UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

TRACY P., RICHARD A., GERARD O.,
RENAISSANCE MANOR, INC.,
Plaintiffs,

vs. **Consolidated Case No. 8:05-CV-927-T-27EAJ**

SARASOTA COUNTY,
JOSEPH and MARIA SERNA,
Defendants.

Consolidated with

UNITED STATES OF AMERICA
Plaintiff
and

COASTAL BEHAVIORAL HEALTHCARE, INC.
Plaintiff-Intervenor,
vs.

SARASOTA COUNTY, FLORIDA
Defendant.
_____/

ORDER

BEFORE THE COURT are Sarasota County's Cross Motion for Summary Judgment (Dkt. 223), Plaintiffs' Response in Opposition to Sarasota County's Cross Motion for Summary Judgment (Dkt. 241) and United States' Response to Sarasota County's Motion for Summary Judgment (Dkt. 240).

Procedural History

Renaissance Manor, Inc., Tracey P., Ric Z., Richard A., and Gerard O. (collectively the "Individual Plaintiffs") initiated this action against Sarasota County and Joseph and Maria Serna

alleging violations of the Fair Housing Act ("FHA"), 42 U.S.C. §§ 3601 *et seq.*, and the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12132 *et seq.*[1] The Individual Plaintiffs allege that the County acted in a discriminatory manner when it determined in July 2004 that six adjacent homes, known as the "Tammi House," were operating as "community residential homes" under the Sarasota County zoning ordinance and Florida Statutes Chapter 419 and therefore subject to a 1,000 foot spacing requirement. (Dkt. 19). The Individual Plaintiffs also contend the County denied them a reasonable accommodation in violation of the FHA and ADA. (Dkt. 19).

Separately, the United States filed an action against the County concerning the same application of the County's zoning ordinance to the Tammi House. (Case No.: 06-CV-1221-T-27EAJ, Dkt. 1). The United States alleges the County intentionally discriminated against the Individual Plaintiffs and denied them a reasonable accommodation in violation of the FHA. The United States also contends the County discriminated against Renaissance Manor by interfering with its exercise of FHA rights by rescinding previously-awarded grant funds and refusing to award future grant funds. Coastal Behavioral Healthcare, Inc. ("Coastal"), who co-owns the Tammi House with Renaissance Manor, was granted permission to intervene as a plaintiff in the United States' action against the County. Like Renaissance Manor, Coastal alleges that in violation of the FHA and ADA the County intentionally discriminated against it and denied it a reasonable accommodation when it determined in July 2004 that Tammi House was operating as a "community residential home." (Case No.: 06-CV-1221-T-27EAJ, Dkt. 23). On April 17, 2007, the two actions were consolidated

[1] Ric Z.'s claims have been dismissed. (Dkts. 214, 234).

for all purposes, including trial.[2]

The County moves for summary judgment on all counts asserted by the consolidated Plaintiffs. (Dkt. 223). Upon consideration, the County's motion for summary judgment is DENIED.

Factual Background

In 1996, Sharon Mays-Tremain owned four single family homes on Sevilla Street in a residential neighborhood in North Port, Florida. (Eller Aff., ¶ 2). The homes were collectively known as "Tammi House" and provided housing for individuals recovering from mental illness and substance abuse. Since1996, Tammi house has not been licensed by any Florida agency. (Eller Aff., ¶¶ 3, 5). Neither has Tammi House been investigated or sanctioned by a state agency for improperly operating a residential program without a license. (Eller Aff., ¶ 4).

In March 1997, in response to neighborhood complaints, the County explained that zoning restrictions, such as spacing requirements between homes, were not applicable to the Tammi House because the appropriate state agency determined that Tammi House was a "recovery home" and not required to obtain a license. (Dkt. 242, Ex. 2). In September 1997, again in response to neighborhood complaints, the County explained that Tammi House residents are "persons with handicaps under the Fair Housing Act" and "meet the definition of 'family' under section 28.59 of the Sarasota County Zoning Regulations [which permits six unrelated persons to live together]." (Dkt. 242, Ex. 3).

