

# Dongan Hills residents win court battle to block state's opening of a group home

By RAYMOND A. WITEK

Residents of Dongan Hills yesterday won a court fight to at least temporarily prevent the state from opening of a group home for three mentally retarded patients in this second-floor apartment of a private home at 490 Buel Ave.

Supreme Court Justice Charles R. Rubin ruled that regardless of the number of persons to be housed in the apartment, the state was under an obligation under the Mental Hygiene Law to have notified Community Board 2 of its intention to place a "community residential facility" at that site before entering into a temporary leasing agreement with the house's owner.

However, the judge, while setting aside the agreement, left the door open for the state Office of Mental Retardation and Developmental Disabilities (OMRDD) to notify Board 2 at some later date, if it so chooses, of its intention to select that site for a group home.

Such action would open the site selection to community scrutiny. This is what Mr. and Mrs. Michael G. Shannon of 491 Buel Ave. had sought when they initiated the homeowners' class action earlier this month. Shannon, a lawyer, claimed to have the support of at least 50 other neighborhood proper-

ty owners.

In addition, the Dongan Hills United Civic Association, which represents 250 homeowners, was permitted to intervene in the action on the side of Mr. and Mrs. Shannon. The association has been in the vanguard in opposing group homes in the area on the grounds that the community already is oversaturated with public and private care facilities. Community Board 2, which encompasses Dongan Hills, has taken a similar position.

The case before Rubin was unusual in that it exposed what appeared to be an attempt by the state to open group homes for the mentally retarded for up to three patients in apartments to a void confrontations with community boards over site selections.

James E. Introne, acting commissioner of OMRDD, reportedly has halted further plans to open such facilities as that proposed on Buel Ave.

The state is under federal court orders to reduce the population at the Staten Island Developmental Center, Willowbrook, and to place residents in group homes. In the past, the state had been content to lease or purchase homes and buildings for such facilities, serving the community boards with notices of

their intentions. Frequently, site selections were met with heated community opposition.

Rubin's 10 page decision centered on his interpretation of primarily two sections of the Mental Hygiene Law.

One section, cited by the state, merely states that OMRDD is empowered to operate group homes without any reference to the number of occupants.

However, Mr. and Mrs. Shannon and the civic association maintained that the state was bound by another section of the same law that covers group facilities for four to 14 residents and prescribes in detail how the state must proceed on site selection, including community review, such as that which would occur when such matters come before a community board.

Rubin noted that the position taken by Mr. and Mrs. Shannon and the civic association on the question of community input on site selection is keeping with declared legislative policy and Gov. Carey's executive memorandum on the section of Mental Hygiene Law upon which they based their case.

"It is no more than fair that the citizens of a community should be given a voice in the site selection process, regardless of the number

of mentally retarded any facility will lawfully accommodate," the judge said.

"To hold to the contrary would subvert the statute and result in the wholesale saturation of a community."

Rubin suggested that if the state's position were maintained, it could conceivably turn a large apartment house, such as the Fountains in Sunnyside, into any number of group facilities under one roof, merely by renting individual apartments, and without having any regard to what impact such a move would have on a community, since it would not be required to notify a community board.

"Instead of promoting (community) acceptance of its goals, such action on the part of OMRDD would thwart, indeed, destroy any hope of community participation and involvement in the welfare of the disabled," the judge said.

"The inevitable result would be that neither the community nor the disabled would be benefited."

The state entered into the lease agreement with the house's owner, Dr. Vincent DiScala, in May, but residents did not know of the proposal until three months later. The state had planned to open the facility Oct. 24.