

COMMONWEALTH OF MASSACHUSETTS  
SUPERIOR COURT

MIDDLESEX, ss.

C.A. No.: 1981 CV 00830

BETTERING LLC,

Plaintiff

v.

TOWN OF WILMINGTON, and DANIEL J.  
VEERMAN, ANTHONY J. BARLETTA, JR.,  
RAYMOND LEPORE, THOMAS W. SIRACUSA,  
and JACQUELYN SANTINI, as they are members  
of the ZONING BOARD OF APPEALS OF  
WILMINGTON,

Defendants

FILED  
IN THE OFFICE OF THE  
CLERK OF COURTS  
FOR THE COUNTY OF MIDDLESEX

MAR 25 2019

COMPLAINT AND  
DEMAND FOR  
JURY TRIAL

COMPLAINT

Plaintiff, Bettering LLC ("Plaintiff" or "Bettering"), by and through its undersigned counsel, by way of Complaint against Defendants, the Town of Wilmington ("Town" or "Wilmington") and the Wilmington Zoning Board of Appeals (the "ZBA"), alleges as follows:

I. INTRODUCTION

1. Drug and alcohol abuse is wreaking havoc on public health and safety in communities across the United States, with more than 64,000 lives lost to drug overdoses in 2016 alone.<sup>1</sup> In an effort to recognize and combat this growing epidemic, on March 10, 2016, the United States Senate passed the Comprehensive Addiction and Recovery Act of 2016, which documented the abuse of heroin and prescription opioid painkillers as having "a devastating effect on public

<sup>1</sup> Drug Overdose Deaths in the United States, 1999-2016. No. 294, National Center for Health Statistics, U.S. Centers for Disease Control and Prevention, December, 2017.

health and safety in communities across the United States,” with the number of drug overdose deaths now surpassing the number of traffic accident deaths:

According to the Centers for Disease Control and Prevention, drug overdose deaths now surpass traffic accidents in the number of deaths caused by injury in the United States. In 2014, an average of more than 120 people in the United States died from drug overdoses every day.

Comprehensive Addiction and Recovery Act of 2016, S.524, 114<sup>th</sup> Cong., § 2.

2. Sadly, the overdose death rate in Massachusetts is more than two times the national average,<sup>2</sup> and Middlesex County (which includes the Town of Wilmington) is in the top nine counties in the nation for overdose deaths.<sup>3</sup>

3. In the year 2016 alone, of the 2,155 Massachusetts residents who died from a drug overdose, 412 residents (or 19.7%) were from Middlesex County.<sup>4</sup>

4. Bettering’s mission is to provide a neighborhood-based detox and recovery facility for patients suffering from drug and alcohol addiction.

5. To fulfill that mission, Bettering acquired a property in Wilmington located at 362 Middlesex Avenue, being Assessor’s Map 89 Parcel 6A (the “Subject Property”), within the Town’s General Business (“GB”) District. The Subject Property has 72,787 square feet and frontage on Middlesex Avenue of 113 feet.

6. At the time Bettering purchased the Subject Property, a “hospital, community health center, sanitarium, nursing, rest or convalescent home” was allowed by special permit in the GB District.

7. Bettering plans to operate on the Subject Property a 48 bed “detox” facility (“the Facility”) dedicated to treating drug and alcohol abuse, and licensed by the Massachusetts Department of Public Health, a proposed use that was allowed by special permit until December 16, 2017.

8. On December 16, 2017, a Special Town Meeting of the Town of Wilmington, by a vote of 366-62, voted to amend the Wilmington Zoning By-Law by making a “hospital, community health center, sanitarium, nursing, rest or convalescent home” a prohibited use in the

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<sup>2</sup> According to the National Institute on Drug Abuse, the national rate of deaths due to drug overdose in 2016 was 13.3 persons per 100,000, while in Massachusetts it was 29.7 persons per 100,000.

<sup>3</sup> Pew Charitable Trust, 2016 data.

<sup>4</sup> Mass. Department of Public Health.

GB District.

9. Bettering obtained a zoning “freeze” to apply for a special permit by applying to the Wilmington Planning Board (“Planning Board”) for approval of a preliminary subdivision plan pursuant to G.L. c. 41, s. 81S and G.L. c. 40A, s. 6 prior to the December 16, 2017 Town Meeting.

10. Bettering perfected its “freeze” by making a timely application to the Planning Board for approval of a definitive subdivision plan pursuant to G.L. c. 41, s. 81U and G.L. c. 40A, s. 6, within seven months as required by statute.

11. The Planning Board approved and endorsed Bettering’s definitive subdivision plan. The Planning Board also approved Bettering’s site plan, submitted under Section 6.5 of the Zoning By-law. In addition, the Wilmington Board of Health approved Bettering’s design of the wastewater system serving the Subject Property.

12. Bettering submitted its application for a special permit to construct and operate the Facility in January of 2018. The Special Permit Granting Authority (“SPGA”) was the ZBA. The Zoning By-Law, at Section 10.5, states that “special permits may be authorized only where, after notice and a public hearing, the Board of Appeals ... specifically finds:

- \* That the proposed use is in harmony with the general purpose and intent of this Bylaw; and
- \* That the use complies with all the requirements of this Bylaw.
- \* That the project has been designed to eliminate any significant threat of contamination to the ground water. In making such a determination, the SPGA shall give consideration to the simplicity, reliability and feasibility of the control measures proposed and the degree and threat to water quality which would result if the control measures fail.”

13. The public hearing commenced on February 14, 2018, was continued to April 25, 2018, December 12, 2018, and January 16, 2019, when the public hearing was closed.

14. Prior to the public hearing on January 16, 2019, Bettering submitted to the ZBA, by certified mail, a request for a reasonable accommodation pursuant to the Americans with Disabilities Act (“ADA”) and the Fair Housing Amendments Act (“FHAA”). See Exhibit 1, hereto. The request was for a waiver of any zoning requirement that otherwise prevented Bettering from constructing and operating its Facility.

15. At the close of the public hearing on January 16, 2019, the ZBA deliberated Bettering’s special permit application. On a motion to approve the special permit, with conditions, the ZBA voted 3-2 in favor. Because a special permit requires a supermajority of

four votes in favor on a five-member SPGA pursuant to G.L. c. 40A, s. 9, the ZBA's vote was to deny.

16. After consulting with Bettering's legal counsel, the ZBA indicated that it would take up Bettering's request for a reasonable accommodation at its meeting of February 27, 2019 and adjourned. The ZBA Chairman, Daniel J. Veerman, suggested that a simple majority would be required to approve such request. Not a single ZBA member raised the issue of whether the ZBA had "jurisdiction" to act on the request for a reasonable accommodation.

