of Long Island.<sup>78</sup>

Nevertheless, a number of participants in the hearings or focus groups attested to the fact that, under Commissioner Carpenter-Palumbo, OASAS has become more proactive in dealing with sober homes. Thomas MacGilvary, for example, said, “I would like to commend OASAS for more recently acknowledging the problems that have been associated with sober homes in Suffolk County.”<sup>79</sup> Part of this new response was the Commissioner’s appointment, in September of 2008, of “a workgroup comprised of OASAS providers, housing providers, local government officials, staff from the NYS Offices of Mental Health (‘OMH’) and Temporary Disability Assistance (‘OTDA’) and OASAS staff from both Nassau and Suffolk Counties,

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<sup>76</sup> Sicignano, Op. Cit., p 59

<sup>77</sup> Karen Carpenter-Palumbo, testimony submitted to the Welfare to Work Commission received April 15, 2010, p. 1.

<sup>78</sup> Ibid.

<sup>79</sup> MacGilvary, Op. Cit.

including Social Services and Mental Health Commissioners, that was charged with exploring the ‘sober home’ issue to make recommendations for a range of solutions.”<sup>80</sup>

However, to date no formal recommendations have been issued by this workgroup which, according to the October 23, 2009 testimony of SCDSS Commissioner Blass, “held numerous meetings over many months” while “any real progress toward the [workgroup’s] goals remains questionable.”<sup>81</sup> In addition, the workgroup has not met since November of 2009, although Richard Buckman, one of its members, was informed that the workgroup may be reconvening in the coming weeks or months to consider OASAS guidelines for sober homes that are drawn from the California Sober Living Network described above.<sup>82</sup> This is in keeping with Commissioner Carpenter-Palumbo’s testimony that the workgroup will ultimately pursue “development of OASAS guideline to support increased state and local funding for individuals who are receiving public assistance and living in recovery homes.”<sup>83</sup> A similar commitment was made in an OASAS memo attached to SCDSS Commissioner Blass’ testimony. The memo stated that OASAS would develop guidelines that LDSS (local DSS district) could use as the basis for offering a higher room & board rate” and that “adherence to the Guidelines would be monitored by a peer based network,”<sup>84</sup> presumably the Sober Living Network of Long Island.

The Commission would welcome release of these OASAS guidelines, however, the Commission has also concluded that what OASAS Commissioner Carpenter-Palumbo termed the “common goal of ensuring that good, safe housing is developed” for people who reside in sober homes will require more than OASAS guidelines and enhanced SCDSS rates.

The Commission agrees with the LICAN three-part strategy for addressing the sober-home problem: (1) new oversight by New York State and the counties; (2) increased reimbursement rates for high quality sober home providers; (3) increased enforcement of local building codes.<sup>85</sup>

Without such a comprehensive approach, tens of thousands of State and County funds are being spent each year on the SCDSS shelter-allowance benefits for people in recovery to live in unsupervised sober homes which are likely to trigger their relapse into alcohol and drug abuse. These SCDSS shelter-allowance payments are preventing homelessness, and in many, perhaps all cases, are keeping these people out of expensive motels or shelters. Unfortunately, less than desirable housing opportunities such as sober homes may be a necessary evil. There is a striking absence of affordable rental housing for low-income single people on Long Island. Without the availability of residential opportunities provided by residences like sober homes that house

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<sup>80</sup> Carpenter-Palumbo, Op. Cit.

<sup>81</sup> Gregory Blass, Op. Cit., p. 63.

<sup>82</sup> Richard Buckman interview with Richard Koubek, May 3, 2010.

<sup>83</sup> Carpenter-Palumbo, Op. Cit., p. 2.

<sup>84</sup> *Proposals for Increased Oversight and Funding For High Quality Recovery Homes: Guidelines vs. Regulations*, OASAS memo appended to the testimony of SCDSS Commissioner Blass, October 23<sup>rd</sup>, 2009.

<sup>85</sup> *Strategy for Improving Recovery Housing...* LICAN, Op. Cit., p. 1.

multiple singles, homelessness would increase, and there may be more people forced to live out on the street. The cost to shelter homeless singles is much greater than the rents accepted by the operators of sober homes.

