

7 Emerson Hill residents go to court to challenge group home

By ROBERT MIRALDI

Seven residents of Emerson Hill have gone into Supreme Court, St. George, in an attempt to block the state from setting up a respite-care home for the mentally retarded. It is the first time on Staten Island a group residence for the retarded has been legally challenged.

In papers filed Tuesday, attorney James J. Burns, a resident of 10 Diana Trail, the house next door to the proposed respite-care home, said the state facility would do "irreparable harm" to his neighborhood and was a violation of the rights of Emerson Hills residents.

The papers name as defendants Thomas A. Coughlin, commissioner of the state Office of Mental Retardation and Developmental Disabilities; Edward Hassett, the office's director of resource development, and Elin M. Howe, director of the Staten Island Developmental Center, Willowbrook.

State attorneys must appear in court Friday to show cause why a preliminary injunction should not be granted to the Emerson Hill residents, temporarily blocking setup of the home. There were indications yesterday the state would ask that the case be shifted into a federal court.

The state is under a federal court order to reduce the population of the former Willowbrook State School to 250 residents by 1981. The population reduction is to be achieved by the development of small group homes in communities throughout New York City.

Respite care is a service the state

wants to offer to Staten Islanders who have retarded children. Parents would be able to take their children to the 8 Diana Trail residence for periods up to a month at a time. No other respite-care homes exist in the city, and officials say it is a vitally needed service.

In the court papers, the Emerson Hill residents contend the respite-care home violates the deeds to their houses; will be unsafe for its clients; will lower property values in the area, and will impair the privacy of Emerson Hill residents.

Burns said in the papers, "The state must act reasonably and rationally under all the circumstances so that its purpose may be achieved with the least amount of invasion or diminishing of property rights."

In this case, the papers say, the state has been "arbitrary ...and unreasonable."

Miss Howe, asked to comment on the court action, said: "We have attempted to exercise good judgment, and we think we have. The last thing we would do is pick a home that is unsafe."

"There are no significant safety problems that we can determine," Miss Howe said. "If it is that unsafe an area, I can't imagine why people would spend so much money to live there." Emerson Hill is considered one of the Island's most exclusive neighborhoods.

Burns and his neighbors contend in the court papers that the house is located on a steep grade and that Diana Trail is a narrow street that would make vehicle entry difficult. "It is difficult to imagine a more unsafe and potentially dangerous location," the court papers state.

Although there have been numerous court cases on the rights of group homes to exist in neighborhoods, state officials said yesterday that Burns' contention about a deed violation may be first.

Burns said that when he purchased his house in 1972, he did so only after viewing state papers that said 8 Diana Trail, already owned by the state, was only to be used as a doctor's residence. "The state, when it took title, agreed to abide by these covenants and may not now disclaim them," the papers maintain. Miss Howe said state attorneys were researching that point.

Answering Burns' claim that property values will be lowered by the respite-

care home, Miss Howe cited a recent study by a Princeton University researcher showing this is not so. Numerous studies have found no relationship between group homes and property values.

Burns' claim about a violation of the privacy of the street's residents also was rejected by Miss Howe. "Our clients will be no different from any family living on the block," she said. "If they think everyone will be running around in the neighborhood, well, that's not our intention."

In addition to Burns and his wife, the named plaintiffs are Mr. and Mrs. Ralph Aveela, Mrs. and Mrs. John Witkowski and Edward J. Vomero.

The case will be heard by Justice Charles R. Rubin.