17. On February 27, 2019, Member Lepore, for the first time in public, took the position that the ZBA did not have jurisdiction to review and act upon Bettering's request for reasonable accommodation. Member Siracusa supported this position. Eventually, Member Santini also opined that the ZBA lacked "jurisdiction." A motion was made and seconded to take no action on the request for reasonable accommodation, and the ZBA voted 3-2 in favor. Accordingly, the request for a reasonable accommodation was never acted upon by the ZBA or any other board, agency, or official of the Town.

18. Over the course of the public hearings before the ZBA, Bettering presented uncontested, overwhelming, and objective evidence that the Facility is inherently beneficial, and that no substantial detriment would result to the neighborhood or the Town.

19. After hearing all the evidence, the ZBA denied Bettering's special permit and request for reasonable accommodation based on facially discriminatory reasoning and thinly-veiled pretext. Simply stated, this case presents "the familiar conflict between the legal principle of non-discrimination and the political principle of not-in-my-backyard." *New Directions Treatment Services v. City of Reading*, 490 F.3d 293, 296 (3d Cir. 2007).

20. Ignoring the language and intent of the Zoning By-Law, which expressly allows larger retail, office and other buildings and uses in the GB District as of right with a height not more than 35 feet and three stories, the Defendants have illegally denied Bettering a special permit AND a reasonable accommodation.

21. The ZBA's stated reasons for denying Bettering's application are not only irrelevant, but also, more importantly, blatant pretext to hide discriminatory intent. To further its discriminatory objectives, the ZBA has delayed life-saving treatment desperately needed by Bettering's prospective patients who reside in and around the Town of Wilmington, jeopardized Bettering's significant investment in the project and caused Bettering and its prospective patients to suffer immediate and irreparable harm.

22. As a result of the wrongdoing alleged herein, Bettering seeks compensatory damages, punitive damages, injunctive relief, and attorneys' fees and costs, and asserts claims under the Constitution of the United States, 42 U.S.C. § 1983, 42 U.S.C. § 12132 (the

“Americans with Disabilities Act” or “ADA”), 42 U.S.C. § 3601 (the “Fair Housing Amendments Act” or “FHAA”), 29 U.S.C. § 791 (the “Rehabilitation Act”), the Zoning Act’s anti-discrimination provision in G.L. c. 40A, s. 3, and the Massachusetts anti-discrimination act, G.L. c. 151B.

## **II. PARTIES**

23. Plaintiff Bettering LLC is a Massachusetts limited liability corporation with a principal office located at 335 Middlesex Avenue, Unit 7, Wilmington, Massachusetts.

24. The Town of Wilmington is a municipal corporation in the Commonwealth of Massachusetts with a principal office located at 121 Glen Road, Wilmington, Massachusetts.

25. Defendant Daniel J. Veerman is the Chairman of the Wilmington Zoning Board of Appeals and resides at 131 Middlesex Avenue, Wilmington, Massachusetts.

26. Defendant Anthony J. Barletta, Jr. is a member of the Wilmington Zoning Board of Appeals and resides at 20 Swain Road, Wilmington, Massachusetts.

27. Defendant Raymond Lepore is a member of the Wilmington Zoning Board of Appeals and resides at 66 Adams Street, Wilmington, Massachusetts.

28. Defendant Thomas W. Siracusa is a member of the Wilmington Zoning Board of Appeals and resides at 5 Elwood Road, Wilmington, Massachusetts.

29. Defendant Jacquelyn Santini is a member of the Wilmington Zoning Board of Appeals and resides at 38 Glen Road, Wilmington, Massachusetts.

## **III. JURISDICTION AND VENUE**

30. This Court has jurisdiction over the federal claims alleged in this Complaint under 28 U.S.C. §§ 1331 & 1343 and over the state claims alleged in this Complaint under 28 U.S.C. § 1367.

31. Venue is proper under 28 U.S.C. § 1391(b)(1) & (2) because Defendants are residents of this judicial district, the events or omissions giving rise to the claims set forth herein occurred in this judicial district, and of the property that is the subject of the action is situated in this judicial district.

#### IV. STATEMENT OF THE FACTS

##### *The Building and Site Plan*

32. The Subject Property has a lot area of 72,787 square feet with a total frontage of 462.56 feet (after lots as shown on the approved definitive plan are combined). Frontage on Middlesex Avenue is 113 feet. The GB District requires a lot area of 20,000 square feet, and frontage of 125 feet.

33. Bettering's proposed two-story building will be 65' x 170,' with a total gross floor area of 22,100 square feet. The building height to the peak will be 32 feet nine inches, in two stories. Maximum height in the GB District is 35 feet and three stories.

34. The building will have 26 bedrooms with 48 beds. The first floor will have ten (10) small offices, an exam room, a nurses' station, kitchen and cafeteria, two (2) bathrooms with showers, a community room, and several sitting areas. The second floor will have five (5) offices, two (2) medium size group rooms, a nurses' station, an exercise room, and an open lounge area.

35. Water service will be provided by a new 8" water main extended from Middlesex Avenue with two (2) fire hydrants. The building will be fully sprinklered.

36. Wastewater will be directed to an onsite septic system with a capacity of 7,200 gallons per day. Due to a lack of a specific flow requirement for this type of facility in the Commonwealth's Title 5 Regulations, 310 CMR 15.00, design sewage flow has been based upon actual flows from similar facilities in the area, and subsurface system regulations from several states in New England. Design flows and the system design meet state and local requirements and the system has been approved by the Board of Health.

37. Fire Department access is available to all sides of the building over the site driveways and proposed roadway. Site driveways are 26 feet in width to accommodate the outriggers on the largest fire vehicle.

38. A subsurface drainage system will be provided to capture and control site runoff. Through the use of buried storage chambers, the use of vortex treatment units, tree wells, and a wet swale, the requirements of the Massachusetts Department of Environmental Protection ("DEP") and the Town for stormwater treatment, infiltration, and volume control have been met. The Planning Board has approved the stormwater management system in its Site Plan Approval.

39. Section 6.4.1.1 of the Zoning By-Law requires one space per bed for a hospital or nursing home. There are 48 beds. There are 48 parking spaces. Deliveries will be handled through service doors at the rear of the building. Solid waste will be deposited in covered dumpsters adjacent to the site driveway located within a dedicated fenced area with gates for truck access.

