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April 8, 2009

SENT VIA FAX AND FIRST CLASS MAIL

Bradford E. Bullock, Esquire
Law Offices of William M. McKamie, P.C.
645 Lockhill-Selma
San Antonio, TX 78216

Re: Reasonable Accommodation Request
Primary Purpose Homes
1311 Oak Timber Drive
Euless, Texas

Dear Mr. Bullock,

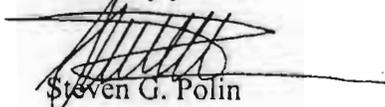
Thank you for bringing to my attention the lateness of my client's submission for a request for a reasonable accommodation as provided by Section 84-86(aj) of the Municipal Code for the City of Euless, Texas.

Please find attached the formal request for a reasonable accommodation made on behalf of my client, Primary Purpose Homes.

While we appreciate the fact that the City has attempted to provide a mechanism to comply with the mandates of the Federal Fair Housing Act by recognizing the need of groups of disabled persons to reside in residential zones within the City of Euless, our compliance with the amendments to the code particularly Section 84-85(aj) does not constitute a waiver of any challenges we may have to the facial or as applied validity of Ordinance No. 1833.

If you need additional information or have any questions, please do not hesitate to contact me.

Sincerely yours,


Steven G. Polin

cc: Sam Kroll

APPLYING FOR A REASONABLE ACCOMMODATION

In accordance with federal and state fair housing laws, the City of Euless adopted Ordinance 1833 for the purpose of providing reasonable accommodations in the City's zoning and land use regulations, policies, and practices when needed to provide an individual with a disability an equal opportunity to use and enjoy a dwelling.

INSTRUCTIONS

1. **Required Submittals:** In addition to materials required under other applicable provisions of the code, an application for reasonable accommodation shall include the following:

- Does the project for which the request for reasonable accommodation's made require another discretionary permit or approval required by any federal or state law or local ordinance? Yes ___ No X
- If the answer to the previous question is "Yes," do you request that the City Manager, or his designated representative, conduct a simultaneous hearing with any other administrative hearings conducted by the City regarding other discretionary permits issued by the City? Yes ___ No X
- Name of Applicant: PRIMARY PURPOSE HOMES
- Is the Applicant: (i) an individual with a disability ___;
(ii) applying on behalf of one or more individuals with a disability X;
(iii) a developer or provider of housing for one or more individuals with a disability X;
(iv) other. (Please describe) _____

(Please check appropriate description)

- Please list the specific exception(s) or modification(s) to the City of Euless' zoning, subdivision or other land use provision, policy or practice requested by the applicant, including the applicable zoning, subdivision or other land use provision, policy or practice. (Attach additional pages as necessary)

SEE ATTACHED

- Please provide documentation that the specific exception or modification requested by the applicant is reasonable and necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy the residence. (Attach additional pages as necessary)

SEE ATTACHED

- Please provide documentation that the individual(s) for whom the reasonable accommodation is sought is/are disabled, as that term is defined by City of Euless, Texas Ordinance No. 1833. (Attach additional pages as necessary)

SEE ATTACHED

2. **City Manager Review of Request:** The City Manager shall issue a written determination to approve, conditionally approve, or deny a request for reasonable accommodation, and the modification or revocation thereof in compliance with Section 84-29(b) within fourteen (14) days of the date of receipt of a completed request for reasonable accommodation, which shall be served on the applicant in person or by certified United States mail. If the City Manager's written determination is not made within the time limits provided herein, the applicant's request for a reasonable accommodation shall be deemed granted.
3. **Notice of Appeal:** In the event of appeal of the City Manager's written determination, applicants shall file with the City Secretary a notice of appeal on the form provided by the City no later than fourteen (14) days following the date the City Manager issues a written determination. Notices of appeal filed after that date shall be considered untimely and the City Manager's written determination shall be considered a final determination.
4. **Consideration of Appeal:** The standard of review on appeal shall be de novo appeal to the City Council. The City Council, acting as the appellate body, may sustain, reverse or modify the decision of the City Manager or remand the matter for further consideration, which remand shall include specific issues to be considered by the City Manager. A final decision regarding an applicant's appeal of the City Manager's written determination regarding a reasonable accommodation shall be made within thirty (30) days after the date the City receives an applicant's notice of appeal, which shall be served on the applicant in person or by certified United States mail. If the City Council does not issue a final decision regarding an applicant's appeal of the City Manager's written determination regarding a reasonable accommodation, the applicant's request for a reasonable accommodation shall be deemed granted.