Nevertheless, the unsupervised, counterproductive sober homes discussed in this report generate very heavy social and fiscal costs for the community and the County. For example, conservatively, if just 50 of the 805 SCDSS clients who are alcohol or chemical dependent are placed in “rogue” sober homes, with \$309 a month for their rental payments, the annual cost in SCDSS shelter allowances is a staggering \$185,400 a year to place these fragile clients in harm’s way of relapsing.

Consider, for example the social and fiscal costs of this actual case that involved a “rogue” sober home, drawn from the "Case Notes" from a hearing in Family Court.<sup>86</sup> The subject of this hearing was whether the respondent in a child-neglect case was complying with the court's order.

"Mr. H. testified that he works in (name of workplace deleted for confidentiality,) NY 4-5 days/week for his former employer, but probation department requires that he return to Long Island each night after work. He goes to work early in the morning and gets back about 8:30 pm. He resides at a sober house but his roommates smoke crack cocaine in the room. He has to breathe in crack cocaine smoke while he is sleeping. He complained to staff and threatened to withhold rent. Staff indicated that they would rather have him leave than confront the other residents. He was told that he would have to leave if he didn't pay the rent. So he has to pay rent to live in a place where he has to breathe in crack smoke while he's sleeping, and trying to get away from ... (drugs)."

What follows are the Commission’s specific recommendations to meet the challenges outlined in this report, challenges that will face any government attempts to achieve “good, safe” sober homes in Suffolk County.

### **Challenge #1. Who Is In Charge: OASAS or OTDA?**

There will be no regulation of sober homes until the two State agencies, OTDA and OASAS, determine which has primary oversight responsibility and which agency will pay for the oversight of sober homes. For example, as noted above, the OASAS memo attached to Commissioner Blass’ testimony called for OASAS guidelines that SCDSS could use to provide enhanced SCDSS rental reimbursements to sober homes that adhere to these guidelines. However, Commissioner Blass testified:

“The [OASAS] proposal mentions a state/county 50/50% share for proper staffing of supervisors and care givers at sober homes. OASAS clearly fails to provide any additional funding resources for increase in service, and seeks to enlist counties in an

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<sup>86</sup> Gregory Blass, e-mail to Richard Koubek, May 14, 2010.

arrangement which the counties cannot afford, as these requirements would place entirely new financial burdens on counties.”<sup>87</sup>

### **Recommendations: OASAS Must Assume Regulatory Responsibility**

Sober homes play a critical role in the recovery process. And many if not most Suffolk County residents of sober homes, despite Commissioner Carpenter-Palumbo’s assertion, are in treatment. Oversight of sober homes and the treatment process are deeply intertwined. As reported above, Dr. Stephen Dewey said that an unsupervised and unregulated sober home where a recovering addict lives in an environment where drugs and alcohol are used is a “recipe for disaster.” And, the supervision of sober homes requires more than just oversight of the physical conditions of the house, that is, its health and safety conditions. More important is oversight, by professionals in chemical dependence treatment, that these sober houses are supervised “homes” in which recovering residents are adhering to the behavioral norms that should be in the sober home guidelines which OASAS has promised to release. Samples of behavioral guidelines can be found in the McCann and Oxford House descriptions on pages 6 and 7 above and the Sober Living Network of Long Island’s “New Member House Inspection Form” referenced above on page 26.

