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ZONING AND LAND USE PLANNING

Court Finds Village's Zoning Plan Discriminatory

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The U.S. District Court for the Eastern District of New York has ruled that the Village of Garden City, on Long Island, and the village's board of trustees (the Garden City defendants) violated the federal Fair Housing Act (FHA),[1] based on theories of disparate treatment and disparate impact, and also violated other federal civil rights laws and the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution when they eliminated "multi-family residential group" (R-M) zoning and endorsed "residential-townhouse" (R-T) zoning after they received public opposition to the prospect of affordable housing in the village.[2]

After an 11-day bench trial in the case, Judge Arthur D. Spatt found that Garden City's zoning decision tended to perpetuate segregation in that community.

The practical impact of the decision for Garden City, if any, remains to be seen and may not become evident for quite some time. The ruling, however, is quite notable for its conclusions of law on standing, mootness, and liability—which very well may lead to lawsuits against villages and towns across New York challenging municipal zoning decisions and land use regulations under federal anti-discrimination laws.

Background

The Garden City case arose a number of years ago after Nassau County began drafting a real estate consolidation plan and proposed to sell some real property it owned within the boundaries of the village of Garden City. Garden City is an affluent community located in Nassau County where minorities living in households make up only about 2.6 percent of the population, as compared to 15.3 percent in the county as a whole.

The village created a committee to review zoning options for the parcel and a planning consultant retained by the village issued a draft environmental assessment form (EAF) that proposed that R-M zoning controls be used for the residential component of the property, which could have allowed for a possible 311 apartment units to be built there.

The village subsequently held a hearing at which residents voiced concerns that multi-family housing would generate traffic, parking problems, and increased school expenditures due to additional children. A few weeks later, the village's planning consultant "reversed course" and endorsed a new proposal to rezone the residential area for townhouses rather than apartments. Thereafter, the village board adopted R-T zoning for the site. As enacted, Local Law No. 2-2004 limited construction on the site to one dwelling unit for each 6,000 square feet of total plot devoted to such use, and prohibited multi-family housing in all but a small portion of the site, and then only with a special permit.

The county issued a request for proposals (RFP) and ultimately awarded a contract to develop the property to a private developer that made the highest bid. The transaction never closed, however, and, following a change in administration, the county decided not to sell the site.

New York ACORN Housing Company, Inc. (NYAHC), known now as MHANY Management, Inc., and New York Association of Community Organizations for Reform Now (New York ACORN), which has been succeeded by New York Communities for Change, Inc. (NYCC), were among the plaintiffs who sued. At the time of trial, the only remaining plaintiffs were MHANY, a not-for-profit community-based developer of affordable housing incorporated in New York, and NYCC, a non-profit entity formed in December 2009. Similarly, the only remaining defendants were the Garden City defendants.

Standing

In its decision, the court rejected the Garden City defendants' arguments challenging the plaintiffs' standing under Article III of the Constitution.

First, the court found that NYAHC had proved injury in fact at the trial notwithstanding that it had not submitted a proposed bid during the RFP process. In the court's view, NYAHC had proved that submitting a proposal in response to the RFP would have been futile because the shift to R-T zoning made it financially impossible to build low income housing on the site. Simply put, the court found, the shift to R-T zoning by the village, whether discriminatory or not, had caused injury to NYAHC because the high cost to develop single-family housing under R-T zoning made it financially impossible to build low income housing on the site.

The court also found that NYCC had standing as an association because it had demonstrated that its members would have been eligible for and would have an interest in obtaining affordable housing in Garden City.[3]

The court, in essence, did not have much difficulty deciding that the plaintiffs had standing to bring their action.

Mootness

The court also rejected the Garden City defendants' argument that the suit was moot because the county had decided not to sell the site. The court reasoned that the plaintiffs'

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alleged injuries resulted from the change in the proposed zoning, which had preceded the county's decision not to sell the site. Moreover, the court continued, there were two specific instances of injunctive relief sought by the plaintiffs against the Garden City defendants that did not relate specifically to the site itself: the plaintiffs sought to enjoin the defendants from engaging in any other discriminatory acts that perpetuate or contribute to segregation in Garden City, and they sought an order that the defendants take and/or fund affirmative steps to overcome the effects of past discriminatory practices, including the funding of remedial activities necessary to overcome the perpetuation of segregation in Garden City.

Accordingly, the court found that there remained a live controversy in spite of the fact that the county was not going to sell the site. The court then turned to the substantive merits of the action.

Liability

The principal part of the court's decision addressed the plaintiffs' FHA claims against the Garden City defendants. After observing that conduct prohibited by 42 U.S.C. §3604(a)[4] included "discriminatory zoning practices,"[5] the court pointed out that a claimant may demonstrate that discriminatory zoning practices were employed by presenting either proof of disparate treatment or disparate impact, and that the plaintiffs in this case relied on both theories of liability.

