The proposed zoning amendments seek to enable community residences to locate in all residential zoning districts through the least drastic regulation needed to accomplish the legitimate government interests of preventing clustering (which undermines the ability of community residences to accomplish their purposes and function properly, and which alters the residential character of a neighborhood) and of protecting the residents of the community residences from improper or incompetent care and from abuse. They are narrowly tailored to the needs of the residents with disabilities to provide greater benefits than any burden that might be placed upon them. And they constitute the requisite legitimate government purpose for regulating community residences for people with disabilities.

Key to establishing a zoning approach in compliance with the Fair Housing Act is classifying community residences on the basis of functionality rather than on the number of people living in the community residence — at least as much as the legal provisions of Florida's statutes allow.

As they are now, community residences for people with disabilities (both family and transitional) that house no more than Pompano Beach's cap of three unrelated residents in a single housekeeping unit would be treated the same as any other family and would not be included when calculating spacing distances between community residences for people with disabilities.

Community residences in general

As emphasized throughout this report, emulating a biological family is an essential core characteristic of every community residence. It is difficult to imagine how more than ten to 12 individuals can successfully emulate a biological family. Once the number of occupants exceeds a dozen, the home tends to take on the characteristics of a mini–institution rather than a family or a residential use. Pompano Beach should consider defining community residences as housing no more than a ten or 12 people,[54] while allowing for a reasonable accommodation process for proposed community residences that demonstrate they can emulate a family and need more than 10 or 12 residents for therapeutic and/or financial reasons.[55]

Recovery communities in general

Updated material starts here

Community residences are not the only vehicle available for people in recov-

54. The maximum number of residents allowed as of right should be an even number to accommodate the established need of assuring all recovery home residents have a roommate.

55. As explained beginning on page 44, community residences for people with disabilities are subject to the building code provisions to prevent overcrowding that apply to all residential uses. So if the building code would allow just seven people in a dwelling unit, then that is the maximum number of people who can live in that dwelling unit whether it is occupied by a biological family, children in foster care, or the functional family of a community residence for people with disabilities.

ery from drug and/or alcohol addiction or abuse. Recovery communities offer a more intensive living arrangement with more people than can emulate a family and a more segregated, institutional–like atmosphere than a community residence.

A recovery community consists of multiple dwelling units in a single multi–family structure that are *not* available to the general public for rent or occupancy. A recovery comunity provides a drug–free and alcohol–free living arrangement for people in recovery from drug and/or alcohol addiction. But, unlike a community residence, a recovery community does *not* emulate a biological family. As explained below, a recovery community is a different land use than a community residence and it warrants a different zoning treatment.

Unlike a community residence that seeks to function like a biological family with no more than ten or 12 occupants in a dwelling, a recovery community is more akin to a mini–institution in nature and number of occupants.

Figure 12: Cluster of Four Clustered Recovery Communities in Pompano Beach

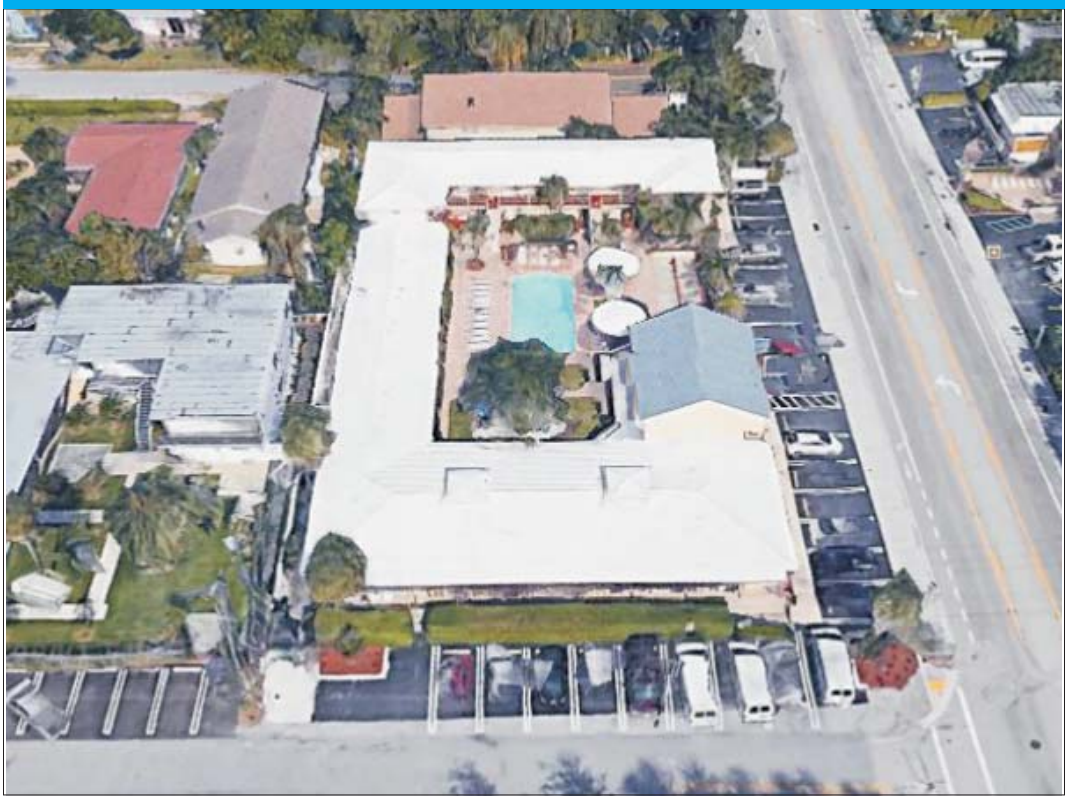
Four of the buildings in the center of this photo from Google Earth are each occupied by 24 people in recovery, for a total of 96 people in 16 apartment units.

