

# Jacksonville Beach church denied permit despite RLUIPA

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The Religious Land Use Act (RLUIPA) was apparently of little effect in a recent court decision regarding a church's ability to build in a location it deemed vital for its long-term needs, according to a report issued on the Law of the Land website.

The Church of Our Savior is an Anglican church located in Jacksonville Beach, Florida. It is a relatively new congregation, having begun its existence as the city's only Anglican church in 2006.

As many new churches do, the congregation found temporary space, having leased a historic chapel and two adjacent buildings. The drawback to its space is that it is only allowed to use the buildings four hours per week.

The church began looking for land to build a permanent structure using three criteria. First, it had to be affordable; second, it needed to be in a very visible location; and third, it needed to be in a location that was easily accessible. They eventually found a piece of property that met those criteria located in a single-family residential zone.

As is often the case, churches are not usually allowed in residential zones without obtaining special permission from city government, and in this case, the city's comprehensive plan prohibited churches and a number of other institutional uses from building in low-density residential areas.

Nevertheless, the church applied for a Conditional Use Permit (CUP) and received a favorable recommendation for approval from the city Planner. Despite that recommendation the Planning and Development Department denied the permit, expressing an objection to their proposed playground; its close proximity to homes; a fear that the church would adversely cause property values to fall; what they claimed to be an inconsistent use in the neighborhood; and apparently, they did not like the design of the church building.

The church addressed their concerns and applied four months later with a new proposal and again received a favorable recommendation by the city planner, but the Planning and Development Department turned them down for similar reasons given in the first attempt.

It was then that the church filed suit against the city, claiming that the city had violated "RLUIPA's equal terms, substantial burden, and unreasonable limits provisions" and, while "the Middle District of Florida found the city violated RLUIPA's equal terms provision (as applied)," it rejected the remaining claims.

According to the Law of the Land report, "The church argued that the city's denial of its CUP application substantially burdened its religious exercise because: (1) there is no other property that meets the church's three criteria; and (2) it is forced to use the chapel property where it cannot fully practice its religion."

The court rejected the church's claims because "that other suitable land is not available in Jacksonville Beach at a price the church can afford is a burden imposed by the market, not created by the city denying the church a CUP." It also stated that the church could not make the claim of substantial burden, because it must "place more than an inconvenience on religious exercise." Furthermore, it stated that "the majority of land in the city remains open for use by religious organizations by right or conditional use..."

I cannot comment specifically about this case, but in a general sense this kind of situation can and does arise out of out-of-scale planning that is characteristic of newer comprehensive plans and zoning codes.

When the court ruled "that other suitable land is not available in Jacksonville Beach at a price the church can afford is a burden imposed by the market, not created by the city denying the church a CUP," it was describing what may very well have been an artificial market.

When cities impose heavy regulations on where new construction can occur, especially when urban growth boundaries are imposed, then the natural result will be land shortages and higher prices. This creates an artificial market, one in which a city can throttle up or down the availability of land and its value simply by passing a code that allows them to arbitrarily restrict one group and favor another. It is a case of city government being able to create winners and losers at will.

RLUIPA was intended to prevent this kind of government abuse, but it is of little use when the courts are not willing to look beyond the specifics of the case and see if an artificial market or a real market actually exists are manipulating the market.



Randy W. Bright, AIA, NCARB, is an architect who specializes in church and church-related projects. You may contact him at 918-582-3972 [rwbrightchurcharch@sbcglobal.net](mailto:rwbrightchurcharch@sbcglobal.net) or [www.churcharchitect.net](http://www.churcharchitect.net). ©2014 Randy W. Bright Previous articles written by the author are available for reading at his website.