

Long Island Housing Bias Ruling Affirmed by 2nd Circ.

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MANHATTAN (CN) - After a federal judge found intentional discrimination behind its rezoning plan, Nassau County may face new liabilities for "steering" affordable housing to low-income communities of color, the Second Circuit ruled on Wednesday.

In 2002, Nassau faced a budgetary and infrastructure crisis when its then-executive Thomas Suozzi came up with a plan that included selling the 25-acre site of the county's former social services building to a developer for \$30 million.

At first, Garden City trustees proposed "multi-family residential" housing that would have created 311 units - or 75 single-family homes - on the site, but the village selected a different developer under pressure from residents following multiple public hearings.

A study commissioned by Acorn, a now-defunct civil rights group, found that the revised plan would not have altered the racial composition of the largely white village.

In 2005, Acorn filed a lawsuit with four Long Islanders alleging that this was by design.

Garden City, a town known as the place where famed aviator Charles Limbergh took off on his first transatlantic flight, had a 4.1 percent black and Latino population in the year 2000.

Excluding students living dormitories, they accounted for only 2.6 percent of the population, and only 2.3 percent headed Garden City households.

Five years into the anti-discrimination lawsuit, Acorn shuttered after 40 years of serving poor and minority communities.

MHANY Management, a Brooklyn-based affordable housing group, took over as lead plaintiff three years before a federal judge found that Garden City acted with "discriminatory intent" to placate public opposition to its affordable housing plans.

On Wednesday, a three-judge panel of the Second Circuit spotted "no clear error" with that finding.

"The tenor of the discussion at public hearings and in the flyer circulated throughout the community shows that citizen opposition, though not overtly race-based, was directed at a potential influx of poor, minority residents," Judge Rosemary Pooler wrote in a 102-page opinion.

The panel found one of the Garden City public hearings "eerily reminiscent" to the reaction to those held for a proposed public housing plan in Yonkers.

In the Yonkers case, a Manhattan Federal Court judge's plan to desegregate public housing met stiff resistance from the local government and constituents in the late 1980s and early 1990s.

A politician's struggle to implement the plan in the face of racist opposition provided dramatic fodder for the HBO miniseries "Show Me a Hero," by writer David Simon.

Unlike the Yonkers case, Garden City's opponents did not make overtly racist remarks at public hearings. But the panel found that their euphemisms for preserving the village's "flavor" and "character" amounted to "code words for racial animus."

Significantly, the appellate court revived a claim accusing Nassau County of a pattern of placing affordable housing in communities of color.

U.S. District Judge Arthur Spatt tossed these allegations on the grounds that Section 808 of the Fair Housing Act does not provide a private right of action.

The Second Circuit noted that Spatt failed to consider another avenue to explore these claims - Section 804(a).

In a statement, Nassau County Attorney Carnell Foskey said: "We are confident that on remand that Judge Spatt will find that the county appropriately disbursed its housing funds and did not engage in any discriminatory conduct or practice."

MHANY Management did not immediately respond to a request for comment.