

CHARLES P. STIRTON

ATTORNEY AT LAW

1325 NORTH WILMOT, SUITE 310
TUCSON, ARIZONA 85712

TELEPHONE (520) 296-3985
FACSIMILE (520) 296-3986

February 11, 2015

Pima County Board of Supervisors
c/o Clerk of the Board
130 W. Congress Street, 5th Floor
Tucson, AZ 85701

**Re: P21-14-023 Fenster Ranch School
Sabino Recovery Group, LLC
Conditional Use Permit**

Dear Board Member:

This letter is submitted in opposition to the grant of a conditional use permit to Sabino Recovery Group, LLC ("Applicant") for the purpose and operating of a "Residential Substance Abuse Diagnostic and Treatment Facility". The property described in the application has been owned by The Fenster School of Southern Arizona ("Fenster School") for approximately 40 years and operated as a private school. The Fenster School property is situated south of Sabino Canyon, west of Sabino Creek and at the end of Ocotillo Drive, and is **surrounded** by residential properties. There is no commercial property of any kind nearby. My wife and I have owned an acre essentially around the corner from the Fenster School property for more than twenty years.

A school use, even an unconventional alternative school like the Fenster School, is at least to be expected in a residential neighborhood, but the Applicant wants to operate a facility for more than 50 addicts and persons with serious emotional problems. This use is totally inconsistent with this residential neighborhood.

The business plan is described by the Applicant as a "luxury environment more akin to a resort/spa hotel". The Board should not be misled by this sales pitch. The Applicant does not define a "luxury environment" and or explain how this enterprise is "akin to a resort/spa hotel". The Applicant is not going to be operating a Canyon Ranch type of destination resort. The Applicant is going to admit and attempt to treat addicts and seriously mentally disturbed people who are sufficiently desperate to pay the estimated \$1,100 to \$1,500 per day the Applicant says it plans to charge its patients.

The Applicant's proposed use is going to present serious safety concerns for the neighborhood by the influx of more than fifty addicts and seriously mentally disturbed people and all their inherent problems within just hundreds of feet of many residences. Further, the

Pima County Board of Supervisors
c/o Clerk of the Board
February 11, 2015
Page 2

Applicant either has no plan or has refused to describe its security plan that would protect the neighbors from these addicts and seriously mentally disturbed patients.

At the neighborhood meeting and again at the public hearing before the Planning and Zoning Commission, the Applicant was asked about security personnel and the plans to provide security to protect the neighbors. The Applicant provided no response at the neighborhood meeting about its security plan except to deny that any patient would ever “walk away” or “escape” from the property even though there are no physical barriers of any kind between the facility where these addicts and seriously mentally disturbed patients will be housed and the neighborhood. The Applicant admitted at the neighborhood meeting that these patients will be able to just walk out of their rooms with nothing to restrain them or track their movements if they left the property.

The Applicant’s response to the Commission when asked about security and plans to monitor its patients was that electronic tracking devices were in its future plans, but that funds were not now available for that technology. The Applicant told the Commissioners that its plan to monitor the patients was to assign them schedules and that staff would take attendance. If a patient was missing when attendance was taken, someone on the staff would go look for the missing patient. This is the precise plan described at Sierra Tucson where a similar treatment facility experienced its third suicide in just over a year. (See attached article from Arizona Daily Star dated February 8, 2015.) The representative for the Applicant, Mr. O’Donnell, says that he is the person who started Sierra Tucson which operates the same type of business as the Applicant proposes, i.e., a residential substance abuse diagnostic and treatment facility.

The conditional use to be permitted is described as a “Residential Substance Abuse Diagnostic and Treatment Facility”. However, simply allowing the use of the Fenster School property as a “Residential Substance Abuse Diagnostic and Treatment Facility” does not require the Applicant to restrict the patients to be admitted or the manner in which the treatment facility is to be operated. The applicable provision in the Pima County Code is §18.03.020 which defines a Residential Substance Abuse Diagnostic and Treatment Facility as “A facility designed to diagnose and treat persons suffering from the abuse of chemical substances and alcohol subject to the licensure procedures of the Arizona Department of Health Services”. The only means to control the Applicant’s business operations is to impose special conditions on the Applicant.

