STATE OF MICHIGAN

IN THE SUPREME COURT

SHEPHERD MONTESSORI CENTER MILAN, a Michigan not-for-profit corporation,

Plaintiff/Appellee,

v

ANN ARBOR CHARTER TOWNSHIP, ANN ARBOR CHARTER TOWNSHIP ZONING OFFICIALS and ANN ARBOR CHARTER TOWNSHIP ZONING BOARD OF APPEALS,

Defendants/Appellants.

Supreme Court No. 137443

Court of Appeals No. 272357

Case No. 00-1072-AS
Hon. Melinda Morris

/

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AMICI CURIAE BRIEF IN SUPPORT OF DEFENDANTS/APPELLANTS ANN ARBOR TOWNSHIP'S APPLICATION FOR LEAVE TO APPEAL

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STATEMENT OF QUESTIONS PRESENTED

1. Did the Court of Appeals err in holding that the strict scrutiny test applies in an equal protection case when an ordinance was already found to be valid?

   Defendant-Appellant answered: "Yes".
   Court of Appeals' majority answered: "No".
   Plaintiffs-Appellees answered: "No".

2. Did the Court of Appeals confuse the "similarly situated" test with comparison of the daycare center and a school instead of the two parties?

   Defendant-Appellant answered: "Yes".
   Court of Appeals' majority answered: "No".
   Plaintiffs-Appellees answered: "No".

3. Did the Court of Appeals err in finding that Shepherd Montessori had been treated differently than other religious entities?

   Defendant-Appellant answered: "Yes".
   Court of Appeals' majority answered: "No".
   Plaintiffs-Appellees answered: "No".

4. Did the Court of Appeals err in their remand with inconsistent positions on RLUIPA and equal protection?

   Defendant-Appellant answered: "Yes".
   Court of Appeals' majority answered: "No".
   Plaintiffs-Appellees answered: "No".

STATEMENT OF FACTS

Amici Curiae accepts the Statement of Facts as filed by Defendant-Appellant in their brief for Application for Leave to Appeal.

STATEMENT OF INTEREST OF AMICI CURIAE

MICHIGAN MUNICIPAL LEAGUE AND MICHIGAN TOWNSHIPS ASSOCIATION

Now Comes the Michigan Municipal League and the Michigan Townships Association and herein states their interest in the statewide importance that the two organizations have in this important Court of Appeals decision affecting Ann Arbor Charter Township and the impact this decision could have on municipalities in the State of Michigan.

The Michigan Municipal League is a non-profit Michigan corporation whose purpose is the improvement of municipal government and administration through cooperative effort. Its membership is comprised of 521 Michigan local governments of which 450 are also members of the Michigan Municipal League Legal Defense Fund. The Michigan Municipal League operates the Legal Defense Fund through a Board of Directors. The purpose of the Legal Defense Fund is to represent the member local governments in litigation of statewide significance. This Amici Curiae Brief is authorized by the Legal Defense Fund's Board of Directors.[1]

The Michigan Townships Association is a Michigan non-profit corporation whose membership consists of in excess of 1,235 townships within the State of Michigan

[1]The Board of Director's membership includes: the President and Executive Director of the Michigan Municipal League and the officers and directors of the Michigan Association of Municipal Attorneys: Randall L. Brown, City Attorney, Portage; Andrew J. Mulder, City Attorney, Holland; Clyde Robinson, City Attorney, Kalamazoo; James O. Branson III, City Attorney, Midland; Debra A. Walling, Corporation Counsel, Dearborn; Eric D. Williams, City Attorney, Big Rapids; Stepphen K. Postema, City Attorney, Ann Arbor; Lori Griggs Bluhm, City Attory, Troy; James J. Murray, City Attorney of Boyne City and Petoskey; and William C. Matthewson, General Counsel, Michigan Municipal League.

joined together for the purpose of providing education, exchange of information and guidance to and among township officials to enhance the more efficient and knowledgeable administration of township government services under the laws of the State of Michigan. Through its Legal Defense Fund, the Michigan Townships Association has participated on an amici curiae basis in a large number of state and federal cases presenting issues of statewide significance to Michigan townships.

