

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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FAIR HOUSING IN HUNTINGTON :
COMMITTEE, SENAYE GREEN, :
BERNARD PEYTON, and ROBERT :
RALPH, :

02 CV2787 Hurley/Lindsay

Plaintiffs,

v.

TOWN OF HUNTINGTON, NEW YORK, :
TOWN BOARD OF THE TOWN OF :
HUNTINGTON, TOWN OF :
HUNTINGTON PLANNING BOARD, and :
S.B.J. ASSOCIATES LLC, :

Defendants.

**COMPLAINT FOR
DECLARATORY
JUDGMENT, INJUNCTIVE
RELIEF, AND DAMAGES**

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I. NATURE OF ACTION

1. This is a housing discrimination action for declaratory judgment, injunctive relief, and damages for ongoing exclusionary housing practices on the basis of race and national origin by the Town of Huntington, Long Island ("the Town" or "Huntington") and others working in concert with, or on behalf of, the Town. This action specifically challenges the exclusion of African-American, other black, Hispanic and other racial and ethnic minority families ("Minority Families"), from the soon to be built housing development at the former Long Island Developmental Center ("LIDC"). The action arises under the Fair Housing Act, as amended, 42 U.S.C. § 3601, *et seq.*; the Civil Rights Act of 1866, 42 U.S.C. §§ 1982

and 1983; the Civil Rights Act of 1964, 42 U.S.C. § 2000d, *et seq.*; and the Equal Protection clause of the Fourteenth Amendment to the United States Constitution.

II. INTRODUCTION

2. This action brings before this Court the Town of Huntington for its incessant rejection and obstruction of the creation of affordable family housing in Huntington's overwhelmingly white neighborhoods (the "White Areas"). This action also brings before this Court S.B.J. Associates, LLC ("SBJ"), the for-profit developer that has worked in concert with the Town to develop and execute a plan for exclusionary housing at LIDC.

3. Huntington has an extended and well documented history of concentrating Minority Families in the least desirable areas of Huntington in violation of the Fair Housing Act. In 1988, the Second Circuit Court of Appeals found that the Town was in violation of the Fair Housing Act and directed the United States District Court for the Eastern District of New York to compel the Town to amend its zoning laws to allow a nonprofit housing development to be built in a White Area. See Huntington Branch, NAACP v. Huntington, 844 F.2d 926 (2d Cir.), aff'd per curiam, 488 U.S. 15 (1988) ("Huntington"). The Town had refused to allow multi-family housing to be built in the White Areas. Instead, affordable multi-family housing had been concentrated in the disproportionately minority, low-income areas around Huntington's railroad station (the "Racially Impacted Areas").

4. Since Huntington ordered the Town to amend its zoning laws, the Town Board and Planning Board have found myriad new ways to engage in the same discriminatory housing practices that were formerly effected through its zoning laws.

5. As the Second Circuit noted in 1988, most of Huntington's residentially-zoned property is already developed. Since 1988, the Town has repeatedly approved housing projects on the few remaining undeveloped sites in Huntington's White Areas that were designed to, and have in fact, attracted more white residents.

6. Plaintiffs bring this action to enjoin the Town's conduct in connection with a 382-acre parcel of land comprising the single largest remaining tract of undeveloped, residentially-zoned property in Huntington's White Areas. This property, formerly known as the LIDC, is now known as The Greens at Half Hollow (the "Greens" or the "Property"). The Town has supported and approved the construction of 1,375 single family homes and a golf course at the Greens without providing for any affordable family housing. Consequently, the Town's actions in connection with the Greens threaten to permanently and irreparably eliminate any possibility of meaningfully integrating the White Areas. Plaintiffs seek to enjoin the Town from taking further action, including the building of the Greens project, that will result in the exclusion of Minority Families from the White Areas.

7. The Town's decision to create and approve a development plan for the Greens that lacks any affordable family housing will further exclude Minority

Families from the White Areas, not only perpetuating the housing segregation that currently persists along racial lines, but deliberately exacerbating the problems Minority Families face in obtaining homes in the White Areas. The Town's actions constitute a systematic and deliberate effort to sustain and promote segregated housing in Huntington.