Robert Briglio, one of the two attorneys who brought the *Homeworks v. Suffolk County* case, testified that, in his opinion, new County and State statutes and/or regulations setting forth how “good” sober homes are to be run would not violate the ADA or FHA if they ensured that the “good” sober homes provide their residents with some kind of “added benefit” not otherwise offered to Public Assistance recipients (e.g., transportation to treatment; supervision to ensure adherence to house rules such as the zero-tolerance rule.)<sup>88</sup>

The Commission therefore supports SCDSS Commissioner Blass’ call “that OASAS amend its regulations as soon as possible to create a residential treatment model.” To accomplish this goal, the Commission recommends that:

1. Members of the New York State legislative delegation representing Suffolk County introduce legislation to amend the New York State Mental Hygiene Law so as to grant OASAS the statutory authority to have oversight of and responsibility for all housing where individuals are enrolled in a licensed outpatient treatment program to ensure that they are living in group homes that support their recovery.
2. Pending the enactment of State legislation granting OASAS authority to regulate sober homes as per Recommendation #1 above, OASAS should amend its regulations, as per the OASAS memo released at the October 23<sup>rd</sup> hearing, “to create a residential treatment services model to include recovery homes.”<sup>89</sup> Toward this end, OASAS should review with stakeholder groups the feasibility of including sober homes under the existing “Supportive

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<sup>87</sup> Gregory Blass testimony, Op. Cit., p. 63.

<sup>88</sup> Robert Briglio, testimony at the October 30<sup>th</sup>, 2009 hearing, official transcript, pp.69-70 and April 1, 2010 focus group.

<sup>89</sup> *Proposals for Increased Oversight and Funding...*, Op. Cit., p.1.

Living Services” type of “residential services” which it currently has statutory authority to regulate under Section 819.2, (a), (3) described above on page 18. This review should provide data showing: (1) the number of OASAS “Supportive Living Services” residences in New York State; (2) the counties in which they are located; (3) how they are funded and staffed; (4) the populations they are serving; (5) how these residents are referred to the “Supportive Living Services” residences; and (6) the limitations on their length of stay in these residences.

## **Challenge #2. How Do We Incentivize “Good” Sober Homes?**

The Commission received a great deal of testimony indicating that the current monthly rate of rental reimbursement used by SCDSS (\$309 for rent alone; \$467 with food) does not adequately cover the cost of operating a responsible sober home. Catholic Charities, as noted above, closed its sober home because of the losses it incurred. Or as former sober-home provider Carlos Rodriguez testified, “If you’re looking at a \$2,200 mortgage...\$309 [a month]...doesn’t even cover the mortgage and light bill.” Mr. Rodriguez stated that a cost-effective monthly reimbursement should range from \$500 at a minimum to \$700.<sup>90</sup>

### **Recommendations: OASAS and SCDSS Must Incentivize “Good” Sober Homes**

The Commission heard testimony that some unscrupulous sober-home providers pack residents into their houses in order to turn a profit. In addition, it has been reported by Catholic parish outreach coordinators, that some of these homes do not even provide the food they are being reimbursed to serve but, instead, send residents to local food pantries and soup kitchens.

Sober-home residents in Suffolk County, as reported above, may have lower levels of self sufficiency than the residents in other parts of the country such as those who live in California Sober Living Network homes. Because many Suffolk sober-home residents are Public Assistance recipients, SCDSS provides their rent through the shelter-allowance benefit. Other vulnerable sober-home residents receive their rents from SSI or SSD.

The Commission believes that SCDSS does not have the personnel to determine if the treatment components of a decent sober home – the behavioral guidelines that lead to sobriety and recovery such as zero tolerance or participation in peer support groups or compliance with the rules created by the residents – are being adhered to. But, SCDSS can assume greater responsibility to financially incentivize the creation and maintenance of sober homes that not only meet local health and safety standards but also require adherence to behavioral guidelines. For example, John Haley of Seafield Center and Robert Briglio, as noted above, called for contracting sober homes so that they receive a higher reimbursement rate linked to compliance with quality standards.<sup>91</sup>

To accomplish this goal of incentivizing “good” sober homes, the Commission recommends that:

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<sup>90</sup> Rodriguez, Op. Cit., pp. 25, 26.

<sup>91</sup> Haley, Op. Cit., p. 148.



