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2010

Complaint, Nikolich et al v. The Village of
Arlington Heights Illinois, 870 F.Supp.2d 556,
Docket No. 1:10-cv-07395 (Northern District of
Illinois 2012)

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John Marshall Law School Fair Housing Legal Clinic

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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

C.S., individually,)	
ALEKS NIKOLICH, individually,)	
DEJAN NIKOLICH, individually,)	
NORTH/NORTHWEST SUBURBAN)	
TASK FORCE ON SUPPORTIVE HOUSING)	
FOR INDIVIDUALS WITH MENTAL ILLNESS,)	
an Illinois not for profit corporation,)	
THE THRESHOLDS, INC., an Illinois not for)	
profit corporation,)	
DDG BOEGER, LP, an Illinois limited partnership,)	
DAVERI DEVELOPMENT GROUP, LLC,)	
an Illinois corporation.)	
)	
Plaintiffs,)	
)	
vs.)	
)	
VILLAGE OF ARLINGTON HEIGHTS,)	
ILLINOIS, an Illinois municipal corporation,)	
)	
Defendant.)	

No.

JURY DEMANDED

COMPLAINT

Plaintiffs, C.S., ALEKS NICHOLICH, DEJAN NIKOLICH, NORTH/NORTHWEST SUBURBAN TASK FORCE ON SUPPORTIVE HOUSING FOR INDIVIDUALS WITH MENTAL ILLNESS, THE THRESHOLDS, INC., DDG BOEGER, LP, DAVERI DEVELOPMENT GROUP, LLC, by and through their attorneys, Allison K. Bethel, Christopher T. Vogel and the Senior Law Students of The John Marshall Law School Fair Housing Legal Clinic complain as follows against Defendant, VILLAGE OF ARLINGTON HEIGHTS, ILLINOIS.

JURISDICTION AND VENUE

1. This claim arises under 42 U.S.C. §3601, *et seq.*, of the Federal Fair Housing Act, the Americans with Disabilities Act, 42 U.S.C. §12101, *et seq.*, and Section 504 of the Rehabilitation Act, 29 U.S.C. §794, *et seq.*

2. Federal jurisdiction is conferred on this Court under 28 U.S.C. §1331, 1343 and §1367, 42 U.S.C. §1983 and 42 U.S.C. §3613. Declaratory relief is authorized by 28 U.S.C. §§2201 and 2202.

3. Venue is proper in the Northern District of Illinois, Eastern Division, as all Plaintiffs and Defendants reside and are located within the boundaries thereof.

PARTIES

4. Plaintiff C.S. is an adult person who resides in Cook County, Illinois with her parents. She is an adult female with a chronic mental illness and is classified as “disabled” pursuant to 42 U.S.C. §3602(h), 42 U.S.C. §12102(1) and 29 U.S.C. §705(9). Due to the disclosure of her disability, she fears for her privacy and retaliation if her identity is disclosed. Therefore, she will be referred to throughout this complaint by the assumed acronym, “C.S.”.

5. C.S. has been diagnosed with acute anxiety and schizoaffective disorder. She cannot live independently without help from others. At all times material hereto, she was a prospective resident of the subject housing development and was ready, willing and able to apply and subsequently reside therein. As such, she is an aggrieved person within the meaning of the Federal Fair Housing Act.

6. Plaintiff ALEKS NIKOLICH (“Aleks Nikolich”) is an adult person who resides in Cook County, Illinois. Aleks Nikolich is a co-owner of the subject parcel of land.

7. Plaintiff DEJAN NIKOLICH (“Dejan Nikolich”) is an adult person who resides in Cook County, Illinois. Dejan Nikolich is a co-owner of the subject parcel of land.

8. Plaintiff NORTH/NORTHWEST SUBURBAN TASK FORCE ON SUPPORTIVE HOUSING FOR INDIVIDUALS WITH MENTAL ILLNESS (“Task Force”) is an Illinois not-for-profit, 501(c)3 corporation. Its mission is to help eradicate the serious lack of housing for persons with disabilities in the Northwest Suburbs of Chicago and carrying out its mission through the organized effort to develop the proposed property at issue. It is an aggrieved person within the meaning of the Fair Housing Act.

9. Plaintiff THE THRESHOLDS, INC. (“Thresholds”) is an Illinois not-for-profit, 501(c)3 corporation. Thresholds provides services through the administration of therapeutic programs for persons with mental disabilities. Thresholds is also a managing partner in DDG BOEGER, LP, a plaintiff to this complaint.

