

# Churches will face challenges with zoning restructuring

by Randy Bright <http://www.tulsabeacon.com/?p=2762#more-2762>

Recently I received an e-mail from the author of a book about form-based codes that kindly disagreed with an article I wrote last month in which I said (again) that the new zoning codes won't adequately protect our churches.

His e-mail was lengthy, but to be brief, here were the three points that he made.

First, separation of church and state has led to laws that protect churches from limitation by regulation. Second, form-based codes don't regulate churches. Third, form based codes are about giving people choices in regards to location, etc..

All points well-taken, but I disagree with each of the three points, for one simple reason. While none of them specifically discriminate against churches, none of them protect churches from the unintended consequences that result from form-based codes, consequences that would affect everyone, not just churches. For example, the land shortages that occur when a city is constrained by an urban growth boundary affects all residents of the city not just churches. That is why I have argued for some time that RLUIPA (the Religious Land Use Act) is not adequate to protect churches in that situation.

In 2003, there was an interesting case that went to the Seventh Circuit US Court of Appeals. The case was "Civil Liberties for Urban Believers, Christ Center, Christian Covenant Outreach Church, et al., Plaintiffs-Appellants, v. City of Chicago, Defendant-Appellee," which was an appeal using RLIUPA to seek relief in a number of cases where churches had been repeatedly refused permission to build or relocate their churches in various places in Chicago. The common complaint was that the churches incurred costs that were unnecessary because of violation of their rights under RLIUPA.

Here's what was written in the decision of that case:

"We therefore hold that in the context of RLIUPA's broad definition of religious exercise, a land-use regulation that imposes a substantial burden on religious exercise is one that necessarily bears direct, primary, and fundamental responsibility for rendering religious exercise - including the use of real property... - effectively impracticable. Appellants contend that the scarcity of affordable land available for development in R zones, along with the costs, procedural requirements, and inherent political aspects of the Special Use, Map Amendment, and Planned Development approval processes, impose precisely such a substantial burden.

However, we find that these conditions - which are incidental to any high-density urban land use - do not amount to a substantial burden on religious exercise.

While they may contribute to the ordinary difficulties associated with location (by any person or entity, religious or nonreligious) in a large city, they do not render impracticable the use of real property in Chicago for religious exercise, much less discourage churches from locating or attempting to locate in Chicago...Whatever specific difficulties (plaintiff church) claims to have encountered, they are the same ones that face all (land users). The harsh reality of the marketplace sometimes dictates that certain facilities are not available to those who desire them.”

In other words, if the zoning laws do not specifically discriminate against churches and affect all people and entities equally, then the churches have no case for discrimination. My contention is not just that equal regulations can impose unintended consequences on churches, but that lack of consequential thought in the writing of zoning codes, especially if done from a liberal, anti-religious, anti-Christian or cynical bias, can indirectly discriminate against churches, and in such a way that it may not be discovered until a specific church has been harmed.

I now have the book that my e-mailer wrote, and have begun to read and study it.

It is lengthy and technical, so it will take some time to get through it all.

However, I did attempt to find references to churches under a number of subjects listed in the index, but could find none.

Whether this is intentional or not, I don't know, but if indeed there are none, I think it would prove the point that code writers are not as cognizant of the unique needs of churches as they should be.

To make things more complicated, churches are morphing into different kinds of land users, including becoming developers themselves, in order to provide for their own long-term survival.

This is just another reason why we need to be paying a great deal of attention to both to our existing zoning codes and any revisions or new codes that come about as a result of our Comprehensive Plan.

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