

ZONING AND LAND USE PLANNING

Village Discriminated Against Proposed Rabbinical College



By
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Local governments in New York may regulate land use within their borders directly through their zoning codes and more indirectly by adopting a variety of other statutes and regulations. But there are limits to their power. Municipalities, of course, must not discriminate on the basis of religion in violation of the U.S. or New York State Constitutions or other applicable federal or state laws.

That was the message from a recent decision by the U.S. District Court for the Southern District of New York in a long-running court battle over the possible construction of a rabbinical college in the village of Pomona, in Rockland County. In *Congregation Rabbinical College of Tartikov v. Village of Pomona*, No. 07–CV–6304 (KMK) (S.D.N.Y. Dec. 7, 2017), the court decided that the village could not use zoning and other laws it adopted to thwart the proposed construction of a rabbinical college—and

associated dormitory housing—in the community.

The court’s decision highlights the need for local officials to consider constitutional provisions and federal laws, as well as state requirements, when enacting laws affecting religious uses.

Background

The Southern District case involved approximately 100 acres of land in Pomona purchased in 2004 for about \$13 million by the Rabbinical College of Tartikov, Inc. Tartikov sought to build a rabbinical college on the property that would include housing for its students—all affiliated with the Orthodox Jewish community, including various sects of the Hasidic community—and the students’ families. According to Tartikov, the on-campus housing would permit students to study from 6 a.m. until 10 p.m. and also to meet their religious obligations to their families. Tartikov believed that, without the housing, its program would fail.

Tartikov and future students and faculty (collectively, the plaintiffs) went to court in 2007 to challenge portions

of three laws that Pomona adopted: an “Accreditation Law,” which defined educational institutions and dormitories; a “Dormitory Law,” which limited the size of dormitories; and a “Wetlands Law,” which established wetlands protections in the village (collectively, the Challenged Laws). The

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plaintiffs argued that the Challenged Laws were unlawful under the First and Fourteenth Amendments of the U.S. Constitution, the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C. §2000cc *et seq.*, the Fair Housing Act (FHA), 42 U.S.C. §3601 *et seq.*, and Sections 3, 9, and 11 of the New York Constitution.

The Challenged Laws prevented the construction of Tartikov’s rabbinical college in the village for a

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number of reasons. For one thing, the Accreditation Law barred the construction of the rabbinical college because, as proposed, it would not be able to be accredited by any accrediting body and, therefore, did not fall within the definition of an educational institution. The Dormitory Law prohibited student family housing and separate cooking, housekeeping, and dining facilities, which Tartikov intended for its project. The Dormitory Law also limited housing to 20 percent of the total square footage of other buildings on the property, which was a problem for Tartikov because it sought to provide housing in excess of this limitation. The Wetlands Law restricted Tartikov's use of the property because the proposed location of the property's driveway fell within a 100-foot buffer mandated by that law and an access road could not be built anywhere else due to the presence of wetlands and steep slopes.

The court issued decisions on the defendants' motion to dismiss in 2013, *Congregation Rabbinical College of Tartikov, Inc. v. Village of Pomona*, 915 F.Supp.2d 574 (S.D.N.Y. 2013), and on the parties' summary judgment motions in 2015, *Congregation Rabbinical College of Tartikov, Inc. v. Village of Pomona*, 138 F.Supp.3d 352 (S.D.N.Y. 2015). Last May, it held a 10-day trial, and in September it heard closing statements.

The plaintiffs contended that the court should enjoin the village and the other defendants, including its board of trustees and various current or former officials, from enforcing the

Challenged Laws because they were discriminatory and substantially burdened their religious exercise.

The defendants countered that the laws had been passed for legitimate reasons and did not burden the creation of a run-of-the-mill rabbinical college. Any burden, the defendants claimed, resulted from the fact that Tartikov was seeking to build a "rabbinical college extraordinaire." The primary source of the defendants' opposition to Tartikov's proposed use was that it would include housing for its students and their families. The defendants were particularly concerned that providing housing for students and their families would overburden the village's infrastructure and detract from its rural character.

Now, the court has issued its decision.

The Court's Decision

The court concluded that Tartikov's permit application to build its rabbinical college should not be governed by the standards and requirements set forth in the Challenged Laws. In the court's opinion, the defendants enacted the Challenged Laws to prevent the spread of the Orthodox/Hasidic community into the village, and, in certain respects, to specifically target Tartikov and the property it owned. The court said that it based this conclusion "on the context in which the laws were adopted" and "the unsatisfactory and incredible reasons presented for their adoption."