Please list the specific exception(s) or modification(s) to the City of Euless' zoning, subdivision or other land use provision, policy or practice requested by the applicant, including the applicable zoning, subdivision or other land use provision, policy or practice. (Attach additional pages as necessary)

All residents of Primary Purpose Homes, 1311 Oak Timber Drive, Euless, are persons in recovery from alcoholism and drug addiction. Primary Purpose Homes is requesting the City of Euless treat its residents as a single housekeeping unit as defined in Section 84-85(a) of the City of Euless Municipal Ordinances. Specifically, Primary Purpose Homes is seeking a waiver of the following provision contained in the definition of "single housekeeping unit" which requires "a single written lease with joint use and responsibility for the premises, and the makeup of the household occupying the unit is determined by the residents of the unit rather than the landlord or property manager" and to allow more than five unrelated disabled individuals residing in a single family dwelling be treated the same as "the functional equivalent of a traditional family". Further, if the City does not grant the requested accommodation that it treat the use and residents of 1311 Oak Timber Drive as a "single housekeeping unit" then it is requested that the City waive the application of the classification of "transient dwelling" if it deems that the residents of the Primary Purpose Homes fall within that definition as that term is defined in Section 84-85(a) of the Municipal Code of the City of Euless, Texas.

Please provide documentation that the specific exception or modification requested by the applicant is reasonable and necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy the residence.

As individuals in recovery from alcoholism and substance abuse present and prospective residents of Primary Purpose Homes seek to live in a family type environment which would provide them with emotional and therapeutic support during recovery process. The residents are individuals who cannot live independently without the fear or threat of relapse into active alcoholism and substance abuse. The requested accommodation is necessary to achieve an opportunity for the disabled residents of Primary Purpose Homes to live in a setting which is a self-paced recovery option and it gives them sufficient time for personal psychological growth while avoiding the use of alcohol and other substances. Absent the sobriety setting, the individual residents of Primary Purpose Homes would not be able to live in a supportive environment in a residential area, let alone a single-family residential area. Residency in Primary Purpose Homes provides a useful and often times essential public service by providing a safe and sober living environment, so that its residents can be reintegrated in the world and workforce. A request for accommodation to the City's definition of "single housekeeping unit" is necessary for the present and future residents of Primary Purpose Homes "to enjoy the housing of his or her choice". The residents of Primary Purpose Homes are not "transient" by nature and function and interact with each other much in the same way as "the functional

equivalent of a traditional family.” By living together as the “functional equivalent of a traditional family” and by living with other persons who are in recovery, the residents of Primary Purpose Homes never have to face an alcoholics or addicts deadliest enemy: loneliness.

Please provide documentation that the individual(s) for whom the reasonable accommodation is sought is/are disabled, as that term is defined by the City of Euless, Texas, Ordinance No. 1833 (Attached additional pages as necessary)

In reviewing the recent history of interactions between the City and Primary Purpose Homes, it is our position that it is not necessary to provide the City the requested documentation. The City since the spring of 2008 has engaged in conduct that treats Primary Purpose Homes and its residents as being disabled, i.e., recovery alcoholics and substance abusers, as that term is defined in 24 C.F.R. 100.201. 24 C.F.R. 100.201 defines handicapped in part as follows: “Handicap means, with respect to a person, a physical or mental impairment which substantially limits one or more major life activities; a record of such an impairment; or being regarded as having such an impairment” However, without waiving this objection, the applicant is providing a certification from an officer of Primary Purpose Homes that all its residents are recovering alcoholics and substance abusers and are handicapped as that term is defined by the Federal Fair Housing Act.