In 1999, a County code enforcement official made the following observations about Tammi

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[2] The Individual Plaintiffs, Renaissance Manor, and Coastal will collectively be referred to as the "consolidated Plaintiffs."

House:

> [P]revious investigations at these group homes have revealed that 6 or less unrelated persons live in each home; They are not licensed by dhrs as "Community residential homes", Thus, the restriction as to 1 such home within a 1,000 ft. Radius of another such home, Is not applicable.

(Dkt. 242, Ex. 4).

In 2003, Renaissance Manor and Coastal purchased the four single family homes constituting Tammi House, as well as two vacant properties on Sevilla Street. (Eller Aff., ¶ 1). In March 2004, Renaissance Manor applied for building permits for authorization to construct single family homes on the two vacant lots and to rebuild one of the existing single family homes as part of their effort to expand the Tammi House operation. (Dkt. 242, Ex. 7). The County granted these permits, concluding Tammi House constituted a single family use. *Id.*[3]

In May 2004, after the homes were built and occupied by Tammi House residents, neighbors communicated concerns regarding Tammi House's expanded operation to County officials, including Commissioner Shannon Staub. (Dkt. 242, Ex. 8). Shortly thereafter, in June 2004, the Board of County Commissioners initiated an investigation to determine whether the Tammi House was operating as a group home. Mary Beth Humphreys, the County Zoning Administrator, Paul Radauskas, the County Building Official, and Chip Taylor, the County's Human Services Manager participated in the investigation. (Dkt. 223, Ex. 15). On July 7, 2004, Humphreys and Radauskas set forth their conclusions in a memorandum to the Board of County Commissioners. (Dkt. 223, Ex.

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[3] The County contends Renaissance Manor and Coastal misrepresented how the properties were to be used and instructed Coastal employees to lie about the services provided by Coastal. (Dkt. 223, p. 2, citing Ex. 8 ("intended use of the properties is affordable housing to persons with mental illness"; Bacher Depo., pp. 136-38; Dkt. 285-2, Letter from Eller to Tate Taylor representing that the "property will not be used as a medical/treatment facility, but as rental units for people to live").

15). In summary, Humphreys and Radauskas concluded that

> [t]he proposed and existing [Tammi House] residents meet the definition of residents in a community residential home as defined in F.S. 419 Community Residential Homes. That definition, admission of the nature of the residents and operation of these homes, and both the State Law and County Zoning Ordinance lead us to determine that the structures on Sevilla Street are and will be operated as Community Residential Homes.... Both State Statutes and Sarasota County Zoning Code do not permit such houses to operate within 1,000 feet of one another.

(Dkt. 223, Ex. 15, p. 5).

In large part, Humphreys and Radauskas relied on the findings of Chip Taylor, who spoke to Scott Eller, the Executive Director of Renaissance Manor, during the investigation. Taylor's report of his conversation with Eller, which was included in the July 7, 2004 memorandum, in relevant part, provides:

> [Eller] stated that Tammi House is not a treatment program and that medications are not administered to residents in the houses. If residents were administered medications, then the houses would come under the purview of AHCA [Agency for Health Care Administration] and have to be licensed as ALFs [Assisted Living Facilities]. [Renaissance Manor] has no desire or plans to do that.
>
> * * *
>
> [Renaissance Manor] provides staffing and security for Tammi House on a 24/7 basis. There are seven full time [Renaissance Manor] staff members: two are "certified" in life skills; three have received training; and two are security personnel (only). The two security staff cover the night shift; the other five cover the two day shifts on a rotating basis. Eller stated that none of the staff members are "live-in"; they all reside elsewhere. The five non-security staff provide a variety of assistance to the residents; they transport residents to jobs, they may provide some counseling, they assist with training in daily living skills, etc. . . . Apparently, Coastal does provide some on-site counseling, and [Renaissance Manor] has prevailed upon Coastal to have their therapists come to the houses twice a week to check on their patients in the setting in which they are living.

(Dkt. 223, Ex. 15, p. 3).

