

ORIGINAL

FILED

IN THE SUPERIOR COURT OF DOUGLAS COUNTY

STATE OF GEORGIA

SEP 20 2 55 PM '05

VICTORY FAMILY LIFE CHURCH

Plaintiff

Versus

CASE NO. 04CV01469**DOUGLAS COUNTY ETAL**

Defendant

FINAL ORDER

The above-styled case has come before the Court for hearing on the instant Petition for Mandamus, Declaratory Judgment and Damages. In its complaint, Petitioner moves this Court for entry of an Order compelling Respondents to issue a special land use permit for operation of a religious institution on property adjacent to property already being used by Petitioner as a religious institution. Petitioner also seeks a declaratory judgment from this Court that Petitioner is entitled to the special land use permit. In addition, Petitioner claims that Defendants' refusal to issue the special land use permit constitutes a taking in violation of Petitioner's right to due process as well as inverse condemnation and a violation of the Civil Rights Act, 42 U.S.C. § 1983 et seq. Finally, Petitioner maintains that Defendants' actions violate the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C. § 2000cc et seq. Having heard argument from the parties and having read the parties' briefs, the Court hereby enters the following Order.

Statement of Facts

Petitioner is a religious organization in Douglas County and owns several parcels of real property in Land Lots 321 and 364 of the 18th District, 2nd Section ("the Subject Property"). (Compl. ¶¶ 1, 3.) Seeking to expand its facilities, Petitioner purchased some real property adjacent to its main facility in November 2002 for the construction of another

sanctuary and a Sunday School building. (Compl. ¶¶ 3, 10-14.) The Subject Property, which includes the original parcel plus the newly purchased parcels, is approximately 2.8 acres in size and is currently zoned R-2 under the Douglas County Zoning Ordinance (“Zoning Ordinance”). (Compl. ¶ 15.) According to Petitioner, it was “grandfathered” in under the Zoning Ordinance because Petitioner used the original parcel as a religious organization prior to the enactment of the Zoning Ordinance. (Compl. ¶ 17.) Accordingly, Petitioner was allowed to operate as a religious organization without a Special Land Use Permit. (Compl. ¶ 17.)

Nevertheless, following the purchase of the additional adjacent parcels, Petitioner applied for a Special Land Use Permit (“SLUP”), pursuant to Section 80.010(3)(f) of the Zoning Ordinance, to obtain authorization to use the Subject Property as a sanctuary and Sunday School building. (Compl. ¶ 18.) The Zoning Ordinance requires issuance of a SLUP for religious institutions and accessory facilities provided:

- (1) That if located in any residential district any building or structure established in connection with these uses shall be set back not less than seventy-five (75) feet from any property line;
- (2) That if located in any residential district these uses shall be permitted only on a lot which abuts a major or minor thoroughfare or a collector street;
- (3) The site must contain at least **three (3) acres and have frontage of at least two hundred (200) feet on a public street**. The site must contain five (5) acres, have frontage of at least two hundred (200) feet on a public street, and comply with all applicable setback and buffer requirements if located within the RDBOS zoning overlay district.
- (4) No parking areas or driveways shall be established within (20) feet of another lot in a residential zoning district, and all parking areas and driveways shall be paved. The location of all curb cuts must be approved by the county engineer.
- (5) A buffer at least twenty-five (25) feet wide of natural vegetation and/or planted trees and/or shrubs that grow at least eight (8) feet tall, are at least four (4) feet tall at time of planting and provide an effective visual screen shall be along the side and rear property lines that abut a residentially zoned district.
- (6) Any existing religious institution with or without necessary facilities not meeting the minimum acreage standards of this section as of June 7, 1994, may erect an addition or add accessory structure or uses provided that:

- a. All other provisions of this section including setbacks and buffers are met; and
 - b. All parking requirements for religious institutions and accessory facilities are met.
- (7) Uses accessory to religious institutions include the following:
- a. Cemeteries and mausoleums (minimum five (5) acres).
 - b. Religious classrooms.
 - c. Church schools and related facilities.
 - d. Meeting facilities.
 - e. Offices and rectories.

(Zoning Ordinance § 80.010(3)(f)).

According to Petitioner, both the County Planning Staff and the Douglas County Planning and Zoning Commission (“Planning and Zoning”) reviewed Petitioner’s SLUP application and recommended approval of the application with some modifications. (Compl. ¶¶ 21-23, 25-26.) Subsequently, on October 7, 2003, the Douglas County Board of Commissioners (“Board of Commissioners”), after reviewing Petitioner’s SLUP application, voted to deny the same. (Compl. ¶¶ 27-28.) The Board of Commissioners voted to deny Petitioner’s application because the Subject Property did not contain at least 3 acres, as is required by the Zoning Ordinance. (Defs.’ Ex. 1, p. 192.)

Six months later, Petitioner resubmitted its SLUP application for reconsideration. (Compl. ¶ 29.) Following a meeting to consider Petitioner’s application, Planning and Zoning recommended that the application be denied. (Compl. ¶ 35-36.) Afterwards, the Board of Commissioners voted to deny Petitioner’s SLUP application. (Compl. ¶ 40.)

On May 25, 2004, Petitioner filed this action for mandamus relief seeking an Order from this Court compelling the Board of Commissioners to issue the SLUP. (Compl. ¶¶ 43-60.) Further, Petitioner seeks a declaratory judgment that it has a vested right to the issuance of the SLUP from Defendants because a refusal by Defendants to issue the SLUP is unconstitutional and violates Petitioner’s right to equal protection. (Compl. ¶¶ 61-66.) Petitioner also alleges that the Defendants’ actions in denying the SLUP violate

Petitioner's right to due process and, further, that Defendants' actions constitute inverse condemnation of the Subject Property. (Compl. ¶¶67-71.) Finally, Petitioner contends that Defendants' actions violate the Civil Rights Act, 42 U.S.C. § 1983 and RLUIPA. (Compl. ¶¶72-77.)

