

Monument Board of Adjustment, Aug. 10

Board of Adjustment reverses approval of methadone clinic

By James Howald

At a heavily attended meeting on Aug. 10, the Monument Board of Adjustment voted unanimously to grant an appeal of an earlier decision by the town's planning staff that allowed Colonial Management Group LP (CMG) of Orlando, Fla., to open a methadone clinic at 192 Front St., adjacent to Limbach Park. This decision was appealed by Jamie Fenley, a Monument resident who has described herself as having been previously addicted to heroin for seven years, but currently in long-term recovery. By granting Fenley's appeal, the board reversed the decision of the town's staff and prevented CMG from proceeding with its

original plan. CMG can contest the board's decision on the appeal by suing the town in district court.

Attorney William H. Louis represented Fenley in her appeal. Louis also represents the "No Methadone in Monument" group. Attorney Christopher J. Dawes, accompanied by CMG Director of Development Katie Peck, represented CMG.

"This is not about keeping addicts out"

In his introduction, Louis argued that the real issue was negative land use impacts that would result from a methadone clinic in downtown Monument. Louis said Monument's planning director when CMG's proposal was approved, Mike Pesicka, erred in his interpretation of the word "clinic" in the town's zoning code. Louis contended that the zoning code did not clearly define the term clinic, and that the business CMG proposed would in fact be a "dispensary" and not a clinic. Louis said Pesicka improperly relied on the dictionary definition of the term "clinic" to clarify the town's zoning code.

Louis did not define what he meant by dispensary, and referred to CMG's proposed business as a clinic later in his presentation.

Fenley describes her behavior as an addict

Louis introduced Fenley, who described her years on methadone therapy, which she said was not helpful to her. Fenley said she continued to take heroin while she was receiving methadone, and supported her addiction by panhandling and shoplifting. Fenley said the dealers she bought from viewed methadone clinics as a way to find customers, and that she believed CMG's proposed business would lead to drug sales and use in the restrooms at Limbach Park.

Fenley said she and other drug users often remained near the methadone clinic after receiving medication in

the morning.

Current and previous town managers give background on zoning decision

Louis questioned both Pamela Smith, who is the current interim town manager, and Cathy Green, who was the town manager between 2005 and 2013 when the zoning codes were revised. Smith confirmed that she had directed Pesicka to confer with Town Attorney Gary Shupp as to whether CMG's proposal was legal, and that the conclusion was that CMG's proposed use was permitted. Smith said that based on her background in medical management the business CMG proposed qualified as a clinic.

In response to questions from Louis, Green said the changes to the zoning code made in 2009 simply made architectural and design guidelines stricter, and did not alter what the code said about use by right and by review. Green went on to say in her opinion CMG's plan was not compatible with downtown Monument. Green also provided details about how other cities have addressed methadone treatment facilities in their zoning codes.

Louis ended his presentation by showing pictures of buildings and businesses close to other methadone treatment facilities elsewhere in El Paso County.

Attorney for St. Peter Church opposes CMG's plan

Scott Mikulecky, an attorney with Sherman and Howard, who represents St. Peter Church, argued that CMG's proposed business was not in accord with the intent of the zoning code, regardless of the specific language used in the code. The church is one block southeast of the proposed clinic in downtown Monument. Mikulecky said in his opinion the term "clinic" was not intended to include CMG's proposed business. "Don't let the applicant put the lipstick of 'clinic' on this methadone dispensary pig," Mikulecky said.

"It's very clear my client's business is a clinic"

Attorney Dawes, of Fox Rothschild LLP, pointed out to the board that their responsibility was to follow the zoning code as it was written at the time the town approved CMG's proposal, and not to decide the matter based on theoretical improvements that could be made to the code, or on what other municipalities have done. "We are dealing with zoning in place," Dawes said.

Dawes asked Smith if legal advice was sought at the time the original decision was made, and Smith answered it was, and that the zoning request was approved based on the legal advice the town received at that time. Dawes said CMG had made it clear the business would provide methadone to patients at the time the town's approval was granted.

Dawes cited a court case in Pennsylvania that decided a methadone treatment center met the definition of a clinic, and a case in Denver that reached a similar conclusion.

Dawes questioned CMG's Peck concerning the differences between clinics and dispensaries. Peck stated that 90 per cent of the floor space for CMG's proposed business would be professional offices or office space for certified addiction counselors, and that the business would employ a medical director with at least two years' experience treating addiction. Nurses and pharmacists would also work at the facility. Ten percent of the floor space would be devoted to the pharmacy and the dispensing of methadone.

Board members question daily patient volume and business strategy

Board members asked Peck a number of questions in-

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