

HOMEBUILDERS ATTACK LOCAL ZONING AUTHORITY

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The Home Builders Association of Greater Austin, The National Association of Homebuilders, and the National Association for the Advancement of Colored People have launched a full-scale attack on local zoning authority by claiming that the City of Kyle's zoning and subdivision ordinances are illegal under the federal Fair Housing Act. The lawsuit, styled as *NAACP et al. v. The City of Kyle*, was filed in the U.S. District Court for the Western District of Texas (Civil No. A05CA979LY). However, the plaintiffs' claims in this lawsuit are much more than a simple dispute over zoning and subdivision regulations; they appear to be part of a carefully planned and coordinated attack on the authority of *all* cities to enact and enforce *any* regulatory ordinance that could potentially increase housing costs.

In essence, the plaintiffs are asking the court to significantly extend the reach and application of the Fair Housing Act to place unprecedented federal limits on local regulatory authority. Plaintiffs allege that the City of Kyle's revised zoning and subdivision ordinances, which relate to the construction of single-family homes, violate the Fair Housing Act because the ordinances "significantly" increase the price of entry-level homes, thus placing them beyond the financial reach of many potential minority home buyers. If the plaintiffs obtain the outcome that they seek, the implications are much broader than the invalidation of the City of Kyle's ordinances, which are generally no more restrictive than those enacted by cities all over Texas. Rather, virtually any city regulation that increases the cost of housing, including building and electrical codes, open space set-asides, and funding mechanisms such as impact fees could all be invalidated under the Fair Housing Act. In that case, the ability and task of regulating residential construction in each of the thousands of local jurisdictions nationwide would be removed from local governing bodies and placed in the hands of federal judges.

Recognizing the implications for local governments, the City of Manor recently filed a Motion to Intervene in the lawsuit as a party defendant, in support of the City of Kyle. Given that the City of Kyle's zoning ordinance imposes fairly common standards on square footage minimums, lot sizes, and masonry requirements for single family homes, other Texas cities are also considering intervention. For example, the City of Kyle's zoning ordinance contains the following restrictions and requirements:

- One single family residential district that allows homes with a minimum of 1,600 square feet of living area, on a minimum lot size of 8,190 square feet;
- Another single family residential district that allows homes with a minimum of 1,200 square feet of living area, on a minimum lot size of 6,825 square feet;

- All buildings and structures are required to have all four sides composed of one-hundred percent brick, stone, hardiplank, or other approved masonry product; and
- A minimum garage size of 480 square feet.

The plaintiffs seek to establish precedent that zoning ordinances such as the City of Kyle's are discriminatory and in violation of the Fair Housing Act. The plaintiffs also seek to have standing to bring lawsuits under the Fair Housing Act. It appears that the plaintiffs are bringing cases like this nationwide, and they have stated that ordinances like the City of Kyle's are, "an excellent example of the kinds of land use controls that the FHA was designed to prohibit." See "Building on a Dream – a Joint Housing Report by the NAACP and the National Association of Home Builders" (August, 2006).

For more information regarding this case and ways Texas cities can help to protect their local regulatory authority, please contact the following:

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