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Town's Opposition to Church Violated U.S. Law, Court Finds

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A Westchester County town violated a federal act barring religious discrimination in land use decisions by putting one obstacle after another in the path of a Pentecostal congregation's plans to build a new church to accommodate its growing flock, according to a federal judge.

Southern District Judge Stephen C. Robinson ruled that the Town of Greenburgh used fire, safety and traffic concerns as pretexts to derail a project proposed by the Fortress Bible Church that the town supervisor and some board members had wanted to kill from the outset.

In a 206-page decision last week summing up his findings after a 26-day bench trial, Judge Robinson also said the town would be liable for an unspecified amount of money damages and was subject to sanctions for the deliberate destruction of documents in the decade-long fight over the church.

The judge said in *Fortress Bible Church v. Feiner*, 03 Civ. 4235, that the town's "purported concerns were unsupported, if not wholly fabricated," and therefore it had violated the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. §2000cc.

The evangelical Christian congregation is located in a cramped 3,000-square-foot facility in the city of Mount Vernon. In 1998, it purchased a 6.53-acre plot on Pomander Drive in nearby Greenburgh on which it plans to construct a new 14,600 square-foot building. The proposed church would accommodate up to 500 worshippers as well as some 150 students in grades K-12.

But the plan ran into opposition from town officials. According to the judge, at a July 2000 meeting, Town Supervisor Paul J. Feiner complained about traffic, although he later told church representatives that "50 percent [of his concern] was traffic" and the other "50 percent" was the church's tax exempt status—officials did not want more land taken off the tax rolls.

Judge Robinson also took note that Mr. Feiner asked the church to donate a fire truck to the Fairview Fire District or make some other kind of payment in lieu of taxes.

The judge said that during another meeting early in the process, Councilwoman Timmy Feinberg said, "We do not need another church in Greenburgh where there are already several religious institutions."

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The evidence, the judge said, showed that the councilwoman instructed the town planning commissioner to "help stop the project or kill the project."

Judge Robinson observed that a community member stood up at a hearing in 2000 and talked about how "some of the churches like this Bible Church have a tendency sometimes to go to extreme[s]" and recalled the Jim Jones massacre in Guyana, a statement that went unremarked upon by council members.

'Positive Declaration'

The judge found that Mr. Feiner directed the town staff and town attorney to torpedo the project.

Judge Robinson said the town "punitively" used the process outlined in the New York State Quality Environment Review Act, §§8-0101 et seq. (SEQRA), and issued a "positive declaration" that the project would have a significant environmental impact. That required the church to jump through additional hoops in response to "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 SEQRA process for the church."

In all, the judge found that conduct of town officials violated §2(a)(1) of RLUIPA, the First Amendment's free exercise clause, the Fourteenth Amendment's equal protection clause, as well as the free exercise and equal protection clauses of the New York Constitution and Article 78 of the New York CPLR.

The judge instructed the plaintiffs to submit an application for damages under their civil rights claims.

Donna E. Frosco and Nicholas Ward-Willis of Keane & Beane in White Plains represented the church at trial.

Ms. Frosco said they have argued before the judge for at least \$4 million in damages but that the request is going up due to increased construction and other costs.

The decision by the judge, who is no longer on the bench, came three years after the close of evidence. Ms. Frosco said that post-trial, her side gave the court more than 200 pages of submissions and the town submitted some 100 pages of material.

"We're just very pleased that we received the decision we did receive," Ms. Frosco said. "As far as we know, I believe this is one of the first cases in the Second Circuit where we went to a combined trial on liability and damages" under RLUIPA.

Kevin Plunkett of the now-defunct Thacher Proffitt & Wood represented the town and its officials.

Judge Robinson said he would order the defendants to pay \$10,000 in sanctions because "the record is replete with evidence regarding defendants' intentional destruction of evidence and disregard for discovery obligations."

He said Ms. Weinberg, the councilwoman, intentionally discarded documents relating to the church's application even after being told to preserve documents by plaintiffs' counsel at deposition.

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