

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

**OPEN DOOR RE-ENTRY AND
RECOVERY MINISTRY,
INCORPORATED, a Florida
not-for-profit corporation,**

Plaintiff,

Case No.: _____

v.

**CITY OF BUNNELL, a Florida
municipal corporation,**

Defendant.

_____ /

COMPLAINT AND DEMAND FOR JURY TRIAL
(DAMAGES AND INJUNCTIVE RELIEF REQUESTED)

Open Door Re-entry and Recovery Ministry, Incorporated (“Open Door Ministry”), through its undersigned counsel, sues the City of Bunnell (the “City”), and avers:

The Parties, Jurisdiction, and Venue

1. Open Door Ministry is a Florida not-for-profit corporation with its principal place of business located in Bunnell, Florida.

2. The City is a Florida Municipal Corporation incorporated under the laws of the State of Florida that has a total population of 2600 residents.

3. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 because the claims herein involve federal questions under federal anti-discrimination laws, namely the Fair Housing Act (“FHA”), as amended by 42 U.S.C. § 3601 *et seq.* (1988), and Title

II of the Americans with Disabilities Act (“ADA”), 42 U.S.C. §12131 *et seq.* (1990) (amended 2009).

4. Venue is appropriate in this Court pursuant to 28 U.S.C. § 1391 because the claims alleged herein arose within the jurisdictional boundaries of the Middle District of the United States District Court of Florida.

Open Door, its Mission, and the Residents

5. On August 13, 2013, Open Door Ministry incorporated to provide a faith-based residential living environment for individuals recovering from addiction to alcohol and controlled substances.

6. Specifically, Open Door Ministry intends to provide residential accommodations to persons in the Florida criminal court system facing potential imprisonment for their addiction to controlled substances (the “Open Door Residents”). Such individuals are neither violent nor sexual crime offenders.

7. Given their status as recovering addicts, Open Door Residents qualify as handicapped and disabled individuals under the FHA and ADA.

8. Open Door Ministry provides Open Door Residents with the opportunity to avoid prison and instead live in a supportive, family-like environment.

9. Open Door Residents proceed through Open Door Ministry’s faith-based program for one calendar year.

10. The program provides Open Door Residents with the opportunity to: (i) engage in character transformation and successful community transition; (ii) participate in recovery steps that lay a foundation to break the behavioral cycle that leads to

addiction; (iii) develop the spiritual, emotional, and physical tools to face the future with hope and deal with life problems without resorting to the use of drugs and/or alcohol; (iv) work with Christian churches, service, and legal organizations for assistance with transitioning to life in the community with appropriate support mechanisms; and (v) to engage in transitional employment opportunities as part of the recovery process.

11. Throughout their stay, Open Door Residents progress through a series of phases or steps until they graduate from the program.

12. Open Door Residents are required to live together, cook, clean, and engage in the same activities that traditional families undergo in a residential home.

13. Open Door Residents have a therapeutic need to live together collectively with other individuals recovering from the disease of addiction to alcohol and controlled substances.

14. The potential to stay sober and recover from the disease of addiction and alcoholism is greatly enhanced by the mutual support and monitoring gained by living with similarly situated individuals recovering from drug addiction and alcohol abuse. Furthermore, it is often critical that a person in the early and middle stages of recovery, like an Open Door Resident, shares residential accommodations with other similarly situated individuals for mutual support and monitoring to quash the greatest enemy of the individual in recovery: loneliness and isolation.

15. Open Door Ministry program is totally dependent upon community support in the form of donations from Flagler County residents, churches, and businesses.

The Booe Residence

16. On or about September 13, 2013, Open Door Ministry began to search for a location to implement its mission within the City of Bunnell.

17. Open Door Ministry found the Booe Residence, located at 309 East Booe Street in Bunnell, Florida, which could be used to accommodate Open Door Residents.

18. The Booe Residence is a dwelling as defined by the FHA because the Open Door Residents' intended length of stay is one year, which is longer than a typical hotel or motel stay, and they intend to treat the Booe Residence as their home during the length of their stay.

