ORIGINAL

In the

Supreme Court of the United States

Village Of Arlington Heights, et al., Petitioners, v. Metropolitan Housing Development Corporation, et al., Respondents. Northwest Opportunity Center and Eluteria D. Maldonado, Intervening Respondents.	)	No. 75-616

Washington, D. C.
October 13, 1976

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VILLAGE OF ARLINGTON HEIGHTS, et al., Petitioners, v. METROPOLITAN HOUSING DEVELOPMENT CORPORATION, et al., Respondents. NORTHWEST OPPORTUNITY CENTER and ELUTERIA D. MALDONADO, Intervening Respondents.	No. 75-616

Washington, D. C.,

Wednesday, October 13, 1976.

The above-entitled matter came on for argument at 10:03 o'clock, a.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice
LEWIS F. POWELL, JR., Associate Justice
WILLIAM H. REHNQUIST, Associate Justice

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APPEARANCES:

JACK M. SIEGEL, ESQ., 39 South LaSalle Street, Chicago, Illinois 60603; on behalf of the Petitioners.

F. WILLIS CARUSO, ESQ., 407 S. Dearborn Street, Chicago, Illinois 60605; on behalf of the Respondents and Intervening Respondents.

C O N T E N T S

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments first this morning in 75-616, Village of Arlington Heights against Metropolitan Housing Development Corporation.

Mr. Siegel, you may proceed whenever you're ready.

ORAL ARGUMENT OF JACK M. SIEGEL, ESQ.,

ON BEHALF OF THE PETITIONERS

MR. SIEGEL: Mr. Chief Justice, and may it please the Court:

This cause is here on certiorari to the Court of Appeals of the Seventh Circuit. The Court of Appeals reversed the district court. This is a zoning case, in which the Circuit Court held that the refusal to rezone certain property classified for single-family use, in the Village of Arlington Heights, violated the equal protection clause of the Fourteenth Amendment.

In so doing, the Court of Appeals recognized that the zoning ordinance of the Village of Arlington Heights, as applied to the subject property, was not administered in a discriminatory manner.

It found that the Village was attempting to protect neighboring property values and to preserve the integrity of its zoning ordinance.

Nevertheless, the Court, based upon its findings that the Chicago Metropolitan Area had a segregated housing market,

applied the compelling interest test, and held, in substance, that the Village had an affirmative duty to rezone the property in light of the fact that Arlington Heights, in 1970, had a population of approximately 64,000, only 27 of whom were Negroes.

The plaintiff in the case below, the respondent here, is the Metropolitan Housing Development Corporation. It is a not-for-profit corporation, established for the purpose of building low and moderate-income housing in the Chicago Metropolitan Area.

It has a 99-year lease and purchase agreement with the Clerics of St. Viator, who are the owners of the 15-acre tract which is the subject matter of this litigation.

The 15-acre tract is part of an 80-acre tract owned by St. Viator, which is presently improved with a boys high school, a novitiate and an old single-family dwelling.

The property has been zoned as part of the 80-acre tract since the beginning of zoning in Arlington Heights for single-family development. Under the 1959 Comprehensive Plan of the Village of Arlington Heights, the subject property was shown for single-family purposes.

The portion of the property which is subject to the 99-year lease and the option to purchase consists of approximately 1,100 feet in a north and south direction, and approximately 600 feet in an east and west direction.

It is surrounded on all sides by the R-3 zoning classification, and,with the exception of the property also owned by St. Viator, surrounded on all sides by a single-family, well-established, residential district.

Under the provisions of the Arlington Heights R-3 zoning classification, approximately 50 single-family homes could be placed upon the subject property.

The respondent sought rezoning to the R-5, which is the multiple-family classification, for the purpose of establishing 190 dwelling units. Their contract to purchase was conditioned upon rezoning and was also conditioned upon the securing of a 236 mortgage commitment; under the prior Federal Housing Act, 236 provided for federal assistance with respect to the construction of multiple-family dwelling units.

I would draw the Court's attention to page 115 of the exhibit volume of the Appendix, in which we have a land use and zoning map indicating the physical characteristics of the surrounding area.

I would also point out that Exhibits 11 and 14, found at pages 121 and 123, contain photographs of the surrounding area.

Under the provisions of the Arlington Heights Zoning Ordinances, high schools, such as the high school on the site, churches and monasteries or, in this instance, a novitiate, are permitted uses under the R-3 classification.

QUESTION: Where is Arlington Heights vis-a-vis the City of Chicago?

MR. SIEGEL: Arlington Heights lies in the northwest suburban area, approximately 23 miles from the center of the City of Chicago. It has a population, in 1970, of 64,000; at the present time we've recently had a Federal Census, Your Honor, our population is now approximately 71,000.

As I indicated, in 1970 there were 27 blacks; our most recent Census shows there are now 200 blacks in Arlington Heights, and 648 other non-white persons.

QUESTION: Is this west of Evanston?

MR. SIEGEL: Yes, sir. It is almost directly due west of Evanston.

QUESTION: All right.

MR. SIEGEL: Now, at the time of trial in 1973, and this matter commenced with the denial of the application for rezoning in 1971, Arlington Heights had over 14,000 owner-occupied single-family dwellings. It also had more than 6,000 multiple-family units in Arlington Heights. So this is not a case involving an effort to screen out rental units.

The zoning in Arlington Heights provided for an additional 9,000 multiple-family units. That was on property which was already zoned to permit multiple-family dwelling units. Vacancy rates for apartments in 1970, under the 1970 Census, which was before the Board when the decision was made,

was over 11 percent vacancy in the R-5 or the multiple-family districts. At the time of trial at least seven vacant R-5 parcels were for sale.

Now, the evidence shows that the Village policy was to use R-5 classification as a buffer between the single-family and commercial or industrial uses.

