

United States District Court
Southern District of Florida

Case No. 03-80178-CIV-Paine/Johnson

JEFFREY O., BOBBY HOOVER, TODD)
CONROY, DOUG BYERS, RICHARD COHEN,)
MATTHEW WOLF, REGENCY PROPERTIES)
OF BOCA RATON, INC., a Florida Corporation,)
and AWAKENINGS OF FLORIDA, INC.,)
a Florida Corporation,)
Plaintiffs,)
vs.)
CITY OF BOCA RATON, a Florida)
Municipal Corporation,)
Defendant.)

NIGHT BOX
FILED

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THIRD AMENDED COMPLAINT

Plaintiffs Bobby Hoover, Todd Conroy, Doug Byers, Richard Cohen and Matthew Wolf (referred to collectively as the “Residents”), Regency Properties of Boca Raton, Inc. (“Boca House”), a Florida corporation, and Awakenings of Florida, Inc. (“Awakenings”), a Florida corporation, sue Defendant City of Boca Raton (the “City”), a Florida municipal corporation, and allege:

PARTIES AND JURISDICTION

1. This action arises under the Fair Housing Act of 1968, as amended, 42 U.S.C. §3601, *et seq.* (the “FHA”), Title II of the Americans with Disabilities Act, 42 U.S.C. 12131, *et seq.* (the “ADA”), the Declaratory Judgment Act, 28 U.S.C. § 2201, and the equal protection guarantee of the 14th Amendment to the United States Constitution for which 42 U.S.C. § 1983

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provides a remedy.

2. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343 (a)(3) and (a)(4), and pursuant to 42 U.S.C. § 3613.

3. Venue is appropriate in the Southern District of Florida because the cause of action accrued in Palm Beach County, Florida and because the Defendant is a municipality located in Palm Beach County, Florida.

4. Plaintiff, Bobby Hoover, is a recovering alcoholic or drug addict with disabilities, who is in need of stable housing during his transition from rehabilitation to integrated community living.

5. Plaintiff, Doug Byers, is a recovering alcoholic or drug addict with disabilities, who is in need of stable housing during his transition from rehabilitation to integrated community living. He has relapsed on at least one prior occasion.

6. Plaintiff, Todd Conroy, is a recovering alcoholic with disabilities, who is in need of stable housing during his transition from rehabilitation to integrated community living.

7. Plaintiff, Richard Cohen, is a recovering alcoholic or drug addict with disabilities, who is in need of stable housing during his transition from rehabilitation to integrated community living. He has relapsed on at least one prior occasion.

8. Plaintiff, Matthew Wolf, is a recovering alcoholic or drug addict with disabilities, who is in need of stable housing during his transition from rehabilitation to integrated community living.

9. Plaintiff Residents currently reside in drug and alcohol-free rental housing for persons recovering from alcohol or drug addiction operated by Plaintiffs Boca House and Awakenings or related properties. Typically, after Boca House or Awakenings residents

complete detoxification in a hospital or similar facility, they continue their recovery in larger, more structured sober housing at Boca House, which does not provide treatment but does provide a structured, supportive and drug and alcohol free environment. Eventually these persons transition to smaller, less structured and more independent homes and apartments with two or more other residents (to whom they are not related) when they reach more advanced phases of recovery.

10. Plaintiff Residents are in active recovery from addiction through programs such as A.A. (Alcoholics Anonymous) and N.A. (Narcotics Anonymous). Anonymity is a central tenet of these recovery programs: members maintain anonymity at the “public” level (press, radio, television, and films), and when the media portrays an A.A. or N.A. member, that person is identified by his or her first name only, without an accompanying picture.

11. Plaintiff Residents are qualified persons with disabilities that affect one or more major life activities of central importance to most people’s daily lives, including abstaining from alcohol or drug abuse and living independently without a structured supportive setting and a sober housing environment. In addition, each of the Plaintiff Residents has been diagnosed as suffering from alcohol or drug dependence, is participating or has participated in alcohol or drug treatment on an outpatient basis at facilities unrelated to Boca House and Awakenings, and is regarded as disabled. Plaintiff Residents are not currently illegally using controlled substances or alcohol.

12. Despite the fact that none of the Plaintiff Residents is illegally using controlled substances or alcohol, each of the Plaintiff Residents is at continual risk of relapse due to his addiction and/or alcoholism. Notwithstanding most Boca House and Awakenings residents’ active participation in alcohol or drug treatment programs, and their residence in sober housing,

some residents relapse by breaking their sobriety. In fact, since the filing of the original complaint in this case, several residents of Boca House and Awakenings have relapsed and left to attend drug or alcohol rehabilitation before returning to Boca House or Awakenings. Even for Resident Plaintiffs who have “graduated” from Boca House to smaller, more independent sober housing, there is a constant danger of relapse.

13. Plaintiff Residents, and all other individuals residing at Boca House and Awakenings, are “handicapped” within the meaning of the FHA and 24 C.F.R. 100.201(a)(2), and are “qualified persons with disabilities” within the meaning of the ADA, 42 U.S.C. § 12102(2) and 28 C.F.R. 35.104.

14. Plaintiffs Boca House and Awakenings are Florida corporations whose principal places of business are in Boca Raton, Florida. Boca House and Awakenings own or operate housing units (apartments, town homes and single family homes) in residential settings that they rent to individuals who are recovering from substance addiction so they can live in a drug and alcohol-free environment and a structured supportive setting.

15. The City is a municipal corporation established and organized under the laws of Florida and is located in Palm Beach County, Florida. This lawsuit relates to certain discriminatory ordinances and zoning actions taken by the City under color of state law. Further, the City provides programs and services in the form of zoning laws and enforcement of those laws also under the color of state law.

INTRODUCTION

16. Since 1990, in response to an ever-increasing demand for safe, drug and alcohol-free housing for persons recovering from addiction, Boca House and Awakenings have rented housing to persons who are recovering from drug or alcohol addiction and who are

currently not illegally using controlled substances, and to any other persons with disabilities who want to live in a supportive drug and alcohol-free environment.

17. Boca House and Awakenings provide their residents a safe, structured environment to live in, typically after they have successfully completed substance abuse treatment. To create the drug and alcohol free environment needed by persons in recovery, both Boca House and Awakenings require drug testing as a condition of residency and expel residents found to be using drugs or alcohol. Although Boca House and Awakenings provide a supportive environment, they do not provide treatment or counseling for drug or alcohol addiction.

18. The residents of each apartment, town home or single family home operated by Boca House and Awakenings pay rent and maintain their common households with other persons recovering from alcoholism or addiction. The residents in each home are the functional equivalent of a family. They divide the cost of, and collectively participate in maintaining, their common household. Any resident who uses drugs or alcohol is immediately and automatically expelled. While many Boca House and Awakenings residents have made multiple prior attempts at long-term recovery, the majority of those who live at Boca House or Awakenings for one year or more maintain long-term sobriety.

19. People who are handicapped or disabled by alcoholism or drug abuse are more likely to need structured living arrangements such as what a sober living residence provides. Living together for mutual support, away from the environment which may have contributed to their alcoholism or drug abuse, is critical to the recovery process. It also helps each person in recovery combat his or her own worst enemy—being alone. Persons in early recovery who do not live in an environment such as that provided by a sober living residence are at far greater risk of relapse into substance abuse.

20. Residing in an environment free of drugs and alcohol is critical to recovery, particularly in the early stages. Drug and alcohol use is prevalent in almost all multi-family residential buildings that do not employ restrictions on drug and alcohol use enforced through testing. Residing in an environment where alcohol or drugs are used by others is one of the main triggers of substance abuse relapse for recovering drug addicts and alcoholics. For this reason, a sober living residence must employ drug testing as a condition of residence.

21. Alcoholism and drug addiction are lifetime diseases. They are chronic and progressive. Unless these diseases are successfully treated, and long term sobriety is achieved, both diseases are ultimately fatal. Avoiding relapse and progressing in recovery are therefore the most important aspects of a recovering addict's or alcoholic's life.

22. Finding and staying in a healthy, functional environment, surrounded by people who are not using alcohol or drugs, away from people and situations that previously triggered substance use, with access to transportation and work opportunities, are essential elements to avoiding relapse.

23. Sober living residences such as Boca House and Awakenings provide such an environment and operate on the premise that people in the early, and for some, later stages of recovery from drug and alcohol addiction will have a better chance of success in remaining sober if they live in a highly supportive environment where substance abuse is not tolerated.

24. Boca House and Awakenings, along with the Plaintiff Residents, on their own behalf and on behalf of the other residents of Boca House and Awakenings bring this action challenging the City of Boca Raton's (the "City") zoning ordinance No. 4649, which was later amended in April 8, 2003 by City ordinance No. 4701 (Ordinance No. 4649, as amended is referred to herein as the "Ordinance"). By this action, Plaintiffs seek relief from the Ordinance,

which intentionally and on its face excludes persons recovering from drug or alcohol addiction, and who reside in sober living residences, from residing in residential neighborhoods within the City. The Ordinance unlawfully prohibits housing specifically targeted for persons recovering from drug or alcohol addiction from continuing to operate in any residentially-zoned area of the City.