8. On April 23, 2002, the Town announced that SBJ will shortly break ground at the Greens on an extensive housing project consisting of over 1,000 homes – none of which meet the appropriate criteria for affordable family housing. In an effort to sustain the segregated housing situation in Huntington, the Town granted the developer an extremely lucrative density bonus – allowing it to build 1,375 units instead of the 125 units permitted under the Property's previous zoning – without requiring, or even taking into consideration, any provision for affordable family housing at the Greens. The development of the Greens is the last opportunity for the Town to even partially ameliorate the disparate impact on the housing market for Minority Families created by the decades-long, judicially-recognized, racially discriminatory housing practices promulgated by the Town. Regrettably, the Town has forfeited this opportunity in a deliberate attempt to maintain the status quo and perpetuate the racially segregated housing market in the Town of Huntington.

III. JURISDICTION

9. Jurisdiction is conferred on this Court by 42 U.S.C. § 3613 and by 28 U.S.C. §§ 1343 and 2201.

IV. PARTIES

10. Plaintiff Senaye M. Green is an African-American mother of one, who resides in Huntington, New York. Ms. Green has been seeking a two-bedroom residence in Huntington since approximately September 2001, and has been unable to find any suitable affordable family housing for her family. Ms. Green would move to the White Areas of Huntington for housing if the opportunity presented itself.

11. Plaintiff Bernard "Bud" Peyton resides in Melville, New York, which is a part of Huntington. As a White resident of Huntington, Mr. Peyton desires to live in an integrated community, and has been denied that opportunity by the discriminatory practices of the Town and its agents.

12. Plaintiff Robert W. Ralph resides in Centerport, New York, which is part of the Town of Huntington. As a White resident of Huntington, Mr. Ralph desires to live in an integrated community, and has been denied that opportunity by the discriminatory practices of the Town and its agents.

13. Plaintiffs Green, Peyton, and Ralph, collectively, shall be referred to herein as the "Individual Plaintiffs."

14. Plaintiff Fair Housing in Huntington Committee, Inc. ("FHHC"), is a local nonprofit organization consisting of concerned White and minority residents of Huntington and the surrounding areas, located at Post Office Box 20221, Huntington Station, New York 11747 (together with the Individual Plaintiffs, "Plaintiffs"). FHHC's goals include the elimination of unlawful racially discriminatory housing practices and housing segregation that cause injury to its members, to all persons who seek to rent or buy housing units in Huntington, and to all persons who reside in Huntington. FHHC has been injured because the Town's racially discriminating housing practices deprive its members of the opportunity to live in an integrated community and require the FHHC to expend its resources seeking redress for the Defendants' illegal conduct.

15. The Individual Plaintiffs have been injured by the Defendants' conduct, which has deprived them of the ability to live in an integrated community. Plaintiff Green, for example, by virtue of the Town's discriminatory policies and actions, have suffered in that they have been forced by the lack of affordable family housing in Huntington to look to other communities in which to live.

16. Defendant Town of Huntington, New York, is a municipal corporation organized under the laws of the State of New York. All references to the Town include any individual or entity acting on behalf of, or under the authority derived from, the Town.

17. Defendant Town Board of the Town of Huntington ("Town Board") is an elected governing body in the Town of Huntington from which the Town offices responsible for all development in Huntington derive their authority. All references to the Town Board include any individual or entity acting on behalf of, or under authority derived from, the Town Board.

18. Defendant Planning Board of the Town of Huntington (the "Planning Board") is a quasi-independent board whose members are appointed by the Huntington Town Board. All references to the Planning Board include any individual or entity acting on behalf of, or under authority derived from, the Planning Board. The Town, the Town Board, and the Planning Board, collectively, shall be referred to herein as the "Town Defendants."

