

Fw: Case summary regarding Town liable for damages in land use matter [IMAN-ACTIVE.FID2821443]

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Mon 9/16/2024 1:07 PM

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Good afternoon, colleagues:

In consultation with our legal counsel this morning, he has provided me with the following case, as well as guidance, on how to deal with an emergent issue concerning the Wake Robin project. I will specifically address (and contextualize) recent developments in my remarks that will precede the Applicant's presentation on Tuesday evening. Please remember that the public hearing continuation for Wake Robin begins at 6 PM on Tuesday. Our regular meeting begins at 6:30 PM this evening.

Michael

----- Forwarded Message -----

**From:** Andres, Charles R. <candres@barclaydameron.com>

**To:** Klemens, Michael <fenbois@aol.com>

**Sent:** Monday, September 16, 2024 at 11:26:09 AM EDT

**Subject:** Case summary regarding Town liable for damages in land use matter [IMAN-ACTIVE.FID2821443]

Gilead Community Services, Inc. v. Town of Cromwell, 604 F. Supp. 3d 1 (D. Conn. 5/27/2022)

Plaintiff acquired a home in Cromwell with the intention of turning it into a group home for persons with mental illness. No local zoning approvals/permits were sought or required. But there was significant public opposition to the home. A Facebook group was formed that strongly opposed the home; most Town Officials (Mayor, Manager, Chief of Police, Fire Chief, Assessor, Town Planner, Superintendent of Schools) opposed the home; Mayor and Town Manager issued press releases requesting the home's closure; public forums were held voicing concerns about the home, with Town Officials playing an active role; the Town petitioned the DPH to reject the license for the home (although one was not required); Town issued a Cease and Desist Order, but ultimately withdrew it; Assessor wrongfully denied plaintiff's tax exempt application; the police exhibited indifference by failing to fully investigate a vandalism complaint made by plaintiff.

Ultimately, plaintiff closed the home after only a few months, deciding that it was not a safe place for the residents. After closing the home, plaintiff sued the Town claiming violations of the FHA and ADA. A jury found violations and awarded compensatory damages of \$181,000 and punitive damages of \$5,000,000. The Town moved for reconsideration or, in the alternative, a new trial on a number of grounds – we'll focus primarily on issues relative to the punitive damage award.

Relying on US Supreme Court caselaw specific to 1983 actions, the **Town claimed that punitive damages are not recoverable against a municipality. It further argued that a punitive damages award would punish blameless or unknowing taxpayers who were unaware of the entire controversy. The Court was not convinced** and held that the US Supreme Court case was not binding in the context of FHA and ADA violations. The Court further noted that given the significant evidence in the record of taxpayer involvement in efforts to deny plaintiff rights under the FHA, the jury could rightly conclude that there was significant taxpayer participation, and the public was not unaware of the controversy.

The **Town also argued that the amount of the punitive damage award was excessive** in violation of the Fourteenth Amendment (Due Process Clause's protection against excessive punitive damage awards) **and did not bear a reasonable relationship (and was grossly disproportionate) to the compensatory damages award. The Court upheld the award, stating that the jury found the Town's conduct highly reprehensible, and the award was consistent with other FHA cases where the records contained evidence of willful, malicious**

and/or reckless disregard for FHA rights and the defendants inflicted non-economic harms upon the plaintiffs.

The Town also claimed that the Town Officials' comments in opposition were protected by the First Amendment and could not be the basis for liability under the FHA and ADA. The Town claimed that all citizens, including public officials, have a protected right to speak out on matters of public concern. The Court, however held that although a public official has a right not to be held liable for his speech, he is not free from having his speech be considered evidence of his intent to discriminate.

The Town's motions were all denied, and the Town appealed the decision to the Second Circuit in June 2022. Briefs were filed in January 2023, awaiting decision.

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