



## STAFF REPORT

**TO:** Board of Zoning Adjustment (BZA)

**DATE:** May 13, 2016

**RE:** Case No.16-101BZA - A request for an Appeal of an Administrative Decision pursuant to Section 151-3.15 of the Clay County Land Development Code pertaining to the two (2) written interpretations given on March 30<sup>th</sup>, 2016, regarding to 1). Whether or not College or University as used in the Code and permitted by right in C-3 zoning includes dorms or residence halls; 2). and whether or not under Religious Assembly, Mega etc., in the definition includes any kind of residential option like homeless shelter, staff housing, parsonage, or other use typical of many churches, synagogues, mosques, and monasteries. The applicant is Doug Perry, The Church of Liberty, representing Millin Co., LLC.

**Contact:** Doug Perry, The Church of Liberty, representing Millin Co, LLC

**Appellant 1:** Doug Perry, The Church of Liberty, representing Millin Co, LLC

**Appellant 2:**

**Site Location:** Approximately 14518 Old Quarry Road

S33 & 34 | T53 | R30

**Site Size:** 67.72+ acres

**Existing Land Use and Zoning:** Community Services District (C-3)-38.39+ Acres & Agricultural (AG)-29.332 + Acres

**Zoning History:** Conditional Use Permit (CUP)- Case-Feb.98-109CUP, Res# 99-284, 07/12/1999 (*Tomorrow's Gun Range Today, LLC*) Rezoning case- July 03-149 RZ, Res.# 2003-397, 08/25/2003(*Inferno Extreme Park-Paintball*), Rezoning case-Sept. 15-136RZ, Res#2016-51, 02/29/2016 (*Liberty Farm PUD*)-{proposed approx.. 6 acres of C-3 to R-SDM with PUD overlay—DENIED}

**Surrounding Land Use and Zoning:**

**North** – Rocky Hollow Park (abutting), Watkins Ridge (R-1A), AG and R-1 zoned land

**East** – Stockwell Acres 2005 (R-1A/AG), Stein Addition 2005 (R-1A), AG zoned land (AG), City of Excelsior Springs (approx. ¾ mile)

**South** – AG zoned land, City of Excelsior Springs (approx. ¼ mile)

**West** – Jeremy Acres (R-1A), Rocky Hollow 2<sup>nd</sup> Plat (R-1A/AG), Rocky Hollow (R-1), AG zoned land

### CURRENT CONDITIONS



Courtesy Clay County Assessor GIS Mapping



Courtesy Microsoft® Bing™

**REVIEW**

Doug Perry, of The Church of Liberty (henceforth referred to as “TCOL”) representing owners Millin Co, LLC (appellant). The property is located at 14518 Old Quarry Road, and is approximately 67.72± acres. The subject property is zoned Community Services District (C-3) approximately 38.39 acres and Agricultural (AG) approximately 29.332 acres, as shown on *Attachment B*.

The appellant has requested an appeal of the Manager’s administrative decision of a Clay County Planning & Zoning Department Manager’s written interpretation pursuant to Section 151-3.14 (E) of the 2011 Clay County Land Development Code (LDC). [See *Exhibit C*]

**Appellant’s request, February 6, 2016 [See *Exhibit C*]:**

1. Request for written interpretation “whether or not etc under Religious Assembly, Mega on page 266 of the Code includes any kind of residential option like homeless shelter, staff housing, parsonage, or other use typical of many churches, synagogues, mosques, and monasteries”.

This definition is located in **Section 151-15.1 Definitions of the LDC**, specifically;

*Page 266*

Religious Assembly, Mega	A place of religious assembly that contains parking for more than 300 cars or sanctuary seating for more than 450 persons, and may also have accessory uses such as gymnasiums, school classes during the week, day care, etc.
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**Manager’s response, March 30, 2016 [See *Exhibit B*]:**

A residential use is not included in the accessory uses of a Religious Assembly, Mega.

**Appellant’s request, February 6, 2016 [See *Exhibit C*]:**

2. Request for written interpretation of the “whether or not College or University as used in the Code and permitted by right in C-3 Zoning district includes dorms and residence halls or not”.

This definition is located in **Section 151-15.1 Definitions of the LDC**, specifically;

*Page 254*

College and University Facility	An educational institution or other institutions of higher learning that offer courses of general or specialized study leading to a degree.
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**Manager’s response, March 30, 2016 [See *Exhibit B*]:**

Dorms and residence halls are not permitted by right in C-3 zoning districts.

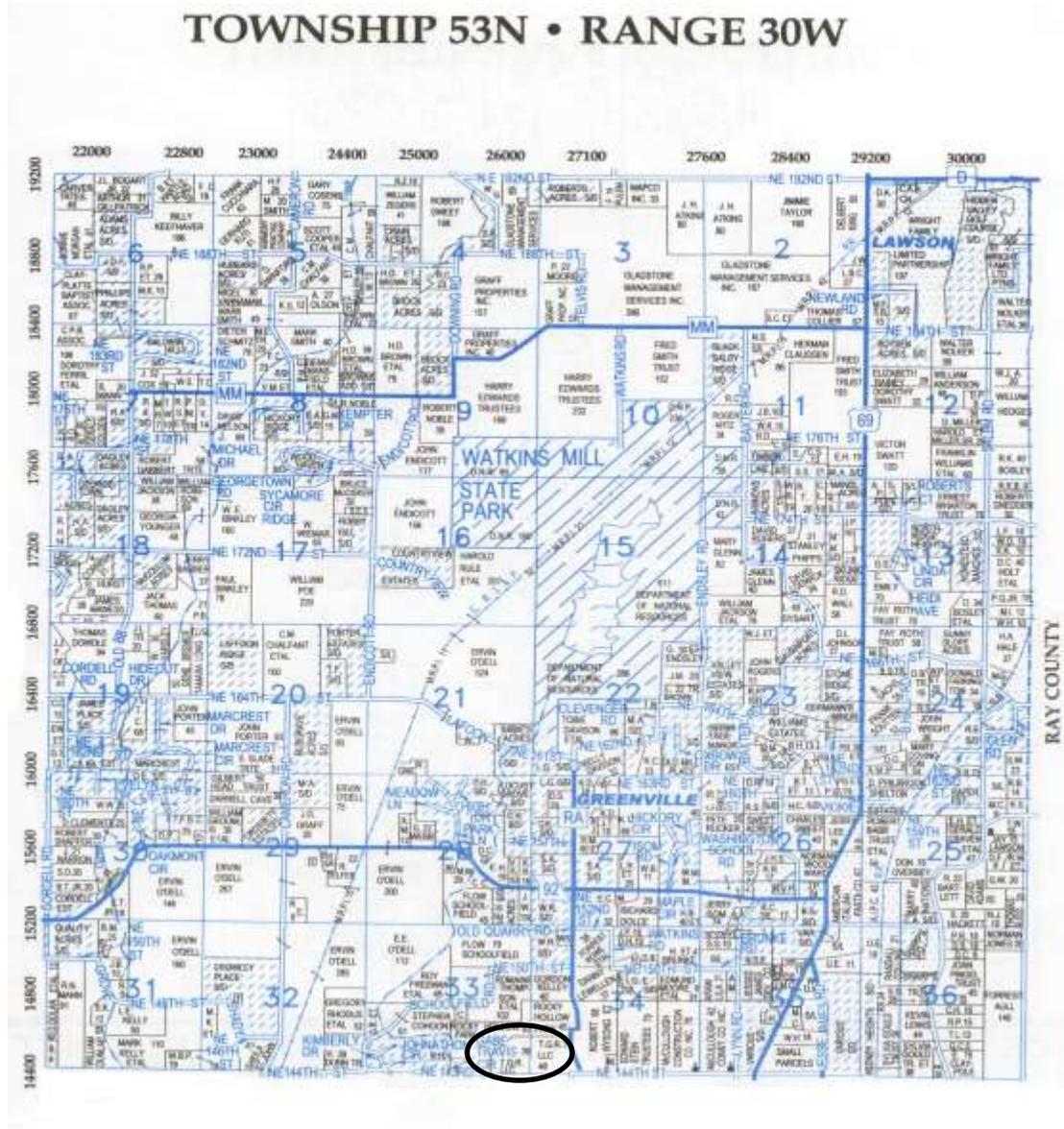
**The BZA may:**

- **AFFIRM the Manager’s Administrative Decision as to Written Interpretation #1**
- **REJECT the Manager’s Administrative Decision as to Written Interpretation #1**
- **MODIFY the Manager’s Administrative Decision as to Written Interpretation #1**
- **AFFIRM the Manager’s Administrative Decision as to Written Interpretation #2**
- **REJECT the Manager’s Administrative Decision as to Written Interpretation #2**
- **MODIFY the Manager’s Administrative Decision as to Written Interpretation #2**

# 16-101BZA – 14518 Old Quarry Rd

## Appeal of Administrative Decision

### Attachment A – Vicinity Map



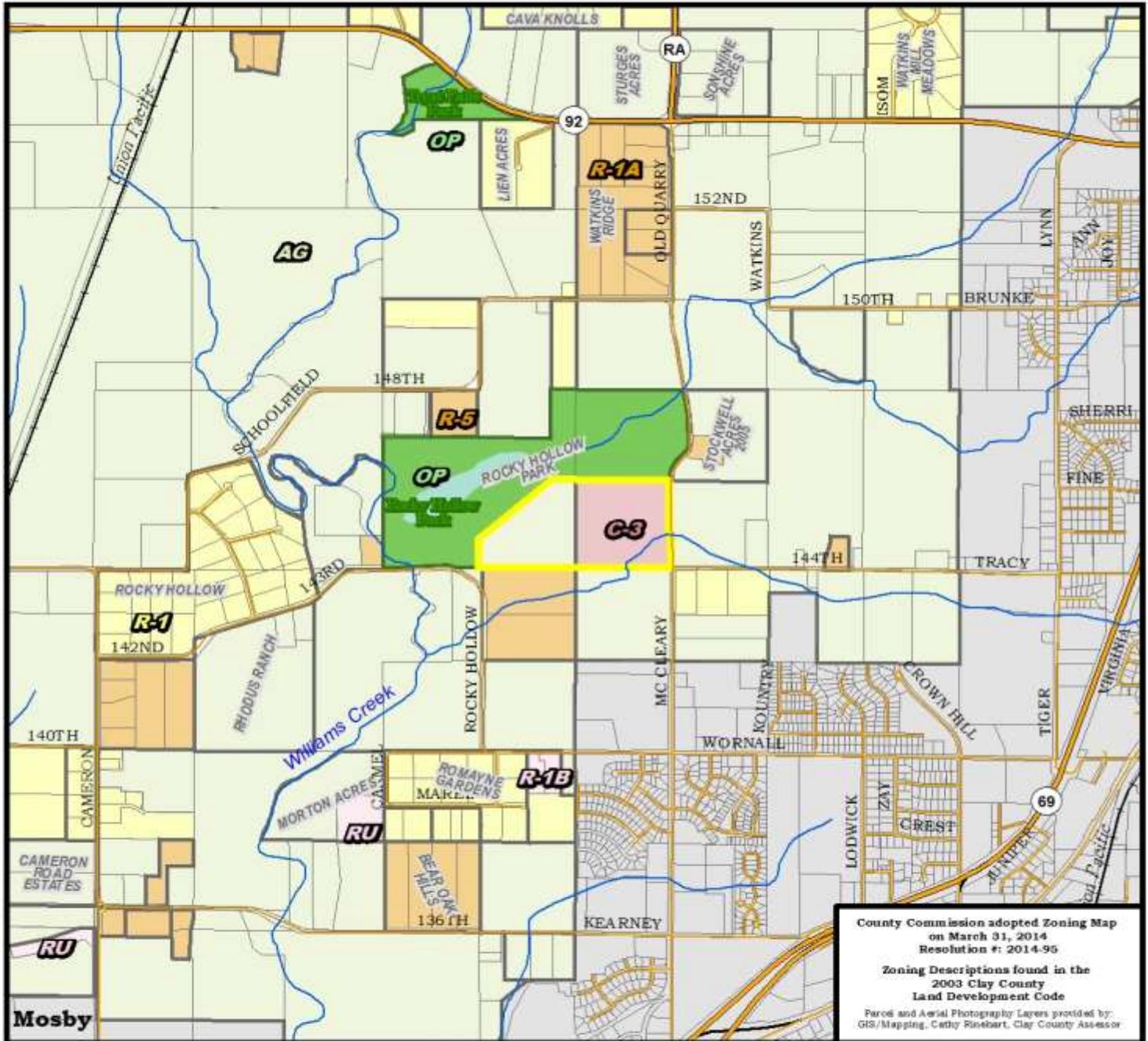
ADDRESS: 14518 Old Quarry Rd, Excelsior Springs, MO  
 FROM Clay County Courthouse go east on E Kansas St turn Left on N Lightburne St/MO 33  
 Turn Right onto US-69N 9 miles  
 Turn Left on S McCleary Rd 1.6 miles