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March 25, 2008

SENT VIA FAX AND FIRST CLASS MAIL

Gary McKamie
City Manager
City of Euless
201 N. Ector Drive
Euless, TX 76039-3595



Re: Reasonable Accommodation Request
1311 Oak Timber Drive

Dear Mr. McKamie:

I have been retained by Primary Purpose Homes concerning the alleged zoning violations regarding the use of the aforementioned properties as sober houses. I am writing this letter in response to the letter written by Mike Collins, Director of Planning and Development to Sam Kroll. Mr. Collins advised Mr. Kroll in his letter that the use of 1311 Oak Timber Drive by a group of recovering alcoholics and substance abusers in a non permitted use in a single family district as its use constitutes that of a "Rooming and Boarding House." I do not believe the use of 1311 Oak Timber Drive by a group of recovering addicts and alcoholics constitutes a change from single family use. I would request that enforcement of this alleged notice of violation be held in abeyance until the City makes a determination of my request under the Federal Fair Housing Act for an accommodation which would permit the residents to continue the single family use of the premises.

I am writing this letter to explain to you the Primary Purpose Homes concept, and to request pursuant to the Federal Fair Housing Act that the City of Euless make a reasonable accommodation in the application of its land use ordinances for the aforementioned dwelling. I would appreciate the opportunity to discuss the Fair Housing implications of your proposed action and request that the imposition of any further civil penalties or fines be held in abeyance during this time period.

The use of 1311 Oak Timber Drive to have been an improper use for a single family zone based on Mr. Collins' conclusion that the dwelling was being used a "boarding house" rather than a "family". The City's Zoning Code defines family as "*any number of individuals living together as a single housekeeping unit, in which not more than four individuals are unrelated by blood, marriage or adoption.*"

As you already are aware, the residents of 1311 Oak Timber Drive are recovering alcoholic and addicts. Therefore, for the reasons stated below, Primary Purpose Homes requests pursuant to

the Federal Fair Housing Act that the City of Euless make a reasonable accommodation in the application of its zoning ordinances and other municipal codes so that a group of recovering addicts and alcoholics residing together as a family can be afforded an equal opportunity to use and enjoy a single family dwelling. I also request that if you anticipate finding the aforementioned property's use as a sober living house to be in violation of the City's zoning ordinances or other municipal codes that enforcement of these violations be held in abeyance until this matter can be resolved.

1311 Oak Timber Drive are being used as alcohol and drug free housing for recovering alcoholics and addicts. 1311 Oak Timber Drive is a sober living environment designed to increase self-responsibility and support for persons in recovery. Primary Purpose Homes does not provide a "recovery program" or services. There is no counseling, or therapy offered to the residents. The group behaves like any family and makes group decision based on democratic procedures. Primary Purpose Homes is nothing more than a single family residence.

1311 Oak Timber Drive is not a substance abuse treatment facility, a halfway house, a shelter, a group home nor a residential care facility. There is no treatment, counseling, therapy, or any type of health care service provided. 1311 Oak Timber Drive is not licensed by the State of Texas nor is license required. 1311 Oak Timber Drive, as opposed to a halfway house, residents live there by choice. 1311 Oak Timber Drive is not a halfway house, nor are they a substitute for halfway houses.

1311 Oak Timber Drive is neither a rooming nor a boarding house. The residents of 1311 Oak Timber Drive rent the entire premises rather than a single room. They have access to the entire house and all of the household facilities, and live in the house as any other group of unrelated persons functioning as a single housekeeping unit. The residents of the house share all household responsibilities. They also share in the cooking, shopping, cleaning and general care of the premises. The residents live together purposefully to create a "family" atmosphere, where all aspects of domestic life are shared by the residents. There are no treatment or professional services provided at the premises.

Physically, the house is no different from any other single family house in the neighborhood.

In sum, for the same reasons asserted, we submit that the use of 1311 Oak Timber Drive is not a residential care facility, rooming or boarding house, group home nor halfway-house under any applicable definition. See Oxford House - Evergreen v. City of Plainfield, 769 F. Supp. 1329 (D. N.J. 1991)(Oxford House is not a halfway house. Residents share more than "household responsibilities" and meals. The residents make all house decisions in a democratic fashion. But even more important, the support they lend each other is therapeutic, in the same manner as that of

a well-functioning family. The relationship is not analogous to that between residents of a boarding house).¹

The residents of houses 1311 Oak Timber Drive are considered to be the "functional equivalent" of a family for several reasons. First, all the residents have access to the entire house. Second, all the residents participate equally in the housekeeping functions of the house, *i.e.*, house chores, house finances. Each resident, however, is responsible for his own food and cooking. Third is the quality of the relationship among the residents. The emotional and mutual support and bonding given each resident in support of his recovery from drug addiction and alcoholism is the equivalent to the type of love and support received in a traditional family.