25. In addition, the Ordinance makes no provision for grandfathering Boca House's and Awakening's existing sober living residences, which are located in residential neighborhoods. Boca House and Awakenings were the direct targets of the Ordinance, and it was passed in response to public outcry to remove Boca House's and Awakenings' residents from their present residential neighborhoods. The City drafted the ordinance to exempt other sober living residences within the City, which are not in residential areas, while singling out Boca House and Awakenings, expressly because they are located in a residential area that the City did not (in its Mayor's words) deem "appropriate" for recovering addicts and alcoholics. (See infra ¶54)

26. If the City is allowed to enforce the Ordinance, it will force Boca House's and Awakening's current residents to leave the residential neighborhoods where they now reside, and will prevent Boca House and Awakenings from offering structured, drug and alcohol-free housing to prospective handicapped and disabled residents, who are in need of independent, drug and alcohol-free housing opportunities. It would also extinguish Boca House's and Awakenings' long-established use of their real property.

27. Plaintiffs also separately seek relief from Section 28-2 of the City's zoning code which sets forth a definition of "family" that draws a distinction between persons related by blood or marriage and "unrelated" groups of persons, imposes severe restrictions on household

size that apply solely to groups of unrelated persons, intentionally discriminates based on familial or marital status of groups maintaining a common household, and has a disparate impact on persons in recovery from alcoholism or addiction.

28. As explained below, both the Ordinance and Section 28-2 expressly create discriminatory zoning schemes for residential housing, and intentionally and facially violate the Fair Housing Act, 42 U.S.C. §3601, *et. seq.*, and the Americans with Disabilities Act 42 U.S.C. §11213 et. seq. In addition, both provisions have a disparate impact on disabled persons suffering from alcohol or drug addiction such as the Plaintiff Residents and the other residents of Boca House and Awakenings.

ORDINANCE NO. 4649

29. On May 29, 2002, the City's Council enacted the Ordinance which provides:

Section 1. Section 28-2, Code of Ordinances, is amended to read:

“Substance Abuse Treatment Facility” shall mean a service provider or facility that is: 1) licensed or required to be licensed pursuant to Section 397.311(18). Fla. Stat. or 2) used for room and board only and in which treatment and rehabilitation activities are provided at locations other than the primary residential facility, whether or not the facilities used for room and board and for treatment and rehabilitation are operated under the auspices of the same provider. For the purposes of this paragraph (2), the following shall be deemed to satisfy the “treatment and rehabilitation activities” component: (a) service providers or facilities which require tenants to participate in treatment and rehabilitation activities as a term or condition of, or essential component of, the tenancy; or (b) service providers or facilities which facilitate, promote, monitor, or maintain records of, tenant participation in treatment and rehabilitation activities, or perform testing to determine whether tenants are drug and alcohol free, or receive reports of results of such testing.

“Social Service activities” shall mean the administration of any community-oriented service including offices, meetings, storage, library and similar administrative users. It shall not

mean any social service activities, including without limitation, substance rehabilitation services, counseling activities and services, shelters for the homeless or abused, food/meal distribution for the needy, job training, and teen oriented programs.

Section 2. Section 28-197, Code of Ordinances, is created to read:

Section 28-197. Status of Substance Abuse Treatment Facilities.

Any Substance Abuse Treatment Facility that exists as of the effective date of this ordinance must comply with all provisions and requirements of this ordinance no later than eighteen (18) months after its effective date.

Section 3. Section 28-743, Code of Ordinances, is amended to read:

Section 28-743. Conditional uses.

(e) Substance Abuse Treatment Facility, provided that such facilities shall not be located within a radius of 1,000 feet of another existing facility.

30. The Ordinance was later amended, in part, as follows:

Substance Abuse Treatment Facility" shall mean a service provider or facility that is: 1) licensed or required to be licensed pursuant to Section 397.311(18). Fla. Stat. or 2) used for room and board only and in which treatment and rehabilitation activities are provided at locations other than the primary residential facility, whether or not the facilities used for room and board and for treatment and rehabilitation are operated under the auspices of the same provider. For the purposes of this paragraph (2), ~~the following shall be deemed to satisfy the "treatment and rehabilitation activities" component:~~ (a) service providers or facilities which require tenants or occupants to participate in treatment and rehabilitation activities, or perform testing to determine whether tenants or occupants are drug and/or alcohol free, as a term or condition of, or essential component of, the tenancy or occupancy shall be deemed to satisfy the "treatment and rehabilitation activities" component of the definition contained in this section; or (b) service providers or facilities which

~~facilitate, promote, monitor, or maintain records of, tenant participation in treatment and rehabilitation activities, or perform testing to determine whether tenants are drug and alcohol free, or receive reports of results of such testing~~

31. On its face the Ordinance commits the City to the position that

service providers or facilities which require tenants or occupants to participate in treatment and rehabilitation activities, or perform testing to determine whether tenants or occupants are drug and/or alcohol free, as a term or condition of, or essential component of, the tenancy or occupancy

must move out of the residential areas of the City and away from its general residential population.

32. Boca House and Awakenings perform testing to ensure that their residents remain drug and alcohol free. Such testing is necessary, because of their residents' disabilities, to allow the residents of Boca House and Awakenings to be able to function in a residential setting. Unless this Court strikes down the Ordinance, Boca House and Awakenings will no longer be able to offer a sober living environment to their recovering residents, including the Plaintiff Residents, and their residents will not be able to remain in their residential neighborhoods.

33. Because of their physical handicaps, Plaintiff Residents and others living at Boca House and Awakenings cannot live in the same housing that is available to non-disabled individuals, *i.e.*, those who are not in the early stages of addiction recovery. The City's Ordinance specifically targets the minimum services that such persons need to reside in a residential setting, including those services that a community needs to maintain a drug- or alcohol-free environment. Under the Ordinance any housing for recovering alcoholics and drug addicts that provides such services is segregated into what is essentially a ghetto district that is completely separate from the areas where non-disabled persons reside.

A. The Ordinance Intentionally And On Its Face Discriminates Against Recovering Persons In General, And The Residents Of Boca House And Awakenings In Particular.

34. The Ordinance targets any residential use that makes treatment or rehabilitation a condition of residency -- even if the treatment or rehabilitation takes place off site and is unaffiliated with the housing provider. It also extends to residential uses that require drug or alcohol testing as a condition of residency. These provisions specifically target sober living residences and prohibit sober living residences from being established or expanded in any of the City's residential zoning districts. Even established sober living residences may not be continued in such areas once the Ordinance takes retroactive effect.

35. The Ordinance allows the uses it defines as "Substance Abuse Treatment Facilities" only in institutional areas that are zoned for medical and hospital uses (the MC - Medical Center district), or with conditional approval from the City Council, in commercial areas zoned for motel-business use (the RB-1 - Motel Business district), and in no other district. The Ordinance accomplishes this by defining Substance Abuse Treatment Facilities as allowed uses in the Medical Center District and conditional uses in the Motel Business District. This prohibits any use meeting the definition of "Substance Abuse Treatment Facility" from locating in any residential zoning district in the City.

36. The City has taken the position that inclusion of "Substance Abuse Treatment Facilities" as defined uses in these districts prohibit their establishment in any other zoning district. In a December 10, 2002, letter to counsel for Boca House and Awakenings, the City's attorneys confirmed that any facilities meeting this definition would be subject to the "locational requirements of the ordinance," meaning that such a facility would need to relocate to the hospital district, or if the City grants a special exception, to the commercial-motel district.

37. The City's Ordinance specifically targets the minimum services recovering

alcoholics and drug addicts need to reside in a residential setting. It thereby, on its face, segregates housing for such disabled persons away from the general population of the City and into districts otherwise reserved for institutional and commercial uses.

38. Section 3 of the Ordinance further requires that Substance Abuse Treatment Facilities in the RB-1 - Motel Business District “not be located within a radius of 1,000 feet of another existing facility.” Given the limited size of the Motel Business District, as well as the limited or non-existent availability of suitable properties within the available districts, this restriction will limit new “Substance Abuse Treatment Facilities” to the point where they may not be established within the City at all.

39. As established in the Ordinance, Substance Abuse Treatment Facilities include:

[s]ervice providers or facilities which require tenants or occupants to participate in treatment and rehabilitation activities, or occupants to participate in treatment and rehabilitation activities, or perform testing to determine whether tenants or occupants are drug and/or alcohol free, as a term or condition of, or essential component of, the tenancy or occupancy . . .

Boca House and Awakenings fall within this definition as they “perform testing to determine whether tenants or occupants are drug and/or alcohol free, as a term or condition of . . . the tenancy . . .” The Ordinance therefore would prohibit Boca House and Awakenings from continuing to provide housing to persons in recovery in the residential zoning districts where they are presently located, and would allow Boca House’s and Awakenings’ operations only in non-residential districts established for hospitals or (with special exception approval) motels and commercial establishments.

