



Issued by the Governmental Law Practice Group

November 29, 2005

CITY VIOLATES FEDERAL LAW IN DENYING CHURCH'S REZONING REQUEST

Author:

Philip A. Erickson
Direct: (517) 324-5608
perickson@plunkettcooney.com

Given the complexities of the Religious Land Use and Institutionalized Persons Act (RLUIPA), Michigan municipalities need to handle zoning requests by religious organizations with caution and, most importantly, with guidance from legal counsel. Otherwise, attorney fees and costs could become the responsibility of the defendant in resulting litigation as was the case recently in Jackson, Michigan.

On Nov. 10, the Michigan Court of Appeals issued a published opinion (*The Greater Bible Way Temple of Jackson v City of Jackson*, Nos. 250863; 255966) affirming the Jackson County Circuit Court decision that the City of Jackson violated RLUIPA when it denied the requested rezoning of church-owned property from single family residential (R-1) to multiple family residential (R-3) based on the city's zoning ordinance.

The church operated a place of worship and subsequently purchased property near the church to build an assisted living center for elderly and disabled persons. They sought to have the property rezoned in order to build a 32-unit building. After reviewing and applying its zoning ordinance, the city denied the rezoning request.

The Michigan Court of Appeals first addressed the threshold issue of whether RLUIPA applied to this factual scenario. Under the act, a plaintiff must meet one of the following three jurisdictional tests in order to receive protection under RLUIPA:

“(A) the substantial burden is imposed in a program or activity that receives federal financial assistance, even if the burden results from a rule of general applicability;

(B) the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several states, or with Indian tribes, even if the burden results from a rule of general applicability; or

(C) the substantial burden is imposed in the implementation of a land use regulation, or system of land use regulations, under which a government makes, or has in place formal or informal procedures or practices that permit the government to make, individualized assessments of the proposed uses for the property involved.”

Since no federally funded program was involved, the plaintiff asserted that the city's denial of the rezoning request constituted an individualized assessment within the meaning of RLUIPA. Both the trial and appellate courts found that the application of the zoning ordinance was an individualized assessment since it involved an application for rezoning, a hearing and consideration by the city council.

The appellate court also concurred with the trial court that there was no genuine issue of material fact regarding whether the denial of the rezoning request substantially burdened the plaintiff's free exercise of religion. The court emphasized the evidence that the operation of the assisted living center was "central to" the ministry of the church and that the center needed to be near the church for practical and operational reasons. The appellate court also pointed out that there were no existing parcels near the church zoned R-3.

Next, the court held that the city could not demonstrate a compelling governmental interest to support its action as a matter of law. The city had argued that it had compelling interests in traffic safety, avoiding blight and urban sprawl.

Further, the court held that the RLUIPA legislation was not unconstitutional either because Congress exceeded its power under § 5 of the Fourteenth Amendment or because the act violates the establishment clause of the First Amendment by forcing municipalities to endorse religion.

In affirming the decision on the merits, the appellate court also affirmed an award of attorneys fees and costs pursuant to 42 USC § 19889(b).

This case is significant to Michigan municipalities, because it provides further warning that planning commissions and the legislative bodies of municipalities need to handle zoning requests by religious organizations very carefully in light of RLUIPA. Given the complexities of the RLUIPA statute, and the other issues involved, municipal officials should always involve legal counsel when addressing zoning requests by religious organizations.

Blmfield.PD.FIRM.701125-1