

Zoning discrimination ruling against Garden City affirmed

March 23, 2016 By John Riley john.riley@newsday.com

A federal appeals court on Wednesday affirmed an exclusionary zoning discrimination ruling against Garden City and said the plaintiffs can also pursue a claim that Nassau County has been illegally “steering” affordable housing from well-off communities to low-income enclaves.

The ruling by the 2d U.S. Circuit Court of Appeals in Manhattan came in a decade-long struggle over residential development of a 25-acre parcel of public land in 96-percent white Garden City that had housed the Nassau County Department of Social Services.

The court found the village’s insistence on single-family townhouses instead of multi-family zoning was a result of “vocal and racially influenced opposition,” and said county efforts to end the lawsuit in 2010 by announcing plans for a new courthouse on the site were “pervaded” by “suspicious timing and circumstances.”

“Plaintiffs claim that Nassau County has an explicit policy of steering affordable housing to low-income, majority-minority communities,” the court said. “... With respect to... Nassau County’s steering of affordable housing, we remand for the district court to address.”

Although the decision did not even assure the plaintiffs of a trial on the “steering” claim, plaintiffs lawyer Stan Brown of the law firm Hogan Lovells called the 102-page ruling “powerful and important.”

“The court gives us a pathway to changing where affordable housing is located and creating a diverse, integrated county,” Brown said. “The county is not diverse now and not integrated the way it should be.”

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“This is a monumental decision not only for the plaintiffs but for all of the communities on Long Island,” said another plaintiffs lawyer, Fred Brewington. “The court found that Garden City intentionally discriminated, and the county cannot wash their hands of their involvement.”

But in a statement, Nassau County attorney Camell Foskey said the county was “confident” that the courts will eventually find that the county “appropriately disbursed its housing funds and did not engage in any discriminatory conduct or practice.”

The ruling on Garden City, which the court said has no affordable housing, largely upheld a 2014 decision by Central Islip U.S. District Judge Arthur Spatt.

Spatt ordered the village to fund fair-housing training for officials, allow multi-family zoning on the parcel if the county dropped claimed plans to build a courthouse, and set aside 10-percent of future multi-family projects for affordable housing.

The 2d Circuit said opposition to multi-family zoning at the county site had revolved around purported concerns about community “character” and “flavor” which it described as “code words” long used to cloak “race-based animus.”

The appeals court also said county plans for a new courthouse on the parcel instead of residential development surfaced in 2010, just after Ed Mangano became county executive, and gave the county a basis to claim the lawsuit over zoning was “moot” just as it reached a critical stage.

But work hadn’t progressed significantly since that initial claim, the judges wrote, leaving them “wondering whether the courthouse project represents a convenient distraction rather than a valid claim.”

Although the appeals panel said Spatt erred in dismissing all claims against the county, it only ordered the judge to consider whether there was a sound legal basis for the “steering” claim, and did not express an opinion on whether it was valid.

The judges did, however, note that the plaintiffs had produced some evidence supporting it – including federal filings in which the county said it targeted “comprehensive community development efforts” in “lower income and minority areas such as Roosevelt, Inwood, Hempstead Village, New Cassel and Freeport.”

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