

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
SOUTHERN DIVISION**

THE GATHERING TREE	)	
d/b/a EDEN VILLAGE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No.: 19-3261
	)	
CITY OF SPRINGFIELD, MISSOURI,	)	JURY TRIAL DEMANDED
<i>Serve Mayor Ken McClure:</i>	)	
840 N. Boonville Ave.,	)	
Springfield, Missouri 65802	)	
	)	
Defendant.	)	

**COMPLAINT**

**COMES NOW** Plaintiff, The Gathering Tree d/b/a Eden Village, by and through its attorneys of record, Hall Ansley, P.C., and for its cause of action against the City of Springfield, Missouri, states, alleges and avers to the Court as follows:

**PRELIMINARY STATEMENT**

1. This action is brought under the Fair Housing Act (“FHA”), as amended, 42 U.S.C. § 3604 *et seq.*, and Title II of the Americans with Disabilities Act (“ADA”), 42 U.S.C. §12131, *et seq.*, as amended, seeking an order that Defendant City of Springfield grant Plaintiff’s rezoning application to rezone approximately five (5) acres of property generally located at 3303 West Division Street, Springfield, Greene County, Missouri, from a Light Industrial District (“LI”) to a Commercial Service District (“CS”) and to establish a Conditional Overlay District No. 171. Plaintiff also seeks damages, costs and attorney fees.

## **JURISDICTION AND VENUE**

2. This Court has jurisdiction of this action under 28 USC § 1331 and 1345, and 42 U.S.C § 12133. This Court may grant the relief sought in this action pursuant to 42 U.S.C. § 12133 and 28 U.S.C. § 2201 and 2202.

3. This Court also has jurisdiction pursuant to 42 U.S.C. § 3613(a).

4. Venue is proper in this district pursuant to 28 U.S.C. § 1391 in that all of the claims and events giving rise to this action occurred in the district and the Defendant conducts operations in Greene County, Missouri.

## **PARTIES**

5. Plaintiff The Gathering Tree d/b/a Eden Village (“Plaintiff” or “Eden Village”) is a Missouri non-profit corporation organized and existing under Missouri law.

6. Eden Village has standing to bring the present action. *See Village of Arlington Heights v. Metropolitan Housing Development Corporation*, 429 U.S. 252 (1977); *see also Havens Realty Corp. v. Coleman*, 455 U.S. 363, 372 (1982); *Warth v. Seldin*, 422 U.S. 490, 505-06 (1975); *see also Park View Height Corp. v. City of Black Jack*, 467 F.2d 1208 (8<sup>th</sup> Cir. 1972).

7. Defendant the City of Springfield, Missouri (“Defendant” or “Springfield”) is Constitutional Charter City existing as a municipal corporation under Missouri law.

## **FACTS**

8. Springfield is governed by a Mayor, Ken McClure, and a Council made up of eight (8) members. The Mayor and Council vote on pending bills.

9. Pursuant to Springfield’s Code section 36-367, the zoning classification of property may not be changed unless there is a favorable vote of two-thirds of the members of

City Council when thirty (30%) of neighboring landowners protest the proposed change by a document that is duly signed and acknowledged.

10. Chapter 36, Section 36-303(26) of Springfield's Land Development Code provides:

*Travel trailer, camper, recreational vehicle, and other trailer parking.* The parking of a travel trailer, camper, or recreational vehicle for overnight accommodations or dwelling purposes in any district shall be prohibited except when such travel trailer, camper, or recreational vehicle is located in a licensed campground or recreational vehicle park. The parking or storing of a travel trailer, camper or recreational vehicle other than a mobile home in any district not in a licensed campground or recreational vehicle park, shall be permitted provided that no living quarters shall be maintained while such travel trailer, camper or recreational vehicle is parked or stored. No travel trailer, camper, recreational vehicle or any other trailer shall be parked in the required front yard of a lot or tract of land in any residential district or a lot or tract of land used for residential purposes in any other district except in a driveway leading to a required off-street parking space for a single-family detached, single-family semi-detached, duplex or townhouse dwelling unit or mobile home on an individual lot.

11. Campgrounds and Recreational Vehicle Parks are permitted under Springfield's Land Development Code in areas zoned as "Commercial Services Districts." Land Development Code of the City of Springfield at § 36-423.

