

Town is ruled against in group home fight

Supreme Court Justice George Beisheim Jr. accused a state agency of "bureaucratic arrogance" Friday, but nevertheless ruled that the agency doesn't have to tell a community the location of an intended group home for the retarded.

Beisheim ruled in favor of the State Office of Mental Retardation and Development Disabilities and against the Town of Cortlandt. Cortlandt had gone to court to block the office from opening another group home in the town, holding that there are already nine group homes in the town in addition to the Veterans Administration Hospital and that the town was being "saturated." The state agency, which has the responsibility of finding homes for transferring retarded persons from large state institutions into smaller homes in local communities, countered that the next group home for about a dozen or so retarded persons would be in the southern part of the town. Most of the other homes are in the northern part. It argued that under the law it is not required to tell the town where the home is to be located.

Beisheim found in favor of the state, holding that the State Mental Hygiene Law provides that the agency may tell the community, but doesn't have to. He said that in a similar case involving

Stony Point, Justice Richard Daronco ruled in favor of the community, but that the judge's decision was reversed by the Appellate Division. Beisheim said he was compelled to follow the ruling of the Appellate Division. But, in his decision, he leveled a blast at the present law.

"It appears to this court that section 41.34 of the Mental Hygiene Law is a very unfair law and is in violation of the spirit of the municipal Home Rule Law of the State of New York. In the court's opinion, it grants excessive discretionary powers to a bureaucratic department whose personnel is motivated primarily, if not solely, in carrying out the function of the Mental Retardation and Development Disabilities Office rather than looking at the question from a broader point of view. In this court's judgment, this statute should be amended to give the municipality involved more input into the selection of a group home site. The court might point out that the respondent (the state agency) refused to reveal to the petitioner (the town) the location in the Town of Cortlandt whether the respondent planned to place a group home until directed to do so by the court on the day that this proceeding was argued. In the opinion of this court, such conduct verges upon being bureaucratic arrogance."