

ACM, BURLCO, & TRICO

Municipal Joint Insurance Funds

In Cooperation With
The Municipal Excess Liability Joint
Insurance Fund
presents

RISK MANAGEMENT FOR LOCAL OFFICIALS

2016 -2017

Paul J. Miola, CPCU, ARM
Executive Director
ACM, BURLCO, TRICO JIFs
(856) 446-9130
paul_miola@ajg.com



Welcome

- ✗ Mayors
- ✗ Council Members
- ✗ Utility Directors
- ✗ Officials
- ✗ Administrators



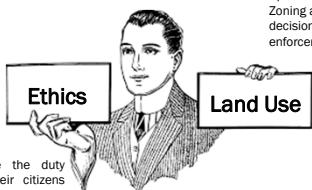
Please make sure you signed in!

Introduction

- **Paul J. Miola, CPCU, ARM**
Executive Director, ACM, BURLCO, TRICO
- 40-plus years industry experience
- 30 years pooling
- Over 100 S. J. Municipalities
- Some ideas on how to better manage risk and save money
- Give you an update about your Joint Insurance Fund (JIF)



Two Topics This Year



Uptick in claims arising out of
Zoning and Planning Board
decisions and code
enforcement!

"Governments have the duty both to provide their citizens with standards by which they may determine whether public duties are being faithfully performed and to apprise their officers and employees of the behavior which is expected of them while conducting their public duties."

How are we doing?



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The JIFs* are in Great Shape!

- \$4,350,000 in current dividends!
 - \$52,136,767 since inception
- Budget reductions in all three JIFs
 - -\$1,372,517
- \$103,610,118 Cash on hand
 - \$61,803,432 Surplus
- Seeking greater investment options
 - Bonds of NJ governmental entities



Controlling costs through sound fiscal policy and reducing claims.

*ACM, BURLCO, and TRICO JIFs

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Addressing New Exposures

- Cyber Risk/Technology Risk Assessments
 - Member Questionnaire
 - Personal On-Site Visits
 - Next Phase = Policies + Training
- Vacant/abandoned properties
 - Underwriting guidelines
- Drones
 - Non-Owned
 - Owned



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POLICE ACCREDITATION

- Police cases are the most expensive
 - Liability
 - Workers Compensation
- Can Help Control Claims Costs
 - NJ Association of Chiefs of Police Program
 - JIF pays 50% of fee
 - JIF Intern Program reimbursement (\$10/Hr. \$1,000 max.)
 - MEL gives \$1,000 Grant upon completion
 - Reduced rates

Program Notification sent to all members on February 2, 2017

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MANAGEMENT OF SPECIAL EVENTS

- CSL Booklet updated
- Copies mailed to all members
- MEL Safety Institute Training Program
 - **Covers issues and exposures created by special events.** Proper planning procedures and many hazard and liability considerations.



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WELLNESS PROGRAM

- Healthy employees
 - Less likely to get hurt
 - Likely to recover more quickly
- JIF Wellness Director
 - Personal visits to all members
 - Helps establish Wellness Committees
 - Develops Wellness activities
 - Publishes monthly newsletters
 - Gives monthly tips



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Risk Management Starts at Home!



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Support Your Risk Management Team

Fund Commissioner

- Town's representative to the JIF
- Serves on JIF boards and committees
- Monitors Town's participation and protects interests

Safety Coordinator

- Liaison between Safety Director and Town
- Chairs Safety Committee
- Coordinates safety training
- Disseminates safety information

Claims Coordinator

- Maintains claims forms and records
- Makes sure all claims are reported and monitored
- Relays info between Town and Claims Adjusters

Risk Management Consultant

- Important member of your Team
- Knows the local issues
- Provides guidance and advice
- Helps you get the most from the JIF
- Model RFQ from JIF



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Armando V. Riccio, Esq.

How Elected Officials Get in Trouble!



Ethics in Local Government

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Armando V. Riccio, Esq

- Represents Management:
 - Civil Service Commission
 - PERC, EEOC, NLRB
 - NJ Division of Civil Rights
- Conducts Investigations:
 - Discrimination
 - Harassment
 - Retaliation
- Provides training on workplace/employment Issues
- Advises clients regarding employment practices, policies, and procedures.
- 2016 Ten Best Attorneys in Client Satisfaction



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Criminal Case Study

A Mayor who was also a powerful state senator used his official position to push the DEP to grant an approval for a law client. He was sentenced to three years.



Criminal Case Study

The former State Attorney General who was Chair of the Port Authority, forced an airline to schedule flights to an airport near his vacation home. He is scheduled to be sentenced in December.



When is acting under the advice of an attorney a valid defense?

- 1) The advice was received prior to the action taken
- 2) The individual who offered the advice possessed authority or responsibility with regard to ethical issues
- 3) The individual seeking advice made full disclosure of all pertinent facts and circumstances and
- 4) The individual complied with the advice, including all the restrictions contained in it.



