

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

H & J CONSULTING SERVICES, a)
Georgia limited liability corporation, d/b/a)
ALPHA HOUSE FOR MEN; CSJ)
RECOVERY SYSTEMS, INC., a Georgia)
S corporation, d/b/a ALPHA HOUSE FOR)
MEN; RICK MARTIN, in his individual)
capacity; HAROLD HINCHMAN, in his)
individual capacity; RYAN D.; TRACY L.;)
and DONNIE T.,)

Plaintiffs,)

v.)

CITY OF GAINESVILLE, GEORGIA,)
a body corporate,)

Defendant.)

CIVIL ACTION FILE
NO.: 2:08-CV-0028-WCO

ANSWER AND DEFENSES

COMES NOW defendant the City of Gainesville, Georgia, by and through
counsel, and files its answer and defenses to plaintiffs' complaint as follows:

FIRST DEFENSE

Plaintiffs' complaint fails to state a claim against defendant upon which
relief can be granted.

SECOND DEFENSE

Responding to the specifically numbered paragraphs of the complaint, defendant answers as follows:

RESPONDING TO “PRELIMINARY STATEMENT”

The allegations in the unnumbered paragraph of the complaint following “Preliminary Statement” constitute a statement of the relief plaintiffs seek, and as such, require no response from defendant. Insofar as the paragraph alleges or implies that the complaint states a cause of action against defendant, the paragraph is denied.

RESPONDING TO “JURISDICTION AND VENUE”

1.

Defendant admits the allegations in paragraph 1 of the complaint.

2.

The allegations in paragraph 2 of the complaint constitute a statement of the relief plaintiffs seek, and as such, require no response from defendant. Insofar as the paragraph alleges or implies that the complaint states a cause of action against defendant, the paragraph is denied.

3.

Defendant admits the allegations in paragraph 3 of the complaint.

RESPONDING TO "PARTIES"

4.

Defendant can neither admit nor deny the allegations in paragraph 4 of the complaint for want of sufficient information to form a belief as to the truth thereof, and puts plaintiffs on strict proof of the same.

5.

Defendant can neither admit nor deny the allegations in paragraph 5 of the complaint for want of sufficient information to form a belief as to the truth thereof, and puts plaintiffs on strict proof of the same.

6.

Defendant can neither admit nor deny the allegations in paragraph 6 of the complaint for want of sufficient information to form a belief as to the truth thereof, and puts plaintiffs on strict proof of the same.

7.

Defendant can neither admit nor deny the allegations in paragraph 7 of the complaint for want of sufficient information to form a belief as to the truth thereof, and puts plaintiffs on strict proof of the same.

8.

Defendant can neither admit nor deny the allegations in paragraph 8 of the

complaint for want of sufficient information to form a belief as to the truth thereof, and puts plaintiffs on strict proof of the same.

9.

Defendant can neither admit nor deny the allegations in paragraph 9 of the complaint for want of sufficient information to form a belief as to the truth thereof, and puts plaintiffs on strict proof of the same.

10.

Defendant can neither admit nor deny the allegations in paragraph 10 of the complaint for want of sufficient information to form a belief as to the truth thereof, and puts plaintiffs on strict proof of the same.

11.

Defendant admits the allegations in paragraph 11 of the complaint.

RESPONDING TO “STATUTORY AND REGULATORY FRAMEWORK”

12.

Paragraph 12 of the complaint purports to contain a statement of law, and as such, requires no response from defendant. Insofar as the paragraph alleges or implies that the complaint states a cause of action against defendant, it is denied.

13.

Paragraph 13 of the complaint purports to contain a statement of law, and as

such, requires no response from defendant. Insofar as the paragraph alleges or implies that the complaint states a cause of action against defendant, it is denied.

14.

Paragraph 14 of the complaint purports to contain a statement of law, and as such, requires no response from defendant. Insofar as the paragraph alleges or implies that the complaint states a cause of action against defendant, it is denied.

15.

Paragraph 15 of the complaint purports to contain a statement of law, and as such, requires no response from defendant. Insofar as the paragraph alleges or implies that the complaint states a cause of action against defendant, it is denied.

16.