3. OASAS, SCDSS and the Suffolk County Office of Community Mental Hygiene Services cooperate in the formation of the Sober Living Network of Long Island, which would serve as a voluntary coalition of providers enforcing quality standards in the model of the California Sober Living Network described above on page 25. Still undetermined is the legal status of this network: (1) Will it be a free standing organization, either for-profit or not-for-profit? (2) Will the network fall under the aegis of SCDSS or OASAS to determine if it is requiring members to adhere to the OASAS guidelines? (3) Should the network be overseen by a non-governmental umbrella agency such as the Long Island Council on Alcoholism and Drug Dependencies or the Quality Consortium or the Suffolk Community Council?
4. SCDSS work with the Nassau County Department of Social Services (NCDSS) to develop an enhanced rental reimbursement, as the OASAS memo states, “in the range of \$600 to \$700 a month”<sup>92</sup> for their clients that would be paid to Sober Living Network of Long Island approved sober-home providers who adhere to the yet-to-be released OASAS guidelines. SCDSS should ascertain whether new County and/or State statutory authority needs to be legally created in order to allow SCDSS to provide the enhanced rate.
5. SCDSS maintain a list of sober homes that comply with the OASAS guidelines and, as per the recommendation of Robert Briglio, consider the feasibility of licensing these homes and designating them as Suffolk County or OASAS contract entities and thereby subject to strict SCDSS oversight of their health and safety conditions, such as repeated inspections.<sup>93</sup> Licensing was also endorsed by Thomas MacGilvary.<sup>94</sup> SCDSS will likely need to add housing inspectors to the existing five budgeted positions in order to determine if the licensed/contracted sober homes are maintaining health and safety standards. Licensing and contracting sober homes would thus permit the County to withhold payments from sober homes that fail inspections due to health and safety violations or that deny the inspectors access to the homes.
6. OASAS and stakeholder groups study the application of the “Florida day/night program” referenced in OASAS Commissioner Carpenter-Palumbo’s testimony,<sup>95</sup> as an intensive residential rehabilitation services program that could be one model of a licensed/contracted sober home. This program was described by John Haley: “License a treatment component that includes intensive outpatient level of services ... during the day and a night model, which includes the housing aspect.”<sup>96</sup> Presumably, the day “treatment” component would be overseen by OASAS and the night “housing” component would be overseen by SCDSS. In this model, OASAS would have to recognize treatment as an integral part of a sober-home’s

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<sup>92</sup> *Proposal for Increasing Oversight and Funding...*, Op. Cit.

<sup>93</sup> Robert Briglio, testimony at the October 30<sup>th</sup>, 2009 hearing, p. 71

<sup>94</sup> MacGilvary, Op. Cit., p. 59.

<sup>95</sup> Carpenter-Palumbo, Op. Cit.

<sup>96</sup> Haley, Op. cit. P. 151-152.

mission and thereby assume responsibility for that treatment. The health and safety conditions of the house would be the responsibility of SCDSS.

7. The County support the OASAS initiative to create 100 “Community Residential Services” beds on Long Island, 70 of which are proposed for Suffolk County. Despite the belief stated by some witnesses that these funds could have been better utilized upgrading sober homes, the Commission believes that because these residences are regulated by OASAS under Section 819.2, (a) (2), when established they will relieve some of the housing pressures that force recovering substance abusers into low-quality sober homes. However, if there are barriers to creating these “Community Residence” beds, OASAS should apply these funds to upgrading sober homes on Long Island.

### **Challenge #3. How Do We Crack Down on “Bad” Sober Homes?**

Again and again the Commission heard about the negative impacts that unsupervised and unregulated sober homes have on their residents and on the neighborhoods in which they are located. However, because they house people who are addicted to alcohol and/or drugs who are therefore “disabled” and thus protected from housing discrimination by the ADA and FHA, the State, the County, towns and villages are restricted in how they can regulate sober homes. The Commission has concluded that new County or town or village legislation aimed at regulating the health and safety conditions of sober homes could have difficulty withstanding ADA and FHA legal challenges. In addition, the Commission found some evidence that neither the County nor the towns and villages have sufficient building inspection staffs to enforce their own codes and ordinances.