In addition, the residents live in a house operated by Primary Purpose Homes by choice. The choice is usually motivated by the individual's desire not to relapse into drug and/or alcohol use again after that individual has bottomed out, *i.e.*, lost jobs, home or family. It is also motivated by the desire that one must change their lifestyle, the manner in which they conduct their affairs, and the need to become a responsible, productive member of society. The final factor in determining that residents of houses 1311 Oak Timber Drive are the "functional equivalent" of a family is the fact that there is no limit as to how long a resident can stay. Conceivably, an individual can stay in a house operated by Primary Purpose Homes a lifetime if he does not relapse into drug and/or alcohol use, pays his rent on time, and does not engage in disruptive behavior.

¹Also, See Oxford House, Inc., et al. v. Township of Cherry Hill, 799 F. Supp. 450, 452 (D.N.J. 1992), wherein the Court stated:

Oxford Houses are not health care facilities, rehabilitation centers, or supervised halfway houses. They are simply residential dwellings rented by a group of individuals who are recovering from alcoholism and drug addiction . . . No professional treatment, therapy, or paid staff is provided. Unlike a boarding house, where a proprietor is responsible to run and operate the premises, at Oxford House, the residents are responsible for their own food and care as well as for running the home. Because the house must be self-supporting, each of the residents needs a source of income to pay his or her fair share of the expenses.

See, United States v. Borough of Audubon, 797 F. Supp 353, aff'd 968 F.2d 14 (3d Cir. 1992)(Oxford Houses are not health care facilities, rehabilitation centers, or supervised halfway houses. Unlike those facilities, no professional treatment or paid staff are provided. Instead, such houses are simply residential dwellings that are rented by a group of individuals who are recovering from alcoholism or drug addiction.). The Court also held that Oxford House residents are handicapped under the Federal Fair Housing Act, and that the residents drug and/or alcohol addictions did substantially impair one or more of their major life activities.

The residents of 1311 Oak Timber Drive are considered "handicapped" under the 1988 amendments to the Federal Fair Housing Act. See 42 U.S.C. 3600 et seq. Recovering addicts and alcoholics are specifically included within the definition of "handicapped individual." See, 42 U.S.C. 3602(h) and 24 C.F.R. 100.201(a)(2). See, also, City of Edmonds v. Oxford House, Inc., 514 U.S. 725(1995). The Fair Housing Act was amended to include handicapped individuals within its parameters, and to guarantee the ability of these individuals to live in the residence of their choice within the community. Tsombanidis, v. City of West Haven, 180 F.Supp. 2d 262, 282 (D. Conn. 2001); See Oxford House - Evergreen v. City of Plainfield, *supra*. (noting that residents of an Oxford House in Plainfield, New Jersey "are part of a nationally recognized program which, through peer pressure and strict conditions of abstinence, successfully maintains freedom from addiction and improves the lives and opportunities of its participants.") Oxford House, Inc. v. Township of Cherry Hill, 799 F. Supp. 450, 454 (D.N.J. 1992)(There is a shortage of adequate housing in New Jersey for recovering substance abusers and alcoholics. Requiring the closure of 1311 Oak Timber Drive and forcing the residents to leave would be extremely detrimental to their recovery and would substantially increase the likelihood of relapse). As recovering alcoholics and addicts who cannot presently live independently or with their natural families, plaintiffs are individuals with handicaps within the meaning of the Fair Housing Act. City of Plainfield. at 1342.²

Under 42 U.S.C. 3604(f)(1) it is 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 of --

- (A) that buyer or renter
- (B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
- (C) any person associated with that buyer or renter.

