

Early ruling expected in court fight to block Dongan Hills group home

An early decision is expected in a Supreme Court case in which some Dongan Hills residents charge that the state is playing a numbers game in an attempt to skirt a law that spells out procedures for selecting sites for group homes for the mentally retarded.

The residents, in a homeowners class action, are seeking to prevent the state Office of Mental Retardation and Developmental Disabilities from opening what was termed a "community residential facility" in an apartment in a house at 490 Buel Ave.

The apartment will house two or three patients along with a trained supervisor.

The legal issue before Supreme Court Justice Charles R. Rubin is whether the state can operate such a small facility without first subjecting itself to community review as to its sites, or whether such a facility falls under a section of the state Mental Hygiene Law that covers group facilities for between four and 14 patients and carefully prescribes how the state must proceed on site selection before it can open such a home.

The action was commenced this week through a show cause order obtained by Michael and Karen Shannon of 491 Buel Ave., who brought the proceeding on behalf of themselves and at least 50 other neighborhood property owners.

Through an Article 78 proceeding, they are seeking a preliminary injunction pending trial of their action. An injunction would stop the state from proceeding with its plans for the facility unless it first complied with what the Shannons say is the binding law in the case, which would open the site to community inspection.

Rubin reserved decision after hearing arguments in the case.

According to Shannon, a lawyer, Dr. Vincent DeScala entered into a temporary agreement in May with

the facilities Development Corp., a state agency to lease the top apartment of the home he owns at the Buel Ave. address.

Neighbors learned that the apartment was to be used as a residential facility for the mentally retarded only late last month. The facility is expected to start operation late this month or early October.

Shannon said in court papers that the "secretive actions" of the state "so seriously impact my community and completely ignore the rights of the community to participate in and, to a degree, control (the state's) actions."

The Dongan Hills United Civic Association, which in the past has fought the opening of at least one group home in the community on the grounds that the area already is oversaturated with similar-type facilities, has moved to intervene in the court case on behalf of the Shannons and other property owners.

Assistant State Attorney General Robert L. Schonfeld, in moving to dismiss the Shannon's petition on technical grounds, claims that for a residential facility for only three residents the state was not required to follow the procedures set down in Section 41.34 of the Mental Hygiene Law.

Rather he cited as the state's authority for proceeding with the smaller facility a preceding section of the same law — 41.33. This is a general statement that authorizes James E. Introne, acting commissioner of Office of Mental Retardation and Developmental Disabilities, to operate community facilities without any reference to the number of residents to be housed in any one facility.

Schoenfeld argued that this section empowers the state to operate residences of any size.

Section 41.34, however, specifically refers to residences for between four and 14 patients. It provides specific guidelines for the state and

municipalities to follow in selecting sites for such facilities. The state is prohibited from issuing operating certificates unless there is compliance with the statute.

In New York City, such proposals are normally reviewed by community boards, and one of the Shannon's demands is that the Buel Ave. residence be taken up by Community Board 2, which has jurisdiction over the Dongan Hills area. Board 2 was never notified of the apartment facility.

Like the Dongan Hills United Civic Association, Board 2 in the past has taken a dim view of group homes because of what it regards as oversaturation of its jurisdictional area with public and private care facilities.

On Staten Island, the state, to comply with a federal order for the reduction in the population of the Staten Island Developmental Center, Willowbrook, has taken to buying or renting homes and buildings for use as community facilities. The use of apartments appears to be a new twist.

Shannon said he was informed that Introne has agreed to halt further openings of facilities with less than three patients.

Shannon said he also learned from a developmental center official that the state did not intend to inform Community Board 2 of its action until after the Buel Ave. facility had been placed in operation. He added that the same official admitted that the custom in the past had been to give public notice of a site under consideration to comply with section 41.34, but sometimes this resulted in community action against such sites.