19. On information and belief, Defendant S.B.J. Associates, LLC ("SBJ"), is a limited liability company organized under the laws of the State of New York with its principal office in Nassau County. On information and belief, Defendant SBJ has acted in concert with the Town Defendants to develop the Greens project, in furtherance of the Town's efforts to exclude Minority Families from the White Areas of Huntington. SBJ together with the Town Defendants shall be referred to herein as the "Defendants."

V. SUBSTANTIVE ALLEGATIONS

Huntington's History of Unlawful Discriminatory Housing Practices Has Resulted in Widespread Housing Segregation.

20. The Town's long history of preventing minorities from moving into the White Areas was judicially recognized by the Second Circuit in Huntington.

21. The Second Circuit found that Huntington had a shortage of affordable rental housing for low and moderate-income households and that a disproportionate number of African-Americans in Huntington, as compared to white residents, need low-cost housing. As a result, Huntington concluded that the Town's housing practices disproportionately harmed African-Americans, and "significantly perpetuated segregation in the Town." Huntington, 844 F.2d at 938.

22. The Second Circuit explained that "the Town has demonstrated little good faith in assisting the development of low-income housing." Id. at 941. Moreover, the court emphasized that the Town's conduct "clearly demonstrates a pattern of stalling efforts to build low-income housing." Id. at 942.

Huntington's Affordable Family Housing Shortage Continues to Worsen.

23. The concentration of Minority Families in the Racially Impacted Areas has continued since Huntington. The Town Board and other entities under the Town's control have restricted affordable family housing to these parts of Huntington.

24. Contrary to representations made by the Town in Huntington, the Town has not built government-assisted, multi-unit family housing in the White Areas of the Town. All existing government-assisted, multi-unit housing projects for families are located in the Racially Impacted Areas.

25. In Huntington, the Town asked the court to take judicial notice of a Town approved plan to build subsidized housing in Melville, a White Area. The court refused to consider the Melville plans finding that "[i]t is entirely speculative and smacks of a mid-litigation effort to demonstrate that the Town is acting in good faith." Huntington, 844 F.2d at 941 n.12.

26. The Second Circuit's analysis of the Town's motives has been proven correct. Nearly fourteen years after Huntington was decided, the Town has yet to make good on its promise and build the Melville housing.

Lack of Affordable Family Housing Disproportionately Affects Minorities

27. The current concentration of minorities in the Racially Impacted Areas is nearly identical to the demographics on which the Huntington court based its conclusion that minorities are disproportionately impacted by Huntington's lack of affordable family housing.

28. Huntington comprises 35 census tracts. Over 63% of the Huntington's non-white population is concentrated in 5 of those tracts. In Huntington Station, the

"Racially Impacted Area" discussed in Huntington, 29% of the population is not white, while only 12% of the rest of Huntington is not white.

29. A study conducted in 2000 concluded that in Huntington, where less than one in nine residents is African-American or Hispanic, the need for affordable housing falls four times as heavily on African-Americans and Hispanics than on Whites.

Huntington Has Failed to Respond to HUD's Criticism of the Town's Failure to Comply with Its Fair Housing Mandates.

30. The Town has for many years refused to comply with fair housing mandates from the U.S. Department of Housing and Urban Development ("HUD").

31. While continuing to receive HUD funding in the form of Community Development Block Grants ("CDBGs") – federal funds made available for community development projects – the Town has made no discernible progress outside the Racially Impacted Areas in the provision of affordable family housing since the Second Circuit's decision in 1988. In fact, the Town has not permitted the construction of a single unit of government-assisted multi-unit family housing – housing formerly proscribed by the Town's pre-Huntington zoning laws – outside the Racially Impacted Areas since HUD first provided the Town with CDBGs in 1975.

32. In 1997, a review by HUD found that the Town's actions with respect to fair housing were inadequate to the point that sanctions and/or corrective actions

were authorized. HUD specifically found that "the Town did not address the problem of the lack of multifamily housing for low and moderate income persons outside of the racially-impacted urban renewal area and the lack of homeownerships [sic] opportunities outside the racially-impacted urban renewal area at prices affordable for low and moderate income persons." In 1998, HUD reiterated its "significant concerns" regarding fair housing in Huntington.

