

# City Plan Board

City of Gainesville

April 27, 2017

Petition PB-17-13-TCH

Kyle Benda

Knellinger, Jacobson & Associates

o/b/o the ITM Group, LLC

# “Rehabilitation Center”

- Section 30-23 of the Land Development Code
  - *Rehabilitation center* means a facility providing professional care, nonresident only, **for those requiring therapy, counseling or other rehabilitative services related to drug abuse, alcohol abuse, social disorders, physical disabilities, mental retardation or similar problems.**

# The ITM Group, LLC

ITM ITM Group | Licensed Therapists

www.itmflorida.com

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**ITM**  
INTENSIVE TREATMENT MODALITIES

A professional team of mental health care **therapists** that provide individual, family and marriage counseling for adult and adolescents.

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OUR NEWS



Honesty,  
Integrity, and  
Empathy


**Our Main Office in Gainesville has Moved**

Our main office in Gainesville has moved to 1208 NW 6th Street. Since this is the administrative office for The ITM Group, as always, all initial contacts and appointments will be made through this office. Sex offender assessments and treatment are NOT provided at this location. These services ARE provided at...

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The *Intensive Treatment Modalities* is made up of team of mental health care professionals that have been providing treatment and care for adult and adolescent clients since the early 1980's. Serving the North Central Florida area with our main office being located in Gainesville. The mission of The ITM Group is to provide exceptional services to our clients. We endeavor to offer and to utilize only well-qualified therapists whose services are provided in a manner that supports the values of basic human dignity and respect. Our teams of therapists are Florida Licensed and include licensed Psychologists, Licensed Marriage & Family therapist, Licensed Mental Health Counselors and Licensed Clinical Social Workers whom have their own special areas of expertise.

SERVICE PROVIDER FOR



The ITM Group is a contracted provider for various Government agencies and also a mental health provider or referral agency for etc... Please click below to see a full list of, etc, etc.

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# Freedom of Speech

- Amendment I, United States Constitution
  - “Congress shall make no law . . . abridging the freedom of speech . . . .”
- Article I, Section 4, Florida Constitution
  - “No law shall be passed to restrain or abridge the liberty of speech . . . .”

# Equal Protection

- Amendment XIV, Section 1, United States Constitution
  - “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States . . . **nor deny to any person within its jurisdiction the equal protection of the laws.**”
- Article I, Section 2, Florida Constitution
  - “**All natural persons, female and male alike, are equal before the law** and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property . . . **No person shall be deprived of any right because of race, religion, national origin, or physical disability.**”

# Vagueness

- Amendment XIV, Section 1, United States Constitution
  - “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; **nor shall any State deprive any person of life, liberty, or property, without due process of law . . . .**”
- Article I, Section 9, Florida Constitution
  - “**No person shall be deprived of life, liberty or property without due process of law . . . .**”

# Right to Privacy

- Amendment XIV, Section 1, United States Constitution
  - “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; **nor shall any State deprive any person of life, liberty, or property, without due process of law . . . .**”
- Article I, Section 23, Florida Constitution
  - **“Every natural person has the right to be let alone and free from governmental intrusion into the person’s private life . . . .”**

# Freedom of Speech

- Congress **shall make no law . . . abridging the freedom of speech . . . .**
- *See Wollschlaeger v. Governor of Florida*, 2017 U.S. App. LEXIS 2747, decided by the United States 11<sup>th</sup> Circuit Court of Appeals on February 16, 2017:
  - “Despite its majestic brevity—or maybe because of it—the freedom of speech clause of the First Amendment sometimes proves difficult to apply. (citations omitted). **Yet certain First Amendment principles can be applied with reasonable consistency, and one of them is that, subject to limited exceptions, ‘[c]ontent-based regulations [of speech] are presumptively invalid.’** (citation omitted).”