### ***Programmatic Aspects of the Facility***

*The information set forth in paras. 40-63, below, was provided in an "Overview" to the ZBA at the public hearing. It was also the subject of the testimony of Kenneth Mayer, Bettering's incoming Executive Director, and an expert in the field of drug and alcohol recovery facilities. The three (3) ZBA members who voted to approve the special permit agreed to incorporate these provisions as conditions of the special permit.*

40. Bettering proposes to operate an Acute Treatment Services (ATS) facility. This is the medical withdrawal/detoxification component. Bettering also proposes to operate Clinical Stabilization Services (CSS), a nonmedical post-withdrawal component. Both ATS and CSS are regulated by 105 CMR 164.000, Licensure of Substance Abuse Treatment Programs. These are all inpatient services. No outpatient services will be offered or provided. The licensing requirements can be found in 105 CMR 164.000. The requirements are 80 pages long and can be found in PDF format here:

<https://www.mass.gov/files/documents/2017/09/11/105cmr164.pdf>

41. The objective of the Bettering's program is to safely and effectively, through medical and clinical means, stabilize and detoxify someone from alcohol or substance dependence and to make necessary and appropriate aftercare recommendations that are clinically and medically informed with attention to the needs and presentation of each individual client.

42. Bettering will form a single purpose LLC to operate the Facility and to implement evidence-based medically assisted treatment, cognitive behavioral therapy, dialectic behavioral therapy, motivational interviewing and several other evidence-based treatment methodologies. Furthermore, Bettering will develop programs that provide staff access to and professional training in emerging evidence-based treatments such as culturally informed evidence-based practices, by partnering with local teaching hospitals and universities.

43. The Facility will be served by the following staff members:

- \* Medical Director - Licensed MD in Massachusetts with significant experience treating persons with addiction.
- \* Executive Director - Masters level professional with extensive experience leading a residential addiction treatment program. Approved by Massachusetts Department of Public Health (DPH) as a Program Director.
- \* Nurse Manager MSN with significant experience leading medical team addressing addiction treatment.
- \* Nurse - Supervisor of each medical shift shall be led by a BSN.
- \* Staff Nurse - RN or LPN approved to dispense medications used in residential treatment.
- \* Clinical Supervisor - Master Level licensed independent clinician with a minimum of 4 years of experience supervising clinicians treating persons with addiction.
- \* Counselors - Masters level and/or licensed substance abuse/mental health counselors

- meeting all Massachusetts requirements.
- \* Case Managers - B.A. or B.S. level education and experience with treatment planning for persons with addiction.
- \* Behavioral Health Technicians – High school graduate with experience recovery coaching for persons with addiction.
- \* Security Guard - High school graduate with training in de-escalation tactics, CPR and how to handle aggressive verbal or physical confrontation of any member of the public who tries to enter the facility or harass the clients.
- \* Food Service Director - Required to meet all Massachusetts and Wilmington regulations and have experience/expertise in dietary factors that enhance the recovery from addictions process.

44. The ZBA was provided with a matrix that showed all RNs, Counselors, and Behavioral Health Technician shifts by day and time. This matrix did not include the following positions: Medical Director, Clinical Director, Executive Director, Program Director, Admissions Staff, Food Service Director, Community Outreach Director, Office Manager or Security Guard. Most of these positions will be on site Monday through Friday during daytime business hours. Some of those positions including Medical Director, Clinical Director, Executive Director and Food Service Director will also be on site during Saturdays and Sundays on rotating shifts. At the specific request of the ZBA, Bettering agreed to have one Security Guard on every shift.

45. Bettering/Bettering will strictly adhere to such federal privacy laws, including HIPPA regulations, which require extensive and significant care to protect client confidentiality and privacy.

46. All admissions to the program will be made by appointment. The Facility will not accept walk-ins. However, if someone was to arrive without a scheduled admission, the staff of Bettering will facilitate safe transportation to an appropriate program and/or location.

47. Whenever a person with addiction and/or a referral entity contacts Bettering for admission a telephone screening shall be conducted. Only after the person is deemed to meet admission criteria of the program shall an admission/evaluation time be given. During that telephone screening before the appointment is made, safe appropriate transportation to Bettering shall be determined. Bettering shall be available to provide that transportation, if needed. Bettering committed, at the public hearing, that it will never be an acceptable plan to have a prospective patient drive himself or walk to the Facility or use public transportation to arrive at the Facility.

48. The vast majority of clients will arrive via family transportation or transportation provided by the facility in one of the Facility's passenger vehicles (a Ford Explorer or similar type vehicle). All clients must have been medically cleared by a physician prior to their arrival and must be ambulatory and medically stable. Bettering is not an Emergency Room and no client will be arriving if having an emergency.



49. At the time of admission, all clients will undergo an extensive medical and clinical assessment by the medical and clinical staff, including substance use history, treatment history, a biopsychosocial assessment, as well as an assessment of each client's knowledge and awareness of available treatment modalities. Findings from the assessment will be reviewed by both the medical and clinical team and an individualized treatment plan will be created and presented to each client. Clients will be given all pertinent information on available treatment modalities and how they may be effectively incorporated.

50. All clients will be at the Facility voluntarily. Clients who choose to be admitted do so of their own free will and volition. If a client decides not to complete the program or recommended medical or clinical treatment plan, they may do so after receiving medical and clinical advice from the staff.

51. Several AMA (against medical advice) and ACA (against clinical advice) blocking techniques will be employed, including staff and family interventions, to convince the client to complete treatment recommendations at the Facility. However, if a client decides to leave prior to the completion of treatment, the client provides their own transportation home by calling an immediate family member, or, in the alternative, transportation will be provided by Bettering.

52. If for some reason a client refused the free and readily available transportation provided to them and decided to simply "walk off" the Facility, an immediate notification would be provided to local authorities if the client were deemed a safety risk and the client would be followed by a staff member until a family member or local authority intervened.

53. During the admission process, the patient will sign an agreement stating that when discharge from the program occurs the patient agrees to have the Facility provide/arrange transportation departing the facility. This will be the policy regardless of the reason for discharge.

- \* The Facility will transport door to door if the patient is entering a new treatment program.
- \* If the patient requires medical transportation to a medical facility, Bettering shall utilize a private ambulance service.
- \* Should the patient be returning to his home community, transport will either be made to that community or to local public transportation. If public transportation is used the patient will be provided with adequate funds/passes and staff will remain with the patient until the patient has left the area.

54. Although Bettering's staff will employ counseling/support to encourage the patient to stay in treatment, ultimately if any patient decides to leave the program it cannot be prevented. Should the patient insist on leaving without program approved transportation and staff deems that the patient poses any safety risk to self or community, public safety officials will be contacted. Federal confidentiality regulations prevent Bettering from identifying the person as a patient. However, any information such as current medication, mental status, risk factors, personal description, and the direction the patient was heading can and will be provided to safety officials.

