

June 19, 2014

The Education and Certification Committee
The Florida Association of Code Enforcement
C/O The Florida Institute of Government at
The University of Central Florida
12443 Research Parkway, #402
Orlando, FL 32826-3282

Dear Committee Members:

I am submitting the following topic for my legal issue paper for the Committee's approval. My paper will provide an overview of the United States Religious Land Use and Institutionalized Persons Act (RLUIPA) and the Act's effect on land use regulation proposed by the City of Gainesville which led to an investigation by the United States Department of State's Civil Rights Division in 2008. The general issue described by the paper will be the restrictions a federal law places on a local government's zoning and land use regulatory authority.

The Committee's response to my proposal and other correspondence can be emailed to cooperce@cityofgainesville.org or mailed to PO Box 490, Mail Station 10A, Gainesville, FL 32627.

Sincerely,

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FACE Member #7154

The United States Religious Land Use and Institutionalized Persons Act (RLUIPA) and the Act's
Effect on the City of Gainesville, Florida's Land Use Regulation

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Local Governments have long instituted land use and zoning regulations to systematically develop properties within their communities. While some best practices and standards guide the creation of these regulations, they are unique to each jurisdiction and dependent on characteristics of the community such as existing development, natural resources, and the community's long-range idea of what their jurisdiction should include. These rules are set by policy makers and rely on citizen engagement, input from interested parties, and local and state laws guiding the creation of land use and zoning regulations. A large part of the process and one that extends well beyond the creation of land use and zoning regulations, is the belief that land use and zoning cannot be contrary to or violate an individual's or a group's rights as provided by the United States Constitution. In 2000, the United States passes the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) in part to enhance the Constitutional protection given to religious institutions under the First Amendment to the U.S. Constitution. Since its inception, several cases involving RLUIPA have been heard at various levels of the judicial system. The following will review RLUIPA, examine a case involving the City of Gainesville, Florida, and the implication to Gainesville's zoning laws as a result of the case.

President Bill Clinton signed the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc et seq., into law on September 22, 2000. The law is a civil rights law that offers protection to, "individuals, houses of worship, and other religious institutions from discrimination in zoning and landmarking laws ("Religious Land Use and Institutionalized Persons Act"). The impetus for the United States Congress to consider legislation was information gathered during hearings that claimed religious institutions were disproportionately treated and potentially discriminated against by local government imposed land use laws. Information gathered during the hearings went further to claim that religious institutions

practicing minority religions and newly founded churches faced the greatest scrutiny although religious institutions as a whole were seen as being more likely adversely affected than their secular counterparts.

RLUIPA contains five key provisions which provide protections for individual's religious freedoms, houses of worship, and religious based schools. First, RLUIPA allows for religious institutions to serve the needs of their members by limiting zoning restrictions that, "impose a substantial burden on the religious exercise of a person or institution, unless the government can show that it has a compelling interest for imposing the restriction and that the restriction is the least restrictive way for the government to further that interest" ("A Guide to Federal Religious Land Use Protections"). As defined the burden imposed must be substantial and minor or inconsequential issues would not result in a RLUIPA violation. A violation under this provision requires a religious institution to demonstrate an unfair burden, and the local government responsible for the regulation must prove otherwise by showing a rational and compelling reason for the regulation. RLUIPA also protects religious assemblies and institutions from being treated unfairly and must have equal terms to nonreligious places.

RLUIPA provides for protections against discrimination of "any assembly or institution on the basis of religion or religious denomination" ("A Guide to Federal Religious Land Use Protections"). For example, if a religious institution applies for a city permit (building permit, zoning compliance permit, special use permit, etc.) and it can be proven that the permit was denied due to the religious use of the building or property, there may be grounds for a RLUIPA violation. Similarly, the fourth provision does not allow local governments to create zoning ordinances that absolutely exclude religious assemblies. Lastly, governments cannot create a

land use regulation that provides unreasonable limits on religious assemblies, institutions, or structures within their jurisdiction.

While RLUIPA and similar laws are intended to offer protections to institutions and other entities and balance their Constitutional rights with local laws and interests it can create challenges for local governments when crafting land use and zoning regulations. Often these conflicts are inadvertent such as placing restrictions on properties within a certain zoning district which may interfere with a core service or mission of a religious institution. Other times RLUIPA protects against the blatant use of local land use and zoning regulations such as blocking the building of a religious institution based on their denomination.

In 2007, the City of Gainesville, Florida was a party to a case before the United States District Court due to the interpretation and enforcement of special use permit regulations related to services provided by a local religious institution. The following review of this case will illustrate the code interpretation and enforcement as well as the resulting case, settlement agreement and amendments to Gainesville's zoning code related to assembly and religious uses.

Fire of God Ministries is a non-denominational Christian church that has operated in Gainesville since 2001. In 2006, the church leased the site of a former Moose Lodge that had operated as a legal nonconforming use within a single-family residential zoning district and in February of 2006 applied for a zoning compliance permit to continue operation as an assembly hall. Prior to 2006 and presently, there are several churches operating within single-family residential zoning districts within the city. The City of Gainesville denied Fire of God Ministries' zoning compliance permit and the church continued to operate at the location without an approved permit. In September 2006, Fire of God Ministries was cited by the city's Code Enforcement Division for operating without the required permits and given 60 days to obtain a

special use permit or face fines of \$100 per day until found to be in compliance. The action taken ultimately led to fines being assessed on the church and administrative costs related to the prosecution and Code Enforcement Board hearing. Fire of God Ministries subsequently appealed the city's interpretation of their code to the city's Board of Adjustment. The Board of Adjustment denied the church's appeal and the hearing included citizen opposition to Fire of God Ministries operating in their neighborhood. Fire of God Ministries continued their appeal to the United States Department of Justice and the United States District Court based on the portion of RLUIPA that prohibits treating religious institutions differently from non-religious institutions based on the fact that the property's previous use was a non-religious assembly. Their appeal also claimed the city violated the church's Free Exercise Clause of the First Amendment and the Equal Protection Clause of the Fourteenth Amendment.