33. In 1999, HUD *again* criticized the Town for its inaction in a letter notifying the Town that it had referred a fair housing complaint to the Department of Justice.

34. Under pressure from HUD to demonstrate a commitment to building affordable housing, the Town on June 20, 2000 announced the Huntington Homes Program, which it called "a comprehensive housing plan which will move Huntington to the forefront on Long Island as a leader in the creation of affordable homes for its residents."

35. In fact, the "key elements" of the Town's Homes Program were (1) an age restricted community at the Greens; (2) an age restricted development at The Coves at Melville, and (3) a development of one-bedroom units "transferred from the [Greens] site."

36. Not a single unit of housing in this so-called "comprehensive plan" would provide any affordable *family* housing.

37. A potential but underutilized resource available to alleviate Huntington's affordable housing shortage is the HUD funded Section 8 voucher program, which offers federal funds to subsidize voucher holders' housing payments. Huntington's affordable housing shortage is so severe, however, that approximately 30% of the Section 8 vouchers issued in the Town go unused because, even with the assistance vouchers offer, low-income families cannot find a place to live.

38. Section 8 vouchers theoretically might enable low-income families to move into housing in Huntington's White Areas that they could not otherwise afford. Unused vouchers, therefore, represent an available source of funding for affordable housing that the Town has failed to utilize. In fact, on information and belief, all unused Section 8 vouchers will be returned to HUD on June 30, 2002. As of February 5, 2002, there were 185 unused vouchers because the families holding them could not find housing. Losing these vouchers would disproportionately affect Minority Families who are more likely to hold such vouchers than are White residents.

Huntington's Purported "Accessory Apartment" Solution Is a Sham.

39. Because of the dearth of available housing for low income families, "accessory apartments," – i.e., rented rooms with private kitchens and bathrooms in single family homes – constitute much of the Town of Huntington's "affordable housing" stock. Although these are often of limited size which makes them

impractical for families, the Town's Consolidated Plan for 1995-1999 referred to accessory apartments as a valuable means by which Huntington would address its affordable housing shortage. On information and belief, the Town also represented to HUD that it planned to use accessory apartments to alleviate some of Huntington's affordable housing problems.

40. The Town's actions regarding accessory apartments belie its rhetoric. While touting accessory apartments as a means to increase the affordable housing stock, the Town, in 2000, adopted a new nuisance ordinance under which maintaining an accessory apartment that fails strictly to comply with Town regulations is placed on par with prostitution, drug use, gambling, theft and forgery. On information and belief, this new rule came within weeks of the Town's statements to HUD regarding how accessory apartments were part of a plan to address the affordable housing shortage. Moreover, this nuisance ordinance was only one in a series of several rules promulgated by the Town to limit the number of accessory apartments in Huntington. Consequently, as the Town's most recent Consolidated Plan reflects, the number of lawful accessory apartments in Huntington has not increased over the last three years.

VI. THE GREENS PROJECT WILL EXACERBATE SEGREGATED HOUSING IN HUNTINGTON

41. In 1999, the State of New York sold the former LIDC site to SBJ. Upon information and belief, LIDC is by far the largest undeveloped parcel of land available for residential development in Huntington.

The Town's Participation in the Greens Development Plan.

42. The Planning Board has significant power to determine what housing is built in Huntington, as it must approve a site plan before construction may commence.

43. Planning Board members typically work with developers to help generate a plan that comports with the Planning Board's objectives. Indeed, on information and belief, representatives for SBJ frequently met with Town officials to develop a specific plan for the Greens that the Planning Board would find acceptable.

44. In a meeting on April 19, 1999 at which plans for the Greens were discussed, an SBJ representative said that the developer was willing to let the Town decide what housing should be built at the Greens, so long as the developer could achieve its financial goals.

45. The developer stated publicly on July 25, 2000 that the Town was heavily involved in developing the housing plan for the Greens. An attorney

representing SBJ explained that the "theme and design of the [Greens] project did not start with the applicant. Rather, the project and its theme and design was formed ... by a State-appointed Task Force" that included Huntington officials.