40. The City’s definition of “Substance Abuse Treatment Facilities,” and in particular the language extending the definition to facilities that merely perform drug testing, was created

specifically to apply to Boca House and Awakenings, which are not “licensed or required to be licensed pursuant to Section 397.311(18). Fla. Stat.,” do not “require tenants or occupants to participate in treatment and rehabilitation activities,” and are located in residential (not institutional or commercial) areas.

41. Upon information and belief, the City was aware at both the time it passed and at the time it later amended the Ordinance that Boca House and Awakenings “perform testing to determine whether tenants or occupants are drug and/or alcohol free, as a term or condition of . . . the tenancy . . . ,” and included this language specifically to force Boca House and Awakenings to cease providing housing to persons recovering from addiction in their current residential neighborhoods.

42. Upon information and belief, no use or facility within the City would be forced to relocate due to the passage of the Ordinance other than Boca House and Awakenings. Thus, the “locational requirements” of the City’s ordinance apply only to Boca House and Awakenings, the existing uses that the City targeted for its discrimination.

43. Shortly after the litigation was filed the City amended the Ordinance, in part to be sure it would apply to Boca House and Awakenings. It modified the definition of “Substance Abuse Treatment Facilities” to include the term “occupants” to clarify that Boca House and Awakenings are subject to the Ordinance by significantly expanding its scope.

44. Section 2 of the Ordinance originally provided that “any substance abuse treatment facility that exists as of the effective date of this Ordinance must comply with all provisions and requirements of this ordinance no later than 18 months after its effective date.” In the recent amendment to the Ordinance the operative date was changed to the later of 18 months after its effective date or 60 days after the conclusion of this litigation. In either event, this

would allow for retroactive application of the ordinance to established housing uses. This retroactive provision was inserted specifically to target Boca House and Awakenings' existing operations and to displace their residents, including the Plaintiff Residents.

45. Upon information and belief, the City has a long-standing policy of recognizing existing uses and providing for their continuation when making modifications to its zoning code. The City provided no similar relief in its Ordinance, which was instead designed to force the nearly immediate relocation of the targeted "Substance Abuse Treatment Facilities" "away from residential areas. In the original Ordinance, such uses would have had to relocate a mere 18 months after its enactment (or November 2003).

46. Upon information and belief, other than the Ordinance, no change in the City's zoning code has ever applied to outright prohibit an existing use after its enactment. Thus, in addition to singling out Boca House and Awakenings because of the disabled nature of their residents, the City has subjected them to unequal treatment by denying the protection it typically grants to existing uses affected by zoning changes.

47. The expressed intent of those who enacted the Ordinance was to expel and ban disabled or handicapped persons in general, and Boca House and Awakenings and their Residents in particular, from the City's residential neighborhoods.

48. An early draft of the Ordinance applied only to licensed facilities providing treatment or rehabilitation services. Because neither Boca House nor Awakenings are licensed, or required to be licensed, and because neither provides treatment or rehabilitation services, the Ordinance would not have applied to the housing they provide. To correct this, during the Commission's debate the Ordinance was revised first to include within the definition of a "Substance Abuse Treatment Facility" non-licensed facilities, and then broadened to include

housing where the housing provider merely employs drug testing.

49. The intent of the City, as manifested in the Ordinance, is to exclude persons in recovery from residing in any residential district in the City. The Ordinance is expressly designed to relegate any housing provider that provides the environment needed by persons in recovery to the MC or RB-1 districts, where no other residential uses are located. This segregation and isolation of handicapped and disabled persons is precisely the type of discrimination that the FHA and the ADA were enacted to prohibit.

50. The City's discriminatory intent to oust specific disabled or handicapped individuals from the City's residential districts is reflected by the statements of City Attorney Diana Grub Frieser, Mayor Steve Abrams, and Council Members during regular Council meetings.

51. For instance, City Attorney Frieser explained how the Ordinance was intended to address not just licensed facilities but any residential use that houses persons in recovery in residential areas:

This Ordinance as drafted was intentionally drafted, based on direction from this council, to broadly encompass both the statutory definitions [of a treatment facility] and more. And the reason I say that is as you will recall, when the statute was going through the legislative process at different times it had a much broader scope. **And what was adopted, in fact, had a narrower scope excluding certain facilities that the city had concerns about and wanted to address, because we believe that they had similar adverse impacts in our residential areas. And that's why it was drafted broader.** (emphasis added).

Transcript 66:12-23. These comments explain that the Ordinance was crafted to "broadly encompass." The City wanted to target "certain facilities," referring to Boca House and Awakenings" and crafted the ordinance (i.e., "drafted [it] broader") to be sure they would be

caught in its net.

52. Throughout the Council meeting at which the Ordinance was enacted, neighbors expressed their disdain for the Residents and made clear their desire to expel Boca House, Awakenings and the Residents from their residential area because of their status as recovering alcoholics and drug addicts. Among those comments:

- a) Rose Vinti, the President of Boca Hill Condominium Association (condominiums located across the street from Boca House) explained that “living in a sober house area would be deteriorating to the surrounding neighborhood,” and that the condominium owners “would like to see them go.” Transcript 9:8-10; 15-16.
- b) Grace Fisher, another resident, insisted that allowing former substance abusers to continue residing in the City’s neighborhoods would result in the ghettoization of those neighborhoods, particularly her own. She was concerned that “adult drug addicts [were being put] into a residential neighborhood” where she felt they did not have a right to be and that Boca House and Awakenings attract “pedophiles, murderers, God knows what You are putting adult drug addicts into a residential neighborhood.” Transcript 9:19-17:5.
- c) Another neighbor, Anthony Amunatogui, stated: “My concern, is not with the halfway house. It’s the location in my neighborhood. . . . There [are] appropriate places to house those type[s] of facilities and we should house those facilities in those places.” Transcript 20:5-16.
- d) Mark Traveis, the President of Boca Marquee’s Condominium Association (located on Southwest 6th Street) also voiced his opinion: “Addicts in every family, sure, but do they have to be in my backyard and across the street, down everywhere in such concentration?” Transcript 46:24-7:1.
- e) Carolyn O’Brien, a business owner, landlord and resident of the City: “[I]et’s get them [addicts] out.” Transcript 24:16-17.

53. During the Council Meeting Mayor Abrams and several Council Members acknowledged that the Ordinance serves to ease the frustrations and complaints of the neighbors of sober living residences and their residents. The statements of the Mayor and Council Members confirm that the City’s intent in passing the Ordinance was to discriminate against handicapped individuals and segregate them from the remainder of the City’s residents.

54. Particularly indicative of this intent is Mayor Abrams' exclamation that "[t]here is a time and place for everything, and there are appropriate places for these facilities, but this neighborhood is not it." Transcript 73:19-21. This and other similar comments leave no doubt of the City's intent to force the targets of the Ordinance, Boca House and Awakenings and their residents, out of "this [residential] neighborhood" to a more "appropriate" institutional setting.

55. Councilman Bill Hagar joined the Mayor and commented on how his vote in favor of the Ordinance was the result of the "profound, powerful and persuasive" arguments of the neighbors (as partially set forth above):

I want to compliment the neighborhood that came out. I found the compliments and comments that were provided to be profound, powerful and persuasive, and I would just add this: I think if all of you got to know each other, you could move mountains. So I'm going to vote for this. I want to compliment the people that worked on it.

Transcript 70:5-11. In making this statement Councilman Hagar essentially adopted and agreed with the discriminatory arguments made at the hearing by the neighborhood proponents of removing housing to persons recovering from addiction from residential areas.

56. Councilwoman Carol Hanson followed by remarking on her six year struggle to make the sort of "improvements" the Ordinance accomplishes. Transcript 70:13-16. Most of the other Council Members agreed, including Councilwoman Susan Haynie who referred to herself as the Council's "original NIMBY"¹ and acknowledged that the Ordinance was enacted to provide a solution to the "problem" of persons in recovery residing in the City's residential neighborhoods. Transcript 73:5-13.

57. In addition, on or about April 2002, notes recorded from the City Attorney Diana Grub Frieser before the Ordinance was passed make clear that the City's intent was to keep

¹ "NIMBY" means "not in my backyard."

former substance abusers out of the City's residential neighborhoods. In particular, Ms. Frieser notes the City's intent to revise its zoning ordinance to make absolutely sure that sober living residences could not come into residential areas, such as the R1 and R2 residential zoning districts. She indicated the City's intent was

[T]o insure that this use [sober house] which we will try to regulate cannot come into the R1 or R2 under the 'social service' category, i.e. protect against: since it seems like a social service agency it must be permitted under those rules. Provide a definition of social service agency that reflects its use in the city.