On July 21, 2004, the County informed Renaissance Manor in writing that "the operation of

the Tammi House appears to match the definition of a community residential home." (Dkt. 213, Ex. 2, p. 2). The County zoning ordinance defines "community residential home" as:

> A dwelling unit licensed to serve clients of the Department of Children and Family Services, which provides a living environment for up to 14 unrelated residents who operate as the functional equivalent of a family, including such supervision and care by supportive staff as may be necessary to meet the physical, emotional, and social needs of the residents. . . .

Sarasota County Zoning Ordinance, § 10.2.1

In concluding that the Tammi House was operating as a community residential home, the County found that the Tammi House provides "supervision at the property" and that residents "receive counseling" and "are provided assistance with training and daily living skills, and may be subjected to daily drug testing." (Dkt. 213, Ex. 2, p. 2). The County concluded that "these sorts of activities are not in keeping with family living activities." *Id.* In turn, the County concluded that Tammi House was operating in violation of Florida Statute § 419.001(2) and Sarasota County Zoning Ordinance 2003,-052, Section 5, Article 5.3.2(b)(1)(i), which require community residential homes to be at least 1,000 feet apart from each other. (Eller Aff., ¶ 3; Dkt. 213, Ex. 2).

Specifically, zoning ordinance § 5.3.2(b)(1)(i) provides that "community residential homes with six or fewer residents shall not be located within a radius of 1,000 feet of another existing such home with six or fewer residents." Similarly, Florida Statute, § 419.001(2) provides:

> Homes of six or fewer residents which otherwise meet the definition of a community residential home shall be allowed in single-family or multifamily zoning without the approval by local government, provided that such homes shall not be located within a radius of 1,000 feet of another existing such home with six or fewer residents.

Fla. Stat., § 419.001(2).

In the July 21, 2004 letter, the County advised Renaissance Manor that it could operate one

home by virtue of the spacing requirement, but it must cease operating the remaining five homes within ninety days of the date of the letter. (Dkt. 213, Ex. 2).

Chip Taylor, the County's Human Services Manager, testified that the County does not have the authority to classify a facility as a community residential home. (Taylor Depo., p. 109-110). Taylor testified that during the relevant time period, the Department of Children and Families was the agency charged with the responsibility to determine whether a facility was a community residential home and required to obtain a license. (Taylor Depo., p. 109-110; "The County doesn't [have the authority]. DCF makes that determination").[4] Taylor testified that he was not aware that any County employee asked the Department of Children and Families for a determination regarding Tammi House's status as a community residential home prior to its July 2004 zoning determination. (Taylor Depo., p. 112).[5]

Renaissance Manor and Coastal appealed the County's zoning determination. On October 4, 2004, a public hearing was conducted before the Board of Zoning Appeals ("Appeals Board"). (Dkt. 223, Ex. 17). At the hearing, the Appeals Board considered testimony and argument from Renaissance Manor and Coastal, as well as interested residents from the surrounding community.

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[4] Q: In order for a facility to be classified as a community residential home, there must be certain criteria that is met and applied for to DCF; correct.

Ms. Edson: Objection.

A: I'm not sure how the process works now . . . because I had been out of there. But DCF is the agency that makes that determination.

(Taylor Depo., p. 111).

[5] Taylor and County employee Susan Scott testified that *after* the County rendered its zoning determination, the County contacted the appropriate state agencies and asked general questions about the kind of activities that would require licensing. (Taylor Depo., pp.19-22; Scott Depo., pp. 66-67). According to Eller, in 2004 and 2005, Renaissance Manor asked the Department of Children and Families and the Agency for Health Care Administration whether Renaissance Manor needed to obtain a license for Tammi House. Both agencies responded in writing that Tammi House did not need a license. (Eller Aff., ¶ 6). According to the County, Renaissance Manor misinformed the state agencies that no substance abuse treatments were being provided at Tammi House. (Dkt. 223, p. 22).

(Dkt. 223, Ex. 17). The Appeals Board unanimously upheld the zoning determination.

Applicable Standard

Federal Rule of Civil Procedure 56 provides that summary judgment shall be granted if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). All the evidence and factual inferences reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970); *Jackson v. BellSouth Telecomms.*, 372 F.3d 1250, 1280 (11th Cir. 2004).

