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Plaintiff's Answer to Defendant's Motion for Summary Judgment, Conroy v. County of Kankakee, Docket No. 2:03-cv-02187 (Central District of Illinois Oct. 23, 2003)

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION**

JOYCE CONROY and GARY AKERS,)	
)	
)	
Plaintiffs,)	Case No. 03-2187
)	
vs.)	The Honorable Michael P.
)	McCuskey
)	
THE COUNTY OF KANKAKEE, a body politic)	Magistrate Judge David G.
organized and existing under the laws of the State)	Bernthal
of Illinois,)	
)	
Defendant.)	

**PLAINTIFF’S ANSWER TO
DEFENDANT’S MOTION FOR SUMMARY JUDGMENT**

NOW COME the Plaintiffs, JOYCE CONROY and GARY AKERS, by and through their attorney F. WILLIS CARUSO, who moves, pursuant to Rule 56 (b) of the Federal Rules of Civil Procedure, for an order denying summary judgment motion of the Defendants. In support thereof, Plaintiffs state as follows:

1. The Plaintiffs in this lawsuit at the present time are Joyce Conroy and Ms. Conroy’s handicapped son Gary Akers.
2. In 1999, Conroy purchased and subdivided 7.8 acres of agricultural property (thereafter zoned “A-2”) into two separate parcels and requested zoning variances.
3. In 2002, a variance was sought from Kankakee County to allow a manufactured home on the subdivided property.
4. These variances were required because, under the County’s zoning ordinance, manufactured homes are prohibited in A-2 zoned districts.

5. Plaintiffs have alleged in their Amended Complaint that only manufactured mobile homes will suit their housing needs.
6. Plaintiffs have alleged that the Defendant was obligated under the Fair Housing Act to “reasonably accommodate” Ms. Conroy and Gary Akers and grant their requests for a variance.
7. In April 2003, this request for a variance was denied by the Defendant
8. At present, the only remaining counts in the litigation are parallel claims asserted by Ms. Conroy and Gary Akers under the Fair Housing Act, 42 U.S.C.A. § 3604 (Counts I & III), and an equal protection claim asserted solely by Ms. Conroy (County IV).
9. Plaintiffs state that the Defendant violated the “reasonable accommodation” requirement of the Fair Housing Act and that it should have granted the zoning variance under the circumstances presented here.
10. The Defendants misconstrue this case as a zoning case. This case is about a reasonable accommodation in violation of Fair Housing Act, 42 U.S.C.A. § 3604.
11. The Defendant’s assertion that facially neutral ordinances do not violate the Fair Housing Act do not apply to this case, as more fully explained in the Memorandum filed concurrently herewith.
12. The evidence in this case shows that stick-built or modular homes could not have been built or customized to suit Conroy’s and Akers’ needs.
13. There is evidence that Defendant engaged in discriminatory conduct and therefore summary judgment should not be granted as to Plaintiffs’ claims under the Fair Housing Act.

14. A litigant can prevail in a “class of one” equal protection case if he or she can prove that the government’s actions were (1) based solely upon sheer vindictiveness or spite and (2) were wholly unrelated to any legitimate state objective. Esmail v. Macrane, 53 F.3d 176, 179 (7th Cir. 1995).
15. Plaintiffs’ have submitted a Memorandum of Law in support of this Answer to Deny Defendant’s Motion for Summary Judgment, as well as a statement of undisputed facts, disputed, immaterial, and additional facts as required under Rule 7.1 of the Local Rules for the United States District Court for the Central District of Illinois.

WHEREFORE, the Plaintiffs JOYCE CONROY and GARY AKERS, respectfully request that this Honorable Court grant summary judgment in its favor.

s/ F. WILLIS CARUSO,
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OF ILLINOIS)

) SS.

COUNTY OF COOK

CERTIFICATE OF SERVICE

I hereby certify that on 7 March, 2005, electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Jason Rose.

s/ F. Willis Caruso
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