The Village denied the zoning, the Planning Commission found in its report that the subject property would not constitute such a buffer, because there was nothing to buffer.

The evidence in the record showed clearly that the proposed development would have an adverse effect on additional property values, in the neighborhood of ten percent.

The property on Drury Lane, the single-family homes which back up, as indicated on our land use exhibit, range in value from 50 to 70 thousand dollars. The property south of Euclid Avenue, which is the southern boundary, all single-family, range in the area of from 40 to 50 thousand dollars. The property west of Dryden is also in the 50 to 60 thousand dollar class. And the property north of Oakton, which is the northern boundary across from the high school, are relatively new homes, built within five years of the trial, some homes still under construction, they also range in the 60 to 70 thousand dollar class.

The evidence shows also that the subject property could be economically developed for single-family homes at a

price range comparable or higher than the existing single-family homes in the area.

As a matter of fact, Mr. Kane, who was the Real Estate Manager of the plaintiff, testified that except for the fact that the Clerics of St. Viator wished to get $300,000, which was the purchase price, for the property, the property could have been developed for low and moderate single-family homes, which were then eligible under the so-called 235 program. Except that they couldn't afford to pay more than $200,000 for the price -- for single-family purposes.

So that there's no question that this property was properly zoned in terms of its suitability, the surrounding land uses, all the criteria which I indicate in my brief were the criteria normally applied to zoning matters.

The trial court found that the Village was motivated by a legitimate desire to protect property values and the integrity of the Zoning Plan. It found that low-income workers do not have a constitutional right to low-income housing, either where they work or elsewhere. There was no evidence proving discrimination against racial minorities from the low-income persons generally. And the trial court found that there were no specific violations of the Fair Housing Act, or the Civil Rights Act, and that there was no violation of the Fourteenth Amendment.

The Court of Appeals, as I have indicated, found that:

the findings of the trial court should not be disturbed, and, in essense, said that the Village's reasons for rezoning were the protection of property values, were for the preservation of the integrity of the Zoning Ordinance.

The Court specifically found that the evidence did not support a finding that the Village was administering its buffer policy in a discriminatory manner, found that the trial court's determination was not clearly erroneous.

The Court of Appeals also recognized that merely because racial minorities constituted a higher percentage of low and moderate-income category did not mean that the refusal to rezone have the type of racially discriminatory effect that required the implication of the compelling interest test. But, to my mind, illogically it then proceeded to rely upon what it judicially determined was the segregated housing market in a Chicago Metropolitan Area, and compelled -- and applied the compelling interest test.

Now, the Village's position in this matter is very simple. We take the position that the fact that the Zoning Ordinance may have a greater impact upon the poor or a minority group does not thereby invalidate it, or cause it to be a violation of the equal protection clause of the Fourteenth Amendment.

The evidence indicated that in the Standard Metropolitan Area, that's a six-county area around Chicago,

approximately 40 percent of the blacks who resided in that area would be eligible for the housing which was proposed here, low and moderate-income housing, in the so-called Lincoln Green Project.

There is no evidence that anyone has ever been denied housing in Arlington Heights because of their race. As a matter of fact, the answers to interrogatories indicated Arlington Heights was the first community in a northwest suburban area to adopt the Fair Housing ordinance.

Mr. deVise, a demographer, who testified for MHDC, testified that based upon the economics of the situation, approximately five percent of the housing units in Arlington Heights were available to blacks in the Chicago Metropolitan Area, and that if housing was determined solely for economic reasons there would be a black population in excess of 3,200 blacks in Arlington Heights.

This indicates, to our mind at least, that it was the economics of the situation, not the zoning, nothing that the Village of Arlington Heights has done by way of zoning, which has in any way impaired the rights of blacks to live in Arlington Heights.

We believe, therefore, that what the Court of Appeals has done is applied one set of zoning criteria for so-called white housing and another set of criteria for housing which may contain black or poor people.

We believe that under the decisions of this Court, in Lindsey vs. Normet, Rodriguez, and the other cases which I have cited in my brief, there is no fundamental constitutional right to housing, and that the Court erred in applying the compelling interest test.

The proper test, we believe, following Belle Terre and Euclid, is the test of rational relationship to a permissible Stateobjective. And we believe that the Zoning Ordinance bears such a rational relationship.

We also believe that under the criteria which have been established for the decision of zoning cases, the surrounding land use and zoning, suitability of the property for the purposes zoned, the presumption of validity, that the MHDC failed to overcome the presumption of validity; we believe that the Court should not substitute its judgment for that of the legislative body, or that a federal court should sit as a super Zoning Board.

The Ordinance is patently reasonable. I think that Your Honors will determine by simply looking at the land use map and at the photographs indicating the actual uses in place, the ordinance is not, on its face or in fact, aimed at a racial or economic minority. It is a valid exercise of legislative discretion, and it should not be set aside.

QUESTION: What ordinance are you talking about?

MR. SIEGEL: I'm talking about the Arlington --

QUESTION: I thought this was a failure to rezone.

MR. SIEGEL: A failure to rezone.

QUESTION: So what ordinance are you talking about?

MR. SIEGEL: I'm talking about the Village of Arlington Heights Zoning Ordinance and specifically the classification of the subject property for R-3 single-family purposes. This zoning has been in existence since, as I indicated the first zoning in Arlington Heights, this is not a failure to rezone, this is not the Dailey case, this is not Kennedy Homes case, where there was a rezoning to keep out.

QUESTION: Well, this is a failure to rezone, this case, that's what the --

MR. SIEGEL: It's a failure to rezone.

QUESTION: Yes.

MR. SIEGEL: Yes, sir. But it was a continuation of existing zoning.

QUESTION: Of existing zoning. Right.

MR. SIEGEL: Yes, sir.

QUESTION: Right.

QUESTION: Well, that's what a refusal to rezone is, almost by definition, isn't it, a continuation of existing zoning?