Once a party properly makes a summary judgment motion by demonstrating the absence of a genuine issue of material fact, whether or not accompanied by affidavits, the nonmoving party must go beyond the pleadings through the use of affidavits, depositions, answers to interrogatories and admissions on file, and designate specific facts showing that there is a genuine issue for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-4 (1986). Plaintiff's evidence must be significantly probative to support the claims. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986).

Discussion

The FHA and ADA both prohibit "governmental entities from implementing or enforcing housing policies in a discriminatory manner against persons with disabilities." *Tsombanidis v. West Haven Fire Dept.*, 352 F.3d 565, 573 (2d Cir. 2003).[6] The FHA makes it unlawful "[t]o discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of that buyer or renter, a person residing in or intending to reside in that dwelling...or any person associated with that buyer or renter." 42 U.S.C. § 3604(f)(1). A local

[6] It is undisputed that recovering alcoholics and drug addicts are members of a protected class under the FHA and ADA. 42 U.S.C. § 3602(h); 24 C.F.R. § 100.201(a)(2); 42 U.S.C. §12210(b)(1) and (2).

government acts in violation of the FHA if with discriminatory intent it blocks the development or existence of housing to persons with disabilities. *See e.g. United States v. Yonkers Bd. of Educ.*, 837 F.2d 1181, 1216-26 (2d Cir. 1987), *cert. denied*, 486 U.S. 1055 (1988).

Like the FHA, the ADA "provide[s] a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U.S.C. § 12101(b)(1). Under the proscriptions of the ADA, "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. Although the ADA does not explicitly define "services, programs, or activities," the regulations promulgated pursuant to the act state that "title II applies to anything a public entity does." 28 C.F.R. pt. 35, app. A. The courts which have considered the issue have held that the ADA clearly encompasses zoning decisions by local government entities. *See e.g. Regional Econ. Comty. Action Program, Inc. v. City of Middletown,* 294 F.3d 35, 44-46 (2d Cir. 2002); *Bay Area Addiction Research and Treatment, Inc. v. City of Antioch,* 179 F.3d 725, 730 (9th Cir.1999).

A plaintiff may establish a violation of either the FHA or ADA under three separate theories: (1) intentional discrimination, (2) disparate impact, or (3) failure to make a reasonable accommodation. *See Regional,* 294 F.3d 35 at 48. The consolidated Plaintiffs assert claims for intentional discrimination and failure to make a reasonable accommodation. The County's motion seeks summary judgment on all of the consolidated Plaintiffs' claims.

Intentional Discrimination[7]

A claim of intentional discrimination in violation of the FHA may be proven by both direct and circumstantial evidence. *Village of Arlington Heights v. Metro. Housing Dev. Corp.*, 429 U.S. 252, 265 (1977). When proving a claim of discrimination by circumstantial evidence, the three part burden of proof test set forth in *McDonnell Douglas* is applicable. *See Secretary, HUD ex rel. Herron v. Blackwell*, 908 F.2d 864, 870 (11th Cir. 1990) (citing *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973)). Under *McDonnell Douglas*, the plaintiff has the initial burden of proving a *prima facie* case of discrimination by a preponderance of the evidence. If the plaintiff sufficiently establishes a *prima facie* case, the burden shifts to the defendant to articulate some legitimate, nondiscriminatory reason for its action. If the defendant satisfies this burden, the plaintiff has the opportunity to prove by a preponderance that the legitimate reasons asserted by the defendant are in fact mere pretext. *Id.*

Plaintiffs' Prima Facie Case

In proving a *prima facie* case of intentional discrimination under the FHA, a plaintiff must show that his handicapped or disabled status was a motivating factor in the defendant's decisions concerning the proposed use of plaintiff's property. *See Village of Arlington Heights,* 429 U.S. at 265; *Sofarelli v. Pinellas County*, 931 F.2d 718, 723 (11th Cir. 1991) (dismissing FHA claim because there was no evidence "that race played some role in the actions of the [defendant]"). However, an