58. Prior to passing the Ordinance, the City's discrimination against Boca House and Awakenings was carried out through the use of arbitrary, capricious and abusive zoning and building code enforcement practices, and attempts to convince other governmental bodies to take overly aggressive regulatory actions — all of which were intended to limit Boca House's and Awakenings' ability to rent housing to handicapped or disabled persons and to limit handicapped or disabled persons' choice of housing in residential areas. Such prior actions included repeated and abusive inspections designed to harass Boca House and Awakenings. They also included failed attempts to pass state legislation severely restricting sober living residences.

59. All of this shows a long pattern of City discrimination and animosity to persons in recovery and to Boca House and Awakenings for providing housing to such persons. The Ordinance is the City's ultimate solution to the "problem" of persons in recovery residing in its residential neighborhoods and the culmination of its discriminatory efforts.

b. The Ordinance has a Disparate Impact upon Persons Recovering From Alcohol or Drug Addiction

60. In passing the Ordinance, the City created a zoning scheme designed to force persons with disabilities into zoning districts created for institutional, not residential, uses. Such a measure will obviously have a disparate impact on the affected persons. That is what it was

intended to do, and it would fulfill its discriminatory intent all too well if left to stand.

61. As noted, persons in the early stages of recovery need a supportive structured setting, such as what a sober living residence provides. Such persons also need to remain in a drug and alcohol free environment, which a sober house provides through strict enforcement of a zero-tolerance policy for drug and alcohol use.

62. The City's Ordinance directly targets these necessary aspects of early recovery to force recovering addicts and alcoholism out of residential areas. Without the structured, drug and alcohol free environment provided by a sober living residence, most addicts and alcoholics in the early stages of recovery could not function in a residential setting. If sober living residences ceased to provide these services and ceased maintaining a sober community, their residents would be at a far greater risk of relapse into substance abuse and many of them could not continue living in a residential setting.

63. The City's Ordinance thus creates a Hobson's choice for recovering addicts. Either they can live in an institutional setting, away from any residential neighborhood or they can attempt to live in a residential area, with no support, and around persons who use drugs and alcohol, and suffer a far greater risk of relapse into substance abuse.

64. If the Ordinance is enforced many recovering addicts and alcoholics in the early stages of recovery will, as a result of their disability, not be able to live in a residential area. It thus denies persons disabled by drug addiction or alcoholism the equal opportunity to reside in the same neighborhoods as non-disabled persons.

c. **Boca House and Awakenings Have Requested and the City Has Failed to Provide a Reasonable Accommodation from the Discriminatory Ordinance and Refused to Make Reasonable Modifications to the Ordinance to Reduce its Discriminatory Impact.**

65. On or about November 27, 2002, Boca House and Awakenings, on behalf of

themselves and their residents, sent Mayor Abrams and the City Attorney Frieser a letter requesting clarification as to “what options exist for such property owners to continue to administer drug testing or continue to receive and maintain reports of drug testing regarding residents or potential residents after November 29, 2003?” That same letter requested any available reasonable accommodation that would allow sober living residences to remain in residential areas, and asked “[w]hat, if any, accommodation is the City willing to make in this regard? If there are accommodations available, please advise as to what the applicable procedures would be and under what criteria an accommodation request would be reviewed.”

66. The City responded on December 10, 2002 acknowledging that Boca House and Awakenings “requested an accommodation from the City regarding the operation of the Ordinance” and asked counsel for Boca House and Awakenings to “let us know what proposal you might have and any authority that supports the need for the City to make an accommodation to particular sites affected by the Ordinance.” That same letter further indicated that any uses in residential zoning districts meeting the definition of “substance abuse treatment facility” would be “subject to the locational requirements of the Ordinance.” In other words, Boca House and Awakenings would be forced to relocate out of their residential neighborhoods.

67. On or about December 19, 2002, in response to the City’s December 10, 2002 letter, counsel for Boca House and Awakenings specifically noted that “[a]t a minimum, any such accommodation would need to allow existing and new multifamily residential uses in the City’s residential districts to administer or receive reports of drug tests regarding potential residents, and to administer or receive reports of periodic and/or random tests on current residents.”

68. That same day, December 19, 2002, in separate correspondence, counsel for Boca

House and Awakenings, and its residents, sent a letter to Mayor Abrams requesting that the City “initiate proceedings to repeal the Ordinance.”

69. On or about January 6, 2003 the City rejected Boca House and Awakening’s accommodation request and indicated that it also would not repeal the ordinance, but stated that it would consider amendatory language to the Ordinance. In response to both December 19, 2002 letters, Michael S. Popock, on behalf of the City, stated in a January 6, 2003 letter, that “[w]e are continuing to evaluate your proposal concerning the Ordinance and its application to your clients. . . . However, we remain willing to consider reasonable amendatory language that you may propose that will resolve your particular concerns while leaving the Ordinance basically intact.”

70. As requested by the City, on or about January 14, 2003, Boca House and Awakenings submitted yet another request for accommodation and modification, this time proposing “reasonable amendatory language” as requested by the City and noting that “this amendment should be placed for first reading consideration at the next City Council meeting if it is to be pursued.” *Id.* As requested by the City’s attorneys, this set out specific proposed modifications to the ordinance that would allow residential apartments in the City to administer or receive reports of drug testing without being labeled a Substance Abuse Treatment Facility and forced out of residential areas. The proposal was that the City amended the ordinance as follows:

“Substance Abuse Treatment Facility” shall mean a service provider or facility that is:

- 1) licensed or required to be licensed pursuant to Section 397.311(18), Fla. Stat. or
- 2) used for room and board ~~only~~ and in which treatment and rehabilitation activities are provided ~~on site at locations other than the primary residential facility whether or not the facilities used for room and board~~

~~and for treatment and rehabilitation are operated under the auspices of the same provider.~~ For the purposes of this paragraph (2), the following shall be deemed to satisfy the “treatment and rehabilitation activities” component: (a) service providers or facilities which require tenants to participate in treatment and rehabilitation activities on-site as a term or condition of, or essential component of, the tenancy; or (b) service providers or facilities which facilitate, promote, monitor, or maintain records of tenant participation in on-site treatment and rehabilitation activities, ~~or perform testing to determine whether tenants are drug and alcohol free, or receive reports of results of such testing.~~

71. In a subsequent telephone conference with counsel for Boca House and Awakenings, Mr. Popock, counsel for the City, rejected the proposal outright. The rejection of the proposed language was reiterated on or about January 30, 2003 in a conference as detailed in a March 21, 2003 letter from counsel for Boca House and Awakenings to counsel for the City.

72. The City has therefore identified no means for seeking an accommodation from the Ordinance other than through amendatory language, and has refused to make any such modification to its discriminatory Ordinance. As the Ordinance is both intentionally discriminatory and has a disparate impact on disabled persons, no request for accommodation was required to maintain a cause of action under the FHA or ADA. However, the refusal to act upon any of the various requests for accommodation and modification submitted by Boca House and Awakenings provides a separate, independent basis for relief against the Ordinance.

SECTION 28-2, CODE OF ORDINANCES

73. The residents of each apartment, town home or single family home operated by Boca House and Awakenings maintain a common household. People who are handicapped or disabled by alcoholism or drug abuse are more likely to need the living arrangements that a sober living residence provides, including sharing a household with other persons in recovery.

74. The City Code restricts these living arrangements through its requirement that only one family occupy a residential dwelling unit and its definition of the term “Family” in

Section 28-2, Code of Ordinances, as follows:

1 person or a group of 2 or more persons living together and interrelated by bonds of consanguinity, marriage or legal adoption, or a group of persons not more than 3 in number who are not so interrelated, occupying the whole or part of a dwelling as a separate housekeeping unit with a single set of culinary facilities. The persons thus constituting a family may also include gratuitous guests and domestic servants. Any person under the age of 18 years whose legal custody has been awarded to the state department of health and rehabilitative services or to a child-placing agency licenses by the department, or who is otherwise considered to be a foster child under the laws of the state, and who is placed in foster care with a family, shall be deemed to be related to a member of the family for the purposes of this chapter. Nothing herein shall be construed to include any roomer or boarder as a member of a family.

75. This restriction in Section 28-2 on “unrelated” persons maintaining a household creates a limit on the number of persons that can reside in a single unit -- regardless of size -- that applies only to persons who are not related by blood, marriage or adoption.

76. Section 28-2 on its face discriminates based on family status and was intended to discriminate by allowing an unlimited household size only for certain familial relationships, and imposing severe restrictions on all other groups that do not meet the City’s Family composition rule. Households that meet the City’s preferred family composition can be of any size, regardless of the size of the dwelling unit and can further have an unlimited number of “gratuitous guests and domestic servants.” On the other hand, a clear distinction is drawn for “unrelated adults” sharing common households, which the City found undesirable, as these are limited to three persons, again regardless of the size of the dwelling.

A. Section 28-2 Intentionally and on its Face Discriminates on the Basis of Familial Status

77. By defining “family” in Section 28-2 as a group of unlimited size “living together and interrelated by bonds of consanguinity, marriage or legal adoption” or “a group of persons not more than 3 in number who are not so interrelated,” the City draws a distinction between

families established by marriage or parenthood and groups of unrelated adults that maintain a common household, such as the residents of Boca House and Awakenings.

