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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
REGIONAL ECONOMIC COMMUNITY :
ACTION PROGRAM, INC., :
 :
Plaintiff, : COMPLAINT IN INTERVENTION
 :
UNITED STATES OF AMERICA, : 97 Civ. 8808 (CLB)
 :
Plaintiff-Intervenor, :
 :
v. :
 :
CITY OF MIDDLETOWN, CITY OF :
MIDDLETOWN PLANNING BOARD :
and JOSEPH DESTEFANO, :
 :
Defendants. :
-----X

Plaintiff United States of America, by its attorneys
Janet Reno, the Attorney General of the United States, and
Mary Jo White, the United States Attorney for the Southern
District of New York, alleges for its complaint in intervention
as follows:

PRELIMINARY STATEMENT

1. The United States files this complaint in intervention
to redress discrimination on the basis of disability in violation
of the Fair Housing Act, as amended, 42 U.S.C. §§ 3601 et seq.,
Title II of the Americans with Disabilities Act,
42 U.S.C. §§ 12131 et seq., and Section 504 of the Rehabilitation
Act, 29 U.S.C. § 794.

2. The Attorney General has certified that this case is "of general public importance." 42 U.S.C. § 3613(e). The certificate of the Attorney General is attached to this complaint and is incorporated herein.

JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1345, 29 U.S.C. § 794, 42 U.S.C. §§ 3613 and 3614, and 42 U.S.C. § 12133.

4. Venue is proper in the Southern District of New York under 28 U.S.C. § 1391(b) because the claims alleged herein arose in this District.

PARTIES

5. Plaintiff Regional Economic Community Action Program, Inc. ("RECAP") is a not-for-profit corporation incorporated in 1965 that has its principal place of business in Middletown, New York. Among other activities, RECAP provides social services and housing to persons with mental and physical disabilities and persons in recovery from alcohol dependency.

6. Defendant City of Middletown ("City") is a city incorporated under the laws of the State of New York, located in Orange County. The City is governed by a Mayor and a Common Council.

7. Defendant City of Middletown Planning Board ("Planning Board") consists of seven members appointed by the Mayor with the approval of the Common Council. The Planning Board has authority to issue special use permits after public notice and hearing.

8. Defendant Joseph DeStefano is the duly elected Mayor of Middletown.

PROCEDURAL BACKGROUND

9. On November 25, 1997, RECAP filed a complaint in this Court against the City, the Planning Board, and Mayor Joseph DeStefano, alleging that Defendants had violated the Fair Housing Act, as amended, Title II of the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act.

FACTUAL BACKGROUND

10. In 1994, RECAP entered into leases with options to purchase two adjacent properties in Middletown situated across the street from its outpatient clinic: 301-311 North Street ("North Street property") and 20½-30 Low Avenue ("Low Avenue property"). Both properties are located along Middletown's freight rail line, but the North Street property has approximately three times as much frontage along that rail line, as well as a disused rail spur.

11. At the North Street property, RECAP planned to develop administrative offices and a Children's Center (including a daycare facility, a HeadStart program and a children's healthcare service).

12. At the Low Avenue property, RECAP planned to develop two Adult Care Residential Facilities ("ACRFs") for persons in recovery from alcohol dependency, one for between 20 and 24 men and the other for 20 single mothers living with their minor children. The proposed ACRFs would have been licensed and would

have provided 24-hour supervision and staffing by certified alcoholism counselors. The ACRFs would have provided Middletown's only long-term transitional housing for persons in recovery from alcohol dependency and Orange County's only such housing for women in recovery from alcohol dependency who wanted to live with their minor children.

13. The North Street property is spot-zoned for heavy-industrial use within an area zoned light-industrial. The adjacent Low Avenue property is zoned light-industrial. The City's zoning ordinance permits multi-family dwellings in light-industrial and heavy-industrial zones.

14. In or about June 1994, RECAP filed applications with the Planning Board for special-use permits for both properties.

15. On September 23, 1994, the Planning Board unanimously granted the special use permit for the North Street property, where RECAP planned to develop its Children's Center and its administrative offices, contingent upon RECAP paying all property taxes or negotiating a payment-in-lieu-of-taxes agreement.

16. At the October 17, 1994 Planning Board hearing, the Mayor and City officials testified that RECAP's proposed ACRFs on the Low Avenue property might impede future economic development along Middletown's freight rail line -- an argument that had never been raised at the Planning Board's August 18, 1994 and September 19, 1994 hearings with respect to either the proposed Children's Center or the proposed ACRFs.

