

Where Site Plans Meet Sanctity

Churches and Local Governments Struggle to Find Common Ground on Various Religious Land Use Issues

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By Carol Lundberg

A religious land-use law intended to level the playing field for churches and religious organizations working through municipal planning processes is creating challenges as churches move out of residential neighborhoods and into commercially zoned properties.

For cash-strapped communities, any loss of property tax revenue as tax-generating properties are being used by tax-exempt entities is worrisome, said Bill Mathewson, legal counsel for Michigan Municipal League.

The Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) is “cumbersome for local governments with respect to exercising their authority,” Mathewson said. “As churches move into commercial areas that could be an added concern to local governments.

“Not only might the use be inconsistent, but in addition there are property tax cuts to their revenues,” Mathewson added. “Given the economic climate, and cuts to state revenue sharing and property tax revenues falling off, any loss of revenue is of great concern.”

It’s the loss of tax revenue that causes most Michigan communities to deny churches their rights under RLUIPA, said Daniel P. Dalton, of Royal Oak-based Tomkiw Dalton, PLC.

“The reason is mainly economic,” Dalton said, particularly as churches that used to be located in residential neighborhoods start moving into

commercial areas, including large pieces of properties in commercial zones, where they can avail themselves of amenities like freeway access and visibility.

“Communities would rather see businesses move into those areas,” Dalton said.

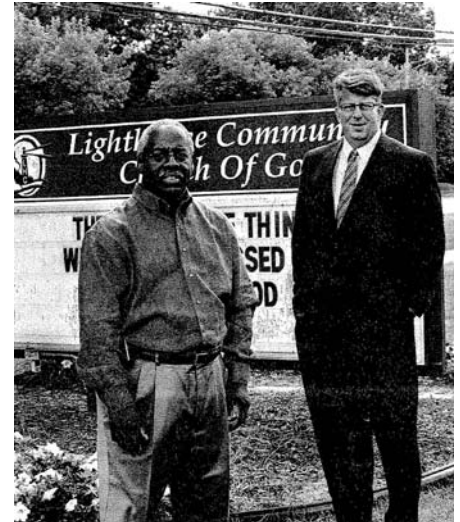
That was the case for one of his clients, Celebration Church, in its pursuit of special land-use approval in Muskegon. The church bought property where a former Volkswagen dealership had been. The site had been vacant for seven years, but the city of Muskegon held out hope that another car dealership would move in, Dalton said.

The city’s planning commission late in 2007 denied special land use because the property was near a bar, which the city said created a negative impact on the bar. The commission expressed concerns about the property becoming tax exempt, and said a church was a bad fit for the area.

The church filed suit in 2008.

“Once the city understood that this is Muskegon, which is not exactly an economic hotbed of activity, we were able to start talking. They needed that reality check,” Dalton said. “We showed them how the church would help the community.”

The church and the city entered mediation with U.S. District Court Magistrate Joseph Scoville, and 10 weeks later, reached an agreement allowing the church to occupy the property. In February, the church hosted its grand opening.



The Reverend Demetrius Booker of Lighthouse Community Church of God (left) and Royal Oak attorney Daniel P. Dalton, took the city of Southfield to court for violating religious land use laws. The church in 2007 prevailed in its suit against the city’s planning officials. The church has since moved to Redford.

Religious land use cases used to be nearly impossible for plaintiffs to win.

“Before RLUIPA, in 97 percent of the cases involving church land use, the churches lost. Since then, it’s more like 50-50. It really just leveled the playing field,” Dalton said. “It basically says that if you’re going to allow the commercial side of development in an area, you also have to allow religious development.”

Sometimes, the cases have nothing to do with tax revenue. Rather, the concerns are about things such as traffic patterns and parking, said Timothy S. Wilhelm of Farmington Hills-based Johnson,

Rosati, LaBarge, Aseltyne & Field PC, which is representing Northville Township in its dispute with a group of priests.

The priests are appealing a U.S. District Court rejection of its land use lawsuit against the township. Judge Paul Borman dismissed the case brought by the Miles Christi religious order on the grounds of ripeness.

Miles Christi says the township as classified the house as a small church, and that the determination is violating the occupant priests' First Amendment rights, equal protection and due process rights, as well as violating RLUIPA.

The township contends that it has not yet determined if the house is indeed a church, and that Miles Christi has to go through the site plan process. Borman agreed, and dismissed the case, so it's too early to determine if RLUIPA has been violated. Further, the plaintiffs have not suffered injury, Borman wrote in his order.

The dispute started not long after a group of priests moved into a house in Northville Township. The house is in a neighborhood of single family homes, and had been recently occupied by a Catholic religious order of nuns who cared for the mentally disabled. The church donated the house to Miles Christi in 2002, Wilhelm said.

So the township investigated and found that there was nothing amiss, and everything quieted down.

But late in 2006, the neighbor complaints started up again.

"They were concerned with the number of cars and the frequency of the cars," Wilhelm said. "They also believed that the priests may not have even been living there anymore, and that the house was being used for church services."

Even if it is, Wilhelm said the zoning in the neighborhood permits religious uses.

"This is really just about having Miles Christi follow the procedures," Wilhelm said. "They just have to follow site plan review procedures... Historically RLUIPA isn't intended to exempt religious organizations from bypassing procedures."

The plaintiffs have appealed to the 6th U.S. Circuit Court of Appeals.

Sometimes, Dalton said, there doesn't seem to be any legitimate reason for a government to limit land usage on a religious property.

Dalton is working now with NorthRidge Church in Plymouth Township, to remove some of the items in a consent judgment between the township and church. The items are now unlawful under RLUIPA, Dalton said.

The church, one of the state's first "mega churches," is built on 55 acres which used to be zoned for agricultural use.

In the 1990s, the church sought rezoning and was denied. The church sued the township, and the property was rezoned as the result of a consent judgment.

The judgment, however, is no longer lawful as it limits the number of religious musical events the church can have in one year, and limits the number of special religious programs during the Easter and Christmas holidays, Dalton said.

It forbids the church from hosting a soup kitchen or shelter; limits usage of outdoor land; and limits the number of parking spaces to one per every three seats in the church.

There is no other property in the township that has such limitations, according to a complaint, filed by Dalton in October.

The township permitted similar non-religious activities at nearby Compuware arena, less than two miles from the site of the church, Dalton said.

Further, the consent judgment violates the nondiscrimination clause

of RLUIPA by privileging one type of religious assembly over NorthRidge by placing restrictions on the time and dates worship is permitted. No other church in the township has such restrictions.

"There are some cases," Dalton said, "where it's not about taxes and it's not about appropriate land use. The only way you can describe what's going on is to call it flat-out religious discrimination." ■

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