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RLUIPA issues continue to pop up, 10 years later

Religious Land Use and Institutionalized Persons Act can affect how land-use applications are processed


OREGON LAND USE

Edward Sullivan and Carrie Richter

The Religious Land Use and Institutionalized Persons Act – a federal act said to prohibit, among other things, state and local governments from discriminating against religious uses when processing land-use applications – has been in the books for more than 10 years. RLUIPA authorizes a court to determine whether a land-use review is in violation and authorizes recovery of attorney fees to prevailing religious applicants. Given this threat, local governments have acted to amend or waive regulations that expressly placed churches on less-than-equal terms with non-religious uses.

The litigation emerging of late is seeking redress of subtle injuries when the evidence of discrimination is less clear. In some cases, the challengers attack land-use schemes that appear properly authorized, and serve legitimate ends. Before RLUIPA, courts were loath to disturb land-use regulations that further health, safety and welfare, granting local governments' discretion, and electing not to second-guess those determinations. However, change may be ahead.

For example, in Rocky Mountain Christian Church v. Boulder County (May 2010), the 10th Circuit Court of Appeals upheld a jury verdict and entry of a permanent injunction in favor of the plaintiff church. Boulder County had a comprehensive plan directed at curbing urban sprawl and retaining the rural county character. The land-use regulations designated the church property as agricultural and made no mention of religious activities. However, a special-use permit was required where occupancy loads would exceed 100 people.

Established before the applicable zoning was in place, the church had grown in stages to become the largest church complex in the county with a 106,000-square-foot main building and a number of accessory structures. The church sought to expand by an additional 130,200 square feet. The County denied very nearly all of the uses proposed, finding that the proposed expansion was incompatible with the surrounding area, likely to cause undue traffic congestion and thus detrimental to the welfare of county residents.

The church sued under RLUIPA, and the county moved for judgment as a matter of law asserting that the county had a legitimate government interest to deny this application. The jury disagreed. On appeal to the 10th Circuit, the county argued that the jury erred in finding a violation of the Equal Terms prong of RLUIPA.

The county argued that the evidence did not show that the church was similarly situated to a comparator use, the Dawson School. The Dawson School was a high school on agricultural zoned land where, 15 years earlier, the county had approved an expansion.

The Dawson School expansion was half the size of the church's in terms of raw square footage and consisted of multiple small buildings rather than one large structure. The county found that the traffic at the church would exceed the Dawson School traffic by 10 times. Notwithstanding these differences, the court found sufficient similarities between the two uses: 1, the total overall square footage of the two uses after expansion were within 50,000 square feet of each other; 2, both proposals expanded existing uses; 3, both sought to build gymnasiums; 4, the student bodies would expand by the same amount; and 5, both uses proposed similarly sized buffers between the structures and the property lines.

The court went on to reject the county's affirmative defense that its denial was based on application of generally applicable law that was rationally related to a legitimate governmental interest and, therefore, was entitled to deference. This argument was rooted in the idea that RLUIPA was only meant to codify existing Free Exercise Clause jurisprudence that only regulations that are not neutral are subject to more strict scrutiny by a court.

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Although the court agreed with the general premise, it disagreed that the county applied the zoning ordinances neutrally. Rather, it found that the church was treated less favorably than the Dawson School and, therefore, the county's decision was subject to strict scrutiny. The court found pertinent the county's application of a less advantageous method of calculating the traffic generation from the church and the processing of the application as a new application as indicators that the regulations were not neutrally applied. The court gave no deference to the county's expertise in reviewing these matters, finding that a jury could interpret the county's actions as discriminatory.

Before dismissing this case as unrelated to land use in Oregon within a different federal circuit jurisdiction, consider that on June 2, the state Land Conservation and Development Commission considered new administrative rules dealing with RLUIPA. These new rules will replace OAR 660-033-00130(2), which prohibits churches on land zoned for exclusive farm use within three miles of an urban growth boundary. That rule was struck down by the Land Use Board of Appeals as violating the equal terms prong of RLUIPA.

In Young v. Jackson County (2008), LUBA found that the state failed to identify the compelling government interest that justified permitting non-religious "assemblies" that "cause no lesser harm to the interests the regulation seeks to advance" while simultaneously prohibiting churches.

Coincidently, the proposed revisions to OAR 660-033-00130(2) would limit enclosed structures to those designed to accommodate fewer than 100 people within three miles of an urban growth boundary. This limitation applies to new secular uses as well as new churches. The rule goes on to require a minimum of one-half mile between qualifying structures or groups of structures. The rule does not specify how close buildings need to be to constitute a "group." Finally, existing enclosed structures within three miles of an urban growth boundary may not be expanded beyond the 100-person accommodation limitation.

The proposed administrative rule amendment is dissimilar to the 100-person limitation at issue in Boulder County in that it works as an outright prohibition rather than a trigger for applying a discretionary conditional or special use review. However, what the proposal does not address is whether pre-existing uses could be used to preclude a county from disallowing the expansion of or construction of a new use.

Even when regulations appear, on their face, to treat religious activities on equal terms, they may be applied in a way that violates RLUIPA. Years later, local governments still must be careful when reviewing religious uses, and be cognizant of any precedent allowing uses that have similar impacts.

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