55. Patients will sign a statement of understanding of this procedure during their admission process. While consideration was given to having patients sign a release that would allow Bettering to call the Police Department if the patient leaves the program without transportation, it was ultimately determined that this practice would be considered a barrier to treatment. Furthermore, federal confidentiality regulations allow patients to revoke any release they may have signed.

56. The program is allowed to release pertinent information to qualified medical/safety personnel when a safety and/or medical emergency occurs. Should a patient decide to leave the program and refuse transportation and a safety risk is determined, the patient will be informed that the program will need to call emergency public services. Often, this reality will motivate a patient to accept the program's transportation services.

57. Bettering is committed, should someone leave the building AMA or ACA and simply walk down the street, to have a staff member follow the client until picked up by family or police.

58. As stated above, after full medical and clinical assessments of each client, individualized treatment plans will be made and given to each client including recommended aftercare plans. Discharge planning for individuals will include

- \* Recommendations for follow up medical and clinical care with an approved provider;
- \* Referrals to licensed facilities for those seeking lower levels of care such as Intensive Day or Night Treatment; and
- \* Outcomes tracking and analysis to improve quality and proper application of treatment recommendations.

Practically speaking, when a client completes treatment, depending on their discharge plan, they will either be transported home or to a lower level of care via their family or the Facility.

59. Security will include 24 hour monitored video surveillance of all outside spaces and entrances and exits as well as common spaces inside the Facility. Also, there will be designated, professionally trained security personnel on staff 24 hours a day. The security personnel will have specific training on de-escalation tactics, CPR and how to handle aggressive verbal or physical confrontation of any member of the public who tries to enter the Facility or harass the clients.

60. Dining will be in-house. All meals will be prepared and served from the Facility's kitchen in the facility cafeteria.

61. Clients will have access to their own client laundry services in the Facility. Housekeeping will provide laundry services for linens and other items.

62. Bettering will enter into a contract for services with a local private ambulance

provider. A vendor has not been selected at this time. The contracted services will avoid use of Wilmington municipal ambulance services.

63. Wilmington residents will be put at the very top of the list for admission and given preferential financial terms when needed.

### ***The 2017 Town Meeting Vote***

64. Bettering first introduced its planned detox Facility to the public by making an informal presentation at a meeting of the Board of Selectmen in the Fall of 2017.

65. The reaction of the citizenry was quick, and it was discriminatory. Michael V. McCoy, a member of the Board of Selectmen, prepared an amendment to the Zoning By-Law that would make a “hospital, community health center, sanitarium, nursing, rest or convalescent home” a prohibited use in the GB District. At the time Bettering introduced its proposed Facility, this use was allowed in the GB District by special permit.

66. At the Special Town Meeting of December 16, 2017, during the debate on the zoning amendment, Mr. McCoy stated that it would be “a lot less invasive” to have this type of Facility in the General Industrial or Highway Industrial Districts.

67. Statements from registered voters were equally discriminatory. For example, an unidentified female voter urged voters to support the amendment, stating that people in withdrawal “are losing their faculties” and asked, “is that what we want people to see across the street from Eli’s,” a local store in the in the GB District.

68. The Wilmington Finance Committee voted unanimously to support the amendment and so advised the Special Town Meeting. To its credit, the Wilmington Planning Board voted 3-2 to make a recommendation to the Special Town Meeting to vote against the amendment.

69. By a vote of 366-62, the Special Town Meeting voted on December 16, 2017, to amend the Wilmington Zoning By-Law by making a “hospital, community health center, sanitarium, nursing, rest or convalescent home” a prohibited use in the GB District. A two-thirds supermajority was required. G.L. c. 40A, s. 5. The motion passed easily.

### ***The Planning Board and Board of Health Approvals***

70. G.L. c. 40A, s. 6 states, in pertinent part:

If a definitive plan, or a preliminary plan followed within seven months by a definitive plan, is submitted to a planning board for approval under the subdivision control law, and written notice of such submission has been given to the city or town clerk before the

effective date of ordinance or by-law, the land shown on such plan shall be governed by the applicable provisions of the zoning ordinance or by-law, if any, in effect at the time of the first such submission while such plan or plans are being processed under the subdivision control law, and, if such definitive plan or an amendment thereof is finally approved, for eight years from the date of the endorsement of such approval....

When a preliminary and a definitive plan are timely filed under the statute, the applicant is said to obtain a “freeze” of the zoning in effect at the time of submittal for eight years from the date of endorsement.

71. Bettering obtained a zoning “freeze” to apply for a special permit for the detox Facility in the GB District by applying to the Wilmington Planning Board (“Planning Board”) for approval of a preliminary subdivision plan pursuant to G.L. c. 41, s. 81S and G.L. c. 40A, s. 6 prior to the Town Meeting on December 16, 2017.

72. Bettering perfected its “freeze” by making a timely application to the Planning Board for approval of a definitive subdivision plan pursuant to G.L. c. 41, s. 81U and G.L. c. 40A, s. 6 within seven months, as provided by statute.

73. The Planning Board approved and endorsed Bettering’s definitive subdivision plan after a timely submittal.

74. The Planning Board also approved Bettering’s site plan, submitted under Section 6.5 of the Zoning By-law, and Bettering’s Stormwater Management Permit under Chapter 51 of the Town’s General By-laws.

75. The Facility’s wastewater will be directed to an onsite septic system with a capacity of 7,200 gallons per day. Despite a lack of a specific flow requirements for this type of facility in the Commonwealth’s Title 5 Regulations, 310 CMR 15.00, Bettering and the Wilmington Board of Health agreed to design sewage flow based upon actual flows from similar facilities in the area, and subsurface system regulations from several other New England states. The Facility’s design flows and the system design itself meet state and local requirements and the system has been approved by the Board of Health.

### ***The Special Permit Hearings***

76. Bettering submitted its application for a special permit to construct and operate the Facility in January of 2018. The Special Permit Granting Authority (“SPGA”) was the ZBA. Section 10.5 of the Zoning By-Law provides that “special permits may be authorized only where, after notice and a public hearing, the Board of Appeals ... specifically finds:

- \* That the proposed use is in harmony with the general purpose and intent of this Bylaw; and
- \* That the use complies with all the requirements of this Bylaw.
- \* That the project has been designed to eliminate any significant threat of contamination to the ground water. In making such a determination, the SPGA shall give consideration to the simplicity, reliability and feasibility of the control measures proposed and the degree and threat to water quality which would result if the control measures fail.”

77. The public hearing commenced on February 14, 2018 and was continued with the consent of Bettering to the evenings of April 25, 2018, December 12, 2018, and January 16, 2019, when the public hearing was closed.

