New York Law Journal
REAL ESTATE TRENDS
Wednesday, November 28, 2007
ALM

RLUIPA Roadmap

Circuit Clarifies Elements of Religious Exercise Law

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In the decade or so since Congress enacted the Religious Land Use and Institutionalized Persons Act ("RLUIPA"),[1] numerous plaintiffs have asserted claims under the statute, contending that local zoning actions substantially burdened their religious exercise without a compelling government interest. Recently, in *Westchester Day School v. Village of Mamaroneck*,[2] the U.S. Court of Appeals for the Second Circuit issued an important decision in favor of the plaintiff in an RLUIPA action (NYLJ, Oct. 18). The appellate court's opinion should help to establish a roadmap for both property owners and local governments in New York to follow to comply with RLUIPA's requirements.

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ZONING AND LAND USE PLANNING

The Statute

RLUIPA prohibits municipalities from imposing or implementing a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest.[3]

"Religious exercise" is one of the key elements of the statute. Under RLUIPA, religious exercise is defined as "any exercise of religion, whether or not compelled by, or central to, a system of religious belief."[4] Using, building, or converting real property for religious exercise purposes is considered to be religious exercise under the statute.[5] Indeed, RLUIPA states that its aim of protecting religious exercise is to be construed broadly and "to the maximum extent permitted by the terms of this chapter and the Constitution."[6]

It is important to recognize that RLUIPA does not immunize all conceivable land use improvements by religious organizations. Thus, for example, to fall under RLUIPA's protections, a religious school needs to demonstrate more than that a proposed improvement would enhance the overall experience of its students; accordingly, a religious school expansion to build a gymnasium to be used exclusively for sporting activities would not constitute religious exercise.[7]

RLUIPA's "substantial burden" requirement is another issue to consider in the land use context when a municipality denies a religious institution's building application or rejects its efforts to expand its facilities. The Second Circuit has held that a denial of a religious institution's application to build that is not absolute does not necessarily amount to a substantial burden on the institution because it could file a second application that remedies the problems in the first. Thus, rejection of a submitted plan, while leaving open the possibility of approval of a resubmission with modifications designed to address the cited problems, is less likely to constitute a substantial burden than definitive rejection of the same plan that rules out the possibility of approval of a modified proposal.[8]

Additionally, a number of circuit courts have held that generally applicable burdens, neutrally imposed, are not "substantial" under RLUIPA. For example, the Seventh Circuit has held that land use conditions do not constitute a substantial burden under RLUIPA where they are "neutral and traceable to municipal land planning goals" and where there is no evidence that government actions were taken "because [plaintiff] is a religious institution."[9]

A religious organization, however, may be able to demonstrate a substantial burden even in the neutral application of legitimate land use restrictions where they are imposed on the institution arbitrarily, capriciously, or unlawfully. For instance, the Seventh Circuit has concluded that a substantial burden was demonstrated in circumstances where the "decision maker cannot justify" the challenged ruling and where "repeated legal errors" by the city's officials cast "doubt on their good faith."[10]

The Westchester Case

The *Westchester Day School* case arose when a Jewish private school submitted an application to the Village of Mamaroneck's zoning board of appeals ("ZBA") to allow it to proceed with a $12 million expansion project. The ZBA denied the application in its entirety. Its stated reasons for the rejection included the effect the project would have on traffic and concerns with respect to parking and the intensity of use.

In the school's federal action against the ZBA, the district court ruled that the ZBA violated RLUIPA, concluding that the stated reasons for denying the application were not supported by evidence in the public record before the ZBA, and were based on several factual errors. The district court surmised that the application was in fact denied because the ZBA gave undue deference to the public opposition of some neighbors who

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were against the school's expansion plans. It also noted that the denial of the application would result in a long delay of the school's efforts to remedy the inadequacies of its facilities, and substantially increase construction costs. The district court ordered the village to issue a special permit to the school,[11] and the village appealed.

In its decision, the Second Circuit first addressed the "religious exercise" factor. It observed that the district court had made careful factual findings that each room the school planned to build would be used at least in part for religious education and practice. In light of these findings, which the circuit court ruled were amply supported in the record, the expansion project was a "building [and] conversion of real property for the purpose of religious exercise" and thus was religious exercise under RLUIPA.

Regarding the "substantial burden" factor, the Second Circuit affirmed the district court's express finding that the ZBA's denial of the school's application was "arbitrary and capricious under New York law because the purported justifications set forth in the Resolution do not bear the necessary substantial relation to public health, safety or welfare," and that the ZBA's findings were not supported by substantial evidence. The Second Circuit determined that the district court had reasonably concluded that the zoning board had denied the school's application based, in part, on an accusation that the school had made "a willful attempt" to mislead the zoning board—an accusation that the circuit court stated was unsupported by the evidence and was based on the zoning board's own error with respect to certain relevant facts. Additionally, it ruled that the ZBA's allegations of deficiencies in the school's traffic study were also unsupported by the evidence before it, and that the concern about lack of adequate parking was based on the zoning board's own miscalculation. Indeed, the circuit court added, the ZBA had "impermissibly based its decision on speculation about future expansion, without a basis in fact." In each of these instances, the appellate court ruled, the ZBA's assumptions "were not only wrong; they were unsupported by its own experts." In sum, the Second Circuit found, the record demonstrated that the zoning decision in this case was characterized "by an arbitrary blindness to the facts."