**Destination will be on the Left**

# 16-101BZA – 14518 Old Quarry Rd

## Appeal of Administrative Decision

### Attachment B - Existing Conditions Map



County Commission adopted Zoning Map on March 31, 2014  
 Resolution #: 2014-95

Zoning Descriptions found in the 2003 Clay County Land Development Code

Parcel and Aerial Photography Layers provided by: GIS/Mapping, Cathy Risehart, Clay County Assessor

Map Document: (G:\GIS\Projects\_Files\vacinity Map - 8 x 11 P.mxd) 06/13/2016 -- 12:29:18 PM

**Planning & Zoning Department**

**LEGEND**

<ul style="list-style-type: none"> <li><span style="border: 1px solid yellow; display: inline-block; width: 15px; height: 10px; margin-right: 5px;"></span> Property Line</li> <li><span style="color: blue; font-weight: bold;">~</span> Streams (EPA)</li> <li><span style="color: red; font-weight: bold;">~</span> Railroads</li> </ul>	<ul style="list-style-type: none"> <li><span style="color: blue; font-weight: bold;">~</span> Interstates</li> <li><span style="color: orange; font-weight: bold;">~</span> State Highways</li> <li><span style="color: yellow; font-weight: bold;">~</span> Local Roads</li> <li><span style="color: black; font-weight: bold;">~</span> Highway Ramps</li> </ul>	<ul style="list-style-type: none"> <li><span style="border: 1px solid gray; display: inline-block; width: 15px; height: 10px; margin-right: 5px;"></span> Subdivisions</li> <li><span style="background-color: gray; display: inline-block; width: 15px; height: 10px; margin-right: 5px;"></span> 2016 City Limits</li> <li><span style="background-color: green; display: inline-block; width: 15px; height: 10px; margin-right: 5px;"></span> Parks</li> <li><span style="border: 1px solid black; display: inline-block; width: 15px; height: 10px; margin-right: 5px;"></span> County Boundaries</li> </ul>	<p><b>Zoning Districts</b></p> <ul style="list-style-type: none"> <li><span style="background-color: #d9ead3; display: inline-block; width: 15px; height: 10px; margin-right: 5px;"></span> AG</li> <li><span style="background-color: #fff2cc; display: inline-block; width: 15px; height: 10px; margin-right: 5px;"></span> R-1</li> <li><span style="background-color: #fce4d6; display: inline-block; width: 15px; height: 10px; margin-right: 5px;"></span> R-1A/R-5</li> <li><span style="background-color: #f4cccc; display: inline-block; width: 15px; height: 10px; margin-right: 5px;"></span> R-1B/RU</li> <li><span style="background-color: #e1f5fe; display: inline-block; width: 15px; height: 10px; margin-right: 5px;"></span> R-3</li> <li><span style="background-color: #f4cccc; display: inline-block; width: 15px; height: 10px; margin-right: 5px;"></span> C-1</li> <li><span style="background-color: #fce4d6; display: inline-block; width: 15px; height: 10px; margin-right: 5px;"></span> C-2</li> <li><span style="background-color: #f4cccc; display: inline-block; width: 15px; height: 10px; margin-right: 5px;"></span> C-3</li> <li><span style="background-color: #f4cccc; display: inline-block; width: 15px; height: 10px; margin-right: 5px;"></span> I-1</li> <li><span style="background-color: #f4cccc; display: inline-block; width: 15px; height: 10px; margin-right: 5px;"></span> I-2</li> <li><span style="background-color: #d9ead3; display: inline-block; width: 15px; height: 10px; margin-right: 5px;"></span> OP</li> </ul>
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# **16-101BZA – Appeal of Administrative Decision**

Exhibit A – Appellant Request for Written Interpretation (3 pages)

## **The Church of Liberty**

118 N. Conistor, #B251, Liberty, MO 64068 – 816-255-5766  
[help@thechurchofliberty.com](mailto:help@thechurchofliberty.com) – [www.TheChurchOfLiberty.com](http://www.TheChurchOfLiberty.com)

To: Kevin Graham, Clay County Attorney  
From: Doug Perry, The Church of Liberty  
Date: February 6, 2016  
Re: Official written clarification of Land Development Code language

We have reached an impasse with the Zoning staff on a specific point in the Code that will require clarification by Counsel. We are requesting a written clarification on this point as quickly as possible as it may affect a lot of other decisions about our zoning requests and other issues before the County.

We have said from the very beginning that “The Liberty Farm” was to be a teaching and training institution, that people were coming there to; A) be a Church, B) live and work together, C) learn how to do Permaculture, Vermiculture, Aquaponics, Hydroponics, power generation, animal husbandry, mission training and many other things SO THAT we can go teach people in other places and set up farms where they are needed. This is “Missional Agriculture” and many denominations train people specifically in these areas. We also are a non-profit church that has the right and privilege to train ministers, to license and ordain, to offer certificates or degrees to those who complete a program of study that we have designed and approved.

The two questions that we are asking are, first, whether or not the “etc” under “Religious Assembly, Mega” on page 266 of the Code includes any kind of residential option like homeless shelter, staff housing, parsonage or other use typical of many churches, synagogues, mosques and monasteries. We note the Little Sisters of the Lamb convent in KCK, the Rime Buddhist Center & Monastery, Forest Avenue Church and Grand Avenue Temple that both have shelters. (All in KCMO). All of these are simply zoned “Church.” We believe that we have a right not manifest “church” as we are directed by our faith – and that means living together, working together and worshipping together.

The second question is whether or not “College or University” as used in the Code and permitted by right in the C-3 Zoning district includes dorms and residence halls or not. And if not, WHERE are examples of Colleges and Universities that have their property split up into different zoning codes for each separate building or block of buildings on their campus.

Here is every mention of “College” or “University” in the Code.

On Page 95 it says that "College or University" is a permitted by right in the C-3 zoning.

On Page 254 it describes this term as: "College and University Facility – An educational institution or other institutions of higher learning that offer courses of general or specialized study leading to a degree.

On Page 197 it says that Colleges require "Schedule C" of the parking code because it's difficult to determine the exact parking needs without more information. Some of the considerations in Item 4 on Page 199 are "employees, students, residents or occupants,..." To us that means that "residents" **are one of the projected possibilities.**

These are the only mentions of "College or University" in the Code except for a mention on Page 253 under "Business or Trade School" which says "A use providing education or training in business, commerce, language or other similar activity or occupational pursuit, and not otherwise defined as a home occupation, college, university, or public or private educational facility." Business or Trade School is permitted by right in C-1 and C-2.

On Page 258 there is an item "Group Residential" that says: "The residential use of a site for occupancy by group of more than six persons not defined as a family, on a weekly or longer basis. Typical uses include occupancy of fraternity or sorority houses, dormitories, residence halls, boarding houses or fraternal orders." This category shows up on Page 95 as permitted by right in C-1, while Group Home is permitted in C-2 and C-3 with a Conditional Use Permit.

Further, despite that there is a "Residential" category on Page 95, we would argue that, for example, there are other "Residential" uses under "Civic/Institutional" such as; Convalescent Center, Detention Facility, Hospital, and Residential Treatment Facility. There are also "Residential" uses under the Commercial category on Page 96, such as; Bed and Breakfast, Cabins/Rental, Campground/RV Park, and Hotel-Motel. There are also "Residential" uses under the "Agricultural and Other Uses" category on Page 97, such as; Accessory Apartment, Accessory Dwelling Units and Accessory Guest House. Some of these uses may be temporary, but there are those that certainly could be long-term, such as Convalescent Center, Detention Facility, Residential Treatment, Accessory Dwelling Units, etc. Some of the categories under "Residential" could be just as transient (Transitional Housing, Congregate Living, Retirement Housing) – or more so – than categories listed in other areas (College, Detention Facility, Residential Treatment Facility, Accessory Dwelling Unit, etc.)

We believe that the main property of a College or University that is zoned C-3 would typically include residence halls on the property and would NOT be subdivided into separate lots that were zoned independently for the power plant, the bookstore, the cafeteria, the residence halls, the offices, the classrooms, etc. We believe that the separate "Group Residential" (permitted in R-SDM or C-1) designation would be for a property that was not already included on the C-3 property, such as a fraternity house across town or owned by the fraternity themselves but not on the main campus of the College or University.

There are no examples in rural Clay County, but William Jewell is clearly ONE large Commercial property (with the exception of the cemetery). One might say that it was grandfathered in, having been there so long, but even the new fraternity complex (and the baseball fields) are zoned the same as the main campus, not any special residential district code. They are simply Commercial – School. Even the President's house. Using the GIS mapping of Jackson County, we note that the same is true of Avila University and Rockhurst University. In the case of UMKC, there seem to be multiple lots acquired at different times, but they are all zoned the same “School-Private” whether classrooms or residence halls. Catholic colleges like Rockhurst, Benedictine, St. Mary in Leavenworth and many others would include housing for professional religious staff (priests, monks & nuns) EVEN IF the College itself were not residential.

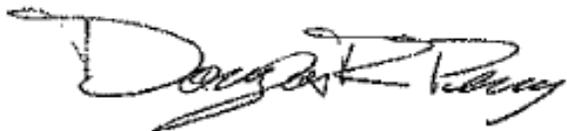
This leads us to believe that a College or University is permitted by right in a C-3 district and that a “typical” College or University would include dormitories or other housing on site and that, while the language of the Code is non-specific, that this is the accepted norm and to be expected.

We also feel strongly that Clay County is looking through a lens and enforcing a particular flavor of church (Sundays/Wednesday, non-residential) and that by so doing, is violating the establishment clause. The definitions in the Code list those things which SOME PEOPLE associate with “church” - but to use that list as definitive and final is to seriously hamper the faith of MANY different religions who might do things in “church” that aren't on your list.

The C-3 Zoning allows for all kinds of residential housing, even long-term housing like Detention Centers or Convalescent Centers or Congregate Living. We fail to see where the State has a compelling interest then in eliminating such usages from Church or College in C-3. We would refer you to other local examples like St. John Catholic Church in Liberty that houses staff, or Little Sisters of the Lamb convent and chapel in KCK, or Reim Buddhist Center & Monastery, or Grand Avenue Temple homeless shelter, or Forest Avenue Church family shelter (all in KCMO) or Mount St. Scholastica convent and chapel in Atchison. As far as we can tell from our research, these are just zoned “Church.”

Again, we appreciate your timely consideration and written response to this question, as it affects our current rezoning efforts and subsequent legal decisions about how to proceed. We see a strong likelihood that the result of the current track may have to be an RLUIPA federal lawsuit against the County and we'd like to avoid that if at all possible. This might be the best option to allow us quiet enjoyment of our property.

Thanks again for your consideration of this issue,



Douglas R. Perry  
Senior Pastor & Founder  
The Church of Liberty  
The Liberty Farm

# 16-101BZA – Appeal of Administrative Decision

Exhibit B – Manager’s Written Interpretation (1 page)



## Clay County, Missouri

Planning and Zoning

234 West Shrader, Suite C  
Liberty, Missouri 64068-2448

March 30<sup>th</sup>, 2016

Mr. Doug Perry  
The Church of Liberty  
118 N. Conlston Unit B251  
Liberty, MO 64068

*Kipp Jones*  
Manager

*Debbie Viviano*  
Planner

*Alex Kunellis*  
Building Inspector

Mr. Perry,

The Clay County Planning and Zoning Department received your request for written interpretations concerning two sections of the 2011 Land Development Code on March 2nd, 2016. This letter serves as the written interpretation to your inquiries.