17. At the same October 17, 1994 Planning Board hearing, the Mayor also testified that "residential facilities for the disabled, mentally retarded, mental illness and those who suffer from alcohol and drug abuse problems" were having a "negative" impact on Middletown's "quality of life."

18. At the November 17, 1994 hearing, the Planning Board Chairman, who later voted to deny the special use permit, stated that idling diesel engines might create a nuisance for prospective residents of the ACRFs.

19. On December 3, 1994, the Planning Board issued a Resolution Denying Special Use Permit, stating, in part, that "[l]ocating a residential facility in an area zoned and targeted for industrial development will impede vitally needed development in that area." The Planning Board's Resolution further stated that the "proximity of the tracks will also potentially cause problems for persons living in the proposed facility if trains begin to move on the present or expanded tracks."

20. The Planning Board did not have reasonable grounds supported by substantial evidence for denying a special use permit for RECAP's proposed ACRFs on the Low Street property.

21. Although the North Street property had approximately three times the rail line frontage as the Low Avenue property and a disused rail spur, neither the Mayor nor any other City officials objected on economic development, nuisance or any other grounds to the special use permit to allow development of the

Children's Center and administrative offices on the North Street property.

22. On information and belief, RECAP's proposed ACRFs would have been consistent with the mix of residential, commercial, and light-industrial uses in that particular light-industrial district, which contains approximately 44 multi-family dwellings.

23. On information and belief, RECAP's proposed ACRFs would have been in harmony with the appropriate and orderly development of that light industrial district and would not have been detrimental to the orderly development of adjacent properties or the surrounding neighborhood.

24. On information and belief, RECAP's proposed ACRFs would have been consistent with the approximately 49 multi-family dwellings situated along Middletown's freight rail line, including a large condominium complex for which the Planning Board granted a special use permit in 1988.

25. On information and belief, the freight rail line would not have posed any nuisance to prospective residents of RECAP's ACRFs. In 1994, Conrail used the freight rail line approximately twice a week during daylight hours to transport four to six railroad cars. On information and belief, rail traffic has not increased since 1994. The diesel engines did not, and do not, idle in Middletown and they did not, and do not, travel faster than 10 miles per hour due to the condition of the track.

26. Both before and after the Planning Board's denial of

the special use permit, RECAP requested that the Planning Board make a reasonable accommodation in its rules, policies, practices, and services by granting a special use permit for the proposed ACRFs for persons in recovery from alcohol dependency. On information and belief, the City denied RECAP's requests for reasonable accommodation and the City did not propose alternative sites for RECAP's proposed ACRFs.

FIRST CLAIM FOR RELIEF

27. The United States realleges and herein incorporates by reference the allegations set forth in paragraphs 1 through 26 above.

28. The persons in recovery from alcohol dependency who would have been residents of RECAP's proposed ACRFs are handicapped within the meaning of the Fair Housing Act, as amended. 42 U.S.C. § 3602(h).

29. Defendants' denial of RECAP's application for a special use permit was based, in part, on the Mayor's statement at the October 17, 1994 Planning Board hearing that "residential facilities for the disabled, mentally retarded, mental illness and those who suffer from alcohol and drug abuse problems" were having a "negative" impact on Middletown's "quality of life."

30. Defendants' conduct, as described in paragraphs 16 through 26 above, constitutes discrimination on the basis of handicap in violation of the Fair Housing Act, in that:

- a. Defendants have made unavailable or denied dwellings based on the handicap of the prospective

residents, in violation of 42 U.S.C. § 3604(f)(1);
and

- b. Defendants have failed to make a reasonable accommodation in their rules, policies, practices, or services, when such an accommodation was necessary to afford handicapped persons equal opportunity to use and enjoy a dwelling, in violation of 42 U.S.C. § 3604(f)(3)(B).

31. Defendants' conduct constitutes a denial of rights granted by the Fair Housing Act to a group of persons, which denial raises an issue of general public importance under 42 U.S.C. §§ 3613(e) and 3614(e).

32. RECAP is an aggrieved person as defined in 42 U.S.C. § 3602(i), and, as such, it is entitled to be compensated by Defendants for the injuries caused by Defendants' unlawful conduct.

33. Defendants' violation of the Fair Housing Act, as amended, was intentional, willful, and taken in reckless and callous disregard of the rights of persons with handicaps.

