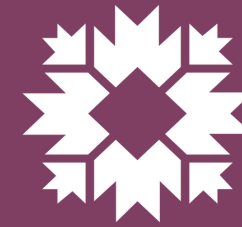


RIGHTS STUFF

A Publication of The City Of Bloomington Human Rights Commission



CITY OF BLOOMINGTON

Vacancy on the City's Commission on the Status of Black Males

X The City of Bloomington created the Commission on the Status of Black Males (CSBM) in 2001. Its purpose and duties include the following:

— Developing action committees to address problems of Black males in the areas of education, health, criminal justice and employment;

— Serving as a catalyst to promote positive public and private remedies to the multi-faceted problems confronting Black males in our community and the resulting effects on the entire community;

— Organizing and convening community forums and neighborhood-based focus

groups to discuss the status of Black males; and

— Networking with groups with similar missions throughout the state, sharing ideas, information, data and plans.

Its initiatives include Outstanding Leaders of Tomorrow, Black Male Youth Summit, Black Barbershop Health Initiative, Black Male Grads, Million Father March and Photos with Santa.

It meets on the second Wednesday of each month at 5:30.

The CSBM currently has a vacancy. If its important work interests you, please consider applying. You can apply by going to <https://bloomington.in.gov/boards>.

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Accessibility Dispute at Condo Leads to Court Case

X The Boulder Bluffs condominium in Georgetown, Michigan, has 17 buildings and 145 apartments. Under the bylaws, a condo owner may not make structural modifications to her apartment without approval from the condo association.

Terry Romig bought one of the condos in 2009. In 2016, her daughter Bobbie Jo Kooman asked the condo association if they could add a railing next to the step to the porch because her dad, who has a disability, had fallen several times. The association liaison, Natasha Biegalle, told Kooman that she needed to make the request online to the board. Kooman did, sending an email with a photo of the railing she had picked out. She didn't mention her dad or his disability in her online request.

The board considered the request a couple of weeks later and a majority voted against it. One said that the proposed railing would not match the nearby condos. Biegalle later emailed the board and said she was concerned if they denied the request and the dad fell again, they could be legally liable.

That same day, Kooman emailed Biegalle and told her that her father had fallen off the porch again. She demanded an answer "as soon as possible" and said they should have already approved her request. Biegalle wrote Kooman, explaining that the board had denied the request based on the appearance of the rail and the possibility of damage



to the porch. She also called Kooman and suggested she get a doctor's note about her dad's need for a railing.

Kooman got the doctor's note, but instead of submitting it to the board, the family went to an attorney. The attorney sent the association a demand letter along with the doctor's note. A couple of weeks later, the dad fell again. The board soon approved the request, but Kooman sued, alleging the condo association had violated the Fair Housing Act. She lost.

The court said that the association's delay in granting the request was not unreasonable. They had the right to request a doctor's note. Kooman had told Biegalle that her father had a disability, but there was no evidence that the board had been informed of that fact when it made its initial decision.

One way to avoid this problem is for landlords and condo

associations to have clear policies on how to handle accommodation requests, including forms that require the applicant to provide a doctor's note when the disability is not obvious.

The case is Kooman v. Boulder Bluff Condominiums, 2020 WL 6498672 (6th Cir. 2020). If you have questions about fair housing, please contact the BHRC.

RIGHTS STUFF'S MISSION

The purpose of Rights Stuff is to provide information about civil rights litigation as a way to encourage adherence to best practices for landlords, providers of public accommodations and employers. We do this by publishing relevant and timely articles from around the country. Please see the reports in this issue to learn more.

Employee with Disability Not Always Entitled to Job Reassignment

X Chuck Elledge worked for Lowe's in Virginia for more than 20 years. By 2014, he was the market director of stores, overseeing a dozen stores. His job duties included driving to two stores a day and walking around the stores once he arrived. He worked 50 to 60 hours a week.

In 2014, he had a fourth knee operation. It became trying for him to walk the floors of the stores he supervised, and driving was taxing for him. His doctor said he should not walk more than four hours a day, and he should not work more than eight hours day. Lowe's offered him the use of a motorized scooter while at work, but he declined that offer. He did not always follow his doctor's instructions. He had lower-ranking employees drive him to the stores he needed to visit.