There were two specific requests for interpretation.

1. Request for written interpretation "whether or not etc under Religious Assembly, Mega on page 266 of the Code includes any kind of residential option like homeless shelter, staff housing, parsonage, or other use typical of many churches, synagogues, mosques, and monasteries". A residential use is not included in the accessory uses of a Religious Assembly, Mega.

2. Request for written interpretation of the "whether or not College or University as used in the Code and permitted by right in C-3 Zoning district includes dorms and residence halls or not". Dorms and residence halls are not permitted by right in C-3 zoning districts.

If you have any questions or concerns, please contact Kevin Graham at (816) 792-0500.

Respectfully,  
Planning and Zoning Department

---

Kipp Jones

CC File: Nicole Brown, Assistant County Administrator  
Kevin Graham, County Counselor

# 16-101BZA – Appeal of Administrative Decision

Exhibit C – Appeal Request Packet (1 of 27 pages shown)

## APPEAL OF ADMINISTRATIVE DECISION CLAY COUNTY BOARD OF ZONING ADJUSTMENT

A SUPPLEMENTARY INFORMATION FORM MUST BE COMPLETED AND ATTACHED TO THIS APPLICATION

**NON-REFUNDABLE:**

Fees:  $\frac{\$ 250.00}{\text{Filing Fee}}$  +  $\frac{\$ 80.00}{\text{Publication Legal Notice}}$  +  $\frac{NA}{\text{Special Deposit (if applicable)}}$  +  $\frac{94^{26}}{\text{Certified Mail Postage (\$ Adj. x Rate)}}$  -  $\frac{\$ 424^{36}}{\text{Total}}$

\*Note: The filing fees (plus required postage for certified mail) must accompany this application, by check or money order payable to the "Clay County Treasurer." The applicant must submit the names and addresses of all property owners within a 1,000 foot radius of the subject property boundaries.

Appellant 1: JERRY PERZY - THE CHURCH OF LIBERTY

Address: 118 N. CONISTOR STREET LIBERTY MO 64068  
Street City State Zip

Telephone: (816) 255-5766 (816) 929-4466 ( )  
Home Work Fax

Appellant 2: \_\_\_\_\_

Address: \_\_\_\_\_  
Street City State Zip

Telephone: ( ) ( ) ( )  
Home Work Fax

Address of subject property: 14518 Old Quarry Rd.  
Legal description of property must be attached

*\*Additional sheets may be attached\**

Give a brief statement setting forth the legal interest of each of the appellants in the building or the land involved in the appealed decision. If property owner is a corporation, appellant must be an officer of the corporation and must attach certification of corporate office held to this application. (If applicant is a representative of the appellant(s), an owner's authorization must be attached.)

See Attached.

Give a brief statement, in ordinary and concise language, of the specific decision protested, together with any material facts claimed to support the contentions.

See Attached.

Give a brief statement, in ordinary and concise language, of the relief sought, the reasons why it is claimed, and why the protested decision should be reversed, modified or otherwise set aside.

See Attached

I hereby affirm that the above statements and representations are true and correct. All participating appellants must sign.

Signature(s): [Signature] Date: 9-22-16  
Date: \_\_\_\_\_

Last Revised: 06/19/2012



**SUPPLEMENTARY INFORMATION I**  
**Clay County Planning & Zoning**

Application Date: 4-25-16  
Application Name: THE CHURCH OF LIBERTY APPEAL OF WRITTEN INTERPRETATION  
Contact Person: TRONG PERRY  
Phone: H) 816-255-5766 B) 916-929-4966 C) \_\_\_\_\_ F) \_\_\_\_\_  
Property Owner: MUNICIPALITY ADVANCING FOR THE CHURCH OF LIBERTY

Desired Use of Subject Property: CHURCH - w/RESIDENTIAL COMPONENTS

Anticipated Time Needed for Presentation at Hearings:

BOARD	TIME REQUESTED
Planning and Zoning Commission:	_____ hours
Board of Zoning Adjustment:	<u>2.5</u> hours
County Commission:	_____ hours

List of witnesses (attach an additional sheet, if needed):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

List of exhibits (attach an additional sheet, if needed):

Letter  
OWNER AUTHORIZATION  
KIPP JONES WRITTEN INTERPRETATION  
DALANCA VS ANN ARBOR  
CITY OF MPLS VS CHURCH UNIVERSAL & TRUMPET  
LIGHTHOUSE RESCUE MISSION VS HATTIES BORO, MS

Additional comments or information (attach an additional sheet, if needed):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Truong Perry  
(Applicant's Name)

4-25-16  
(Date)

**DO NOT WRITE BELOW THIS LINE**

Special Deposit: \_\_\_\_\_ Date Deposited: \_\_\_\_\_

Revised: 11/20/03

\*Attach to Applications for Amendment to Zoning Map, CUP or BZA

**Owner's Authorization**

This form must be submitted when the applicant for one of the below actions is not the actual owner of the property involved. No application will be accepted without this form being complete.

I, Millin LLC, do hereby authorize  
(Owner's name)

Doug Perry - The Church of Liberty, to apply for the following action(s):  
(Applicant's name)

Rezoning from C-3 to R

Preliminary/Final Plat

Conditional Use Permit PUD

Board of Zoning Adjustment (BZA) Action

Temporary Use/Sign Permit

on my property legally described as: ( description attached) 14518 Old Quarry Rd.  
Excelsior Springs, MO.

This authorization is valid through 09/30/2016. If the requested action is not complete at this end of this time period, another authorization must be submitted before the application may be considered further.

1-28-16  
(Date)

Philip Linger  
(Owner's Signature)

\_\_\_\_\_  
(Owner's Signature)

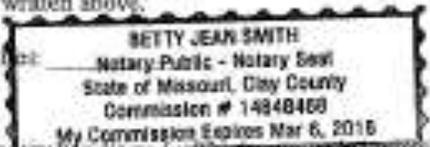
Attest:

STATE OF MISSOURI )  
County of Clay )

On this 28 day of 28, 2016, before me, the undersigned Notary Public, personally appeared Philip Linger, to me know to be the person(s) described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at my office in Clay County, Missouri the day and year last written above.

My term expires:



Betty Jean Smith  
Notary Public

Owner's Authority Expires: 09/05/2012  
Edited by M&T

Clay County, Missouri  
Planning & Zoning Department

# The Church of Liberty

118 N. Conistor, #B251, Liberty, MO 64068 – 816-255-5766  
[help@thechurchofliberty.com](mailto:help@thechurchofliberty.com) – [www.TheChurchOfLiberty.com](http://www.TheChurchOfLiberty.com)

To: Board of Zoning Adjustment  
From: Doug Perry, The Church of Liberty  
Date: April 10, 2016  
Re: Appeal of Staff

We have asserted from the very beginning of our discussions with Zoning staff that there is something deeply flawed in the Clay County Zoning Code that; 1) makes no allowances for who we are and what we need to do , and, 2) violates our civil rights. We have tried every available avenue to navigate through the Zoning process and found nothing but denials. We never wanted this to turn into a federal civil rights lawsuit, but we fear that it may if the County can't find a way to see the reality that there are holes in the Code.

We are a Church that has purchased a piece of property (14518 Old Quarry Road) where we can have "church." (The previous owners, Millin Co. are financing the purchase short-term. See authorization attached.) For us that means living in community, BEING a church daily and together – as we have been doing for over a decade. We have said from the very beginning that "The Liberty Farm" was to be a teaching and training institution, that people were coming there to; A) be a Church, B) live and work together, C) manage our outreaches (internet/radio, etc.), D) learn how to do Permaculture, Animal Husbandry, Aquaponics, Hydroponics, power generation, mission training, ministry/pastoral training and many other things SO THAT we can go spread the Gospel, teach people in other places and set up farms where they are needed. Besides being a place where we can live out what we see in the Book of Acts, living together and worshiping together - this is also "Missional Agriculture" and many denominations train people specifically in these areas. We are an acknowledged non-profit church that has the right and privilege to train ministers, to license and ordain, to offer certificates or degrees to those who complete a program of study that we have designed and approved. This issue at hand has nothing to do with farming – we're approved for that and already doing it. It all has to do with our ability to residentially occupy the land as a Church (or even as a college/seminary).

We believe strongly that the Code is violating the Establishment Clause of the U.S. Constitution by defining HOW we manifest "church" and forcing us into a "Sunday and Wednesday Night" model – despite that there are examples all around of convents, monasteries, shelters, priest quarters, personages and many other historically granted ways that a "church" might manifest. There are over 1,000 Christian "intentional communities" in the world where the "church" lives together on a piece of land ([www.ic.org](http://www.ic.org)). And that's just Evangelicals, not including all the Catholic versions! We would also refer you to the cases of DiLaura vs Township of Ann Arbor, Lighthouse vs Hattiesburg and City of Minneapolis vs Church Universal and Triumphant (see attached) as cases invoking the Religious Land Use and Institutionalized Persons Act (RLUIPA, see attached). In some cases, the cost to the city in the end was quite substantial.

We believe that somewhere along the way, the Zoning Code has gotten things backward. The Zoning Code seems to make it our responsibility to prove why we should be allowed to use our land as we see fit according to our faith – and to prove why what we want to do will be good for Clay County. And yet, the Constitution works in the completely opposite direction – as does RLUIPA. Under RLUIPA it is the clear responsibility of the state (Clay County) to prove why it has a “compelling interest” in limiting the religious expression of a church on its own land.

*“By passing RLUIPA, Congress conclusively determined the national public policy that religious land uses are to be guarded from interference by local governments to the maximum extent permitted by the Constitution.”*

Cottonwood Christian Ctr., 218 F. Supp. 2d at 1230 (granting a preliminary injunction).

RLUIPA also makes it clear that there can be no discriminatory policy that allows secular uses, but not religious and that the state is not to place a “substantial burden” on churches, particularly unfamiliar new movements, that would prevent them from exercising their faith. We feel strongly that our civil rights have been violated, and are daily being violated continually as we are kept from living out our faith in community on our land. We believe that the County HAS placed a “substantial burden” - to the degree that it's unlikely, through the current processes and the bias shown against us by neighbors and other actors, that we will EVER succeed through the current Zoning system. We have also spent many thousands of dollars – that we can't afford – to try to comply with every request, only to be denied with prejudice and in some cases, having our due process rights violated. This is exactly why RLUIPA was written and it is the applicable law of the land in this case, not the Clay County Zoning Code.

We asked the Zoning Director for written clarification on whether or not “Religious Assembly” would include homeless shelter, staff quarters, or even parsonage. Their response (see attached) was that the Code makes no allowance for any residential component for “Church.”

While not in rural Clay County, there are examples all over in the nearby area that would contradict this, including:

- St. John's Catholic Church in Liberty, Holy Family in Gladstone, St. Andrew the Apostle in Gladstone, St. Charles Borromeo Parish in Kansas City North, St. Ann Parish in Excelsior Springs (All in Clay County and all have Priest's quarters.)
- The Little Sisters of the Lamb Convent (36 S Boeke St, KC, KS – zoned “Church”)
- Rime Buddhist Monastery (700 W. Pennway, KC, MO – zoned “Commercial Improved”)
- Convent of Christ the King (1409 E Meyer Blvd, KC, MO – zoned “Church”)
- St. Therese Convent & Hogan Academy (1919 E 58th St, KC, MO – zoned “Church”)
- Sisters of St. Francis (2100 N Noland Rd, Independence, MO – zoned “Church”)
- Saint Michael Monastery (KC, KS – zoned “Church”)
- Forest Avenue Church & Family Shelter (4300 Forest Ave, KC, MO – zoned “Church”)
- The Lighthouse Homeless Shelter (3212 Central, KC, MO – zoned “Office Building”)
- and many others.