[7] The United States' claim that the County interfered with Renaissance Manor's FHA rights is properly considered as a theory of intentional discrimination. *See Regional,* 294 F.3d at 48; *Tsombanidis*, 180 F. Supp. 2d. at 283 (recognizing three available theories of FHA discrimination available to a plaintiff: "(1) intentional discrimination; (2) discriminatory impact; and (3) a refusal to make a reasonable accommodation"). The United States correctly contends that the County failed to address this particular claim when moving for summary judgment on "all counts of the Complaints." (Dkt. 223, p. 4). In this regard, the County fails to satisfy its initial burden of demonstrating an absence of a genuine issue of material fact and summary judgment as to this theory of intentional discrimination is improper.

actionable intent to discriminate need not be motivated by dislike for, or animosity against, people with disabilities. *See Bryant Woods Inn, Inc. v. Howard County, Md.*, 911 F.Supp. 918, 929 (D. Md. 1996), *aff'd*, 124 F.3d 597 (4th Cir. 1997). The legislative history of the FHA demonstrates that Congress intended equally to prohibit discrimination resulting from "false and over-protective assumptions about the needs of handicapped people, as well as unfounded fears of difficulties about the problems that their tenancies may pose." *Id.* (citing H.R. No. 100-711, U.S.C.C.A.N. 2185 (1988)).

Government officials are generally held to act with discriminatory intent, regardless of their personal views, when they implement the discriminatory desires of others. *See Hallmark Developers, Inc. v. Fulton County, GA*, 466 F.3d 1276, 1284 (11th Cir. 2006); *see e.g. Innovative Health Systems, Inc. v. City of White Plains*, 117 F.3d 37, 49 (2d Cir. 1997), *overruled on other grounds by Zervos v. Verizon N.Y., Inc.*, 252 F.3d 163 (2d Cir.2001), ("a decision made in the context of strong, discriminatory opposition becomes tainted with discriminatory intent even if the decisionmakers personally have no strong views on the matter"); *Dailey v. City of Lawton,* 425 F.2d 1037, 1039 (10th Cir. 1970) ("it is enough for the complaining parties to show that the local officials are effectuating the discriminatory designs of private individuals").

Under the evidentiary test set forth in *Village of Arlington Heights*, some of the factors to consider when evaluating a claim of intentional discrimination include: (1) the discriminatory impact of the governmental decision; (2) the decision's historical background; (3) the specific sequence of events leading up to the challenged decision; (4) departures from the normal procedural sequences; and (5) departures from normal substantive criteria. *Village of Arlington Heights*, 429 U.S. at 266-268.

Based upon the evidence presented, a reasonable jury could conclude that the County's 2004 zoning decision is suspect in light of the requirements set forth in the zoning ordinance and that the historical background of the County's decision, and the events leading up to its abrupt change in position, including strong neighborhood dissent, demonstrate that the County was motivated, at least in part, by the residents' disabled status. *See Village of Arlington Heights*, 429 U.S. at 265-66 (plaintiff alleging intentional discrimination need only show decision to deny housing opportunities was motivated, at least in part, by unjustified consideration of the disabled status). Accordingly, this Court concludes that the consolidated Plaintiffs have met their initial burden in establishing a *prima facie* case of intentional discrimination.

Legitimate Non-discriminatory Reason for County's Action

Once a *prima facie* case of intentional discrimination is established, the burden shifts to the defendant to present a legitimate, nondiscriminatory reason for its action. *See Rojas v. Florida*, 285 F.3d 1339, 1342 (11th 2002). According to the County, it acted in a non-discriminatory manner when it concluded that the six houses consisting of the Tammi House were in violation of Zoning Ordinance § 5.3.2(b)(1)(I), which provides that "community residential homes with six or fewer residents shall not be located within a radius of 1,000 feet of another existing such home with six or fewer residents." This zoning provision is consistent with Florida law, Fla. Stat., § 419.001. The consolidated Plaintiffs do not challenge the facial validity of § 5.3.2(b)(1)(I) or claim it has a disparate impact on individuals recovering from substance abuse. Accordingly, the County has articulated a legitimate non-discriminatory reason for its action with regard to the Tammi House and the burden shifts to the consolidated Plaintiffs to establish pretext.