SECOND CLAIM FOR RELIEF

34. The United States realleges and herein incorporates by reference the allegations set forth in paragraphs 1 through 26 above.

35. RECAP's clients, who are persons in recovery from

alcohol dependency and who would have been residents of the proposed ACRFs, are qualified individuals with disabilities within the meaning of the Americans with Disabilities Act.

42 U.S.C. §§ 12102(2), 12131(2), and 12210(b);

28 C.F.R. § 35.104.

36. The City and the Planning Board are public entities within the meaning of Title II of the Americans with Disabilities Act and its implementing regulations. 42 U.S.C. § 12131(1);

28 C.F.R. § 35.104.

37. Defendants' decisions regarding special use permits are services, programs, or activities of a public entity within the meaning of Title II of the Americans with Disabilities Act and its implementing regulations. 42 U.S.C. § 12132.

38. Defendants' conduct, as described in paragraphs 16 through 26 above, constitutes discrimination on the basis of disability in violation of the Americans with Disabilities Act, in that:

- a. Defendants denied RECAP and its clients, by reason of disability, the benefits of the services, programs, or activities of a public entity and discriminated against them in violation of 42 U.S.C. § 12132 and 28 C.F.R. § 35.130(a); and
- b. Defendants failed to make a reasonable modification in their policies, practices or procedures when a modification was necessary to avoid discrimination on the basis of disability,

in violation of 42 U.S.C. § 12132 and
28 C.F.R. § 35.130(b)(7).

39. RECAP was injured by Defendants' violation of Title II of the Americans with Disabilities Act, and, as such, it is entitled to be compensated by Defendants for the injuries caused by Defendants' unlawful conduct.

THIRD CLAIM FOR RELIEF

40. The United States realleges and herein incorporates by reference the allegations set forth in paragraphs 1 through 26 above.

41. RECAP's clients, who are persons in recovery from alcohol dependency and who would have been residents of the proposed ACRFs, are qualified individuals with disabilities within the meaning of Section 504 of the Rehabilitation Act. 29 U.S.C. § 706(8).

42. The City is a recipient of federal financial assistance and its Planning Board and land-use activities are "programs or activities" within the meaning of Section 504 of the Rehabilitation Act. 29 U.S.C. §§ 794(a) and (b).

43. Defendants' conduct, as described in paragraphs 16 through 26 above, constitutes discrimination on the basis of disability in violation of Section 504 of the Rehabilitation Act, in that Defendants excluded RECAP and its clients from the participation in, denied them the benefits of, and subjected them to discrimination under, a program or an activity of Defendants. 29 U.S.C. § 794(a).

44. RECAP was injured by Defendants' violation of Section 504 of the Rehabilitation Act, and, as such, it is entitled to be compensated by Defendants for the injuries caused by Defendants' unlawful conduct.

PRAYER FOR RELIEF

WHEREFORE, the United States prays that the Court enter judgment that:

1. Declares that the acts of defendants, as set forth above, violate the Fair Housing Act, as amended, 42 U.S.C. §§ 3601 et seq., Title II of the Americans with Disabilities Act, 42 U.S.C. §§ 12131 et seq., and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794;

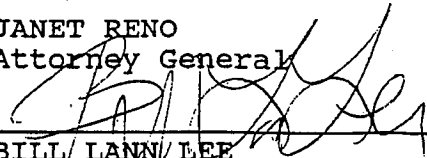
2. Enjoins defendants, their officials, agents, employees, and all other persons in active concert or participation with them from otherwise discriminating against RECAP on account of the disabilities of RECAP's clients, in violation of the Fair Housing Act, as amended, 42 U.S.C. §§ 3601 et seq., Title II of the Americans with Disabilities Act, 42 U.S.C. §§ 12131 et seq., and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794;

3. Awards such damages as would fully compensate RECAP for the injury caused by the City's discriminatory actions;

4. Assesses civil penalties against the Defendant in amounts of money authorized by 42 U.S.C. § 3614(d)(1)(C), in order to vindicate the public interest; and

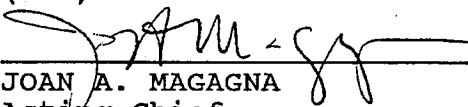
5. Grants such further relief as the Court may deem
just.

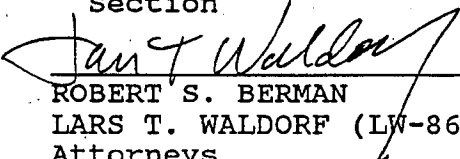
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