10. Plaintiff DAVERI DEVELOPMENT GROUP, LLC (“Daveri”) is a limited liability corporation organized and existing under the laws of the State of Illinois. Daveri is a managing partner in DDG BOEGER, LP, a plaintiff to this complaint.

11. Plaintiff DDG BOEGER, LP (“DDG”) is a limited partnership organized and existing under the laws of the State of Illinois.

12. Defendant VILLAGE of ARLINGTON HEIGHTS, ILLINOIS (“the Village” or “VAH”) is an Illinois municipal corporation and is a home rule unit under and by virtue of §6 of Article VII of the Illinois Constitution of 1970. Its zoning and land use decisions are required to comply with the mandates set forth by the Fair Housing Act, 42 U.S.C. §3601, *et seq.*, the Americans with Disabilities Act, 42 U.S.C. §12101, *et seq.*, and Section 504 of the Rehabilitation Act, 29 U.S.C. §794, *et seq.*,

FACTS

Summary of Case

13. There is a critical need in the Village for permanent supportive housing for persons with disabilities. The available housing is inadequate to meet the needs of persons with disabilities in the area.

14. To address this problem, Daveri sought approval from the Village to build a 30 unit, permanent supportive housing complex in Arlington Heights in early 2010. The housing was to be constructed on a parcel of land which had been vacant for many years. The parcel is zoned for commercial and industrial uses. There are no single family homes, but there is a new affordable housing/condominium development on the block.

15. Daveri worked with the Village's planning and zoning officials over several months to develop a proposal that would receive applicable approvals from the Village. The Village's procedures require the proposal, titled "Daveri's *Boeger Place Apartments: Application to the Village of Arlington Heights* ("the Application")" be presented for public hearing, reviewed and approved by the Plan Commission and approved by the Village's Board of Trustees ("Village Board").

16. When the Application was transmitted to the Village Board for its final decision it had been approved and recommended by all of the reviewing authorities, including the Village's Plan Commission.

17. The Village Board reviewed the Application at its public meeting on May 17, 2010. The meeting was long and contentious. A small, but politically influential and vocal group of citizens attended. They criticized the Application and articulated "concerns" reflecting negative and unwarranted discrimination against persons with a disabilities.

18. As the evening wore on and it became obvious that attendees and the Village Board were exhausted, Daveri asked to continue the meeting to allow it time to address issues that had been raised. The Village Board refused. It denied the Application at approximately 1:35 a.m.

19. Since then, the Village has refused to engage in further discussions about the project or otherwise accommodate the critical housing needs of this protected class, thereby violating its federally imposed duties to Affirmatively Further Fair Housing pursuant to the Housing and Community Development Act of 1974, 42 U.S.C. §5304(b)(2) and to engage in an interactive dialogue, mandated by the reasonable accommodation provisions of the Fair Housing Act, 42 U.S.C. §3604(f)(3)(B).

Background of Boeger Place Concept

20. In 2002, Plaintiff Task Force was formed with the purpose to provide housing for people with mental illness in the north/northwest suburbs of Chicago. The Task Force's membership includes representatives of the National Alliance of Mental Illness ("NAMI"), Thresholds and other respected member of the mental health community.

21. The critical need for this housing had also been identified by the Village through at least two publications :

- a. The *Village of Arlington Heights' 5-Year Consolidated Plan, 2010-2014* ("Consolidated Plan"), identifies an unmet need of 180 housing units for persons with severe mental disabilities within the community.
- b. And, the most recent publication of its *Analysis to Impediments to Fair Housing/Fair Housing Plan* notes that fair and affordable housing issues are the primary barriers to housing for persons with disabilities in the area.

22. Upon information and belief, the Village receives federal funds, including CDGB monies and is thus obligated to conduct business, including its enforcement of zoning regulations, in manner that Affirmatively Furthers Fair Housing as set forth in Housing and Community Development Act of 1974, 42 U.S.C. §5304(b)(2).

23. On or about March 15, 2009, the Task Force selected Plaintiff Daveri to develop a permanent supportive housing complex in the northwest suburbs of Chicago. Daveri was selected because of its well established reputation of building affordable housing complexes for persons with mental illness. At all times material hereto, Daveri was ready, willing and able to construct the complex.

24. The parties decided to build permanent supportive housing in the Village for persons with low level mental illnesses, including but not limited to, depression, schizophrenia, bi-polar disorder and schizoaffective disorder.