Evidence of Pretext

Under *McDonnell Douglas,* once the defendant has articulated a legitimate justification for its action, "the burden shifts back to the plaintiff to 'introduce significantly probative evidence showing that the asserted reason is merely a pretext for discrimination.'" *Zaben v. Air Prod. & Chem., Inc.,* 129 F.3d 1453, 1457 (11th Cir.1997) (citation omitted). The consolidated Plaintiffs can prove pretext in one of two ways: indirectly, by showing that the County's proffered justifications are not true, or, directly, by showing that the County was more likely motivated by discriminatory animus than by its proffered reasons. *See Texas Dept. of Community Affairs v. Burdine,* 450 U.S. 248, 256 (1981).

Plaintiffs have presented evidence demonstrating that Commissioner Staub felt significant political pressure to cease the expansion of the Tammi House operation. The evidence demonstrates that Commissioner Staub received numerous complaints from neighbors and that she herself was concerned about the impact the Tammi House would have on the neighborhood, stating that "[i]t just isn't right that a routine neighborhood has now become a recovering persons Coastal campus" and "I don't like how this can happen to a neighborhood (and told my Commissioner, Mr. Eller, and anyone else that might listen) but the fact is that there is nothing that is illegal." (Dkt. 242, Ex. 8, p. 47). Commissioner Staub agreed with a complainant "that the integrity of this neighborhood is being compromised," but "finding a way to deal with it is the issue." (Dkt. 242, Ex. 8, p. 60). In response to information she learned during the investigation, Commissioner Staub stated, "I just don't see how this doesn't need a public hearing for zoning to allow it. . . . One way or another I think this issue is ripe for public consumption." (Dkt. 242, Ex. 8).

Significantly, Staub communicated her fears and concerns to Building Official, Paul

Radauskas and Zoning Administrator, Mary Beth Humphreys, who were responsible for the July 2004 zoning memorandum issued to the Board of County Commissioners. Shortly before the zoning determination was made, Staub sent an email to Radauskas which included an excerpt from an article questioning the fairness of the FHA. (Dkt. 242, p. 53). In relevant part, the article included in Staub's email provides:

> Imagine discovering a facility down your street dedicated to housing mental patients who continually rob you and your neighbors and that you can do nothing about it. That is the unenviable situation in which the central Austin neighborhood of Rosewood and many other American neighborhoods find themselves thanks to the federal Fair Housing Act.
>
> Over the past few months, Rosewood residents have endured dozens of thefts ranging from bikes to car emblems. . . . Unfortunately, thanks to the Fair Housing Act, neighbors are powerless to prevent or remove such facilities from their neighborhoods, even when they, as is the case here, house convicted felons and provide little supervision. . . . Clearly the Fair Housing Act ought to be amended in at least two respects. First, like the Americans with Disabilities Act, it should no longer treat drug and alcohol abuse, which are voluntary, as being equivalent to a head injury, cerebral palsy, or other genuine and involuntary mental disabilities.

(Dkt. 242, Ex. 8, p. 53).

The transcript from the hearing before the Appeals Board confirms that community members strongly opposed Tammi House's operation in their neighborhood in part because they believed Tammi House residents were "junkies," "drug people," and "criminals." (Dkt. 223, Ex. 17-2, pp. 72, 75). There is nothing inherently wrong with the Board responding to community pressure. *See Hallmark*, 466 F. 3d at 1285 (holding plaintiff failed to establish that "members of the decision-making body were aware of the motivations of the private citizens"... "[h]ere, with no racial animus expressed to the Board, bowing to political pressure does not demonstrate racial animus"). However, bowing to political pressure becomes suspect, where, as here, discriminatory animus was expressed to the Board and the evidence suggests that one of the Board members shared the motivations of the private citizens and attempted to influence the zoning decision. *See Innovative Health*, 117 F.3d at

49 ("a decision made in the context of strong, discriminatory opposition becomes tainted with discriminatory intent even if the decisionmakers personally have no strong views on the matter) (citing *Support Ministries for Persons with AIDS, Inc. v. Village of Waterford, N.Y.*, 808 F. Supp. 120, 134 (N.D.N.Y. 1992) (zoning officials who "bowed to political pressure" by those with animus against people with alcohol and drug related disabilities violated FHA).