We also asked the Zoning Director for clarification on whether or not "College or University" as used in the Code and permitted by right in the C-3 Zoning district would include dorms and residence halls, staff housing, president's house or any other residential option – and if not, WHERE are examples of Colleges and Universities that have their property split up into different zoning codes for each separate building or block of buildings on their campus. Staff response was that the Code makes no allowance for residence halls or any residential component for "College or University."

Here is every mention of "College" or "University" in the Code.

On Page 95 it says that "College or University" is a permitted by right in the C-3 zoning.

On Page 254 it describes this term as: "College and University Facility – An educational institution or other institutions of higher learning that offer courses of general or specialized study leading to a degree."

On Page 197 it says that Colleges require "Schedule C" of the parking code because it's difficult to determine the exact parking needs without more information. Some of the considerations in Item 4 on Page 199 are "employees, students, residents or occupants..." **To us that means that "residents" are one of the projected possibilities.**

These are the only mentions of "College or University" in the Code except for a mention on Page 253 under "Business or Trade School" which says "A use providing education or training in business, commerce, language or other similar activity or occupational pursuit, and not otherwise defined as a home occupation, college, university, or public or private educational facility." Business or Trade School is permitted by right in C-1 and C-2.

On Page 258 there is an item "Group Residential" that says: "The residential use of a site for occupancy by group of more than six persons not defined as a family, on a weekly or longer basis. Typical uses include occupancy of fraternity or sorority houses, dormitories, residence halls, boarding houses or fraternal orders." This category shows up on Page 95 as permitted by right in C-1, while Group Home is permitted in C-2 and C-3 with a Conditional Use Permit.

In order to define "Religious Assembly" in such a narrow way – or even "College or University" in such a narrow way when it might be Church-based – the County has to show a compelling state interest in restricting "Religious Assembly" from manifesting residentially as we have requested. And since the Code has other categories that are clearly just as residential – and even long-term – as what we have suggested, it looks like the Code is being selectively enforced.

Despite that there is a "Residential" category on Page 95, we would argue that, for example, there are other "Residential" uses under "Civic/Institutional" such as; Convalescent Center, Detention Facility, Hospital, and Residential Treatment Facility. There are also "Residential" uses under the Commercial category on Page 96, such as; Bed and Breakfast, Cabins/Rental, Campground/RV Park, and Hotel-Motel. There are also "Residential" uses under the "Agricultural and Other Uses" category on Page 97, such as; Accessory Apartment, Accessory Dwelling Units and Accessory Guest House.

Some of these uses may be temporary, but there are those that certainly could be very long-term, such as Convalescent Center, Detention Facility, Residential Treatment, Accessory Dwelling Units, etc. Some of the categories under "Residential" could be just as transient (Transitional Housing, Congregate Living, Retirement Housing) – or more so – than categories listed in other areas (College, Detention Facility, Residential Treatment Facility, Accessory Dwelling Unit, etc.). This clearly shows that secular residential uses are already permitted by right in C-3, so the burden is on the county to show why Clay County has a "compelling interest" in limiting a church from manifesting their faith residentially and violating their strongly held beliefs.

We believe that the main property of a College or University that is zoned C-3 would typically include residence halls on the property and would NOT be subdivided into separate lots that were zoned independently for the power plant, the bookstore, the cafeteria, the residence halls, the offices, the classrooms, etc. We believe that the separate "Group Residential" (permitted in R-SDM or C-1) designation would be for a property that was not already included on the University C-3 property, such as a fraternity house across town or owned by the fraternity themselves but not on the main campus of the College or University.

There are no examples in rural Clay County, but William Jewell is clearly ONE large Commercial property (with the exception of the cemetery). One might say that it was grandfathered in, having been there so long, but even the new fraternity complex (and the baseball fields) are zoned the same as the main campus, not any special residential district code. They are simply "Commercial – School." Even the President's house. Using the GIS mapping of Jackson County, we note that the same is true of Avila University and Rockhurst University. In the case of UMKC, there seem to be multiple lots acquired at different times, but they are all zoned the same "School-Private" whether classrooms or residence halls, bookstore, cafeteria or business office. All of these, and especially the Catholic ones, would have staff living on site. The same would be true with Benedictine College in Atchison, KS. Having spent three years running the Residence Life program and living on campus at University of Saint Mary in Leavenworth, I can tell you that there were probably two hundred Nuns living on campus, either working there or retired.

This leads us to believe that a College or University is permitted by right in a C-3 district and that a "typical" College or University would include dormitories or other housing on site and that, while the language of the Code is non-specific, that this is the accepted norm and to be expected. There is no clear path for how a residential college like William Jewell would start in Clay County according to the Code without changing their land to a whole alphabet soup of zoning codes. If C-3 is for College/University, then what about the football field or the rec center or the cafeteria or the bookstore? Would they all be included in C-3 as an expected part of what it means to be College/University? Then why not dorms? Surely this is an oversight.

The Courts has often held that churches are valuable to a community, that they should not be treated prejudicially, and that they should be accommodated unless there is a compelling state interest. It's also a regular thing for new faith movements that are unusual or unknown to see bias against them that makes it very difficult to start. We have certainly seen our share of that – and the County has an obligation to see past the noise and adjust Zoning codes where they are faulty.

We have talked from the very beginning about this being a church-based teaching farm. I'm a licensed and ordained pastor. We are a recognized non-profit church and missionary sending agency. I have a Masters degree in Higher Education Administration from UMKC which is all about how to design, set up, manage, and administrate a college or university. I also worked for a time as assistant to the Dean of Student Affairs and Director of Residence Life and Student Life at the University of Saint Mary. And, as a church, we have the right to establish seminaries, courses of study, missionary training programs – and certify, license and ordain as we see fit. We also believe strongly that "church" is best manifest by living together.

The argument we have consistently heard from Zoning is that they are not violating RLUIPA because they are treating us the same as they would any secular organization that wanted to use that land. But that's not really true at all. The Code has defined "Church" in such a narrow way that it excludes us and forces us into a mold that we don't and can't fit. It's no different than saying that "Hotel" is approved, so long as people don't stay there overnight.

The County has to prove why it has a "compelling interest" in NOT allowing us as a people of faith to live out our faith on our land as we see fit. Since Clay County already allows lots of residential uses for land in the C-3 zoning district, we can only presume that it's; A) an oversight in the Code based on ignorance of different kinds of churches, or B) a bias against us personally.

We ask that the Board of Zoning Adjustment would overturn the previous Written Clarification by Zoning staff. We are not looking for a way to get around building codes or densities or anything else – we have always worked with staff to design something that will be safe, will work for all concerned and will meet all requirements.

Again, we appreciate your timely consideration and response to this appeal. We see a strong likelihood that the result of the current track will be an RLUIPA federal lawsuit against the County and we'd like to avoid that if at all possible. Adjusting the Code to allow for a church to be a church as they are led by their faith might be the best option to avoid public controversy and allow us quiet enjoyment of our property.

Thanks again for your consideration of this issue,



Douglas R. Perry  
Senior Pastor & Founder  
The Church of Liberty  
The Liberty Farm

cc: Kipp Jones, Director of Zoning  
Kevin Graham, County Counsel

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

TIM DILAURA; DF LAND DEVELOPMENT L.L.C.;  
APOSTOLATE FOR THE EUCHARISTIC LIFE,  
*Plaintiffs-Appellants/Cross-Appellees,*

v.

TOWNSHIP OF ANN ARBOR; ANN ARBOR TOWNSHIP  
ZONING OFFICIAL; ANN ARBOR TOWNSHIP ZONING  
BOARD OF APPEALS,  
*Defendants-Appellees/Cross-Appellants.*

Nos. 05-2482/2506

Appeal from the United States District Court  
for the Eastern District of Michigan at Detroit.  
No. 00-70570—Bernard A. Friedman, Chief District Judge.

Argued: November 2, 2006

Decided and Filed: December 27, 2006

Before: MERRITT and MOORE, Circuit Judges; COLLIER, Chief District Judge.\*

COUNSEL

**ARGUED:** Robert Charles Davis, O'REILLY, RANCILIO, NITZ, ANDREWS & TURNBULL, Sterling Heights, Michigan, for Appellants. G. Christopher Bernard, BODMAN LLP, Ann Arbor, Michigan, for Appellees. **ON BRIEF:** Robert Charles Davis, O'REILLY, RANCILIO, NITZ, ANDREWS & TURNBULL, Sterling Heights, Michigan, Robert L. Bunting, Oxford, Michigan, for Appellants. G. Christopher Bernard, James J. Walsh, BODMAN LLP, Ann Arbor, Michigan, for Appellees.

OPINION

KAREN NELSON MOORE, Circuit Judge. Plaintiffs Tim DiLaura ("DiLaura"), DF Land Development, L.L.C., and Apostolate for the Eucharistic Life (collectively "the plaintiffs") appeal the district court's order granting the plaintiffs attorney fees and costs. The plaintiffs argue that the district court abused its discretion in ordering a sixty-percent reduction from the amount

\* The Honorable Curtis L. Collier, Chief United States District Judge for the Eastern District of Tennessee, sitting by designation.

recommended by the magistrate judge's Report and Recommendation. The defendants Township of Ann Arbor, Ann Arbor Township Zoning Official, and Ann Arbor Township Zoning Board of Appeals (collectively "the defendants") cross-appeal, arguing that the district court erred in ruling that the plaintiffs were entitled to any costs or fees because they were not prevailing parties.

Because the district court was within its discretion in finding that the plaintiffs were prevailing parties, but abused its discretion in reducing the fees and costs by sixty percent, we **AFFIRM** in part and **REVERSE** and **REMAND** in part the district court's judgment granting attorney fees and costs to the plaintiffs in the amount of \$72,214.24.

## I. BACKGROUND

As this is the third time that these parties have come before our court, there is a long history behind this case. DiLaura, as a member and Executive Director of the Apostolate for the Eucharistic Life, received a charitable donation of real estate in the Township of Ann Arbor for hosting guests for religious prayer and contemplation. In conjunction with this proposed use, DiLaura planned on providing complementary food and overnight accommodations for approximately eight guests throughout each week.

DiLaura sent a letter to the zoning official asking whether the plaintiffs' proposed property use under the donation was prohibited by the defendants' zoning ordinance. The zoning official responded that DiLaura was prohibited under the zoning laws from using the property in the way in which he proposed. DiLaura filed an application for a variance, but the zoning board of appeals denied the variance application.

The First Amended Complaint was brought under 42 U.S.C. § 1983, and alleged violations of, *inter alia*, the plaintiffs' right to free exercise of religion under the First Amendment of the United States Constitution and the Religious Freedom Restoration Act. U.S. CONST. amend I; 42 U.S.C. § 2000bb *et seq.* ("RFRA"). The district court granted the defendants' motion to dismiss for lack of subject matter jurisdiction, holding that the plaintiffs lacked standing and that the plaintiffs' claims were not ripe.

In *DiLaura v. Ann Arbor Charter Twp.*, 30 F. App'x 501, 505-07 (6th Cir. 2002) (unpublished opinion) ("*DiLaura I*"), we concluded that the plaintiffs did have standing and that their claims were ripe for review. Although we disagreed with the district court's reasoning, we agreed that there was no First Amendment violation. *Id.* at 508. However, we concluded that the plaintiffs' RFRA claim was still valid. Although parts of RFRA had recently been declared unconstitutional by the Supreme Court while *DiLaura I* was on appeal, Congress enacted the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc *et seq.* ("RLUIPA"), which amended RFRA. *DiLaura I*, 30 F. App'x at 507. Thus, we remanded to the district court to determine whether the defendants were violating the plaintiffs' rights under RFRA as amended by RLUIPA. *Id.* at 510.

After *DiLaura I*, on November 14, 2002, the plaintiffs filed a Second Amended Complaint, formally claiming a violation under RLUIPA. On December 16, 2002, the township board of trustees, on the recommendation of the planning commission, granted the plaintiffs a conditional permit to operate a bed and breakfast. Although the defendants asserted that they would not enforce it, a bed and breakfast permit requires that the permittee charge guests a fee and prohibits serving alcohol or meals other than breakfast and light snacks. These restrictions, if enforced, would interfere with the plaintiffs' plan to provide services for free and to serve lunch, dinner, and communion wine.

