

community watch

MONITORING LEGAL ISSUES THAT AFFECT MICHIGAN MUNICIPALITIES

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MICHIGAN SUPREME COURT NARROWS THE APPLICABILITY OF THE RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT (RLUIPA) IN ZONING CASES

By Thomas Schultz

The Michigan Supreme Court issued a decision on June 27, 2007 that re-establishes the idea that religious uses are not exempt from local land use regulations merely by virtue of their religious nature, and that, in the absence of a true burden on the exercise of a property owner's religious beliefs, such regulations are not subject to stricter scrutiny by reviewing courts.

The Greater Bible Way Temple of Jackson owned several adjacent lots in a single-family residential neighborhood. It asked the City of Jackson to rezone the combined parcels to allow for the construction of a multiple-family, multi-story apartment complex. The city declined, finding that such a use would be inconsistent with the established single-family character and zoning of the area. The church challenged the decision both on traditional zoning grounds (takings, due process) and as a violation of the federal Religious Land Use and Institutionalized Persons Act (RLUIPA). RLUIPA provides that in situations where a municipality makes an "individualized assessment" in denying a proposed religious land use, and that denial imposes a "substantial burden" on the applicant's exercise of religion, the municipality bears the burden of proving that its regulations further a "compelling governmental interest" and that its decision is the least restrictive means of furthering those interests.

The circuit court found that the city's denial of the rezoning was proper when analyzed under traditional zoning rules, but nonetheless violated RLUIPA because the inability to build the apartment complex was essentially by definition a substantial burden on the church's exercise of religion. According to the court, the zoning justifications asserted by the city

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The opinion contains significant language that will be beneficial to municipalities regarding their zoning authority even in cases that do not involve religious uses. The Court's discussion of zoning as a compelling governmental interest will be useful background in nearly any zoning challenge, as will its analysis of the "community-wide" impact of rezoning actions.

The opinion represents a significant change in the direction of the Michigan courts on the RLUIPA issue. Like the Court of Appeals' decision in *Jackson*, most of the Michigan RLUIPA cases had set a very low threshold for property owners claiming a substantial burden on the exercise of religion and a much higher threshold on communities to establish a compelling governmental interest. Secret Wardle represented the City of Jackson in this case, preparing the brief along with the city attorney's office. Gerald Fisher, consultant to Secret Wardle, argued the case before the Supreme Court on behalf of the city.

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(traffic, noise, intensity of use) did not rise to the level of a compelling governmental interest. The Michigan Court of Appeals agreed in a published opinion.

The Michigan Supreme Court disagreed, finding that the church had failed to establish **any** of the requirements of a RLUIPA claim. The court first concluded that a rezoning request does not involve an individualized assessment of the sort that would trigger application of RLUIPA, because rezoning is a legislative act that requires a municipality to look at more than just the individual property owner or its specific proposed use; the creation of a new zoning district, the court said, affects not just the property owner but the entire community, which becomes bound by the legislative act.

While this conclusion would have been enough to resolve the case in the city's favor, the court went on to address each of the various elements of a RLUIPA claim and reject the church's position entirely. The court noted that, "even if" RLUIPA did apply to a request for rezoning, the request in this case (for multiple-family zoning) did not rise to the level of a religious exercise, since there was no proof that the proposed apartment complex would be used for religious worship or for any other religious activity. And even if building an apartment complex were considered a religious exercise, the denial of the rezoning did not constitute a substantial burden on the church's religious exercise because it did not "coerce" the church into acting contrary to its religious beliefs by requiring it to do something its religious tenets prohibited or to refrain from doing something they required. The court recognized that the city was not forbidding the plaintiff from building an apartment complex, "it is simply regulating where that apartment complex can be built," and thus the only burden imposed on the church to "follow the law like everyone else."

Finally, the court found that even if the burden on the church was substantial, the city had met its own burden of establishing that its interests in protecting the existing single-family neighborhood were compelling, and that the denial of the rezoning—since that was the only question actually before the city—was the least restrictive (and here, the only) means by which the city could further those interests.

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