

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

BAYMARK HEALTH SERVICES OF OHIO, INC.,)
1720 Lakepointe Drive, Suite 117)
Lewisville, TX 75057,)

Civil Action No. 1:20-cv-2754

and)

Judge: _____

MKB HOLDINGS, LLC,)
3659 Green Road, Suite 214)
Cleveland, OH 44122,)

Magistrate Judge: _____

Plaintiffs,)

v.)

**JURY DEMAND ENDORSED
HEREON**

CITY OF PARMA HEIGHTS, OHIO,)
6281 Pearl Road)
Parma Heights, OH 44130,)

and)

CITY OF PARMA HEIGHTS PLANNING)
COMMISSION,)
6281 Pearl Road)
Parma Heights, OH 44130,)

and)

DENNIS PATTEN, in his official capacity as)
CITY OF PARMA HEIGHTS DIRECTOR OF)
PUBLIC SERVICE,)
6281 Pearl Road)
Parma Heights, OH 44130,)

Defendants.)

COMPLAINT

Plaintiffs BayMark Health Services of Ohio, Inc. (“BayMark”) and MKB Holdings, LLC (together, “Plaintiffs”), for their Complaint against Defendants City of Parma Heights,

Ohio (the “City”), the City of Parma Heights Planning Commission (the “Planning Commission”), and Dennis Patten in his official capacity as the City’s Director of Public Service (the “Director”) (collectively, “Defendants” or “Parma Heights”) aver and allege:

I. INTRODUCTION

1. Nearly every American has experienced the impact of the opioid crisis. Its effects have had a devastating impact across Ohio, recognized as “ground-zero for opioid overdose deaths” in the United States.¹ Opioid Use Disorder (“OUD”) exists in nearly every Ohio community, particularly in Cuyahoga County and Parma Heights.

2. The number of overdose deaths in Cuyahoga County surged in 2020 and is on pace to be the highest number of such deaths in three years.² Heroin, fentanyl, and other opioids have been, and continue to be, the leading cause of overdose deaths in Cuyahoga County.³

3. In response to the significant unmet need for OUD services in Parma Heights and its surrounding area, BayMark has sought to open an opioid treatment office (also known as a methadone treatment office) in Parma Heights that will provide medication assisted treatments primarily utilizing methadone and buprenorphine, along with counseling and recovery services, to provide comprehensive, evidence-based

¹ Courtney Astolfi, *Report: Ohio Ground-Zero for Opioid Overdose Deaths*, THE PLAIN DEALER, (Nov. 30, 2016), https://www.cleveland.com/metro/2016/11/report_ohio_ground-zero_for_op.html (“Ohio saw more opioid overdose deaths than anywhere else in the nation”).

² Evan MacDonald, *Cuyahoga County Sees 19 Drug Overdose Deaths in a Week, on Pace for Highest Total in Three Years*, THE PLAIN DEALER, (Oct. 13, 2020), <https://www.cleveland.com/metro/2020/10/cuyahoga-county-sees-19-drug-overdose-deaths-in-a-week-on-pace-for-highest-total-in-three-years.html>.

³ Dr. Thomas P. Gilson, *Cuyahoga County Medical Examiner’s Office Heroin/Fentanyl/Cocaine Related Deaths in Cuyahoga County*, (Oct. 9, 2020) http://medicalexaminer.cuyahogacounty.us/pdf_medicalexaminer/en-US/HeroinFentanylReports/SEP2020-HeroinFentanylReport.pdf.

treatment for individuals with OUD.

4. Methadone is prescribed to reduce or eliminate chronic opioid addiction while the client is provided a comprehensive range of treatment. Methadone is a long-acting synthetic narcotic analgesic that is administered in sustained, stable, medically determined dosage levels for periods in excess of 21 days. Among other things, methadone blocks the opiate receptor in the brain. This means that if someone on a methadone treatment were to also use an opiate, the individual will not typically feel a “high” from the opiate. In short, the methadone stabilizes someone suffering from OUD by providing a “maintenance dose” of opioids, allowing the individual to avoid withdrawal symptoms and pursue a healthy lifestyle without opioid cravings leading to relapse.

5. During the course of the methadone treatments, clients suffering from OUD also receive a range of other outpatient services. These services habilitate and rehabilitate clients with OUD to a basic level of social, life, work, and health capabilities that help them become productive, independent members of society. Services include replacement therapy, evaluation of medical, employment, alcohol, criminal, and psychological problems, screening for diseases that are disproportionately represented in the opioid-abusing population, monitoring for illicit drug use, counseling by addiction counselors that are evaluated through ongoing supervision, and professional medical, social work, and mental health services either on-site or by referral.

6. Unfortunately for those suffering from OUD in and around Parma Heights, the City has arbitrarily and unlawfully prevented BayMark from providing these much-needed services.

7. The City has continuously – over the course of years – refused to issue a final decision on BayMark’s pending zoning applications. Without any legitimate basis, the City has arbitrarily and capriciously refused to recognize that BayMark’s opioid treatment office is a “commercial business,” an expressly permitted use of BayMark’s property. Likewise, the City has arbitrarily and capriciously refused to approve BayMark’s site plan, even though it meets all of the requirements set forth in the City’s Zoning Code. It is now clear that while the City is refusing to act upon BayMark’s pending applications and that the City is going to impose new zoning restrictions on use of the property and prohibit BayMark from operating an opioid treatment office on the property.

8. Rather than objectively applying its Zoning Code to approve BayMark’s operation of an opioid treatment office, the City has discriminated against and is continuing to discriminate against BayMark based on unsubstantiated fears and stigma against BayMark and its clients’ OUD disabilities.

9. The City’s arbitrary refusal to permit BayMark to open its opioid treatment office has led to overdose deaths that could have been prevented. Meanwhile, BayMark has lost significant sums during the City’s arbitrary delays. BayMark therefore seeks injunctive, monetary, and declaratory relief for the City’s violation of the Americans with Disabilities Act, the Rehabilitation Act, the United States and Ohio Constitutions, and the City’s own Zoning Code.

II. JURISDICTION AND VENUE

10. This action arises under the United States Constitution, the Ohio Constitution, and laws of the United States.

11. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331, 1343(a), 1367, and 2201.

12. Venue in this Court is proper under 28 U.S.C. § 1391(b) as this is the judicial district in which a substantial part of the events or omissions giving rise to the claims occurred.

13. Additionally, further recourse to state procedures would be futile, and/or a final decision is not required by existing law.

III. PARTIES

14. BayMark is a corporation organized under the laws of the State of Ohio with its principal place of business in Lewisville, Texas. BayMark has leased a portion of the property located at 6700 Pearl Road in the City of Parma Heights, Ohio (the “Property”) for purposes of operating an opioid treatment office. BayMark sues on behalf of itself and on account of injuries it has suffered and will continue to suffer due to its association with persons with disabilities.

15. MKB Holdings, LLC (“MKB”) is a limited liability company organized under the laws of the State of Ohio, with its principal place of business in Cleveland, Ohio. MKB purchased the Property in 2014 and subsequently leased a portion of the Property to BayMark.

16. The City is a chartered municipal corporation and body politic operating under the laws of the State of Ohio and is situated within Cuyahoga County, Ohio. Upon information and belief, the City receives and distributes money from the federal government for its programs and activities.

17. Dennis Patten is the current Director of Public Service of the City of Parma

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