As members of a protected class under the Federal Fair Housing Act, the issue of whether the residents of 1311 Oak Timber Drive are in violation of the local zoning ordinances is not relevant to the question of federal law. United States v. Borough of Audubon, 797 F. Supp. 353, aff'd 968 F.2d 14 (3d Cir. 1992). Thus, any allegation that 1311 Oak Timber Drive may have violated a local zoning ordinance does not abrogate its rights in claiming discrimination under the Federal Fair Housing Act. It is well established that the Federal Fair Housing Act prohibits discriminatory land

²With respect to individuals with disabilities, violation of the Fair Housing Act may be shown by either intentional discrimination, discriminatory effect, or a failure to reasonably accommodate. Oxford House - Evergreen v. City of Plainfield at 1343; Oxford House - C v. City of St. Louis, 843 F. Supp. 1556 (E.D. Mo. 1994); Carson v. Rochester Housing Authority, 748 F. Supp 1002, 1007 (W.D. N.Y. 1990).

use decision by municipalities, when such decisions are "ostensibly authorized by local ordinance." Oxford House - Evergreen v. City of Plainfield, supra. (on motion for a preliminary injunction: city's enforcement of zoning ordinance so as to prevent operation of local Oxford House in area zoned for single family residences violated the Federal Fair Housing Act); Association of Relative and Friends of AIDS patients v. Regulation and Permits Administration, 740 F.Supp. 95 (D.P.R. 1990)(government agency's denial of land use permit to open AIDS hospice violated Fair Housing Act); Baxter v. City of Belleville, 720 F.Supp. 720 (S.D. Ill 1989)(on motion for preliminary injunction: city's refusal to issue special use permit under zoning law to develop to remodel building into residence for persons with AIDS violated Fair Housing Act). See also 42 U.S.C. Section 3615 ("any law of a State, a political subdivision, or other jurisdiction that purports to require or permit any action that would be a discriminatory housing practice under this subchapter shall to that extent be invalid [under the Fair Housing Act]").

In addition, for purposes of this section, 42 U.S.C. 3604(f)(3)(B) defines discrimination to include a "refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such [handicapped] person equal opportunity to use and enjoy a dwelling."

The legislative history to the Fair Housing Amendments Act of 1988 ("House Judiciary Report") is explicit as to the effect of the amendments on state and local land use practices, regulations or decisions which would have the effect of discriminating against individuals with handicaps. The amendments prohibit the discriminatory enforcement of land use law to congregate living arrangements among non-related persons with disabilities, such as 1311 Oak Timber Drive, when these requirements are not imposed on families.

[Section 804(f)] would also apply to state or local land use and health and safety laws, regulations, practices or decisions which discriminate against individuals with handicaps. While state and local governments have authority to protect safety and health, and to regulate use of land, that authority has sometimes been sued to restrict the ability of individuals with handicaps to live in communities. This has been accomplished by such as the enactment or imposition of health, safety or land-use requirements on congregate living arrangements among non-related persons with disabilities. Since these requirements are not imposed on families and groups of similar size of unrelated people, these requirements have the effect of discriminating against persons with disabilities.

House Report, p. 24 (footnote omitted). Based on this clear expression of legislative intent, the courts have enjoined the application and enforcement of zoning and health and safety regulations which have a discriminatory impact on group homes for persons with disabilities. City of Plainfield, 769 F. Supp. at 1343-44; Township of Cherry Hill, 799 F. Supp. at 462; Oxford House, Inc. v. Town of Babylon, 819 F. Supp 1179 (E.D.N.Y. 1993); Marbrunak, Inc. v. City of Stowe, 974 F.2d 43 (6th

Cir. 1992); A.F.A.P.S. v. Regulations & Permits Admin., supra at 106-07; Tsombanidis v. City of West Haven, 180 F.Supp. 2d 262, *aff'd in part, rev'd in part*, 352 F.3d 565 (2d Cir. 2003).

It is quite apparent that the City of Eules's efforts to interfere with 1311 Oak Timber Drive through its enforcement activities -- "not imposed on families" -- is a failure to make reasonable accommodations in its zoning ordinances. Thus, the City may not act to prevent those with handicaps from living in recovery housing within its boundaries. A reasonable accommodation in this instance would be for the City to accept the residents of 1311 Oak Timber Drive as the functional equivalent of a family and waive the limitation on the number of unrelated persons who may reside together in a single family dwelling and apply all building and fire codes in the same manner as it applies to single family dwellings for single family purposes.

