
TESTIMONY – GRANT E. NELSON, III

Welcome to the Honorable Representatives Kate Harper and Robert Freeman, House Local Government Committee-Public Hearing, Monday July 20, 2015. Thank you for considering HB 809.

I am President of the West Chester Apartment Housing Association. The Association (WCAHA) represents over 4000 rental units. The Association was formed in August of 1998. Our membership consists of owners of residential real estate within the Borough and other interested parties. Our goal is to maximize the satisfaction of all people associated with renting of residential apartments. By bringing together responsible apartment investors and landlords in an organization, we envision that we can best address common concerns of the community.

Many years ago West Chester Borough Council introduced it's "*Fair Rental Ordinance*". This ordinance required all rental property owners to supply tenant names/addresses to be made available in the Borough public records. The ordinance provided penalties for tenant misconduct and property maintenance resulting in a three (3) strike policy. The Association requested the ordinance be placed on the ballot to give an opportunity for all the residents whether renter or owner to vote yes or no to the ordinance. The voters by a substantial majority of 58% to 42% said "No" and the ordinance was stopped.

A few members of the Borough council perceived the need to address specially student housing issues including property maintenance and conduct differently and more aggressively than other housing. Although the stated concerns are easily articulated, empirical data to support the concern has never been made available. Yet, the desire to regulate persists. Does singling out student housing comport with the Law? The Pennsylvania Constitution, Art 1, § 1. Inherent rights of mankind provides:

All men are born equally free and independent, and have certain inherent and inalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.

In the case of *Farley v. Zoning Hearing Bd. of Lower Merion Tp.*, 161 Pa. Cmwlth. 229 (1994), the Honorable Judge Kelly authored a dissent, joined by Judge McGinley, to the decision permitting a local township to impose special regulation on student housing. Judge Kelley wrote:

I respectfully dissent.

This appeal involves a challenge to a zoning ordinance enacted by Lower Merion Township which permits "student homes" to be located in residential areas only if allowed by special exception. The majority rejects the appellants' equal protection argument, concluding that the ordinance is rationally related to the legitimate purpose of preserving the residential character of the

community and that the classification of student homes is not arbitrary or unreasonable. In its brief, the zoning hearing board cites a U.S. Supreme Court case, *Village of Belle Terre v. Boraas*, 416 U.S. 1, 94 S.Ct. 1536, 39 L.Ed.2d 797 (1974), in which the court held that a municipality may regulate the number of unrelated people living together in a household. I believe that case is clearly distinguishable from this case where the restriction of how persons may live together is based solely on the fact that they are students. When a municipality restricts the number of unrelated persons who may live together, there is a rational basis for the regulation because it is clear that unrelated persons will require more parking, etc., and that the residential character of a neighborhood will be changed by their presence. In the present case, the restricted class is defined solely on the basis of the fact that they are students. This is the equivalent of defining a group based on what they do for a living. If an ordinance restricted where plumbers could live, or coal miners or all blue collar workers, we would hold that classification as arbitrary and a violation of equal protection. But because the classification is "student" we accept the zoning hearing board's discriminatory stereotype of students as rowdy, noisy, undesirable neighbors. The ordinance clearly works a violation of equal protection when three or more college age students who work full-time can live together without restriction while two or more students cannot. Accordingly, I would reverse the trial court and hold that the ordinance violates equal protection. I would also overrule this court's *Lantos* decision, cited by the majority, which upheld the constitutionality of an ordinance similar to the one at issue here.

Some years later, a new Borough Council introduced the *Student Home Ordinance* which restricted where renters could live in the Borough. The ordinance restricted student housing to specific zoning districts, provided for separation distances and strict occupancy limitations. The Rental owners had to provide information to the Borough for their student occupants who were enrolled for six (6) credits or more. If the rental property was not occupied by students, or the student home use ceased for one year, the owner would no longer be able to rent to students. The owner also had to provide students names and addresses for Building and Housing department. Additionally, in order to establish a new student home, it would have to be 400 feet from any other student home. Student rentals were limited to no more than 4 unrelated whether the home had 5 or more bedrooms and adequate on/off street parking. Many owners rented to qualified individuals without consideration to whether they were students or not. This placed their student license and livelihood in jeopardy. Abiding by the PA. Landlord Tenant Act, PA Human Relations Act, and Federal Fair Housing Act requirements on discrimination of protected classes is very important to all owners.

Again a new Borough Council decided to introduce a new rental ordinance which the WCAHA opposed but worked with Council members to develop a process by using points assessed for violations of Tenant disorderly conduct, noise disturbances, underage drinking, domestic issues, property maintenance, etc. Upon tenant conviction of offense, the

owner would be advised when five (5) points were accumulated. The owner would submit a plan to address the issue with Building and Housing. If the owner reached 10 points, his/her rental license could be suspended or revoked.

Recently Borough Council revisited the Student Home Ordinance. The Borough's next step in the regulation of student homes was to further restrict where a student home could be located by removing student homes as a permitted use in the TC-Town Center zoning district. The articulated issue was noise, litter, and concentration of too many students. All these regulatory matters are easily addressed by current ordinances, including the property maintenance code and the criminal code. This had a great negative impact on owners who were improving uptown properties which was improving the safety and quality of housing and further reduced student choices in housing.

Now the current Borough Council is in the process of changing the current Rental Ordinance and replace it with effectively a two (2) strike and licenses can be suspended with a 3rd strike where license can be revoked. Disruptive behavior when observed by a police officer or code official would trigger the process. WCAHA raised the question why change the current point system when it has been working. Not one license had been revoked! Repeat offenses have been reduced to less than five (5) instances. WCAHA requested that the current system that provides for due process for its residents be maintained and provide owners with notice when the first point is accessed. Property maintenance issues are all covered by ordinances and fines. We question the legality of vicariously punishing a rental property owner for a tenant's misconduct. It is our belief that the WC Police Dept. and WC Building and Housing Dept. have been successful in their jobs and quality of life is better than ever and property values have continued to rise. A few are having issues out of 19,000 residents. Concerns of tenant's rights afforded by HB 1796.

Why the legislative concern? It's simple, Student Home Ordinance like the one in West Chester Borough treat a small class of residents different because of their status in life. The ordinances effectively limit the supply of housing to students and increase the costs of housing. Importantly, housing occupancy limits not related to the structure size or type severely deny the property owner with an economic return to maintain the structure. You get blight – that simple.

By treating one class of occupant differently, the West Chester Borough Student Home Ordinance effectively denies familial status households with entry into the Borough in violation of the Fair Housing Act and the Pennsylvania Human Relations Act. By compelling property owners to rent to student under threat of a loss of license – remember if the student home use is discontinued for one year the owner loses his student home license – then the property will not advertise or market the properties to familial status, non-student households.

WCAHA asks that you recommend passage of HB 809.

Respectfully submitted,

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President, WCAHA