19. Indeed, the chores, tasks, daily interaction, and values that are established at the Booe Residence mimic the daily life of a typical residential household.

20. The Booe Residence is located in a mixed residential neighborhood surrounded by single and multi-family homes. Bunnell's City Hall, a local park, police station, and a church are located within blocks.

21. The Booe Residence has a zoning designation of R-2, Multi-family Residential district ("R-2").

22. Under the City's Land Development Code, the R-2 designation allows the following uses by right: (i) single-family dwellings, including modular homes, and any customary single-family accessory buildings; (ii) public library, post office, and other government recreation or public and institutional uses provided they do not conflict with state law; (iii) parks, swimming pools, playgrounds and conservation areas; (iv) home daycare facilities in accordance with state law and schools excluding institutions of

higher learning; (v) special care housing with a maximum of six residents; (vi) multiple-family dwelling structures; (vii) mobile home parks; and (viii) daycare centers.

23. The R-2 designation allows the following uses by special exception: (i) churches and related activities pursuant to article V, division 3 of chapter 35 of the City's Land Development Code; (ii) boarding houses, rooming houses, lodging houses or dormitories; (iii) bed and breakfast inns; and (iv) convenience stores without gas pumps.

24. Using the Booe Residence to provide residential accommodations to recovering addicts is compatible with uses allowable by right or by special exception in the R-2 zoning category.

The Application for Special Exception

25. On September 25, 2013, Open Door Ministry submitted a Special Exception Application to operate a residential recovery home for recovering addicts (the "Special Exception Application").

26. As part of the Special Exception Application, Open Door Ministry explained that it needed to open the Booe Residence to help save the lives of addicted individuals.

27. On October 15, 2013, pastors from Open Door Ministry appeared before the Planning Commission to seek approval for the Special Exception Application.

28. Under Florida law, the Planning Commission is required to review, comment, and provide recommendations on applications for development like the Special Exception Application.

29. At the hearing, dozens of neighbors appeared and objected to the approval of the Special Exception Application for the Booe Residence.

30. None of the cited objections were based on compatibility or consistency with the City's rules or regulations governing the use of land.

31. Rather, citizen comments expressed a discriminatory animus based on stereotypical characterizations of persons in recovery from alcoholism and substance abuse and unsubstantiated fears and biases about the harm that individuals recovering from addiction would cause to the community.

32. Statements reflecting discriminatory animus of the neighbors included: (i) the Booe Residence should not be located in a residential neighborhood; (ii) the individuals living at the Booe Residence would be a danger to children; and (iii) the Booe Residence would cause an increase in drug trafficking.

33. In response to the objections, the Planning Commission moved to table the vote, rather than vote on the merits of the Special Exception Application.

34. The Planning Commission tabled the vote so that: “[S]taff could bring the [Planning] Commission up to speed on this situation and broaden th[e] discussion to the Community as a whole.”

35. The Planning Commission failed to explain what constituted the “situation” or why it was necessary to “broaden this discussion to the Community as a whole.”

36. Rather than resetting the Special Exception Application for consideration at a later public meeting, as is the norm, the City introduced a moratorium directed at the

establishment of residential accommodation for recovering addicts, like the Booe Residence.

The Moratorium

37. On November 25, 2013, the City conducted a hearing to impose a Moratorium relating to the establishment of residential accommodation for recovering addicts (the “Moratorium”).

38. Surrounding residents packed City Hall, supported the Moratorium, and demanded that the City prohibit the Open Door Ministry from establishing its program at the Booe Residence.

39. During the hearing, City Commissioner Jenny Crain-Brady commented that the issue of whether residential homes for recovering addicts should be allowed within the City is a “zoning issue” and that “if these homes are allowed in a residential area, there will be problems.”

40. The City’s planning director, Mick Cuthbertson, said “It has come to our immediate attention that jurisdictions in our immediate area are flat out prohibiting [recovery houses] . . . [The City of] Bunnell serves Bunnell citizens and does not want to end up being a place where these programs are set up for citizens from all over.”