Re: Howard, 93 N.J.A.R. 2d (Vol. 5A) 1, aff'd as modified, 94 N.J.A.R. 2d (Vol. 5A) 1 (App. Div. 1994).

Local Finance Board Advisory Opinions



The request must come from the individual contemplating the future act, or that individual's specifically authorized representative, and

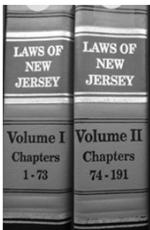
The action must be prospective. The Board cannot issue an opinion on an action that has already occurred.

Basic Prohibition:



"No local government officer or employee or member of his immediate family shall have an interest in a business organization or engage in any business, transaction or professional activity which is in substantial conflict with the proper discharge of his duties in the public interest;"

Basic Prohibition:



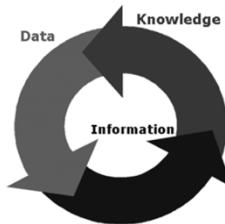
The basic prohibition pertains to both the public official as well as the official's immediate family

Prohibition against other employment that is in conflict with official positions:



"No local government officer or employee shall undertake any service whether compensated or not, which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties;"

Frequently Asked Questions



To what extent is a local official barred from using information learned during the course of public duties when conducting private business?



The restriction against accepting things of value does not apply to political contributions "if the local governmental officer has no knowledge or reason to believe that the contribution, if accepted, was given with the intent to influence the local government officer in the discharge of his official duties."

Exception for providing constituent service:



No elected local government officer shall be prohibited from making an inquiry for information on behalf of a constituent, if no fee, reward or other thing of value is promised to, given to or accepted by the officer or a member of his immediate family, whether directly or indirectly, in return therefore;

Frequently Asked Questions



If you recuse yourself, can you represent yourself or your family before your public entity?

Frequently Asked Questions



Answer: Yes, but be very careful and talk to the attorney in your organization with authority to review ethical issues.

Frequently Asked Questions



If you are acquitted of violating the Act, will insurance cover your defense costs?

Frequently Asked Questions



Answer: No: Insurance does not cover defense costs in criminal matters and also excludes fines, penalties and punitive damages.

Case Study # 1

Facts:



A Zoning Board member with many years of experience was confirmed for reappointment by one vote. The tie breaker was his recently elected wife. The couple were married after the Zoning Board member was originally appointed.

Shapiro v. Mertz (368 N.J. Super. 46, App. Div.2004)

Legal or Not Legal?

Case Study # 1



Legal



Not Legal

Case Study # 2



Facts:

A Council Member voted to appoint his campaign manager to a vacant position on the town's utility board.

Local Finance Board decision 14-008

Legal or Not Legal?

Case Study # 2



Legal



Not Legal

Case Study # 3



Facts:

A Member of the municipal council was also employed as the town's Planning Board Secretary.

Local Finance Board decision 11-073

Legal or Not Legal?

Case Study # 3



Legal



Not Legal



If you work for Ford, can your town purchase police cars from the local Ford Dealership?

Case Study # 4



Facts:

A Council Member works for an auto supply company that has a contract through the state cooperative purchasing system. Is it permissible for your municipality to purchase auto parts from your firm?

Local Finance Board decision 92-015

Legal or Not Legal?

Case Study # 4



Legal



Not Legal

Case Study # 5



Facts:

The Mayor was in the business of selling uniforms and was close to members of the police department. In fact, he stated on numerous occasions that he was the Department's best friend and "had their backs", but he did not recuse himself from union negotiations.

Legal or Not Legal?

Case Study # 5



Legal



Not Legal

Case Study # 6

Facts:

The Council President used one sheet of official town stationery to endorse a candidate for Congress. The letter was reproduced at the expense of the campaign and had the proper "paid for" statement at the bottom.

Local Finance Board decision 12-013

Legal or Not Legal?



Case Study # 6



Legal



Not Legal

Case Study # 7

Facts:



While considering a zoning code amendment, the Council President recused himself but continued to sit at the dais and perform his functions including directing debate, controlling the meeting and calling on interested parties.

(Beacon Hill Farm LLC. v. Marlboro, unreported 2006, 2006 WL 1161361)

Legal or Not Legal?

Case Study # 7



Legal



Not Legal



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Michael J. Ward, IV, Esq.

- Admitted NJ and PA Supreme Court
- Member Camden and Burlington Bar Associations
- Solicitor
 - Brooklawn and Stratford Joint Land Use Boards
 - Magnolia Planning Board



Law practice emphasis includes real estate development, land use, and environmental regulatory law.

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Michael J. Ward, IV, Esq.