78. The City's definition of family is clearly intended to preserve the "family character" of Boca Raton, by promoting a specified family composition and not intended to prevent overcrowding of a dwelling. Any group of persons related by blood, marriage or adoption can occupy whatever dwelling they wish regardless of the size of the family or the size of the dwelling unit. Meanwhile persons that do not have the type of relations accepted by the City are limited to a household size of three, again with no relation to the size of the dwelling. The Ordinance does nothing to limit density or overcrowding, so long as the persons at issue have the type of marital or familial composition the City sanctions and grants special privilege in Section 28-2.

79. Section 28-2 on its face discriminates against persons living together that are not related by blood, marriage or adoption. It singles out such persons for discrimination and imposes restrictions on their households that do not apply to other groups, where the types of relations outlined in Section 28-2 are maintained.

80. This type of discrimination based on familial status is prohibited by the FHA. Although the FHA contains an exemption for "any reasonable local, State or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling," this exemption only applies to generally applicable maximum occupancy restrictions that cap the total number of occupants in order to prevent overcrowding of a dwelling. To comply with the FHA an occupancy limit must apply to all households, regardless of family composition. The FHA does not sanction or allow the type of familial composition rules designed to preserve the family character of a neighborhood based on the composition of a household that Section 28-2 imposes.

B. Section 28-2 has a Disparate Impact on Persons Recovering from Drug or Alcohol Addiction

81. Mutual support is critical to addiction recovery. Persons recovering from addiction are far more often successful when living in a household with other persons in recovery. The residents of such a home provide each other with mutual support and supervision. In the early stages of recovery persons suffering from addiction need constant mutual supervision including sharing of bedroom areas.

82. Limiting each household to no more than three unrelated individuals, without regard to the size of the residential unit, interferes with this support system and denies the residents of the household the critical mass which contributes to the recovery of all.

83. The limitation in Section 28-2 on unrelated persons has a disparate impact on disabled persons. Disabled persons, and in particular persons recovering from addiction, need to reside under living arrangements that do not meet the City's narrow definition of a family, but which in fact function as the equivalent of one.

84. Whereas non-disabled persons would have the ability to enter into a variety of living arrangements so as to satisfy the Ordinance, the residents of the Boca House and Awakenings, who are in the early stages of addiction recovery, cannot. The restrictions of Section 28-2 therefore have a disparate impact on the Plaintiff Residents and the other residents of Boca House and Awakenings.

C. Boca House and Awakenings Have Requested, and the City has Failed to Provide, a Reasonable Accommodation from Section 28-2.

85. On or about February 26, 2004, Boca House and Awakenings sent a letter to City Attorney Diana Grub Frieser requesting that a reasonable accommodation be made which would allow for up to four recovering alcoholics or drug addicts to share a common household in a two

bedroom or larger dwelling unit. This would allow a large enough group in each household for the continual mutual monitoring and support that is needed for recovery, and would also facilitate shared bedroom accommodations for larger apartment units. The requested accommodation could be accomplished by whatever means the City would find most expedient to allow four persons living in recovery and functioning as a family to maintain a common household in units of two bedrooms or larger operated by Boca House and Awakenings.

86. On or about February 26, 27, and March 8, 2004, the Plaintiff Residents sent letters to the City Attorney Freezer, reciting identical requests for accommodation from or modification to Section 28-2.

87. On or about March 17, 2004, counsel for the City responded and directed Boca House and Awakenings to submit an application as a “Petition for Special Case Approval,” so that the City can then “process” the request. This is essentially a quasi-judicial process of the City that cannot result in modification to the family composition ordinance in section 28-2.

88. As the City Code does not appear to allow the City to waive section 28-2 under the process identified, on March 23, 2004, counsel for Plaintiffs jointly sought clarification from the City, stating:

From a review of the application materials you have provided and the City Code it is unclear whether the Petition for Special Case Approval process can in fact grant relief from section 28-2, given that this provision expressly imposes size limitations that apply to the households of the Residents and others residing at Boca House. Further, we can find no provision in the City Code referencing anything called a “Special Case Approval.” If there is a provision in the City Code for “Special Case Approval,” please provide a copy of same immediately as well as any criteria or standards that govern a “Special Case Approval.”

Additionally, before we file any application for “Special Case Approval” we require confirmation from the City that it would have the power under its City Code to grant relief from the household size limitations in Section 28-2 through the Petition for Special Case Approval process. We would therefore ask that you clarify whether the City has authorization under its City Code to waive the directly applicable requirements of Section 28-2 through the “Special Case Approval” process, and to provide us with the

City Code provisions under which the City would claim to have that authority. If there is no authority under the City Code for relief to be granted under this process, there would obviously be no point in filing the application, and we will take your response as a denial of our requests for reasonable accommodation.

89. To date the City has not responded. However, its March 17, 2004, correspondence makes clear that the City refuses to make changes to its discriminatory ordinance in Section 28-2. This would be the only available means to grant reasonable relief from that provision for the housing arrangements needed by persons in recovery from drug addiction and alcoholism.

**IMPACT OF THE ORDINANCE AND
SECTION 28-2 ON PLAINTIFFS**

90. Between 1990 and the passage of the Ordinance on May 29, 2002, Boca House and Awakenings purchased various buildings in the City and renovated them according to code in order to provide affordable drug and alcohol-free housing to disabled persons. Boca House and Awakenings invested time, money and effort into these projects. Boca House and Awakenings have long-established and vested uses of their real property as sober living residences.

91. These buildings were bought and renovations and other improvements to them made with the reasonable investment-backed expectation that they would be used for sober living residences. The buildings were in fact put to that use, and additional investments made in reliance on continuing to operate as sober living residences. Boca House and Awakenings real property would suffer severely diminished economic value if not allowed to operate as sober living residences.

92. Boca House and Awakenings intend to continue renting housing to persons who are recovering from drug or alcohol addiction and any other persons with a disability who want

to live in a supportive drug and alcohol-free environment.

93. Florida state law does not prohibit the current uses of Boca House and Awakenings' properties, and contains no prohibition against private housing providers requiring drug or alcohol testing as a condition of residency. The Ordinance, if allowed to be enforced, will end a legal use, and will prevent Boca House and Awakenings from continuing to provide housing to persons who are recovering from drug or alcohol addiction and other persons with disabilities who want to live in a supportive, drug and alcohol-free environment.

94. Although the retroactive effect of the Ordinance will not occur until the conclusion of this litigation, it presently prevents the expansion of Boca House and Awakenings operations to include any newly acquired residential buildings used for sober living residences. Since the enactment of the Ordinance, Boca House and Awakenings have had opportunities to acquire additional properties which they would use to provide much needed additional housing for persons recovering from alcoholism or substance addiction. They have not been able to follow through on these opportunities due to the passage of the Ordinance.

95. As the direct and proximate result of the City's enactment of the Ordinance, Boca House and Awakenings have had to forego the purchase of additional housing, thereby losing income.

96. In addition, the fact that the Ordinance will apply retroactively to Boca House and Awakenings present buildings has resulted in lost opportunity to refinance existing mortgages at more favorable rates. As the direct and proximate result of the City's enactment of the Ordinance, Boca House and Awakenings have been unable to refinance existing obligations at current market rates, thereby resulting in greater expense to them.

97. As the direct and proximate result of the City's discriminatory provision limiting

the number of unrelated individuals who can reside in a dwelling unit, Boca House and Awakenings have, for a period of many years, been forced to limit the number of tenants, thereby losing income.

98. As a direct and proximate result of the Ordinance, the Resident Plaintiffs have suffered emotional and mental distress as a result of the uncertainty created over whether they will have to leave their sober living residence housing and whether they will be able to continue to reside in a residential area.

99. But for the Ordinance, the Plaintiffs and the other residents of Boca House and Awakenings would and could continue to lawfully reside in their current residences.

100. The Plaintiffs have retained counsel to represent them in this action and have agreed to pay them reasonable attorneys' fees and costs.

Count I
Ordinance No. 4649: Violation of FHA by Passage
of Intentionally Discriminatory Ordinance

101. The Plaintiffs re-allege paragraphs 1-100 as if fully set forth herein.

102. The FHA, 42 U.S.C. §3604(f) prohibits discrimination by a public entity against handicapped or disabled persons or on the basis of disability. The FHA applies to a municipality's zoning decisions and enforcement actions.

103. The City's Ordinance violates FHA because the Ordinance intentionally and on its face discriminates against Plaintiffs and other persons disabled by drug addiction or alcoholism on the basis of their disabled and handicapped status.

104. The City enacted the Ordinance with discriminatory intent.

105. The Plaintiff Residents have been and continue to be injured by the City's discriminatory Ordinance and are "aggrieved persons" within the meaning of 42 U.S.C.