On remand from *DiLaura I*, the district court granted summary judgment in favor of the plaintiffs, concluding that the defendants' bed and breakfast proposal violated RLUIPA. While

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acknowledging that the defendants were not going to enforce the bed and breakfast provisions at the present time, the district court stated that it had “to look at what [the bed and breakfast ordinance] says and take it [us] exactly what [the defendants] could do.” Joint Appendix (“J.A.”) at 838 (Mot. Hr’g on Cross-Mot. for Summ. J. (“Hr’g”) at 27). The district court did not formally grant an injunction, but, rather, stated on the record that the defendants could never enforce the bed and breakfast provisions against the plaintiffs. The defendants appealed, and we affirmed, *DiLaura v. Twp. of Ann Arbor*, 112 F. App’x 445, 446 (6th Cir. 2004) (unpublished opinion) (*DiLaura II*).

This brings us to the issue before us today. After *DiLaura II*, the plaintiffs requested attorney fees and costs associated with litigating this case. The magistrate judge issued a Report and Recommendation concluding that the plaintiffs were entitled to attorney fees and costs in the amount of \$178,535.61. The district court found that the plaintiffs were prevailing parties, but reduced the award by sixty percent to \$72,214.24. The parties cross-appealed to this court; we have jurisdiction over their appeals under 28 U.S.C. § 1291.

## II. PREVAILING PARTIES

We review a district court’s determination of prevailing party status for clear error. *Knology, Inc. v. Insight Creative Int’l Co.*, 460 F.3d 722, 726 (6th Cir. 2006). The defendants argue that the plaintiffs are not entitled to any attorney fees or costs, because they do not qualify as “prevailing parties” under 42 U.S.C. § 1988(b).<sup>1</sup> Section 1988(b) provides, in pertinent part, that in an action to enforce provisions under RFRA or RLUIPA “the court, in its discretion, may allow the prevailing party . . . a reasonable attorney’s fee as part of the costs . . . .” Prevailing party status is a “statutory threshold” which must be crossed before there is any consideration of a fee award. *Tex. State Teachers Ass’n v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 789 (1989). This threshold is crossed when “the plaintiff has succeeded on ‘any significant issue in litigation which achieve[d] some of the benefit the parties sought in bringing suit’ . . . .” *Id.* at 791-92 (alteration in original) (quoting *Nadeau v. Helwanone*, 581 F.2d 275, 278-79 (1st Cir. 1978)). See also *Deja Vu of Nashville, Inc. v. Metro. Gov’t of Nashville & Davidson County, Tenn.*, 421 F.3d 417, 420 (6th Cir. 2005), cert. denied, 126 S. Ct. 2916 (2006).

“[T]he touchstone of the prevailing party inquiry must be the material alteration of the legal relationship of the parties.” *Farrar v. Hobby*, 506 U.S. 103, 111 (1992) (quoting *Garland*, 489 U.S. at 792-93). “A material alteration requires that “[t]he plaintiff [] obtain an enforceable judgment against the defendant from whom fees are sought, or comparable relief through a consent decree or settlement.” *Id.* (quotation omitted). The relief must directly benefit the plaintiff “at the time of the judgment or settlement.” *Id.* In contrast, “[w]here the plaintiff’s success on a legal claim can be characterized as purely technical or *de minimis*, a district court would be justified in concluding that” the plaintiff is not a prevailing party under the statute. *Garland*, 489 U.S. at 792. Further, the change in the relationship between the parties must be court ordered—if a party’s change in position is purely voluntary, then there is no prevailing party. *Buckhamton Bd. & Care Home, Inc. v. W. Va. Dep’t of Health & Human Servs.*, 532 U.S. 598, 605 (2001).

The defendants make two overlapping arguments in defense of their position that the plaintiffs are not prevailing parties. First, the defendants argue that their change in position was purely voluntary; that the district court did not order the defendants to do anything, and, therefore, under *Buckhamton*, the plaintiffs are not prevailing parties. We cannot agree with the defendants’ characterization of their actions as voluntary. To the contrary, if the defendants’ actions in this case were voluntary, they would not have appealed the district court’s decision in *DiLaura II*. The

<sup>1</sup> According to Rule 54(d) of the Federal Rules of Civil Procedure, costs are to be awarded as “of course” to the prevailing party. Although costs are part of the ultimate award that plaintiffs seek, the debate between the parties focuses on attorney fees under 42 U.S.C. § 1988.

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plaintiffs did not obtain full relief in this case until the district court announced, and this court affirmed, that the defendants could not enforce the bed and breakfast permit limitations against the plaintiffs. Thus, the defendants' actions were not completely voluntary.

Second, the defendants argue that the grant of summary judgment in the plaintiffs' favor was only a technical or symbolic victory, and, thus, under *Farrar v. Hobby*, the plaintiffs are not prevailing parties. They argue that the rule is that "a plaintiff who does not obtain relief in the form of a money judgment, an enforceable declaratory judgment or an injunction is not a prevailing party under Section 1983." Br. of Defs.-Appellees/Cross-Appellants at 24. According to the defendants, because the district court's grant of summary judgment in favor of the plaintiffs did not include one of these forms of relief, the plaintiffs are not prevailing parties.

The defendants' argument rests on an erroneous view of the law. They do not cite any cases stating that a party must obtain a money judgment, an enforceable declaratory judgment, or an injunction before it is entitled to prevailing party status.<sup>2</sup> As explained above, if the party points to success on a significant issue leading to a material legal alteration between the parties, then that party has crossed the "arbitrary threshold" into prevailing party status. Although a money judgment, an enforceable declaratory judgment, or an injunction will indicate such an alteration between the parties, these are not the only ways in which such a changed relationship may manifest itself. The case at bar provides an example.

Here, the district court granted the plaintiffs' motion for summary judgment, and stated on the record that the defendants could not enforce their ordinance against the plaintiffs' proposed use of the property. The district court explained that it was not granting an injunction because "the relief [the plaintiffs] were [seeking] for in effect is [the defendants] not enforcing their ordinance. I'm going to grant that. That's your motion for summary judgment." J.A. at 836 (Hr'g at 25). While the district court declared the relief "injunctive," the effect of its order granting summary judgment materially affected the legal relationship between the parties in that after the district court's judgment was rendered, the threat of enforcement no longer existed. The plaintiffs' victory was not merely technical or symbolic, and the district court's determination that the plaintiffs were prevailing parties was not clearly erroneous.

### III. FEE REDUCTION

#### A. Standard of Review

We review for abuse of discretion a district court's determination of the attorney fees due under § 1983, affording "substantial deference" to the district court's decision. *Deja Vu*, 421 F.3d at 423. Abuse of discretion "exists only when a district court 'relies upon clearly erroneous factual

<sup>2</sup> In their petition for rehearing/rehearing on banc, the defendants cite, for the first time, a case which, they argue, requires that a court provide a plaintiff with a monetary judgment or an injunction before the plaintiff can achieve prevailing party status. Br. for Rehg/Rehg En Banc at 16 (citing *Gregory v. Shelby County*, 220 F.3d 433, 447 (6th Cir. 2000)). We note that this argument conflicts with the defendants' earlier argument to this court that, to be a prevailing party, the plaintiff must obtain "relief in the form of a money judgment, an enforceable declaratory judgment or an injunction." Br. of Defs.-Appellees/Cross-Appellants at 24. Now the defendants are arguing that only a monetary judgment or injunction will suffice.

But arguments, however, are wrong. Defendants' new argument fails because *Gregory*, and the case upon which it relied, *Woodbridge v. Midwest Indus. Corp.*, 898 F.2d 1169 (6th Cir. 1990), have both been abrogated by *Backhouse v. City of Erie*, 530 U.S. 1070, 121 S.Ct. 1332, 137 S.Ct. 1332, 137 S.Ct. 1332 (2001). *Backhouse* makes clear that all that is required to obtain prevailing party status is a judgment that is enforceable and on the merits. Id. at 614 ("[E]nforceable judgments on the merits and court-ordered consent decrees create the 'material alteration of the legal relationship of the parties' necessary to permit an award of attorney's fees." (quoting *Tex. State Teachers Ass'n v. Garwood Indep. Sch. Dist.*, 489 U.S. 782, 792-93 (1989))). To the extent that *Gregory* and *Woodbridge* limit prevailing parties to those parties who obtain monetary judgments or injunctions, they are abrogated.

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findings, applies the law improperly, or uses an erroneous legal standard.” *Id.* (quoting *Wikel ex rel. Wikel v. Birmingham Pub. Schs. Bd. of Educ.*, 360 F.3d 604, 611 (6th Cir. 2004)).

## **B. The Decision to Reduce the Award Was An Abuse of Discretion**

In the case at bar, the district court abused its discretion on three levels, all of which culminated in its decision to reduce the fees and costs awarded. First, it incorrectly concluded that the plaintiffs were not entitled to fees for work done prior to the Second Amended Complaint, because the plaintiffs ultimately prevailed only on their RLUIPA claim which was not raised until the Second Amended Complaint. Second, the district court applied the wrong legal standard, because, although it implicitly found that the case at bar was one involving a common core of facts, it improperly treated the various claims as distinct, reducing fees based on the number of claims won versus the number of claims lost. Third, the district court erred in finding that the plaintiffs did not get complete relief.

### **1. Relationship Between RLUIPA Claim and the Original Complaint**

One reason motivating the district court’s decision to reduce attorney fees and costs was its conclusion that the plaintiffs did not raise their RLUIPA claim until the Second Amended Complaint. According to the district court, “[n]one of the claims initially pled succeeded and none of the relief initially sought was obtained.” J.A. at 302 (Order at 3).

But in *DiLaura I*, we explained that in their First Amended Complaint the plaintiffs pleaded a claim under RFRA which was amended by RLUIPA, enacted while the case was on appeal. *DiLaura I*, 30 F. App’x at 107. Thus, on remand, the panel instructed the district court to adjudicate the original RFRA claim according to the RLUIPA provisions. *Id.* at 510. It follows that the district court was incorrect in its finding that none of the original claims succeeded, because, according to *DiLaura I*, the panel treated the RFRA claim in the First Amended Complaint to be adjudicated as a RLUIPA claim. Even though the plaintiffs did not formally include a RLUIPA claim until their Second Amended Complaint, it was an abuse of discretion for the district court to ignore the decision of a panel of this court in *DiLaura I*, and to treat the RLUIPA claim as unconnected to the work related to the First Amended Complaint.

### **2. The District Court Applied the Wrong Legal Standard to a Case Involving a Common Core of Facts and Related Legal Claims**

The district court also abused its discretion in failing to state the correct legal standard applicable when a series of related legal claims are based on a common core of facts. We recently stated that:

[A] court should not reduce attorney fees based on a simple ratio of successful claims to claims raised. When claims are based on a common core of facts or are based on related legal theories, for the purpose of calculating attorney fees they should not be treated as distinct claims, and the cost of litigating the related claims should not be reduced.”

*Dejo*, 19, 421 F.3d at 423 (quoting *Thurston v. Yellow Freight Sys., Inc.*, 90 F.3d 1160, 1169 (6th Cir. 1996) (citation omitted)). “Litigants in good faith may raise alternative legal grounds for a desired outcome, and the court’s rejection of or failure to reach certain grounds is not a sufficient reason for reducing the fee. The result is what matters.” *Id.* (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 435 (1983) (citation omitted)).

*DiLaura I*

In the case at bar, the district court's statement of the applicable law is selective and, thereby, misleading. To the extent that the standard is stated correctly, the opinion improperly applies that standard to the facts. The district court opinion states:

In determining a reasonable attorney fee "the district court should focus on the significance of the overall relief obtained by the plaintiff in relation to the hours reasonably expended in the litigation." *Hensley v. Eckerhart*, 461 U.S. 424, 435 (1983). Further a reduction from the lodestar is appropriate when the prevailing party "achieve[ed] only partial or limited success." *Id.* at 436.