Considerations and Pitfalls in Land Use Decision-Making by Land Use Boards and Public Officials



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How Should Public Officials Conduct Themselves in Land Use Matters?

Undertake actions sincerely and without malicious intent.

Objective Test:

All Public Officials must be held liable for actions and conduct of which a reasonable person would have known or should have known are violative of established statutory or constitutional rights (i.e. "Civil Rights")



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How Should Public Officials Conduct Themselves in Land Use Matters?

Considerations (**Political**): Public officials must follow established legal and constitutional principals in land use ordinance enactment and decision making, to achieve the following goals:

- a) Minimization of the risk of costly and time consuming litigation;
- b) Enhancement of the municipal or entity reputation among other governmental entities and within the business community, evoking the belief that your entity is progressive and "you do things the right way";
- c) Promotion of investment in, and economic benefits for your community;
- d) Stabilization of your tax base and avoidance of unplanned fiscal constraint;
- e) Avoidance of negative media notoriety and (at times) sensationalism;
- f) Long term municipal government stability.



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How Should Public Officials Conduct Themselves in Land Use Matters?

Implementation (**Practical**):

- a) Land use ordinances, regulations and board procedures must be regularly reviewed and updated when necessary to complement the Master Plan and ensure due process to all applicants;
- b) Non-statutory volunteer Land Use Board appointees should be chosen on merit and undergo regular training;
- c) Reinforcement that all municipal officials including **Land Use Board appointees must conduct themselves in a "quasi-judicial" manner when they review land use applications** participate in Board hearings and render decisions.



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How Should Public Officials Conduct Themselves in Land Use Matters?

Municipal Checklist:

- a) All municipal officials must be impartial and "open-minded", shall be free of bias, and shall not pre-judge on the merits of any application;
- b) Decision making must be based solely upon the evidence produced at the hearing and included within the record;
- c) Board members should not engage in pre-hearing discussions regarding the particular merits (or lack of merit) of an application;
- d) Board members should not engage in ex parte communications with interested parties, other public officials or the general public outside of the hearing;
- e) Hearings must be conducted fairly and openly in accordance with reasonable policies and procedures; adherence to decorum and the need to protect the record;
- f) Simply stated, the Board members collectively conduct themselves in a manner which minimizes potential issues for appeal and litigation.



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Wrongful Conduct

If wrongful conduct occurs, the remedy can include imposition of monetary damages and the payment of attorney's fees. Moreover, individuals (but not municipalities) can be subject to liability for punitive damages in a lawsuit under state law.



By law, punitive damages may NOT be covered by insurance!

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Interference with Business

- ❑ **Summary of Allegations:** Plaintiffs obtained approval to construct a facility on their vineyard to host dinners and tasting events. Since then, Plaintiffs claim that Mayor harassed them and directed code officials to issue stop orders and citations to Plaintiffs. Plaintiffs state that the malicious acts of Defendants violated their civil rights and substantially delayed the completion of Plaintiffs' project resulting in lost sales and increased costs in excess of \$1.5 million.
- ❑ **Damages Sought:** Monetary and non-monetary relief.

Interference with Business

Resolution: Settled for \$550,000.

Defense fees: In excess of \$200,000.



Medical Detox/Rehab Clinic

- Summary of Allegations:** Plaintiffs were seeking to operate a medical detoxification clinic and rehabilitation facility. It was not a permitted use. Plaintiffs applied for:
 - (1) a use variance; or, in the alternative,
 - (2) a reasonable accommodation under ADA.

The Board adopted a resolution denying the use variance. Plaintiffs filed suit alleging that the Town's ordinance discriminated against substance abuse service providers and violated ADA.

- Damages Sought:** Monetary and Non-Monetary Relief.

Medical Detox/Rehab Clinic

Resolution: Matter settled for \$1.4 M, with member contributing to relief.

Defense fees: Approximately \$240,000.



Harassment of a Business

Summary of Allegations: Plaintiffs were husband and wife and owned a construction company. Plaintiffs alleged that the town wanted Plaintiffs to sell a parcel of land. When Plaintiffs refused, the town cited Plaintiffs for violating numerous zoning restrictions and issued multiple summonses.

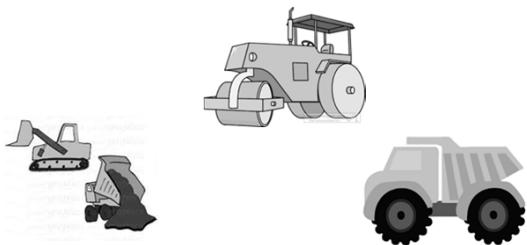
The summons' were dismissed. The citations focused on Plaintiffs storing/parking commercial vehicles in the "O" zone. Plaintiffs alleged that the town targeted them. Plaintiffs also alleged that the town employees interfered with their business operations by telling contractors to not use the Plaintiffs in work and encouraging others to terminate lease.