§3602(d).

106. Boca House and Awakenings have standing as housing providers to bring this action on their own behalf and on behalf of their residents.

107. Boca House and Awakenings and their residents have been and continue to be injured by the City's discriminatory Ordinance.

WHEREFORE, the Plaintiffs request that this Court:

- a. Enter judgment in favor of Plaintiffs, declaring that the City violated the FHA, and declaring the City' Ordinance unlawful and void *ab initio*;
- b. Enter a permanent injunction enjoining the City, its officers and officials, their successors in office, their agents, and all those acting or purporting to act in concert with them from enforcing the Ordinance;
- c. Award the Plaintiffs nominal, actual and compensatory damages;
- d. Award the Plaintiffs their reasonable attorney's fees and costs; and
- e. Award all further relief that the Court deems proper and necessary.

Count II
Ordinance No. 4649: Violation of FHA
Disparate Impact upon Handicapped or Disabled Persons

108. The Plaintiffs re-allege paragraphs 1-100 as if fully set forth herein.

109. The FHA, 42 U.S.C. §3604(f) prohibits actions by a public entity that discriminate against handicapped or disabled persons or on the basis of disability or act to otherwise deny such persons the ability to reside in a dwelling. The FHA applies to a municipality's zoning decisions and enforcement actions.

110. The City's Ordinance violates FHA because the Ordinance, by targeting services required by disabled and handicapped persons, makes housing in residential areas unavailable to

such persons, and has a disparate impact on Plaintiffs and other persons disabled by drug addiction or alcoholism. The Ordinance thereby subjects persons disabled by drug or alcohol addiction to discrimination.

111. The Plaintiff Residents have been and continue to be injured by the City's discriminatory Ordinance and are "aggrieved persons" within the meaning of 42 U.S.C. §3602(d).

112. Boca House and Awakenings have standing as housing providers to bring this action on their own behalf and on behalf of their residents.

113. Boca House and Awakenings and their residents have been and continue to be injured by the City's discriminatory Ordinance.

WHEREFORE, the Plaintiffs request that this Court:

- a. Enter judgment in favor of Plaintiffs, declaring that the City violated FHA, and declaring the City' Ordinance unlawful and void *ab initio*;
- b. Enter a permanent injunction enjoining the City, its officers and officials, their successors in office, their agents, and all those acting or purporting to act in concert with them from enforcing the Ordinance.
- c. Award the Plaintiffs nominal, actual and compensatory damages;
- d. Award the Plaintiffs their reasonable attorney's fees and costs; and
- e. Award all further relief that the Court deems proper and necessary.

Count III
Ordinance No. 4649: Violation of FHA by
Failing to Grant Requested Reasonable Accommodation

114. The Plaintiffs re-allege paragraphs 1-100, as if fully set forth herein.
115. The City's Ordinance and the City's actions violate the FHA, 42 U.S.C.

§3604(f)(3)(B), because the City has refused to make reasonable accommodations to its Ordinance when such accommodations were requested and are necessary to afford the Plaintiff Residents and the other residents of Boca House and Awakenings the equal opportunity to continue to reside in their residential neighborhoods.

116. As set forth above on a number of occasions the City was asked by Plaintiffs to provide accommodations from the discriminatory impact of the Ordinance.

117. The accommodations requested were reasonable.

118. The accommodations requested were necessary to afford the residents of Boca House and Awakenings the equal opportunity to use and enjoy residential housing within the residential areas of the City of Boca Raton.

119. The Plaintiff Residents have been and continue to be injured by the City's discriminatory Ordinance and are "aggrieved persons" within the meaning of 42 U.S.C. §3602(d).

120. Boca House and Awakenings have standing as housing providers to bring this action on their own behalf and on behalf of their residents.

121. Boca House and Awakenings and their residents have been and continue to be injured by the City's discriminatory Ordinance and the City's refusal to grant the requested reasonable accommodations.

WHEREFORE, the Plaintiffs request that this Court:

- a. Enter judgment in favor of Plaintiffs, declaring that the City violated the FHA and declaring the City' Ordinance unlawful and void *ab initio*;
- b. Enter a permanent injunction enjoining the City, its officers and officials, their successors in office, their agents, and all those acting or purporting to act in concert with them

from enforcing the Ordinance;

- c. Award the Plaintiffs nominal, actual and compensatory damages;
- d. Award the Plaintiffs their reasonable attorney's fees and costs; and
- e. Award all further relief that the Court deems proper and necessary.

Count IV
Ordinance No. 4649: Violation of ADA by Passage
of Discriminatory Ordinance

- 122. The Plaintiffs re-allege paragraphs 1-100 as if fully set forth herein.
- 123. Title II of the ADA, 42 U.S.C. §§12131, *et. seq.*, prohibits discrimination by a public entity against handicapped or disabled persons or on the basis of disability. Title II of the ADA provides that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. §12132.
- 124. The City’s Ordinance violates Title II of the ADA and 28 C.F.R. 35.130 because the Ordinance intentionally and on its face discriminates against Plaintiffs and other persons disabled by drug addiction or alcoholism on the basis of their disabled and handicapped status.
- 125. The City enacted the Ordinance with discriminatory intent.
- 126. The City has violated Plaintiffs’ rights, secured to them by the ADA, by enacting an ordinance that intentionally discriminates against them on account of their handicap or disability.
- 127. The Ordinance’s requirement that Substance Abuse Treatment Facilities be located in non-residential districts and in the commercial district “not be located within 1,000 feet of another existing facility” violates federal regulations implementing the ADA, which prohibit a public entity in determining the size or location of a facility from imposing barriers

that have the purpose or effect of excluding individuals with disabilities or otherwise subjecting individuals with disabilities to discrimination. 28 C.F.R. 35.130(b)(4)(i).

128. Each of the Plaintiff Residents is a qualified individual with a disability as defined in 42 U.S.C. § 12131 and 28 C.F.R. 35.104. Additionally, the residents of Boca House and Awakenings are qualified individuals with disabilities, and entitled to the protection of the ADA.

129. The City is a public entity as defined in 42 U.S.C. § 12131(1). Plaintiffs and the residents of Boca House and Awakenings have been subjected to discrimination by the City through its passage of the Ordinance.

130. Boca House and Awakenings have standing as housing providers to bring this action on their own behalf and on behalf of their residents.

131. Boca House and Awakenings and their residents have been and continue to be injured by the City's discriminatory Ordinance.

WHEREFORE, the Plaintiffs request that this Court:

- a. Enter judgment in favor of Plaintiffs, declaring that the City violated the Title II of the ADA, and declaring the City' Ordinance unlawful and void *ab initio*;
- b. Enter a permanent injunction enjoining the City, its officers and officials, their successors in office, their agents, and all those acting or purporting to act in concert with them from enforcing the Ordinance;
- c. Award the Plaintiffs nominal, actual and compensatory damages;
- d. Award the Plaintiffs their reasonable attorney's fees and costs; and
- e. Award all further relief that the Court deems proper and necessary.

Count V
Ordinance No. 4649: Violation of ADA
Disparate Impact upon Handicapped or Disabled Persons

132. The Plaintiffs re-allege paragraphs 1-100 as if fully set forth herein.

133. Title II of the ADA, 42 U.S.C. §§12131, *et. seq.*, prohibits discrimination by a public entity against handicapped or disabled persons or on the basis of disability. Title II of the ADA provides that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. §12132.

134. The City’s Ordinance violates Title II of the ADA and 28 C.F.R. 35.130 because the Ordinance, by targeting services required by disabled and handicapped persons, has a disparate impact on Plaintiffs and other persons disabled by drug addiction or alcoholism. The Ordinance thereby subjects disabled persons to discrimination.

135. Because of the disparate impact on Plaintiffs and other persons disabled by drug addiction or alcoholism, the Ordinance also violates federal regulations implementing the ADA, *e.g.*, 28 C.F.R. 35.130.

136. Each of the Plaintiff Residents is a qualified individual with a disability as defined in 42 U.S.C. § 12131(2) and 28 C.F.R. 35.104. Additionally, the residents of Boca House and Awakenings are qualified individuals with disabilities, and entitled to the protection of the ADA.

137. The City is a public entity as defined in 42 U.S.C. § 12131(1). Plaintiffs and the residents of Boca House and Awakenings have been subjected to discrimination by the City through its passage of the Ordinance.

138. Boca House and Awakenings have standing as housing providers to bring this action on their own behalf and on behalf of their residents.

139. Boca House and Awakenings and their residents have been and continue to be injured by the City’s discriminatory Ordinance.

WHEREFORE, the Plaintiffs request that this Court:

- a. Enter judgment in favor of Plaintiffs, declaring that the City violated the Title II of the ADA, and declaring the City' Ordinance unlawful and void *ab initio*;
- b. Enter a permanent injunction enjoining the City, its officers and officials, their successors in office, their agents, and all those acting or purporting to act in concert with them from enforcing the Ordinance;
- c. Award the Plaintiffs nominal, actual and compensatory damages;
- d. Award the Plaintiffs their reasonable attorney's fees and costs; and
- e. Award all further relief that the Court deems proper and necessary.