With respect to the plaintiffs' disparate treatment claim, the court first noted that the plaintiffs had presented statistical evidence that indicated that the R-T zoning designation weighed "more heavily on one race than another." It also found that the sequence of events leading up to the implementation of the R-T zone gave rise to an "inference of race-based animus by the Garden City Defendants." The court then found that at least some of the expressions by Garden City residents of disapproval for affordable housing reflected race-based animus or at least could have been construed as such by the village's board of trustees.

Next, the court determined that the Garden City defendants had satisfied their "minimal burden of offering a nondiscriminatory reason for their zoning decision" by indicating that they had "legitimate concerns" over traffic and other matters. It added, however, that its finding that the board had acted based on legitimate concerns did "not foreclose a finding that impermissible discriminatory intent also played a role" in the decision-making process.

In fact, the court said, there were "many different factors" surrounding the enactment of the R-T zoning. Significantly, it ruled that, although "legitimate concerns" played a role in the board's shift from R-M zoning to R-T zoning, the plaintiffs had established that discrimination played a "determinative role." In other words, the court declined to hold that, based on the "legitimate concerns," the board would have shifted from R-M zoning to R-T zoning even if discrimination had played no role.

The ruling is quite notable for its conclusions of law on standing, mootness, and liability—which very well may lead to lawsuits against villages and towns across New York challenging municipal zoning decisions and land use regulations under federal anti-discrimination laws.

Accordingly, the court ruled that the plaintiffs had established liability under §3604(a) of the FHA based on a theory of disparate treatment.

The court reached the same conclusion with respect to the disparate impact theory of the plaintiffs' §3604(a) claim. It found that the plaintiffs had established, by a preponderance of the evidence, that the rejection of the R-M zone in favor of the R-T zone perpetuates segregation because it eliminates the availability of the type of housing that minorities were disproportionality likely to need—namely, affordable rental units. It further found that the enactment of the R-T zoning actually resulted in racial discrimination because it "significantly decreased the potential pool of minority residents likely to move into housing developed [on the site] in proportion to the number of non-minorities affected."

The court added that although the enactment of R-T zoning advanced certain legitimate, bona fide government interests—namely, reducing traffic and providing for the construction of townhomes—the Garden City defendants had not established the absence of a less discriminatory alternative. Thus, it held, the plaintiffs had established, by a preponderance of the evidence, the liability of the Garden City defendants under §3604(a) of the FHA by proving that the village's acts "had both an adverse impact on minorities and tended to perpetuate segregation."

Other Claims and Remedies

In short order, the court also concluded that the plaintiffs had established liability under 42 U.S.C. §§1981, 1983, and the Equal Protection Clause, although it dismissed the plaintiffs' cause of action under 42 U.S.C. §1982, finding that they had not identified any cognizable property interest in as yet-built or planned affordable housing.

With respect to a remedy, the court looked to the language of the FHA, which authorizes courts to award injunctive relief, and to prior case law, which directs a court to "craft injunctive relief with a view toward the statute's goal of preventing future violations and removing lingering effects of past discrimination."[6] It concluded that, at a minimum, a prohibitive injunction enjoining the village from future FHA violations was appropriate. In an effort to compel the village to take affirmative steps to promote non-discriminatory housing, the court directed the plaintiffs to submit a proposed remedial plan to the court, and provided the village with an opportunity to respond with objections or propose an alternative remedial plan.

Conclusion

Whether the court ultimately will order the Garden City defendants to comply with a remedial plan remains to be seen. The court's holdings on standing, mootness, and liability, however, almost certainly will be used as a roadmap for challenges in other courts to the zoning rules of other villages and towns across the state by plaintiffs advocating for affordable housing. All parties have an interest in carefully studying Judge Spatt's opinion and considering what steps to take from now on.

1. Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §3601
2. MHANY Management Inc. v. Garden City, No. 05-CV-2301 (ADS)(WDW) (E.D.N.Y., Dec. 6, 2013).
3. The court did not decide whether the plaintiffs, as corporate entities, had statutory standing to bring an action under 42 U.S.C. §1982, which provides that "[a]ll citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property," finding that the Garden City defendants had waived that argument.
4. Section 3604)(a) provides that it shall be unlawful "[t]o refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin."
5. See, e.g., *Fair Hous. in Huntington Comm. Inc. v. Town of Huntington, N.Y.*, 316 F.3d 357 (2d Cir. 2003).
6. *United States v. Space Hunters*, 2004 U.S. Dist. LEXIS 23699 (S.D.N.Y., Nov. 22, 2004).

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