The Commission recommended approval of the application and in special condition number 3 proposes that the Applicant be required to operate in “substantial conformance with the submitted application package”. This is an improvement over the staff recommendation, but this

Pima County Board of Supervisors
c/o Clerk of the Board
February 11, 2015
Page 3

special condition is not sufficiently specific and does not include restrictions that were promised by the Applicant at the neighborhood meeting and the public hearing before the Commission, i.e., that no patients would be accepted for treatment of sex addictions. If the Board just adopts the language forwarded in special condition 3 by the Commission how are the neighbors or the enforcement personnel supposed to determine what is "substantial conformance"? Does "substantial conformance" mean that most of Applicant's patients will fall within the restrictions? This terminology is inadequate to protect the neighbors and give enforcement personnel the tools to address deviations from the Applicant's proposed business plan.

In addition, the "package" submitted by the Applicant states that it would not accept patients under court order for treatment. Court-ordered admissions are going to occur only subsequent to a conviction for a criminal offense. However, patients with violent or other crimes pending are also likely to seek admission as an attempt to defer prosecution or obtain dismissal of pending criminal prosecution. The neighbors should also be protected from patients with criminal charges pending who pursue treatment to defer or diminish prosecution for their criminal acts. Defendants trying to avoid prosecution for criminal acts pose just as much of a threat to the neighbors as those who have entered guilty pleas or been convicted. This additional limitation on patients eligible for admission must be added if the Board intends to allow this conditional use permit.

Finally, if the Applicant is granted this conditional use permit and all the special conditions recommended above are included, plus any reasonable conditions proposed by other neighbors, the conditional use permit should also include a sunset provision so it cannot be transferred without a reassessment of the permit and an opportunity for the neighbors to be heard about whether or not the use should be continued.

In summary, this application should be denied because the proposed use is totally inappropriate in this residential neighborhood. The business is going to inevitably have suicides and attempted suicides along with the other crimes from more than 50 addicts and seriously mentally disturbed people situated within only hundreds of feet from a residential neighborhood.

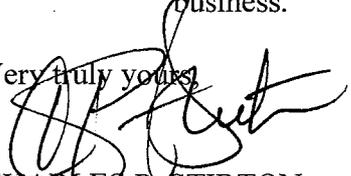
If the conditional use permit is going to be granted over the reasonable objections of the neighbors, then in addition to requiring that the Applicant operate as set forth in its application package (not just "substantial conformance"), the Board must impose (a) **comprehensive and specific** special conditions, and (b) a sunset provision in the event of any transfer of the business to ensure that the neighbors have recourse if the Applicant does not operate in the manner promised at the neighborhood meeting, the public hearing before the Commission, and in the materials submitted by the Applicant. The specific conditions must include all of the following:

Pima County Board of Supervisors
c/o Clerk of the Board
February 11, 2015
Page 4

The Applicant must operate its facility in conformance with the materials submitted with its application for the conditional use permit, **and**:

- (1) No patients will be accepted that are either seeking court-ordered treatment or are seeking deferred prosecution or a dismissal of prosecution for any criminal offense.
- (2) No patients will be accepted that are seeking treatment for or have any history of sex addictions.
- (3) No patients will be accepted that have any history of violent behavior.
- (4) No patients will be accepted that have stated or implied any recent or current intentions of suicide.
- (5) The Applicant must formulate a reasonable and comprehensive security plan to provide for video monitoring of the patients, or at least the exit doors of patient rooms, and the grounds and for a comprehensive response plan for any missing patient. This would not only help protect the neighbors, but would protect the patients from each other and themselves.
- (6) The permit included a sunset provision in the event of any transfer of the business.

Very truly yours,



CHARLES P. STIRTON

CPS/jo

In the latest case a married father of two, who had checked into Sierra Tucson on Jan. 4 for severe depression and chronic pain due to neuropathy, was found dead in his room at 12:41 p.m. Jan. 23.

The report says the man went to his exercise class at Sierra Tucson at 7:30 a.m. but did not show up to two subsequent classes.

According to the autopsy report, staff began looking for the man at about 10:30 a.m.

"He was on suicide watch and per protocol if the patient misses any classes that he is assigned to, they are supposed to immediately search for the patient," says the autopsy report, which was signed by medical examiner Dr.

John Hu.

911 CALL

When a staff member called 911 at 12:41 p.m., the man was reportedly "unconscious but still breathing." Staff then began CPR but the Golder Ranch Fire Department arrived and took over and pronounced the patient dead at 1:13 p.m., the report says.

The patient's family does not want the man's name to be published, Tucson attorney **Dev Sethi** said. The patient was an engineer and business analyst who had recently been on short-term disability due to chronic pain that left him depressed. He went to Sierra Tucson at the urging of family members.