Damages Sought: Monetary

Harassment of a Business

Resolution: Matter settled for \$300,000.

Defense fees: Over \$92,000.



Denial of Application - Safety

Summary of Allegations: Plaintiff sought to construct a restaurant & submitted an application for development which was initially approved. After approval, the NJ Dept. of Transportation widened the roadway next to Plaintiff's site. This reduced the lot area of Plaintiff's site. As a result, Plaintiff submitted an amended site plan. Defendant denied the amended application on the basis of substantial safety risk. Plaintiff filed suit alleging the denial was based on irrelevant factors without factual basis and arbitrary, capricious and unreasonable.

Damages Sought: Monetary and Non-Monetary Relief.

Denial of Application - Safety

Resolution: Court granted summary judgment in favor of member. On appeal.

Defense fees: \$123,000



Refusal to Issue COO

- Summary of Allegations:** Plaintiffs allege that the town discriminated against them based on their ethnicity in violation of state and federal law when the town refused to issue the Certificate of Occupancy ("COO") for its new restaurant. The restaurant suffered a fire. After the fire, Defendant allegedly did not allow Plaintiffs to turn on the electricity in their restaurant and supermarket, causing all the food and other perishables to spoil without refrigeration. Plaintiffs claim to have suffered economic, consequential, expectation, discretionary, and general damages as a result of the discrimination by the Town Defendants. Plaintiffs demand judgment for damages along with attorney's fees.

- Damages Sought:** Monetary Relief

Refusal to Issue COO

Resolution: Matter settled for \$85,000.

Defense fees: \$85,000



Farmland Preservation Claim

- ❑ **Summary of Allegations:** The Planning Board adopted the "Farmland Preservation Plan Element" (FPP) pursuant to NJ law during the pendency of a land use application from Plaintiffs. In the application Plaintiffs were seeking permission to install solar powered facilities on their property. The Twp. denied Plaintiff's application. Plaintiffs are effectively barred from siting any renewable energy source on their property. Plaintiffs filed suit arguing that the adoption of the FPP was arbitrary and unreasonable in violation of municipal land use law and federal constitutional.
- ❑ **Damages Sought:** Monetary and injunctive relief.

Farmland Preservation Claim

Resolution: Matter settled for \$100,000.

Defense fees: Over \$115,000.



RLUIPA

Religious Land Use and Institutionalized Persons Act

No 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 government demonstrates the 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.



Islamic Society of Basking Ridge v. Township of Bernard

The Islamic Society of Basking Ridge sought permission to build a mosque in a suburban New Jersey community, but faced hostility and opposition from protesters and illegal obstruction and delays by the local zoning board.

After 39 public hearings in which the town refused to approve plans for the mosque, or to offer the same accommodations that it had applied to other houses of worship, the congregation filed suit under the Religious Land Use and Institutionalized Persons Act (RLUIPA), a law that the NAE was instrumental in passing.



United States of America v. Port Jervis

The city of Port Jervis, New York agreed to repeal a downtown ban on places of worship to settle a U.S. government lawsuit claiming that it discriminated against a church that had contracted to buy property near the site of a planned brewpub.

According to the U.S. Department of Justice, the law forced the rescission of an August 2015 contract for the church to buy property near where city officials, including Mayor Kelly Decker, hoped a microbrewery or gastropub could be opened.



United States of America v. Township of Bensalem (PA)

J. McDaniel, "[Justice Department: Bensalem discriminates against Muslims.](#)" *Philadelphia Inquirer* (July 22, 2016).
"Our Constitution protects the rights of religious communities to build places of worship free from unlawful interference and unnecessary barriers," said Principal Deputy Assistant Attorney General Vanita Gupta, head of the Justice Department's Civil Rights Division. "The Department of Justice will continue to challenge unjustified local zoning actions around the country when they encroach upon this important civil right."



Yeshiva Gedola Na'os Yaakov, Inc v. Ocean Twp.

U.S. District Court Judge Rita Freda L. Wolfson said the township's Zoning Board of Adjustment violated federal law when it voted to deny a use variance to Yeshiva Gedola Na'os Yaakov, a post-secondary religious school for Orthodox men ages 18 to 22 that's currently renting space in Lakewood. The school sought to relocate to a larger, existing school building at 1515 Logan Road with enough room to provide housing for up to 96 students.



These Claims Are Costly

Deductibles & Co-Pays

\$20,000 plus 20% of next \$250,000

Non-Monetary (Injunctive) Relief Not Covered

Modified land use liability coverage of \$150,000 per claim for cases where there is a demand for monetary damages.



Consider setting aside part of your annual dividend to cover unexpected costs!

Your Best Line of Defense

Your best line of defense is an experienced Land Use Attorney and an experienced Municipal Attorney.