Other Factors

The Second Circuit then concluded its examination of whether the denial had imposed a substantial burden on the school by exploring whether there were quick, reliable, and financially feasible alternatives the school could use to meet its religious needs absent its obtaining the construction permit, and whether the denial was conditional.

In the circuit court's view, there were not only no quick, reliable, or economically feasible alternatives for the school, there were no alternatives at all. For one thing, the Second Circuit said, the school could not meet its needs simply by reallocating space within its existing buildings. It noted that the architectural firm the school hired had determined that certain essential facilities would have to be incorporated into a new building, because not enough space remained in the existing buildings to accommodate the school's expanding needs. Further, the school's experts determined that the planned location for the new building was the only site that would accommodate it.

The Second Circuit then concluded that the denial of the school's application was absolute. It first observed that the ZBA could have approved the application subject to conditions intended to mitigate adverse effects on public health, safety, and welfare but chose instead to deny the application in its entirety. The appellate court added that it was "evident" that in the eyes of the ZBA's members the denial was final because all of them discarded their notes after voting on the application. Moreover, if the school had to prepare a modified proposal, it would have to begin the application process anew, which would impose so great an economic burden as to make the option unworkable. The Second Circuit also pointed out that the district court had determined that ZBA members were not credible when they testified they would give reasonable consideration to another application by the school, noting that when a board's expressed willingness to consider a modified proposal was insincere, "we do not require an institution to file a modified proposal before determining that its religious exercise has been substantially burdened." Consequently, the Second Circuit concluded that it was persuaded that the school had satisfied its burden in proving that there was no viable alternative to achieve its objectives, and that its religious exercise had been substantially burdened by the ZBA's arbitrary and unlawful denial of its application.

'Least Restrictive Means'

Under RLUIPA, once a religious institution has demonstrated that its religious exercise has been substantially burdened, the burden of proof shifts to the municipality to prove it acted in furtherance of a compelling governmental interest and that its action was the least restrictive means of furthering that interest.[12] Here, the village claimed that it had a compelling interest in enforcing zoning regulations and ensuring residents' safety through traffic regulations, but the Second Circuit declared that the village had to show a compelling interest in imposing the burden on religious exercise in this particular case, not a compelling interest in general.

In the Second Circuit's opinion, the district court's findings revealed the ZBA's stated reasons for denying the application were not substantiated by evidence in the record before it; the application was denied not because of a compelling governmental interest that would adversely impact public health, safety, or welfare, but because of undue deference to the opposition of a small group of neighbors. Furthermore, it concluded, even if it determined that there was a compelling state interest involved, the village did not use the least restrictive means available to achieve that interest because the ZBA had the opportunity to approve the application subject to conditions, but refused to consider doing so.

Conclusion

The Second Circuit's decision certainly does not mean that every religious institution's application for a zoning change or permit must be approved. Local governments may continue to review those applications and deny them, or grant them subject to conditions, on a case by case basis. What they may not do, however, as the Second Circuit made clear, is to arbitrarily deny a religious institution's requests—just as they may not arbitrarily deny any property owner's application.

1. 42 U.S.C. §2000cc et seq.
2. 2007 U.S. App. Lexis 24267 (2nd Cir. Oct. 17, 2007).
3. 42 U.S.C. §2000cc(a)(1).
4. §2000cc-5(7)(A).
5. §2000cc-5(7)(B).
6. §2000cc-3(g).
7. See *Westchester Day School v. Village of Mamaroneck,* 386 F.3d 183 (2d Cir. 2004).
8. Id. It should be noted that the Second Circuit has made it clear that even a definitive denial of an institution's application to build does not amount to a substantial burden where it will have only a minimal impact on the institution's religious exercise. 2007 U.S. App. Lexis 24267, supra.
9. *Vision Church v. Vill. of Long Grove*, 468 F.3d 975 (7th Cir. 2006); see also *Midrash Sephardi, Inc. v. Town of Surfside*, 366 F.3d 1214 (11th Cir. 2004); *San Jose Christian Coll. v. City of Morgan Hill,* 360 F.3d 1024 (9th Cir. 2004).
10. See *Saints Constantine and Helen Greek Orthodox Church, Inc. v. City of New Berlin*, 396 F.3d 895 (7th Cir. 2005); see also *Guru Nanak Sikh Soc'y v. County of Sutter*, 456 F.3d 978 (9th Cir. 2006).
11. See *Westchester Day School v. Village of Mamaroneck*, 417 F. Supp. 2d 477 (S.D.N.Y. 2006).
12. §2000cc-2(b).