78. At the public hearing of February 14, 2018, Bettering introduced its proposed Facility. Approximately 150 citizens were in attendance. Many of the citizens spoke in opposition to the proposed facility. Many offered discriminatory remarks, all captured on Wilmington Cable Television (WCTV) which archives the ZBA meetings online.

79. The ZBA asked for more specific plans and Bettering agreed to work out the details with the Planning Board and the Board of Health before returning to the ZBA for final action on the special permit. The hearing was continued to April 25, 2018.

80. On April 25, 2018, the hearing was continued without the taking of any evidence, as review of the proposed Facility was still pending at the Planning Board and Board of Health.

81. On December 12, 2018, after the approvals of the Planning Board and the Board of Health, the ZBA resumed the public hearing. Approximately 150 citizens were in attendance. Bettering presented a traffic study prepared by a qualified transportation engineer, Kenneth Cram of Bayside Engineering, that found no detriment to the area or Town.

82. Again, many of the citizens spoke in opposition to the proposed Facility, all captured on WCTV. The ZBA members request additional information of Bettering and continued the public hearing to January 16, 2019.

83. Prior to the public hearing on January 16, 2018, Bettering submitted to the ZBA, by certified mail, a request for a reasonable accommodation pursuant to the ADA and FHAA. See Exhibit 1, hereto. The requested accommodation asked for a waiver of any zoning requirement that would otherwise prevent Bettering from constructing and operating its proposed Facility.

84. At the public hearing on January 16, 2019, the Wilmington Chief of Police, Michael Begonis, reported to the ZBA regarding his conversations with Police Chiefs in other Massachusetts cities or towns with detox or similar drug and alcohol abuse treatment facilities.

The ZBA had requested this information at its hearing on December 12, 2018. The Chief reported that of the six or seven facilities he learned about, only one – in Stoughton, Massachusetts – was a “problem” for the local Chief.

85. Chief Begonis asked Bettering to comply with several suggested conditions he had devised after speaking with the other Chiefs, including the appointment of an institutional security contact person, 24-hour cameras on premises, community involvement and support of local addiction programs, transportation services for patients, admissions hours, a prohibition of outpatient care, a preference for Wilmington residents, free services for indigent persons, and notification when a patient leaves the facility and is considered a danger to himself or others.

86. Bettering agreed, on the record, to accept each and every condition proposed by Chief Begonis.

87. Member Anthony Barretta, Jr. also had several conditions he wanted included in the grant of any special permit. These included notification to the ZBA when a new Executive Director was appointed, more landscaping for immediate neighbors, and a promise to revisit the design of the Facility during the reasonable accommodation process.

88. Bettering agreed, on the record, to accept each and every condition proposed by Member Barretta.

89. The ZBA closed the public hearing on January 16, 2019. Member Barretta moved to approve the special permit, with the conditions noted above. The motion was seconded.

90. During deliberations, Member Lepore stated that he was opposed to the grant of the special permit. He stated that the proposed Facility was too big and “not in harmony” with the neighborhood. He stated that a two-story building was not aesthetic and would “not look right.”

91. During deliberations, Member Siracusa stated that he was opposed to the grant of the special permit. He stated that the building “overpowers the lot.” He was concerned about the “24-hour operation” of the proposed Facility. He had concerns regarding traffic and security.

92. On the motion to approve the special permit, with conditions, the ZBA voted 3-2 in favor, with Members Lepore and Siracusa voting “no”. Because a special permit requires a supermajority of four votes in favor on a five-member SPGA pursuant to G.L. c. 40A, s. 9, the ZBA’s vote was to deny. The ZBA’s Decision was filed with the Town Clerk on March 5, 2019. See Exhibit 2, hereto.

93. The Wilmington Zoning Bylaw, at Table I: Principal Use Regulations, states that the

following uses are allowed as of right in the GB District: Retail Store under 30,000 square feet. No limit as to square feet is stated for the following additional uses as of right: Business/Professional Office; Bank; Lodge and Club; Funeral Home; Personal Service Shop; Craft Shop/Building Trade; Commercial/Trade School; Amusement Facility; Parking Facility as well as the institutional uses of Municipal; Educational; Religious; Philanthropic; Nursery School; and Public Service Utilities.

94. The Wilmington Zoning Bylaw, at Table II, Standard Dimensional Regulations, states that the following dimensional standards apply in the GB District: Maximum Building Height: 35 feet; Maximum Number of Stories: 3.

95. At the close of the deliberations on January 16, 2019, after consulting with Bettering's legal counsel, the ZBA indicated that it would take up Bettering's request for a reasonable accommodation at its meeting of February 27, 2019. Before adjournment, ZBA Chairman, Daniel J. Veerman, suggested that a simple majority would be required to approve such a request. Not a single ZBA member raised the issue of whether the ZBA had "jurisdiction" to act on the request for a reasonable accommodation.

96. On February 27, 2019, Member Lepore took the position, for the first time in public, that the ZBA did not have jurisdiction to review and act upon Bettering's request for reasonable accommodation. Member Siracusa supported this position. Eventually, Member Santini also opined that the ZBA lacked "jurisdiction." A motion was made and seconded to take no action on the request for reasonable accommodation, and the ZBA voted 3-2 in favor. Accordingly, the request for a reasonable accommodation was never acted upon by the ZBA or any other board, agency, or official of the Town.

97. At the public hearing, counsel for Bettering and the Town Counsel expressed to the ZBA that because substance-abuse patients are a protected class under both federal and state law, the ZBA must consider a request for reasonable accommodations to help house and rehabilitate the Facility's patients.

98. When asked to put on the record their reasoning for voting against the special permit, Members Lepore and Siracusa confirmed that the decision was infected with unlawful discrimination. As the two members who carried the vote in the denial, their reasons are set forth in the ZBA's Decision (the "ZBA Decision"), attached hereto as Exhibit 2. Members Lepore and Siracusa cited "the design, bulk and massing of the structure that would contain the proposed use, coupled with the 24-hour/7 day a week nature of the use," which they contended "would be detrimental to residential abutters and inconsistent with the surrounding commercial neighborhood."

99. While Members Lepore and Siracusa mentioned design, safety, and quality of life concerns, those sentiments were pretext for other discriminatory purposes, and the

ZBA's empty support of a detox facility at a different location amounted to nothing more than a not-in-my-backyard ("NIMBY") defense premised on the perceived danger caused by those suffering from alcohol and drug dependency.

100. No independent evidence was presented at any of the hearings to establish negative criteria, challenge Bettering's experts' testimony, or offer objective reasons for the Board to vote to deny the special permit. In fact, the Planning Board, Board of Health, Chief of Police, and Town Engineer had reviewed the special permit application and approved Bettering's plans. The lack of an evidentiary record to support the denial further proves that Defendants' decision was based solely on the unsupported discriminatory statements and subjective opinions of residents and the ZBA Members themselves.