Paragraph 16 of the complaint purports to contain a statement of law, and as such, requires no response from defendant. Insofar as the paragraph alleges or implies that the complaint states a cause of action against defendant, it is denied.

17.

Paragraph 17 of the complaint purports to contain a statement of law, and as such, requires no response from defendant. Insofar as the paragraph alleges or implies that the complaint states a cause of action against defendant, it is denied.

18.

Paragraph 18 of the complaint purports to contain a statement of law, and as such, requires no response from defendant. Insofar as the paragraph alleges or implies that the complaint states a cause of action against defendant, it is denied.

19.

Paragraph 19 of the complaint purports to contain a statement of law, and as such, requires no response from defendant. Insofar as the paragraph alleges or implies that the complaint states a cause of action against defendant, it is denied.

20.

Paragraph 20 of the complaint purports to contain a statement of law, and as such, requires no response from defendant. Insofar as the paragraph alleges or implies that the complaint states a cause of action against defendant, it is denied.

RESPONDING TO “STATEMENT OF FACTS

CITY OF GAINESVILLE GROUP HOME ORDINANCE”

21.

Defendant admits the allegations in paragraph 21 of the complaint.

22.

Defendant admits the allegations in paragraph 22 of the complaint to the extent that this definition pertained to group homes in residential zoning districts.

23.

Defendant admits the allegations in paragraph 23 of the complaint.

24.

Defendant admits the allegations in paragraph 24 of the complaint.

25.

Defendant admits the allegations in paragraph 25 of the complaint.

26.

Defendant admits the allegations in paragraph 26 of the complaint.

RESPONDING TO “ISSUANCE OF NOTICES OF ZONING VIOLATIONS”

27.

Responding to the allegations in paragraph 27 of the complaint, defendant admits that it received complaints from neighbors regarding plaintiffs’ illegal operation of group homes in violation of the zoning ordinance. Defendant can neither admit nor deny the remaining allegations in paragraph 27 of the complaint for want of sufficient information to form a belief as to the truth thereof and puts plaintiffs upon strict proof of the same.

28.

Responding to the allegations in paragraph 28 of the complaint, defendant admits that the property located at 1084 Riverside Terrace is located in an R-I

zoning district. Defendant can neither admit nor deny whether 570 A&B Denton Drive is located in R-1 or R-I-A. Defendant denies the remaining allegations in paragraph 28 of the complaint.

29.

Defendant denies the allegations in paragraph 29 of the complaint in the form and manner pled.

30.

Responding to the allegations in paragraph 30 of the complaint, defendant admits that the listed properties have been illegally occupied as group homes since 2005 or 2006. Defendant can neither admit nor deny the remaining allegations in paragraph 30 of the complaint for want of sufficient information to form a belief as to the truth thereof and puts plaintiffs upon strict proof of the same.

31.

Responding to the allegations in paragraph 31 of the complaint, defendant admits that it was aware that the listed properties had been illegally occupied as group homes since 2005 or 2006. Defendant can neither admit nor deny the remaining allegations in paragraph 31 of the complaint for want of sufficient information to form a belief as to the truth thereof and puts plaintiffs upon strict proof of the same.

32.

Defendant denies the allegations in paragraph 32 of the complaint in the form and manner pled.

33.

Responding to the allegations in paragraph 33 of the complaint, defendant admits that it notified plaintiffs that they were in violation of the zoning ordinance for their operation of group homes located at 1084 Riverside Terrace, 606 Ivey Terrace, 550 Ivey Terrace, 425 Northside Drive, and 570 A&B Denton Drive. Defendant can neither admit nor deny the remaining allegations in paragraph 33 of the complaint for want of sufficient information to form a belief as to the truth thereof and puts plaintiffs upon strict proof of the same.

RESPONDING TO “SPECIAL USE PERMIT APPLICATIONS FOR
ALPHA HOUSE FOR MEN”

34.

Responding to the allegations in paragraph 34 of the complaint, defendant admits that a hearing was held before the Gainesville Planning Department on July 10, 2007 to consider plaintiff Rick Martin’s application to rezone 1084 Riverside Terrace from R-I to R-II, with a special use. Defendant denies the remaining allegations in paragraph 34 of the complaint.