The Michigan Townships Association and the Michigan Municipal League believe that the within case presents issues of importance not just to the instant defendants, but also to local governments throughout Michigan and elsewhere. At issue is the Court of Appeals decision in *Shepherd Montessori v Ann Arbor Township*, et al, No. 272357, decided August 26, 2008. In that decision this Honorable Supreme Court vacated the May 22, 2007 judgment on RLUIPA and directed the Court of Appeals to reconsider their decision in light of *Greater Bible Way Temple of Jackson v City of Jackson*, 478 Mich 373 (2007). The court was directed to look at the issues of "substantial burden", whether denial of a variance coerced individuals into acting contrary to their religious beliefs and whether denial would be a "mere convenience" or irritation. Although the Court of Appeals accepted the ruling via *Greater Bible Way*, as to the RLUIPA claim, they refused to apply the principles that were enunciated in *Greater Bible Way* and the principles enunciated in the Supreme Court's decision and apply it to the remaining equal protection claim. Instead, the Court of Appeals held that the Township still violated the plaintiff's equal protection claim which we believe is inconsistent with the direction for reconsideration and inconsistent with the *Greater Bible Way* case referred

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to by this Honorable Court. It is the opinion of the Township, Defendants-Appellants, and Amici Curiae Michigan Municipal League and Michigan Townships Association that this decision needs further review by this Honorable Court to finally put to rest once and for all this case which has been before the Court of Appeals three separate times. This recent decision also goes against well-founded principles of zoning and we believe will foster more confusion. It is hard to understand how this Honorable Court can find no discrimination on the same facts regarding RLUIPA but the Court of Appeals can find there is discrimination in regards to the equal protection claim.

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LAW AND ARGUMENT

ARGUMENT I

THE COURT OF APPEALS ERRED IN HOLDING THAT THE STRICT SCRUTINY TEST APPLIES IN AN EQUAL PROTECTION CLAIM WHEN AN ORDINANCE WAS ALREADY FOUND TO BE VALID

Background

The request by Ann Arbor Township, et al., for leave to appeal is important to finally put an end to the much litigated cases of Shepherd Montessori. The issue between Shepherd Montessori and Ann Arbor Township involves no less than three Court of Appeals decisions and one Michigan Supreme Court decision. The cases are as follows:

Court of Appeals;

Shepherd Montessori Center Milan v Ann Arbor Charter Township et al., 259 Mich App 315; 675 NW2d 271 (2003) cited herein as Shepherd I:

Shepherd Montessori v Ann Arbor Charter Township et al., 275 Mich App 597; 739 NW2d 654 (2007), cited herein as *Shepherd II.*

Shepherd Montessori v Ann Arbor Township et al., No 272357, (decided August 26, 2008), cited herein as *Shepherd III*:

Supreme Court

Shepherd Montessori v Ann Arbor Charter Township et al., 480 Mich 1143; 746 NW2d 105 (2008).

Briefly, in *Shepherd I*, the Court of Appeals reversed the trial court's dismissal of Plaintiff's RLUIPA claim and found that there were genuine issues of material fact for further proceedings. The Court of Appeals also reversed the trial court's motion dismissing Plaintiff's equal protection claim and remanded the ZBA appeal and affirmed

the motion for summary disposition for the Township on substantive due process, vagueness, procedural due process and superintending control.

Shepherd II involved a decision that the plaintiffs did meet the requirement to bring a RLUIPA cause of action; remanded the case on the variance denial as it relates to substantial burden on the plaintiff's religious exercise and again reversed the circuit court on finding no violation of equal protection.

The case again was appealed by the Township but in lieu of granting leave to appeal, this Supreme Court vacated the 2007 judgment of the Court of Appeals and remanded it back for reconsideration in light of *Greater Bible Way Temple of Jackson v City of Jackson*, 478 Mich 373; 733 N.W.2d 734 (2007) with attention to the substantial burden question as it relates to the variance denial.

In *Shepherd III*, the Court of Appeals acknowledged the Michigan Supreme Court's decision regarding RLUIPA and now concurred with the same result. However, in regards to the equal protection claim, the Court of Appeals would not alter their prior holding even though the Supreme Court instructed the Court of Appeals to reconsider their decision in light of *Greater Bible Way, supra*. Ann Arbor Township is requesting that this court now look at the equal protection decision.