The reasonable accommodation requirement of the Fair Housing Act draws no distinction between "rules," "policies," and "practices" that are embodied in zoning ordinances and those that emanate from other sources. All are subject to the "reasonable accommodation" requirement. Thus, when a municipality refuses to make a reasonable accommodation in its zoning "rules," "policies," or "practices," and such an accommodation may be necessary to afford handicapped persons an equal opportunity to use and enjoy a dwelling, it violates the reasonable accommodation provision of the act, 42 U.S.C. 3604(f)(3)(B). See United States v. Village of Marshall, 787 F. Supp. 872, 877 (W.D. Wis. 1991)(Congress in enacting the Fair Housing Amendments Act "anticipated that there were rules and regulations encompassing zoning regulations and governmental decision about land use")

Reasonable accommodation has been interpreted by the Courts in cases involving zoning ordinances to mean that a municipality must change some rule that is generally applicable to everyone so as to make its burden less onerous on the person with disabilities. Township of Cherry Hill at 465, ft. 25. See, Casa Marie, Inc. v. Superior Court of Puerto Rico for the District of Arecibo, 752 F. Supp 1152, 1169 (D.P.R.1990), *rev'd on other grounds*, 988 F.2d 252 (1st Cir. 1993)(noting that a court hearing a reasonable accommodation claim under the Fair Housing Act may "adjudge whether compliance with the zoning ordinances may be 'waived'"); Horizon House Development Services v. Township of Upper Southampton, 804 F.Supp. 683, 699-700 (E.D. Pa. 1992), *aff'd mem.*, 995 F.2d 217 (3d Cir. 1993)("affirmative steps are required to change rules or practices if they are necessary to allow a person with a disability to live in a community"). A request for a reasonable accommodation may even encompass a request for non enforcement of a zoning ordinance. Proviso Association of Retarded Citizens v. Village of Westchester, 914 F. Supp 1555, 1561-62 (N. D. Ill. 1996); Tsombanidis, supra.

One of the purposes of the reasonable accommodations provision is to address individual needs and respond to individual circumstances. In this regard, courts have held that municipalities that municipalities must change, waive, or make exception to their zoning rules to afford people with disabilities the same access to housing as those who are without disabilities. Town of Babylon, 819 F. Supp at 1192; Horizon House, 804 F. Supp. at 699; Township of Cherry Hill 799 F. Supp at 461-

63; Village of Marshall, 787 F. Supp at 878; Commonwealth of Puerto Rico, 764 F. Supp. at 224; Tsombanidis, supra.

Here, accommodating 1311 Oak Timber Drive would not cause the City any undue financial or administrative burdens nor would it undermine the purpose which the requirement seeks to achieve. See, Village of Marshall, supra at 877-78 (accommodation is unreasonable if it "undermine[s] the basic purpose which the requirement seeks to achieve"). The Fair Housing Act places an affirmative duty on the municipality to accommodate the needs of persons with disabilities. The Fair Housing Act demands that municipalities such as the City of Euless change the manner in which its zoning ordinances are applied to afford the disabled the same opportunity to housing as those who are not disabled. City of Plainfield, 769 F. Supp at 1344 (accommodation reasonable where it "would not cause undue financial burden to the City").

Permitting 1311 Oak Timber Drive to exist would not significantly compromise the policies reflected in any of the land use ordinances that the City would apply or enforce. Nor is there any significant evidence that such an accommodation would significantly compromise the City's legitimate interests in the protecting the residential character of the surrounding neighborhood. 1311 Oak Timber Drive is not requesting that the City of Euless build housing, rather, 1311 Oak Timber Drive is requesting that the City remove an obstacle to housing. See, Town of Babylon, supra; Huntington Branch, NAACP v. Town of Huntington, 844 F.2d 926, 936 (2d Cir), aff'd 488 U.S. 15 (1988).