### **Recommendations: Local Governments Need to Crack Down on “Bad” Sober Homes**

Despite federal restrictions on the ability of local governments to regulate sober homes, the Commission believes that non-discriminatory actions can be taken to regulate health and safety conditions in sober homes, and therefore recommends that:

8. The County Executive convene a conference of town supervisors and their code enforcement departments to identify common problems and common solutions they can share in reducing the number of substandard housing units – including sober homes – without adding to the homeless population of Suffolk County and without violating the ADA and FHA protections of sober-home residents.
9. The New York State legislative delegation representing Suffolk County pursue amendment and ultimate adoption of the heretofore stalled State bills (S4322, S4323, A3146) that would allow SCDSS to utilize, *where the Department deems appropriate*, the often-more stringent health and safety ordinances of the local municipality (town or village,) rather than the less stringent State health and safety standards, for homes in which SCDSS clients reside.
10. The State legislators also seek to amend New York State Social Service Law to comply with SCDSS Commissioner Blass’ call for the State to “allow local [DSS] districts to withhold the rent portion of the room and board grant to those landlords who have health and safety

violations.”<sup>97</sup> As discussed above, if a client is receiving both room and board (\$467 a month), SCDSS cannot invoke its 143-b authority to withhold rent from a landlord who has been found by a municipality to be in serious violation of local health and safety codes. The 143-b power can only be used with clients who are receiving rent alone (\$309 a month.) Withholding the \$309 (the rent portion) from a landlord whose client is receiving \$467 for both room and board will apply pressure on landlords to comply with local health and safety codes.

11. The County and Legislative attorneys review the *Homeworks v. Suffolk County* decision striking down the 2003 Suffolk County sober-homes law to determine if this law can be redrafted to comply with the ADA and FHA in light of the now-established “heightened scrutiny” standard of review for any such legislation, arising from the *Homeworks* decision. In so doing, the attorneys should review the Hawaii statute (HI Stat § 46-4) and proposed statutes in California (AB724, 2007,) Massachusetts (H 33803, 3809, 2009) and Minnesota (HF 2493, 2008 and SF 2323, 2007.)<sup>98</sup>

### **The Costs of Doing Nothing**

The Commission understands that these recommendations are not cost neutral. OASAS will have to admit that treatment is an important component of sober-home living and thereby assume some regulatory authority that must not be an unfunded mandate to the counties. State OASAS funds must follow State regulations so that Suffolk County’s Office of Community Mental Hygiene Services will have the staff and other resources needed to enforce OASAS sober-home regulations. Similarly, OTDA will have to provide additional funding so that SCDSS can hire the necessary inspectors to assure that licensed and contracted sober homes comply with local health and safety standards and OTDA will have to provide the funds for enhanced reimbursements to sober homes with SCDSS clients that comply with both the behavioral (treatment) and health and safety standards that are ultimately contained in the OASAS guidelines.

Given the federal legal restrictions on the ability of counties, towns and villages to enforce regulations against sober homes, the Commission believes that establishing State regulations to govern what will be County licensed and contracted agencies is the best path to Commissioner Blass’ call to “sanction and/or close substandard homes” while providing sober homes “where people can recover and receive treatment.”<sup>99</sup> The Commission believes that the community costs of substance abusers relapsing in bad sober homes – such as welfare dependency, lost employment, crime, DWI incidents, broken families— are far greater than the costs required by OASAS and SCDSS to fix what is obviously a broken, cruel and dysfunctional sober-home system.

In the end, the State’s Office of Alcohol and Substance Abuse Services (OASAS) and Office of Temporary and Disability Assistance (OTDA,) the County’s Department of Social Services and

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<sup>97</sup> Gregory Blass testimony, Op. Cit., p. 62.

<sup>98</sup> Spigel, Op. Cit., p. 4.

<sup>99</sup> Gregory Blass, Op. cit., p. 63.

Office of Community Mental Hygiene Services, Suffolk County towns and villages, must come together with the will and the resources to regulate sober homes so that their vulnerable residents are no longer “throw away people” and the neighborhoods in which sober homes are located do not become “throw away” communities. The Commission believes that these recommendations will save the County many thousands – perhaps millions – of dollars by transforming “rogue” sober homes into real recovery homes that help their residents gain both sobriety and self sufficiency.

