



Garden State CLE
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GARDEN STATE CLE LESSON PLAN

A 1.0 credit course

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LESSON PLAN AND EVALUATION**

LITIGATING A FEDERAL FAIR HOUSING CLAIM

With

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And

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Program description

This 1.0 credit CLE program looks at the federal Fair Housing Act through the prism of *Mount Holly v. Mt. Holly Gardens Citizens in Action, Inc.*

I. Introduction

- **Started doing municipal government law about 11 years ago**
- **Municipal solicitor/township attorney for Burlington City, Mt. Holly Township, Riverside, West Hampton, and Fairfield Township in Cumberland County, several different boards**
- **Need to know reasonable amount of different topics because various issues come up**
- **Sought out advice of some people who had been doing that type of work, some reading materials, Robert's Rules of Order, NJ Practice Series – Local Government Law 4th by Michael Pane, Jr.**
- **Once you get to know the council then you get used to the issues**
- **Main function is as legal counsel and as parliamentarian; know each issue that will arise because you have the agenda in advance**
- **Less formality in the meetings – as opposed to being in the courtroom**
- **People have a right to speak – but have boundaries – no personnel complaints (must be made privately) – can limit time the public can speak**
- **Make advice available to anyone**
- **Phone calls to office by individuals as opposed to addressing the issue to the entire body**
- **Provide advice but then do a memorandum regarding the phone conference and provide that to the entire governing body**
- **Each municipality has its own way of operating**
- **Can have a problem where an attorney would have trouble if only one member of council is asking for advice as opposed to all members of council – may not want to bill against, better practice to have a flat fee no matter how much time is put into it**
- **Serve at the whim of local politics – may not be re-appointed the following year – even if you do a good job**
- **Contracted to show up for meetings and provide legal advice – for litigation depends on each municipality as to**

- whether solicitor would be involved in the litigation or outside counsel**
- **Most municipalities involved in “JIFs” – NJ Joint Insurance Funds – they assign separate counsel anyway**
- **Outside of JIF – solicitor would handle – typical cases**
- **Solicitor may not know of all suits against the town because JIF may be dealing with it**
- **JIF or not is a policy decision by the municipality – nature of the claim**
- **Self insurance – would cover “unusual” claims, i.e. ordinance passed regarding hiring illegal immigrants and must register as well as requiring landlords to prove people were lawfully in the US – lawsuit was filed and then self insurance would cover – repealed ordinance**
 - **Counseled not to enact ordinance**
 - **New council voted to repeal – only 1 vote against repealing**

II. Housing in General

- **The *Mount Laurel* doctrine interprets the NJ State Constitution in such a way that municipalities would have an affirmative duty to provide low-income housing through use of their zoning powers**
- **Long line of caselaw dealing with fair housing – each municipality have proportionate share of low income housing**
- **Idea behind it is to insure that there is a blending in each community based on economics/financial status**
- **Communities would buy and sell “credits” for low income housing such that wealthier communities would sell their “credits” so they would not have to build low income housing**
- **RCA funds – one town would give another township money to fulfill its affordable housing requirements such that the town would have not to build affordable housing; the community who received the money would use RCA funds to assist in rehab or building of affordable housing**
- **Judicial recognition that we have a spectrum of people in NJ and they all have to live there**

- **People do not want property values driven down by affordable housing being built in the community**
- **Policy and politics involved**
- **Initially idea to homogenize the mixture of people in communities – make it available to each community**
- **Communities cannot “buy” their way out of building affordable housing anymore**
- **“fair housing” – affordable housing where people will be able to afford to live in the community, ownership or rentals**
- **Policy is driven by courts and legislature**

III. Township of Mt. Holly v. Mt. Holly Garden Citizens in Action, Inc.

- **Case settled on November 13, 2013**
- **US Supreme Court dismissed case on November 15, 2013**
- **Going on for 10 years**
- **Section of Mt. Holly traditionally known as “the Gardens” – 1950s built near Ft. Dix as base housing – small row houses, side-by-side, fee simple condo units – by 1980s crime infested and disproportionate amount of crime compared to other parts of town**
- **Township tried various measures to try to assist and help the Gardens**
- **In early 2000s the Township began purchasing the properties on their own – actively purchasing them – not condemnations**
- **Created re-development area and designated an area in need of redevelopment under NJ law – can seek out a new developer – this was in 2005**
- **Put out bids for developer – mixed use – commercial component and the rest was to be single family townhomes in a series of phases**
- **Several amendments to the plan – apartment component to it, phase of homes was first phase and then the rest stalled**
- **Township acquired 250-260 homes**
- **Under NJ law, when started purchasing landlord homes, you have to pay the fair market value and relocation benefits; Township paid more than that over the years**

- **Township hired another company to assist with relocation services – 1000+ people in the area**
- **Substandard construction according to the Township while residents argued to the contrary**
- **Generally speaking as of January 2014 – still people living there – 60 units remain – good people, no longer crime problem, properties dilapidated as a result of slum landlords**
- **Lawsuit filed 2003 or 2004 – great deal of progress had been made in the redevelopment of this area**
- **Legal issues raised in lawsuit:**
 - **Fair Housing Act (42 USC 3601-3619)**
 - **Citizens in Action – a community group – all residents of the Gardens**
 - **Disparate impact claims – no issue that the Township ever intentionally discriminated; the remaining issue was whether or not the Townships actions designating redevelopment had a greater impact on minorities than non-minorities – a numbers game**
 - **Remanded to district court on that issue alone – summary judgment on other issues**
- **Disparate impact – does something have a greater impact on minorities than non-minorities no matter the intent**
- **Went from State court to Federal court after State court claims were dismissed on the merits and then new lawsuit filed in Federal court (Camden)**
- **Never go to point of depositions**
- **There were millions of pages of discovery, emails, from Township officials, developer, etc.**
- **Disparate impact is still unsettled issue in this case**
- **Political issues related to the case**
 - **New council members were elected**
 - **Each member during campaigning used end this litigation as part of campaign promise**
 - **Municipalities have debt limitations/bonding limitations – like a personal credit card – Mt. Holly’s limit was \$21M and they bonded \$18M on the Gardens – buying properties, legal fees**

