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Due Process: Unification Theological Seminary v. City of Poughkeepsie

supplemented by notice mailed to the mortgagee's last known available address, or by personal service."[608]

Most recently, in *Weigner v. City of New York*,[609] the Second Circuit Court of Appeals used the *Mullane* standard in a foreclosure proceedings.[610] In *Weigner*, appellant owned real property and failed to pay taxes for more than four years.[611] By receiving bills and letters from the City relating to her delinquency, appellant knew foreclosure was pending.[612] The court held that "notice by ordinary mail supplemented by publication and posting was reasonably calculated to inform the parties affected. Due process does not require that notice sent by first class mail be proven to have been received."[613]

In conclusion, New York and federal case law are in accord on what type of notice is required for a tax lien proceeding to satisfy due process. Both require actual notice be mailed when the names and addresses of the parties are known to the municipality.

Unification Theological Seminary v. City of Poughkeepsie[614]
(decided February 7, 1994)

The plaintiffs claimed that the single family zoning ordinance of the City of Poughkeepsie[615] was unconstitutional because it

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608. *Id.* at 798 ("Until 1980 . . . Indiana law did not provide for notice by mail or personal service to mortgagees of property that was to be sold for nonpayment of taxes.").

609. 852 F.2d 646 (2d Cir. 1988).

610. *Id.* at 651.

611. *Id.*

612. *Id.*

613. *Id.*

614. ___ A.D.2d ___, 607 N.Y.S.2d 383 (2d Dep't 1994).

615. POUGHKEEPSIE, N.Y. CODE § 19-2.2 (1990). Definition of a Family:

(a) One (1), two (2) or three (3) persons occupying a dwelling unit; or

(b) Four (4) or more persons occupying a dwelling unit and living together as a traditional family or the functional equivalent of a traditional family.

(2) It shall be presumptive evidence that four (4) or more persons living in a single dwelling unit who are not related by blood,

violated the due process clause of the New York State Constitution.[616] At issue was the ordinance's rebuttable presumption that a household of more than three unrelated persons is not functionally equivalent to a traditional family.[617] The supreme court held the zoning ordinance constitutional and the appellate division affirmed. The decision rested on two propositions: First, that zoning ordinances carry a presumption of constitutionality;[618] and second, that a valid rebuttable presumption can save an otherwise facially invalid ordinance from being declared unconstitutional.[619]

The presumptive validity of zoning ordinances was originally established by the Supreme Court of the United States in 1926, in *Euclid v. Ambler Realty Co.*.[620] In a case of first impression, the Court held that an ordinance may only be declared unconstitutional if its "provisions are clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare."[621] That decision included the finding that it is a permissible governmental objective to enact zoning ordinances that restrict land usage to single family

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marriage or legal adoption do not constitute the functional equivalent of a traditional family.

(3) In determining whether individuals are living together as the functional equivalent of a traditional family, the following criteria must be present: . . . [the code then lists four such criteria, (a), (b), (c), and (d)]

(e) Any other factor reasonably related to whether or not the group is the functional equivalent of a family.

Id.

616. N.Y. CONST. art. I, § 6, which provides: "No person shall be deprived of life, liberty or property without due process of law."

617. POUGHKEEPSIE, N.Y. CODE, § 19-2.2. This section provides in pertinent part: Family (2) "It shall be presumptive evidence that four (4) or more persons living in a single dwelling unit who are not related by blood, marriage or legal adoption do not constitute the functional equivalent of a traditional family."

618. ___ A.D.2d at ___, 607 N.Y.S.2d at 384.

619. *Id.*

620. 272 U.S. 365 (1926).

621. *Id.* at 395 (citing Cusack Co. v. City of Chicago, 242 U.S. 526, 530-31 (1917)).

dwellings in order to maintain safe, quiet, low traffic neighborhoods.[622] This aspect of the holding is the prevailing rule of law in both state[623] and federal decisions.[624] Thus, subsequent due process challenges to zoning ordinances have, like the case at hand, focused primarily on whether the means employed by the municipality bears a substantial relation to the permissible objective.

Since the concept of "single family" residence has consistently been viewed as part and parcel of the permissible governmental objective,[625] it is not surprising that the definition of family has become the prime focus of attention. In *Baer v. Town of Brookhaven*,[626] the New York State Court of Appeals held that,

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622. *Id.* at 394 (stating that apartment houses can be characterized as approximating a nuisance when built in detached sections).

623. *See* City of White Plains v. Ferraioli, 34 N.Y.2d 300, 305, 313 N.E.2d 756, 758, 357 N.Y.S.2d 449, 452 (1974) ("By requiring single family use of a house, the ordinance emphasizes and ensures the character of the neighborhood to promote the family environment . . . . Thus the city has a proper purpose in largely limiting the uses in a zone to single-family units."); Group House v. Board of Zoning and Appeals, 45 N.Y.2d 266, 271, 380 N.E.2d 207, 209, 408 N.Y.S.2d 377, 379 (1978) ("It is now settled law that a community may appropriately limit the use of certain neighborhoods to single-family residences."); McMinn v. Town of Oyster Bay, 66 N.Y.2d 544, 549, 488 N.E.2d 1240, 1243, 498 N.Y.S.2d 128, 131 (1985) ("Indisputably, this ordinance was enacted to further several legitimate governmental purposes, including preservation of the character of traditional single-family neighborhoods, reduction of parking and traffic problems, control of population density and prevention of noise and disturbance.").