12. A park model RV (PMRV) is a towable RV designed to provide temporary living quarters. PMRVs are built on a single trailer chassis, mounted on wheels, and have a gross trailer area not exceeding 400 square feet in the set-up mode. PMRVs are self-propelled or permanently towable by a light duty truck and are designed primarily not for use as a permanent dwelling but as a temporary living quarters for recreational, camping, travel or seasonal use. PMRVs are certified by their manufacturers to comply with the American National Standards Institute (ANSI) A119.5 Park Model Recreational Vehicle Standard.

13. PMRVs are excluded from the definition of a manufactured home under the regulations of the U.S. Department of Housing and Urban Development (HUD) specifically because they are a type of RV. 24 C.F.R. § 3282.8(g).

14. According to the United States Interagency Council on Homelessness, “[p]eople with disabilities are disproportionately represented among all people experiencing homelessness.” United States Interagency Council on Homelessness, “Homelessness in America: Focus on Chronic Homelessness Among People with Disabilities” at p. 1 (August 2018) available at: [https://www.usich.gov/resources/uploads/asset\\_library/Homelessness-in-America-Focus-on-chronic.pdf](https://www.usich.gov/resources/uploads/asset_library/Homelessness-in-America-Focus-on-chronic.pdf) (last accessed June 26, 2019).

15. “On any given day nearly one-quarter (24%) of individuals experiencing homelessness (86,962 of 369,081 individuals) are people with disabilities who met the federal definition of experiencing chronic homelessness.” *Id.*

16. Eden Village seeks to provide housing for the chronically homeless and those disqualified from most all other housing options. To this end, Eden Village develops property and places PMRVs to be rented to the disabled homeless. These PMRVs are placed on campgrounds and recreational vehicle parks owned and operated by Eden Village.

17. Eden Village attempts to provide its residents with a safe and secure environment conducive to their well-being as well as a place they can live independently.

18. Those eligible for Eden Village’s program include adults from Greene County who have an Axis I mental health diagnosis or physical disability, have a history of homelessness and as a result of these previous issues, are high utilizers of Green County resources such as 9-1-1 calls, ambulance services, emergency room services, police engagement, county shelter services, incarceration for violations like trespassing, vagrancy, public intoxication, and/or

panhandling. Individuals selected to live in an Eden Village development represent some of the most vulnerable individuals in the Greene County community. There are currently nearly eighty (80) individuals on the waiting list for Eden Village's program.

19. Eden Village has already successfully developed one PMRV community in Springfield. This area, known as Eden Village I, is an RV park where PMRVs have been parked and permitted by Springfield.

20. Residents of an Eden Village community pay rent monthly based on their ability to pay.

21. Eden Village received a pledge of land from Jet View, LLC providing for the gift of approximately five (5) acres of property located at 3303 W. Division St., Springfield, Missouri 65802 contingent on the development of an Eden Village Community. The property was, and is, zoned light industrial or LI. In order to finalize the pledge and develop the property into an Eden Village Community the charity needed to have the property rezoned to a Commercial Services District.

22. Eden Village undertook the steps necessary to have the property rezoned to effectuate the pledge. To that end, Eden Village enlisted experts, paid fees and costs, and developed plans.

23. In furtherance of the pledge, Jet View, LLC sought to have the property rezoned and filed a request with Springfield.

24. Accompanying the rezoning request was a letter from Eden Village urging support for the rezoning request, mentioning the intended use of the property, and referencing Eden Village's history of providing housing for disabled persons. A true and correct copy of the letter is attached hereto as Exhibit A and incorporated herein by reference.

25. Springfield staff developed a Development Review Staff Report recommending approval of the rezoning request. A true and correct copy of the Development Review Staff Report is attached hereto as Exhibit B and incorporated herein by reference.

26. On or about April 11, 2019, Springfield's Planning and Zoning Commission held a public hearing regarding the rezoning request. Records of the proceeding reflect that the Chief Operating Officer for Eden Village, Nate Schlueter, spoke regarding the intended use of the property for individuals who are 100% disabled and chronically homeless.

27. After the hearing on April 11, 2019, the Planning and Zoning Commission of Springfield unanimously recommended that the rezoning request be approved.

28. On or about April 30, 2019, Council Member Ferguson sponsored Council Bill No. 2019-111 approving and effectuating the rezoning request.

29. On or about May 6, 2019, Council had a first reading for Bill 2019-111.

30. On or about May 17, 2019, Mary Lilly Smith, the Planning and Development Director for Springfield, forwarded the Mayor and City Council a memorandum concerning Council Bill 2019-111 which would rezone the subject property. The memorandum references that "much of the discussion on this case has revolved around the proposed use of the property as Eden Village II." A true and correct copy of this memorandum is attached hereto as Exhibit C and incorporated herein by reference.