35.

Responding to the allegations in paragraph 35 of the complaint, defendant admits that plaintiff Martin requested a rezoning to R-II, with a special use, in order to establish a group home. Responding further, defendant admits that the property has been illegally occupied as a group home since September 2006. Defendant can neither admit nor deny the remaining allegations in paragraph 35 of the complaint for want of sufficient information to form a belief as to the truth thereof and puts plaintiffs upon strict proof of the same.

36.

Defendant denies the allegations in paragraph 36 of the complaint.

37.

Defendant denies the allegations in paragraph 37 of the complaint in the form and manner pled.

38.

Defendant denies the allegations in paragraph 38 of the complaint in the form and manner pled.

39.

Defendant denies the allegations in paragraph 39 of the complaint in the form and manner pled.

40.

Responding to the allegations in paragraph 40 of the complaint, defendant admits that a hearing was held before the Gainesville Planning and Appeals Board on July 10, 2007 to consider plaintiff Martin's application for a special use permit. Defendant denies the remaining allegations in paragraph 40 of the complaint.

41.

Responding to the allegations in paragraph 41 of the complaint, defendant admits that plaintiff Martin requested special use permit within R-II in order to establish a group home. Responding further, defendant admits that the property has been illegally occupied as a group home since September 2006. Defendant can neither admit nor deny the remaining allegations in paragraph 41 of the complaint for want of sufficient information to form a belief as to the truth thereof and puts plaintiffs upon strict proof of the same.

42.

Defendant denies the allegations in paragraph 42 of the complaint

43.

Defendant denies the allegations in paragraph 43 of the complaint in the form and manner pled.

44.

Defendant denies the allegations in paragraph 44 of the complaint in the form and manner pled.

45.

Defendant denies the allegations in paragraph 45 of the complaint in the form and manner pled.

46.

Responding to the allegations in paragraph 46 of the complaint, defendant admits that the Gainesville City Council considered plaintiff Martin's applications for 680 Hillcrest Avenue and 1084 Riverside Terrace on August 7, 2007. Defendant denies the remaining allegations in paragraph 46 of the complaint in the form and manner pled.

47.

Defendant denies the allegations in paragraph 47 of the complaint in the form and manner pled.

48.

Defendant denies the allegations in paragraph 48 of the complaint in the form and manner pled.

49.

Responding to the allegations in paragraph 49 of the complaint, defendant admits that it issued a notice to Martin to close and vacate the properties located at 1084 Riverside Drive and 680 Hillcrest within 60 days. Defendant denies the remaining allegations in paragraph 49 of the complaint in the form and manner pled.

50.

Responding to the allegations in paragraph 50 of the complaint, defendant admits that it received a letter from Steven G. Polin dated September 7, 2007, and addressed to the Mayor, which asserted allegations under the Fair Housing Act with regard to Alpha House for Men and made various requests of the City. Defendant denies the remaining allegations in paragraph 50 of the complaint in the form and manner alleged.

51.

Responding to the allegations in paragraph 51 of the complaint, defendant admits that the City Attorney responded to the letter from Polin regarding Alpha House for Men. Defendant denies the remaining allegations in paragraph 51 of the complaint in the form and manner pled.

52.

Responding to the allegations in paragraph 52 of the complaint defendant admits that it issued a citation to Martin on or about October 23, 2007 for illegally operating a group home at 1084 Riverside Drive and 680 Hillcrest Avenue. Defendant denies the remaining allegations in paragraph 52 of the complaint in the form and manner pled.

53.

Defendant can neither admit nor deny the allegations in paragraph 53 of the complaint for want of sufficient information to form a belief as to the truth thereof and puts plaintiffs upon strict proof of the same.

RESPONDING TO “AGORA HOUSE FOR MEN”

54.

Responding to the allegations in paragraph 54 of the complaint, defendant admits that Harold Hinchman applied for special use permits in June 2007 for properties located at 606 Ivey Terrace, 550 Ivey Terrace, and 425 Northside Drive in order to establish three separate group homes. Defendant can neither admit nor deny the remaining allegations in paragraph 54 of the complaint for want of sufficient information to form a belief as to the truth thereof and puts plaintiffs upon strict proof of the same.

