

## Judge affirms Adventist win in Prince George's land use case

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A federal judge has largely cleared the way for a group of Seventh Day Adventists to build a church in West Laurel after concluding that Prince George's County intentionally discriminated against the religious sect by denying its application for water and sewerage services.

Judge Roger W. Titus upheld an April verdict of \$3.7 million in favor of Reaching Hearts International Inc. in U.S. District Court in Greenbelt. The jury "reasonably" concluded that the county's plumbing-based denial of the construction application was a pretext to shield intentional discrimination against the religious group, Titus wrote.

The judge cited trial testimony that 27 other water and sewage applications were granted by the council shortly before it rejected the one submitted by Reaching Hearts, the only church that applied.

"Thanks to the actions of the defendant [county], RHI's exercise of religion in this case didn't have a prayer, and this court will now step in and attempt to right the wrong," Titus wrote.

The judge did not expressly order the county to allow construction of the church but told it to review RHI's application "without any discriminatory animus."

An attorney for the county, which denied acting with discriminatory intent, declined to comment for this story.

RHI's lawyer, Ward B. Coe III, said the county is likely to seek review by the 4th U.S. Circuit Court of Appeals. He and his client "feel very strongly about our chances on appeal," Coe said, based on Titus' "legally strong" opinion.

The opinion is closely tied to the facts, which make a compelling case of intentional religious discrimination in violation of the Constitution's Equal Protection Clause and the federal Religious Land Use and Institutionalized Persons Act, said Coe, a partner at Gallagher, Evelius & Jones LLP in Baltimore.

### WHAT THE COURT HELD

**Case:** *Reaching Hearts International Inc. v. Prince George's County*, No. RWT 05-1688. Reported. Opinion by Titus, J. Filed Nov. 4, 2008.

**Issue:** Was jury's finding of intentional religious discrimination by county valid under Equal Protection Clause and Religious Land Use and Institutionalized Persons Act?

**Holding:** Yes; a jury could have reasonably concluded that county's nondiscriminatory explanation for rejecting church's water and sewerage application was pretextual.

**Counsel:** Ward B. Coe III for plaintiff; Mary C. Crawford for defendant.

## **Near the reservoir**

At issue before the district court was Burtonsville-based RHI's plan to build a 750-seat church with 173 parking spaces on 3.4 acres of property the sect bought for about \$800,000 in February 2002.

With its West Laurel plans on hold, the church has continued to meet at the Cedar Ridge Conference Center in Spencerville, where it has been paying about \$80,000 annually to use the premises on Wednesdays from 6:30 p.m. to 9:30 p.m. and Saturdays from 9 a.m. to 3 p.m.

A bigger, church-owned facility would allow RHI to accommodate more members, for more hours and, over time, at less cost, RHI argued in court papers. After the application was submitted, the County Council passed a zoning ordinance that thwarted the church's plan, RHI stated.

The original zoning regulations had permitted structures within 2,500 feet of a drinking-water reservoir to cover 50 percent of a lot. The change permitted the church to use only 10 percent of the property. As a result of the ordinance, the church would be limited to 0.34 acres rather than the 3.4 acres planned, RHI added.

The council defended its actions, saying the church was next to a reservoir and could have a negative impact on water quality.

But the jury in April agreed with RHI that the county's actions amounted to intentional discrimination in violation of the Equal Protection Clause and RLUIPA. At the time, Titus agreed to hold hearings on whether the county's actions were narrowly tailored to advance a compelling state interest.

On Nov. 4, though, Titus upheld the jury's verdict.

RHI had engaged in a no-win effort to reach an agreement with the council, beginning in 2002 and ending with the sect's 2005 filing of the religious-discrimination lawsuit in the U.S. District Court for Maryland, Titus stated.

"In conclusion, it is clear that defendant engaged RHI in a fruitless three-year-long shadowboxing match that was doomed from the start," Titus wrote.

"Certainly, [the county] never leveled a knockout punch with one decision or action over the course of the three years ...," he added. Instead, it used "a combination of uppercuts, hooks, crosses, and jabs" coupled with "bobbing and weaving, which ensured that RHI was always facing a moving target without ever having the time or opportunity to recover or any hope for success."