25. At all relevant times hereto, there was/is no other equivalent housing development within the Village.

26. All future residents of the housing were/are disabled within the meaning of 42 U.S.C. §3602(h), 42 U.S.C. §12102(1) and 29 U.S.C. §705(9).

Description of Boeger Place

27. The Plaintiffs named the development the Boeger Place Apartments (“Boeger Place”). It is a three story, 30 unit apartment comprised of 14 efficiency units, 10 one-bedrooms units and 6 two bedrooms for 32 residents. Laundry rooms were provided on each floor and the common areas included a community room, storage room and an outdoor patio. The grounds included parking and green spaces.

28. The supportive services provided to residents included tenant screening, on site property management, medication monitoring and counseling services.

29. Boeger Place will be a “dwelling” within the meaning of 42 U.S.C. 3602(b).

The Proposed Site

30. Over the next several months, the Plaintiffs began looking for appropriate sites. They examined numerous sites and eventually located the subject parcel at 120-122 Boeger Road in Arlington Heights, Illinois.

31. The land was vacant and had been so for years. It was located on a quiet side street, but was nevertheless close to major roads, shopping centers, restaurants, banks, bus routes and other needed amenities. The parcel was well suited for Boeger Place even though it would need rezoning and some variances.

32. The Village Planning Manager, Matthew Dabrowski, an experienced and certified planning professional, and the owners would later confirmed that constructing Boeger Place on the site would be the “highest and best use” currently for the land.

33. There is no other land in the Village reasonably available this project.

34. Boeger Road contains a mixture of uses. There is a medical office complex, a Kindercare Daycare Center and an affordable condominium development. Boeger Place would be consistent with these uses and would not alter the fundamental character of the area.

35. Boeger Place would not have a detrimental influence on the surrounding neighborhood.

36. Accordingly, on or about December 3, 2009, Daveri obtained a loan through a corporation that specializes in assisting developers with projects of this sort and executed an

option contract to buy the lot from Plaintiffs Aleks and Dejan Nikolich. It also initiated the process for obtaining tax credits from the state to finance the project.

37. In May 2010, the option contract was assigned to Plaintiff DDG.

The Application Process

38. On December 21, 2009, Daveri submitted a conceptual proposal for Boeger Place to the Village's Planning Department.

39. The following month, on or about January 8, 2010, the Village's Planning Manager responded, outlining the Staff Development Committee's ("Development Committee") concerns and suggesting changes. A copy of this report is attached hereto as Exhibit "A".

40. The Development Committee also recommended that Daveri present the plan to the Village Board for an early critique, conduct public outreach, develop a market study/ parking study and consult the Village Police Department.

41. Daveri complied with all of these recommendations and otherwise met the requirements of the Village. Additionally, it presented the proposal to the Village's Housing Commission and held a public hearing at the neighboring high school.

42. While Daveri was working with the Development Committee, the Task Force continued its community outreach. Numerous letters of support for the project were obtained.

Plan Commission Approval

43. On or about February 26, 2010, after completing all of the tasks requested by the Village's Development Committee, Daveri submitted the Application to the Village's Plan Commission.

44. The Application was circulated to the requisite sub-departments. Some changes were suggested, all of which Daveri accepted.

45. On April 16, 2010, the Village's Development Planner submitted the Development Committee's report ("Report") to the Plan Commission. A copy of this Report is attached herewith as Exhibit "B". The Report recommended approval of all the rezoning and variation actions requested.

46. A few days later, on April 21, 2010, the Plan Commission convened a special public meeting to consider the Application. Pros and cons of the project were discussed by opponents and proponents. After considering all of the concerns, the Plan Commission voted in favor of the project.

The Village Board Meeting

52. On May 17, 2010, the Plan Commission submitted its findings and recommendation, a copy of which is attached hereto as "Exhibit C", to the Village Board for approval.

47. The Village Board is vested with the final authority for zoning decisions. Thus, the Village Board's decisions constitute the policy of the Village.

48. A meeting was held later that evening. The comments of the opposition group were vicious, hateful and reflected irrational and groundless fears of persons with disabilities. Village Board Trustees raised and discussed issues that had been already considered and rejected by the Plan Commission.

49. The meeting went on for over six hours. When it became apparent the Trustees were going to reject the project despite the Plan Commission's previous approval, Daveri representatives pleaded for a continuance. They wanted some time to try to address the concerns and allow members of the Village Board to rest since the meeting had gone on so long. Their plea was denied and the Application was rejected by a vote of 4 to 3 at approximately 1:35 a.m.