Moreover, there are questions of material fact concerning whether the County departed from normal criteria when it determined that the Tammi House should be classified as a community residential home. In the July 2004 memorandum and July 21, 2004 zoning determination letter, County officials relied on the presence of pay phones, security staff, drug testing, gender segregation and the coordination of alcoholics and narcotics anonymous meetings as evidence that the Tammi House operated as a community residential home. However, none of these services are included in the definition of "community residential home" and Plaintiffs have presented testimony, which if believed by the jury, demonstrates that the presence of these services do not necessarily require a facility to be licensed. (Sarasota County Zoning Ordinance, § 10.2.1; Holm Depo., pp, 23-28, 37, 41-42, 45-46, 51). Plaintiffs have also presented evidence which suggests the County failed to properly consider whether Tammi House was required to be licensed by a state agency before concluding that it fell within the definition of "community residential home." (Dkt. 223, Humphreys Depo. 2, pp. 54-55;[8] Dkt. 240, Humphreys Depo., pp. 30-31;[9] Radauskas Depo., pp. 93-94; Dkt. 213,

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[8] "The fact that [Tammi House] didn't have a license didn't enter into my determination because I saw what the uses were."

[9] Q: Do you know what type of meetings [were being conducted at Tammi House]?
A: Relapse prevention group. People that don't have a job have to go to that meeting. Different types of meetings, it appeared to me.
Q: Did you know who Bruce worked for?
A: No, ma'am.
Q: Do you know whether or not Bruce was a licensed therapist or counselor?
A: . . . no, I did not know that.

Scott Depo., pp. 64-65;[10] Taylor Depo., pp. 107, 109-111;[11] Dkt 223, Exs. 15, 16).[12]

Because there are questions of material fact concerning the County's intent, this Court cannot conclude as a matter of law that the residents' disabled status played no role in the County's zoning determination. *See Village of Arlington Heights*, 429 U.S. at 265-66 (plaintiff alleging intentional discrimination need only show decision to deny housing opportunities was motivated, at least in part, by unjustified consideration of the disabled status). Summary judgment is inappropriate, where as here, the parties may agree on the basic facts, but disagree about the inferences that should be drawn from these facts. *See Anderson,* 477 U.S. 242 at 255 ("credibility determinations, the weighing of evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge"); *Impossible Elec. Techniques, Inc. v. Wackenhut Protective Sys., Inc.,* 669 F.2d 1026, 1031 (5th Cir. 1982) (if reasonable minds might differ on the inferences arising from undisputed facts, then summary judgment should be denied). Accordingly, the County's cross motion for summary

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[10] Q: What steps – what action are you aware of that the County took to ascertain that the Tammi Houses should be licensed by the State of Florida –

* * *

A: I can't recall specifically what actions prior to the issuance of [the July 21, 2004 letter] related to licensing.
Q: All right. Now, the County doesn't have any authority to license a Community Residential Home.
A: That's right.

[11] Q: The County doesn't have th[e] authority [to determine whether the facility is a community residential home]; right?

A: The County doesn't. DCF makes that determination.

* * *

Q: Are you aware at any time from, let's say, June of 2004 . . . until present, whether anybody from DCF has stated to you or any other person in the County that the Tammi Houses are a community residential home and should be licensed?

A: I'm not aware of whether they have done that or not.

[12] At a minimum, Plaintiffs' evidence suggests that prior to rendering its zoning determination, the County failed to properly consider whether the on-site counseling provided at Tammi House qualified as substance abuse treatment and therefore required Tammi House to be licensed. The evidence in this regard is conflicting and the resolution of this issue would require the Court to make credibility determinations, a function reserved for the jury. *See Anderson*, 477 U.S. at 255 (credibility determinations are a jury function).

judgment on Plaintiffs' intentional discrimination claims is DENIED.