- Seek the advice of your attorneys before doing something
- Insist that they tell you what you should hear, not what you want to hear, and
- Watch what you say, especially in executive session and in electronic communications.



Positive Action = Positive Results

- Claims can be avoided
- Good loss experience results in
 - Continued Coverage
 - Lower Premium
 - Options for Lower Deductible and Coinsurance



PRESENTATION OUTLINE

CONSIDERATIONS AND PITFALLS IN LAND USE DECISION MAKING BY LAND USE BOARDS AND PUBLIC OFFICIALS

AT ISSUE: “An uptick in litigation claims involving Planning and Zoning Boards and their members”.

HOW SHOULD PUBLIC OFFICIALS CONDUCT THEMSELVES IN LAND USE MATTERS?

Subjective test: All public officials must undertake their actions sincerely and without malicious intent.

Objective test: All public officials must be held liable for actions and conduct of which a reasonable person would have known or should have known are violative of established statutory or constitutional rights [*i.e.*, “civil rights”].

Considerations (Political): Public officials must follow established legal and constitutional principals in land use ordinance enactment and decision making, to achieve the following goals:

- (a) Minimization of the risk of costly and time consuming litigation;
- (b) Enhancement of the municipal or entity reputation among other governmental entities and within the business community, evoking the belief that your entity is progressive and “you do things the right way”;
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- (d) Stabilization of your tax base and avoidance of unplanned fiscal constraint;
- (e) Avoidance of negative media notoriety and (at times) sensationalism;
- (f) Long term municipal government stability.

Implementation (Practical):

- (a) Land use ordinances, regulations and board procedures must be regularly reviewed and updated when necessary, to complement the Master Plan and ensure due process to all applicants;
- (b) Non-statutory volunteer Land Use Board appointees should be chosen on merit and undergo regular training;
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Municipal Checklist:

- (a) All municipal officials must be impartial and “open-minded”, shall be free of bias, and shall not pre-judge on the merits of any application;
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- (d) Board members should not engage in ex parte communications with interested parties, other public officials or the general public outside of the hearing;
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- (f) Simply stated, the Board members collectively conduct themselves in a manner which minimize potential issues for appeal and litigation.

If wrongful conduct occurs, the remedy can include imposition of monetary damages and the payment of attorney's fees. Moreover, individuals (but not municipalities) can be subject to liability for punitive damages in a lawsuit under state law.

LITIGATION ISSUES

1. Interference with Business [Scenario #1]
2. Medical Detoxification/Rehab. Clinic [Scenario #2]
3. Business/Personal Harassment [Scenario #3]
4. Denial Of Application Submitted For Safety Reasons [Scenario #4]
5. Refusal to Issue CO [Scenario #5]
6. Farmland Presentation Plan Element Claim [Scenario #6]

STATUTORY ISSUES

Religious Land Use And Institutionalized Persons Act Of 2000 [RLUIPA] (42 USCA §§2000 cc to 2000 cc-5)

Basic Premise:

No 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 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.

Applicable to ordinance enactments, municipal official action, and land use board decision making

CASE STUDIES AND DISCUSSIONS

1. Islamic Society Of Basking Ridge v. Township Of Bernard (NJ)
 - Summary
 - Federal Court Complaint by DOJ
2. United States Of America v. City Of Port Jervis (NY)
 - Summary (two pages)
3. United States Of America v. Township Of Bensalem (PA)
 - Summary (one page)
4. United States Of America v. Pittsfield Charter Township (Michigan)
 - Summary (one page)
5. Yeshiva Gedola Na'os Yaakov Inc. v. Township Of Ocean (NJ)
 - Summary (one page)

Effective: September 22, 2000

42 U.S.C.A. § 2000cc

§ 2000cc. Protection of land use as religious exercise

Currentness

(a) Substantial burdens

(1) General rule

No 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.

(2) Scope of application

This subsection applies in any case in which--

- (A) the substantial burden is imposed in a program or activity that receives Federal financial assistance, even if the burden results from a rule of general applicability;
- (B) the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, even if the burden results from a rule of general applicability; or
- (C) the substantial burden is imposed in the implementation of a land use regulation or system of land use regulations, under which a government makes, or has in place formal or informal procedures or practices that permit the government to make, individualized assessments of the proposed uses for the property involved.

(b) Discrimination and exclusion

(1) Equal terms

No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.

(2) Nondiscrimination

No government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.

(3) Exclusions and limits

No government shall impose or implement a land use regulation that--

- (A) totally excludes religious assemblies from a jurisdiction; or
- (B) unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.

CREDIT(S)

(Pub.L. 106-274, § 2, Sept. 22, 2000, 114 Stat. 803.)

Notes of Decisions (197)

42 U.S.C.A. § 2000cc, 42 USCA § 2000cc

Current through P.L. 114-244.

