From: Jim Lyons [mailto:jasmlyons@ameritech.net]

Sent: Wednesday, May 29, 2013 4:28 PM

To: Russ Schaedlich

Cc: Joe Gurley

Subject: RE: LMHA involvement??

Dear Russ and Joe: I thought that I would send this email in order to clarify the issues as I know them. It is my understanding that the house is not a licensed adult family home. Licensed adult family homes must be allowed “as a permitted use in any residential district or zone,” including single-family districts. It is my understanding that Patricia Kidd believes that the persons who are living at this house are members of a protected class (allegedly recovering alcoholics) and therefore there are subject to the protections of the Federal Fair Housing laws. Zoning laws apply to alcoholics and to recovering alcoholics. The City under the law cannot discriminate against alcoholics or other protected classes and in some cases there has to be a reasonable accommodation.

This FHA act affects land use regulations enacted with a discriminatory intent or that have a discriminatory impact on protected classes. Zoning codes that have the effect of excluding minority groups or that fail to make reasonable accommodations to afford persons with disabilities the opportunity to live in a dwelling are examples of practices open to challenge under the act.

Under 42 U.S.C.A. § 3602(h), “handicap” means, with respect to a person—

(1) a physical or mental impairment which substantially limits one or more of such person's major life activities,

(2) a record of having such an impairment, or

(3) being regarded as having such an impairment,

Handicap does not include current, illegal use of or addiction to a controlled substance. This definition of “handicap” has been interpreted to include recovering alcoholics and drug abusers.

It is my understanding that is not a group home in the normal sense of the term. Instead it is my understanding that the neighbors believe that unrelated individuals are living in the house and someone has claimed that they are alcoholics of some sort, either recovering or active. As indicated above, the City cannot discriminate against persons with handicaps or recovering alcoholics. Further if the persons who do live in the house meet the definition of handicapped and if they ask for a reasonable accommodation, then the City would have see if there is a reasonable accommodation that would alleviate the situation.

The real issue in the City is what are they being used for? If they are being used as multifamily or boarding houses, then the City can take action. If they are being used as a single family house, then it becomes much more complicated because of the very limited definition that the City has for who may live in a single family house. Patricia Kidd has indicated that there are many instances in the City of more than 2 unrelated individuals living together such as around the college and other places. Patricia Kidd has not said this directly but her argument seems to be if the City allows 3 or more college students or other 3 or more unrelated individuals to live together, then how can the City attempt to enforce its zoning laws against recovering alcoholics who are living together? If the City only enforces its family definition against recovering alcoholics then that is discrimination. That is the impasse that exists in this situation.

The main problem that exists is the City’s definition of a Family. The City’s definition is “Family - a single individual living upon the premises as a separate housekeeping unit, or a collective body of two or more adult persons related by blood, marriage or legal adoption, or not more than two adult persons not so related, living together in a single dwelling unit as a single housekeeping unit.”

I talked to Joe about this and he reiterated what he has said for some time. Our current Family definition is not enforceable under the law. I don’t disagree with him. It seems to me that Council must change the definition of Family so that it is enforceable and so that it meets the realities of the way people currently live in Painesville and in other communities. The following are selected definitions of Family that that used by other Cities in the greater Cleveland area:

South Euclid

"Family" means an individual or two or more persons related by blood, marriage, guardianship or legal adoption, living together as a single housekeeping unit within a dwelling unit. A family may also consist of not more than three unrelated persons. Members of a licensed charitable organization, persons conforming to Section 710.02(g) of these Codified Ordinances and members of a protected class of handicapped persons under the applicable Federal Fair Housing Amendments Act of 1988 (42 USC 3601 et seq.) are excepted. When three unrelated persons live together in a single housekeeping unit, one shall be designated as the head of household.

Broadview Heights

“Family" means any number of individuals living, sleeping, cooking and eating together on premises as a single housekeeping unit, provided that such term shall not include any group of individuals in excess of four in number, the majority of whom are not related to one another, either by consanguinity or propinquity.

Mayfield Heights, Ohio

Family. "Family" means any number of individuals living and cooking together on the premises as a single housekeeping unit.

Lakewood, Ohio

FAMILY means an individual or two (2) or more persons living together as a single housekeeping group in a dwelling unit. A “single housekeeping group” exists where the group of individuals share expenses and labor related to the maintenance of the dwelling unit and are living and eating together as a household. “Family” shall not include an individual occupying a rooming unit nor a group of unrelated individuals occupying a rooming house.

Any one of these definitions would work much better than our current definition and I think that Lakewood’s definition is especially well written and it would help with our current situations.

Finally, based on the above, we cannot use the City’s Family definition to stop what is going on at [ADDRESS]. However, if we can prove that it is being used as a rooming or boarding house, then we can cite them into court for violating our zoning laws for using the house as a rooming house in a single family area. If it is being used as a rooming or boarding house, then we will have to deal with any issues that might be raised if a violation of fair housing is claimed. In order to attempt to prove that it is being used as a rooming or boarding house, it would be necessary for the City to conduct an investigation as to all of the facts as to how the house is being used. If Jim Behrens has info about how the house is used, then the City should take a statement from him that sets forth what facts he has about the use of the house. The City could also interview the current people who live at the house and also the owner of the house to determine how it is being used. If the owner won’t let the interior of the house be inspected, then it may also be possible to obtain a search warrant if there is probable cause to show that the house is being used as a rooming house. Once the City has all of the facts that it can gather about the use of this house, then the City will have to determine if it has sufficient evidence to prove that the house is being used in violation of the zoning laws as it relates to rooming or boarding houses.

I hope this helps.

If you have any questions, please give me a call.

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