Failure to Provide a Reasonable Accommodation

In addition to prohibiting intentional discrimination, the FHA and ADA both require public entities to make a reasonable modification or accommodation in its practices, services, and facilities. The FHA specifically prohibits the "refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodation may be necessary to afford such person equal opportunity to use and enjoy a dwelling." 42 U.S.C. § 3604(f)(3)(B). Likewise, the regulations promulgated pursuant to the ADA require that a public entity "make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless making the modifications would fundamentally alter the nature of the service, program, or activity." 28 C.F.R. § 35.130(b)(7). The "'reasonable accommodation' provision prohibits the enforcement of zoning ordinances and local housing policies in a manner that denies people with disabilities access to housing on par with that of those who are not disabled." *Hovsons, Inc. v. Township of Brick,* 89 F.3d 1096, 1104 (3d Cir.1996) (internal citation omitted).

In order to establish a reasonable accommodation claim, a plaintiff has the burden of proving that a proposed accommodation is (1) reasonable and (2) necessary (3) to afford handicapped persons equal opportunity to use and enjoy housing. *See Bryant Woods Inn, Inc. v. Howard County, Md.,* 124 F.3d 597, 603-604 (4th Cir. 1997) (citing 42 U.S.C. § 3604(f)(3)); *see also, Loren,* 309 F.3d at 1302.

The consolidated Plaintiffs contend that in a July 28, 2004 letter to Humphreys, Renaissance Manor requested an accommodation so that it would be allowed to continue to operate the Tammi House, including all six homes at their current location on Sevilla Street, notwithstanding the

County's finding that it was a community residential home and subject to the zoning code's 1,000 foot spacing requirement. The County contends summary judgment is proper because Plaintiffs' request was not reasonable. In support, the County points out that it "has left the houses alone throughout the pendency of this litigation and responded to Plaintiffs' request by participating in several meetings in an attempt to resolve the parties' dispute by locating new sites that complied with the zoning ordinance." (Dkt. 223, p. 25). The County contends Plaintiffs have "rejected every solution proposed by the County because Plaintiffs' business plan requires the houses to be side-by-side in light of the economics in providing extra services on-site." (Dkt. 223, p. 25).

While it may be true that the County proposed different locations and means to resolve the zoning violation, this evidence does not establish that Renaissance Manor's request that it be permitted to operate Tammi House as six single family homes on Sevilla Street was not reasonable or necessary. *See Loren,* 309 F.3d at 1302 ("[w]hether a requested accommodation is required by law is 'highly fact-specific, requiring case-by-case determination'") (citing *Groner v. Golden Gate Gardens Apartments,* 250 F.3d 1039, 1044 (6th Cir.2001)). Based on the County's argument and the evidence it cites in support, this Court cannot conclude as a matter of law that Renaissance Manor's request was neither reasonable nor necessary to afford equal housing opportunities. *See Buskirk v. Apollo Metals,* 307 F.3d 160, 170 (3d Cir.2002) ("[g]enerally, the question of whether a proposed accommodation is reasonable is a question of fact"); *see also Holbrook v. City of Alpharetta, Ga.,* 112 F.3d 1522, 1527 (11th Cir.1997). Likewise, the County fails to establish that Renaissance Manor's request would cause undue hardship on the County. *See Bryant Woods,* 124 F.3d at 605 (an accommodation is reasonable if it does not impose "undue financial and administrative burdens" or "changes, adjustments, or modifications to existing programs that would

be substantial, or that would constitute fundamental alterations in the nature of the program") (citations omitted). Summary judgment on Plaintiffs' reasonable accommodation claims is therefore DENIED. Accordingly, it is

ORDERED AND ADJUDGED that Sarasota County's Cross Motion for Summary Judgment (Dkt. 223) is DENIED.

DONE AND ORDERED in chambers this 5th day of September, 2007.

JAMES D. WHITTEMORE
United States District Judge

Copies to:
Counsel of Record