Effective: September 22, 2000

42 U.S.C.A. § 2000cc-5

§ 2000cc-5. Definitions

Currentness

In this chapter:

(1) Claimant

The term "claimant" means a person raising a claim or defense under this chapter.

(2) Demonstrates

The term "demonstrates" means meets the burdens of going forward with the evidence and of persuasion.

(3) Free Exercise Clause

The term "Free Exercise Clause" means that portion of the First Amendment to the Constitution that proscribes laws prohibiting the free exercise of religion.

(4) Government

The term "government"--

(A) means--

(i) a State, county, municipality, or other governmental entity created under the authority of a State;

(ii) any branch, department, agency, instrumentality, or official of an entity listed in clause (i); and

(iii) any other person acting under color of State law; and

(B) for the purposes of sections 2000cc-2(b) and 2000cc-3 of this title, includes the United States, a branch, department, agency, instrumentality, or official of the United States, and any other person acting under color of Federal law.

(5) Land use regulation

The term "land use regulation" means a zoning or landmarking law, or the application of such a law, that limits or restricts a claimant's use or development of land (including a structure affixed to land), if the claimant has an ownership, leasehold, easement, servitude, or other property interest in the regulated land or a contract or option to acquire such an interest.

(6) Program or activity

The term "program or activity" means all of the operations of any entity as described in paragraph (1) or (2) of section 2000d-4a of this title.

(7) Religious exercise

(A) In general

The term "religious exercise" includes any exercise of religion, whether or not compelled by, or central to, a system of religious belief.

(B) Rule

The use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose.

CREDIT(S)

(Pub.L. 106-274, § 8, Sept. 22, 2000, 114 Stat. 806.)

Islamic Society of Basking Ridge v. Township of Bernards

Current Court: United States Court for the District of New Jersey

Status: Ongoing

Becket role: Amicus curiae

Related issues: RLUIPA, religious communities

A suburban New Jersey town denied a small Muslim congregation the right to build a new mosque where it could meet to worship. So the congregation went to court.

A small mosque with a big dream

Mohammad Ali Chaudry is a Pakistani immigrant who has lived with his family in Basking Ridge, New Jersey for nearly 40 years. Chaudry, who has a Ph.D. in economics from Tufts University and is a retired AT&T executive, has a long history of community engagement, including serving on the town's board of education and as mayor from 2004 to 2007. He is also the founding and current president of the Islamic Society of Basking Ridge, a small Muslim congregation. In 2008, Chaudry began looking for property to build a larger space to hold the Society's prayer meetings and Sunday school for children. A few years later, Chaudry purchased a 4-acre site zoned for houses of worship and began planning construction. The small, unassuming mosque was designed to fit in with the residential neighborhood, without a traditional dome and with discrete minarets that looked like chimneys.

Red tape discrimination from the town board

In 2012, after the Society filed its application for a permit with the Township's Planning Board, what ensued was four years of local bureaucratic quagmire. The Board held a record 39 public hearings during which time the Society faced hostility and vandalism from members of the local community.

The Society's application met every requirement from the Township Planning Board, but the goal posts kept changing. For example, the 150-congregant mosque was required by local ordinance to have 50 parking spaces—the same amount required for churches and synagogues of the same size. But local bureaucrats changed the rules to require more than double that amount of parking for the mosque.

In January 2016, the application to build the mosque was ultimately denied.

Becket defends the right to worship

In March 2016, the Society sued the town for violating the Religious Land Use and Institutionalized Persons Act (RLUIPA) and the First and Fourteenth Amendments. In May 2016, the Society asked the court to rule in its favor.

The Becket Fund filed a friend-of-the-court brief supporting the mosque, which was signed by a diverse coalition including the American Association of Jewish Lawyers and Jurists, Baptist Joint Committee for Religious Liberty, Becket Fund for Religious Liberty, Center for Islam and Religious Freedom, Ethics and Religious Liberty Commission or the Southern Baptist Convention, Interfaith Coalition on Mosques, International Mission Board of the Southern Baptist Convention, International Society for Krishna Consciousness, Muslim Bar Association of New York, National Asian Pacific American Bar Association, National Association of Evangelicals, New Jersey Muslim Lawyers Association, Queens Federation of Churches, Sikh American Legal Defense and Education Fund, Sikh Coalition, South Asian Bar Association of New Jersey, South Asian Bar Association of New York, and Unitarian Universalist Legislative Ministry of New Jersey.

On November 22, 2016 The Department of Justice filed a lawsuit against the Township of Bernards over the denial of zoning approval for the mosque.

