

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

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CLERK OF DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

UNITED STATES OF AMERICA,

Plaintiff,

v.

POLK COUNTY, FLORIDA,

Defendant.

Civil Action No. 8:10CV2196-27 EJS

COMPLAINT

The United States of America alleges as follows:

1. This is a civil action brought by the United States of America to enforce the Fair Housing Act ("FHA"), 42 U.S.C. § 3601 *et seq.*
2. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 3614(a).
3. Venue is proper because the claims alleged herein arose in the Middle District of Florida.
4. Defendant, Polk County Florida ("the County"), is an incorporated, legal subdivision of the State of Florida, located in the Middle District of Florida. Polk County is governed by a five-member Board of Commissioners ("the Commission").
5. The Commission's duties and powers are outlined in the Polk County Charter, the Florida Constitution and Chapter 125 of the Florida Statutes. Those duties include enforcing zoning regulations such as the Land Development Code.
6. New Life Outreach Ministries ("New Life") is a non-profit organization founded

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by Mr. Larry Mitchell in 1989 to provide outreach to Polk County's male, homeless population largely through a faith-based transitional housing program. New Life's transitional housing program serves men who are at least 21 years old, have no major medical problems, have no violent criminal record, have a drug and/or alcohol problem that they want help overcoming, and may have other physical or mental disabilities.

7. New Life's residents are "handicapped" or disabled within the meaning of the Fair Housing Act, 42 U.S.C. § 3602(h).

8. Since 1989, New Life's main house and office have been located at 1151 Kathleen Road in the Webster neighborhood of Lakeland, Florida. Webster is a residential neighborhood and the Kathleen Road facility is surrounded by single family houses.

9. New Life has operated a transitional housing program at the Kathleen Road facility and other locations in Polk County for more than twenty years. As part of its transitional housing programs, New Life provides various case management services to assist its residents in becoming more self-sufficient, including drug and alcohol abuse counseling and job placement assistance. In addition, New Life offers faith-based services to its residents, including the option to attend bi-weekly Bible study classes at the site, men's fellowship groups at community churches, and Sunday morning church services. The average resident stays in New Life's transitional housing program for approximately six months.

10. In 2003, New Life decided to use a grant it received from the U.S. Department of Housing and Urban Development ("HUD") and a grant from the state of Florida to create a permanent residency program for homeless men with disabilities. Participants in the permanent residency program would be required to have completed a transitional housing program, like the

one New Life operates on Kathleen Road, for a minimum of eighteen months, to have one or more disabilities as defined under the Americans with Disabilities Act ("ADA"), and have no violent criminal record.

11. The goal of the permanent residency program was to help clients with a history of past substance abuse live "independently." The residents of the permanent residency program would have no expected limit on the duration of their stay. New Life would support the residents by providing them a variety of services, including spiritual counseling, financial counseling, case management, and transportation services. In addition, New Life intended to help residents obtain mental and physical medical care, as needed.

12. New Life decided to locate its permanent residency program at 4606/4620 South Pipkin Road, in Lakeland, Florida ("the Pipkin Road property"). The Pipkin Road property consists of one single family house and a one-story addition, which was constructed onto the back of the house years prior to New Life purchasing the property. The Pipkin Road property was the site of another care facility, Christian Rest Care, from the mid-1970's until October 2004, when New Life purchased the property. Christian Rest Care's residents included up to twenty elderly or disabled persons. The property is on a residential street in an area that is zoned "Residential Suburban."

13. Christian Rest Care housed up to twenty residents. New Life intended to modify the addition at the back of the property into four "quads" to better suit its future residents' needs. Each quad was to have three bedrooms, a bathroom and a kitchen and the ability to house three men. New Life planned to house a total of fifteen men on the property (three in each of the four quads and three in the main house), five fewer residents than Christian Rest Care housed.

14. New Life's planned use of the property on Pipkin Road constitutes a dwelling within the meaning of the Fair Housing Act, 42 U.S.C. § 3602(b).

15. HUD's funding for the New Life permanent residency program was contingent on written confirmation that the Pipkin Road property complied with applicable zoning regulations. In the fall of 2004, New Life sought confirmation from the Polk County Planning Division that its proposed use (i.e., a faith-based, permanent residency program for homeless persons with disabilities) would meet the applicable zoning requirements.

16. On or about November 3, 2004, Polk County issued a Land Use Determination Letter, which approved New Life's proposed land use. The letter stated that the neighborhood surrounding the Pipkin Road property had been rezoned since CRC began operation, so that New Life's use was approved as a "non-conforming conditional use" and that the use could not cease for more than twelve months at one time.

17. In reliance on the County's determination letter, New Life signed the contract of sale for the Pipkin Road property on or about November 11, 2004. New Life took possession of the Pipkin Road property on or about February 28, 2005.

18. Once New Life took possession of the property it initiated plans to modernize and renovate the building. The nature of the renovations required that the building be unoccupied during construction. The construction did not start on schedule.

19. In March 2005, New Life placed six residents at the Pipkin Road property temporarily until the renovations could begin. While they lived at the Pipkin Road property these six residents continued to take part in the programs offered by New Life at Kathleen Road.

20. These six residents all moved out of the Pipkin Road property by July 20, 2005, so

that the major construction could begin. The County issued a building permit for the renovations on August 2, 2005.

21. Shortly after the renovations began, residents near the Pipkin Road property began to inquire into what was going to replace Christian Rest Care. Once the community members learned that New Life would be operating there, they began to organize and openly express opposition to New Life's presence.

22. In April 2006, residents near the Pipkin Road property voiced concerns about New Life to the Planning Division. In response to the neighbors' concerns, the Planning Division reviewed New Life's zoning use a second time.