55.

Responding to the allegations in paragraph 55 of the complaint, defendant admits that on August 14, 2007, the Planning and Appeals Board approved plaintiff Hinchman's request to withdraw the application for a special use permit for the property located at 550 Ivey Terrace. Defendant can neither admit nor deny the remaining allegations in paragraph 55 of the complaint for want of sufficient information to form a belief as to the truth thereof and puts plaintiffs upon strict proof of the same.

56.

Responding to the allegations in paragraph 56 of the complaint, defendant admits that on August 14, 2007, the Gainesville Planning and Appeals Board considered plaintiff Hinchman's application for a special use permit for the property at 425 Northside Drive, located in the R-II zoning district. Defendant denies the remaining allegations in paragraph 56 of the complaint.

57.

Responding to the allegations in paragraph 57 of the complaint, defendant admits that plaintiff Hinchman requested a special use permit within the R-II zoning district to establish a group home. Responding further, defendant states that the dwelling has been illegally occupied as a group home since June 2007.

Defendant can neither admit nor deny the remaining allegations in paragraph 57 of the complaint for want of sufficient information to form a belief as to the truth thereof and puts plaintiffs upon strict proof of the same.

58.

Defendant denies the allegations in paragraph 58 of the complaint in the form and manner pled.

59.

Defendant denies the allegations in paragraph 59 of the complaint in the form and manner pled.

60.

Defendant denies the allegations in paragraph 60 of the complaint in the form and manner pled.

61.

Defendant admits the allegations in paragraph 61 of the complaint.

62.

Responding to the allegations in paragraph 62 of the complaint, defendant admits that plaintiff Hinchman requested a special use permit within the R-II zoning district to establish a group home. Responding further, defendant states that the dwelling has been illegally occupied as a group home since June 2007.

Defendant can neither admit nor deny the remaining allegations in paragraph 62 of the complaint for want of sufficient information to form a belief as to the truth thereof and puts plaintiffs upon strict proof of the same.

63.

Defendant denies the allegations in paragraph 63 of the complaint in the form and manner pled.

64.

Defendant denies the allegations in paragraph 64 of the complaint in the form and manner pled.

65.

Defendant denies the allegations in paragraph 65 of the complaint in the form and manner pled.

66.

Defendant admits the allegations in paragraph 66 of the complaint.

67.

Defendant admits the allegations in paragraph 67 of the complaint.

68.

Defendant admits the allegations in paragraph 68 of the complaint.

69.

Defendant denies the allegations in paragraph 69 of the complaint in the form and manner pled.

70.

Defendant denies the allegations in paragraph 70 of the complaint in the form and manner pled.

71.

Defendant admits the allegations in paragraph 71 of the complaint.

72.

Defendant denies the allegations in paragraph 72 of the complaint in the form and manner pled.

73.

Defendant denies the allegations in paragraph 73 of the complaint in the form and manner pled.

74.

Defendant can neither admit nor deny the allegations in paragraph 74 of the complaint for want of sufficient information to form a belief as to the truth thereof and puts plaintiffs upon strict proof of the same.

75.

Defendant can neither admit nor deny the allegations in paragraph 75 of the complaint for want of sufficient information to form a belief as to the truth thereof and puts plaintiffs upon strict proof of the same. To the extent a response is required or to the extent paragraph 75 is intended to imply some liability on the part of defendant, all allegations are denied.

76.

Defendant can neither admit nor deny the allegations in paragraph 76 of the complaint for want of sufficient information to form a belief as to the truth thereof and puts plaintiffs upon strict proof of the same.

77.

Defendant can neither admit nor deny the allegations in paragraph 77 of the complaint for want of sufficient information to form a belief as to the truth thereof and puts plaintiffs upon strict proof of the same.

78.

Responding to the allegations in the first numbered paragraph 79 of the complaint, defendant admits that it issued a citation to plaintiff Hinchman on or about November 28, 2007 for illegally operating a group home at 425 Northside Drive, 550 Ivey Terrace, and 606 Ivey Terrace. Defendant denies the remaining

allegations in the first numbered paragraph 79 of the complaint in the form and manner pled.

