



INSTITUTE FOR JUSTICE

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An Open Letter Regarding the Bridge Haven Emergency Shelter Conditional-Use Permit Application

My name is Diana Simpson, and I am a Senior Attorney at the Institute for Justice, a national *pro bono* law firm dedicated to protecting people’s ability to use their property as they see fit. I write this open letter regarding the city of Leadville’s consideration of a conditional-use permit for the Bridge Haven Emergency Shelter, and to provide context about how the U.S. Constitution protects Bridge Haven and its clients’ rights and how the U.S. Supreme Court has treated similar land-use decisions by local governments.

Local governments may not veto productive, valuable uses of property without a really good reason. In 1985, the U.S. Supreme Court concluded that a Texas city’s denial of a conditional-use permit for a group home violated the Equal Protection Clause.¹ There, the city invoked a half dozen reasons for denying the permit, including the negative attitude of neighboring property owners, the property’s location on a floodplain, and neighborhood serenity. The Supreme Court analyzed each justification, comparing how a group home would differ from other overnight property uses that were allowed under the code without a conditional-use permit. For example, the Court asked how the proximity on a 500-year floodplain impacted a group home differently than it would a nursing home. The answer is that it did not; both property uses for the building would be impacted by a potential flood in the same manner. This was how the Court approached each of the city’s justifications, asking if there was any rational basis for believing that the group home would pose any special threat to the city’s interests that the other uses would not. Each justification failed under this test. Ultimately, the Court concluded that all that was left was irrational prejudice against the people the group home would serve, which violated the Equal Protection Clause.

The Supreme Court’s decision in *Cleburne* continues to hold strong. It is regularly cited by federal and state courts across the country for its equal protection analysis and treatment of local land use decisions. One example is from North Wilkesboro, North Carolina—a case I myself litigated.² There, the Catherine H. Barber Memorial Shelter, which has operated for three decades, was in need of new space. The shelter obtained a building that met all the zoning requirements, but the town’s board of adjustment denied a conditional-use permit, citing three reasons: traffic safety, the shelter would lower nearby property values, and the shelter wouldn’t be in harmony with its neighbors. As

¹ *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432 (1985), available at <https://supreme.justia.com/cases/federal/us/473/432/#tab-opinion-1956273>.

² *Catherine H. Barber Memorial Shelter, Inc. v. Town of North Wilkesboro*, 576 F. Supp. 3d 318 (W.D.N.C. 2021), available at <https://ij.org/wp-content/uploads/2020/10/ECF-41-MSJ-Order.pdf>.

with *Cleburne*, the federal court marched through the government's justifications and analyzed whether there was any difference between how the shelter would use the land as opposed to rehabilitation facilities, group homes, and other overnight uses that did not need a conditional-use permit to operate. And as with *Cleburne*, the court concluded that none of the justifications were rational. In the abstract, safety or harmony might be rational. But that isn't the relevant question; rather, there must be a specific distinction between the shelter and other uses not requiring a conditional-use permit. And it cannot be a distinction about the people who use the property. Ultimately, the court concluded that none of the justifications were rational, leaving just hostility toward the people the shelter would serve in violation of the Equal Protection Clause.

Local governments may not make land-use decisions on assumptions about the people who use the property. They also may not make decisions in the abstract. Instead, they must base their decisions using the facts involved, analyzing whether a proposed use would impact the land in a different and relevant way than other allowed uses, and not making inappropriate conclusions based on the people who use the land.