In the present case, plaintiffs' success was "partial or limited indeed." *None of the claims initially pled succeeded and none of the relief initially sought was obtained. Three years into the litigation plaintiffs asserted the RLUIPA claim, which did succeed, but still the remaining claims failed and no declaratory or injunctive relief was awarded.*

J.A. at 302-03 (Order at 3-4) (alteration in original) (emphasis supplied). The district court's quotation from *Hensley* fails to recognize that the Supreme Court mandated the following: "Such a lawsuit [one involving a common core of facts] cannot be viewed as a series of discrete claims. Instead, the district court should focus on the significance of the overall relief obtained by the plaintiff in relation to the hours reasonably expended on the litigation." *Hensley*, 461 U.S. at 435,

by focusing on the fact that most of the plaintiffs' claims failed, the district court does what *Hensley* specifically forbids: it analyzes a series of related legal claims based on a common core of facts and determines the amount of fees, not based on the plaintiffs' overall success, but based on the success or failure of the individual claims.<sup>7</sup> Because the plaintiffs ultimately prevailed on only one of their related legal claims, the district court reduced the attorney fees and costs by sixty percent. It is of no import that the relief came only from the RLUIPA claim, because under *Hensley* "[t]he result is what matters." *Id.* Thus, the district court's reduction in fees was an abuse of discretion.

### 3. The Relief Obtained Was Complete

The district court also erred in deciding that the "plaintiffs' success was 'partial or limited. . . ." J.A. at 302 (Order at 3). When the plaintiffs filed their First Amended Complaint, the defendants denied them their requested use of the property. Now the plaintiffs are expressly allowed their proposed use of the property without any application of the defendants' zoning ordinances. The fact that the court did not grant an injunction or declaratory judgment when it granted the plaintiffs' motion for summary judgment does not make the ultimate relief less complete.

## IV. CONCLUSION

The parties dispute whether there was a stipulation as to the correct amount of fees and costs due to the plaintiffs in this case if they were to prevail. We need not reach this issue at this time; we conclude that, in this case, it is more appropriate to remand to the district court for a decision on fees that is consistent with our opinion.

<sup>7</sup> The district court opinion does not even mention the phrase "common core of facts," but given that the portion of *Hensley* from which it quotes is specifically about involving a core of facts, we infer that the district court believed this to be such a case. This is exactly the most plausible position—all of the claims were based on the defendants' refusal to grant the plaintiffs permission to open a religious retreat, and all of the claims were designed to enable use of the property at issue in proposed.

Dilaura

For the foregoing reasons we **AFFIRM** the district court's judgment that the plaintiffs are prevailing parties, we **REVERSE** the district court's judgment insofar as it reduced the fees and costs by sixty percent, and we **REMAND** to the district court for further proceedings consistent with this opinion.

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# CITY OF MPLS. v. Church Universal & Triumphant

[Annotate this Case](#)

339 N.W.2d 880 (1983)

CITY OF MINNEAPOLIS, Plaintiff, Lake Harriet Residents, Intervenor, v. The CHURCH UNIVERSAL AND TRIUMPHANT, Minneapolis/St. Paul Region, Inc., et al., Respondents.

Nos. C2-82-1333, CO-82-1542.

Supreme Court of Minnesota.

November 4, 1983.

\*881 William C. Dunning, Asst. City Atty., Minneapolis, for plaintiff.

John H. Herman, James A. Payne, Minneapolis, for intervenors.

Christopher B. Hunt, Roger A. Peterson, Peterson, Engberg, Peterson, Minneapolis, for respondents.

Owen P. Gleason, Eden Prairie, for Minnesota Civil Liberties Union, amicus curiae.

Heard, considered and decided by the court en banc.

AMDAHL, Chief Justice.

This is a case of first impression. The City of Minneapolis originally commenced this zoning action in the form of a motion for a temporary injunction pursuant to Minnesota Statutes Annotated section 462.362 (West Supp.1983) to prevent respondent Church Universal and Triumphant (Church) from using the premises at 4551-55 East Lake Harriet Parkway as a church, monastery, convent, seminary, rectory, parsonage, parish house or religious retreat. Lake Harriet Residents, an unincorporated association of residents living in the neighborhood of the Church, intervened as plaintiff.

The City alleged that the property was zoned as an R1 single family residential district and that the Church was in violation of Minneapolis Code of Ordinances section 522.40 (hereinafter Code). This code section limits the occupancy of a duplex (which was the prior use of the building) to \*882 two family units unless the premises were properly converted to other than residential use. The City also alleged the Church was in violation of Minneapolis Code of Ordinances sections 538.120 through 538.200 for not complying with the parking or loading requirements for a religious institution or church. Respondent Church replied that the Church and other accessory uses of the property were permitted under Code sections 538.120(4) and 538.120(6)(k).[1] Additionally, the Church alleged that it had substantially complied with the off-street parking and loading requirements of the Code. The trial court denied appellant's motion for a temporary injunction.[2]

The parties have all stipulated to the validity of the Church within the meaning of the Minneapolis Zoning Code and the recognition of the Church by the United States Internal Revenue Service as a tax exempt religious organization under section 501(c)(3) of the Internal Revenue Code. The issues at trial on the City's motion for a permanent injunction were limited to whether the occupancy of the Church property by more than two family units qualified as a use "accessory" to the church use and whether the Church was in violation of the parking and loading requirements of Code sections 538.120 through

538.200.[3]

After trial the court held:

(1) that the Church uses the subject property as a church, monastery and rectory; (2) that the Church use is a permitted use and the monastery and rectory uses are permitted "accessory" uses in an R1 zoned district; (3) that the Church is in substantial compliance with the parking and loading requirements of the Code and that absolute compliance with the loading provision of the Code would create an undue burden on defendants, destroy the aesthetics of the property and produce no benefit to the surrounding property owners.

The trial court ruled that if the Church should require additional parking spaces in the future, those spaces could be located within reasonable walking distance of the subject property. The request for a permanent injunction against the Church's use of the property was denied. The City was ordered to issue all permits necessary to the recognition of the property as a permitted church, monastery and rectory. The district court, however, retained jurisdiction over any future disputes that might arise between the parties concerning the provision of additional parking spaces.

The City of Minneapolis and the intervenors, the Lake Harriet Residents, appeal from the order denying injunctive relief and the order for judgment entered in favor of the defendant Church Universal \*883 and Triumphant on September 15, 1982. We hereby affirm.[4]

Minneapolis Code of Ordinances section 538.120 lists the uses that are permitted in an R1, single-family residential, district. The permitted uses include:

(4) Religious institutions as follows: (a) Churches, chapels, temples and synagogues, \* \* \* \* \* (6) Accessory uses incidental to and on the same zoning lot as the principal use as follows \* \* \* (k) Convents, seminaries, monasteries and nunneries; rectories, parsonages and parish houses; religious retreats when accessory to a church, chapel, temple or synagogue. [emphasis added.]

Section 522.40 defines the meaning of an "accessory" building or use under the zoning code as follows:

Accessory building or use. A building or use which: (1) Is subordinate to and serves the principal building or principal use, (2) Is subordinate in area, extent or purpose to the principal building or principal use served, (3) Contributes to the comfort, convenience or necessity of occupants of the principal building or principal use served, and (4) Is located on the same zoning lot as the principal building or principal use served, with the single exception of such accessory off-street parking facilities as are permitted to locate elsewhere than on the same zoning lot with the building or use served.

(Emphasis added). An exemplary list of accessory uses follows this definition in the Code but the list is explicitly described as not being exclusive.

The other relevant provision of the zoning ordinance is Code section 540.440, which describes the principal permitted uses of the higher density B1-1 District. This district permits all religious institutions allowed in R1 districts but applies to convents, seminaries and monasteries when they are principal rather than accessory uses.

The off-street parking requirements for religious institutions and their accessory uses allowed in the R1 District are delineated in Code section 538.190 as follows:

(7) Religious institutions. (a) In addition to the minimum lot area requirement and except as provided in (b) below, parking requirements shall be as follows: (i) Ten (10) parking spaces, or (ii) One parking space for each twenty (20) seats in the main auditorium plus any rooms which can be added to the main auditorium by opening of doors and/or windows so as to obtain both audio and visual unity with said main auditorium, whichever is greater. (b) Convents, seminaries, monasteries, nunneries, rectories,

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parsonages, parish \*884 houses and religious retreats Parking spaces shall be provided in adequate number, as determined by the zoning administrator, to serve persons employed or residing on the premises, as well as the visiting public, based on standards incorporated in the zoning code for similar uses.

(Emphasis added)

In addition, Code section 538.200 provides that religious institutions containing 10,000 square feet of gross floor area or more must provide one off-street loading berth. Section 538.90 defines a loading berth as a large parking space 10 feet wide by 25 feet in length which could accommodate a large vehicle such as a truck.

#### A. Description of the Church

The Church Universal and Triumphant is a worldwide organization, founded in 1958 in Washington, D.C. by Mark L. Prophet. The Church operates a religious seminary, Summit University (established in 1973), on a 214-acre college campus in Los Angeles, California. Montessori International, a private school founded by the Church, is also located on the campus. As part of its worldwide ministry, the Church sponsors the operation of branch churches known as Church Universal and Triumphant Community Teaching Centers. The branch at 4551 East Lake Harriet Parkway is the subject of this appeal. **The Church has been modeled after the early Essene and Christian communities and places great emphasis upon religious community living.** Each teaching center has a religious residence directly associated with it. The Lake Harriet Teaching Center is a nonprofit corporation under the laws of the State of Minnesota.

The subject property is a large stone mansion of 17,000 square feet overlooking Lake Harriet and was used as a duplex prior to the adoption of the current zoning code. Its current zoning status is as a permissible nonconforming duplex use under the "grandfather" provision of the ordinance. The first floor of the home contains a sanctuary, public reception area, bookstore and administrative offices. These areas are used by the nonresident public members of the Church and also by the residents for private devotions, for administration and for training purposes. There are also two private residential rooms on the first floor and two garages used exclusively by the residents. On the second floor, nine rooms are private residences; there is a kitchen and dining area used primarily to prepare meals for the residents but also for communal meals for nonresidents; and a library and children's playroom used by both nonresidents and resident church members. The home contains a total of 13 bedrooms and nine baths. The basement contains storage, laundry and heating areas and an audio-visual center which also serves both residents and nonresidents.

At the time of trial there were 19 adults and three children residing at the subject property. Four of the adults were married couples. Some of the unmarried residents were male and some were female. The Church Director, Mr. Connor, testified that the number of residents could increase to 35 and that the upper limit would be imposed by the safety and health requirements of the residents. As of the date of trial, 13 former residents had left the property. Each had resided there for varying periods ranging in length from 2 to 8 months. All 13 former residents remained members of the Church. **The community residential element is considered to be one of the essential elements of the mission of the Church.** Residents are trained to be lay ministers. The activity of each center revolves around daily church services, prayer sessions and related church-sponsored activities.

The center conducts six public religious services per week at the subject property. In addition, prayer services are held, analogous to those held by monks or nuns in \*885 monasteries and convents, that are not attended by the public. Daily devotions are considered a fundamental practice. Ordained ministers conduct church religious services and administer formal church sacraments. Lay ministers also serve in limited ministerial functions. Between 30 and 40 members of the Church who do not reside at the

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subject property routinely attend the public services.

The trial court found that persons residing at the subject property live monastic lifestyles, that is, an ordered existence, subject to specific disciplines. However, residents hold jobs or attend schools in the community and participate in community life. Thus they are not cloistered from the external world. The residents of the subject property own 10 automobiles which they use daily. Up to approximately 12 additional automobiles at a time have been parked in the vicinity by nonresident church members attending the public services.

There are currently six off-street parking spaces (including a 4-car garage) behind the building and there is room on the property for two more spaces but only by means of the removal of a great deal of landscaping.

