

SUMMARY OF ST. BERNARD PARISH V. GNOFHAC

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In mid-2008, a Dallas developer filed applications with the Louisiana Housing Finance Agency (LHFA) to secure low income housing tax credits on four apartment complexes in St. Bernard Parish, Louisiana (across the bridge from the 9th Ward). By way of background, in this latest round of tax credits, LHFA gave priority to two parishes that were hit hardest by Hurricane Katrina but had not received tax credits in prior rounds. St. Bernard Parish had over 90 percent of its housing stock significantly damaged by the hurricane. The Parish is 94 percent Caucasian versus adjoining Orleans Parish which is over 70 percent African American.

After the developer requested its tax credits, but before LHFA awarded the credits, the Parish passed a moratorium on multifamily development to stop development of the apartment complexes. The multifamily moratorium was the fourth in a series of measures passed by the Parish to stop rental housing — previously, the Parish had adopted a 2007 multifamily moratorium, a ban on any house being rented that was not rented prior to the hurricane, and a revised ban on renting houses that only allowed rental to a "blood relative."

In late 2007/early 2008, the blood relative ordinance was challenged in Federal District Court by a local nonprofit. The nonprofit claimed the blood relative ordinance violated the Fair Housing Act. The Parish and the nonprofit ultimately entered into a Consent Decree that, among other things, prohibited the Parish from violating the Fair Housing Act for three years, with the court retaining jurisdiction over Fair Housing Act violations by the Parish during that time period. The Blood Relative Consent Decree is [attached](#).

In December, the developer intervened in the nonprofit's lawsuit against the Parish and together the nonprofit and the developer claimed the new multifamily moratorium violates the Fair Housing Act and the Consent Decree. They moved to have the Consent Decree enforced and the moratorium struck down. In March, the judge granted the request to enforce the Consent Decree, requiring the Parish to revoke the moratorium. The judge subsequently granted a motion for contempt and sanctions against the Parish (also [enclosed](#)).

Since that date, the Parish used the planning and zoning process (subdivision approval) to block the apartment developments. The nonprofit and the developer petitioned the court to again hold the Parish in contempt for these actions and on August 17th the judge held that the Parish's conduct since the original March 25th order, by "subverting the re-subdivision process," also violates the Fair Housing Act. To quote from the [opinion](#): "there appears to be a concerted effort, through stall and delay tactics, to simply outlast [the developer's] efforts while avoiding a substantive decision on their application. Construction must be completed by December 31, 2010 for the tax credits to be viable. By delaying construction a month here and a month there while plaintiffs ping-pong back and forth between the planning commission and the Parish Council, defendants may well achieve their goal." The judge ordered the Planning Commission to put the resubdivision applications on its next agenda.

The judge's opinion was issued the afternoon of August 17th. That morning, the developer was before the Planning Commission to again request approval of the resubdivisions and the resubdivisions were again denied.

The Parish placed the resubdivision applications on their Planning Commission agenda for Tuesday afternoon, August 25th. We informed the Commission of the judge's order, which concluded that the resubdivisions should be considered "minor resubdivisions" and that many of the concerns expressed at prior meetings were "pretextual." The Chairman of the Commission replied: "The judge doesn't say what's a major or a minor subdivision in St. Bernard Parish. Unfortunately, the Parish Planning Commission does and that's who you have to answer to."

The nonprofit and the developer petitioned the court to again hold the Parish in contempt and liable for sanctions and requested that the court order the resubdivisions approved and require the Parish to issue building permits by October 1st. Last week, the court held a hearing to discuss the issuance of the building permits and the actions of the Parish in denying subdivision approval. Referring to the comments of the Planning & Zoning Chairman, the judge stated "I think you would agree that I do get to say if the action of the Planning Commission or the Parish Council violates the Fair Housing Act and other U.S. laws, and I did say that," and asked the Parish's counsel "How is this not contempt?"

The judge issued her [opinion](#) last Friday, noting that the Planning & Zoning Commission had not even read her prior opinion, and in finding the Parish in contempt stated that the Parish "may disagree with this court's orders, but under our system of laws, they must abide by those prior orders unless and until the Court of Appeals takes a different view." The judge ordered the subdivision applications deemed approved, and laid out specific steps and timelines for the issuance of building permits, coupling those requirements with daily sanctions for each missed deadline beginning at \$5,000 for the first day and increasing to \$10,000 per day thereafter.



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