624. Moore v. East Cleveland, 431 U.S. 494, 499-500 (1977) ("The city seeks to justify [this single family dwelling unit ordinance] as a means of preventing overcrowding, minimizing traffic and parking congestion, and avoiding an undue financial burden on East Cleveland's school system. Although these are legitimate goals, the ordinance before us serves them marginally, at best."); Village of Belle Terre v. Boraas, 416 U.S. 1 (1974). The town "restricted land use to one-family dwellings . . . ." *Id.* The Supreme Court held that "[a] quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land-use project addressed to family needs. This goal is a permissible one . . . ." *Id.* at 9.

625. *See, e.g.*, *Group House*, 45 N.Y.2d at 271, 380 N.E.2d at 209, 408 N.Y.S.2d at 379 ("It is now settled law that a community may appropriately limit the use of certain neighborhoods to single-family residences.").

626. 73 N.Y.2d 942, 537 N.E.2d 619, 540 N.Y.S.2d 234 (1989).

in order to pass due process review, a zoning ordinance may not impose numerical limits on households composed of unrelated individuals that are more restrictive than those imposed on households composed of related individuals.[627] It should be noted that this is a higher degree of protection against zoning restrictions than that afforded by federal decisional law. In *Village of Belle Terre v. Boraas*[628] the Supreme Court upheld an ordinance that placed no limitations on the size of households in which the people were related by "blood, adoption, or marriage," but which limited the number of unrelated individuals "living . . . as a single housekeeping unit" to two.[629]

In *Unification Theological Seminary* the plaintiffs did not challenge the city's purpose in enacting the zoning ordinance in question.[630] Rather, they sought to have the city code declared unconstitutional on the grounds that the means chosen by the city was not rationally related to that purpose.[631] They based their argument on the fact that the code clearly placed a greater

627. *Id.* at 943, 537 N.E.2d at 619, 540 N.Y.S.2d at 234.

> In McMinn v. Town of Oyster Bay, 66 N.Y.2d 544, 488 N.E.2d 1240, 498 N.Y.S.2d 128 [(1985)] we addressed the constitutionality of a zoning ordinance which limited the number and age of unrelated persons who could dwell in a single-family home to two persons, 62 years of age or older. We held that the ordinance was invalid because it imposed a restriction on the number of unrelated persons residing together as a functionally equivalent family but imposed no such restriction on related persons. Such differentiation, we said, was not reasonably related to a legitimate zoning purpose and, therefore, violated the State Due Process Clause.

Id.

628. 416 U.S. 1 (1974).

629. *Id.* at 2. The issue was peripherally revisited in Moore v. East Cleveland, 431 U.S. 494 (1977) where the Supreme Court held an ordinance unconstitutional because it restricted the nature of related individuals who could comprise a single family. *Id.* at 518. Specifically, the ordinance prevented a grandmother from including in her household two grandchildren who were cousins and not brothers. *Id.* In reaching its decision the Court discussed case law in the various states, acknowledging that the states have tended to provide greater protection for the individual rights of homeowners. *Id.* at 518.

630. ___ A.D.2d at ___, 607 N.Y.S.2d at 384.

631. *Id.* at ___, 607 N.Y.S.2d at 384.

restriction on the number of unrelated persons who may reside together than on the number of related individuals who may reside together.[632] However, the appellate division held that the city code was not unconstitutional because the restriction[633] was in the form of a valid rebuttable presumption.[634] Thus, the fact that the city provided the plaintiffs with the opportunity to make a defense, according to factors specified in the code,[635] saved it from being held invalid.[636]

State and federal case law provide "that a rebuttable presumption involving the imposition of civil penalties . . . is valid if there is a rational connection between the facts proven and the facts presumed, and there is fair opportunity for the opposing party to make his defense."[637] This rule of law dates back to the seminal New York State case, *Board of Commissioners v. Merchant*,[638] wherein the court of appeals held that:

> so long as the legislature, in prescribing rules of evidence, . . . leaves a party a fair opportunity to make his defense, and to submit all the facts to the jury to be weighed by them, upon evidence legitimately bearing upon them, it is

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632. *Id.* at ___, 607 N.Y.S.2d at 384.

633. POUGHKEEPSIE, N.Y. CODE §19-2.2 (2).

634. ___ A.D.2d at ___, 607 N.Y.S.2d at 384. ("A rebuttable presumption is valid if there is a rational connection between the facts needed to be proven and the fact presumed, and there is a fair opportunity for the opposing party to make his defense.").