The City of Gainesville and Fire of God Ministries eventually entered into court ordered mediation to resolve the dispute. Ultimately the City of Gainesville and Fire of God Ministries entered into a settlement agreement in September of 2007. The first action taken by the City of Gainesville was to issue a zoning compliance permit to comply with RLUIPA (Radson). Subsequently, both parties negotiated and agreed to a settlement agreement. First, Fire of God Ministries, Inc. agreed to conditions that were associated with its use of their property, which were the same conditions that they would have had to comply with if they had obtained a special use permit. Second, the City of Gainesville agreed to pay Fire of God Ministries, Inc. some of their attorney fees and other costs associated in the case totaling \$30,000 and the City of Gainesville waived and/or reimbursed other related costs totaling approximately \$560 (Radson). The \$560 included \$227.97 assessed in connection to the Code Enforcement Board case and the \$330.75 fee paid to the City of Gainesville to appeal the Code Enforcement Board decision to the

Board of Adjustment. The final action prescribed by the settlement agreement was for the City of Gainesville to file an affidavit of compliance for the associated Code Enforcement Board case and dismiss the case without assessing any fines or fees.

Following the completion of the settlement agreement between the City of Gainesville and Fire of God Ministries, Inc. the city initiated a petition to the City's Plan Board to make changes to the City's Land Development Code to bring it into accordance with the Religious Land Use and Institutionalized Persons Act. The proposed amendments generally considered places of religious assemblies at least equal to non-religious places of assembly or institutional uses. The significant changes to the land development code included:

Allowing places of religious assembly as a use by right in most non-residential districts instead of by special use permit or not at all so that they are treated on equal terms as other similar assembly or institutional uses.

Allowing public schools as a use by special use permit instead of by right in single-family zoning districts so that all assembly or institutional uses are treated equally in that district.

Allowing public schools, private schools and places of religious assembly as a use by right in all residential low, medium and high density residential districts so that they are all treated equally.

Deleting membership and assembly types use from the industrial districts, so that all such uses are equally prohibited.

Changing the requirements for landscaping, parking, gateway street district, and nature park district so that all membership and assembly uses are treated equally.

Changing the requirements for places of religious assembly, a “specially regulated use,” so that they are at least equal to other assembly or institutional uses (2008 Gainesville City Commission Item).

The process used by the City of Gainesville included meetings before the City Commission’s Community Development Committee, a review and recommendation from the City’s Plan Board, multiple hearings before the City Commission, and the solicitation of input from stakeholder groups and interested parties. Additionally, the City provided updates to the United States Department of Justice summarizing the City’s efforts.

There have been several cases for failure to abide by the Religious Land Use and Institutionalized Persons Act. These cases can be found across the United States and find potential discrimination based on land use and zoning regulations against a variety of religious denominations including Sikh, Hasidic Jews, Orthodox Jews, Muslims, and Christians. The U.S. Department of Justice’s *Report on the Tenth Anniversary of the Religious Land Use and Institutionalized Persons Act*, describes a 2005 case in Florida against the City of Hollywood due to the denial of a permit for an Orthodox Jewish synagogue to be located within a residential neighborhood even though, it was alleged, that this type of permit was regularly granted to other houses of worship. The suit resulted in the permit being granted as well as training for city officials and payment of \$2 million for damages and attorneys’ fees. In several cases, similar to Gainesville and Hollywood, the activity that was denied or overburdened was allowed to take place. Additionally, land use and zoning laws were required to conform to RLUIPA provisions and steep attorneys’ fees and damages were paid to the plaintiff.

From its inception, local government’s land use and zoning laws have been evolving in an attempt to reach a compromise between the general public’s interest and the desires of

property owners to use and develop their properties. Since the landmark United States Supreme Court Case Village of Euclid, Ohio v. Ambler Realty Co., which is seen as validating the use and enforcement of land use and zoning laws, cities and counties have used such regulation to allow development and land use in a manner perceived as best suited for their communities. While cases like Euclid v. Ambler were seen as bolstering land use and zoning laws nationwide, laws such as RLUIPA were created to provide protection of Constitutional rights potentially threatened by this type regulation. Code enforcement professionals are tasked with enforcing their jurisdiction's ordinances fairly, with due process, and with a responsibility to uphold each individual's Constitutional rights. A code enforcement officer's understanding of laws like RLUIPA and having an awareness of potential conflicts between local regulations and the Constitutional rights of each citizen will not only benefit their community but may also prevent their jurisdiction from legal action, additional scrutiny, and hefty financial loss.

Works Cited

City of Gainesville, Florida. *City Commission Meeting Item #070619 Version 4*. 24 March 2008.

Radson, Marion J. "Fire of God Ministries, Inc. v. City of Gainesville Case No.: 1:06-CV-188-SPM-AK – U.S. District Court." Memo to Mayor and City Commissioners, Gainesville, Florida. 24 September 2007. E-mail.

"Religious Land Use and Institutionalized Persons Act." *Religious Land Use and Institutionalized Persons Act*. 6 August 2015. Web. 7 January 2016.

United States Department of Justice. *Protecting the Religious Freedom of All: Federal Laws Against Religious Discrimination*. June 2005. <<http://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/religiousfreedom.pdf>>

United States Department of Justice. *Report on the Tenth Anniversary of the Religious Land Use and Institutionalized Persons Act*. 22 September 2010. <http://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/rluipa_report_092210.pdf>