MR. SIEGEL: It's a continuation of the prior zoning.

QUESTION: So when you speak of the ordinance, you mean the status as it existed before.

MR. SIEGEL: As it existed then and as it existed at the time of the trial.

Now, we also believe that the respondents in this case lack standing. The trial court held that the two blacks who actually testified did not have standing to represent a proper class. They were a Mr. Guthrie and Mr. Ransom, who were employed at Honeywell. Neither of whom had ever sought housing in Arlington Heights. One of them had looked at want ads.

QUESTION: Mr. Siegel, I want to be sure. Was there an objection on standing grounds made in the trial court?

MR. SIEGEL: Yes, sir, I filed a motion originally to have the case dismissed for lack of standing. My motion is found in the first volume of the Appendix, on pages 20 and 21, paragraph 4, I raise the question of standing.

QUESTION: Let me be sure about -- is it Maldonado?

MR. SIEGEL: Mrs. Maldonado was an intervenor.

QUESTION: Is she still living in the Village?

MR. SIEGEL: She lived in the Village at the time of the trial; to the best of my knowledge she still lives in the Village.

QUESTION: Have any of the other individuals, named individual plaintiffs, demonstrated any interest in housing in Arlington Heights, --

MR. SIEGEL: No, sir, not to my -- pardon me, sir.

QUESTION: -- on the record?

MR. SIEGEL: Not on the record. One of them lives in Evanston, which is another suburban community. He testified he lived there with his mother and his son in a five-room house. His mother also had a full-time job, and there is no indication that they even qualified with respect to income. And he commuted 45 minutes to Arlington Heights.

The other gentleman lived in the City of Chicago, had moved further away in order to buy a two-flat in Chicago, he was renting out one apartment for $160 a month, I believe, and he resied there with his wife and child, his wife was also employed. There is no evidence that either of them had ever indicated any interest in housing in Arlington Heights, except, I believe, Mr. Guthrie said that he had read the want ads.

QUESTION: Mr. Siegel, you say the district court held there was no standing. I read its opinion otherwise.

MR. SIEGEL: No, sir. No, sir, they didn't hold there was no standing, they held it was not a class action.

QUESTION: Yes.

MR. SIEGEL: Yes, sir.

QUESTION: But you raised the standing question.

MR. SIEGEL: I raised the standing question --

QUESTION: In the district court?

MR. SIEGEL: -- initially in a motion to strike and dismiss. The predecessor judge, not Judge McMillan, Judge

Lynch, who had the case originally, denied my motion.

QUESTION: How about in the Court of Appeals?

MR. SIEGEL: The Court of Appeals didn't talk about it at all.

QUESTION: Did you talk about it to the Court of Appeals?

MR. SIEGEL: I talked about it in my brief, I raised it in my brief, I argued it orally.

QUESTION: Unh-hunh.

MR. SIEGEL: And I also argued the fact that MHDC had a contract to purchase conditioned on zoning, conditioned on a 236 commitment. The 236 program was dead at the time of the trial. But under Illinois law, the so-called Clark vs. City of Evanston case, a mere contract purchaser does not have standing because he isn't damaged. If he doesn't get the zoning, he walks away.

QUESTION: Unh-hunh.

MR. SIEGEL: So I argued that, and that was clearly before the Court of Appeals. They did not touch on it.

QUESTION: Had the case of Warth v. Seldin been decided here at the time of the Court of Appeals decision?

MR. SIEGEL: Yes, sir, I believe it was decided before the Court of Appeals decision, it was not decided at the time of Judge Lynch's decision.

And I rely, of course, on Warth vs. Seldin.

It's our position that the failure to grant the rezoning request did not violate the Civil Rights Act or the Fair Housing law or the Fourteenth Amendment. Any other decision would have been spot zoning and would have destroyed the integrity of our zoning plan.

The property is clearly suitable for single-family purposes. The trial court so found. The trial court also found that there was no discrimination involved in this case, and the Court of Appeals refused to set aside that finding of fact.

We believe that the Fourteenth Amendment and the Civil Rights Act and the Fair Housing Act does not protect -- purport to discrimination based upon economics. This is essentially a garden variety zoning case, in which the argument is made that because of single-family zoning, poor people cannot reside on that property, and that there is a higher percentage of poor people who are black, and therefore, according to the respondents, this is a violation of the Fourteenth Amendment.

Now, this argument has been raised in this Court in other connections. The San Antonio School District case, the Rodriquez case, Lindsey vs. Normet, James vs. Valtierra, Palmer vs. Thompson, and in the Court of Appeals of the various districts, including Acevedo and Mahaley Housing Authority case.

We believe that the Court of Appeals held that low-income persons have special privileges to have low-income

housing if there is a possibility that a higher percentage of minorities will be in their number. We do not believe there is any basis in the Fourteenth Amendment for this position.

The fact that a zoning ordinance may have a greater impact upon the poor or a minority group clearly does not invalidate it. The most recent case, which I've cited in my supplemental brief, is Washington vs. Davis.

There is no affirmative duty, we believe, under the Fourteenth Amendment to change a valid zoning ordinance, absent a showing of purposeful discrimination, simply to accommodate low-income people. We believe that Milliken vs. Bradley and Washington vs. Davis clearly establishes this fact.

The fact that, as I said, that enforcement of an ordinance may have a greater impact upon the poor does not render it invalid under the equal protection clause, under the teachings of this Court in James vs. Valtierra.

As a matter of fact, in Warth vs. Seldin, which we rely on on the standing case, I believe this Court specifically said that the failure of low-income people to reside in that suburban community was based on their economic situation and not upon -- could be based upon their economic situation and not upon any zoning pattern.

QUESTION: But the position of Metropolitan Housing Development Corporation here, as an actual applicant for rezoning with a contingent contract, makes it a little bit

different than any of the parties in Warth v. Seldin.

MR. SIEGEL: Yes.