The Village's Subsequent Refusals to Dialogue

50. Over the next several months, Daveri representatives and the Task Force sent numerous letters to the Village Board trustees to improve their understanding about the project and address their fears about persons with disabilities.

51. Further, they organized more public meetings, requested meetings with the Village Board members and offered to provide tours of similar facilities. They spoke with the Village's President, and endeavored to elicit what could be done in order to satisfy the concerns of both the Village Board and opposing citizenry of Arlington Heights.

52. All of these efforts were fruitless and Plaintiffs were forced to retain the undersigned attorneys to protect their rights.

Counts

Count 1: Violations of Fair Housing Act

42 U.S.C. §3604(f)(1)

53. Plaintiffs restate and reallege paragraphs 1- 52 herein.

54. In refusing to approve the Application to develop housing for persons with disabilities, the Village violated 42 U.S.C. §3604(f)(1) in that it made a community living arrangement unavailable to Daveri and the prospective residents because of the disabilities of those intended to reside therein.

55. In refusing to approve the Application to develop housing for persons with disabilities, the Village violated 42 U.S.C. §3604(f)(1) and denied persons with disabilities an equal opportunity to live in Arlington Heights.

56. Additionally, the Village's refusal to approve the Application to develop housing for persons with disabilities violated 42 U.S.C. §3604(f)(1) by adversely impacting persons with disabilities more than non-disabled persons.

57. As a direct and proximate result of the Village's refusal to approve the Application to develop housing for persons with disabilities, Plaintiffs have suffered and will continue to suffer irreparable harm for which there is no adequate remedy at law.

58. Further, as a direct and proximate result of the Village's refusal to approve the Application to develop housing for persons with disabilities, Plaintiffs have sustained substantial economic and non-economic damages, in amounts in excess of the jurisdiction of this court.

59. As a result of the Village's discriminatory zoning and enforcement practices, Plaintiffs are entitled to compensatory damages, reasonable attorney's fees and costs, in amounts to be determined upon the trial of this matter pursuant to 42 USC §3613(c)(1) and (2).

42 U.S.C. §3604(f)(3)(b)

60. Plaintiffs restate and reallege paragraphs 1- 52 herein.

61. The rezoning and variation requests within the Application were/are reasonable accommodations within the meaning of 42 U.S.C. §3604(f)(3)(b). The accommodations were/are reasonable and necessary to afford persons with disabilities an equal opportunity to live in Arlington Heights.

62. In refusing to approve the Application to develop housing for persons with disabilities, the Village violated 3604(f)(3)(B) in that it failed to grant a reasonable accommodation to persons with disabilities.

63. Further, by failing to offer any alternative sites, refusing to continue the May 17, 2010 meeting as requested by Daveri, and by refusing to engage in the mandated interactive process, the Village also violated 42 U.S.C. §3604(f)(3)(B).

64. As a direct and proximate result of the Village's wrongful refusal to grant the Application's reasonable accommodations, Plaintiffs have suffered and will continue to suffer irreparable harm for which there is no adequate remedy at law.

65. Further, as a direct and proximate result of the Village's wrongful actions as described here, Plaintiffs have sustained substantial economic and non-economic damages, in amounts in excess of the jurisdiction of this court.

66. As a result of the Village's discriminatory zoning and enforcement practices, Plaintiffs are entitled to compensatory damages, reasonable attorney's fees and costs, in amounts to be determined upon the trial of this matter pursuant to 42 USC §3613(c)(1) and (2).

WHEREFORE, Plaintiff's respectfully request that this honorable Court:

(A) Grant a preliminary and permanent injunction requiring the Village to engage in an interactive dialogue with Plaintiffs as mandated by 42 U.S.C. §3604(f)(3)(B).

(B) Grant a preliminary and permanent injunction permitting the proposed use to be developed, subject to "Final Development Plan Review and Approval" by the Village as provided in §9.5-3 of the Village of Arlington Heights Municipal Code, Chapter 28 "Zoning Regulation".

(C) Declare that the Village's actions in refusing to approve the Application to develop housing for persons with disabilities, unlawfully discriminated against the Plaintiffs and violates the Federal Fair Housing Act, 42 U.S.C. §3601, *et seq.*

(D) Award Plaintiffs such damages as would fully compensate them for their injuries caused by the Village's discriminatory housing practices;

(E) Award Plaintiffs costs, expenses and reasonable attorney's fees and such other and further relief as the Court deems just and proper in the circumstances.

