

**MEMO**

**TO: MAYOR JANSING**

**FROM: GREG D. VOSS, ESQ.**

**DATE: NOVEMBER 24, 2021**

Mayor Jansing:

In response to your request for a follow-up Memorandum regarding the Oxford/Sober Living issues and further, as directed by Council in your absence at the November meeting, I have followed up on “Protect Lakeside Park” e-mail dated October 26, 2021. I have spoken extensively with Daniel Lauber who is a Sober Living Home Expert who was mentioned in their e-mail as well as Joseph Hauberman, the Louisville Planner.

As I advised at the October City Meeting, I requested Rob Himes of PDS to contact the Louisville Planning Commission. Andy Videkovich, our Planning and Development Services of Kenton County Planner (PDS), spoke to their representatives, Brian Davis, Joseph Hauberman and Christopher French. Andy advised me that although Louisville Metro did amend its Zoning Code it did not include Sober Living Homes, specifically Oxford Houses. Mr. Hauberman called me on November 10, 2021. I also spoke to our Planning Representative, Keith Logsdon. As you know, Keith is a retired Professional Planner. He is also involved with a Sober Living Group in Newport, Kentucky. It was his group that was the impetus for the Newport Zoning Ordinance. They apparently got Housing and Urban Development (HUD) involved with their issues in Newport. In addition I spoke to Daniel Lauber, the Sober Living Home expert mentioned by the citizens group.

I will first address my findings regarding the Louisville Ordinance. I was advised that the Planning Department was directed by the current Metro Council to deal with their problems with too many boarding houses and renting to too many people in these homes. Interesting, their legal counsel's involvement in the drafting of the Ordinance was limited to that “they shouldn't call out drug, alcohol treatment specifically, but to roll into other uses”. Louisville's Ordinance No. 102, Series 2021 was drafted by Louisville Metro Planning Staff and appears to be ineffective regarding Sober Living Homes. Be advised that the Planners specifically did not address Sober Living Homes. They acknowledged that they are not included in Transitional housing. Mr. Hauberman specifically indicated that Boarding Houses were the real target and that Oxford Houses successfully self police its houses. Further, he indicated that they would not attempt to use their Ordinance in regard to an Oxford House.

In addition, Yu “Emily”Liu, AICP, Planning Director for Louisville Metro Planning and Design Services issued a interpretation opinion on October 7, 2016 which indicates Oxford Houses are not transitional housing. I attach herewith her advisory opinion which is displayed on their web site noted as case “16INTERPTN 1000”. (*See Exhibit 1*) She clearly sets forth that Oxford Houses are not transitional housing. Although Louisville did attempt to change the definition of the transitional housing, the modifications did not include Sober Living Homes.

Further as requested by “Protect Lakeside Park”, I had a long and detailed telephone conversation with Daniel Lauber, who I agree is a Sober Living House expert. I specifically asked him if Oxford House/Sober Living Houses are a transitional house. His answer was a definite “NO”. His analysis was the same as Ms. Liu. The houses are not necessarily temporary and more importantly there is no staff.

Next, as to the Newport Ordinance, apparently Newport had a HUD Complaint filed against it sometime around 2015. K.R.S. 100.984, (*See Exhibit 2*) which was in effect at that time, was not taken into consideration. Remember, that statute specifically states that a city can only impose “the same limitations upon . . . . number of occupants per dwelling unit as apply to other residences in this district, zone or subdivision”. Newport officials worked with HUD officials to try to settle the Complaint apparently there was a lot of potential issues with HUD funds if it was not resolved. In 2016 Newport passed an Ordinance acceptable to HUD; however, it contradicted Kentucky Law. Further they did not do a study in order to obtain critical data to support the Ordinance. Newport restricted the number of residents and spacing of Sober Living Houses. Newport amended its Ordinance in 2017 to reduce the spacing requirement to 650 feet, which is consistent with the Costa Mesa court decision which came out that year and I have addressed previously. It appears Newport violated at least one Kentucky statute, if not two. First, they tried to limit the number of residents in each house, which violates K.R.S. 100.984. Their counsel responded to Attorney Tim Theissen when asked how they dealt with K.R.S. 100.984, “I don't know what you are talking about”. Their attorney also advised that the City would have the burden to attempt to restrict the number of residents in a Sober Living Home.

