

DECEMBER 2, 2005

When Does RLUIPA Prevent Review of Land Use Applications?

The Appellate Division of the State Supreme Court ruled this summer that the Legion of Christ, Inc., a religious organization that operates a private college, must comply with local zoning. The court held the Religious Land Use and Institutionalized Persons Act (RLUIPA) was not violated by requiring a religious organization, operating a private college, to follow the same land use application process as a secular organization.

This is similar to the issues being raised in the case presently being heard in the United States District Court for the Southern District of New York involving the Westchester Day School and the Village of Mamaroneck. The non-jury trial revolves around an application that has been pending for approximately four years to allow for the expansion of a day school operated by a religious group. The group claims that the failure to approve the expansion of the school substantially effects religious practice. The Village claims that the school seeks to enlarge in order to deliver secular classes and that these secular activities are not protected by RLUIPA. Whatever the outcome the matter is likely to find its way to a higher court.

JANUARY 9, 2006

Village of Suffern Sued Under RLUIPA

The Village of Suffern New York has been sued under the Religious Land Use and Institutionalized Persons Act (RLUIPA) by an Orthodox Jewish group that maintains a home for Orthodox Jews visiting relatives and friends at nearby Good Samaritan Hospital. The group, which was denied a use variance, has received several violations for activities that are not conforming to the single family residence zone. The property is used to house Orthodox Jews, whose religious observance does not permit them to drive on the Sabbath, so that they may stay overnight and walk to the hospital in order to visit the sick. The group complains that the Village's actions substantially interfere with their religious exercise, which commands them to visit the sick but also not to drive on the Sabbath.

MARCH 4, 2006

RLUIPA Applied in Westchester Day School Case

The long awaited decision in the case of the Westchester Day School v. The Village of Mamaroneck Zoning Board of Appeals has been issued by Judge Connor of the U.S. District Court of the Southern District of New York. In a 160 page decision Judge Connor found that the Zoning Board had placed a substantial burden on religious exercise by placing restrictions on the enlargement of the school facilities.

The case is reported in the media at

<http://www.thejournalnews.com/apps/pbcs.dll/article?AID=/20060304/NEWS02/603040340/1026/NEWS10>. Counsel to the Village has already expressed an intention to appeal. We will have further comment on the decision, after we have had an opportunity to study the entire decision.

MARCH 6, 2006

Summary of Westchester Day School RLUIPA Decision

In applying RLUIPA to the decision by the Village of Mamaroneck Zoning Board of Appeals that denied a special permit to the Westchester Day School, the District Court responded to criticism contained in an earlier decision by the Second Circuit Court of Appeals which remanded the District Court's finding of an RLUIPA violation. Judge Connor found that the Zoning Board not only violated RLUIPA but violated the long standing rule under New York Law favoring both religious and educational uses.

Finding that the denial of the special permit substantially burdened the religious exercise of the Day School, the Court noted that under RLUIPA once there is a substantial burden on religious exercise the burden of proof shifts to the Zoning Board to demonstrate that the denial was in furtherance of a compelling state interest. The Court found that the Zoning Board had based its denial on claims of potential adverse impacts on traffic, parking, local property values and aesthetics. However, the Court determined that the traffic concerns were based upon the lay opinion of members of the Board and particularly the chair who admitted during trial that he had misunderstood several significant portions of the study. The Court repeatedly pointed out that the Board's own traffic experts had not questioned the traffic study submitted by the school. As to parking it was pointed out by the Court that the School had actually reduced the number of parking spaces based upon recommendations by the Village and could have provided additional spaces if needed. The Court questioned the conclusions regarding property values and aesthetics and determined that even if such impacts existed they did not rise to a compelling state interest, which is required to defeat a RLUIPA claim.

The Second Circuit had remanded the original decision of the District Court on a motion for summary judgment finding that there were questions of fact and also suggesting that the District Court's application of RLUIPA might be over broad. Therefore the decision was rendered after a seven day bench trial. Apparently in an effort to give the Second Circuit a basis for upholding its decision, even if the Second Circuit questioned the application of RLUIPA, the Court pointed out that New York case law favors both educational and religious uses. It therefore found that under New York Law the Day School qualified for consideration of the recognized beneficial effects as either a religious or an educational use and the Zoning Board had failed to establish a basis for denying the special permit use. It also noted that New York Law favors accommodating such uses and the record demonstrated that even were there concerns with respect to the application the Zoning Board could have approved the application with appropriate mitigating conditions.

JUNE 26, 2006

Court Declines to Apply RLUIPA But Upholds Religious Organization's Use of Lot Zoned for Conference and Training Facilities

New York's highest court declined to apply the Religious Land Use and Institutionalized Persons Act (RLUIPA) in finding a religious institution's use of a lot zoned for "conference and training facilities" is permitted under local zoning. In *Town of Mount Pleasant v. Legion of Christ, Inc.*, the Town appealed an Appellate Division decision, which held that the Legion's use complied with the Town's Code, and that the Town's interpretation of the Code as prohibiting the Legion's use violated RLUIPA. The Court of Appeals affirmed the holding that the Legion's use is permitted by the Town's Code, but did not reach the RLUIPA claim.

The Town argued that because the Legion offered a two-year course of study, rather than shorter-term courses as the lot's previous owner had, the Legion's use of the parcel is more accurately described as a college or seminary than as a conference and training center. The Court rejected the Town's argument, reasoning that the Code does not specify a time limit for visitors to the lot. The Court noted that the Code prohibits "hotel or restaurant" use, but reasoned that this indicates that the town seeks to prohibit shorter-term, rather than longer-term guests.

Further, the Court held that it did not have to decide RLUIPA questions raised in the lower court because the action was instituted before RLUIPA was enacted and the issue of whether the Legion's use was permissible under the Town's Code did not require a determination under RLUIPA.