79.

Defendant can neither admit nor deny the allegations in the second numbered paragraph 79 of the complaint for want of sufficient information to form a belief as to the truth thereof and puts plaintiffs upon strict proof of the same.

RESPONDING TO “AGORA HOUSE REZONING APPLICATION FOR
2306 LIMESTONE PARKWAY, NE”

80.

Defendant can neither admit nor deny the allegations in paragraph 80 of the complaint for want of sufficient information to form a belief as to the truth thereof and puts plaintiffs upon strict proof of the same.

81.

Defendant can neither admit nor deny the allegations in paragraph 81 of the complaint for want of sufficient information to form a belief as to the truth thereof and puts plaintiffs upon strict proof of the same.

82.

Responding to the allegations in paragraph 82 of the complaint, defendant admits that an application was made to the City to rezone properties located at 610

and 614 Grove Street from Light Industrial (L-I) to General Business (G-B). Defendant denies the remaining allegations in paragraph 82 of the complaint.

83.

Responding to the allegations in paragraph 83 of the complaint, defendant admits that an application was made to the City's Planning and Appeals Board to rezone properties located at 610 and 614 Grove Street from Light Industrial (L-I) to General Business (G-B). Defendant denies the remaining allegations in paragraph 83 of the complaint.

84.

Responding to the allegations in paragraph 84 of the complaint, defendant admits that the Planning and Appeals Board voted to approve the application to rezone 610 and 614 Street, subject to conditions. Defendant denies the remaining allegations in paragraph 84 of the complaint.

85.

Defendant admits the allegations in paragraph 85 of the complaint.

86.

Responding to the allegations in paragraph 86 of the complaint, defendant admits that several citizens spoke in opposition to the rezoning application for 610

and 614 Grove Street. Defendant denies the remaining allegations in paragraph 86 of the complaint in the form and manner pled.

87.

Defendant denies the allegations in paragraph 87 of the complaint in the form and manner pled.

88.

Responding to the allegations in paragraph 88 of the complaint, defendant admits that Council Member Wangemann made a motion to deny the rezoning application. Responding further, Council Member Wangemann commended Mr. Hinchman for his desires to rehabilitate but stated that he had concerns about the location and number of occupants. Defendant denies the remaining allegations in paragraph 88 of the complaint in the form and manner pled.

89.

Defendant denies the allegations in paragraph 89 of the complaint in the form and manner pled.

90.

Defendant denies the allegations in paragraph 90 of the complaint.

91.

Defendant denies the allegations in paragraph 91 of the complaint.

92.

Defendant denies the allegations in paragraph 92 of the complaint.

93.

Defendant denies the allegations in paragraph 93 of the complaint.

94.

Defendant denies the allegations in paragraph 94 of the complaint.

95.

Defendant denies the allegations in paragraph 95 of the complaint.

96.

Defendant denies the allegations in paragraph 96 of the complaint.

97.

Defendant denies the allegations in paragraph 97 of the complaint in the form and manner pled.

98.

Defendant denies the allegations in paragraph 98 of the complaint.

99.

Defendant denies the allegations in paragraph 99 of the complaint.

RESPONDING TO “VI. CLAIMS FOR RELIEF

COUNT I FAIR HOUSING ACT”

100.

Responding to the allegations in paragraph 100 of the complaint, defendant incorporates by reference as if fully set forth herein its answers and responses previously made to paragraphs 1 through 99 of the complaint.

101.

Defendant denies the allegations in paragraph 101 of the complaint, including subparagraphs (a) through (f) thereof.

RESPONDING TO “COUNT II AMERICANS WITH DISABILITIES ACT”

102.

Responding to the allegations in paragraph 102 of the complaint, defendant incorporates by reference as if fully set forth herein its answers and responses previously made to paragraphs 1 through 101 of the complaint.

103.

Defendant can neither admit nor deny the allegations in paragraph 103 of the complaint for want of sufficient information to form a belief as to the truth thereof and puts plaintiffs upon strict proof of the same.

104.