As noted on page 24, some operators in Pompano Beach have established recovery communities in multifamily buildings, often in several adjacent buildings: 96 people at four addresses on a single block, 168 people at three addresses on a block, 58 people in 28 units in one building. The reality is that these are functionally segregated mini–institutions that do not emulate a fam-

ily or foster integration into the surrounding community like a community residence does.[56]

Operators of recovery communities are known to move residents from one apartment to another — unlike how a family or three roommates behave. This sort of arrangement certainly does *not* constitute a community residence in any sense of the words — remember that the essence of a community residence is to emulate a biological family. The segregated housing a recovery community creates runs counter to the core purpose of a community residence: to achieve normalization and community integration with the "able–bodied" neighbors as role models.

Figure 13: Uncertified Recovery Community in Pompano Beach



This 28–unit apartment building with pool housed 58 people in recovery. The Florida Association of Recovery Residences recently rejected its application for certification. The mini–institution has since ceased operations.

Few jurisdictions have adjusted their zoning provisions to account for recovery communities. In the absence of zoning provisions for recovery communities, some providers have skirted zoning provisions to prevent adverse clustering

56. Many of these recovery communities offer what is called "Level IV" support, the highest, more instense degree of support. In its description of "support levels" that service providers offer, the Florida Association of Recovery Residences (FARR) notes that "Level IV" "[m]ay be a *[sic]* more institutional in environment." *See* http://farronline.org/standards-ethics/support-levels.

and concentrations by misusing the cap on the number of unrelated individuals in the local zoning code's definition of "family." In these instances, when a city has a cap of three unrelateds in its definition of "family" like Pompano Beach does, the operator places three people in recovery in each unit in an apartment building and sometimes several nearby buildings. The people in recovery, however, function as a single large "community," not as individual functional families. Concentrations and clusters of these mini–institutions can and do alter the residential nature of the surrounding community even more so than a concentration of nursing homes would since the occupants of recovery communities are ambulatory and frequently maintain a motor vehicle on the premises.

These clusters and concentrations of recovery communities in Pompano Beach are very similar to the situation in other jurisdictions where the courts have concluded that an institutional atmosphere was being recreated. In *Larkin v. State of Michigan Department of Social Services,* the Sixth Circuit Federal Court of Appeals arrived at this conclusion when it referenced the decisions in *Familystyle*. In the *Familystyle* case, the operator sought to increase the number of group homes on one and a half blocks from 21 to 24 and the number of people with mental illness housed in them from 119 to 130. Referring to the federal district and appeallate court decisions in *Familystyle,* the *Larkin* court noted, "The courts were concerned that the plaintiffs were simply recreating an institutionalized setting in the community, rather than deinstitutionalizing the disabled."[57]

That is exactly what is happening at the sites in Pompano Beach described here as well as other sites in the city and elsewhere in southeast Florida. In fact, the density of these mini–institutions is often greater than in the *Familystyle* case. The operators have recreated an institutional setting in the midst of a residential district. These mini–institutions not only interfere with the core goals of normalization and community integration, but also alter the character of the neighborhood and the city's zoning scheme.

As noted earlier, a key basis for community residences locating in residential zoning districts has long been that the "able–bodied" neighbors serve as role models for the people with disabilities. Consequently, this essential rationale for community residences expects the occupants of the community residences to interact with their neighbors. Filling apartment buildings with people in recovery is hardly conducive to achieving these fundamental goals. Instead the occupants of the recovery community will almost certainly interact nearly exclusively with the other people in recovery rather than with the "clean and sober" people in the surrounding neighborhood.