Count VI
Ordinance No. 4649: Violation of ADA by
Failing to Grant Requested Reasonable Accommodation

140. The Plaintiffs re-allege paragraphs 1-100, as if fully set forth herein.

141. The City's Ordinance and the City's actions violate Title II of the ADA and 28 C.F.R. § 35.130(7), because the City has refused to make reasonable accommodations and refused to make reasonable modifications to its Ordinance to avoid subjecting disabled persons to discrimination and afford such persons an equal opportunity to reside in residential neighborhoods.

142. As set forth above on a number of occasions the City was asked by counsel for Boca House and Awakenings to provide accommodations from the discriminatory impact of the Ordinance and make modifications to the Ordinance to reduce its discriminatory impact.

143. The accommodations and modifications requested were reasonable.

144. The accommodations and modifications requested were necessary to afford the residents of Boca House and Awakenings equal opportunity to use and enjoy residential housing

within the City of Boca Raton.

145. Each of the Plaintiff Residents is a qualified individual with a disability as defined in 42 U.S.C. § 12131(2) and 28 C.F.R. 35.104. Additionally, the residents of Boca House and Awakenings are qualified individuals with disabilities, and entitled to the protection of the ADA.

146. The City is a public entity as defined in 42 U.S.C. § 12131(1). Plaintiffs and the residents of Boca House and Awakenings have been subjected to discrimination by the City through its passage of the Ordinance and refusal to modify the Ordinance to reduce its discriminatory effect.

147. Boca House and Awakenings have standing as housing providers to bring this action on their own behalf and on behalf of their residents.

148. Boca House and Awakenings and their residents have been and continue to be injured by the City's discriminatory Ordinance and the City's refusal to grant the requested reasonable accommodations and modifications.

WHEREFORE, the Plaintiffs request that this Court:

- a. Enter judgment in favor of Plaintiffs, declaring that the City violated the Title II of the ADA, and declaring the City' Ordinance unlawful and void *ab initio*;
- b. Enter a permanent injunction enjoining the City, its officers and officials, their successors in office, their agents, and all those acting or purporting to act in concert with them from enforcing the Ordinance or, as it applies to sober living residences, the limitation on four or more unrelated persons in a dwelling unit;
- c. Award the Plaintiffs nominal, actual and compensatory damages;
- d. Award the Plaintiffs their reasonable attorney's fees and costs; and
- e. Award all further relief that the Court deems proper and necessary.

Count VII
Ordinance No. 4649: Equal Protection

149. The Plaintiffs re-allege paragraphs 1-100, as if fully set forth herein.

150. The Plaintiffs and the other residents of Boca House and Awakenings have been deprived of rights, privileges and immunities secured by the Constitution and laws of the United States, particularly the equal protection guarantee of the Fourteenth Amendment to the United States Constitution, for which 42 U.S.C. § 1983 provides a remedy.

151. By enacting a zoning ordinance which intentionally denies disabled persons, and disabled persons housing providers, the same housing opportunities as non-disabled persons, the City has acted arbitrarily and discriminatorily against disabled and handicapped persons, and the providers of housing, in violation of the Fourteenth Amendment to the United States Constitution.

152. The City enacted the Ordinance with discriminatory intent.

153. The Ordinance does not serve a legitimate public purpose.

154. If not stricken by this Court, the Ordinance would deny Boca House and Awakenings the existing, vested and highest and best use of their real property, and interfere with and deny Boca House's and Awakenings' investment-backed expectations for their property.

155. As the Ordinance serves no legitimate public purpose it should be stricken.

However, if it were allowed to be enforced Boca House and Awakenings would be entitled to just compensation under the Fifth and Fourteenth Amendments to the United States Constitution and full compensation under Article X, section 6 of the Constitution of Florida for their extinguished property value.

156. The City is a public entity existing and operating under color of state law.

Plaintiffs and the residents of Boca House and Awakenings have been subjected to discrimination under the color of state law by the City through its passage of the Ordinance.

157. Boca House and Awakenings have standing as housing providers to bring this action on their own behalf and on behalf of their residents.

158. Boca House and Awakenings and their residents have been and continue to be injured by the City's discriminatory Ordinance.

WHEREFORE, the Plaintiffs request that this Court:

a. Enter judgment in favor of Plaintiffs, declaring that the City violated the Equal Protection Clause of the Fourteenth Amendment, declaring the City's Ordinance unlawful and void *ab initio*;

b. Enter a permanent injunction enjoining the City, its officers and officials, their successors in office, their agents, and all those acting or purporting to act in concert with them, from enforcing the Ordinance;

c. Award the Plaintiffs nominal, actual and compensatory damages;

d. Award the Plaintiffs their reasonable attorney's fees and costs pursuant to 42 U.S.C. § 1988; and

e. Award all further relief that the Court deems proper and necessary.

Count VIII

**Section 28-2: Violation of FHA by Passage
of Discriminatory Ordinance**

159. The Plaintiffs re-allege paragraphs 1-100 as if fully set forth herein.

160. The FHA prohibits discrimination by a public entity on the basis of familial status. The FHA applies to a municipality's zoning decisions and enforcement actions.

161. Section 28-2 violates the FHA because Section 28-2 intentionally and on its face discriminates on the basis of the marital or family status of groups of persons sharing a common household. The FHA applies to a municipality's zoning decisions and enforcement actions.

162. The City enacted Section 28-2 with discriminatory intent.

163. The Plaintiff Residents have been and continue to be injured by the City's discriminatory discrimination in Section 28-2 and are "aggrieved persons" within the meaning of 42 U.S.C. §3602(d).

164. Boca House and Awakenings have standing as housing providers to bring this action on their own behalf and on behalf of their residents.

165. Boca House and Awakenings and their residents have been and continue to be injured by the City's discriminatory provision in Section 28-2.

WHEREFORE, the Plaintiffs request that this Court:

- a. Enter judgment in favor of Plaintiffs, declaring that the City violated FHA, and declaring Section 28-2 unlawful and void *ab initio*;
- b. Enter a permanent injunction enjoining the City, its officers and officials, their successors in office, their agents, and all those acting or purporting to act in concert with them from enforcing the limitation on four or more unrelated persons in a dwelling unit in Section 28-2;
- c. Award the Plaintiffs nominal, actual and compensatory damages;
- d. Award the Plaintiffs their reasonable attorney's fees and costs; and
- e. Award all further relief that the Court deems proper and necessary.

Count IX
Section 28-2: Violation of FHA
Disparate Impact upon Disabled Persons

166. The Plaintiffs re-allege paragraphs 1-100 as if fully set forth herein.

167. The FHA, 42 U.S.C. §3604(f) prohibits actions by a public entity that subjects handicapped or disabled persons to discrimination on the basis of disability or otherwise denies such persons the ability to reside in a dwelling. The FHA applies to a municipality's zoning decisions and enforcement actions.

168. Section 28-2 violates the FHA because it has a disparate impact on Plaintiffs and other persons disabled by drug addiction or alcoholism, and imposes limitations on the households maintained by such persons that do not apply to households of non-disabled persons who can maintain the marital or familial relations favored by the City.

169. Persons recovering from alcoholism or addiction are more likely, because of their disability, to live in the types of housing arrangements that do not meet the City's definition of family and are subject to the household size limitations of Section 28-2. Section 28-2 thereby discriminates against handicapped or disabled persons and denies equal opportunity in housing arrangements.

170. The Plaintiff Residents have been and continue to be injured by the City's discriminatory Ordinance and are "aggrieved persons" within the meaning of 42 U.S.C. §3602(d).

171. Boca House and Awakenings have standing as housing providers to bring this action on their own behalf and on behalf of their residents.

172. Boca House and Awakenings and their residents have been and continue to be injured by the City's discriminatory Ordinance.

WHEREFORE, the Plaintiffs request that this Court:

a. Enter judgment in favor of Plaintiffs, declaring that the City violated FHA, and

declaring Section 28-2 unlawful and void *ab initio*;

- b. Enter a permanent injunction enjoining the City, its officers and officials, their successors in office, their agents, and all those acting or purporting to act in concert with them from enforcing the Section 28-2 limitation on four or more unrelated persons in a dwelling unit;
- c. Award the Plaintiffs nominal, actual and compensatory damages;
- d. Award the Plaintiffs their reasonable attorney's fees and costs; and
- e. Award all further relief that the Court deems proper and necessary.