#### B. Sequence of Events

On or about June 15, 1981, members of the Church met with the Supervisor of the Minneapolis Zoning Information Office, William Nordrum, and informed him of their intention to purchase the subject property and use it as both a church and a residence for a number of "staff persons". Mr. Nordrum suggested they seek to have the property rezoned to R4-a zone in which rooming houses are permitted. Mr. Nordrum indicated that while "churches" were permitted in R1 zones, defendants would need to obtain a building permit allowing them to change the use of the subject property from a duplex to a church. Mr. Nordrum also indicated that the property would have to be inspected to determine floor-load adequacy and that off-street parking spaces and a loading area would have to be provided.

No mention of a monastery or rectory use of the property was made at that time. Mr. Nordrum assumed that a rooming house was to be the predominant use. Several days later Mr. Nordrum met with defendants again and completed a rezoning petition, advising defendants that the consent of two thirds of the neighboring residents within 100 feet of the church would be required for a rezoning under Minnesota Statutes Annotated section 462.357, subd. 5. (West Supp.1983).

The Church representatives then retained an attorney who advised them that churches were permitted uses in an R1 district and that monasteries were permitted accessory uses. The application for rezoning was never submitted and the property was purchased on September 15, 1981, with no rezoning contingency written into the purchase agreement.

In reaction to several complaints from neighbors and an alderman, an inspector from the City of Minneapolis Housing Department, Andrew Ellis, inspected the property on September 15, the day the Church members took occupancy, and again 3 days later. Reverend King, the director of the Church at the time, subsequently informed Mr. Ellis that the subject property was to be used as a church and was to have monastery and rectory uses as well. Nonetheless, the City within the space of less than a month issued three notices of zoning violations. The first was for overoccupancy and required that the building either be reverted back to its permitted duplex occupancy or that plans and permits be submitted to convert it. The second notice was for rubbish accumulation.[5] The third notice concerned registration of the building as a \*886 let-out duplex since the City recognized the Church as the owner of the property but not as using the building itself as a church.[6] Each notice specified a 30-day period for abatement.

On October 27, 1981, a meeting was held, at the instance of respondents, between city officials and church representatives. The Church representatives agreed to retain and subsequently did retain an architect who would work with City officials to assure that the subject property would conform to safety and health regulations and to outline possible parking alternatives. Written confirmation of this fact was sent to the City by the Church attorney on October 29, 1981.

However, on October 28, 1981, Mr. Jacobs, Director of Inspections and Zoning Administrator for the

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City of Minneapolis wrote to the City Attorney requesting that he initiate legal proceedings against the Church.

Past practice of the zoning department has generally been to try to conciliate any disputes, to work with the subject property owners to try to conform with the Code requirements and to hold compliance orders in abeyance when the parties are willing to try to solve the problem. There is no evidence that the Church members do not intend to cooperate with the zoning officials in ensuring that their property meets the basic requirements of the Code. However, if we accept the trial judge's findings that the subject property is being used principally as a church and accessorially, as a monastery, then the notice of Code violations for overoccupancy and registration as a let-out duplex cannot stand. There are no municipal limits on the number of people allowed to attend any type of church whether traditional or nontraditional or to reside in a monastery except those limits imposed by the requirements of health and safety. The City has not alleged any such violations. The Code clearly permits both traditional and nontraditional churches alike to establish and maintain accessory monasteries and convents within an R1 district. See Minn. Code of Ord. §§ 538.120(4); 538.120(6)(k) (1976).

The crux of the dispute between the Church, the City and the Lake Harriet residents revolves around the interpretation of the term "monastery" as it is used in the ordinances at issue. The City argues that this court should find the teaching center does not qualify as a monastery under the Code. Alternatively the City charges that, if the building is found to be a monastery, its use is a "principal" not an "accessory" use and hence not permitted in an R1 district.

Appellants admit that the residential use of the Lake Harriet property may be a "monastic" use in sociological terms as established by three of respondents' expert witnesses at trial. But appellants contend that a different definition of "monastic" life was envisioned by the land-use planners in drafting the zoning code. Appellants wish to apply the lay and Webster's dictionary meanings of a "monastery" as a "house of religious retirement or seclusion from the world for persons under religious vows." Similarly, appellants would apply the Webster's definition of "convent" as "an association or community of recluses devoted to a religious life under a superior: a body of monks, friars or nuns constituting one local community \* \* \*." The argument concludes with the assertion that the common and dictionary understanding of the term monastery would be a community characterized by privacy or solitariness, and by seclusion from the world at large. Appellants then argue that this is the meaning necessarily incorporated into the zoning code which, according to their perceptions, permits monastery uses in the most restricted residential districts only if they conform to the goals of "low population density, large yards, little traffic and close neighborhood \*887 relationships." When monasteries assume a "principal" use, as opposed to a "use accessory" to a church, appellants urge, they must be placed in a B1-1 zone because they place too great a burden on the residential neighborhood. The test of principal versus accessory use then becomes one of calculating the "area, extent or purpose" to which the various portions of the property are committed for the residential use relative to the area devoted to the church use.

**Respondents quite correctly point out that the contemporary meaning of the words "monastery" and "convent" no longer necessarily indicates a reclusive lifestyle even in the most traditional and established religions.** Courts in many jurisdictions have recognized that through the centuries the activities and pursuits of the occupants of convents, monasteries, parish houses and rectories have changed to bring them in closer contact with the secular world.[7]See *Diakonian Society v. City of Chicago Zoning Board of Appeals*, 20 Ill.Dec. 634, 63 Ill. App.3d 823, 380 N.E.2d 843 (1978); *Association for Educational Development v. Hayward*, 533 S.W.2d 579 (Mo.1976). The issue of whether a lay or dictionary definition as opposed to a sociological, doctrinal definition applies to the land use planners' usage of the word "monastery" is a question of law for this court. All three religious experts at trial testified and the trial court found that the residents of the Lake Harriet property live

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monastic lifestyles as exhibited by a central religious faith, an attachment to an organized church, shared living quarters and an ordered, disciplined lifestyle. It is this definition of a monastery that we hereby adopt for interpretation of the zoning code.

In 1979, the Minnesota Supreme Court delineated its scope of review in zoning matters. In *Northwestern College v. City of Arden Hills*, 281 N.W.2d 865 (Minn. 1979), the court repeated that "it is our function to make an independent examination of an administrative agency's record and decision and arrive at our own conclusions as to the propriety of that determination without according any special deference to the same review conducted by the trial court." *Id.* at 868 (quoting *Reserve Mining Co. v. Herbst*, 256 N.W.2d 808, 822 (Minn.1977)). The court then declared that the same scope is appropriate in reviewing the zoning decisions of local governing bodies. *Id.* In our review of the record we conclude that the finding that the Church Universal and Triumphant Teaching Center conforms to this definition is a finding of fact which was supported by substantial evidence at trial.[8]

Appellants next assert that even if the use of the Lake Harriet property is characterized as "monastic" that use is still not permitted in an R1 residential neighborhood because it is a "principal" not a "subordinate" use. We disagree.

Appellants' argument that there is no "doctrinal compulsion" and no "authentic \*888 religious necessity" for the Church and monastery to function together must fail because the zoning code incorporates no such test. The language of the Code is set forth in the disjunctive and reads very broadly; to be accessory a building or use must contribute to the comfort, convenience or necessity of the church. Minn.Code of Ord. § 522.40(3) (1976). There was substantial evidence at trial that the residential use served the convenience and comfort of the Church.

The Church Universal and Triumphant does not contest the evidence adduced at trial that a large and perhaps equal portion of the Lake Harriet residence is used for residential purposes. But respondent accurately points out that this Code requirement is also written in the disjunctive; to be accessory a use must also be subordinate in area, extent or purpose to the church use. The factual evidence at trial substantially supported the conclusion that the purpose of the monastery is to assist the teaching mission of the individual church.

The major issue then as perceived by the parties is the legal determination of which measuring rod should apply; a numerical test which counts numbers of rooms and occupants and time spent in church or monastic activities or a doctrinal test of service of purpose. The floor space, in a traditional church, that is devoted to a chapel, to church administration and to parochial school usage varies widely depending on the particular denomination and the relative maturity of the church. The same can be said for measuring the size of the congregation. Such measurements should not be determinative in deciding if a monastic or an educational or community use is an "accessory" or "principal" use. We therefore uphold the sociological, doctrinal position advanced by respondents and the trial court.

The two main cases relied on by respondents and appellant are *Havurah v. Zoning Board of Appeals*, 177 Conn. 440, 418 A.2d 82 (1979), and *Association for Educational Development v. Hayward*, 533 S.W.2d 579 (Mo.1976), respectively. In *Hayward*, several members of the Catholic Opus Dei Society were sharing a single family residence, leading an ordered life and participating in daily worship on the premises. The court held that the men were not using the residence as a monastery or church or convent because they were laymen, not clergymen; their religious ministry was an avocation rather than a "regular and primary vocation." *Hayward*, 533 S.W.2d at 585. But the Missouri court carefully distinguished this case from one involving a church which offered religious services to the public: "The Temple Israel case concerned a church and religious school. The instant case involves neither and therefore Temple Israel is not controlling here." *Id.* at 587, citing *Congregational Temple Israel v. City of Creve Coeur*, 320 S.W.2d 451 (Mo.1959). The court further stated: "We believe it is important at this

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point to note that the use sought to be made of this residence by respondents is not a use necessarily incidental to that of a church \* \* \*. *Id.* at 587.

The Havurah court upheld the right of a synagogue located in a large residential home to provide overnight accommodations to its members during holidays when a religious ban on travel was in effect. The decision that such use constituted a permissible "accessory use" was based upon evidence adduced at trial and uncontroverted, that overnight accommodation was an essential religious practice. The trial court had found that "[c]entral to this kind of religious community is the concept of shared time, during which the members come and remain together to worship in a variety of ways, praying, studying, celebrating religious festivals, and preparing meals according to religious laws." 177 Conn. at 449, 418 A.2d at 87.

Similarly, the trial court found that the residential use of the Lake Harriet property was an "accessory" use because the occupancy of the subject property as a monastery \*889 furthers the purposes of the Church in extending its teachings and ministry to the community. The monastery serves the convenience of the Church by training and screening members for future leadership.

This standard is obviously not a rigid test. But a flexible definition is in keeping with the special status that churches enjoy in our society. In a majority of jurisdictions, established churches are permitted to maintain wide-ranging uses accessory to their churches. Various parochial and community functions such as schools, playgrounds, day care centers, drug rehabilitation centers and softball fields have been found to be permitted in residential neighborhoods as accessory uses. *Havurah v. Zoning Board of Appeals*, 177 Conn. 440, 418 A.2d 82 (1979).

Moreover, the language of the ordinances at issue is very broad and evinces no intent to keep monasteries and convents that are accessory to traditional and nontraditional churches out of residential neighborhoods.

It is the contention of the City of Minneapolis that the Church is in violation of the Code requirements as to off-street parking and loading facilities. The evidence adduced at trial showed that the Church currently has six off-street parking spaces at its Lake Harriet property, a 4-car garage and two spaces to the north of the rear of the building. The zoning code requires that churches provide a minimum of 10 off-street parking spaces or "one parking space for each twenty seats in the main auditorium \* \* \*" and one loading dock. *Minn.Code of Ord. § 538.190(7)(a)(i), (ii)* (1976). Currently, a maximum of 37 individuals including the residents of the property attend the Church services. There was no testimony as to the number of seats in the auditorium but we presume there is at least sufficient seating for those 37 people. The six available parking spaces therefore easily meet the Code requirements as to the number of parking spaces as well as the one loading berth required for the Church use of the property.

In the case of a newly established religious group the outside membership attending the services is likely to begin with a small number. If membership does not increase, neither will the need for more parking spaces. If membership does increase to the point where a lack of adequate parking presents a safety hazard, then the housing officials may have reason to require more parking spaces. This court, in *Minnetonka Congregation of Jehovah's Witnesses, Inc. v. Svec*, 303 Minn. 79, 85, 226 N.W.2d 306, 309 (1975), declared that "[i]t is self-evident that any church will cause heavier vehicular traffic, but for that matter, so would residential construction. However, that is far from the creation of a traffic hazard."