Following a hearing and after considering the briefs of the parties, this Court finds as follows.

Conclusions of Law

Pursuant to RLUIPA,

[n]o government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution--

(A) is in furtherance of a **compelling governmental interest**; and
(B) is the **least restrictive means** of furthering that compelling governmental interest. [Emphasis supplied.]

42 U.S.C. § 2000cc-(a)(1). The constitutionality of RLUIPA was recently upheld by the United States Supreme Court in its decision styled Cutter v. Wilkinson, 125 S.Ct. 2113 (2005). Therefore, under RLUIPA, Petitioner must first show that the regulation at issue substantially burdens religious exercise. Midrash Shephardi, Inv. v. Town of Surfside, 366 F.3d 1214, 1225 (11th Cir. 2004). If Petitioner makes such a showing, the burden shifts to Defendants to come forward with evidence of a compelling interest and that the regulation is the least restrictive means. Id. at 1228.

In this case, the Court finds that Defendants have imposed a substantial burden on religion in violation of RLUIPA. While the Zoning Ordinance sets forth a 3-acre minimum requirement for SLUP's for religious institutions and accessory facilities, no other type of establishment requiring a SLUP must satisfy a minimum acreage requirement. (Zoning Ordinance, § 80.010.) Courts in other jurisdictions have determined that when a local government denies a church the ability to build and/or expand its worship facilities on its

property, it creates a substantial burden on religious exercise and is, thus, a violation of RLUIPA.

Castle Hills First Baptist Church v. City of Castle Hills, 2004 WL 546792 (W.D. Tex. Mar. 17, 2004); Elsinore Christian Center v. City of Lake Elsinore, 291 F. Supp.2d 1083 (C.D. Cal. 2003).

In Castle Hills, the court determined that the city's denial of a special use permit to expand its existing fourth floor for use for educating children would impose a substantial burden upon a church pursuant to RLUIPA. 2004 WL 546792 (W.D. Tex. Mar. 17, 2004). Likewise, in Cottonwood Christian Center v. Cypress Redevelopment Agency, 218 F. Supp.2d 1203 (C.D. Cal. 2002), the court found that the denial of a church's permit to build a new facility to accommodate its growth was a substantial burden pursuant to RLUIPA. As in Castle Hills and Cottonwood, Defendants' denial of Petitioner's SLUP based upon the 3-acre minimum requirement substantially burdens religious exercise in that it precludes Petitioner from expanding its facilities.

Given the Court's finding that the 3-acre requirement of the Zoning Ordinance and the denial of the land use permit create a substantial burden on religious exercise, the burden shifts to the Defendant government to come forward with evidence of a compelling interest and that the regulation is the least restrictive means. After considering the evidence and argument before it, the Court finds that Defendants have failed to state a compelling interest for the 3-acre minimum requirement as contained in the Zoning Ordinance. In fact, Defendants have not argued any governmental interests in requiring religious institutions to have at least three acres. While compelling public safety reasons exist for the other requirements for religious institutions, (i.e., setbacks, buffers, frontage requirements, parking space requirements, fire safety code requirements), Defendants have not articulated any compelling reason for requiring religious institutions to have at least 3 acres when no other type of institution is required to do so. This particular requirement is rather troubling in that with this restriction, the county could restrict individuals from holding small-group religious studies on any property with less than the required amount of land. Accordingly, it cannot be said that a 3-acre minimum requirement is the least

restrictive means of advancing a governmental interest when Defendants have failed to state any compelling governmental interest for requiring the same.

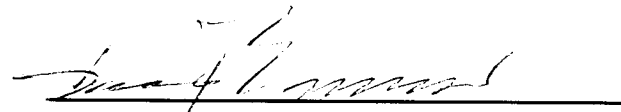
Based upon the analysis set forth above, the Court finds that Defendants' denial of Petitioner's SLUP application based upon Petitioner's inability to satisfy a 3-acre minimum requirement constitutes a violation of RLUIPA in that it substantially burdens Petitioner's religious exercise and because Defendants have failed to articulate a compelling reason for the regulation.

The Court is unpersuaded that the permit was denied due to feared encroachment on a residential area. The location of the subject property is zoned for residential use, however, the present facility faces a Norfolk-Southern east-west railroad line and lies immediately across from the old business center of the Lithia Springs community. The scheme used by the county includes no specific zoning classification for religious institutions in any zoning, residential or otherwise, however the ordinance contemplates that land use permits are the method by which all property to be used for religious purposes and those special use permits are allowed in residential zoning tracts. The parties agree that the plaintiff's use of the bulk of its property for a church already exists with no interference from the defendant. The defendant cannot now complain that same religious use will now unduly encroach on the residential use. The Court therefore finds an abuse of discretion in the denial of the permit for this claimed reason.

The Court, therefore, remands this case to Defendants for reconsideration of Petitioner's SLUP application without the 3-acre minimum requirement and under the requirement of RLUIPA that the government use the least restrictive means for protecting its remaining interests in any future consideration of the plaintiff's permit application. The ordinance's additional 5-acre requirement also falls as well.

Petitioner's remaining claims are hereby denied.

SO ORDERED this September 20, 2005.

A handwritten signature in black ink, appearing to read "David T. Emerson", is written over a solid horizontal line.

DAVID T EMERSON
Judge, Superior Court
Douglas Judicial Circuit
CASE NO: 04CV01469

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