



APR - ALTERNATIVE MARKETS

DEDICATED TO PUBLIC ENTITY

LESSONS FROM LOSSES: IMMUNITY AND FREE SPEECH

The only mistake in life is the lesson not learned.

—Albert Einstein

DESCRIPTION

A 10-acre parcel of land was placed for sale and had two bidders: One was a developer that wanted to erect homes near a school, and the other was a community preservation committee that wanted to prevent the land from being developed. The developer was the highest bidder and bought the property. The project was delayed because of objections voiced by the water district's superintendent.

The proposal for development provided for 10 homes. The property was near a school that was under monitoring obligations imposed by the Department of Environmental Protection because of high nitrate levels resulting from a failing septic system. The water district and its superintendent opposed the home development proposal, citing concerns of high nitrate levels that may lead to health issues for infants and nursing mothers, negative impacts on water supply, and exorbitant cleanup costs.

The matter was put on the agenda, and a public hearing was held. The developer was ordered to complete a nitrate loading analysis as part of the plan submission. The developer retorted that the nitrate level concerns were baseless and unsubstantiated but agreed to proceed with the study. The superintendent was on the record with the statement that the developer should be forced to "jump every hurdle." The water district board agreed to launch a public education campaign to inform residents of the consequences of high nitrate levels. The nitrate loading analysis funded by the builder ultimately revealed that the nitrate levels at the property were within regulated limits, and the project was approved.

The developer filed a lawsuit against the Water District and the superintendent. The allegations against the water district were that the developer's First Amendment right to petition the government for redress was violated when the water district "retaliated" against the developer for winning the land-purchase bid. The contention against the superintendent was malicious intent to derail the project while working under the color of law. The allegedly retaliatory conduct was the campaign to raise community awareness of nitrate-related illnesses, continuous outspoken opposition to the project, and the costly engineering study. The plaintiff relied on the nitrate analysis study that indicated nitrate levels within regulatory guidelines to pursue an action that the water district's concerns were unwarranted, baseless, and retaliatory. The complaint alleged that because of the defendant's actions and statements, the plaintiff lost sales on reserved lots and future contracts for construction of single-family homes.



THE RESULT

The water district and the superintendent proceeded with a motion for summary judgment, and the case was dismissed.

THE PROBLEM

The plaintiff believed that the company was singled out and treated differently from other similarly situated development projects because it had outbid the preservation committee for the property. It further alleged that it was required to complete a nitrate loading analysis and attend multiple board meetings and public debates that were not required of other developers. Because the study indicated nitrate levels within an acceptable range, it concluded that the superintendent's outspoken opposition was malicious, groundless, and therefore retaliatory and unconstitutional.

The water district successfully defended the superintendent's actions because there was well-documented rationale for the expressed concerns: the nearby school with high nitrate levels, Environmental Protection Agency mandated monitoring, valid illnesses related to excessive nitrate levels, and potential cleanup costs. Based on the submitted evidence, the court concluded that the plaintiff failed to prove that the defendant did anything more than force it to justify the project and that the defendant was not motivated by malicious intent.

LESSONS LEARNED

Public officials have free speech rights and an obligation to speak out about matters of public concern. Moreover, a public official exercising judgment and discretion is immune from negligence or other error in decision-making if the official acted in good faith, without malice, and without corruption. In this case, the superintendent expressed public health concerns based on high nitrate levels from a nearby school, severe illnesses that may result from high nitrate levels, and potential cleanup costs. The water district was savvy to extend invitations to the builder and their representatives to public meetings, provide open forums for debates, and document meeting minutes and rationale for decision-making.

The superintendent was found to be acting within the scope of his responsibilities and in good faith when he raised issues and was therefore granted immunity. The rationale for concerns coupled with the democratic approach of open debate ultimately assisted with the successful defense.

Note: Although the statements above are based on an actual loss, some of the facts may have been altered for the purpose of illustration and education. This information is not intended as legal advice; please consult an attorney.

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Margaret Zechlin, Executive Vice President

E: mzechlin@alliedpublicrisk.com

O: 415.761.8628

M: 415.497.6400

Alie Basch, Senior Vice President

E: abasch@alliedpublicrisk.com

O/M: 413.335.3092

Laura Mehtens, Regional Underwriting Director

E: lmehrtens@alliedpublicrisk.com

O/M: 636.212.5072

LaTonya James, Senior Underwriting Analyst

E: ljames@alliedpublicrisk.com

O/M: 312.371.9501

Mia Legg, Senior Underwriting Analyst

E: mlegg@alliedpublicrisk.com

O/M: 773.750.5233

Melissa Metzger, Senior Underwriting Analyst

E: mmetzger@alliedpublicrisk.com

O: 618.717.0553

Lametria Williams, Underwriting Analyst

E: lwilliams@alliedpublicrisk.com

O: 469.451.5467

Trish Poe, Claims and Risk Management Leader

E: ppoe@alliedpublicrisk.com

O: 909.614.3622

Roberta McLean, Administrative Manager

E: rmclean@alliedpublicrisk.com

O: 707.696.0309