Respectfully Submitted by the Welfare to Work Commission of the Suffolk County Legislature,

Legislator Kate Browning, Chair, Health and Human Services Committee  
Richard Koubek, Ph.D., Commission Chair, For Legislator Kate Browning  
Kathy Liguori, Commission Vice Chair, Tutor Time  
Idania Aponte, The INN  
Peter Barnett, Wyandanch Homes and Property Development Corporation  
Peggy Boyd, Family Service League  
Gwendolyn Branch, Long Island Council of Churches  
Jack Caffey, For Presiding Officer William Lindsay  
Judy Cahn, Eastern Suffolk BOCES  
Frank Casiglia, Suffolk County Association of Municipal Employees  
Bridget DePasquale, Catholic Charities  
Jane Devine, Gerald Ryan Outreach Center  
Don Friedman, Empire Justice Center  
Joan Grant, EOC of Suffolk County  
Robert Greenberger, FEGS Health and Human Services System  
Roland Hampson, Suffolk County Department of Social Services  
Michael Haynes, Long Island Cares, Harry Chapin Food Bank  
Pam Killoran, Suffolk County Workforce Investment Board  
Ellen Krakow, Nassau/Suffolk Law Services  
Nina Leonhardt, Suffolk County Community College  
Eric Lopez, Suffolk County Department of Labor  
Michael Stoltz, Clubhouse of Suffolk

### **Individuals Who Provided Testimony or Who Participated in Focus Groups**

Assemblyman Marc Alessi, New York State Assembly, (AD1)

Kathy Ayers-Lanzillata, Director, Chemical Dependent Services, Catholic Charities, Diocese of Rockville Center

Barbara Blass, Riverhead Deputy Town Supervisor and member, Riverhead Town Board

Gregory Blass, Commissioner, Suffolk County Department of Social Services

Karen Boorshtein, President and CEO, Family Service League

Robert Briglio, Nassau/Suffolk Law Services

Mary Brite, Outreach Project, Bellport

Beth Brockland, LICAN

Jay Buchbinder, Peconic Community Council

Richard Buckman, LICAN, Sober Living Network of Long Island

Pamela Burner, Parish Administrator, St. John's Episcopal Church, Oakdale

Karen Carpenter-Palumbo, Commissioner, New York State Office of Alcohol and Substance Abuse Services

Jeffrey Christianson, Project Director, California Sober Living Network

Allaura Cicero

David Cohen, President, Quality Consortium of Suffolk County and member, LICAN

Gail Dambrosio, President, Suffolk County Probation Officers Union

Annette Dellapi

Dr Stephen Dewey, Feinstein Institute for Medical Research, North Shore LIJ Hospital

Mary Dinizio

Mark Epley, Executive Director, Seafield Center

Art Flescher, Acting Director, Suffolk County Office of Community Mental Hygiene Services

Senator Brian Foley, New York State Senate (SD 3)

Legislator Duwayne Gregory, Suffolk County Legislature (LD 15)

"Miss Bee" Griffing, Women in Sobriety in Wyandanch

John Haley, Chief Operating Officer, Seafield Center

Pat Hartley, Pederson Krag

Robert Hartman, Mainstream House

Robert Lambert, Chief, Shirley Community Ambulance

Gail Lolis, Deputy Suffolk County Attorney

Marcia Lukas, Madonna Heights

Thomas MacGilvary, former Director, Suffolk County Office of Community Mental Hygiene Services

Joseph May

Delia McKernan

Pamela Mizzi, Prevention and Resource Center, South Oaks Hospital

David Moran, Deputy Town Attorney, Town of Brookhaven

George Nolan, Council, Suffolk County Legislature

Claire Olsen, Director, Inpatient Treatment, St. Charles Hospital

Ed Olsen, Director, Outpatient Treatment, Town of Babylon

Debra Parker, Project Director, Solutions for Treatment Expansion Project for Future Associates, California

Bruce Richard, Director of Public Safety, Town of Huntington

Carlos Rodriguez, Pathway

Legislator Ed Romaine, Suffolk County Legislature (LD 1)