31. Smith's memorandum states that "from a land use perspective, staff concludes that Commercial Services zoning is appropriate for this 5-acre tract."

32. On or about May 21, 2019, Jet View, LLC executed a letter regarding the intention to donate the property to Plaintiff in furtherance of the development of an Eden Village community.

33. On or about May 30, 2019, Council had a second reading for Bill 2019-111. The Bill was tabled until June 3, 2019.

34. On or about June 3, 2019, during discussion of the Bill, Council Member Ferguson then asked about tabling the proposal indefinitely. The City Attorney indicated that an indefinite tabling would be unprecedented. The Bill was ultimately tabled until the next meeting.

35. After Bill 2019-111 was tabled again at the June 3, 2018 meeting, Eden Village submitted a letter requesting reasonable accommodations on behalf of its disabled clients. A true and correct copy of this letter is attached as Exhibit D and incorporated herein by reference.

36. Bill 2019-111 was brought up again at Springfield's June 17, 2019 Council Meeting. At the meeting rezoning application was denied by one vote. The vote was 5-3 with McGull, Ferguson, and McClure in opposition.

37. Mayor McClure discussed his vote with the Springfield News-Leader on June 18, 2019. Mayor McClure is quoted as follows: "I had been inclined all along to support this. What made me change my mind was the filing they made with the city in early June requesting reasonable accommodation under the Americans with Disabilities Act." He continued, "I viewed that as basically being threatening. We still had this zoning request pending and they filed this request under the ADA."

38. Eden Village has applied for a grant related to the development of the property totaling \$1,000,000. Because of Springfield's actions, as described herein, Eden Village lost eligibility for the grant.

39. On or about July 15, 2019, members of Plaintiff's Board, Plaintiff's Chief Operating Officer, and its counsel met with members of Springfield's staff and Springfield's

Mayor concerning the rezoning request. At the meeting the Mayor reiterated that his opposition to rezoning stemmed from Eden Village's letter requesting reasonable accommodations.

**FIRST CAUSE OF ACTION**  
(FAIR HOUSING ACT VIOLATIONS, 42 U.S.C. § 3604)

40. Eden Village repeats and realleges all allegations contained in the preceding paragraphs as though fully set forth herein.

41. The people being served by Eden Village have impairments which substantially limit their major life activities, have a record of having such impairments, or are regarded as having such impairments. The people served by Eden Village are handicapped under the FHA and are thus covered by the statute. 42 U.S.C. § 3602(h).

42. As a provider of housing to people with mental illnesses who have been injured by a discriminatory zoning practice, Eden Village is an "aggrieved person" under the FHA. 42 U.S.C. § 3602(i).

43. Eden Village, as a not-for-profit provider of housing for people with mental illnesses, has standing to bring this action pursuant to the FHA. 42 U.S.C. § 3604(f)(2).

44. Springfield's land use actions are covered under the FHA. 42 U.S.C. § 3604.

45. Eden Village's Campground and RV Park is a dwelling as defined by 42 U.S.C. § 3602(b).

46. The FHA makes it unlawful to "discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap . . ." 42 U.S.C. § 3604(f)(1).

47. The FHA further provides that it is unlawful to "discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of

services or facilities in connection with such dwelling because of a handicap . . .” 42 U.S.C. § 3604(f)(2).

48. Based on the sequence of events and the fact that Springfield applied different procedural and substantive criteria to the rezoning application than the criteria used to evaluate other similarly situated rezoning projects not providing services to the handicapped, Springfield has engaged in intentional discrimination on the basis of disability in violation of the FHA.

49. By allowing illegal prejudices of the Mayor, members of Council, and the community to influence its decision-making process regarding the rezoning application, Defendant has engaged in intentional discrimination on the basis of disability in violation of the FHA.

50. Springfield has violated the FHA by denying the application to rezone the property because of the tenants and their disabilities.

51. Eden Village has been damaged by the actions of Springfield. Eden Village is entitled to injunctive relief, compensatory damages, the costs of bringing this action, and its reasonable attorney fees. 42 U.S.C. § 3613.

**SECOND CAUSE OF ACTION**  
(FAIR HOUSING ACT VIOLATIONS, 42 U.S.C. § 3617)

52. Eden Village repeats and realleges all allegations contained in the preceding paragraphs as though fully set forth herein.

53. The FHA makes it unlawful to “coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in exercise any right grant or protected by section . . . 3604 . . . of this title.” 42 U.S.C. § 3617.