Press Releases:

Christians, Jews, Sikhs, Hindus defend New Jersey mosque (May 11, 2016)



[Media Essentials](#) [Press Releases](#) [Legal Documents](#) [In the news](#) [Video and Images](#)

United States of America v City of Port Jervis

Port Jervis, NY Sued by DOJ; Settles Two Days Later

BY EVAN SEEMAN, KARLA CHAFFEE, JOHN PELOSO AND DWIGHT MERRIAM ON DECEMBER 2, 2016

POSTED IN EQUAL TERMS, SUBSTANTIAL BURDEN

The City of Port Jervis, New York has agreed to settle a federal lawsuit filed by the United States Department of Justice (DOJ) alleging that the City's revision to its zoning code violated the Religious Land Use & Institutionalized Persons Act (RLUIPA). In August 2015, Goodwill Evangelical Presbyterian Church (Church) finalized a contract to purchase property in the City's Central Business District (CBD), where a place of worship was a permitted use. Four months later, the City revised its zoning code to bar "places of worship and related facilities" in the CBD and the Service Commercial District.

The zoning code revision (known as Local Law No. 7) was intended to allow a local brewery called Fox N Hare Brewing Co. to purchase and operate on property near to where the Church sought to locate. Under New York State's Alcoholic Beverage Control laws, no license may issue for on-premises liquor consumption "on the same street or avenue and within two hundred feet of a building occupied exclusively as a school, church, synagogue or other place of worship." This meant that if the Church operated from the property it sought to purchase, the brewery would have to go elsewhere.

Local Law No. 7 contains a "Legislative Findings and Intent" Section providing that "places of worship may have a detrimental effect on business, commercial[,] and community development" in the subject zoning districts and states that, due to "the restrictions set forth for liquor licenses for restaurants, breweries, micro-breweries, micro-distilleries, pubs and other eating and drinking establishments commonly located within the Central Business Zoning District and Service Commercial Zoning District of the City, as set forth in the Alcoholic Beverage Control Legislation of the State of New York, places of worship and related facilities may deter and prohibit the location and expansion of business and

commercial uses within the Central Business Zoning District and Service Commercial Zoning District in the City." While Local Law No. 7 banned places of worship it also allowed uses that had previously been prohibited: microbreweries, brew pubs, breweries, microdistilleries, distilleries, wineries, and tasting rooms. After Local Law No. 7 passed, the Church voided its contract to purchase the property.

The DOJ sued alleging violations of RLUIPA's equal terms and substantial burden provisions. According to the DOJ, the City's zoning code on its face violated the equal terms provision because it banned religious uses but at the same time permitted analogous, secular assembly uses in the same zone, including clubs, fraternal organizations, nonprofit membership clubs, libraries, gyms, art galleries, museums, preschools, day-care centers, and nursery schools. The DOJ alleged that the City violated the substantial burden provision because prior to Local Law No. 7 the Church had the reasonable expectation that it could use the property as a place of worship. But the revision to the zoning code caused the Church to suffer delay, uncertainty, and expense with respect to its intended use of the property.

Two days after filing suit, the City and the DOJ agreed to settle the case by consent decree filed with the court. Under the decree, the City has sixty days to repeal Local Law No. 7. Further, within 180 days, the City must provide RLUIPA training to its mayor, each member of the Common Council, and all building and code enforcement officers. The last requirement of note is that the City must maintain copies of all religious land use applications and provide copies of same to the DOJ within fifteen days following disposition of such applications. The same applies for any religious discrimination complaints; that is, the City must notify the DOJ of any such complaints within fifteen days after receipt of complaint. The consent decree in *United States of America v. City of Port Jervis*, No. 15 Civ. 9026 (S.D.N.Y. 2016) is available here.

United States of America
Township of Bensalem

- In Bucks County, Pennsylvania, a federal judge has upheld a discrimination lawsuit filed by the US Department of Justice against the Township of Bensalem, denying the Township's motion to dismiss the case. Philly Voice reports that Bensalem Masjid was denied a variance to construct a mosque on parcels zoned for residential and business professional uses, citing concerns about the size of the mosque, parking, and membership growth. Bensalem Masjid responded by reducing the size of the project, adding parking, and offering a Friday afternoon prayer service. The US Department of Justice alleges that variance requests were approved for various other religious institutions, but not for Bensalem Masjid.

United States v. Pittsfield (Michigan) Charter Township

In 2011, Pittsfield Charter Township denied, allegedly without deliberation, Michigan Islamic Academy's ("MIA") application to rezone a 26 acre parcel (the "Property") to allow the development of a pre-K through grade 12 school. MIA then sued the Township, alleging that the denial substantially burdened its religious exercise. At the time, MIA operated a school in nearby Ann Arbor, but such facilities were overcrowded and MIA was forced to use on-site trailers to accommodate its 190 students. As we reported last November, MIA's lawsuit was dismissed because, according to the District Court for the Eastern District of Michigan, MIA did not have a sufficient property interest to maintain its RLUIPA claims because it never acquired a legally cognizable property interest in accordance with Michigan law.