Another statute which has not been addressed to date, but which is as concerning is K.R.S. 65.879 which is titled “Prohibition Against Local Ordinances, specifically applicable to “Residential Care for Persons with a Disability.” (*See Exhibit 3*) It refers to K.R.S. 100.982 for its definition of “Persons with Disabilities”. It has been well established that recovered addicts and/or alcoholics are protected by the provisions of ADA. Residential Care Facility is a

residence . . . operated and maintained by a private agency receiving state or federal funds. It is my understanding that Government support is on a case by case basis. The Fair Housing Act requires states to provide funds specifically for Sober Living Houses. Further the Farmington residents have indicated that the Oxford House residents' rent is subsidized by the Government. The Kentucky Courts have stated “as a general rule, home rule included, a City may pass Ordinances that are in addition to yet not inconsistent with state statutes and constricting provisions” *City of Louisville v. Michael A. Woods Inc.*, 883 S.W. 2d 881 (Ky. App.1993). In the event a Sober Living Home is receiving Government assistance, it is my opinion that these statutes specifically prohibit a City from passing an Ordinance relating only to Sober Living Homes Group Homes, etc. As with the majority of cities, attempts to curtail Sober Living Houses results in legal action that is very costly. As to Mr. Lauber's input regarding Ordinances which attempt to regulate Sober Living Homes he reaffirmed my previous conclusion that in order to create an Ordinance involving Sober Living Homes there has to be an objective finding to support any restrictions on Sober Living Homes.

As to other Kentucky cities, I must point out that the City of Georgetown, upon advise of counsel, repealed the majority of its Ordinance relating to Sober Living Homes and other Group Homes, including its prior spacing requirement.

I return to my discussion with Mr. Lauber. He confirmed my determination that when a city passes an Ordinance based on citizen/council concerns which are not fact based, that the city will lose the cases against it every time. In fact, the Court in *Tsombanidis v. West Haven Fire Department*, 352 F. 3d 565 A.D. Cas. (BNA) 32 (2d Cir. 2003) found that apparent bias of neighbors and public officials, provided sufficient evidence to establish intentional

discrimination in violation of the Fair Housing Act had occurred. I must remind you of my conversation with Oxford House's General Counsel, Steve Poland, when this issue initially arose. He had watched the council meeting when the Farmington residents first addressed council. He told me if the City passes an Ordinance related to Sober Living Houses that the video would be his first exhibit. Further, he stated "I need to fund my childrens' college fund."

Mr. Lauber had an interesting point that the spacing on Sober Living Homes cannot be an attempt to limit them, instead he advised that you have to look at the original theory and argument supporting the allowance of the Sober Living Homes in residential areas. All of the legislation was based on the theory that allowing the recovered addicts/alcoholics to live among nuclear families was to allow them to observe how regular people live and carry on their lives. In essence, they want our citizens to be role models. As such, spacing the homes promotes separating the addicts/alcoholics from each other and integrates them into the community. As stated previously he did state that without a study supporting such spacing requirements that any Ordinance would not survive a legal challenge. He did advise that if a study was to be requested, that if other local cities should unite they could spread the cost. He thought that if three (3) cities joined together it would cost \$6500.00 per City. I spoke with Attorney Mike Baker who represents Crescent Springs and Mary Ann Stewart, who represents Crestview Hills, who both advised they had reviewed Tim Theissen's memo. They both told me that they would advise their respective cities not to enact any legislation regarding Sober Living Homes/Group Homes, etc. Obviously, since neighboring cities declined to participate. Mr. Lauber estimated the cost of \$12,000 just for Lakeside Park. (*See Exhibit 4*)

He further advised that Oxford Houses are granted a Charter from Oxford House,

International and that the Charters are renewed on an annual basis to ensure the specific house is complying with its internal requirements; it appears Oxford Houses are held out as the Gold Standard for Sober Living Homes. In fact, their rules and regulations seem to be the foundation and basis of the national organization of Sober Living Homes.

Another Complaint directed at the City Counsel is that Sober Living Homes devalue the neighborhood property values. I direct your attention to the John Marshall Law Review article regarding Sober Living Homes. 29 J Marshall L. Rev 369 (1996). (See **Exhibit 5**). Although it was published in 1996, I have not found any studies which controvert their findings. I have attached two excerpts from the Article. First, Footnote 37 on page 380 which states “an Oxford House needs 10-15 residents to successfully function”. Secondly, Sec. V on page 384 “more than 50 studies have examined the impact on property values. Their finding is there is no impact on surrounding properties”.

I must stress that although I completely understand the Farmington residents' frustration with the situation; however, I must remind everyone that as the City Attorney my responsibility is to the entire City. Based on the foregoing, it is my opinion that the City should not attempt to pass any legislation regarding Sober Living Homes, specifically Oxford House. The potential liability and exposure cities face when trying to restrict these homes is immense. I have attached Mr. Lauber's financial costs in group home cases (See **Exhibit 6**). I continue to recommend that the City work on passing a Rental Ordinance which requires registration of all landlords located in our City. The purpose is not to make money off the registration. Any fees generated should be limited to the cost of administration of the program. I do recommend a harsh penalty to anyone who violates the registration in order to ensure complete compliance.

Obviously, all regulations regarding home maintenance, building inspections, etc. need to be strictly enforced to ensure all of our residents and landlords are in full compliance of our Ordinances.

In the event the City Counsel does want to order an appropriate study, I would recommend Mr. Lauber, as I have discovered that he is highly regarded nationally. Keith Logsdon sang his praises and I have been very impressed with his knowledge and expertise. Again, the study would possibly support a spacing requirement. However, it appears the Oxford Houses are following their guidelines and self spacing the houses in the City.