

## Zoning and Land Use Discrimination Does Not Pay

It's a familiar scenario: A city or town demonstrably needs affordable housing. A sponsor comes forward to gain site control and secure financing. Once neighbors get wind of the news and express opposition, elected officials get cold feet and deny zoning or building permits that are necessary to move forward. The lost housing opportunities are most often felt by people of color and people with disabilities. Moreover, the loss of affordable units can also mean a lost opportunity for diversity in the communities affected.

More and more frequently, the Fair Housing Act is being used to send the message that discrimination in zoning and land use decisions is illegal. In addition to any injunctive relief that may be available (a court order to do something specific or refrain from doing it), the following cases have resulted in sizeable damages, awards or settlements against local governments. Under either the Fair Housing Act or the Americans with Disabilities Act, a court can also require the losing party to pay the attorney's fees incurred by the winner. Some states, such as California, have state statutes to the same effect.

Additional information about cases in which the U.S. Department of Justice (DOJ) has been the successful plaintiff is available at [www.usdoj.gov/crt/housing/caselist.htm](http://www.usdoj.gov/crt/housing/caselist.htm).

**U.S. v. City of Elgin, Illinois:** An August 2002 agreement between DOJ, U.S. Department of Housing and Urban Development (HUD), the City of Elgin, and the HOPE Fair Housing Center settled DOJ claims that Elgin had discriminated on the basis of national origin. The city paid \$500,000 to settle the claims.

**U.S. v. City of Fairview Heights, Illinois:** The federal court in southern Illinois approved a consent decree in September 2001 in this case in which the city had denied a permit to construct an apartment building based on concerns that more African-Americans would move to town. The consent decree required the city to pay \$275,000 in damages.

**U.S. v. Chicago Heights, Illinois:** DOJ alleged that the city's decision not to issue a permit to a mental health services provider to operate a residence for

persons with mental illness was based on the disability of the prospective residents. Rather than going to trial, the city agreed to a consent decree under which it was required to pay \$123,000 in damages.

**U.S. v. City of Milwaukee, Wisconsin:** The underlying lawsuit alleged that the city discriminated on the basis of national origin against Native Americans by denying a zoning variance to a proposed low-income senior citizen housing development sponsored in part by the Indian Council of the Elderly. In a June 2001 consent order resolving the dispute, the city agreed to provide more than \$650,000 toward the construction of the senior center, including \$340,000 in damages to the private plaintiffs and other aggrieved persons.

**U.S. v. City of Jacksonville/Jacksonville Housing Authority, Florida:** DOJ accused the city and its housing authority of engaging in intentional discrimination based on race in the siting of public housing in Duval County and of unlawful race discrimination when it passed a 1994 amendment to its zoning code which required a special permit for public housing that was not required for private housing. A November 2000 consent decree required the defendants to pay \$440,750 in damages, create 225 new units of public housing in neighborhoods that had none, and operate a Section 8 mobility housing counseling program

**Jennifer House v. City of Owensboro, Kentucky:** In this private lawsuit brought with the assistance of the Lexington Fair Housing Council, plaintiffs alleged that the city had violated the disability protections of the Fair Housing Act by refusing to issue a conditional use permit for construction of a sober living home for women. A 2001 out-of-court settlement resulted in \$125,000 in damages for the plaintiffs.

**Walker v. City of Dallas and HUD:** This case, brought by private litigants in Texas, alleged that the city and other defendants prevented the development of affordable housing in predominantly white suburban areas ringing the city of Dallas. Under the terms of a 1992 court-approved settlement agreement, 32 suburban cities were required to plan for and build affordable units, and defendants were ordered to pay \$2,142,420 in damages.

**-Michael Allen**

