Land Use Case Law Update

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This quarterly update focuses on two aspects of land use practice – recreational fees charged to residential developers and the enforcement of land use laws against religious institutions. Both cases stand as a cautionary note for situations that might seem routine. They demonstrate that it is important to understand the purpose behind many of the common rules in land use practice as these rules may apply differently in uncommon situations.

Appellate Division Holds That Recreational Fee Not Automatic In All Cases: Legacy at Fairway v. McAdoo

The Town Law makes specific provision for charging a developer a recreational fee in lieu of setting aside land for parks, playgrounds and other recreational purposes. Many municipalities have incorporated this requirement into local laws or otherwise impose the fee as a matter of course when approving residential developments.

Relying on the statutory language, a state appellate court held that an explicit finding regarding the additional burden the new development would have on suitably accessible public recreational facilities is needed before a developer can be charged a recreation fee. When, you ask, would a residential development not place such additional burdens? In this case, the question arose in the context of an assisted living center.

Lessons for Municipalities:

Local laws that generically impose a recreation fee for residential development may not be adequate to satisfy the requirements of the Town Law. Particularly with the wide variations in housing stock, the more cautious approach is to require the developer to submit an analysis of the anticipated recreational burden of its proposal and then analyze this burden in conjunction with the capacity of existing accessible town recreational facilities.

Lessons for Developers:

Non-traditional residential developments may impose recreational burdens that differ significantly from standard subdivisions. These situations need to be looked at on a case-by-case basis.

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Federal Appellate Court Holds That RLUIPA Limits Enforcement Discretion: Third Church Of Christ v. City Of New York

The federal Religious Land Use and Institutional Persons Act (RLUIPA) prohibits a government from imposing or implementing a land use regulation in a manner that treats a religious institution on less than equal terms than a non-religious assembly or institution. In this case, the City sought to revoke a permit previously issued to the Church which permitted it to conduct catering activities as an accessory use. The City argued that the use had become a principal use and was unauthorized.

The Church successfully persuaded the Court other comparably-sized catering businesses in the same zone that also were out of compliance with the zoning law, albeit for different reasons, were similarly situated. Once the Court had reached that conclusion, the milder remedies that were being pursued against those businesses made the attempted revocation violative of RLUIPA.

Lessons for Municipalities:

If action is to be taken against a religious institution for violation of any land use law, a review of situations that might be similarly situated should first be conducted. Municipalities might even consider establishing guidelines for zoning enforcement that will help ensure evenhanded responses in all situations, regardless of whether a religious institution is implicated.

For further information on these cases or on other land use issues, please contact:

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