UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 10-6774-GW(FMOx) Date January 13, 2011

Title *United States of America v. City of Walnut, California*

Present: The Honorable GEORGE H. WU, UNITED STATES DISTRICT JUDGE

Javier Gonzalez	Victoria Valine	
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
Max Lapertosa	James R. Tedford II

PROCEEDINGS: DEFENDANT'S MOTION TO DISMISS (filed 11/18/10)

Court hears oral argument. The tentative circulated is hereby adopted as the Court's final ruling (attached). Defendant's Motion to Dismiss is **denied.**

A Scheduling Conference is set for **January 31, 2011 at 8:30 a.m.** Joint Rule 26(f) report will be filed by January 27, 2011.

Parties may appear telephonically provided that notice is given to the clerk by January 27, 2011.

: 12

Initials of Preparer JG

United States v. City of Walnut, Case No.CV-10-6774
Tentative Ruling on Motion to Dismiss

INTRODUCTION

Plaintiff, the United States of America ("Plaintiff") brings this action to enforce the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"), 42 U.S.C. §§ 2000cc - 2000cc-5, against Defendant, the City of Walnut ("Defendant"). Plaintiff's Complaint arises from Defendant's denial of a Conditional Use Permit to the Chung Tai Zen Center ("Zen Center") to construct a new house of worship on its property at 20836 Marcon Drive in Walnut. Defendant now moves to dismiss the Complaint on the ground that the Zen center, "as the subject 'religious assembly or institution' of this action," failed to exhaust its administrative remedies.

BACKGROUND

Defendant is a political subdivision of the State of California with the authority to regulate and restrict the use of land and structures within its borders, including granting conditional use permits. Compl. ¶ 3. The Zen Center is a Buddhist religious organization that had a Buddhist house of worship in the City of Walnut, California, with a membership of between 100 and 200 members. Id. at ¶ 6. It currently operates its religious activities at the Middle Land Chan Monastery in Pomona, California. Id.

The Zen Center previously owned and operated out of a single family house located on a 2.19 acre parcel of land at 20836 Marcon Drive in Walnut (the "Marcon Drive Property). Id. at ¶ 10. The Marcon Drive Property is located in a district that is zoned for residential use. Id. at ¶ 11. Houses of worship are permitted in residential districts by Conditional Use Permit, provided they are located on more than one acre of land. Id. at ¶ 12. At least six houses of worship operate in the immediate area of the Marcon Drive Property. Id. at ¶ 13.

In 2001, the Zen Center began designing a new house of worship on the Marcon Drive Property that would be large enough to accommodate its growing number of members. Id. at ¶ 15. On March 19, 2003, the Zen Center presented its proposed design to the Walnut Planning Commission (hereinafter, the "Planning Commission"). Id. at ¶ 16. Following this submission, based on comments by members of the Planning Commission, the Zen Center significantly revised its proposed design. See id. at ¶¶ 17, 18. The new design reduced the amount of floor space by 43%, reduced the building height by five feet, and reduced the number of parking spaces. Id. at ¶ 18.

On June 7, 2006, the Zen Center applied for a Conditional Use Permit. Id. at ¶ 19. On April 11, 2007, it submitted a revised Conditional Use Permit application in response to suggestions by Walnut planning staff to again reduce the size of the structure and add off-street parking. See id. at ¶ 21. Under the revised plan, the Zen Center would hold no more than two meditation classes a day, with attendance limited to 50 persons per class. Id. at ¶ 22. Upon the request of Walnut planning staff, the Zen Center also commissioned and submitted a traffic study by an independent consulting firm that found that approval of the plan would not significantly increase traffic in the area. Id. at ¶ 23.

At a June 6, 2007 hearing of the Planning Commission, Walnut planning staff recommended approval of the Zen Center's Conditional Use Permit application. Id. at ¶ 24.

Despite this recommendation, the Planning Commission declined to take action and postponed the matter until September 5, 2007. Id. at ¶ 25. At the September 5, 2007, hearing, the Planning Commission again took no action, but required the Zen Center to submit an additional traffic study. Id. at ¶ 26. The Zen center submitted an updated traffic study in October 2007. Id. at ¶ 27. On January 16, 2008, after a lengthy public hearing, the Planning Commission voted 4-1 to deny the Zen Center a Conditional Use Permit. Id. at 28. The Planning Commission issued its formal resolution denying the permit on January 30, 2008. Id. at ¶ 30. The City advised the Zen center that an appeal would be pointless because of an upcoming municipal election. Id. at ¶ 31.

On February 14, 2008, the Zen Center submitted a three-page letter to the Walnut City Council explaining its objections to the Planning Commission's resolution. Id. at ¶¶ 32. Defendant did not respond. Id. at ¶ 33.

Defendant has not denied a Conditional Use Permit to any house of worship since at least 1980, nor has it required them to provide more off street parking than the Walnut Code requires. Id. at ¶¶ 35, 36. On August 20, 2008, the Planning Commission approved a Conditional Use Permit for a Catholic church that would be over three times larger and 20 feet higher than the Zen Center, and would have a capacity of approximately 1100 persons. Id. at ¶ 37.

LEGAL STANDARD

The Ninth Circuit has held that the defense of failure to exhaust administrative remedies may be raised in a non-enumerated motion to dismiss under Rule 12(b). See Wyatt v. Terhune, (9th Cir. 2003) 315 F.3d 1108, 1119.