46. Indeed, on September, 14, 1994, before SBJ even owned the Greens, Town Supervisor Frank Petrone announced that the Town, working with the State, had already decided that the Greens would be used for senior housing. Supervisor Petrone did not offer any explanation of how the Town's affordable family housing needs would be addressed with 382 fewer acres on which to build.

47. The stated first objective of the Advisory Task Force ("ATF") – the group of state and local officials and appointed local residents responsible for the initial planning the LIDC property – originally was to use the land to "create a balanced community... ." On May 17, 1995, however, the Town of Huntington Planning Department director announced that the word "balanced" had been eliminated from the ATF's Land Planning Objectives.

The Town Used the Greens Density Bonus to Perpetuate Racial Segregation

48. The power to grant "density bonuses" – allowances for more homes per acre than existing zoning ordinarily permits – gives the Town Board and the Planning Board considerable power to dictate what groups of residents a developer will serve. Without a substantial density bonus – in fact a zoning variance – SBJ, upon information and belief, would not have proceeded with the Greens project.

49. Huntington's Comprehensive Plan Update of April 12, 1993 states that "higher density development can only be justified in those instances where a public benefit is realized, particularly in the provision of housing more affordable to a greater variety of individuals *and households*." In this same plan, the Town states that "25% of the units allocated to low-income households [are] for large families."

50. The Town's 2000 - 2004 Consolidated Plan provides that "[i]n exchange for [an] increase in density, the property owner and the Town Planning Board agree that a percentage of the homes built on the property will be entry level/starter homes at a price range deemed affordable."

51. Nevertheless, on September 12, 2000, the Planning Board resolved to grant SBJ's request for a density bonus without any provision whatsoever for affordable family housing.

52. The density bonus granted by the Town permitted SBJ to build 1,375 housing units – 1,250 more than the 125 units permitted by the Greens' previous zoning – which represented a huge financial windfall to the developer. All housing units in the proposed development plan for the Greens that are available at affordable prices will be restricted to seniors.

53. The Greens development plan not only contradicts the Town's Consolidated Plan, but conflicts with every land planning policy enacted by the

Town, including the Town's Comprehensive Plans, its Principles of Smart Growth and Livability, and the Melville Draft Generic Environmental Impact Statement.

54. On March 20, 2002, the Planning Board issued additional approvals required for the Greens project to move forward, and, upon information and belief, the Buildings Department granted permits to begin construction soon thereafter. At a meeting of the Affordable Housing Trust Fund Board on April 23, 2002, Supervisor Frank Petrone announced that SBJ will break ground at the Greens within a month of that date on a housing project that will consist of over one thousand homes – and no affordable family housing.

Restricting Affordable Housing to Seniors Will Result in a Disproportionately Low Minority Occupancy.

55. Previous housing projects in Huntington demonstrate that by restricting affordable housing to seniors, the Town, rather than ameliorating, is exacerbating housing segregation. In fact, senior communities in the Town at Paumanack Village and the Knolls are so overwhelmingly white that, despite offering these units at "affordable" prices, the proportion of minority residents there is actually *smaller* than in Huntington generally. Thus, the addition of senior housing actually *increased* segregation in Huntington, just as the current Greens proposal is likely to do.

56. The Town's last two Consolidated Plans demonstrate that the need for affordable family housing far exceeds the demand for affordable senior housing. Nevertheless, the Town has approved the construction of three projects for

government-assisted, multi-unit senior housing in the White Areas since Huntington, while, during the same period, not approving a single government-assisted, multi-unit *family* housing project in the White Areas. As a result of the Town's actions, on information and belief, approximately 92% of Huntington's government-assisted, multi-unit senior housing is located in the White Areas, whereas no government-assisted, multi-unit family housing exists in the White Areas.