Both in *Shepherd I* and in *Shepherd II,* the Court of Appeals outlined the principles and case law involving equal protection. (See *Shepherd I* at 333 to 339 and *Shepherd II* at 611-614.) Amici Curiae does not take issue with the original analysis set forth by the Court of Appeals but does take issue with their conclusion as it applies to the facts of this case. The Court of Appeals, after recognizing that statutes and

ordinances can be neutral on their face, and the question of whether legislative classification can negatively affect a suspect class, concluded that strict scrutiny is used in equal protection, "...where a statute encroaches on a fundamental right such as the right to free exercise of religion as in the present case." (Sherbert v Verner, 374 US 398; 407; 83 SCt 1790; 10 LEd2d 965 (1963) (at 334-335).)

However, in *Shepherd I*, when the Court of Appeals examined the "substantive due process argument", (in response to the plaintiff's argument that the zoning ordinance was invalid because it did not bear a real and substantial relationship to the public health, safety and welfare of the township), the court responded as follows:

> "Although not articulated clearly, it appears that plaintiff is arguing that the township's ordinance is unlawful because it does not allow schools in OP districts. We find that the exclusion of schools from OP districts under the Ann Arbor Charter Township Zoning Ordinance is reasonable and serves a legitimate governmental interest connected to the public's health, safety, and welfare. Presuming the ordinance to be valid, plaintiff has failed to satisfy its burden to prove otherwise. The trial court did not err in summarily dismissing plaintiff's substantive due process claim." (Shepherd I at 341.)

Thus, the Court of Appeals found that the ordinance excluding schools from the OP district was reasonable and served a legitimate governmental purpose. Therefore, the application of strict scrutiny as it affects the ordinance is in error. At that point a "rational basis" test should have been used as seen in *Locke v Davey*, 540 US 712; 124 SCt 1307; 158 Led2d 1 (2004) case at pp 717-718. This argument is more fully discussed in the Township's Appellant's brief at pp 27-29 which will not be rehashed in this brief at this time.

ARGUMENT II

THE COURT OF APPEALS CONFUSED THE "SIMILARLY SITUATED" TEST WITH COMPARISON OF THE DAYCARE CENTER AND A SCHOOL INSTEAD OF THE TWO PARTIES

The court in Shepherd III makes a point that "defendants conceded the plaintiff in Rainbow Rascals were similarly situated and defendants failed to offer a reason for refusing to permit plaintiff to operate a school in the same space that Rainbow Rascals operated in its daycare program." (Shepherd III at p 3.) They then cite Shepherd II at 275 Mich App 613-614. However, the Court of Appeals made two errors. First of all, since they already found that the ordinance that permits schools in a different zone and not in the OP zone was proper and legal, there was no reason the Township had to defend whether or not a school could be permitted in that zone. Secondly, they also made an error in their interpretation that "defendants conceded that plaintiff and Rainbow Rascals were similarly situated." (*Shepherd III* at p 3.) Although the Court of Appeals in its previous decisions were concerned about evidence and other genuine issues of fact, when it came to this issue, they did not support their decision on "fact". The statement that defendants conceded was not evidence at all but a statement in the Township's 2006 brief in response to Shepherd II. The quote from the brief as cited in the Township's Application for Leave to Appeal brief at page 29, explains that the statement was in a context. The statement in the brief was as follows:

> "The similarity of the two entities is not in dispute. Defendant's treatment of these entities is the real issue and in truly comparable situations, defendant did not treat plaintiff differently. Moreover, plaintiff failed to produce anything more than a mere scintilla of evidence to suggest that religious bias motivated defendant's zoning decision." (See Defendant-Appellant's brief at p 29.)

The emphasis that the Township was trying to stress was not "similarity" between a school and a daycare center. The emphasis, in fact, was on the issue of whether or not the Township had treated the secular institution differently from the religious institution which is the proper test for equal protection.

The Court of Appeals in Shepherd III, citing Shepherd II (275 Mich App at 614), confuses equal protection treatment as to the uses that were before the Zoning Board of Appeals. For instance, the court seemed to be puzzled as to why Shepherd Montessori was denied "the opportunity to operate its school" in the identical space that Rainbow Rascals operated its daycare program." (Shepherd III at p 3, citing Shepherd II at 614.) The court became confused in trying to see how similar a school was to a daycare center. However, that was not the issue. The court, as we already know, recognized that the Township was perfectly in their right to have a school located in a different district than office/park. They also recognized that a daycare center for employees was a permissible use in the office/park classification. The original variance request that Rainbow Rascals requested was not to operate a school but was to ask for a variance to include non-employees to use the center. The Township granted the request, in part because it did not change the "use" of the daycare center. It still was a daycare center. They just permitted non-employees to take advantage of the daycare. Hypothetically, had Shepherd Montessori requested to expand a daycare center to include non-employees, the variance would likewise be granted. However, that is where the court became confused. Shepherd Montessori was not requesting a daycare center, they were requesting a total different use which was not permitted by the Zoning Ordinance

