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Village loses appeal in MHANY housing discrimination suit

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A federal court has denied Garden City's appeal in a housing discrimination case, affirming a lower court ruling that Garden City deliberately created zoning that would discourage minorities from moving to the Village.

The ruling by the Second Circuit Court of Appeals, which was issued on Wednesday, upholds all of the remedies required by District Court Arthur Spatt, including that, until 2019, ten percent of all newly constructed developments of five units or more be reserved for affordable housing. The judge also required that the Village hire a Fair Housing Compliance Officer and that it join the Nassau County Urban Consortium, an association of municipalities that work together on housing issues.

In addition, the district court judge had also ruled that the Village would have to pay the attorneys' fees for the plaintiffs, which were at that time estimated to be \$5.6 million. That provision had been stayed pending the outcome of the appeal.

In a statement issued yesterday morning, the Board of Trustees said, "We have received and are currently reviewing the 102 page decision. Although we are disappointed by the ruling of the Second Circuit, we take great pride in treating everyone with respect and dignity and will continue to work on behalf of all of our residents."

The case was originally filed in 2005 after a fair housing group disputed Garden City's rezoning of the 25 acre Social Services building site on Washington Avenue. At that time Nassau County was considering selling the property for development. Because it was not zoned for housing, the Village of Garden City rezoned it to allow single family homes with some townhouses.

A fair housing advocacy group, ACORN, disputed the process which Garden City used to develop the new zoning, saying that Village officials were improperly swayed by racial animus

during public hearings. (ACORN was eventually succeeded as plaintiffs by another fair housing group, MHANY.)

In its appeal, which was heard on May 29, 2015, Garden City made several arguments, all of which were rejected by the Circuit Court. The plaintiffs had argued that citizens' comments during the zoning process used "code words" that led Village officials to zone the property in such a way as to reduce the number of minorities living there. The district court agreed with this assessment.

In Garden City's appeal, attorney Michael Carvin argued that the district court had erred when it "ascrib[ed] improper motivations to public officials based on some private citizens' statements."

However, Circuit Appeals Court Justice Rosemary Pooler, writing for the three judge panel, said, "Garden City argues that a code word theory only makes sense when it is the defendant's statements at issue. We disagree. The notion of a code word implies that it will be understood by another."

The Village also argued that the case was moot because the property was taken off the market by the County, which decided to use it as a site for a new Family Court instead. The appeals court disagreed, saying that the timing of the County's decision was "suspicious". (The County was also a defendant in the case.) "We are unpersuaded that the County has committed to this course permanently," Judge Pooler wrote.

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