After the dismissal, both the Department of Justice ("DOJ") and the Michigan chapter of the Council on American-Islamic Relations ("CAIR") filed separate lawsuits on behalf of MIA.

The DOJ described the settlement:



As part of the settlement, the township has agreed to permit MIA to construct a school on the vacant parcel of land, to treat the school and all other religious groups equally and to publicize its non-discrimination policies and practices. The township also agreed that its leaders and various township employees will attend training on the requirements of RLUIPA. In addition, the county will report periodically to the Justice Department. In the separate settlement between MIA and the township, Pittsfield agreed to pay \$1.7 million to resolve MIA's claims for damages and attorney's fees caused by the 2011 denial and the resulting delay in construction of the school.

In addition to the \$1.7 million payment, MIA received the right to build a 70,000 square foot Islamic school, a residential development consisting of 22 duplex units and three single family homes, and a park. CAIR-MI's press release regarding the settlement is available

Yeshiva Gedola Na'os Yaakov Inc v Township Of Ocean

In January of this year, Yeshiva Gedola Na'os Yaakov, Inc. (the "Yeshiva") filed a 79-page complaint in federal court against the Township of Ocean, New Jersey, and the Township's Zoning Board of Adjustment (the "Township") following the denial of an application to develop a yeshiva with boarding facilities for 96 male students between the ages 18 and 22 in a residential zone, to allow for advanced Talmudic study (the "School"). The Yeshiva had applied for a use variance, associated bulk variances, and site plan approval for the School, but the Board of Adjustment denied the application after conducting ten hearings over the course of a year and a half. The Yeshiva, among other arguments, pled that the Township's zoning code was discriminatory because it prohibits religious boarding schools for students over the age of 18 in all districts. More details regarding the Yeshiva's complaint are available in our prior post.

After a hearing on the Yeshiva's motion for a preliminary injunction, the court ordered reversal of the Township's denial, finding the proposed school is an "inherently beneficial use, and the denial of [the] application... a violation of RLUIPA." The reasoning of the court is not provided since the parties waived findings of fact and conclusions of law. The court granted approval to operate a religious boarding school for no more than 80 students age 18 through 22, subject to several conditions, including:

- Compliance with site plans previously submitted to the Township;
- Prohibiting students from bringing cars on campus;
- Conversion of a gymnasium currently on site to a study hall;
- Applying for necessary building, electrical and plumbing permits, as well as meeting all ADA requirements; and
- Making a variety of minor site improvements (fencing, window coating, modification to a parking area, etc.).

The court also referred any claim for damages and attorney's fees to mediation, but retained jurisdiction over the case until the Township issues a certificate of occupancy. The court's order in *Yeshiva Gedola Na'os Yaakov, Inc. v. Township of Ocean, New Jersey*, Civ. No. 3:16-00096 (D. N.J. 2016) is available

Regulations for C Light Industrial District.

- A. Permitted and prohibited uses. In any light industrial district, lands may be used and buildings or structures may be erected, altered or used for any lawful purpose except the following:
- (1) One-family detached or one-family semidetached dwelling, apartment or any other multi- or single-family residential dwelling.
 - (2) Acetylene gas, ammonia, bleaching powder or chlorine manufacture; arsenal; asphalt manufacture or refining; blacksmith shop; blast furnace; brick or tile yard; building material manufacturing establishment; carbon, lampblack, shoeblacking or stove polishing manufacture; celluloid or other cellulose products manufacture; coal yard; coke ovens; creosote treatment or manufacture; distilling of coal, wood or bones; explosive, fireworks or match manufacture; fat rendering; fertilizer manufacture or potash refining; glue, size or gelatin manufacture and recovery from fish or animal offal; grain elevator; ice plant; incineration; reduction or dumping of offal, garbage or refuse; lime, gypsum, cement, plaster or plaster of paris manufacture; linoleum or oilcloth manufacture; lumberyard; oil or gasoline bulk storage; ore reduction; paint, oil, varnish, turpentine, shellac or enamel manufacture; petroleum refining; printing ink manufacture; pyroxylin plastic manufacture or articles therefrom; rawhides or skins storage, curing or tanning; rubber manufacture; sandpaper or emery cloth manufacture; sauerkraut manufacture; slaughtering of animals or sausage manufacture; smelting of iron, copper, tin, zinc or lead; soap, soda and washing compound manufacture; starch, glucose or dextrin manufacture; stockyards; sulfurous, sulfuric, nitric or hydrochloric acid manufacture; tallow, grease, lard or candle manufacture or refining; tar distillation or manufacture of dyes; tar roofing or waterproofing manufacture; vinegar manufacture; wool pulling or scouring; yeast manufacture; or junkyard.
 - (3) Operations of automatic amusement device arcade or pool hall. [Added 2-14-83 by Ord. No. 1-83]