"The circumstances surrounding this death raise many questions," Sethi said. "The family has requested a meeting with Dr. Herschman and the treatment team to get some answers."

The facility has programs to help patients with addictions, mood disorders, chronic pain, eating disorders and trauma through its "Sierra Model" of integrating therapies such as massage, yoga and acupuncture with traditional psychiatry. Most patients are in their late 30s and early 40s. A majority of patients self-pay at a cost of about \$1,300 per day.

"Like other treatment centers that care for patients with very difficult issues, suicide prevention is a key focus at Sierra Tucson," the Sierra Tucson statement says. "We are committed to providing quality treatment and the safest care possible."

PRIOR PROBLEMS

State officials with the Arizona Department of Health Services, which licenses Sierra Tucson, on Thursday declined to comment on the most recent suicide and would not confirm whether they are investigating.

The state has reprimanded Sierra Tucson numerous times since 2009 for failing to follow its own policies on patient care:

- The facility agreed to pay a \$250 state fine for failing to follow its policies and procedures in its treatment of a 20-year-old man who died April 15.

The 20-year-old East Coast man had been in Sierra Tucson for drug rehabilitation and died of acute drug toxicity. An autopsy said it was unclear whether the lethal drug mix was intentional or accidental and listed the cause of death as undetermined.

Sierra Tucson officials in October filed a plan of correction in that case that said the facility had begun a random patient-chart monitoring program. Compliance with its suicide risk assessment and management policy would be monitored on a monthly basis by a random selection of at least 30 charts, the plan said. Staff training sessions on the facility's suicide-prevention protocol also were conducted in May and June, documents show.

Starr. Most patients self pay at a rate of about \$1,300 per day.

The facility was purchased in 2006 by CRC Health Group, a subsidiary of Boston-based Bain Capital financial services company. CRC Health Group bills itself as the largest specialized behavioral-health-care service provider in the U.S., seeing more than 30,000 patients per day at 115 locations.

Sierra Tucson, which greets patients with the motto "Expect A Miracle," is CRC's flagship property. In October, Tennessee-based Acadia Healthcare announced it would acquire CRC Health Group for \$1.18 billion.

Before signing an enforcement in that case, state officials discussed two concerns with Sierra Tucson officials, documents show: practices relating to the assessment of patients' vital signs; and also concerns about documentation of suicide risk assessment and management.

- In June the state fined Sierra Tucson \$2,000 for violating four rules and regulations related to patient care and safety connected to the Jan. 2, 2014, suicide of a 59-year-old patient. The fine was \$500 per violation, and the infractions included not ensuring that a resident's assessment information is reviewed and updated when additional information is identified.

The patient, who had a history of depression and anxiety, hanged himself with a shoelace from a shower head, according to a Pima County autopsy report. He died three days later at Oro Valley Hospital.

State records show that on Jan. 1, the patient had told his wife over the phone that he wanted to kill himself, and that she called the facility to tell them. But less than 24 hours later, the woman's husband was dead.

The state's report found no evidence of documentation in the patient's medical record that he was reassessed after he told his wife he wanted to kill himself. While Sierra Tucson paid the state fine, it made no admission of wrongdoing.

- In 2011, **Dr. Kenneth Litwack**, a 71-year-old Orange County physician with anxiety and depression, disappeared from Sierra Tucson. Two weeks later he was found dead near Sierra Tucson's stable, about a quarter-mile from the main building, in an area off the facility's footpaths and trails. His body was so decomposed that an autopsy report could not determine how he died.

After Litwack's death, the state fined Sierra Tucson \$9,250 for violations including failing to appropriately allocate staff to supervise patients. The state also placed the facility on a probationary license.

Litwack's family filed a lawsuit against Sierra Tucson in 2012, accusing it of improperly supervising patients. The lawsuit was settled out of court in September.

- In 2009 Sierra Tucson paid \$3,500 to the state related to two incidents involving patients leaving the grounds. One patient with a history of psychosis left without permission, a state investigation said. In the second incident, documents show that a patient with suicidal thoughts, who had threatened to rape another patient, was discharged and left in his private car without documentation that he was safe to leave by himself.

Contact reporter Stephanie Innes at sinnes@tucson.com

Copyright 2015 Arizona Daily Star. All rights reserved. This material may not be published, broadcast, rewritten or redistributed.