QUESTION: Doesn't it?

MR. SIEGEL: Yes, sir, I believe it does. Except that they are a purchaser subject to zoning, subject to a 236 commitment. And, at least under the Illinois law, such a party does not have a right to challenge, because they have no property interest.

I would point out, of course, that the owners of the property have never been a party to this lawsuit, the Clerics of St. Viator, who would lose, presumably, $300,000, their purchase price, if the zoning was not granted or the commitment was not received.

QUESTION: Well, it's fairly typical in this kind of litigation, isn't it, to have the potential purchaser have -- conduct the zoning litigation rather than the seller?

MR. SIEGEL: Yes, sir. But, at least in Illinois, it is typical to have the property owner join. And, as I indicated, the Illinois Supreme Court, in the Clark case, had the situation where only the contract purchaser was carrying on the litigation, and not the owner. They specifically held that since the contract purchaser really had nothing to lose by way of the failure to receive zoning, that they had no standing.

Also, I think the trial court pointed out that merely

because MHDC was organized for the purpose of low and moderate-income housing, it didn't have any special racial characteristics under the Fourteenth Amendment, and it should be treated the same as any other corporation.

QUESTION: Mr. Siegel, in some places a zoning application like this requires a pledge of a commitment to execute the project. That is not required, I take it, under Illinois law?

MR. SIEGEL: It is not required as a matter of practice, Your Hon or. Normally when property is rezoned, it is rezoned to permit a specific use, in this instance it would have been a so-called planned development, and the property could only be developed in accordance with the specific plan.

But there is no statutory or case requirement in Illinois, the commitment for the developer to go ahead. And the trial court indicated, after reaching the decision on the merits, it would have been reluctant to grant any relief because of the fact that 236 program was dead, and this would simply have rezoned property and opened it up to any of the uses permitted under the R-5 classification.

We believe that the ordinance is presumed valid. The party assailing it must overcome it by clear and convincing evidence. And if the decision of the legislative body is fairly debatable, the Court will not substitute a judgment. And there, of course, Euclid vs. Ambler, and Belle Terre case

are hornbook law. That proposition.

We believe, as I've indicated, that the respondents lack the standing to bring this action for the reason that these are non-residents, not residing in Arlington Heights, no showing that this was a class action, that the intervenor, Mrs. Maldonado, resided in Arlington Heights. The other intervenor, the Northwest Opportunity Center, is a welfare organization funded in part by the Village of Arlington Heights and part by the federal government, who are there to take care of low-income people in the Chicago Metropolitan Area.

The testimony of Mr. Newton, who was their director, was that at the time of trial there were 188 low-income families in Arlington Heights, that there were approximately 1500 in the Arlington Heights area, many of them were Spanish surnamed, and Mexican -- originally migratory workers who have settled there.

Mrs. Maldonado clearly was not zoned out of the Village, because Mrs. Maldonado lives in the Village.

Therefore, Your Honors, it is our hope that this Court will not elevate or degrade the Fourteenth Amendment into the proposition that there is one set of zoning laws for all people except the poor or the minorities. The Village of Arlington Heights, let me emphasize, has not discriminated, this trial court so found, but, as a matter of fact, the trial court was correct; there was no evidence of discrimination

and the Village of Arlington Heights does not discriminate.

I would like to reserve my last five minutes for rebuttal.

MR. CHIEF JUSTICE BURGER: Very well, Mr. Siegel.

Mr. Caruso.

ORAL ARGUMENT OF F. WILLIS CARUSO, ESQ.,

ON BEHALF OF THE RESPONDENTS

MR. CARUSO: Mr. Chief Justice, may it please the Court:

This is not a garden variety zoning case. This is a case of racial discrimination.

Mr. Ransom and Mr. Guthrie do desire to live near where they work, and they don't want to drive 40 and 50 minutes a day to get there in Chicago's bitter cold weather, and sometimes --

QUESTION: Well, does the record demonstrate that statement?

MR. CARUSO: Yes, it does, Your Honor.

QUESTION: Where?

MR. CARUSO: The testimony, and I will give you the -- the testimony of both Guthrie and Ransom show that they went out and looked. What counsel is referring to is that he is saying that because they did not go and confront white people, that they did not know that they could confront white people, that they looked, but they could not find what they

wanted, and,perhaps because of their fear of whites and their fear of this location, did not pursue it, that is not looking, that can't be the case.

QUESTION: How does your statement about discrimination square with the Court of Appeals finding?

MR. CARUSO: I think the Court of Appeals finding, Your Honor, squares with the standard set by Washington vs. Davis. I think, though it may not fall completely in the Washington vs. Davis format, the Court in looking at Valtierra and analyzing the situation, said that the impact alone was not sufficient. But taking into account the totality of the situation, and then they went through the totality, the high segregation of the Chicago Metropolitan Area.

QUESTION: Well, that isn't what Washington v. Davis says. Washington v. Davis says you must have a fact which certainly was found by the Court of Appeals here, and you must have intent. The district court found no intent, and the Court of Appeals upheld that finding. There's no totality of the circumstances involved in that test.

MR. CARUSO: I think that there clearly is, there's two aspects of that. First, both at the discovery level and again at the trial level, the Court precluded us from going into the question of motivation, purpose and intent, when we started.

QUESTION: Then you're arguing that the Court of

Appeals' ruling that the district court's finding was not totally erroneous should be set aside by this Court?

MR. CARUSO: No. The Court of Appeals did not directly go to all of the questions as clearly erroneous.

QUESTION: Well, but it said, it specifically said it would not set aside the district court's finding that there had been no discriminatory intent.

MR. CARUSO: Based on the buffer zone application. I would also agree, however, that they didn't set aside anything as clearly erroneous.