# Equal Protection

- No state shall . . . deny to any person within its jurisdiction the equal protection of the laws.
- *See In Re Taylor*, 343 P.3d 867, decided by the California Supreme Court in 2015:
  - “As we next explain, we are persuaded that blanket enforcement of the mandatory residency restrictions of Jessica’s Law, as applied to registered sex offenders on parole in San Diego County, cannot survive even the more deferential rational basis standard of constitutional review. Such enforcement has imposed harsh and severe restrictions and disabilities on the affected parolees’ liberty and privacy rights, however limited, while producing conditions that hamper, rather than foster, efforts to monitor, supervise, and rehabilitate these persons. Accordingly, it bears no rational relationship to advancing the state’s legitimate goal of protecting children from sexual predators, and has infringed upon the affected parolees’ basic constitutional right to be free of official action that is unreasonable, arbitrary, and oppressive.”

# Vagueness

- . . . nor shall any State deprive any person of life, liberty, or property, without due process of law.
- *See Florida Action Committee v. Seminole County*, 2016 U.S. Dist. LEXIS 79189, decided by the United States 11<sup>th</sup> Circuit Court of Appeals in 2016:
  - “The Amended Complaint shows that a number of FAC’s members have no way of knowing where all prohibited exclusion zones are located because of Seminole County’s failure to adequately identify all schools, daycare centers, parks, and playgrounds covered by the Ordinance . . . Indeed, FAC alleges facts demonstrating that Seminole County’s own officials differ on what the Ordinance proscribes and how it is to be enforced. As a result, the Court can reasonably infer that both those who enforce the Ordinance and those who are subject to its enforcement must guess at its meaning and differ in its application, thus stating a vagueness claim under the Fourteenth Amendment.”

# Right to Privacy

- **“Every natural person has the right to be let alone and free from governmental intrusion into the person’s private life . . . .”**
- *See Winfield v. Dep’t of Business and Prof’l Reg.*, 477 So. 2d 544, a Florida Supreme Court case from 1985:
  - **“This amendment is an independent, freestanding constitutional provision which declares the fundamental right to privacy. Article I, section 23, was intentionally phrased in strong terms . . . .”**
- Any law that implicates the right of privacy is **presumptively unconstitutional**, and the burden is on the City to prove:
  - The existence of a compelling state interest; and
  - That the law serves the interest through the least restrictive means.

# Conclusion

- In *Coates v. Cincinnati*, 402 U.S. 611, a United States Supreme Court case from 1971, Justice Potter Stewart states:
  - **“Our decisions establish that mere public intolerance or animosity cannot be the basis for abridgment of these constitutional freedoms.”**
- In *City of Cleburn v. Cleburn Living Ctr.*, 473 U.S. 432, a United States Supreme Court Case from 1985, Justice Byron White states:
  - **“But mere negative attitudes, or fear, unsubstantiated by factors which are properly cognizable in a zoning proceeding, are not permissible bases for treating a home for the mentally retarded differently from apartment houses, multiple dwellings, and the like. It is plain that the electorate as a whole, whether by referendum or otherwise, could not order city action violative of the Equal Protection Clause, (citation omitted) and the city may not avoid the strictures of that Clause by deferring to the wishes or objections of some fraction of the body politic. ‘Private biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect.’ (citation omitted).”**

# Laws Based on Facts

- In *Romer v. Evans*, 517 U.S. 620, a United States Supreme Court case from 1996, Justice Anthony Kennedy wrote:
  - “Even laws enacted for broad and ambitious purposes often can be explained by reference to legitimate public policies which justify the incidental disadvantages they impose on certain persons. Amendment 2, however, in making a general announcement that gays and lesbians shall not have any particular protections from the law, inflicts on them immediate, continuing, and real injuries that outrun and belie any legitimate justifications that may be claimed for it. We conclude that, in addition to the far-reaching deficiencies of Amendment 2 that we have noted, the principles it offends, in another sense, are conventional and venerable; **a law must bear a rational relationship to a legitimate governmental purpose, (citation omitted), and Amendment 2 does not.**”