635. POUGHKEEPSIE, N.Y. CODE §19-2.2, (3)(e).

636. ___ A.D.2d at ___, 607 N.Y.S.2d at 384.

637. Casse v. New York State Racing and Wagering Bd., 70 N.Y.2d 589, 595, 517 N.E.2d 1309, 1311, 523 N.Y.S.2d 423, 425 (1987); *see also* Usery v. Turner Elkhorn Mining Co., 428 U.S. 1, 28 (1975) (stating that as long as there is a rational connection between the presumption and the fact proved, the presumption does not constitute a due process violation); Sigety v. Leventhal, 42 N.Y.2d 953, 367 N.E.2d 644, 398 N.Y.S.2d 137 (1977) (upholding the presumptive evidence rule based on the rational connection between the presumption and the facts proved).

638. 103 N.Y. 143, 8 N.E. 484 (1886).

> difficult to perceive how its acts can be assailed upon constitutional grounds.[639]

In summary, both state and federal law apply a rational basis test when reviewing the constitutionality of a zoning ordinance. The rational basis test holds that such an ordinance is constitutional so long as it was enacted to pursue a legitimate governmental interest and there is a rational relationship between the interest pursued and the means selected for the purpose.[640] The state has determined that an ordinance will fail the rational relationship prong of the test if it is more restrictive with regard to unrelated individuals than it is with regard to related individuals.[641] Federal case law has held that restrictions on unrelated individuals in excess of those on related individuals can be upheld.[642] Thus, an ordinance that is upheld in the face of a New York State due process claim is unlikely to be struck down by a federal court, though the converse does not necessarily hold true. Finally, the constitutionality of the use of a rebuttable presumption to make an otherwise invalid ordinance valid, has, to date, only been dealt with under the state law, and only at the appellate level. On the other hand, under federal law, the city's

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639. *Id.* at 148, 8 N.E. at 485.

640. McMinn v. Town of Oyster Bay, 66 N.Y.2d 544, 549, 488 N.E.2d 1240, 1242, 498 N.Y.S.2d 128, 130-1 (1985). The court stated that:

> In order for a zoning ordinance to be a valid exercise of the police power it must survive a two-part test: (l) it must have been enacted in furtherance of a legitimate governmental purpose, and (2) there must be a 'reasonable relation between the end sought to be achieved by the regulation and the means used to achieve that end'

Id. (citation omitted); *see also* City of Euclid v. Amber Realty Co., 272 U.S. 365, 395 (1926) (holding that in order to be declared unconstitutional, an ordinance must be "arbitrary and unreasonable" and have "no substantial relation to [the police powers]".)

641. *See* Baer v. Town of Brookhaven, 73 N.Y.2d 942, 943, 537 N.E.2d 619, 540 N.Y.S.2d 234 (1989) (holding that an ordinance which "restricts the size of a functionally equivalent family but not the size of a traditional family" violated the state constitution).

642. *See* Village of Belle Terre v. Boraas, 416 U.S. 1 (1974) (upholding an ordinance that did not limit the number of related individuals who could comprise a household, but did limit the number of unrelated individuals to two).

ordinance would probably have passed the rational basis test even if it had totally forbidden four or more unrelated persons from living together in a single family residence.[643]

THIRD DEPARTMENT

Hillard v. Coughlin III[644]
(decided February 3, 1993)

Petitioner, prison inmate, claimed that his state[645] and federal[646] constitutional rights to procedural due process were violated when Respondents denied his request to examine the videotapes and photographs reviewed by the Hearing Officer at his disciplinary proceeding.[647] The third department held that the denial of petitioner's request to reply to evidence used against him "implicated only the right to confrontation and cross examination"[648] since he was denied his regulatory right to reply to evidence against him.[649] The court further held that the evidence played a substantial role in the finding of guilt, and that the explanations as to why petitioner could not examine the evidence did not adequately enunciate "institutional safety and inmate privacy considerations."[650] Accordingly, the court granted petitioner a new hearing.[651]

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643. *Id.*

644. 187 A.D.2d 136, 593 N.Y.S.2d 573 (3d Dep't 1993).

645. N.Y. CONST. art. I, § 6.

646. U.S. CONST. amends. VI, XIV.

647. *Hillard*, 187 A.D. at 139, 593 N.Y.S.2d at 575.

648. *Id. at* 140, 593 N.Y.S.2d at 576.

649. *Id. See* N.Y. COMP. CODES R. & REGS. tit. VII, § 254.6(c) (1992). When an inmate is served with a misbehavior report a hearing is conducted, and N.Y.C.R.R. provides that "[t]he inmate . . . may reply orally to the charge and/or evidence and shall be allowed to submit relevant documentary evidence or written statements on his behalf." *Id.*

650. *Hillard*, 187 A.D.2d at 140, 593 N.Y.S.2d at 576 (quoting Bernier v. Mann, 166 A.D.2d 798, 799, 563 N.Y.S.2d 158, 159 (3d Dep't 1990)).

651. *Hillard*, 187 A.D.2d at 140, 593 N.Y.S.2d at 576.