But there's two aspects of it. One is that we were not allowed to go into intent and motive, because of Palmer vs. Thompson and O'Brien at that time, and the Court said that -- that is Judge McMillan said that his perception of this case was that motive and intent was not important, and that if the impact could be shown that that was sufficient.

Based on his perception of the case, then, he prevented us from asking Mrs. Harms and other people what happened at the meetings, what was discussed, what was the intent, what was the purpose; we couldn't go into that.

In addition to that, however, we believe that the record shows, from the bitter statements in the papers, the letters, the nature of these meetings, that the intent and purpose, the racial discrimination, and the statement by Mayor Walsh at the end, that this was a mandate from the

people.

QUESTION: Well, then, you are asking us to set aside the Court of Appeals' affirmance of the district court's finding that there was no purposeful intent?

MR. CARUSO: No, I think that the Washington vs. Davis standard allows the termination of purpose and intent from the totality of the facts, and that the totality of the facts here shows the racial purpose for denying this development.

The whole totality of the situation, the fact that there is no real reason for turning it down, there is no integrity to this zoning ordinance, the Court of Appeals said that the decline in the budding property owners, those 17 homes, was not the kind of substantial reason that would allow this kind of a discriminatory effect.

And so we believe that within the Washington vs. Davis framework, purpose and intent can be shown.

In addition to Ransom and Guthrie, who worked and have been moved to Arlington Heights -- and that is in the transcript, and it starts with page 220 of the transcript, with Guthrie's testimony -- MHDC has standing and desires to build and can build. AT the time of the trial, 236 was not dead, President Nixon at that time had a moratorium on 236; and later a Court of Appeals held that that would not stand.

Since that time, the Community Development Act has been passed, and under Section 8 this development can be built

with a very similar type of financing and provisions for low and moderate-income people.

So if there was a period of moratorium, that has passed, and it can now be constructed, and MHDC is prepared to go ahead. It has a definite important stake in this case, and would like to get on with building this low and moderate-income housing.

Mrs. Maldonado also testified, although it is not directly testimony as to her present location, and there was testimony in the record about the low standard of housing that Spanish-Americans are allowed to live in in Arlington Heights.

There is a pledge by MHDC to continue to control this. This is a not-for-profit corporation, with an outstanding board of directors, which is concerned with equal opportunity in housing throughout the Chicago Metropolitan Area, they gave letters to the municipality, they committed to sticking with this development forever, to see that it was well-constructed, well-managed by this not-for-profit corporation.

So the commitment and the stake fully provides for the question of Warth vs. Seldin, and a stake in the development.

All of these people have standing.

The zoning --

QUESTION: All you need is one, isn't it?

MR. CARUSO: That's right, Your Honor, and the

district court found that clearly Maldonado and MHDC had sufficient standing, and I don't believe they -- they said Guthrie, that is, Judge McMillan said Guthrie and Ransom did not have standing to represent the class, but he did not rule they personally did not have standing.

The zoning here is good zoning for MHDC, which is a two-story, or one-and-a-half and two-story townhouse development, with individual entrances, 60 percent is open space. It is like and compatible with, as a witness testified, with the surrounding homes. It's a very nice, good-looking development, with mature trees;and before the application and the administrative process, which was completely followed, and the judge found that, MHDC worked with the Village, provided hard stands for fire protection, changed the garbage, re-routed the roads, gave the Village everything that was necessary to make it a really high-class, fine development.

QUESTION: How can Euclid prevent us from taking all that into consideration?

MR. CARUSO: No, Your Honor, I don't think it does.

QUESTION: I thought Euclid said that if a zoning law was passed, that was it.

MR. CARUSO: No, I -- I think that Euclid said that the zoning law was entitled to control the zoning within a municipality.

QUESTION: That's right.

?

MR. CARUSO: But I think Euclid and Necto vs. Cambridge indicated that that was limited by the fact that if there were other requirements, and other needs, safety, public health, the other interests of the community, that those would still have to be considered. That Euclid does not override everything. Zoning is not above all.

QUESTION: Of course not. But, I mean, you say that the man is going to have a very nice development and all, Euclid says that means nothing.

MR. CARUSO: I think that --

QUESTION: You say that they are going to ride herd and see that it is run properly; Euclid says that's not what is to be considered.

MR. CARUSO: I don't think that that is what overcomes Euclid. I think what overcomes Euclid is the fact that this is a highly discriminatory market, that they have no low or moderate-income housing --

QUESTION: Is it discriminatory against poor people?

MR. CARUSO: No, Your Honor, it's not -- our case is not based on discrimination against poor people, it's based on discrimination against blacks and other minorities. And the overriding need for this housing in this area --

QUESTION: Well, can a black person buy one of those vacant homes out there at $60,000?

MR. CARUSO: Can who buy it, Your Honor?

QUESTION: A black person with a Spanish name buy one of the houses, if he's got $60,000?

MR. CARUSO: I believe that he would have a tremendous difficulty in Arlington Heights or any other municipality in the suburbs of chicago. It's a highly racially discriminatory market.

QUESTION: Well, how many are living out there now?

MR. CARUSO: Well, he says that there are 200, and the --

QUESTION: Well, do you --

MR. CARUSO: -- recent Census. I have not checked that Census. I think that's high, Your Honor.

QUESTION: Well, what would you say?

MR. CARUSO: I would say there's some increase in the number of blacks in the area. But there's been an increase in --

QUESTION: Well, how many?

MR. CARUSO: Excuse me, Your Honor?

QUESTION: How many?

MR. CARUSO: There could be as much as 100 increase in blacks in the area.

QUESTION: So they are not excluded, are they?

MR. CARUSO: Well, I think to say that there are 127 people in a town of 72,000 is an indication that there is high exclusion, as there are in 157 other municipalities.

QUESTION: Well, what number would change that?

MR. CARUSO: Excuse me, Your Honor?

QUESTION: What number would change that?

MR. CARUSO: I think that --

QUESTION: Fifty percent?