Code section 538.190(7)(b) states that additional parking spaces may be required for the "monastery" use of the property in an adequate number. This determination is left to the discretion of the zoning administrator but has apparently never been made. Nor did the appellants wait, before bringing suit, for the report of the respondent's architect as to how additional parking could be provided. Intervenor's state that 7 to 12 additional spaces must be provided to accommodate the residential use. Mr. Nordrum

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testified that it would be departmental practice to require one parking space per three persons based on the maximum occupancy potential of the building. But Mr. Nordrum was referring to the zoning code requirements for rooming houses. The applicable Code section 538.190(7)(b) requires reference to "standards incorporated in the zoning code for similar use." (Emphasis added). While the residential use of the property may resemble that of dormitories or rooming houses, the special constitutional implications invoked when a monastery is "accessory" to a church, demand that only religious uses be termed "similar" uses in calculating parking space requirements.

We agree with the trial court that respondents are currently in substantial compliance with the parking requirements. The trial judge viewed the property and \*890 found that "absolute compliance would create an undue burden on defendants, destroy the aesthetics of the property and produce no benefit to the surrounding property owners." Evidence adduced at trial supported these findings. Moreover, the City has not required absolute compliance by other churches and their accessory uses. The City's Zoning Administrator testified that the zoning code is not rigidly but is flexibly applied.

The zoning administrator should proceed to determine the maximum occupancy potential of the monastery and the number of parking spaces necessary in the interest of safety but with the flexibility that is usually applied to such cases.[9] We note that the Code itself allows accessory off-street parking facilities to be located "elsewhere than on the same zoning lot with the building or use served." Minn.Code of Ord. § 522.40(4) (1976).

This approach is consistent with the approach taken by the majority of jurisdictions which hold that zoning ordinances traditionally and expressly have included churches in residential districts in order to serve the convenience of the residents and in furtherance of the public morals and general welfare. 2 A. Rathkopf, *The Law of Zoning and Planning*, § 20.01 (1978 Supp.). Facilities for religious uses cannot be excluded from any residential district nor can their application for permits to expand or modify the facilities be denied unless the City proves that such exclusion or denial is a necessary exercise of the police power in furtherance of the public health, safety and general welfare. The City has to show that the need for compliance outweighs the public policy against such restriction upon freedom of worship and public assembly. *Jewish Reconstructionist Synagogue v. Incorporated Village*, 38 N.Y.2d 283, 379 N.Y.S.2d 747, 342 N.E.2d 534 (1975), cert. denied, 426 U.S. 950, 96 S.Ct. 3171, 49 L.Ed.2d 1187 (1976).

These majority jurisdictions also hold that since a church cannot be legally excluded from a residential district by a zoning ordinance, the same result cannot legally be accomplished by denying special use permits[10] unless the zoning officials meet their burden of proof as to the existence of hazards to health, safety, morals or general welfare. Traffic congestion and increased hazards, insufficient off-street parking space, and insufficient lot size for the intended purposes have all been repudiated as grounds for denial of a permit in the majority of states because there was insufficient proof that congestion would be so extreme that extraordinary and unusual danger of accidents would result. 2 A. Rathkopf, *The Law of Zoning and Planning*, § 20.01 at 20-15 (4th ed. 1975).

These caveats should be carefully considered in any future disputes which may arise between the parties concerning the provision of any additional parking spaces. We agree that the trial court should retain jurisdiction as to this matter. Respondent Church must apply for a permit to change the use of the property from a nonconforming duplex use, to use as a church, monastery and rectory and the City shall issue such permit if the premises meets the fire and other safety code requirements.

Affirmed.

#### NOTES

[1] The Church also claimed that the restrictions sought to be enforced by the City and the \*grandfather

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clause\* (Code sections 532.20 and 532.30) exempting from compliance churches established before July 19, 1963, when the new zoning code was adopted are unconstitutional as violations of the first and fourteenth Amendments to the United States Constitution and Article I, Section 16 of the Minnesota Constitution. We note that such grandfather clauses have been upheld in the face of constitutional attack since 1914. *State v. Taubert*, 126 Minn. 371, 148 N.W. 281 (1914).

[2] Intervenor also moved for a temporary injunction and both appellant and intervenor subsequently moved for summary judgment. All motions were denied.

[3] Prior to the trial on the merits of the permanent injunction, the trial court had determined that the zoning regulations in question were constitutional on their face and as applied to churches in general. These issues were not addressed on appeal by the City, the intervenors or the Church. The Minnesota Civil Liberties Union, which participated at trial and in this appeal as *Amicus Curiae*, did attack the constitutionality of the ordinances. But the rule in Minnesota is that *amicus curiae* may not raise issues as to the constitutionality of a statutory provision when such an issue is not raised by the parties to the action. *State v. Applebaums Food Markets, Inc.*, 259 Minn. 209, 216, 106 N.W.2d 896, 901 (1960).

[4] Respondents raised the argument that the Code was enforced against this Church in particular in such a discriminatory or selective manner as to be violative of the constitutional guarantees of equal protection and freedom of religion. Church members produced evidence of 31 churches within the City of Minneapolis alleged to be in violation of the zoning ordinances but which have not been targeted for vigorous enforcement efforts. The City disputes the contention that these other churches are similarly situated in that most were grand-fathered into the new code requirements and insists that when other churches have violated occupancy standards, enforcement actions have been initiated against them.

Respondents have contended that neighborhood fears about the existence of a "cult" at the Lake Harriet residence and misconceptions about the activities of Church members have prompted the City's efforts in this case. Appellants admit that some neighborhood residents have expressed such fears and misconceptions but insist that the majority of the intervenor-residents are only concerned about parking, over-occupancy and the deleterious effect upon the residential character of the neighborhood.

Since we affirm the holding of the trial court on the basis of our interpretation of the language of the zoning ordinance, we need not address the question of whether the ordinance was applied in this case in a discriminatory manner.

[5] This notice was abated on October 16, 1981. The city housing inspector admitted that the rubbish could have been left by the former tenants who had vacated the premises on September 30, 1981. The notice was prompted by a complaint that day from a neighbor who was attending a meeting of numerous residents and city officials.

[6] The trial judge found that no rooms were rented to any person at the subject property.

[7] The City claims that the transient nature of the residency of church members and the combination of both sexes in the same residence precludes a finding of a "monastery" use. We do not know, nor do we hazard a guess as to the typical length of time during which modern monks and nuns reside within their convents or monasteries. This question and the lack of a gender limitation upon the residents are doctrinal matters that are not determinative of the characterization of the use of the building for zoning purposes.

[8] Prerequisites to living at the property include the following:

- a. Attendance at Summit University, a Church-sponsored seminary located in California;
- b. Acknowledgment of a firm belief in the teachings of the Church;

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- c. Completion of a detailed application;
- d. Approval of the applicant by the local Church Director and the national Church Board of Trustees;
- e. Execution of a vow of service by which the applicant undertakes a commitment to the Church and agrees to abide by various personal and community guidelines and disciplines; and
- f. Periodic review of each member's commitment by the Church and the member.

[9] This does not mean that respondents do not have to comply with the City's building regulations governing load capacity, fire safety, and restroom facilities.

[10] The procedural posture of this case is not the typically seen review of a denial of a special use permit. Indeed, this is the first time the City of Minneapolis has ever brought an injunctive action to enforce the zoning code. But the granting of an injunction preventing the Church from using the subject property as a monastery would be tantamount to the denial of such a permit. Since the neighboring residents have intervened in this action, there is obviously no chance that the Church Universal and Triumphant could obtain the requisite two-thirds approval of a zoning change as is required by Minn.Stat. § 462.357(5).

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## **RLUIPA Religious Land Use Case: Lighthouse Rescue Mission – Hattiesburg, Mississippi**

Written by Daniel P. Dalton on December 10, 2015 Category: [RLUIPA Cases](#)

The federal court in Hattiesburg, Mississippi has approved a settlement agreement that requires the City of Hattiesburg to allow Lighthouse Rescue Mission (Lighthouse) to operate a Christian-based residential addiction treatment facility in a former school facility in Hattiesburg. Under the terms of the settlement, Hattiesburg must also pay Lighthouse \$15,000 in damages and pay Dalton & Tomich's attorney fees incurred in litigating this matter.

Lighthouse is a non-profit Christian ministry located in Hattiesburg that provides religious services, long-term housing, and treatment for single mothers that are recovering from addiction as well as their children. Lighthouse was formed in 2005, when its creator felt called to start the ministry after realizing there was a desperate need for such a ministry in the Hattiesburg community. That same year, using his own personal funds, Lighthouse's founder purchased a former elementary school building in Hattiesburg and began to renovate the building to serve as a worship facility and overnight shelter for its ministry participants.

While the City of Hattiesburg allowed Lighthouse to use its facility for worship and addiction counseling, it refused to allow Lighthouse to provide overnight shelter for the women and children participating in the program. The City's justification for this decision was because the school was located in a single-family residential zone. As a result of the City's refusal to allow Lighthouse to provide overnight stay at the school facility, Lighthouse was forced to spend an additional \$65,000 to buy a separate house that was adjacent to the school facility at which it could house some of the ministry participants.

Lighthouse applied to the City for a zoning change that would allow it to provide overnight stay at the school facility. However, both the Hattiesburg Planning Commission and City Council rejected Lighthouse's request. Next, Lighthouse applied for a conditional use permit to use the facility for worship purposes and overnight stay. The City Council approved the permit with respect to offering worship services, but once again explicitly prohibited Lighthouse from providing overnight stay.

After eight years of unsuccessfully trying to work with the City to allow it to provide overnight stay at the school, Lighthouse's only option was to file a federal lawsuit. In May 2013, with the assistance of Dalton & Tomich, Lighthouse filed its lawsuit in the United States District Court for the Southern District of Mississippi. In the lawsuit, Lighthouse challenged Hattiesburg's zoning regulations as violative of RLUIPA, the federal Fair Housing Act, and the United States and Mississippi Constitutions.

With respect to RLUIPA, Lighthouse argued the City's decisions imposed a substantial burden on Lighthouse's religious exercise. Namely, by refusing to allow Lighthouse to provide overnight stay at the school facility, the City was essentially forcing Lighthouse to forego the most central tenet of its ministry, which is to provide a safe, stable living environment for low income women in recovery from addiction and their children in order to allow the women to focus fully on their recovery and their families.

Lighthouse also argued the City's actions violated the Fair Housing Act, 42 U.S.C. § 3601 et seq. The Fair Housing Act protects individuals with handicaps, including those in recovery from addiction and participating in a drug or alcohol recovery program, from discrimination in housing. In this matter, the City specifically relied on discriminatory statements from neighbors claiming Lighthouse's proposed facility would create safety issues, increase crime, and decrease property values in the area.

In November 2013, Lighthouse and the City reached a settlement agreement under which Hattiesburg agreed to provide Lighthouse with the exact relief it sought in its Complaint—the ability to provide long-term overnight housing to the single mothers and children that participate in its ministry program. Specifically, Hattiesburg agreed to provide Lighthouse with all building code and occupancy permits and use permits it needed to provide overnight stay at the facility. Under the terms of the settlement agreement, Hattiesburg also agreed to pay \$15,000 in damages to Lighthouse as well as Dalton & Tomich's attorney fees incurred in litigating the matter.

Today, Lighthouse Rescue Mission is fully operational and providing a safe, stable living environment for periods of up to nine months to mothers in recovery from addiction and their children in the Hattiesburg community. Lighthouse also continues to provide Christian-based spiritual guidance, a variety of classes including GED, parenting, and money management, as well as counseling opportunities to its participants.

### **Related posts:**

1. [Dalton & Tomich Secures Settlement for Mississippi Christian-Based Recovery Facility](#)
2. [RLUIPA Religious Land Use Case: Lighthouse Community Church of God – Redford, Michigan](#)
3. [Church of our Savior vs. Jacksonville Beach, Florida – our latest Religious Land Use case](#)
4. [Resolution of the San Diego RLUIPA / Religious Land Use and Zoning Case](#)

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