Cases



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Land Use

RLUIPA — Environmental Regulations and Zoning

New York's environmental law known as the State Environmental Quality Review Act (SEQRA) requires review of certain discretionary land use decisions. Under SEQRA, if a preliminary analysis determines that a project might have an adverse environmental impact, then the developer must provide an Environmental Impact Statement and related studies on the environmental effects of the project.

The Fortress Bible Church operated a church and school in Mt. Vernon, New York. Its pastor concluded that the Church could better fulfill its mission in larger facilities and located a site in the town of Greenburgh, New York. The six acre property was vacant except for a small residence. Believing that it could build a new house of worship on the site, the Church bought the property in 1998 and submitted an application to build a structure and use the property. The Church needed three discretionary approvals, including acceptance of the site plan, waiver of a parking island requirement and a variance for setback.

The Town's planning director concluded that the environmental impact would be negligible and recommended that the project be approved without requiring further SEQRA review. At a meeting to consider the Church's application, some members of the Town council expressed concern about the burden that a non tax-paying entity might impose. One councilmember suggested that site approval could be expedited upon the Church's donation of a fire truck to the community. Others complained that the property had better uses. The Church decided not to donate a fire truck or to make payments in lieu of taxes. The council subsequently voted to require the Church to comply with the substantial requirements of SEQRA.

The administrative process extended for years without the Church gaining approval from the Town. According to the lower court, during this period the Town removed its planning director, seeking a more aggressive posture as to the requirement that the Church comply with the onerous provisions of SEQRA. In mid-2003, the Church filed suit in federal court under the Religious Land Use and Institutionalized Persons Act (RLUIPA) and for violation of its First Amendment rights. It also claimed Equal Protection violations as a "class of one" among other causes of action. The trial lasted 26 days and the district court sided with the Church on all issues.

On appeal, the Second Circuit affirmed, finding no merit in the Town's arguments. Of importance to local governments, the court considered whether RLUIPA applies to environmental laws such as SEQRA. The Circuit Court concluded that although RLUIPA did not directly apply to environmental laws, RLUIPA did apply in this case because the Town had attempted to utilize SEQRA as a land use regulation.

To reach this conclusion the court found that "SEQRA by itself is not a zoning law,[but] in this case the Town used the SEQRA review process as its vehicle for determining the zoning issues related to the Church's land use proposal." (citation omitted). In so doing, the Town brought SEQRA within the ambit of RLUIPA. Recognizing that a local government could avoid RLUIPA compliance by re-characterizing any number of land use decisions as "environmental," the court sought to prevent municipalities from preempting RLUIPA applicability through zoning decisions masked as environmental regulations.

The lower court had concluded that discretionary zoning decisions when applied to First Amendment protected uses trigger strict scrutiny. The Second Circuit, however, recognized that the prevailing rule among the circuits is that the rational basis standard of review applies to those decisions and concluded that it did not have to decide whether strict scrutiny might apply. The lower court had identified facts confirming that that the Town's reasons for denying the Church's application were pretextual and that its witnesses were not credible. As a result the Second Circuit concluded that even applying a rational basis standard the Town's denial of the Church was unsupportable.

In its appeal the Town sought to avoid liability under the Equal Protection Clause "class of one" theory by arguing that the Church had not pointed to a single comparator against whom the Church's treatment could be validly referenced. The court noted that in the Second Circuit a "class of one" theory can prevail when the Government, acting as the sovereign, treats one person differently from another similarly situated. The court found that this was an unusual case in which the Church had presented several comparators, each not fully similar to the Church's case yet sufficiently similar in some respects to support the claim that the Church was treated unfairly. The Second Circuit concluded that "...the Church has presented overwhelming evidence that its application was singled out by the Town for disparate treatment." *Fortress Bible Church v. Feiner*, No. 10-3634 (2d Cir. Sept. 24, 2012).

RLUIPA – Article III Standing

The Village of Kiryas Joel was incorporated in 1977 as an enclave for followers of a particular sect of Hasidic Judaism. The Village is populated exclusively by followers of the sect, a majority of whom support the present leader. Plaintiffs in this case are a minority of "dissident" inhabitants of the village, who do not accept the legitimacy of the leader. These parties have engaged in litigation

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