41. None of the other commissioners objected to Commissioner Crain-Brady’s or Mr. Cuthbertson’s comments as improper or as not representative of the City’s opinions. The City unanimously passed the Moratorium (**Exhibit “A”**).

The City's Efforts to Exclude the Booe Residence from Residential Zones and Homes

42. On January 15, 2014, after the City Commission unanimously passed the Moratorium, the City, for the first time, held a workshop to discuss regulation of residences like the Booe Residence.

43. At the workshop, neighbors appeared and continued to voice their objections, in the form of discriminatory animus, to the siting of the Booe Residence.

44. During the workshop, Commissioner Crain-Brady agreed with the comments of the neighbors concerning the siting of a home like the Booe Residence in a residentially zoned neighborhood, stating: ***“My huge trouble is forcing something on the community that the community is rejecting. Because it sets a precedent.”***

45. In response to the overwhelming neighborhood objections and comments made at the workshop, the City's planning staff crafted an ordinance with the sole purpose of excluding the siting of any recovery homes, including the Booe Residence, from any of the City's residential zoning districts (the “Exclusionary Ordinance”).

46. The Exclusionary Ordinance provided that recovery homes would be allowed only in business and industrial districts, and only by special exception use permit.

47. Recovery homes, including the Booe Residence, would be prohibited if they are located within 200 feet of a single-family residence in any zoning district within the City. Finally, the City proposed to limit the number of homes for recovering addicts as follows:

The existence of the total number of rehabilitation centers and residential prison diversion programs shall be limited utilizing the formula of one such program per 1500 citizens living within the City of Bunnell.

48. As a result of the locational criteria within the Exclusionary Ordinance, Open Door Ministry would be prohibited from opening the Booe Residence because it is too close to a single-family home and because it is located in a residential zoning district (R-2).

The Planning Commission Meeting

49. On March 18, 2014, the Planning Commission met to discuss the draft version of the Exclusionary Ordinance (the "March 18th Hearing").

50. At the March 18th Hearing, various members of the Planning Commission voiced concerns that the Exclusionary Ordinance allowed residences like the Booe Residence to be located even in commercial zoning districts.

51. Members suggested that staff for the City revise the Exclusionary Ordinance to make it more restrictive so as to only allow residences like the Booe Residence in districts zoned for industrial use.

52. Again, residents of the City appeared (much like they had at past hearings) at the March 18th Hearing and objected to the passage of any ordinance that would allow a person or entity to provide residential accommodations to individuals recovering from drug or alcohol addiction within the City.

53. The Planning Commission responded by refusing to provide any recommendation to the City Commission for the Exclusionary Ordinance.

54. The Planning Commission delayed any decision on the Exclusionary Ordinance until April 15, 2014.

55. During the March 18th Hearing, the issue of whether the Booe Residence could open to provide residential accommodations to Open Door Residents was discussed.

56. The City's attorney declared (and the Planning Commission adopted such declaration as its own) that Open Door Ministry could not open or operate the Booe Residence since no ordinance had been passed, and that the Moratorium was still in place.

57. Since the March 18th Hearing, Open Door Ministry has been unable to fulfill its mission to provide residential housing to the Open Door Residents.

The Notice and Demand to Remove Sign

58. On March 20, 2014, Open Door Ministry's Pastor Charles Silano received a certified letter from the City demanding that it remove the sign, in the form of a banner from the side of the Booe Residence, which reads:

OPEN DOOR MINISTRY: RE-ENTRY AND RECOVERY MINISTRY
Christ centered recovery through biblical discipleship

(Exhibit "B").

59. The basis for the City's demand was that the Moratorium prohibited any recovery or rehabilitation residences in the City's limits.

60. The City attached a copy of the Moratorium with the March 20th certified letter.

61. The City advised Open Door that: "In order to comply with City Codes, it is necessary that operation of a rehabilitation/prison diversion does not occur at the above

listed at this time.” The City’s planner further demanded that Open Door Ministry take all steps necessary at the Booe Residence to comply with the Moratorium by March 28, 2014, i.e., to not operate.