MR. CARUSO: -- deVise -- no; deVise's testimony said that if it was an open market, if it was a racially free market, based on the value of the homes and the market and the style of homes and the housing stock, there would be about 3500 blacks living in Arlington Heights.

QUESTION: There are 3500 Negroes in Chicago that can buy a $60,000 house?

MR. CARUSO: I think there are, yes, Your Honor.

QUESTION: You think.

MR. CARUSO: Oh, yes.

QUESTION: Have you got any figures?

MR. CARUSO: No, Your Honor, I don't.

But it isn't sixty -- this is not a town of $60,000 homes, Your Honor. This is a town with a broad housing stock. A third of the units, approximately, are apartments. It is not -- this is not a single-family community with just single-family homes and very expensive homes. It has a broad housing stock. It has, right near this development, across this high-speed street to the south, there are houses in the 30 to 40 thousand dollar range.

QUESTION: Are they available?

MR. CARUSO: Some of them, I am sure, have been for sale, Your Honor, since 1971.

QUESTION: You just want this particular piece of property.

MR. CARUSO: I think we do want --

QUESTION: Rezoned.

MR. CARUSO: That's right. Your Honor.

QUESTION: And that's the only thing in this case.

MR. CARUSO: That's right, Your Honor.

The -- one of the statements that was made by counsel was that seven other parcels were for sale at the time. Those parcels were not for sale, and they could not be used for low and moderate-income housing, because there is a limit of $2,000 per unit in each of the homes. Therefore, --

QUESTION: Does every unit -- does every village in this country have to have low-cost housing?

MR. CARUSO: No, Your Honor. The --

QUESTION: Well, why does Arlington have to have it?

MR. CARUSO: Arlington Heights is a unique situation. A tremendous growth from 1950 of 8,000 people to now 64,884 people. The growth in jobs, which is set forth, of 100,000 jobs in that area; the movement of jobs from Chicago to that area.

There are probably six communities like Arlington

Heights in the Chicago Metropolitan Area that would be in the category that we are here showing. The tremendous growth. The exclusion of blacks. The exploitation of that situation. And the lack of any evidence that any good-faith effort is anywhere involved in this municipality to deal with the situation or to responsibly assist in solving the problem.

Here a not-for-profit developer of the highest quality has offered the town an opportunity, with 190 units, to solve this situation, and all we're asking is that the town stand aside and allow the purpose of Congress to provide for fair housing throughout the United States, and the Department of Housing and Urban Development,to create opportunities outside the traditional ghettoes.

For Arlington Heights to stand aside and allow us to do that.

And it isn't the parade of horribles, of striking down zoning. There may be six of these communities out of 157 in the Chicago Metropolitan Area, and there may be six around other large metropolitan areas, where the business has moved to the suburbs, the jobs are moving out to wherever, but the minorities cannot follow the jobs, and are required either to give up the opportunity to work, or to drive these tremendous distances to and from the job.

In addition, the zoning around the -- this piece of 15-acre parcel, is vacant at the present time to the north and

to the west. To the east are 17 single-family homes which actually abut the property. To the north is an open space which is the play field, a football practice field for the high school, and to the west is a communal living facility in which the various clerics live, it's a three-story, very large building, which is in the nature of a living facility for the people working for and participating in the training of the high school and other St. Viator institutions.

To the south is a highly traveled street, Euclid Avenue, that runs to the Arlington Heights Race Track, and there is testimony that it is a very highly traveled business street. To the south of that are single-family homes.

And to the south and to the west of the 80-acre parcel are some single-family homes, which are of the lesser price, of 30 to 40 thousand dollars.

We are not asking the town to do any affirmative duty. In the cases that counsel cites do not relate to this case, this is not a Lindsey vs. Normet case. We have gone through the cases he cited in the brief. This is not that kind of a case.

This is a case where there is no requirement on the Village. The tax impact study, which is in the record, shows that the per-pupil income from this development will be higher than if it were single-family, per pupil.

The income to the Village would be higher than if it

were a single-family. So the Village will make money on this development. There is no problem with water, sewer. The traffic problem is slight and the Village --

QUESTION: Presumably the zoning decision was made with all that -- with an awareness of all those factors, was it not?

MR. CARUSO: Yes, Your Honor, it was, and that's one of the things that's extraordinary in the totality of facts. All of the evidence presented by all these experts, Barton-Ashman, a leading traffic study; tax impact people; experts on housing and urban development. All of these range of experts were all in the record, and all showed that it was a good zoning, valuable. There was no objection by any of the -- the engineer of the Village, the police chief, the fire chief, any one in the Village, they approved it. There is a sheet where they approved this development.

QUESTION: Well, of course, if there had been an application here for high-rise, a cluster of high-rise apartments, they might have been able to show that there would have been three or four times the tax revenues that would be produced either by present zoning or by your proposed zoning. But would that be determinative?

MR.CARUSO: I think that that's a different, completely different thing. And there is --

QUESTION: You are emphasizing the benefits, but the

zoning authority was obviously aware that there were benefits, and then they concluded there were detriments, and they weighed them and made their decision. Is that not so?

MR. CARUSO: I think that the point I am trying to make is that all of the information before them showed the benefits. They didn't have any information before them to show that anything but this was a good development. They have a planner, who is a professional planner, who is employed by the municipality, and he testified that no one ever asked him his opinion. He reviewed it, he testified he reviewed it. This is the professional planner, whose responsibility is to review these plans. He reviewed it, he testified he reviewed it. They never asked him his opinion. And there's no evidence they ever asked anybody else.

So that all the evidence here shows it was a good development, it met all the criteria. And in 60 other cases, Your Honor, they had approved other zoning. And if you -- counsel has referred to the maps, these zonings are all over Arlington Heights. And 53 of those abut single-family homes.

And in some cases they abut much fancier single-family homes than are involved here.