for a school. The fact there might be fewer children or cause fewer traffic or density problems was not the issue. The court became confused by trying to compare a school to a daycare center. That does not go to equal protection. Equal protection speaks to the parties requesting a particular action. No evidence was submitted by Shepherd Montessori to show that Ann Arbor Township had refused religious entities the ability to operate a school in a school district. Shepherd Montessori further never submitted any evidence that the Township allowed secular entities to operate schools in the OP district but had refused religious entities. Ann Arbor Township is not contesting what the US Supreme Court or this Supreme Court has held in regards to the test for equal protection, they are objecting to how the Court of Appeals applied the test to the facts and applied the facts to the equal protection claim. One is certainly puzzled that in recognizing the Supreme Court's holding in *Greater Bible Way*, they can possibly reconsider their actions in that light when *Greater Bible Way* makes it very clear that one looks at whether a Township has done anything to coerce someone in acting contrary to its religious beliefs or that it has substantially burdened its exercise of religion.

In fact, in Shepherd I, the Court of Appeals had already found:

> "In regard to OP districts, the Ann Arbor Charter Township Zoning Ordinance clearly and unambiguously indicates the daycare facilities are a permitted accessory use; there is nothing vague about this language. Further, Section 130.1006 makes absolute no reference to a school of any kind being a permitted use." (Shepherd I at p 344.)

The Court of Appeals went on to indicate that the ordinance was not vague, that it provided clear guidelines on permitted uses, that the court reviewed the standards for

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granting variances noting that the ordinance "...fails to reveal any language that would give the ZBA unfettered and unarbitrary discretion in granting variances." (Shepherd I at 345.) Then the Court of Appeals explained that the plaintiff was really arguing whether there should have been an exclusion of schools from the OP district. Thus, apparently, the Court of Appeals forgot their earlier holdings supporting the constitutionality of the ordinance, the right to have schools in a different district, and the right of the ZBA to make proper decisions based on the standards set forth in the ordinance. But, in the end, comparing whether a school was "similarly situated" like a daycare center was the wrong test. The Court of Appeals should have examined whether or not the religious entity was being treated like the secular when requesting a variance or trying to institute a school.

ARGUMENT III

THE COURT OF APPEALS ERRED IN FINDING THAT SHEPHERD MONTESSORI HAD BEEN TREATED DIFFERENTLY THAN OTHER RELIGIOUS ENTITIES

The Supreme Court has already determined the issue regarding the free exercise of religion as it affects the RLUIPA issue. It found no discrimination on the basis of RLUIPA. Even the Court of Appeals in its latest decision of August 26, 2008 cites the Supreme Court in regards to *Greater Bible Way, supra,* which is whether or not governmental action coerces one into acting contrary to ones religious beliefs or prohibits one from something that their religion requires. (See Decision p 2 and *Greater Bible Way, supra* at p 391.) The Township is not forcing Shepherd Montessori to act contrary to their religious beliefs and there was no evidence to show that the Township contradicts the rights of worship or their free exercise of religion because they have to locate a school in an area which is zoned for schools.

In addition to the Court of Appeals blurring the lines between a daycare center and a school, they also blurred the lines between a non-use variance and a use variance. The variance that had been requested by Rainbow Rascals was a type of non-use variance, i.e., the expansion of a permitted use to include not only employees' preschoolers but non-employees' preschoolers for the daycare center. The request by Shepherd Montessori did not fall in that category but fell into a "use variance" where they wanted to get a variance on the actual use of the property, i.e., a school. Once again, this was not a request to expand Shepherd Montessori daycare but for the creation of a school. The standards for a use variance are well known in case law

which includes proving a hardship and also proving that the use requested is not self-created. (See the classic case of *Puritan-Greenfield Association v Leo*, 7 Mich App 659 (1967), "...a necessary hardship can be best defined as a situation where, in the absence of a variance, no feasible use can be made of the land." At 669.) There was no evidence that the property still couldn't be used for industry or a day school.