62. As a result of the City’s action, Open Door Ministry is unable to (i) fulfill its mission of providing housing opportunities to recovering addicts; (ii) open its doors to provide residential accommodations to the Open Door Residents; (iii) obtain charitable contributions from local churches, business, and other sources; and (iv) have its Special Exception Application processed in accordance with the normal and customary procedures established by the City of Bunnell’s land development code.

63. All conditions precedent have occurred or been waived, or it would be futile to engage in any further efforts to engage the City.

64. Open Door Ministry has retained the undersigned counsel and is obligated to pay it a reasonable fee.

-COUNT I-
(Discrimination Under the FHA)

65. Open Door Ministry realleges and incorporates herein by reference paragraphs 1 through 64 above.

66. The City is violating Open Door Ministry’s rights under the FHA and the FHA’s implementing regulations by:

- a. denying and otherwise making housing unavailable to Open Door Ministry and the Open Door Residents because of their disability;
- b. using the Code as a pretext to exclude Open Door Ministry and the Open Door Residents because of their disability;

c. enforcing discriminatory zoning rules and policies on Open Door Ministry and the Open Door Residents because of their disability;

d. interfering with the right of Open Door Ministry and the Open Door Residents to live in the dwelling of their choice;

e. retaliating against Open Door Ministry and the Open Door Residents because of their exercise of their legal rights under the FHA; and

f. making, printing or publishing, or causing to be made, printed or published a statement in connection with the sale or rental of housing that indicates a limitation, preference or discrimination on the basis of disability.

-COUNT II-
(Discrimination Under the ADA)

67. Open Door Ministry realleges and incorporates herein by reference paragraphs 1 through 64 above.

68. Open Door Ministry is involved in the process of providing housing to people with disabilities as defined in 42 U.S.C. § 12102(2).

69. The City is a public entity, within the definition of 42 U.S.C. § 12131(1).

70. The actions of the City to exclude Open Door Ministry and the Open Door Residents violate Open Door Ministry's and the Open Door Residents' rights under the ADA and the regulations promulgated thereunder by:

a. denying Open Door Ministry and the Open Door Residents the opportunity to participate in or benefit from the supportive housing Open Door Ministry offers;

b. using and administering land use and building codes with the purpose and effect of subjecting Open Door Ministry and the Open Door Residents to discrimination based on their disability;

c. subjecting Open Door Ministry and the Open Door Residents to discrimination on the basis of their disability;

d. denying disabled individuals the opportunity to participate in a program in the most integrated setting appropriate to their needs in a discriminatory manner against Open Door Ministry and the Open Door Residents and different from the opportunities presented to non-disabled individuals; and

e. utilizing licensing and permit requirements to enforce the Code and deny Open Door Ministry and the Open Door Residents enjoyment of rights, privileges, advantages, and opportunities enjoyed by non-disabled individuals in a manner that is discriminatory against Open Door Ministry and the Open Door Residents.

PRAYER FOR RELIEF AS TO EACH COUNT

WHEREFORE, Open Door Ministry requests that the Court:

a. Enter a declaratory judgment that the City has illegally discriminated against Open Door Ministry in violation of the FHA and ADA;

b. Provide injunctive relief restraining the City from discriminating against Open Door Ministry and the Open Door Residents and interfering with Open Door Ministry's current operation of the Booe Residence as a home for disabled recovering alcoholics and substance abusers, and/or from interfering in Open Door Residents' rights to reside in the Booe Residence;

c. Enter a declaratory judgment stating that Open Door Ministry's use of the Booe Residence is consistent with classification of the premises as a single-family home or multi-family home, and requiring the City to apply all zoning, safety, building, and land use codes to Open Door Ministry's use of the Booe Residence in the same manner as it does to all other single-family homes or multi family homes;

d. Award Open Door Ministry any available damages under the FHA and ADA;

e. Grant an award of reasonable costs and attorneys fees; and,

f. Order other such other relief as the Court deems just and proper.



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