Introducing such mini–institutions can and has altered the residential character of the surrounding area. In addition, there is a lack of evidence that such arrangements do not affect property values, property turnover rates, or neighborhood safety. The studies of the impacts of community residences examined

57. *Larkin v. State of Michigan Department of Social Services,* 89 F.3d 285 6th Cir. 1996). *See also Familystyle of St. Paul, Inc. v. City of St. Paul*, 728 F.Supp. 1396 (D. Minn. 1990), aff'd, 923 F.2d 91 (8th Cir. 1991).

actual community residences that emulate a family, not these mini–institutions. The *de facto* social service districts that clusters of recovery communities produce fall far outside the foundations upon which the courts have long based their decisions to treat community residences as residential uses, including emulating a biological family and utilizing nearby neighbors without disabilities as role models to foster normalization as well as participation in the broad community to achieve community integration.

It is important to remember that zoning is based on how each land use functions. The original community residence concept is based on the community residence behaving as a "functional family" that emulates a biological family. Such homes need to be in a residential neighborhood where the so–called "able bodied" neighbors serve as role models. Those are key cornerstones upon which the court rulings that require community residences to be allowed in residential districts rest.

But filling a multifamily building with people in recovery — or even filling a block of houses with people in recovery — hardly emulates a biological family in a residential neighborhood. Instead of "clean and sober" people in the surrounding dwelling units to act as role models, everybody is surrounded by other people in recovery. It is difficult to imagine how such segregated living arrangements foster the normalization and community integration at the core of the community residence concept. Such arrangements are like a step back to the segregated institutions in which people with disabilities were placed before deinstitutionalization became the nation's policy more than half a century ago.

These are among the reasons why spacing distances are so crucial to establishing an atmosphere in which community residences can enable their occupants to achieve normalization and community integration. And these are among the reasons that zoning should treat receovery communities as the mini–institutions that they functionally are.[58]

Since recovery communities are located in multi–family buildings, it makes no sense for a zoning code to allow new recovery communities to be located in single–family districts where new multi–family housing is not permitted. But they should be allowed in multi–family and other districts where multi–family housing is allowed,

As explained beginning on page 17, the capacity of a neighborhood to absorb service dependent people into its social structure is limited. When recovery communities are clustered on a block or concentrated in a neighborhood, there is little doubt that they exceed this capacity. This situation warrants a significantly greater spacing distance for recovery communities allowed as of right in a zoning district than between community residences allowed as of right, sub-

58. The case law that requires *zoning* to treat a community residence residence that fits within the cap on unrelateds in the definition of "family" is based on fact situations involving actual, individual community residences. The case law under the Fair Housing Act regarding community residences for people with disabilities is very fact specific. It is difficult to imagine that a court would fail to recognize that, for example, placing 96 people with disabilities in four buildings on a block is an attempt to subvert the definition of "family" and would be anything but an institutional use plopped down in a residential area.

ject to rational spacing and certification/licensing standards. When a recovery community is proposed to be located within the spacing distance of a community residence or another recovery community, the heightened scrutiny of a special exception is warranted to identify the likely impacts of the proposed recovery community on the nearby existing community residence or recovery community, as well as their combined impacts on the neighborhood.

Under the zoning amendments that Pompano Beach adopts, some existing recovery communities may become legal nonconforming uses (or special exceptions). Such recovery communities, like any other legal nonconforming use, are not allowed to expand or become a more intense nonconforming use.

Updated material ends here

Additional issues to consider

The precise language of the zoning amendments will need to make allowances for the legal provisions in the Florida state statutes on zoning for certain types of community residences for people with specific disabilities.

Note that the state statute governing local zoning for most types of community residences for people with disabilities (called "community residential homes") allows local governments to adopt zoning that is less restrictive than the state statutes.[59] While the zoning proposed here is broader in scope than the state statutes — covering all types of community residences for all types of disabilities — some of the suggested zoning regulations fall within this statutory provision.

The state statutes, however, do *not* establish any zoning standards for recovery residences — sober homes, recovery communities, and small halfway houses for people in recovery. As discussed earlier, the state statutes do establish a voluntary credential for recovery residences administered by the Florida Association of Recovery Residences. The credentialing standards and processes are as demanding or even more demanding than some existing licensing laws in other states.

While there are few Oxford Houses in Florida as of this writing, local zoning provisions for community residences must provide for these unstructured, self–governed recovery communities. Oxford House has been recognized by Congress and has its own internal monitoring system in place to inspect and maintain compliance with the Oxford House Charter.[60] The standards and procedures that both Oxford House and the State of Florida's voluntary certification of recovery residences employ are functionally comparable to licensing requirements and procedures for recovery communities in other states. The zoning approach suggested here recommends that Oxford House and certified recovery residences be treated the same as state certification.

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59. *Florida Statutes*, §419.001(12). "State law on community residential homes controls over local ordinances, but nothing in this section prohibits a local government from adopting more liberal standards for siting such homes."

60. Oxford House does not allow its recovery communities to open in a state until Oxford House has established its monitoring and inspection processes to assure that Oxford Houses will operate within the standards the Oxford House Charter establishes.