Since the Court of Appeals was directed to reconsider the decision via *Greater Bible Way*, the court noted that while looking at the housing that was requested in *Greater Bible Way*, the court found:

> "While the city's zoning ordinance may contribute to the ordinary difficulties associated with location (by any person or entity religious or non-religious) in a large city, it does not prohibit plaintiff from providing housing. Whatever specific difficulties plaintiff-church claims to have encountered, they are the same ones that face all land users. The city has not done anything to coerce plaintiff in acting contrary to its religious beliefs and thus it does not substantially burden plaintiff's exercise of religion." (Cited by the Court of Appeals in Shepherd III on p 3 referring to Shepherd I, pp 401-403.)

Further, in the latest decision of *Great Lakes Society v Georgetown Charter Township*, No. 270031 (October 30, 2008) (for publication), (see Exhibit A attached), the Court of Appeals reviewed a denial for a special use and for a variance by the Township involving a church/nutrition organization that was seeking to get a special use permit for their church in a residential zone that did not have the requisite frontage and other requirements. One of the issues, of course, was equal protection. The first thing the court noted was,

> "Accordingly, the first question has to be whether GLS demonstrated on the record that it was treated differently from some similarly situated church. (See Shepherd I; Shepherd Montessori Center Milan v Ann Arbor Charter Township, 259 Mich App 315, 336-337; 675 NW2d 271 (2003).) With regards to the variance request, the record here shows that all churches within the Township

> have been treated alike. Almost all have been allowed only on parcels of property that have a 200 foot street frontage...therefore, GLS has failed to show that it had been treated differently from any similarly situated church." (Great Lakes Society at p 18.)

Thus, the Court of Appeals in GLS, ironically citing Shepherd I, properly reviewed the situation for an equal protection argument. Was the church treated differently from other "similarly situated churches"? There was no evidence in the case at bar that Shepherd Montessori was treated differently. In fact, the record showed in the GLS case that churches in the township had all been treated alike including the requirement that parcels have a 200 foot frontage. This court recognized that the proper standard in an equal protection case is to show how a religious organization has been treated differently from a similarly situated church. In fact, there is no evidence in any of the Shepherd cases to show that as a church they were being discriminated against or that secular institutions were getting better treatment than Shepherd Montessori in terms of zoning. Therefore, after the Court of Appeals already held the validity of the Township Zoning Ordinance and the standards set forth in the ordinance for variances, to say that the application of the Zoning Ordinance violated equal protection was simply error.

In the case at bar, the Plaintiff-Appellee failed to show by any evidence or affidavits that other churches in Ann Arbor Township have requested schools in the OP zoning district and have been granted the right to do so. Further, they have failed to show that secular schools have been allowed to locate in the industrial area. Without that showing, how can the Court of Appeals hold that there has been an equal protection violation? Once again, the Court of Appeals erred in not accepting the findings of the trial court which found that there was no equal protection violation and

found that there was not selected treatment based on religion. The Court of Appeals, unfortunately, bought the argument that they were treated differently because the daycare center had 100 people whereas the proposed school was only going to have 25. But the issue was not the number of children using the space, but the type of institution proper for the zone. The fact that the Court of Appeals did not see a difference between a school and a daycare facility was not their prerogative. Their role was to see if the Zoning Board of Appeals decision was supported by "competent material and substantial evidence on the record." (See MCL 125.3606(1)(c).) The Court of Appeals overstepped its bounds by acting as a "super zoning commission" in substituting its own opinion for that of the Zoning Board of Appeals.

Whether they felt the Zoning Board of Appeals should have allowed schools in a non-zone, it was not the court's decision to make. As the principle clearly enunciated in *Brae Burn, Inc. v Bloomfield Hills*, 350 Mich 425; 86 NW2d 166 (1957), the courts have constantly reiterated the following principle:

> "In view of the frequency with which zoning cases are now appearing before this court, we deem it expedient to point out again in terms not susceptible of misconstruction, a fundamental principle: This court does not sit as a super zoning commission. Our laws have wisely committed to the people of a community themselves the determination of their municipal destiny, the decree to which the industrial may have precedence over the residential, and the areas carved out of each to be devoted to commercial pursuits. With the wisdom or lack of wisdom of the determination we are not concerned. The people of the community through their appropriate legislative body and not the courts govern its growth and its life. Let us state the proposition as clearly as may be: <u>It is not our function to approve the ordinance before us</u> as to the wisdom or desirability for alleged abuses involving such factors, the remedy is the ballot box, not the courts. We do not substitute our judgment for that of the legislative body charged with the duty and the responsibility in the premises." (Emphasis added.) (*Brae Burn, supra*, at 430-431. See also *Schwartz v City of Flint*, 426 Mich 295; 395 NW2d 678 (1986) at 307-308.)