101. In sum, the Zoning Board acted illegally to deny the special permit and the request for a reasonable accommodation in the form of a waiver of the special permit requirement for a drug and alcohol detox Facility in the GB District. Two members of the ZBA, in an effort to appease their constituents, voted down the special permit application. Three members voted that the ZBA had no jurisdiction to hear the request for a reasonable accommodation, after scheduling a meeting to review the request on February 27, 2019.

102. Defendants' discriminatory conduct, including adoption of the retaliatory zoning amendment to prohibit the use in the GB District, the denial of Bettering's special permit, and the rejection of the request for a reasonable accommodation, has resulted in significant harm to Bettering and Bettering's prospective patients.

103. To date, Bettering has invested an estimated \$1.5 million in the Subject Property and Facility, including approximately \$1.2 million to purchase the premises.

104. In addition, bettering has paid \$300,000 for permitting, design, and preconstruction activities including professional services, and carrying costs.

105. As a result of the unlawful delay in placing the Facility into operation, Plaintiff will suffer a variety of economic damages, including substantial lost profits, which Bettering estimates, at this time, to be in excess of \$500,000.

106. The conduct of the Defendants, as aforesaid, was intentional, in bad faith and sufficiently outrageous as to justify the imposition of punitive damages.

107. In addition, Bettering and its prospective patients do not have an adequate remedy at law, and will suffer immediate and irreparable harm in the absence of equitable relief, thereby justifying the grant of preliminary and permanent injunctive relief to allow Bettering to construct and operate the Facility on a unique piece of real property, which is perfectly suited for the intended use, and Bettering's prospective patients to receive desperately needed medical treatment close to their homes, families and support networks.



**V. CLAIMS FOR RELIEF**

**COUNT 1:  
VIOLATION OF THE ADA**

108. Paragraphs 1 through 107 above are incorporated by reference, as if fully set forth herein.

109. The American with Disabilities Act (the "ADA") provides that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the service, program, or activity of a public entity, or be subjected to discrimination by any such entity. The ADA makes it unlawful for a public entity, in determining the site or location of a facility, to make selections that have the purpose or effect of excluding individuals with disabilities from, denying them the benefits of, or otherwise subjecting them to discrimination. 28 C.F.R. § 35.130(b)(4).

110. Bettering's patients will be qualified persons under the ADA with disabilities that substantially impair one or more major life activities.

111. The first criterion for admission to any part of the Facility is that patients be diagnosed as suffering from drug or alcohol addiction, and participate or agree to participate in substance abuse treatment.

112. For an individual to be eligible for inpatient care at the Facility, Bettering's medical personnel must determine that the patient is suffering from drug or alcohol addiction to such a degree that they are unable to care for themselves.

113. While being treated at the Facility, Bettering's patients will not be illegally using controlled substances. As a result, its patients are "qualified persons with disabilities" within the meaning of the ADA, 42 U.S.C. § 12102(2) and 28 C.F.R. § 35.104.

114. The Defendants are qualifying public entities within the meaning of the ADA. 42 U.S.C. § 12131(1)(A).

115. Section 12132 of the ADA constitutes a general prohibition against discrimination on the basis of disability by public entities.

116. The Defendants have violated, and are continuing to violate the ADA, by, inter alia: (i) changing the Zoning By-Law, with malice, in reaction to the imminent application of Bettering for a special permit in the GB District; (ii) refusing to provide reasonable accommodations to disabled individuals; (iii) allowing prejudice against disabled individuals to dictate the outcome of zoning decisions and hearings; and (iv) discriminating against disabled individuals.

WHEREFORE, Bettering demands judgment in its favor and against the Defendants, jointly and severally, and requests that the Court grant the following relief:

- (1) Declaratory relief stating that the Defendants' discriminatory zoning amendment and decisions and improper denial of Bettering's special permit application constituted violations of the ADA, and that Bettering, and its patients are entitled to reasonable accommodations to facilitate the construction and operation of the Facility as planned;
- (2) Preliminary and permanent injunctive relief permitting Bettering's construction and operation of the Facility as planned, and enjoining the Defendants from obstructing or interfering with Bettering's construction and operation thereof;
- (3) Compensatory damages;
- (4) Punitive damages;
- (5) Attorneys' fees and costs; and
- (6) Such other and further relief as the Court deems necessary and appropriate.

## **COUNT 2: VIOLATION OF THE FHAA**

117. Paragraphs 1 through 116 above are incorporated by reference, as if fully set forth herein.

118. The Fair Housing Amendments Act, 42 U.S.C. § 3601, et seq., (the "FHAA") guarantees fair housing to handicapped individuals.

119. Under the FHA, the term "handicap" means, with respect to a person, a "physical or mental impairment which substantially limits one or more of such person's major life activities, a record of such impairment, or being regarded as having such an impairment." 42 U.S.C. § 3602(h). The term "physical or mental impairment" includes "alcoholism" and "drug addiction (other than addiction caused by current, illegal use of a controlled substance)." 24 C.F.R. § 100.201.

120. Bettering's patients are qualified individuals with disabilities within the meaning of 42 U.S.C. § 12101.

121. Under the FHAA, it is unlawful to discriminate against or otherwise make unavailable or deny a dwelling to any buyer or renter because of a handicap of that buyer, renter, or person residing in or intending to reside in that dwelling after it is sold, rented, or made available. 42 U.S.C. § 3604(f)(1).

122. Bettering's residential treatment space within the Facility qualifies as a dwelling under the FHAA.

123. The Defendants have violated, and are continuing to violate the FHAA, by, inter alia: (i) changing the Zoning By-Law, with malice, in reaction to the imminent application of Bettering for a special permit in the GB District; (ii) refusing to provide reasonable accommodations to disabled individuals; (iii) allowing prejudice against disabled individuals to

dictate the outcome of zoning decisions and hearings; and (iv) discriminating against disabled individuals.

WHEREFORE, Bettering demands judgment in its favor and against the Defendants, jointly and severally, and requests that the Court grant the following relief:

- (1) Declaratory relief stating that the Defendants' discriminatory zoning amendment and decisions and improper denial of Bettering's special permit application constituted violations of the ADA, and that Bettering, and its patients are entitled to reasonable accommodations to facilitate the construction and operation of the Facility as planned;
- (2) Preliminary and permanent injunctive relief permitting Bettering's construction and operation of the Facility as planned, and enjoining the Defendants from obstructing or interfering with Bettering's construction and operation thereof;
- (3) Compensatory damages;
- (4) Punitive damages;
- (5) Attorneys' fees and costs; and
- (6) Such other and further relief as the Court deems necessary and appropriate.

