ABA BOOK BRIEFS BLOG

7/14/2009

The RLUIPA Dance

Excerpted from The RLUIPA Reader: Religious Land Uses, Zoning, and the Courts

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Land use regulation, property rights, and religion—a potentially volatile mix in any community. Add to the brew the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) and, depending on whom you talk to, there's either an explosion or a celebration. Some consider RLUIPA a shield to protect religious land use applicants (particularly minority religions) from the abusive, exclusionary zoning practices of local officials. Others view it as a sword wielded by bullying applicants who want special treatment or want to avoid the land use regulatory process altogether.

There are four major participants in any RLUIPA dance—the religious land use applicant wishing to build on or use his property in some way that requires a permit; the local government authorized by the state to plan for, and regulate, land use in the community; the Civil Rights Division of the Department of Justice, with the responsibility of monitoring and enforcing compliance with RLUIPA's provisions; and last, but not least, the neighbors.

Practical Application of the RLUIPA Statute

By Roman P. Storzer

The predominant issue in most RLUIPA cases is the existence, or lack thereof, of a substantial burden on religious exercise. The statute requires a claimant to make a prima facie case that a government has "impose [d] or implement[ed] 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." Generally, the scenario involves denial of a land use permit or variance to build or expand a place of worship, or a related structure such as a religious school or fellowship hall. Courts are faced with what might appear to be a Hobson's choice of adopting a principle where the denial of the use of any particular parcel of land as a place of worship may create a substantial burden on religious exercise or, alternatively, that no substantial burden exists unless the applicant can demonstrate that it is unable to worship elsewhere.

Although inconsistencies continue to abound in this area of law, a pattern has emerged from the dozens of cases that have made their way to the court system. This is the general rule that in an area of law with few—if any—established practical rules, courts are aware of the equities in cases brought before them and tend to steer the results accordingly. When a church attempts in good faith to resolve legitimate municipal interests in its effort to build a place of worship, its claims are generally favored, especially when such attempts are unreasonably rebuffed by the municipality. However, when an attempt is made to bypass the permitting requirements of a zoning code, courts tend to develop principles supporting a negative outcome for the applicant.

Decisions rendered by the Second, Seventh, and Ninth Circuit Courts of Appeals plainly demonstrate this principle. Each of these courts has been presented with one case where the RLUIPA claimant had been found not to have made an exhaustive effort to comply with zoning requirements, and a later case where another (or, in one circumstance, the same) applicant had done so. In each Circuit, the first case did not result in a determination of a RLUIPA violation, but the second case did.

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