54. Eden Village's request for reasonable accommodations for the housing of disabled persons was protected pursuant to 42 U.S.C. § 3604.

55. Springfield's decision to deny the rezoning application was done to intimidate, threaten or interfere with Eden Village's attempts to seek accommodations and pursue rights granted by the FHA.

56. Springfield's decision to deny the rezoning application was retaliatory in response to Eden Village's request for reasonable accommodations. 24 C.F.R. §100.400; *see also Gallagher v. Magner*, 619 F.3d 823, 838 (8<sup>th</sup> Cir. 2010).

57. Eden Village has been damaged by the actions of Springfield. Eden Village is entitled to injunctive relief, compensatory damages, the costs of bringing this action, and its reasonable attorney fees. 42 U.S.C. § 3613.

**THIRD CAUSE OF ACTION**  
(DISCRIMINATION IN VIOLATION OF TITLE II OF  
THE AMERICANS WITH DISABILITIES ACT, 42 U.S.C. §12131, et seq.)

58. Eden Village repeats and realleges all allegations contained in the preceding paragraphs as though fully set forth herein.

59. Eden Village has standing to bring this action because it seeks to provide housing to qualified individuals with disabilities as that term is defined under 42 U.S.C. § 12131(2).

60. Springfield is a municipality within the state of Missouri, is a "public entity" within the meaning of the ADA, 42 U.S.C. § 12131(1), 28 C.F.R. § 35.104, and is, therefore, subject to Title II of the ADA, 42 U.S.C. § 12131, et seq., and its implementing regulations, 28 CFR Pt. 35.

61. Title II of the Americans with Disabilities Act states that no qualified individual with a disability shall, by reason of such disability, be subject to discrimination by a public entity such as Springfield. 42 U.S.C. § 12132.

62. Springfield's denial of the application to seeking to rezone property to establish housing for people with mental illness in Springfield is an illegal discriminatory act under Title II of the ADA.

63. Consequently, Springfield is intentionally discriminating against Eden Village and qualified people with disabilities in violation of Title II of the Americans with Disabilities Act.

64. Springfield intentionally violated the ADA in denying the rezoning application.

65. Because of the events described herein, Eden Village has suffered damages related to the rezoning application. Eden Village has also suffered damages to the extent it has lost the ability to obtain a grant to develop the property.

66. Eden Village is entitled to an award of compensatory damages, injunctive relief, an award of its reasonable attorney fees, and any costs incurred herein.

**FOURTH CAUSE OF ACTION**  
(RETALIATION IN VIOLATION OF TITLE II OF  
THE AMERICANS WITH DISABILITIES ACT, 42 U.S.C. §12131, et seq.)

67. Eden Village repeats and reallages all allegations contained in the preceding paragraphs as though fully set forth herein.

68. Pursuant to 42 U.S.C. § 12203:

**(a) Retaliation**

No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this chapter or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter.

**(b) Interference, coercion, or intimidation**

It shall be unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this chapter.

**(c) Remedies and procedures**

The remedies and procedures available under sections 12117, 12133, and 12188 of this title shall be available to aggrieved persons for violations of subsections (a) and (b) of this section, with respect to subchapter I, subchapter II and subchapter III of this chapter, respectively.

69. Springfield retaliated against Eden Village for seeking accommodations under the ADA in that a letter requesting accommodations was the basis for the Mayor voting against the rezoning application and causing the rezoning application to fail.

70. Springfield, through its Mayor, threatened, intimidated or attempted to coerce Eden Village and others from enforcing rights under the Americans with Disabilities Act by voting against the rezoning application because Eden Village had sent a letter seeking accommodations pursuant to the Act.

71. Springfield intentionally denied the rezoning application and the development of the Eden Village Community in violation of the ADA.

72. Eden Village is entitled to compensatory damages, injunctive relief, and its reasonable costs and attorney fees.

**JURY TRIAL DEMANDED**

73. Plaintiff requests a jury trial on all issues of fact and law which may be tried to a jury and which are raised by the allegations in this Complaint.

**PRAYER FOR RELIEF**

**WHEREFORE**, it is respectfully requested by Plaintiff that this Court grant the following relief:

- A) A declaration that Springfield has violated the Fair Housing Act and the Americans with Disabilities Act;
- B) An injunction directing Springfield to immediately approve the request for rezoning related to the property described herein;
- C) An award of compensatory damages, costs and attorney fees; and
- D) Such other and further relief as shall be deemed necessary, just and proper.

HALL ANSLEY,  
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