**COUNT ONE (Violation of the Fair Housing Act)
42 U.S.C. § 3601 *et seq.***

57. Plaintiffs repeat and reallege the foregoing paragraphs as if fully set forth herein.

58. The Defendants' discriminatory practices, motivated by malice and/or callous disregard for the rights of the Plaintiffs, deprive the Plaintiffs of their right of equal access to housing and otherwise make unavailable housing in the Town of Huntington on the basis of race, national origin and familial status in violation of the Fair Housing Act, 42 U.S.C. §3604(a).

**COUNT TWO: (Violation of the Civil Rights Act
of 1866, 42 U.S.C. § 1982.)**

59. Plaintiffs repeat and reallege paragraphs 1 through 56, as if fully set forth herein.

60. The Defendants' discriminatory practices, motivated by malice and/or callous disregard for the rights of the Plaintiffs, deprive the Plaintiffs of their right to

purchase, lease, or otherwise hold or convey property in the Town of Huntington on the basis of race, national origin and familial status in violation of the Civil Rights Act of 1866, 42 U.S.C. §1982.

COUNT THREE: (Violation of the Civil Rights Act of 1871, 42 U.S.C. § 1983.)

61. Plaintiffs repeat and reallege paragraphs 1 through 56, as if fully set forth herein.

62. The Defendants' discriminatory practices, motivated by malice and/or callous disregard for the rights of the Plaintiffs, deprive the Plaintiffs of their right of equal access to housing in the Town of Huntington under color of law in violation of the Federal Civil Rights Act of 1871. 42 U.S.C. §1983.

COUNT FOUR: (Violation of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*)

63. Plaintiffs repeat and reallege paragraphs 1 through 56, as if fully set forth herein.

64. The Defendants' discriminatory practices with regard to the administration of federal programs, motivated by malice and/or callous disregard for the rights of the Plaintiffs, violate the Civil Rights Act of 1964, 42 U.S.C. §2000d *et seq.*

COUNT FIVE: (Violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.)

65. Plaintiffs repeat and reallege paragraphs 1 through 56, as if fully set forth herein.

66. The Defendants' discriminatory practices, motivated by malice and/or callous disregard for the rights of the Plaintiffs, deprives the Plaintiffs of their rights under the Equal Protection Clause of the United States Constitution with regard to housing in the Town of Huntington.

PRAYER FOR RELIEF

Wherefore, plaintiffs respectfully demand that this Court enter a judgment:

(a) Declaring that Defendants' acts, practices, and policies complained of herein violated and violate plaintiffs' rights as secured by Fair Housing Act, as amended, 42 U.S.C. §3601 *et seq.*; the Civil Rights Act of 1866, 42 U.S.C. §§1982; the Civil Rights Act of 1871, 42 U.S.C. § 1983; the Civil Rights Act of 1964, 42 U.S.C. §2000d *et seq.*; and the Equal Protection clause of the Fourteenth Amendment to the U.S. Constitution.

(b) Enjoining the Defendants, their agents, employees, successors, assigns, and those acting in active concert, combination or participation with them, from engaging in any policies or practices that deprive Plaintiffs of their rights secured by any and all of the statutes cited in sub-paragraph (a), above, including, but not limited to:

(i) Enjoining Town Defendants from granting, and ordering Town Defendants to withdraw, any permits, letters of approval, or other consents allowing steps toward construction of the Greens development to continue;

(ii) Enjoining Defendants from permitting any construction at the Greens; and

(iii) Enjoining Defendants and their agents, employees, successors and assigns, from engaging in any other discriminatory acts that perpetuate or contribute to segregation in the Town of Huntington; and

(iv) Ordering Defendants to take affirmative steps, supervised by this Court, to overcome the effects of past discriminatory practices.

(c) Awarding compensatory damages resulting from Defendants' discriminatory conduct in an amount to be proven at trial;

(d) Awarding punitive damages to Plaintiffs;

(e) Awarding to the Fair Housing in Huntington Committee and Individual Plaintiffs their expenses incurred in obtaining legal redress for the Defendants' practices and in pursuing this litigation;

(f) Awarding the Plaintiffs their costs and attorneys' fees in this action; and

(g) For such other and further relief as this Court deems just and proper.

Dated: New York, New York
May 8, 2002

Respectfully submitted,

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