Count X
Section 28-2: Violation of FHA by
Refusal to Grant Requested Reasonable Accommodation

173. The Plaintiffs re-allege paragraphs 1-100, as if fully set forth herein.
174. Section 28-2 and the City's actions violate the FHA because the City has refused to make reasonable accommodations to Section 28-2 when such accommodations were requested and are necessary to afford the Plaintiff Residents and the other residents of Boca House and Awakenings equal housing opportunity.
175. As set forth above on a number of occasions the City was asked by Plaintiffs to provide accommodations from the discriminatory impact of Section 28-2.
176. The accommodations requested were reasonable.
177. The accommodations requested were necessary to afford the residents of Boca House and Awakenings the equal opportunity to use and enjoy residential housing within the residential areas of the City of Boca Raton and to mitigate the disparate and discriminatory impact of Section 28-2 on disabled persons.
178. The Plaintiff Residents have been and continue to be injured by Section 28-2 and are "aggrieved persons" within the meaning of 42 U.S.C. §3602(d).

179. Boca House and Awakenings have standing as housing providers to bring this action on their own behalf and on behalf of their residents.

180. Boca House and Awakenings and their residents have been and continue to be injured by Section 28-2 and the City's refusal to grant the requested reasonable accommodations.

WHEREFORE, the Plaintiffs request that this Court:

- a. Enter judgment in favor of Plaintiffs, declaring that the City violated the Fair Housing Act, and declaring the Section 28-2 of the City Code unlawful and void *ab initio*;
- b. Enter a permanent injunction enjoining the City, its officers and officials, their successors in office, their agents, and all those acting or purporting to act in concert with them from enforcing the Section 28-2 limitation on four or more unrelated persons in a dwelling unit;
- c. Award the Plaintiffs nominal, actual and compensatory damages;
- d. Award the Plaintiffs their reasonable attorney's fees and costs pursuant to 42 U.S.C. §§ 1988 and 3613; and
- e. Award all further relief that the Court deems proper and necessary.

Count XI
Section 28-2: Violation of ADA
Disparate Impact upon Disabled Persons

181. The Plaintiffs re-allege paragraphs 1-100 as if fully set forth herein.
182. Title II of the ADA, 42 U.S.C. §§12131, *et. seq.*, prohibits discrimination by a public entity against handicapped or disabled persons or on the basis of disability. Title II of the ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. §12132. Title II of the ADA applies to a municipality's zoning decisions and enforcement actions.

183. Section 28-2 violates the ADA, 42 U.S.C. § 12132 and 28 C.F.R. 35.130 because it has a disparate impact on Plaintiffs and other persons disabled by drug addiction or alcoholism. Persons recovering from alcoholism or addiction need to live in the types of housing arrangements that do not meet the City's definition of family and are subject to the household size limitations of Section 28-2. Section 28-2 thereby discriminates against handicapped or disabled persons and denies them the equal opportunity to reside within the City, and imposes restrictions on their households that do not apply to households of non-disabled persons, who are more likely to have the types of marital or familial relationships favored by the City.

184. Each of the Plaintiff Residents is a qualified individual with a disability as defined in 42 U.S.C. § 12131(2) and 28 C.F.R. 35.104. Additionally, the residents of Boca House and Awakenings are qualified individuals with disabilities, and entitled to the protection of the ADA.

185. The City is a public entity as defined in 42 U.S.C. § 12131(1). Plaintiffs and the residents of Boca House and Awakenings have been subjected to discrimination by the City through its passage of the Ordinance.

186. Boca House and Awakenings have standing as housing providers to bring this action on their own behalf and on behalf of their residents.

187. Boca House and Awakenings and their residents have been and continue to be injured by the City's discriminatory provision in Section 28-2.

WHEREFORE, the Plaintiffs request that this Court:

- a. Enter judgment in favor of Plaintiffs, declaring that the City violated Title II of the ADA, and declaring Section 28-2 unlawful and void *ab initio*;
- b. Enter a permanent injunction enjoining the City, its officers and officials, their successors in office, their agents, and all those acting or purporting to act in concert with them

from enforcing the Section 28-2 limitation on four or more unrelated persons in a dwelling unit;

- c. Award the Plaintiffs nominal, actual and compensatory damages;
- d. Award the Plaintiffs their reasonable attorney's fees and costs; and
- e. Award all further relief that the Court deems proper and necessary.

Count XII
Section 28-2: Violation of ADA by
Failing to Grant Requested Reasonable Accommodation

188. The Plaintiffs re-allege paragraphs 1-100, as if fully set forth herein.

189. The City's Ordinance and the City's actions violate Title II of the ADA and 35 C.F.R. § 130(7) , because the City has refused to make reasonable accommodations and refused to make reasonable modifications to its Ordinance to avoid subjecting disabled persons to discrimination and afford such persons an equal opportunity to reside in residential neighborhoods.

190. As set forth above on a number of occasions the City was asked by counsel for Boca House and Awakenings to provide accommodations from the discriminatory impact of Section 28-2 and to make modifications to that provision to reduce its discriminatory impact.

191. Section 28-2 has a disparate impact on persons recovering from drug and alcohol addiction and denies them equal opportunity in housing arrangements. It thereby subjects such persons to discrimination.

192. The accommodations and modifications requested were reasonable.

193. The accommodations and modifications requested were necessary to afford the disabled residents of Boca House and Awakenings equal opportunity to use and enjoy residential housing within the City of Boca Raton.

194. Each of the Plaintiff Residents is a qualified individual with a disability as defined

in 42 U.S.C. § 12131(2) and 28 C.F.R. 35.104. Additionally, the residents of Boca House and Awakenings are qualified individuals with disabilities, and entitled to the protection of the ADA.

195. The City is a public entity as defined in 42 U.S.C. § 12131(1). Plaintiffs and the residents of Boca House and Awakenings have been subjected to discrimination by the City through its passage of the Ordinance.

196. Boca House and Awakenings have standing as housing providers to bring this action on their own behalf and on behalf of their residents.

197. Boca House and Awakenings and their residents have been and continue to be injured by the City's discriminatory Ordinance and the City's refusal to grant the requested reasonable accommodations.

WHEREFORE, the Plaintiffs request that this Court:

- a. Enter judgment in favor of Plaintiffs, declaring that the City violated the Fair Housing Act, and declaring Section 28-2 unlawful and void *ab initio*;
- b. Enter a permanent injunction enjoining the City, its officers and officials, their successors in office, their agents, and all those acting or purporting to act in concert with them from enforcing the Ordinance or, as it applies to sober living residences, the limitation on four or more unrelated persons in a dwelling unit;
- c. Award the Plaintiffs nominal, actual and compensatory damages;
- d. Award the Plaintiffs their reasonable attorney's fees and costs; and
- e. Award all further relief that the Court deems proper and necessary.

Count XIII
Section 28-2: Equal Protection

198. The Plaintiffs re-allege paragraphs 1-100, as if fully set forth herein.

199. By the enactment and enforcement of Section 28-2, the Plaintiffs and the other residents of Boca House and Awakenings have been deprived of rights, privileges and immunities secured by the Constitution and laws of the United States, particularly the equal protection guarantee of the Fourteenth Amendment to the United States Constitution, for which 42 U.S.C. § 1983 provides a remedy.

200. By enacting Section 28-2 which intentionally discriminates against persons that live in non-traditional arrangements that do not meet the City's definition of "family" the City has acted arbitrarily and discriminatorily against persons based on marital or family status, and the providers of housing to such persons, in violation of the Equal Protection clause of the Fourteenth Amendment to the United State Constitution.

201. The City enacted Section 28-2 with discriminatory intent.

202. The City is a public entity. Plaintiffs and the residents of Boca House and Awakenings have been subjected to discrimination under the color of state law by the City through its passage of the Ordinance.

203. Boca House and Awakenings have standing as housing providers to bring this action on their own behalf and on behalf of their residents.

204. Boca House and Awakenings and their residents have been and continue to be injured by the City's discriminatory Ordinance.

WHEREFORE, the Plaintiffs request that this Court:

- a. Enter judgment in favor of Plaintiffs, declaring that the City violated the Equal Protection Clause of the Fourteenth Amendment, declaring the City's Ordinance unlawful and void *ab initio*;
- b. Enter a permanent injunction enjoining the City, its officers and officials, their

successors in office, their agents, and all those acting or purporting to act in concert with them, from enforcing the Ordinance;

- c. Award the Plaintiffs nominal, actual and compensatory damages;
- d. Award the Plaintiffs their reasonable attorney's fees and costs pursuant to 42 U.S.C. § 1988; and
- e. Award all further relief that the Court deems proper and necessary.

Respectfully submitted,

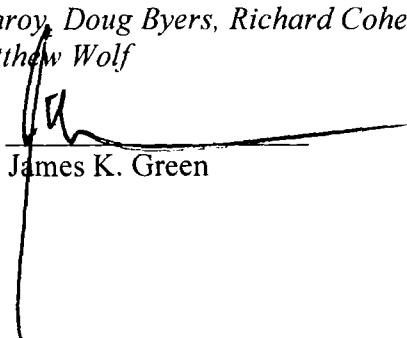
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CERTIFICATE OF SERVICE

I HEREBY certify that a true and correct copy of the foregoing was furnished by facsimile and U.S. Mail to the following addressees this 26th day of March, 2004:

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