

Greenburgh and Town Officials Found Guilty of Violating Church's Constitutional Rights

The Town of Greenburgh, and its supervisor Paul Feiner were found guilty today of violating the federal and state constitutional rights of the Fortress Bible Church for deliberately refusing to approve an application for the church to build a sanctuary and school on church-owned land along Dobbs Ferry Road near the intersection with the Sprain Brook Parkway. The court also found that the Town had discriminated against the church under the Religious Land Use and Institutionalized Persons Act or RLUIPA.

Damages were not fixed in the 206-page opinion issued by Judge Stephen Robinson of the United States Court for the Southern District of New York in White Plains. However, damages have previously been estimated to be at least \$5 million, and probably more. In today's ruling, which stemmed from a trial held in January 2007, the church must submit a new damage estimate consisting of (1) increased construction costs as a result of the Town's delays – which could mean delays of as long as ten years ; (2) increased traffic improvement costs as a result of the Town's delays; (3) reimbursement of excess fees charged by the Town; (4) consultant fees; (5) attorneys fees for the Town's having violated the Open Meetings Law; and (6) costs incurred as a result of the litigation, which could include millions of dollars in legal fees.

Taxpayers – not insurance -- are expected to foot the bill for these millions of dollars in damages because the Town's insurers notified the Town that they would not cover any finding of intentional violations of federal law. All of the findings today involve intentional violations of federal law. Specifically, the Town and Feiner were found liable for violating the church's rights under the First Amendment's "free exercise" of religion clause, as well as the equal protection clause of the Fourteenth Amendment.

Among other things, the Court specifically found that Feiner, who had offered to get the church its approvals if it would donate a fire truck to the Fairview Fire District, was found to have specifically instructed town staff, including the town attorney's office and consultants, to find ways in which the Town Board could deny the church its approvals without violating RLUIPA. The court specifically found Feiner's testimony at trial in the case to be "not credible."

In his decision, Judge Robinson found Town staff had been instructed by Feiner to "kill the project." Robinson cited "overwhelming evidence of [the Town's] intentional delay, hostility and bias towards the Church's application. . . ." (Page 169). He also determined that, in 2000, the Town punitively required the Church to undergo an unjustified and more protracted and expensive environmental review process because the Church refused to make a requested donation of value or money payment to the Town (p. 30). The Court also found that the Town's traffic consultant "intentionally manipulated data" to make traffic impacts of the Church's proposed development seem worse. (P. 101).

On top of everything else, the Court also found that Feiner and other town officials had engaged in "spoliation of evidence" stemming from their willful destruction of evidence in the case. The court issued sanctions against the town in the form of an "adverse inference" that the evidence destroyed would have been helpful to the church's case, and also fined the Town the sum of \$10,000.

A copy of the opinion is posted on the Edgemont Community Council website, www.edgemontcommunitycouncil.org