**COUNT 3:  
VIOLATION OF THE REHABILITATION ACT OF 1973**

124. Paragraphs 1 through 123 above are incorporated by reference, as if fully set forth herein.

125. The Rehabilitation Act, 29 U.S.C. § 791 et seq., provides that no qualified individual with a disability shall, solely by reason of her or his disability, be excluded from participation in or be denied the benefits of or be subjected to discrimination under any program or activity receiving federal financial assistance. 29 U.S.C. § 794(a).

126. The Town of Wilmington receives federal financial assistance, including through federal grant programs such as the Community Development Block Grant program, which is funded by the U.S. Department of Housing and Urban Development.

127. Section 508 of the Rehabilitation Act defines "program or activity" as "all of the operations of specific entities, including "a department, agency, special purpose district, or other instrumentality of a State or of a local government." 29 U.S.C. § 794(b)(1)(A).

128. Zoning decisions by a municipality are normal functions of a governmental entity and thus, are covered by the Rehabilitation Act.

129. Bettering's patients are qualified persons under the Rehabilitation Act with disabilities that substantially impair one or more major life activities.

130. The first criterion for admission to any part of the Facility is that patients be diagnosed as suffering from drug or alcohol addiction, and participate or agree to participate in

substance abuse treatment.

131. For an individual to be eligible for inpatient care at the Facility, Bettering's medical personnel must determine that the patient is suffering from drug or alcohol addiction to such a degree that they are unable to care for themselves.

132. While at the Facility, Bettering's patients are not illegally using controlled substances. As a result, its patients are "qualified persons with disabilities" within the meaning of the Rehabilitation Act, 29 U.S.C. § 706(8)(C)(ii)(II).

133. The ZBA is a qualifying public entity within the meaning of the Rehabilitation Act.

134. Section 508 of the Rehabilitation Act constitutes a general prohibition against discrimination on the basis of disability by public entities.

135. The Defendants have violated, and are continuing to violate the Rehabilitation Act by, inter alia: (i) changing the Zoning By-Law, with malice, in reaction to the imminent application of Bettering for a special permit in the GB District; (ii) refusing to provide reasonable accommodations to disabled individuals; (iii) allowing prejudice against disabled individuals to dictate the outcome of zoning decisions and hearings; and (iv) discriminating against disabled individuals.

WHEREFORE, Bettering demands judgment in its favor and against the Defendants, jointly and severally, and requests that the Court grant the following relief:

- (1) Declaratory relief stating that the Defendants' discriminatory zoning amendment and decisions and improper denial of Bettering's special permit application constituted violations of the ADA, and that Bettering, and its patients are entitled to reasonable accommodations to facilitate the construction and operation of the Facility as planned;
- (2) Preliminary and permanent injunctive relief permitting Bettering's construction and operation of the Facility as planned, and enjoining the Defendants from obstructing or interfering with Bettering's construction and operation thereof;
- (3) Compensatory damages;
- (4) Punitive damages;
- (5) Attorneys' fees and costs; and
- (6) Such other and further relief as the Court deems necessary and appropriate.

#### COUNT 4 VIOLATION OF 42 U.S.C. § 1983

136. Paragraphs 1 through 135 above are incorporated by reference, as if fully set forth herein.

137. Under color of State law, the Town and the ZBA improperly applied zoning laws

to effectuate discrimination and denied Bettering's special permit application and request for reasonable accommodation.

138. The Town's and ZBA's illegal and improper actions are not roughly proportional to the public good sought to be achieved and are grossly disproportionate to any asserted public interest because they unduly deprive Bettering of its constitutional rights far beyond what is reasonable, legal, or necessary.

139. The Town's and the ZBA's actions are illegal because they prevent, frustrate, and impede Bettering's by-right use and enjoyment of its Subject Property and Facility.

140. The Town's and ZBA's conduct was arbitrary, capricious, unreasonable, malicious, discriminatory and in bad faith and shocks the conscience.

141. Accordingly, the Town's and ZBA's actions violate the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

WHEREFORE, Bettering demands judgment in its favor and against the Defendants, jointly and severally, and requests that the Court grant the following relief:

- (1) Declaratory relief stating that the Defendants' discriminatory zoning decisions and improper denials of Bettering's special permit application constituted violations of the Constitution and 42 U.S.C. § 1983, and that Bettering, and its patients are entitled to reasonable accommodations to facilitate the construction and operation of the Facility as planned;
- (2) Preliminary and permanent injunctive relief permitting Bettering's construction and operation of the Facility as planned, and enjoining the Defendants from obstructing or interfering with Bettering's construction and operation thereof;
- (iii) Compensatory damages;
- (iv) Punitive damages;
- (v) Attorneys' fees and costs; and
- (vi) Such other and further relief as the Court deems necessary and appropriate.

**COUNT 5**  
**VIOLATION OF SUBSTANTIVE DUE PROCESS – FIFTH AND FOURTEENTH**  
**AMENDMENTS, AND 42 U.S.C. § 1983**

142. Paragraphs 1 through 141 above are incorporated by reference, as if fully set forth herein.

143. The ZBA's acts in making discriminatory zoning decisions and denying Bettering's special permit application violated Bettering's right to substantive due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution by arbitrarily, irrationally and unreasonably interfering with Bettering's right to use and develop its Property and Facility.

144. The ZBA's actions were undertaken in bad faith and shock the conscience.

145. Bettering, having acquired the Subject Property, has the right to the use and enjoyment thereof.

146. That right includes the ability to develop the Subject Property and operate the Facility.

147. Bettering has a distinct and definite investment-backed expectation in their ability to develop, use and enjoy the Property and Facility.

148. The ZBA's actions, which were arbitrary, capricious, illegal and conscience-shocking, directly interfered with Bettering's legitimate investment-backed expectations.

149. The ZBA's actions, including its improper denials of Bettering's special permit application, have deprived Bettering of a legally-permitted, economically beneficial use of the Subject Property authorized by the Town's Zoning By-Law.

150. By virtue of the ZBA's arbitrary, capricious, and unreasonable exercise of its powers, the ZBA has violated the Fifth and Fourteenth Amendments of the United States Constitution, and 42 U.S.C. § 1983.

WHEREFORE, Bettering demands judgment in its favor and against the Defendants, jointly and severally, and requests that the Court grant the following relief:

- (1) Declaratory relief stating that the Defendants' improper zoning decisions and denials of Bettering's Use Variance Application constituted violations of the Constitution and 42 U.S.C. § 1983, and that Bettering, and its patients are entitled to reasonable accommodations to facilitate the construction and operation of the Facility as planned;
- (2) Preliminary and permanent injunctive relief permitting Bettering's construction and operation of the Facility as planned, and enjoining the Defendants from obstructing or interfering with Bettering's construction and operation thereof;
- (3) Compensatory damages;
- (4) Punitive damages;
- (5) Attorneys' fees and costs; and
- (6) Such other and further relief as the Court deems necessary and appropriate.