- **2012 politics changed – this litigation was a small part of the shift in the politics**
- **Change in administration lead to his appointment**
- **Professional changes – marching orders to settle the case**
- **28 homeowner plaintiffs, 5 tenant plaintiffs, a few estates claims – not a class action but basically 4 attorneys involved**
 - **Looking for damages, equitable relief**
 - **Wanted to stay in the Gardens and wanted homes to stay affordable**
 - **Damage claims – township was tearing down homes when they were purchased and other homes were damaged as a result**
- **Plaintiffs felt they could not afford to live in another area – some lived there 40 years without mortgage and low taxes – difficult to find comparable housing in Mt. Holly or elsewhere**
- **Seeking injunctive relief, monetary damages – wanted to sell homes to the township at a greater amount than value assessed by township**
- **No just about money to the Township – recognized that people were important to the community**
- **Plaintiffs claims were unreasonable – wanted new homes built for their clients but wanted no deed restrictions – which was not possible because they were not eligible for that type of transaction; new housing to tear down the old – new tax value on the new house**
- **Federal Fair Housing Act was basis for federal jurisdiction**
 - **Disparate impact argument**
 - **Civil rights laws in 1960s included disparate impact issue but Federal Fair Housing Act was written differently**
 - **Act specifically was utilized by Obama administration used provisions against Banking and Insurance industries for mortgage applications; 2011-2012 fined banks \$500M so banks wanted to see issue of disparate impact addressed by the Supreme Court to end the issue**

- **New Jersey Fair Housing Act also exists (NJSA 52:27D-301 et seq)**
- **When SCOTUS granted cert in this case – it was the second time they granted cert on a similar issue**
 - **Magner v. Gallagher (docket 10-1032) – dismissed February 10, 2012 – in St. Paul; disparate impact issue – controversial because settled before SCOTUS argument was scheduled**
- **District Court, then 3rd Circuit in Philadelphia – ruled against Mt. Holly**
- **Apart from government, bodegas, and bars – no real industry in Trenton – people cannot sell houses, no viable education, dangerous place, no one outside after dark, palpable corruption in government, very low morale among municipal employees, diminished and weakened police department – nothing to change it**
 - **How do you change this**
 - **New housing development near ball park**
 - **Need to attract new businesses**
 - **Needs help**
 - **Need to attract people and capital – no one will do that if nothing to gain from it**
 - **This is no unique in the US: Camden, Detroit, Baltimore, Irvington**
- **Case is a good learning tool for the future**
- **Meeting with DOJ to try to get them involved**
- **DOJ wrote amicus brief – took position that there is no need for SCOTUS to take the case**
- **Meeting with Plaintiffs’ attorneys to settle case – made progress – external factors putting pressure on settling case – legal scholars believed that SCOTUS would rule in Mt. Holly’s favor (4 conservative justices were definitely interested in taking the case and ruling in favor of Mt. Holly and then 1 more to make it 5 for the decision)**
- **Conference meeting with Plaintiffs’ counsel – unofficial mediators on the case (Fair Share Housing) – mediators were fair**
 - **SCOTUS then agreed to take the case and then progress was made and talking about issues**

- **Needed new developer to do a portion of the project – to bring in someone who had a speciality in affordable homeownership – “emerging market housing”**
- **The Reinvestment Fund – did work in Baltimore; non-profit; “emerging market housing” – increase people’s wealth through homeownership; used non-profit donors; going to build 44 new townhomes which 20 for plaintiffs in the litigation; those 20 plaintiffs will give up deeds to current houses; new houses will have a great deal of equity – more than plaintiffs would have in current homes**
- **Payment in lieu of taxes to the Reinvestment Fund and will be passed on to the homeowners**
- **Remaining homes will be available for purchase - \$170K**
- **Other homes with other developer are being sold in excess of \$200K**

IV. Settlement

- **Negotiated directly with plaintiffs’ attorneys**
- **Amendment to master redevelopment agreement**
- **Plaintiffs – 7 people got paid \$\$ and selling houses; other 20 getting replacement homes; other plaintiffs have minor claims (tenants)**
- **Key to the deal for Mt. Holly – if went to SCOTUS still need to finish project and need to minimize expenses – if win at SCOTUS huge litigation expenses; if lose at SCOTUS huge damages claims to pay out**
- **Reinvestment Fund is paying township \$\$ for land – more than would have received from other developer for that portion of land**
- **Plaintiffs agreed to move from current homes to other side of development – put into temporary housing while building new houses**
- **Commercial component and new houses are next**

V. SCOTUS

- **Granted petition**
- **Needed to tell court that withdrawing petition**

- **Electronically file withdrawal with the Supreme Court clerk**
- **Issue needs to be addressed but just not with Mt. Holly in the citation – other cases are coming up**
- **What would have happened if a third party entered and gave township money to not withdraw the case? – Township attorney has duty to present each offer and must have statement of how it is legal on state and federal issues**

VI. Words of Advice

- **Think outside the box**
- **Try to get creative**
- **Understand Federal Fair Housing Act is there and you must deal with it**