



The Becket Fund

FOR RELIGIOUS LIBERTY

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Mayor Robert Duncan
City Council Members
City of Harrisburg
City Hall
120 Smith St.
Harrisburg, OR 97446

By Hand Delivery

RE: Life Bible Church

Dear Mayor Duncan and Members of the City Council:

We write you to advise you to reverse the Planning Commission's decision and approve the proposal of Life Bible Church. Unless you approve the proposal, the City will face significant financial liability under federal civil rights laws that protect the rights of religious organizations to use land.

By way of background, The Becket Fund for Religious Liberty, based in Washington, D.C., is the nation's leading religious liberty law firm, dedicated to protecting the constitutional rights of all faith traditions. For 18 years our attorneys have been recognized as experts in the field of church-state law. The Becket Fund recently won a 9-0 victory against the Department of Justice at the United States Supreme Court in *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 132 S. Ct. 694 (2012), a decision *The Wall Street Journal* called one of "the most important religious liberty cases in a half century."

We are specifically experts in religious land use litigation, having brought the first case under RLUIPA after it was enacted in 2000 and litigated RLUIPA cases since then across the country. See *Haven Shores Community Church v. City of Grand Haven*, No. 1:00-cv-175 (W.D. Mich.) (consent decree signed December 20, 2000). For example, the Becket Fund won a RLUIPA case on behalf of a Christian church in Boulder County, Colorado, with a federal district court ordering the county to grant the Church a building permit and pay over \$1.2 million

3000 K St, NW
Suite 220
Washington, DC 20007
Phone: 202-955-0095
Fax: 202-955-0090
www.becketfund.org

in attorneys' fees.¹

We recently became aware of the Life Bible Church matter pending before you and are concerned about the City's response to the Church's proposal thus far. In her letter of May 1, 2013, counsel for the Church has ably described both the Church's proposal and why federal law requires it to be approved. We will not repeat here all that she has written. However, we do wish to emphasize three main points based on our experience prosecuting religious land use litigation around the country.

First, as explained in the Church's May 1 letter, the City's decision to deny the proposal by spontaneously deciding that churches should not be allowed in industrial zones is a gross violation of RLUIPA's Equal Terms and Unreasonable Limitations provisions, not to mention a violation of both First Amendment protections for freedom of religion and the Equal Protection Clause. Courts are unlikely to approve of the City's apparent attempt to change the rules in the middle of the game.

Second, because the City has already approved the site for a place of significant assembly—a large riverfront resort—RLUIPA prohibits the City from refusing to approve the Church's proposal on the basis that the resort will be used for religious purposes or that the applicant is a church. Because the City's planner has already made findings that the Church proposal can be approved as consistent with pre-existing and applicable City approval criteria, the City Council's only option is to reverse the Planning Commission's decision and approve the Church's proposal.

Third, the Planning Commission's approach to the Church's application also violates RLUIPA's Unreasonable Limitations provisions. Because existing law expressly allows any use in the Industrial zone that is not a conditional use and that is not declared to be a nuisance, arbitrarily denying the Church's ability to use land in the zone does not meet the federal standard.

Cities that violate RLUIPA face severe consequences. In 2008, for example, a federal court in Maryland prohibited Prince George's County, Maryland, from enforcing its land use regulations against a church and awarded the church a judgment worth over \$3.7 million to be paid by the County.² Similarly, a federal court in Florida struck down a city's land use regulations, ordered city officials, including council members, to

¹ See *Rocky Mountain Christian Church v. Bd. of County Comm'rs of Boulder County*, 605 F.3d 1081 (10th Cir. 2010) (upholding jury verdict); *Rocky Mountain Christian Church v. Bd. of County Comm'rs of Boulder County*, No. 06-cv-00554, 2010 WL 148289, at *7 (D. Colo. Jan. 11, 2010) (\$1,252,327 in fees).

² See *Reaching Hearts Int'l, Inc. v. Prince George's County*, 584 F.Supp.2d 766, 797 (D. Md. 2008). The ruling was upheld by the Fourth Circuit Court of Appeals in March 2010. *Reaching Hearts Int'l, Inc. v. Prince George's County*, No. 08-2281, 2010 WL 724162 (4th Cir. 2010).

undergo sensitivity training, and awarded a Jewish synagogue over \$2 million in damages.³ Multi-million dollar settlements and adjudications are not uncommon for RLUIPA cases.⁴ The City should be careful not to expose itself to significant liability by preventing the Church from using its land in peace.

Moreover, unless the City approves the application in the very near future, the City will incur additional RLUIPA liability for the “delay, uncertainty, and expense” it has caused. *Sts. Constantine & Helen Greek Orthodox Church, Inc. v. City of New Berlin*, 396 F.3d 895, 901 (7th Cir. 2005). Likewise, unnecessary administrative delay can lead to a judicial inference of unlawful hostility towards a religious group. *See id.* (procedural delays gave rise to “whiff of bad faith”).

We therefore advise you to approve the Church’s proposal immediately on the staff approval findings before you and not remand to the Planning Commission.

Please include this letter in the administrative record of the above-captioned matter and forward a copy of the City’s final decision in this matter to me at the address listed above.

Very truly yours,



Eric Rassbach
Deputy General Counsel
The Becket Fund for Religious Liberty

³ *See Hollywood Community Synagogue v. City of Hollywood*, No. 0:04-cv-61212, Dkt. 381 (S.D. Fla. July 5, 2006). The Becket Fund provided the required sensitivity training to city officials at the request of the United States Department of Justice.

⁴ *See, e.g., Westchester Day School v. Village of Mamaroneck*, No. Civ. 02-6291-WCC (S.D.N.Y. 2008) Dkt. No. 100 (settlement for \$4.75 million paid by a village that refused to grant construction permits to an Orthodox Jewish school).