23. On or about April 28, 2006, the Planning Division issued a second administrative determination. Again, the Planning Division stated that New Life's use of the Pipkin Road property was legally non-conforming in accordance with the Polk County Land Development Code and would be permitted to continue. The letter stated that "[b]ased on information gathered, it has been determined that there was an active Congregate Living Facility at 4606-4620 South Pipkin Road and that said facility closed temporarily in August 2005 when renovation of the site began under a valid Construction Permit issued by the County."

24. A Polk County resident appealed the Planning Division's April 28, 2006, determination on behalf of the Pipkin Road neighbors, and a public hearing before the County Board of Commissioners was set for June 21, 2006.

25. Prior to the hearing, the Commissioners and other County officials received hundreds of letters, emails, telephone calls and invitations to community meetings, urging them to deny New Life the right to operate at the Pipkin Road property.

26. The Director of the Polk County Land Development Division, Mark Cunningham, testified at the hearing on behalf of the County. Mr. Cunningham reiterated the Planning Division's conclusion that New Life's permanent residency program at the Pipkin Road property was legally non-conforming in accordance with the Polk County Land Development Code and, therefore, should be permitted. Mr. Cunningham testified that in light of "signed and notarized affidavits, conversations with area residents, the current owner administrator, site visits, the land development code, Fair Housing Act Amendments of 1988, and case law, it was [his] determination that the proposed activities [were] a continuation of the prior activities associated with 4606-4620 South Pipkin Road." He also stated that New Life was a continuing operation because it met each of the requirements for a congregate living facility under the Land Development Code.

27. Neighbors and people outside of the neighborhood voiced strong opposition to New Life during the June 21, 2006, hearing. Several county residents objected to the fact that persons in recovery from drug or alcohol addiction would live on the property. Various residents expressed concern that New Life residents would break into their homes, harm their children and/or make their property values depreciate.

28. At the conclusion of the hearing, the Commission adjourned for the stated purpose of considering the documents and information that had been presented before rendering its decision.

29. After the hearing, county residents continued to write, email, and telephone the Commissioners urging them to deny New Life the right to locate at the Pipkin Road property.

30. The Commission reconvened the public hearing on the appeal of New Life's

zoning classification on July 26, 2006. The Commissioners voted 3-1 to reverse the Planning Commission's determination that allowed New Life to operate its permanent housing program at the Pipkin Road property. The Commission concluded that because New Life's proposed use of the Pipkin Road property was not the same as Christian Rest Care's previous use, New Life did not qualify for the code's grandfathering provision.

31. According to the transcript of the July 26, 2006 hearing, four of the five Commissioners made explicit statements referencing the neighbors' fears that "addicts" would be living at the property.

32. New Life was unable to secure funding sources to relocate the permanent residency program anywhere else in the County. From July 2006 through September 2009, New Life was prevented from operating the permanent residency program at that Pipkin Road property with more than three residents. Unable to fully operate its program, New Life moved the three residents that were living at the Pipkin Road property out in the fall of 2009. The property was foreclosed on shortly thereafter.

33. The Defendant, through the actions described above, has (i) denied or otherwise made a dwelling unavailable because of disability in violation of 42 U.S.C. § 3604(f)(1), and (ii) discriminated in the terms, conditions, or privileges of housing, or in the provision of services or facilities in connection with housing, because of disability in violation of 42 U.S.C. § 3604(f)(2).

34. The Defendant's conduct described above constitutes a denial to a group of persons of rights granted by the Fair Housing Act that raises an issue of general public importance under 42 U.S.C. § 3614(a).

35. The Defendant's conduct described above was intentional, willful, and taken in

disregard of the rights of others.

PRAYER FOR RELIEF

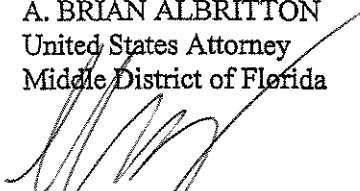
WHEREFORE, the United States prays that this Court enter an order:

- A. Declaring that the actions of the Defendant described herein constitute a violation of the FHA;
- B. Enjoining the Defendant, its agents, employees, assigns, successors and all other persons in active concert or participation with it, from violating the Fair Housing Act by discriminating on the basis of disability;
- C. Requiring such action by the Defendant as may be necessary to restore all persons aggrieved by the Defendant's discriminatory housing practices to the position they would have occupied but for such discriminatory conduct;
- D. Awarding monetary damages to each person aggrieved by the Defendant's discriminatory housing practices, pursuant to 42 U.S.C. § 3614(d)(1)(B); and
- E. Assessing a civil penalty against the Defendant to vindicate the public interest, in an amount authorized by 42 U.S.C. § 3614(d)(1)(C).

The United States further prays for such additional relief as the interests of justice may require.

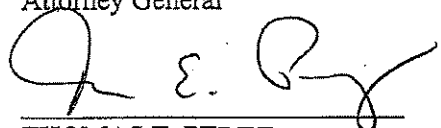
Dated: September 30, 2010

A. BRIAN ALBRITTON
United States Attorney
Middle District of Florida



E. KENNETH STEGEBY
USAO 112
Assistant United States Attorney
400 N. Tampa Street
Suite 3200
Tampa, FL 33602
Phone: (813) 274-6000
Fax: (813) 7274-6358
Kenneth.Stegeby@usdoj.gov

ERIC H. HOLDER, JR.
Attorney General



THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division



STEVEN H. ROSENBAUM
Chief



MICHAEL S. MAURER
Deputy Chief
NORRINDA BROWN HAYAT
Trial Attorney
U.S. Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section
950 Pennsylvania Avenue, N.W. 7 G Street
Washington, D.C. 20530
Phone: (202) 305-3826
Fax: (202) 514-1116
norrinda.brown@usdoj.gov