The process in Arlington Heights is to approve all these zonings everywhere, except where ours is. And, although the Court found that there wasn't a YITWO type violation, the Court did find that their process of approving was not

uniformly followed. And to compare it, let's say, to Washington vs. Davis, this would be like giving a police test whenever you thought you should, and whenever whites failed it, allowing them to be on the force, but when blacks failed it, not allowing them to be on the force. That's the situation here.

Sometimes they apply the test to white developments, sometimes they turn down white developments for certain reasons; but whenever a development comes in that would be racially integrated, then this test is used to keep them out. And that's the process of what is sometimes referred to as a holding pattern zoning. Everything is held as R-3. When someone comes in on R-5, like these 60 other cases, they then approve them after looking at who the developer is, whether they can be assured that that developer will bring in the right kind of people, and whether or not it should be approved. But in 53 of those cases, the argument that's made here, that it would abut single-families, was disregarded completely.

QUESTION: You still think you don't have any trouble with Washington v. Davis?

MR. CARUSO: Your Honor, we think that the Court of Appeals, in analyzing the totality of facts -- and the record here is mostly documentary, all of the documents were stipulated to before the case was brought to trial, and the record builds on that documentary evidence. In reviewing that documentary

evidence, the Court of Appeals analyzed Valtierra and, although maybe it didn't completely anticipate Washington vs. Davis, did talk in terms of the fact that the racial impact alone was not enough to create a constitutional violation, and then went on to talk about the racial hostility, to talk about the fact that the Village board recognized that the people had this animus, and that they had a mandate from the people not to approve this type of project.

And I think in the totality, Washington vs. Davis, it seems to me, recognized that the police force had tried to find people to fill these positions, and when they didn't show up, after they passed the test, they went out and tried to get them, tried to bring them in, to get them on the force.

Under the totality of facts in Washington vs. Davis, there's a completely different atmosphere, attitude, background than there is in this all-white community, which has developed in a way to exclude blacks from that municipality.

QUESTION: Well, Mr. Caruso, did you press your statutory claim as a separate issue in the lower court?

MR. CARUSO: Yes, we did, Your Honor. In both the district court and the Court of Appeals, we urged the violation of the 1968 Fair Housing Act.

QUESTION: Did you ever specify a section?

MR. CARUSO: Your Honor, in the district court, the discussion was not brought up where we had an opportunity

to explain to the judge the operation of 3604, that is, to make housing otherwise unavailable, or 3617 violation.

QUESTION: And is that one of your issues you pressed in the Court of Appeals?

MR. CARUSO: We did -- we did -- our --

QUESTION: Well, is there anything in the Court of Appeals' opinion about it?

MR. CARUSO: No, there isn't, Your Honor.

QUESTION: Well, how did the Court of Appeals move directly to the constitutional issue without dealing with the statutory question first?

MR. CARUSO: Your Honor, I don't think I can answer that.

QUESTION: Well, do you think the Court of Appeals then dealt with your statutory issue or not?

MR. CARUSO: Your Honor, I just cannot say whether or not they did.

QUESTION: Well, do you think you raised -- do you think you named the statutory issue as one of your questions in your petition for certiorari?

MR. CARUSO: In our petition -- in our response here, Your Honor?

QUESTION: Are you pressing it here?

MR. CARUSO: Yes, Your Honor, we are.

QUESTION: To sustain the judgment below?

MR. CARUSO: Yes, Your Honor.

We believe that the constitutional judgment below may be sustained. We also believe that the violation of the 1968 Fair Housing Act --

QUESTION: But the Court of Appeals has never dealt with the statutory issue.

MR. CARUSO: That's right, Your Honor.

But we believe that the -- this Court could determine, on the statutory basis, a violation of the 1968 Fair Housing law, under 3617 or under 3604.

QUESTION: And all you have to say about that is in your brief?

MR. CARUSO: Yes, Your Honor.

QUESTION: Well, can't it be inferred that the Court of Appeals did deal with the statutory claims? It certainly mentioned them, on A3 -- I'm reading from its opinion on A3 of the Appendix -- and then moved right on to the constitutional question. And if it was doing anything like what an appellate court ought to do, or any court ought to do, it was,by moving onto the constitutional question, it was holding that there was nothing to the statutory claims, wasn't it?

MR. CARUSO: I have not read it that way, Your Honor. I cannot explain, as Justice White has indicated, I cannot explain what was in the minds of the Court of Appeals.

QUESTION: No, I can't, either. But that -- applying

normal standards of what courts are supposed to do, that would be the logical inference, wouldn't it?

MR. CARUSO: Well, Your Honor, I --

QUESTION: They don't reach a constitutional question unless it's absolutely necessary to do so.

MR. CARUSO: -- I would believe that that is correct. And I would argue, however, that we believe that the Court could rule with respect to the Fair Housing Act of 1968, and we would urge the Court to consider that as well as the constitutional issue; and we are continuing to urge that.

One of the reasons that we continue to urge that is that the Congress has, in applying and accepting its responsibility, interpreted the problem of fair housing, and discrimination with respect to housing is one of the most important and, as in the Trafficanti, it was stated, a matter of the highest priority.

And, as interpreted, the discrimination in housing issue, in a context of 1968, and indicated how complicated and sophisticated the discrimination is, by going into refusing to sell, making otherwise unavailable, denying housing when in fact the housing is available.

QUESTION: Do you think that a municipal corporation like Arlington Heights can be -- it's covered by the provision that you're talking about of the 1968 Act, that it's a person?

MR. CARUSO: I would -- yes, I believe -- no, I

believe it is a person and also a corporation, as mentioned by the Act, Your Honor.

QUESTION: Do you think that applies to a public municipal corporation?

MR. CARUSO: Yes, I think it is, because this is a municipal corporation of Illinois.