When Lowe's found out that Elledge was getting a permanent disabled parking permit, it asked his doctor how long he would have medical restrictions. The doctor said the medical restrictions would be permanent. Lowe's then told Elledge that he would not be able to remain in his current position, but offered to help him find a less physically demanding manger-level position. Such a job would have paid less than his director position.

Elledge did not want to accept a lower-paying job and instead applied for two director jobs. Lowe's did not find him to be the best qualified applicant for either position. Elledge took early retirement and a severance



package, and then sued Lowe's for disability discrimination under the Americans with Disabilities Act (ADA). He lost.

The court agreed with Lowe's that market directors of stores have to be able to walk more than four hours a day, drive to the stores they supervise and work more than eight hours a day. These are all "essential duties" of the job. Elledge could not do these duties with his medical restrictions, and his doctor said his restrictions were permanent. The fact that Lowe's waived these requirements on a temporary basis did not mean the store had to continue to do so. A scooter might have helped him do his job, but he declined that offer. The Americans with Disabilities Act does not require Lowe's to

continue to allow lower-level employees to drive Elledge to his stores on an on-going basis.

Elledge argued that he was qualified for the two director jobs for which he applied and that Lowe's should have offered him one of those two positions. The court said that Lowe's had implemented a policy of hiring only the best-qualified applicant, and had shown that the successful applicants for the two vacancies were more qualified than he.

The case is Elledge v. Lowe's Home Centers, LLC, 2020 WL 6750363 (4th Cir. 2020). If you have questions about the ADA, please contact the BHRC.

City of Bloomington Earns Perfect Score on Human Rights Campaign Index for Sixth Consecutive Year

XIn partnership with the Equality Federation Institute, the Human Rights Campaign (HRC) has announced that Bloomington has again been awarded a perfect score on the annual

Municipal Equality Index (MEI). The index of 506 cities nationwide uses 49 criteria to evaluate how inclusive a city's laws, policies, and services are of the LGBTQ+ people who live and work there.

Bloomington was one of only 94 cities in the U.S. to earn a perfect score this year, up from 88 last year and just 11 in 2012. As in last year's index, Bloomington was the only city in Indiana to do so. Bloomington's scorecard is available online at hrc.org/resources/municipalities/bloomington.

The 2020 MEI rating marks the sixth consecutive year that Bloomington has been recognized with a perfect score. The full 2020 Municipal Equality Index Report is available online.

"It's great to see Bloomington recognized again for our record of supporting and protecting our LGBTQ+ residents and visitors," said Mayor John Hamilton. "I am grateful to our partners in the community and at the university and to our Human Rights Commission and the many City departments that work hard daily to eliminate discrimination on the basis of sexual orientation and gender identify, and to foster ever greater inclusion and equity in Bloomington."

The MEI score is determined by a city's record in five categories: non-discrimination laws, municipal employment policies and services, city services and programs, law enforcement, and leadership on LGBTQ+ equality.

Bloomington's scorecard highlights a variety of City initiatives that include, support, engage, and protect LGBTQ+ individuals, including the following:

- City code includes laws prohibiting discrimination in employment, housing and public accommodations
- City contractors required to comply with non-discrimination

ordinance

- Human Rights Commission enforces non-discrimination ordinance
- City provides employee domestic partner benefits
- City's healthcare benefits are transgender-inclusive
- Police department employs LGBTQ liaison
- Police department reported 2018 hate crimes statistics to the FBI
- City maintains single-occupancy all-gender facilities

"2020 has been a difficult year for social justice issues across the spectrum. Bloomington remains committed to progress in all areas of diversity and inclusion, and the MEI score shows we are on the right path," said Human Rights Commission Director and Assistant City Attorney Barbara McKinney.

Established in 1980, the Washington, D.C.-based Human Rights Campaign is the largest advocacy group working to achieve civil rights for LGBTQ+ individuals in the United States. The HRC began evaluating cities using the MEI

UPCOMING BHRC MEETING

Currently, the BHRC meets via Zoom. That link can be found on the City of Bloomington's online calendar at bloomington.in.gov.

The next BHRC meeting will take place at 5:30 p.m. February 22, 2021.