Don Seubert

John Sicignano, Mastic Park Civic Association and Affiliated Brookhaven Civic Associations

Mary Silberstein, Addiction Recovery Services Division, Pederson Krag Center

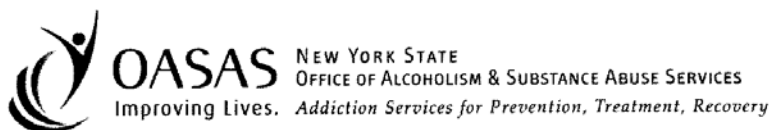
Larry Tellefsen, Director, Mastic Beach Property Owners Association

Assemblyman Fred Thiele, New York State Assembly (AD 2)

Robert Vecchio, Seafield Center and President, William Floyd Board of Education

Steven Wolfe

## APPENDIX A



GOVERNOR  
David A. Paterson  
COMMISSIONER  
Karen M. Carpenter-Palumbo

October 29, 2009

Richard Koubek, Ph.D.  
Chair  
Welfare to Work Commission of the Suffolk County Legislature

Dear Dr. Koubek:

First, let me thank you and the Suffolk County Legislature for holding these hearings to learn more about sober/recovery homes. I believe that we share a common goal of ensuring that good, safe housing is developed for individuals who have completed chemical dependence treatment so that they can maintain their recovery. To that end, in April 2008 OASAS issued a procurement that will lead to the development of 100 certified residential beds in Nassau and Suffolk County. Further, in September of 2008, I appointed a workgroup comprised of OASAS providers, housing providers, local government officials, staff from the NYS Offices of Mental Health (“OMH”) and Temporary Disability Assistance (“OTDA”) and OASAS staff from both Nassau and Suffolk Counties, including the Social Services and Mental Health Commissioners, that was charged with exploring the “sober home” issue and to make recommendations for a range of solutions.

The workgroup reviewed State statutes and regulations from both OTDA and OASAS. The workgroup also collected and reviewed information from across the United States to assess how other states were handling the housing shortage and the impact on addicted individuals. They have also reviewed and discussed the OASAS continuum of care and the almost complete lack of OASAS certified Community Residences in Long Island. In the OASAS Continuum of Care the Community Residence program serves as the crucial bridge for the person who is completing residential treatment but still needs structure and support as they transition into the community. The lack of Community Residences in Long Island has created a gap that is being met by recovery homes. If OASAS were able to enlist a commitment from the Long Island county, city, town and village government leaders to support the development of OASAS certified Community Residences we believe that would assist greatly in addressing the proliferation of recovery homes. This commitment of support could be used as we move towards building the residential beds awarded from the 100 Bed Long Island initiative referenced above. In the absence of such support, OASAS is then left to consider seeking state law site selection protections similar to those that exist for OMH Community Residences.

The workgroup then began exploring a continuum of care which focused on the following options: local districts of Social Services contracts, locally based peer review, OASAS guidelines and state and local social services funding, Oxford styles homes, OTDA room and board regulations, recovery support services housing and the Florida day/night program.



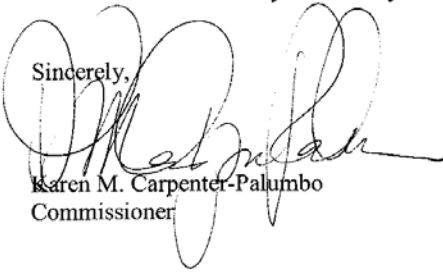


The group has ultimately decided to pursue:

- development of OASAS guidelines to support increased state and local funding for individuals who are receiving public assistance and living in recovery homes;
- development of the beds awarded from the 100 Bed Long Island initiative;
- support from the Long Island county, city, town and village government leaders to support the development of OASAS certified Community Residences or enactment of state law site selection protections similar to those that exist for OMH Community Residences.

Again, we applaud your involvement in this issue and stand ready to assist your committee as you move forward.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Carpenter-Palumbo', written over a faint circular stamp.

Karen M. Carpenter-Palumbo  
Commissioner