ANALYSIS

RLUIPA was enacted in order to protect the free exercise of religion from governmental regulation. See Guru Nanak Sikh Society v. County of Sutter, 456 F.3d 978, 985 (9th Cir. 2006). It prohibits the government from imposing "substantial burdens" on the exercise of religion in the context of regulations regarding land use and prison conditions "unless there exists a compelling governmental interest and the burden is the least restrictive means of satisfying the governmental interest." Id. (citations and internal quotes omitted). It was enacted specifically in response to constitutional flaws in the Religious Freedom and Restoration Act ("RFRA") as applied to States identified in City of Boerne v. Flores, 521 U.S. 507, 515-16 (1997). Accordingly, it is more limited in scope than the RFRA. See Cutter v. Wilkinson, 544 U.S. 709, 715 (2005). RLUIPA applies if, inter alia, "the substantial burden is imposed in the implementation of a land use regulation or system of land use regulations, under which a government makes, or has in place formal or informal procedures or practices that permit the government to make, individualized assessments of the proposed uses for the property involved." 42 U.S.C. § 2000cc(a)(2)(C); Guru Nanak Sikh Soc'y, 456 F.3d at 986. The statute is enforceable by private parties and by the government as an express cause of action. Compare 42 U.S.C. § 2000cc-2(f) with § 2000cc-2(a).

In RLUIPA cases related to prison conditions, there is a strict exhaustion requirement. 42 U.S.C. § 2000cc-2(e) provides that nothing in RLUIPA "shall be construed to amend or repeal the Prison Litigation Reform Act of 1995," and § 1997e(a) requires exhaustion of all administrative remedies. See Cutter v. Wilkinson, 544 U.S. 709, 723 n. 12. (2005). By contrast, RLUIPA's land-use provisions contain no express requirement that administrative remedies be exhausted before a

plaintiff may file suit. See 42 U.S.C. 2000cc-2. Accordingly, RLUIPA does not require plaintiffs in land use cases to exhaust administrative remedies. Cf. Hale Kaula Church v. Maui Planning Comm'n, 2003 U.S. Dist. LEXIS 24509, *8 (D. Haw. Mar. 24, 2003) ("Plaintiffs have obtained a 'final decision' of the County . . . and they are not required to exhaust that remedy through state channels.") (emphasis added). The RFRA similarly has been held not to require exhaustion. See Church of the Holy Light of the Queen v. Mukasey, 2008 U.S. Dist. LEXIS 102990 *9 (D. Or. Dec. 19, 2008).

Plaintiff aptly draws an analogy to the exhaustion requirement in cases brought under 42 U.S.C. § 1983, as discussed in Patsy v. Board ofRegents, 457 U.S. 496 (1982). As with section 1983, the carve-out of an exhaustion requirement for prisoners in RLUIPA demonstrates that Congress did not intend to impose a general exhaustion requirement in RLUIPA actions. See Patsy, 457 U.S. at 508. Both statutes permit private plaintiffs to bring constitutional challenges to local land use decisions. See, e.g., Shelter Creek Dev. Corp. v. City of Oxnard, 838 F.2d 375 (9th Cir.), cert. denied, 488 U.S. 851 (1988) (due process challenge to land use ordinance under § 1983).

As Plaintiff notes, even if the Zen Center would have been required to exhaust its administrative remedies as a private plaintiff, the United States is not bound by whether the Zen Center failed to exhaust administrative remedies. It is a well-settled "general principle of law that the United States will not be barred from independent litigation by the failure of a private plaintiff." United States v. E. Baton Rouge Parish Sch. Dist., 594 F.2d 56, 58 (5th Cir. 1979).

Although the question is not explicitly raised in Defendant's moving papers, Plaintiff correctly observes that a claim may be ripe notwithstanding a plaintiff's failure to pursue state administrative remedies. See Williamson County Reg'l Planning Comm'n v. Hamilton Bank, 473 U.S. 172, 192 (1985) ("The question whether administrative remedies must be exhausted is conceptually distinct ... from the question whether an administrative action must be final before it is judicially reviewable."); Outdoor Media Grp. v. City of Beaumont, 506 F.3d 895, 900 (9th Cir. 2007) ("[T]he alleged deprivation of Outdoor Media's constitutional rights was completed when [the city] denied its permit applications."). This case meets the requirements for ripeness and finality. The Planning Commission was the "initial decisionmaker," see Williamson County, 473 U.S. at 193, on whether the Zen Center could obtain a Conditional Use Permit. It issued a detailed resolution rejecting the Zen Center's application. Accordingly, the Commission reached a "definitive position" that inflicted an "actual, concrete injury" on the Zen Center, see Williamson County, 473 U.S. at 193. The resolution and its underlying record provide the necessary factual basis for evaluating whether the City's actions comply with RLUIPA

Defendant has not - either in its moving papers or in its Reply - pointed to any authority indicating that Congress intended to include a general exhaustion requirement within RLUIPA. Indeed, the Reply does not coherently address any of the points raised in Plaintiff's Opposition. Rather, it appears to try to shift the focus away from exhaustion and to an argument on mootness which, even if it had been raised in the initial motion, would be rejected.

CONCLUSION

Defendant's Motion to Dismiss is DENIED.