If need be, 1311 Oak Timber Drive can demonstrate that the proposed accommodation is reasonable, for the Fair Housing Act requires a showing that the accommodation "may be necessary to afford [handicapped] person[s] equal opportunity to use and enjoy a dwelling." 42 U.S.C. 3604(f)(3)(B). See, Parish of Jefferson v. Allied Health Care, Inc., 1992 U.S. Dist. Lexis 9124 (E.D. La.) (The proper inquiry on a request for a reasonable accommodation is the number of unrelated persons who can reside together is to reasonableness of the request.) The City of Euless, by classifying 1311 Oak Timber Drive as something other than a single family use, is actually enforcing its definition of family in its zoning ordinance by utilizing more stringent requirements on groups of unrelated disabled individuals wishing to live together in a rental property than on individuals related by blood or marriage or a group of unrelated non-disabled persons. Parish of Jefferson, supra (Zoning ordinance limiting the number of unrelated persons residing together as a family to four found to be in violation of the Fair Housing Act since it has the effect of discriminating against groups of handicapped persons by unnecessarily restricting their ability to live in residences of their choice in the community.) Tsombanidis v. City of West Haven, 180 F. Supp. 2d 262 (D.Conn. 2003) aff'd in part, aff'd in part, rev'd in part, 352 F.3d 565 (2d Cir. 2003). (Stringent enforcement of the City's three person rule has a greater adverse impact on disabled persons than non-disabled persons). See also, Groome Resources, Ltd. v. Parish of Jefferson, 234 F.3d 192 (5th Cir. 2000)

1311 Oak Timber Drive residents are individuals who are handicapped by alcoholism or drug abuse. 1311 Oak Timber Drive can demonstrate that the ability of recovering alcoholics and drug

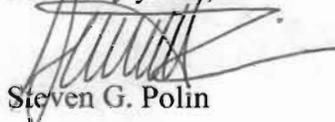
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addicts to live in a supportive drug free environment in a quiet residential area is critical to their recovery.³ These individuals are more likely to need a living arrangement such as the one 1311 Oak Timber Drive provides, wherein groups of unrelated individuals reside together in a residential neighborhood for mutual support during the recovery process. Township of Cherry Hill, 799 F. Supp. at 450. "When that home is also a therapeutic environment critical to maintaining continued recovery from alcohol or drug addiction, eviction is life threatening. Depriving such individuals of housing, or evicting them, would constitute irrational discrimination that may seriously jeopardize their continued recovery," Tsombanidis at 284. See City of Plainfield, 769 F. Supp at 1345.⁴ This action by the City of Euless would completely preclude the opportunity of 1311 Oak Timber Drive to exist within the City and to reside in the dwelling of their choice. It would also prohibit Primary Purpose Homes from providing housing to handicapped persons in recovery from alcoholism and drug abuse. I hope you find this information useful. I would like to discuss this matter with you or any other representative of the City of Euless before it contemplates any further action staff report.

I look forward to discussing ways to resolve this matter with you.

Sincerely yours,



Steven G. Polin

cc: Sam Kroll

³Other programs similar to 1311 Oak Timber Drive have successfully demonstrated the need of recovering individuals to reside in quiet residential areas in order to enhance the recovery process. See Borough of Audubon, 797 F. Supp at 360 (Based on the testimony, we find that the OH-Vassar residents' addictions substantially limit their ability to live independently and to live with their families. Accordingly, we find that the residents are "handicapped" under the Act, and are entitled thereby to the protections of the Act. We do not think that the list of major life activities set forth in the regulation was meant to be all-inclusive. Even if it were, the residents would still satisfy the definition because their inability to live independently constitutes a substantial limitation on their ability to "care for themselves.") City of Plainfield, 769 F. Supp at 1339-40. (In addition to losing their residence, which may in itself be an irreparable injury, plaintiffs would also lose the benefit of their therapeutic and supportive living environment, and may relapse. . . For a non-handicapped individual, the disintegration of a family unit is traumatic for recovering alcoholics and drug addicts, it may be devastating.)

⁴Therefore, any action jeopardizes the recovery process for a group of alcoholics and threatens to push them into relapse causes irreparable harm that justifies preliminary injunctive relief. Sullivan v. City of Pittsburgh, 811 F. 2d 171, 179-80 (3d Cir.), cert. denied, 484 U.S. 180-81 (1987).