**COUNT 6**  
**VIOLATION OF STATE LAW**  
**G.L. c. 40A, s. 17**

151. Paragraphs 1 through 150 above are incorporated by reference, as if fully set forth herein.

152. As detailed above, the ZBA was wrong as a matter of law, palpably abused its discretionary authority and acted in an arbitrary and capricious manner when it denied Bettering's special permit application.

153. G.L. c. 40A, s. 17 states that "[a]ny person aggrieved by a decision of the board of appeals or any special permit granting authority" may appeal to a court of competent jurisdiction. In such appeal "[t]he court shall hear all evidence pertinent to the authority of the board or special permit granting authority and determine the facts, and, upon the facts as so determined, annul such decision if found to exceed the authority of such board or special permit granting authority or make such other decree as justice and equity may require."

154. The ZBA's decision was arbitrary and capricious. Its findings ignored the uncontroverted evidence establishing that the Facility is a would not result in any detriment to the GB District or the Town.

155. The ZBA ignored the uncontroverted evidence establishing that all patients residing at the Facility will undergo treatment for drug and alcohol addiction.

WHEREFORE, Bettering demands judgment in its favor and against the Defendants, jointly and severally, and requests that the Court grant the following relief:

- (1) Declaratory relief stating that the ZBA's actions were arbitrary, capricious, unreasonable, and in violation of the Zoning Act and the local Zoning By-laws;
- (2) Entry of an Order overturning the ZBA's denial of Bettering's special permit application;
- (3) Preliminary and permanent injunctive relief permitting Bettering's construction and operation of the Facility as planned, and enjoining the Defendants from obstructing or interfering with Bettering's construction and operation thereof;
- (4) Compensatory damages;
- (5) Punitive damages;
- (6) Attorneys' fees and costs; and
- (7) Such other and further relief as the Court deems necessary and appropriate.

**COUNT 7**  
**VIOLATION OF STATE LAW**  
**G.L. c. 40A, s. 3**

157. Paragraphs 1 through 156 above are incorporated by reference, as if fully set forth herein.

158. The ZBA violated the provisions of G.L. c. 40A, s. 3, which states, in pertinent part:

Notwithstanding any general or special law to the contrary, local land use and health and safety laws, regulations, practices, ordinances, by-laws and decisions of a city or town shall not discriminate against a disabled person. Imposition of health and safety laws or land-use requirements on congregate living arrangements among non-related persons with disabilities that are not imposed on families and groups of similar size or other unrelated persons shall constitute discrimination. The provisions of this paragraph shall apply to every city or town, including, but not limited to the city of Boston and the city of

Cambridge.

WHEREFORE, Bettering demands judgment in its favor and against the Defendants, jointly and severally, and requests that the Court grant the following relief:

- (1) Declaratory relief stating that the Board's actions were arbitrary, capricious, unreasonable, and in violation of G.L. c. 40A, s. 3;
- (2) Entry of an Order overturning the Board's denial of Bettering's application for a use variance;
- (3) Preliminary and permanent injunctive relief permitting Bettering's construction and operation of the Facility as planned, and enjoining the Defendants from obstructing or interfering with Bettering's construction and operation thereof;
- (4) Compensatory damages;
- (5) Punitive damages;
- (6) Attorneys' fees and costs; and
- (7) Such other and further relief as the Court deems necessary and appropriate.

**COUNT 8**  
**VIOLATION OF MASSACHUSETTS LAW AGAINST DISCRIMINATION**  
**G.L. c. 151B, s. 4**

159. Paragraphs 1 through 158 above are incorporated by reference, as if fully set forth herein.

160. G.L. c. 151B, s. 4 makes it unlawful "[f]or any person to directly or indirectly induce, attempt to induce, prevent, or attempt to prevent the sale, purchase, or rental of any dwelling or dwellings by: (a) implicit or explicit representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular age, race, color, religion, sex, gender identity, national or ethnic origin, or economic level or a handicapped person, or a person having a child, or implicit or explicit representations regarding the effects or consequences of any such entry or prospective entry..."

161. All political subdivisions of the Commonwealth are "persons" for the purposes of Chapter 151B. See Section 1.

162. G.L. c. 151B, s. 1 defines the term "handicap" to mean "(a) a physical or mental impairment which substantially limits one or more major life activities of a person; (b) a record of having such impairment; or (c) being regarded as having such impairment, but such term shall not include current, illegal use of a controlled substance as defined in section one of chapter ninety-four C."

163. The ZBA violated Bettering's rights and violated Chapter 151B by denying Bettering's special permit application in contravention of Chapter 40A and the local Zoning By-law, and G.L. c. 40A, s. 3.

164. The ZBA has exercised its powers to regulate land use in a way that discriminates against disabled persons without justification or cause by preventing development



of a residential healthcare Facility that is necessary for their treatment and rehabilitation.

165. The ZBA's conduct was arbitrary, capricious, unreasonable, malicious and in bad faith and shocks the conscience.

166. The ZBA's wrongful actions prohibit Bettering from providing a residential treatment facility on a property where it should be permitted to operate, an action that is discriminatory on its face against persons with disabilities, a discrete and insular minority that faces restrictions and limitations and has been subjected to a history of purposeful unequal treatment.

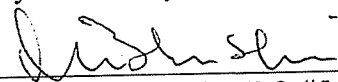
167. Because of the ZBA's denial of Bettering's special permit application and request for reasonable accommodation, Bettering has expended significant time and financial resources, has lost the opportunity to timely conduct their business and provide a much-needed service, and is incurring substantial damages.

WHEREFORE, Bettering demands judgment in its favor and against the Defendants, jointly and severally, and requests that the Court grant the following relief:

- (1) Declaratory relief stating that the Board's actions were arbitrary, capricious, unreasonable, and in violation of Chapter 151B;
- (2) Entry of an Order overturning the Board's improper denial of Bettering's special permit application and/or request for reasonable accommodation;
- (3) Preliminary and permanent injunctive relief permitting Bettering's construction and operation of the Facility as planned, and enjoining the Defendants from obstructing or interfering with Bettering's construction and operation thereof;
- (4) Compensatory damages;
- (5) Punitive damages;
- (6) Attorneys' fees and costs; and
- (7) Such other and further relief as the Court deems necessary and appropriate.

Plaintiff,

By its attorneys,



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Dated: March 25, 2019