In its decision, the court first examined whether the Challenged Laws

violated the plaintiffs' equal protection rights, and concluded that they did. The court ruled that the defendants passed the Challenged Laws "with a discriminatory purpose." The court noted, for example, that the village adopted the Wetlands Law provisions in April 2007 although there was "no evidence" that the village conducted any studies prior to the adoption of the law to determine where the village's wetlands were, what threats they faced, or how best to protect them. The court found that village officials, however, knew that there were wetlands on Tartikov's property before the law was adopted, "indicating that this law was designed to prevent Tartikov from building its proposed rabbinical college."

In addition, the court pointed out, members of the community expressed animus against Orthodox/Hasidic Jews and the board of trustees was aware of these sentiments. The court found that the defendants "acted on that animus."

Next, the court decided, the Challenged Laws had a discriminatory effect because they prohibited the plaintiffs from constructing the type of rabbinical college they sought to obtain.

The defendants did not present any evidence or any argument regarding whether the Challenged Laws could survive "strict scrutiny," instead offering several "justifications" for the Challenged Laws. The court found that none of the justifications rose to the level of a compelling governmental interest sufficient to permit the Challenged

Laws to pass strict scrutiny and that, in any event, they were not “narrowly tailored” to serve those interests.

Following its equal protection analysis, the court turned to The Religious Land Use and Institutionalized Persons Act (RLUIPA). It decided that the Challenged Laws also substantially burdened the plaintiffs’ right to exercise their religion in violation of RLUIPA. Tartikov’s plan, the court explained, was not simply to build multi-family housing within the village for Orthodox/Hasidic Jews but to build on-campus housing for rabbinical students and their families in a manner consistent with Jewish law and the students’ beliefs. The purpose of the housing, the court held, was “to facilitate religious exercise, bringing it within RLUIPA’s protections.” The Challenged Laws substantially affected the plaintiffs’ ability to use the property in the sincere exercise of their religion, in violation of RLUIPA, the court ruled. As just one example cited by the court: The Accreditation Law prevented Tartikov from building a rabbinical college within the village because only accredited educational institutions were eligible for special use permits and Tartikov’s college could not be accredited by any accrediting body.

The court also decided that the Challenged Laws burdened the plaintiffs’ ability to freely exercise their religion in violation of the First Amendment, violated their right to freedom of association as protected by the First Amendment, and violated the FHA provision prohibiting governmental entities from implementing or enforcing housing

policies in a discriminatory manner given that the defendants’ “principal purpose” in enacting the Challenged Laws was to prohibit the plaintiffs from building dwellings on their property.

Finally, the court found that by adopting the Challenged Laws, the defendants violated the plaintiffs’ right to freedom of worship under the New York Constitution.

The remedy sought by the plaintiffs was an order enjoining the enforcement of the Challenged Laws so that Tartikov could “apply for a special permit and site plan not subject to the challenged provisions.” The court ruled that this was “an appropriate and adequate remedy” and that the defendants could not enforce the Challenged Laws against Tartikov.

Conclusion

The court’s decision is likely to be studied by local government officials and their counsel for quite some time to come. The evidence cited by the court for its conclusions and its application of that evidence to constitutional and statutory standards suggests the kinds of steps that local officials should avoid when faced with similar circumstances in the future, as well as the kind of evidence that plaintiffs in future cases will seek to rely on.

Whether the court’s decision will yield Tartikov’s rabbinical college remains to be seen. That’s because, as the court itself observed, there are several layers of regulation through which the defendants still could limit Tartikov’s proposed development. For instance, before an educational institution can

be built in the village, a developer must obtain a special permit from the board of trustees, which is subject to numerous conditions set forth in the village code; obtain site plan approval from the village planning board, which has the authority to impose reasonable conditions and restrictions related to and incidental to the proposed site plan; and go through the village’s architectural review process. Moreover, an application to establish an educational institution in the village would likely be subject to the provisions of the State Environmental Quality Review Act, requiring a review of the proposed project’s environmental impacts on wetlands and water pollution, plant life and wildlife, floodplains, stormwater, air quality, noise, population concentration, distribution and growth, existing community character, and human health. In addition, the New York State Environmental Conservation Law requires permitting from the New York State Department of Environmental Conservation for activity within 100 feet of designated wetlands, and wetlands that qualify as “Waters of the United States” are federally protected by the Clean Water Act. These are significant hurdles for any developer to surmount, but at least Tartikov will be able to try to do so from a level playing field.