

CLAIMS BRIEF



January, 2009

Religious Use Zoning Claims Are On the Rise

In April 2008, a federal jury awarded more than \$3.7 million to a Seventh Day Adventist church after finding that Prince George's County discriminated against the church by blocking its efforts to build a sanctuary in Laurel. The jury found that the County Council violated the group's right to practice its faith and illegally burdened its ability to congregate under the federal Religious Land Use and Institutionalized Persons Act (RLUIPA). Although the County Council initially approved water and sewer connections for the proposed facility, it reconsidered and modified that approval after receiving comments from residents who opposed the projected size of the facility that they claimed did not conform to and preserve the character of the neighborhood. In November of 2008, U.S. District Court Judge Roger Titus affirmed the jury's April verdict.

What is RLUIPA? In 2000, Congress passed the act, with the intention of prohibiting the imposition of burdens on the ability of prisoners to worship as they please, as well as making it easier for churches and other religious institutions to avoid state restrictions on their property use through zoning laws. RLUIPA has two main components, each of which is loosely patterned after a specific clause in our Bill of Rights: The First Amendment's Free Exercise Clause and the Fourteenth Amendment's Equal Protection Clause. As to the first, RLUIPA generally prohibits a local government from applying a land use regulation in a manner that imposes a substantial burden on a person's or institution's exercise of religious beliefs. If, however, the government can demonstrate that the burden furthers a compelling governmental interest and is the least restrictive means of furthering that interest, liability under RLUIPA can be avoided. As to the second, RLUIPA prohibits local governments from imposing land use regulations in a manner that treats a religious institution differently from a non-religious institution. Similar to many zoning disputes, RLUIPA claims are driven by the desire of an entity, albeit a religious one, to locate at a particular site, in contradiction to a determination by the local government that the intended use does not conform to local zoning laws.

Now, some eight years after the passage of the act, RLUIPA claims clearly are on the rise. As a result, local governments increasingly find their zoning decisions claims filed against one county and two municipal members of LGIT. Nearly 1000 lawsuits have been filed since the statute was enacted and local governments are at risk for injunctive relief, millions of dollars in monetary damages and equally large awards of attorneys' fees. The litigation can last years and defense costs can be staggering. Unfortunately, RLUIPA is not a model of clarity. Accordingly, courts have inconsistently applied the terms of the statute resulting in confusion among local government officials and zoning planners.

Moreover, escalating religious diversity and a trend by religious institutions to expand the use of their facilities for uses not customarily considered religious activities can create social and political conflict in communities. Public officials and planning staff must be aware that RLUIPA is not limited to mainstream religious institutions traditionally accepted within American communities. RLUIPA defines religious exercise as any exercise of religion, whether or not compelled by, or central to, a system of religious belief. Furthermore, houses of worship are easily viewed as religious use by the courts, but schools and other facilities for religious education or celebration have been designated by courts to be religious uses.

Consequently, the prospect of litigation under RLUIPA compels local governments to proceed cautiously in making land use decisions that affect religious organizations. Local governments, however, do not need to abandon the authority to make sound decisions in accordance with zoning laws. The key is to ensure that those decisions are based on sound planning principles and a consistent and non-political procedural process that does not unreasonably limit or exclude an intended religious use.

Please review the zoning regulations and procedures of your county or municipality and consider the attached Guidelines to ensure that the zoning laws and procedures of your local government do not violate RLUIPA.

It is extremely important that this bulletin be distributed to the following officials or staff members-

_____ Mayor
_____ City or Town Council members
_____ County Commissioners
_____ City or Town Manager
_____ County Administrator
_____ All member of any Zoning Board, Zoning Board of Appeals
or Planning Commission
_____ City or County Planning Administrator and Staff members
_____ City or County Attorneys

GUIDELINES FOR AVOIDING RLUIPA DISPUTES

- Examine land use regulations affecting religious uses and review how those regulations have been applied; determine if any distinctions between religious-assembly uses and comparable secular-assembly uses are rooted in sound planning and zoning principles.
- Consider the elimination of religious institution or church as a zoning classification and treat religious and secular assembly uses the same.
- Don't totally exclude churches in a discriminatory manner or require a church to obtain conditional use approval while similar secular uses are allowed without filing for conditional use approval.
- Religious exercise incorporates activities that have not been considered religious uses in the past such as faith-based day care centers, faith-based support groups, homeless shelters, schools and venues for weddings and receptions. Likewise, religious exercise may include a small group seeking to study or worship in a rented storefront or house in a residential area. Zoning ordinances must provide reasonable options for locating new, or expanding, religious worship centers and other religious exercise uses. If options are not available, undertake a planning study that seeks to determine how to accommodate the needs of religious uses without harming surrounding property owners.
- Determine whether zoning regulations have adequate options for the location of social service uses such as homeless shelters and domestic violence facilities. Reasonable options for both secular and religious groups to provide such social services will diminish a religious institution's demand that a government allow ministry to the poor at a location only of its choosing.
- Historical preservation ordinances should be reviewed to ensure that the designation of the interior of a sanctuary as a landmark is done only with the consent of the religious organization. Historical preservation ordinances should contain a hardship exemption that could be applied to the structure.
- Public officials must avoid any appearance of unequal treatment or discrimination, whether for or against a particular religious sect, or treating religious uses on less than equal terms with secular use. Be careful what you say, the way you say it and when you say it. Public officials must be aware that they may face personal suit for actions which may be perceived by others as discriminatory.
- Review the procedural requirements of land use regulations to ensure that the process remains neutral and applies equally to secular and religious uses. The zoning process is best administered by appointed, not elected, officials, to ensure that the

process does not become over-politicized. Do not depart from well established rules or precedents.

- Today, religious groups such as Mormon, Evangelical Christian, Orthodox Muslim and Hindu are the fastest growing religious organizations in America. Sometimes local community reaction to new religious denominations can create conflicts in the land use process. Likewise, the application of a large mainstream denomination to build a “mega church” can also create conflict as community residents and officials voice objections related to changes in property values, traffic, parking, etc. Consider training officials and employees to make them aware of religious diversity, RLUIPA requirements and how to resolve conflicts.
- Always treat representatives of religious organizations fairly and with respect. Attempt to craft a compromise between the church’s request and the desire to achieve the city’s land use policies. After meeting with officials of a religious organization to discuss a land use application, follow up the meeting in writing, memorializing the points of agreement and disagreement.
- Consider retaining counsel during a review process of a religious organization’s zoning application to review the matter for RLUIPA issues.

This bulletin is intended to be merely informational and is not intended to be used as the basis for any compliance with federal, state or local laws, regulations or rules, nor is it intended to substitute for the advice of legal counsel.



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