

## **Court Finds Westchester Town Violated RLUIPA and Overturns SEQRA Findings**

In a 206 page decision, the U.S. District Court for the Southern District of New York found the Town of Greenburgh had violated the Religious Land Use and Institutionalized Persons Act (RLUIPA) when it refused to grant a church permission to build a new building, for what the court termed “contrived” reasons. In [Fortress Bible Church v. Feiner](#), the Court found, contrary to the claim of the Town, that the State Environmental Quality Review Act (SEQRA) constitutes an individualized assessment of a land use application, that the review falls within the RLUIPA definition of land use regulation as the application of SEQRA “can limit or restrict a claimant’s use or development of land” and that the actions of the Town in issuing findings pursuant to SEQRA, which limited the use of the Church’s property, constitute a “substantial burden” on religious exercise under RLUIPA.

The Court was no doubt brought to this conclusion in large part by its finding that the “majority” of the Town’s witnesses were lacking in credibility. The Court went so far as to find “not only the admitted destruction of probative evidence, but the existence of evidence relevant to the issues before this Court that Defendants never produced to Plaintiffs. Outrageously, Defendants attempted to enter such previously undisclosed documents into evidence during trial.” The Court therefore held “that the conduct of Defendants warrants both an adverse inference based on spoliation of evidence and sanctions.”

The Court reviewed the history of RLUIPA and its purpose to “protect against inter alia ‘subtle forms of discrimination.’” It then went on to note that under RLUIPA, once a plaintiff demonstrates that conduct in implementing a land use regulation imposes a substantial burden upon religious exercise, the burden shifts to the defendant to demonstrate that the burden imposed is “in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest.” The Court found that the activities at issue fall within the jurisdiction of RLUIPA noting that a number of courts have held that construction of a church implicates interstate commerce. It further found that since the activities of the church will support missionary efforts that too implicate interstate and international commerce.

In reviewing the record, the Court noted that initially the Town’s then planning commissioner indicated he thought the Town could issue a conditioned negative declaration under SEQRA which would provide for implementation of certain mitigation measures to address traffic concerns. By doing this it would not have been necessary to undertake further environmental review. But during a meeting in July 2000 the Court found that the Town Supervisor said that half the issue was traffic and the other half was the tax exempt status of the Church. The Supervisor then suggested that the Church either donate a fire truck or make some other payment to the Town in lieu of taxes. In fact, the Court noted that the Supervisor testified that the tax exempt status of the Church was “hampering or hindering” the approval. The Court also noted testimony by the then planning commissioner that he was instructed by at least one member of the Town Board to “help stop the project or kill the project” as the council person did not want another church in the Town. The Church refused to make a “donation” to the Town.

Thereafter, the Town Board, as lead agency under SEQRA, issued a positive declaration requiring the preparation of a Draft Environmental Impact Statement (DEIS), although the Court found that it was not warranted as the Church had “mitigated all identified potential adverse impacts.”

“The Court finds that the Town used the SEQRA process and the issuance of a Positive Declaration punitively because of the Church’s refusal to make a significant donation of value or monetary payment to the Town because of certain Town Board members’ desire to delay the project and increase the expense of the SEQRA process for the Church.”

The Court then went through a review of the lengthy SEQRA process which included the Town’s firing and hiring multiple consultants, the fees charged for the review by the multiple consultants and the Town’s decision to take over the preparation of the FEIS after it had been started by the Church. As for the FEIS prepared by the Town, the Court stated the “FEIS written by the Town is replete with errors, gratuitous comments and revisions intended to cast the project in the worst light possible.” Subsequently, the Town Board adopted a SEQRA findings statement which the Court also found to be unsupported by the record.

