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Legal Lessons

Reading Between the Lines

Since the 1920s, courts have regularly given clear signals to professional planners on how to plan better and, maybe, more easily. But oftentimes these lessons are not apparent in the final court decisions. To glean these valuable takeaways and broaden our understanding of underlying issues, planners need to look beyond the "yes/no" or "win/lose" parts of a judicial outcome.

A careful reading of dissents and concurring opinions will yield valuable additions to the planner's toolbox.

Beyond the final ruling

Take, for example, the case of *City of Baton Rouge/Parish of East Baton Rouge v. Stephen C. Myers* (2014). Stephen Myers was leasing a single-family residential property in Baton Rouge, Louisiana, to four unrelated persons. Per the city's Unified Development Code, a "family" is defined as "an individual or two (2) or more persons who are related by blood, marriage or legal adoption living together ... or not more than two (2) persons, or not more than four (4) persons (provided the owner lives on the premises) living together by joint agreement ..."

The city brought the action seeking to compel Myers to cease his alleged violation. Myers made a counterclaim alleging the UDC's definition of family was unconstitutional. The local district court agreed with Myers, finding "no rational basis for the definition of 'family' found in the Unified Development Code that furthers a State objective."

The Louisiana Supreme Court disagreed, pointing out that all ordinances are presumed valid and that the presumption of validity is especially forceful for ordinances enacted to promote a "public purpose." The state court relied on major key land-use cases such as *Village of Euclid v. Ambler Realty Co*. (1926) and *Palermo Land Co. v. Planning Commission of Calcasieu Parish* (1990) to support the city's authority to enact and enforce its UDC. Additionally, the court found that Myers lacked standing since he did not occupy the residence in dispute.

So Myers lost the case. But to extract the lesson for planners, we must dig deeper.

In his concurring opinion, Louisiana Supreme Court Justice John Weimer accepts that the court is prevented from siding with Myers because of the plaintiff 's lack of standing; however, he expresses concern over the "continued constitutional validity" of the UDC's definition of "family."

Weimer accepts that the justices are limited to the facts presented, but he finds cause for concern when considering other factual situations. The stated goals of the City-Parish — to control nuisances associated with overcrowding — are not questioned, but the approach taken to resolving these issues is problematic. Weimer states, "The problem lies in ... the use of criteria based on biological and legal relationships ..."

Lessons can also be found in the court's dissent: "The [UDC's] current definition of 'family,' thus, distinguishes between acceptable and prohibited uses on grounds which may, in many instances, have no substantial, or even rational, relationship to the problem sought to be ameliorated."

The dissent notes that this definition of "family" invites the government to look into how a home owner chooses to populate his home and seeks to punish the home owner not because he is infringing on his neighbors' rights, but because of his personal decisions.

As both the concurrence and the dissent point out, troubling questions persist concerning the UDC's definition of family, namely concerning home owners' rights to privacy and association.

Planners should take a professional cue from this case and review and update local codes to ensure that they meet the needs of their communities. Will the current codes stand up to a well-reasoned challenge?

More lesson-worthy cases

Several other cases have sent clear signals to the planning profession. In the decision of *Kelo v. City of New London* (2005), Supreme Court Justice Kennedy sided with the majority and wrote a separate, concurring opinion that specifically gave instructions on how to construct master plans, as well as how to draft standards regarding blight and blight management. Following Kelo, in direct response to Justice Kennedy's signals, dozens of state legislators and local governments amended statutes, local plans, and codes.

Another famous hint to the professional planning profession was clearly outlined by Chief Justice William Rehnquist in *Dolan v. City of Tigard* (1994) when he coined the now-famous term "rough proportionality." In his brief explanation, he states: "no exact calculation is necessary." However the chief justice clearly telegraphs that planners need to include something more specific in their plans and standards to avoid the *Dolan* dilemma when evaluating the issue of a "taking."

Courts have been rendering land-use decisions that help planners do a better job since the early days of *Euclid*. But it's valuable to remember that there's more to a case than who wins or loses. A planner's reading of future land-use decisions should always look for and apply these lessons, which will result in better master plans, clearer codes, and better communities.

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