

Rocky Mountain Christian Church wills zoning conflict

by Randy Bright <http://www.tulsabeacon.com/?p=4748>

In a case I wrote about in March, Rocky Mountain Christian Church in Boulder County, Colorado, has since won most of its legal battles, but the war is still ongoing.

RMCC is a megachurch that had small beginnings in the 80's, and has since grown to over 2,000 members.

Located in an agricultural zone, it applied for a permit to expand its facilities in 1997, but a new zoning code required any church of 100 or more to obtain a special review. As a result, as a condition of the building permit, the church had to sign over 14 of its 50-acre tract to Boulder County in the form of a conservation easement.

In 2004, the church submitted its master plan to the county, which would add 132,000 sf to its existing 116,000 square feet. The Planning Commission said that the church could expand its school and its sanctuary, but would not approve the rest of the structures it wished to build. In 2005, a public hearing was held by the Boulder County Commissioners in a local school, attended by about 1,000 people who supported the church. Another hearing was held several months later, when the commissioners indicated that they had been prevented from denying the church's request because of RLUIPA (Religious Land Use and Institutionalized Persons Act).

But a few weeks later they denied the permit anyway, directing the county attorney to ask a federal judge for a declaratory judgment to determine if the denial was in compliance with RLUIPA.

In March of 2006, the Boulder County Commissioners filed a lawsuit in federal court against the church for that declaratory judgment.

In response, the church filed a lawsuit against the commissioners for violating their First Amendment Rights and their rights according to RLUIPA.

About a year later, the judge dismissed the commissioners' lawsuit against the church, allowing the church's lawsuit against the commissioners to proceed.

Another year later, the judge dismissed some of the church's claims in their suit, but sent the case to a jury.

The jury heard the case in November of 2008, and determined that the Boulder County Commissioners had violated RLUIPA in the case, but had not violated the church's First Amendment rights, and several months later, in March of 2009, the judge ordered them to approve the church's plans.

Unfortunately, that was not the end of the case. In April of 2009, the commissioners decided to appeal the case, and in August of 2009 the county's attorneys were in a U.S. Court of Appeals arguing that RLUIPA was unconstitutional.

By November of 2009, the U.S. Department of Justice had become involved, and assisted the church and its attorneys with a reply to the appeal.

Finally, in March of 2010, three federal appellate judges in the 10th Circuit Court heard the case, and five weeks later ruled in favor of the church.

The church was awarded \$1.25 million for their legal costs. In June, the county asked the appellate court to reconsider the decision, but their request was denied on July 19.

That should have been the end of the case, but now the Boulder County Commissioners are petitioning the US Supreme Court to hear the case, asking the court to determine the constitutionality of the application of RLUIPA that the lower courts applied to this case.

They are also seeking to establish precedent for dealing with land use disputes with churches, saying that local governments "face a quagmire of undefined terms, judicial disagreement and complex constitutional analysis every time a religious landowner applies for a building permit."

The church must file any objections it has to the case being heard by the U.S. Supreme Court within a month.

This is not the first time that the constitutionality of RLUIPA has been challenged in the court system, but to my knowledge it is the first time the ten-year-old law has been taken all the way to the Supreme Court.

Although I believe RLUIPA has very limited ability to protect churches from new zoning codes, it is better than nothing, and it has helped a number of churches.

The danger is that the majority of the justices are liberal, and it is likely that they will strike down RLUIPA in order to give local governments more power over land planning and regulation, just as they did in the Kilo vs. New London case in 2005.

So despite winning all the major battles in the case, the U.S. Supreme Court could determine the outcome of a much broader war against all churches.

We can only hope and pray that the justices won't take the case, and if they do, that they will do the right thing.

Otherwise, it will give local governments the ability to do serious harm to our churches.

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