In concluding that the facilities at issue will be devoted to religious purposes, the court found that the facilities will either be devoted to religious practice and education “or are inextricably integrated with the Church’s ability to provide religious education and practice...” Then in determining that the actions of the Town constitute a substantial burden on religious practice, the Court rejected the claims by the Town that the Church could have addressed the concerns of the Town and ultimately received approval of a scaled back project. First, the Court noted that the Church had already agreed to every mitigation measure proposed by the Town and that the Town’s own findings statement concluded “no mitigation is possible.” But the Court went on to note:

“While the Town’s past treatment of the Church’s application strongly suggests that the Town would not act in good faith in considering a modified proposal, the Court need look no further than the admissions of Town Board members themselves to be certain that the Town would not act in good faith....Given the overwhelming evidence of Defendants’ intentional delay, hostility, and bias toward the Church’s application, the Court finds that any purported willingness by the Town Board to consider a modified proposal is insincere. Under such circumstances, the Church is not required to file a modified application and the Court finds that the Church’s religious exercise was substantially burdened by the Town’s arbitrary and unlawful denial of its application.”

In analyzing the effect of the denial, the Court noted that the Plaintiff has the burden of proving that there is a substantial burden by demonstrating that the actions denying the construction of the church building were arbitrary and capricious and there is no readily available alternative. The Court held that the Church had demonstrated a nexus between the denial and its religious exercise through testimony which proved that the Church currently lacks adequate facilities and the inability to construct the new building interferes with its religious practices. The Court held that the actions of the Town in issuing the SEQRA findings lacked validity and concluded that neither the use of the Church’s current facilities nor a further application to the Town provided a

“satisfactory alternative.” The Court further held that even were the Town willing to give fair consideration to another proposal the time and expense that would be incurred are not “quick, reliable and financially feasible.”

Next the Court turned to what constitutes a compelling government interest in the context of RLUIPA, noting that the Supreme Court has held that such interests are those which “protect public health, safety and welfare.” The Town had argued that the proposed project implicated compelling government interest because (1) it impacted traffic, (2) provided inadequate parking, (3) violated the Town’s steep slope ordinance, (4) created retaining walls that were a public nuisance, (5) impacts police and fire resources and (6) “created concerns among the project’s neighbors.”

In a detailed analysis of each of these “interests” the Court concluded: “this Court finds that Defendants have not demonstrated any compelling governmental interests sufficient to justify the Town’s denial of the Church’s SEQRA application. To the contrary, the evidence presented at trial established that Defendants’ purported concerns were contrived for the sole purpose of rationalizing the Town’s denial of the SEQRA application.”

After determining that the Church had established a substantial burden and the Town had failed to demonstrate a compelling government interest the Court declined to address the other RLUIPA claims raised by the Church. The Court also addressed the constitutional issues raised by the Town and concluded that the application of RLUIPA is constitutional under the commerce clause because of the impact on interstate commerce. The Court rejected the other constitutional claims of the Town based upon the holding in the [Westchester Day School](#) case decided by the Second Circuit after the trial of this case.

On the issue of liability pursuant to 42 USC 1983 the Court held:

- (1) The Town Board and the members of the Town Board are liable in their official capacity; and
- (2) It considered the claims of individual liability against the Supervisor to be withdrawn

The Court also concluded that the Plaintiffs First Amendment Free Exercise rights were violated and that other similarly situated applicants were treated differently without rational justification, thus demonstrating a violation of Plaintiffs’ Fourteenth Amendment right to equal protection. The Court also found equivalent violations of the New York Constitution.

In fashioning relief, the Court annulled the positive declaration and SEQRA findings statement and ordered that the site plan be processed without further SEQRA review. The Court further ordered that all approvals be granted within sixty days (site plan, variances etc.) with reasonable and customary conditions and that within ninety days a building permit shall be issued. Defendants were enjoined from taking any action “that unreasonably delays or interferes with any of the foregoing directives.”

The Court did however conclude that RLUIPA is ambiguous on the issue of whether relief can include damages and therefore concluded there can be no monetary damages under RLUIPA. However, it did conclude that there are compensatory damages available under 42 U.S.C. 1983

and instructed Plaintiffs to submit information on increased construction costs, attorneys' fees, consultants' fees and other potential compensatory damages. Finally, the Court sanctioned the Defendants \$10,000 for their discovery violations.

This was originally posted on New York Zoning and Municipal Law Blog at [http://blog.szlawfirm.net/2010/08/court\\_finds\\_westchester\\_town\\_v.html](http://blog.szlawfirm.net/2010/08/court_finds_westchester_town_v.html)