



August 7, 2009

VIA FASCIMILE AND FIRST CLASS MAIL

City of Jonesboro
Metropolitan Area Planning Commission
307 Vine Street
Jonesboro, Arkansas 72401
Fax: (870) 336-3036

Hon. Herald Perrin, Mayor
515 West Washington Avenue
Jonesboro, Arkansas 72401

Re: King's Ranch of Jonesboro, Inc.

Dear Members of MAPC and Mayor Perrin:

This letter shall serve as a follow up to King's Ranch of Jonesboro, Inc.'s (hereinafter "King's Ranch") earlier letter dated July 13, 2009 requesting a reasonable accommodation pursuant to the Fair Housing Act. In the event the July 13 letter failed to put you on notice that several of the children represented by King's Ranch are considered handicapped under the Fair Housing Act, the purpose of this letter is to explain in more detail that the City of Jonesboro has an obligation under the FHA to accommodate persons with a handicap – specifically the children of King's Ranch.

As explained in the first letter, the Fair Housing Act ("FHA") 42 U.S.C. § 3601 *et seq.*, requires a municipality to provide a reasonable accommodation to its rules and policies under the Act when such accommodations may be necessary to afford persons with a handicap equal opportunity to use and enjoy a dwelling. Section 3604 (h) of the FHAA defines "handicap" to mean:

- (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,

Many times courts refer to 24 C.F.R. § 100.201(a)(2)(1993) for a list of defining terms used in the definition of a handicapped person.¹ Courts have made clear that individuals with behavioral or mental disorders are handicapped under the FHA and must be accorded full protection from discrimination – including the right to a reasonable accommodation. For example, in *Developmental Services of Nebraska, Inc. v. City of Lincoln*, 504 F. Supp. 2d 714, 725 (D. Neb. 2007), the court held an organization was covered under the FHA because it provided “residential treatment to children and adults with developmental disabilities, mental illnesses, and behavioral challenges.” The organization sought to help children and adults cope with their developmental disabilities and behavioral challenges by gaining the skills, knowledge, and experience “to increasingly use and benefit from resources and settings available to all citizens.” *Id.* at 725. The court held that the city violated the FHA when it refused to grant the organization’s reasonable accommodation request to waive a separation requirement that group homes not be less than ½ mile within proximity of any other group home in the R-3 Zoning District in order to permit the organization to provide housing to the children and adults with mental and behavioral disorders. *Id.* at 719.

Like the organization in *Developmental Services of Nebraska, Inc.*, King’s Ranch seeks to provide a stable home and environment to children who have been abused and/or neglected. Many of the children who would be provided a home by King’s Ranch suffer from a mental impairment and/or behavioral or learning disabilities. The most prevalent mental impairment or disorder among these abused or neglected children is Reactive Attachment Disorder (“RAD”) – a common disorder that inhibits and creates problems with a child’s ability to form and maintain relationships with others.² RAD is common in foster children and abused or neglected children.

¹ Section 100.201(a)(2) provides:

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. This term does not include current, illegal use of or addiction to a controlled substance. For purposes of this part, an individual shall not be considered to have a handicap solely because that individual is a transvestite. As used in this definition:

(a) Physical or mental impairment includes:

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

² American Academy of Child and Adolescent Psychiatry, at

http://www.aacap.org/cs/root/policy_statements/coercive_interventions_for_reactive_attachment_disorder (last visited August 5, 2009). (last visited August 5, 2009). RAD can “permanently alter the child’s growing brain and hurt their ability to establish future relationships.” Mayo Clinic, *Definition of Reactive Attachment Disorder*, available at

*City of Jonesboro

Re: Reasonable accommodation for King's Ranch

August 7, 2009

Page 3 of 4

According to the American Academy of Child and Adolescent Psychiatry (AACAP), the disorder is caused by severe disruptions in the early years of a child's life, such as abandonment, sexual or physical abuse, or emotional neglect.³ These children will either be detached, unresponsive, inhibited and reluctant to engage in age-appropriate social interactions, or they may be overly and inappropriately social or familiar with strangers.⁴ Comprehensive psychiatric evaluations and individualized treatment plans are necessary in treating the disorder, and the most helpful method of continuous care is placing the child in family settings that help maximize the opportunities for the child to develop selective attachments.⁵ Children with RAD who are not properly treated can develop numerous behavioral problems as an adult including, depression, anxiety, alcohol and drug abuse, inability to control their anger or temper, and/or severe eating problems.⁶

As an organization protected under the FHA, King's Ranch requests that the City of Jonesboro provide a reasonable accommodation by waiving its definition of "family" as it applies to King's Ranch's proposed use to allow the two houseparents and children to live as single family unit.⁷ King's Ranch, through two parents who live in the home, will provide each child with a steady and supportive home environment. Thus the only difference between King's Ranch's proposed use and that of any other family with eight children who would classify as a "family" under the city's zoning code is that the children at King's Ranch will not be related to each other by blood or marriage as defined by the city's definition of "family."

Finally, as previously stated in our first letter, King's Ranch's request for a reasonable accommodation poses no undue burden or expense for the local government. Nor would it fundamentally alter the single-family character of the neighborhood for the reasons stated directly above. Further, there is no evidence that the addition of several children to the Property consisting of approximately 10.75 acres would impact parking, traffic, noise, utility uses, or any other concerns of zoning differently than an ordinary "family" of the same size.

<http://www.mayoclinic.com/health/reactive-attachment-disorder/DS0098> (last visited July 27, 2009). See World Health Organization's International Statistical Classification of Diseases and Related Health Problems (ICD-10) and the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM) for more information about the disorder.

³ American Academy of Child and Adolescent Psychiatry, *supra* note 2.

⁴ *Id.*

⁵ *Id.*

⁶ Mayo Clinic, *supra* note 2.

⁷ While King's Ranch, per instructions from the City of Jonesboro, originally submitted an application for a conditional use permit as a "group residential," this definition does not accurately define King's Ranch's use. Unlike uses defined as a "group residential" such as a boarding or rooming house or fraternity and sorority houses, the children that would live in the single family home are not transient in nature, but instead, live in the home with their houseparents as a normal child would until the age of 18.

• *City of Jonesboro*
Re: Reasonable accommodation for King's Ranch
August 7, 2009
Page 4 of 4

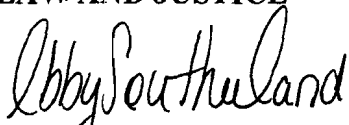
CONCLUSION.

The City of Jonesboro's failure to respond to King's Ranch's reasonable accommodation request or the city's undue delay in responding may be deemed to be a failure to provide a reasonable accommodation. As I explained in the July 13 letter, the City of Jonesboro's refusal to provide a reasonable accommodation to King's Ranch of Jonesborough, Inc. in a manner that allows them to use the Property for the proposed use as a Christian children's home will constitute a violation of the FHA. As such, we request in writing your response to our request for reasonable accommodation on or before **August 30, 2009**. If you refuse King's Ranch's request for a reasonable accommodation, we will advise King's Ranch of its right to seek redress in federal district court.

Should you have any questions, please feel free to contact me at (615) 376-2600.

Sincerely,

**AMERICAN CENTER FOR
LAW AND JUSTICE**



Abby A. Southerland, Esq.
Litigation Counsel

cc: Larry Crain, Senior Counsel
Noyl Houston, Local Counsel
Phillip Crego, Attorney for City of Jonesboro