QUESTION: The Court of Appeals' opinion begins the discussion of the legal issue by saying that the first contention that you raised was the equal protection. They don't say the only contention. That surely implies that, as you suggested, that you argued the statutory issue which they had referred to. And, as Justice Stewart suggested, by all standards of reading an opinion, that means they denied your statutory ground, rejected it. Do you agree with that?

MR. CARUSO: We just do not feel that they did that, Your Honor. We cannot explain why. We did present what we thought was a good definition of what the 1968 Act was meant to do, and that it did apply, and we did urge it. And we -- all I can say is I would continue to urge that the 1968 Act be considered in considering this case. And I believe this Court could consider it, even in light of what may be some indication in the Court of Appeals.

The situation with respect to the zoning and the preparation of the Arlington Heights development indicates that, in comparison to the other developments which were approved,

it would meet the general requirements of the municipality. And that the zoning could have been approved in accordance with the procedures that were followed by the municipality.

We believe that the evidence does show that there was substantial purpose on the part of the municipality, and that the evidence shows further that they did not present any facts or reasonable explanation as to why the development had been turned down, and that that is part of the totality of facts.

We also, in connection with the dissent, we have reviewed the record and the record indicates that none of the seven or nine parcels were available. Both in Mr. Kane's testimony, where he indicates the prices of these, some of them $50,000 an acre, some of them $42,000 an acre, indicates there were no other R-5 parcels zoned, that could have been used because of the $2,000 limit per uni under HUD.

Mr. Opelka, their own appraiser, indicated that $20,000 was the only parcel he knew for single-family in Arlington Heights, and the multiple-family would all be higher than that, and therefore priced out of our market.

Several of the seven parcels were too small, there were five or six units, others had flooding problems, and the others were not for sale or were over-priced. There just was no other opportunity.

And bsides that, the only way this kind of a develop-

ment can be built is where the opportunity comes along that a religious order, such as the Clerics of St. Viator, makes this kind of property available to a particular developer, and with that property available to the developer, the opportunity to make this kind of housing available on an equal opportunity basis arises.

MHDC built a similar project for low and moderate-income people, 212 units. They have been involved in other developments. They have a record of showing that they can bring in minorities and whites to provide a truly integrated development; and that's what would be done here.

That is the purpose of MHDC. That is why these people on the boards of directors of the Leadership Council and MHDC are working so hard on this.

We urge the Court to affirm the decision of the Court of Appeals as being in accordance with Washington vs. Davis, and meeting the general framework there required.

The question of motivation and purpose needs further inquiry. One opportunity would be to go back and to go into that, but we feel that's not necessary on this record.

We urge the Court to allow that Court of Appeals' opinion to stand, so that we can get on with building what we believe will be a very fine and healthful development in the Village of Arlington Heights.

Thank you.

MR. CHIEF JUSTICE BURGER: Thank you, Mr. Caruso.

Do you have anything further, Mr. Siegel?

REBUTTAL ARGUMENT OF JACK M. SIEGEL, ESQ.,

ON BEHALF OF THE PETITIONERS

MR. SIEGEL: Yes, sir. If the Court pleases:

I would point out, first of all, that the Village of Arlington Heights rejected 34 applications for multiple housing, which did not involve low or moderate-income housing, simply because they did not meet the criteria of our planning principles, including the buffer zone, which the trial court and the Court of Appeals found we were applying in a non-discriminatory manner.

As a matter of fact, when Mr. Caruso says you will find that some of those 60 approvals were contiguous to single-family zoning, there's no question about it, that's the whole idea. You use multiple-family as a buffer between more intense and single-family development.

I would point out that their own witness, Mr. deVise, characterized Arlington Heights as a dormitory suburb, and it had the least industry, the least commerce of the communities around it.

So when Mr. Caruso says all the jobs are moving to Arlington Heights, his own witness doesn't believe that.

Now, the fact of the matter is that the record showed that Mr. Hanson, the Village manager, and Mr. Kessler, the

Village planner, were prepared and offered to find other sites for MHDC in Arlington Heights. The 212-unit project, which is the only new project they've ever built, is located three-quarters of a mile away from Arlington Heights, much closer to our industrial area than Lincoln Green is. So that they are in the Arlington Heights area now, and they have no problems.

Now, when Mr. Caruso says that there has been an effort to zone out blacks here, this is just not the fact. We have permitted over 6,000 apartment units. Mr. Kessler testified that those apartments ranged from $160 a month up. There were over 6,000 apartments, and an additional 9,000 zoned at the time of trial.

So to say that we are trying to zone out --

QUESTION: You have 6,000, how many Negroes?

MR. SIEGEL: There are 200, Your Honor, according to the --

QUESTION: Of the 6,000?

MR. SIEGEL: No, sir. Two hundred out of 71,000 people. There are 200 blacks --

QUESTION: Well, you're talking about all these apartments.

MR. SIEGEL: Yes, sir.

QUESTION: How many Negroes are in these apartments?

MR. SIEGEL: I cannot answer that, Your Honor. I

do have a copy of our latest --

QUESTION: Well, it would be less than 200, wouldn't it?

MR. SIEGEL: Yes, sir, it would. Some of them are in single-family homes.

But the Village is zoned --

QUESTION: I'm talking about apartments, not single-family homes.

MR. SIEGEL: That's correct, Your Honor.

But the Village's zoning hasn't done this. What Mr. Caruso is really arguing is that we have a different set of zoning laws for poor people. What he's saying is that Arlington Heights land is too expensive for conventional, multiple-family development. Except for -- pardon me, is too expensive for 235 or 236; but that isn't the test of a zoning ordinance, how expensive land is.

Thank you very much, Your Honors. I ask that the Court of Appeals be reversed.

MR. CHIEF JUSTICE BURGER: Thank you, gentlemen.

The case is submitted.

[Whereupon, at 10:59 o'clock, a.m., the case in the above-entitled matter was submitted.]

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