Count 2 : Violation of the Americans with Disabilities Act

67. Plaintiffs restate and reallege Paragraphs 1-52 herein.

68. Plaintiff C.S. is a qualified person with a disability pursuant to 42 U.S.C. §12131(2).

69. The Village is a "public entity" as defined by 42 U.S.C. §12131(1).

70. The Village's zoning actions, including the enforcement of its zoning code and the administrative processes, decisions and hearings by its Village Board, Plan Commission and Development Committee are "services, programs or activities" required by 42 U.S.C. §12132 to be nondiscriminatory and to be modified as a reasonable accommodation to provide equal housing opportunity to persons with a disability.

71. The Village's aforementioned actions excludes Plaintiff from participation in, denies Plaintiff the benefits of, and subjects Plaintiff to discrimination in the provision of its services, programs and activities, in violation of 42 U.S.C. §12132.

72. Plaintiff is a "person[s] alleging discrimination on the basis of disability" pursuant to 42 U.S.C. §12133, who has suffered, or may have suffer injury as a result of the aforementioned actions of the Village.

WHEREFORE, Plaintiff respectfully requests this honorable Court:

(A) Grant a preliminary and permanent injunction requiring the Village to engage in an interactive dialogue with Plaintiffs as mandated by 42 U.S.C. §3604(f)(3)(B).

(B) Grant a preliminary and permanent injunction permitting the proposed use to be developed, subject to “Final Development Plan Review and Approval” by the Village pursuant to §9.5-3 of the Village of Arlington Heights Municipal Code, Chapter 28 “Zoning Regulation”.

(C) Declare that the Village’s actions in refusing to approve the Application to develop housing for persons with disabilities, unlawfully discriminated against the Plaintiffs and violates the Americans with Disabilities Act, 42 U.S.C. §12101, *et seq.*

(D) Award Plaintiffs such damages as would fully compensate them for their injuries caused by the Village’s discriminatory housing practices;

(E) Award Plaintiffs costs, expenses and reasonable attorney’s fees and such other and further relief as the Court deems just and proper in the circumstances.

Count 3 – Violation of Section 504 of the Rehabilitation Act of 1973

73. Plaintiffs reallege and adopt the allegations contained in Paragraphs 1 - 52 as though the same were set forth more fully herein.

74. On information and belief, the Village is a recipient of Federal financial assistance.

75. Plaintiff C.S. is an “otherwise qualified individual with a disability” pursuant to 29 U.S.C. §794(a).

76. The Village’s zoning activities, including the enforcement of its regulations and administrative processes and/or decisions in connection therewith are “programs or activities” of a unit of local government pursuant to 29 U.S.C. §794 (b)(1)(A).

77. The Village’s actions described herein exclude Plaintiff from participation in, denies them the benefits of and subjects them to discrimination under a program or activity of the

Village on account of the disability of the prospective residents, in violation of 29 U.S.C. §794(a).

78. Plaintiff C.S. is a “persons aggrieved” pursuant to 29 U.S.C. §794A(2) who has suffered or may have suffered injury by the actions of the Village described herein.

WHEREFORE, Plaintiff respectfully requests this honorable Court:

(A) Grant a preliminary and permanent injunction requiring the Village to engage in an interactive dialogue with Plaintiffs as mandated by 42 U.S.C. §3604(f)(3)(B);

(B) Grant a preliminary and permanent injunction permitting the proposed use to be developed, subject to “Final Development Plan Review and Approval” by the Village pursuant to §9.5-3 of the Village of Arlington Heights Municipal Code, Chapter 28 “Zoning Regulation”.

(C) Declare that the Village’s actions in refusing to approve the Application to develop housing for persons with disabilities, unlawfully discriminated against the Plaintiffs and violates the Section 504 of the Rehabilitation Act, 29 U.S.C. §794, *et seq.*

(D) Award Plaintiffs such damages as would fully compensate them for their injuries caused by the Village’s discriminatory housing practices;

(E) Award Plaintiffs costs, expenses and reasonable attorney’s fees and such other and further relief as the Court deems just and proper in the circumstances.

Submitted by Plaintiffs C.S., ALEKS NICHOLICH, DEJAN NIKOLICH,
NORTH/NORTHWEST SUBURBAN TASK FORCE ON SUPPORTIVE HOUSING FOR
INDIVIDUALS WITH MENTAL ILLNESS, THE THRESHOLDS, INC., DDG BOEGER, LP,
and DAVERI DEVELOPMENT GROUP, LLC.

/s/ Allison K. Bethel

/s/ Christopher T. Vogel

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