Defendant can neither admit nor deny the allegations in paragraph 104 of the complaint for want of sufficient information to form a belief as to the truth thereof and puts plaintiffs upon strict proof of the same.

105.

Defendant admits the allegations in paragraph 105 of the complaint.

106.

Defendant denies the allegations in paragraph 106 of the complaint, including subparagraphs (a) through (g) thereof.

107.

Responding to the unnumbered paragraph beginning with “WHEREFORE” following paragraph 106 of the complaint, defendant denies the allegations in the paragraph including subparagraphs (1) through (9) thereof, and further denies that plaintiffs are entitled to any relief requested either in form or amount.

108.

All other allegations in the complaint not hereinbefore specifically responded to are hereby denied.

THIRD DEFENSE

Any and all actions taken by defendant that form the basis of plaintiffs' complaint were taken without actual malice or actual intent to cause injury to plaintiffs.

FOURTH DEFENSE

At all times relevant to the complaint, defendant acted in and exercised its authority in good faith.

FIFTH DEFENSE

Defendant did not breach any duty owed to plaintiffs.

SIXTH DEFENSE

Plaintiffs lack standing to assert some or all of the causes of action listed in their complaint.

SEVENTH DEFENSE

Any constitutional objections by plaintiffs to the actions taken by defendant concerning plaintiffs' applications, and any issues pertaining thereto, which are now raised for the first time in the complaint, are barred.

EIGHTH DEFENSE

The actions taken by defendant with respect to plaintiffs' applications were substantially related to the public health, safety, morality, and general welfare of the citizens of the City of Gainesville, Georgia.

NINTH DEFENSE

No acts or omissions on the part of defendant either proximately caused or contributed to any injury or damages allegedly incurred by plaintiffs and, therefore, plaintiffs have no right of recovery against defendant.

TENTH DEFENSE

To the extent as may be shown by the evidence through discovery, the individual plaintiffs cannot maintain their claims because they are not handicapped, disabled, or qualified individuals within the meaning of the Fair Housing Act or the Americans with Disabilities Act.

ELEVENTH DEFENSE

To the extent as may be shown by the evidence through discovery, H & J Consulting Services, CSJ Recovery Systems, Inc., Rick Martin, and Harold Hinchman cannot maintain their claims because their "residents" are not handicapped or disabled within the meaning of the Fair Housing Act or the Americans with Disabilities Act.

TWELFTH DEFENSE

Defendant has not intentionally discriminated against plaintiffs in the denial of their applications; therefore, plaintiff cannot recover under the Fair Housing Act or Americans with Disabilities Act.

THIRTEENTH DEFENSE

Plaintiffs' claims are barred because defendant acted in and exercised its authority in accordance with the laws of the State of Georgia and the police power granted it by the laws of the State of Georgia

FOURTEENTH DEFENSE

Defendant did not act with discriminatory intent, nor did its actions result in any discriminatory effect or disparate impact; therefore defendant's actions did not result in the violation of the Fair Housing Act or the Americans with Disabilities Act.

FIFTEENTH DEFENSE

Plaintiffs' claims do not establish the necessary prerequisites for issuance of injunctive or declaratory relief.

SIXTEENTH DEFENSE

The granting of injunctive relief to plaintiffs would be improper as there exists an adequate remedy at law.

SEVENTEENTH DEFENSE

Defendant reserves the right to plead and prove such other defenses as may become known to it during the course of its investigation and discovery.

WHEREFORE, having fully listed their defenses and having fully answered plaintiffs' complaint, defendant prays as follows:

That judgment be entered in favor of defendant and against plaintiffs;

That the cost of this action, including attorney's fees, be cast against plaintiffs; and

That the Court grant other and further relief as it may deem just and proper.

FREEMAN MATHIS & GARY, LLP

/s/ Dana K. Maine

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing **ANSWER AND DEFENSES** to the Clerk of Court using the CM/ECF system which will automatically send electronic mail notification of such filing to counsel of record who are CM/ECF participants and mailed by United States Postal Service, first-class postage prepaid, a paper copy of the same document to counsel of record who are non-CM/ECF participants. Counsel of record is:

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This 26th day of March, 2008.

/s/ Dana K. Maine
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