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Furthermore, the difference should be clear if one accepts that a daycare center is different from a school. If this was a matter between a secular daycare center versus a religious daycare center, then certainly one would see a problem with equal protection. But, that is not the case. The fact that "reasonable minds could differ with regard to whether plaintiff and Rainbow Rascal were similarly situated" is not the issue. That is precisely where the Court of Appeals erred. This was not a question of whether a school was similar to a daycare center. That is an attack on the zoning itself which the Court of Appeals already acknowledged was a proper zoning classification to exclude schools in the office park classification.

Query: What if Rainbow Rascals was the one who decided to create a school on the site? If they were denied, would they also argue equal protection because they were not allowed to operate a school in a zone that did not permit schools and the fact that a preschool and an elementary school may be considered "similarly situated", that therefore they can disregard the zoning ordinance classification? Unless the plaintiffs in the case can show that religious institutions have been treated differently from secular in locating schools in a non-school district, then the equal protection argument fails and the court erred in not realizing the proper test in determining whether there has been an equal protection violation.

ARGUMENT IV

THE COURT OF APPEALS ERRED IN THEIR REMAND WITH INCONSISTENT POSITIONS ON RLUIPA AND EQUAL PROTECTION

This Supreme Court, in vacating the May 22, 2007 Court of Appeals decision, remanded the case back to the Court of Appeals for reconsideration in light of *Greater Bible Way, supra*. The Court of Appeals was directed to reconsider Shepherd Montessori Center Milan v Ann Arbor Township, Nos. 134739, 134978, 480 Mich 1143 whether denial of the zoning variance imposed a substantial burden on plaintiff's religious exercise, i.e., "whether the denial of the variance coerces individuals into acting contrary to their religious beliefs. Id at 401" (At p 1143.)

The fact that something might make it more difficult to practice ones religion does not constitute a substantial burden. On remand, the Court of Appeals stated: "Plaintiff did not show that the denial of the variance forces plaintiff to do something that its religion prohibits or refrains from doing something that his religion requires. Plaintiff did not allege that his property issue has religious significance and that plaintiff's faith requires a school at the particular site. Shepherd I at 259 Mich App at 323." (Shepherd III at p 3.) The court went on to state that they felt that the plaintiff could operate a school at another location in the surrounding area concluding with, "In other words plaintiff may operate a faith based school but it must do so on property that is zoned for schools, id at 401-402." Having recognized those principles, the Court of Appeals then incorrectly states that the remand "does not alter our prior holding" that relates to equal protection even though "the Supreme Court instructed us to reconsider our judgment in

light of *Greater Bible Way*", (Id at p 3.) Even though the Court of Appeals may argue that the equal protection claim is another claim, the judgment was to be "reconsidered" in light of the other principles, and you cannot have two conflicting legal theories that involve the same facts and plaintiff. In other words, in order to maintain an equal protection claim, they would have to show that the decision by the township and the circuit court did have a "religious significance" and that it required a school at that particular site. The Court of Appeals already recognized that they could operate a faith-based school "but to do so on property that is zoned for schools." How can the Court of Appeals then say that the legal analysis that they made themselves and in light of the Michigan Supreme Court "does not affect our holding"? That simply is ridiculous. Based on the conclusions that the Court of Appeals has made, how can they argue that Shepherd Montessori was denied equal protection? How can the Court of Appeals argue that they did not hear a reason why the plaintiff was denied the opportunity to operate its schools when they recognized there was no such right? How can they argue that the Township treated the religious entity less favorably when they already acknowledged that a faith-based school is expected to operate on property that is zoned for schools? The Court of Appeals apparently completely missed their illogical reasoning in coming to that conclusion. If all entities are to operate schools in proper zones for schools, then there is no violation of equal protection. No evidence was submitted to the circuit court to show that the Township has allowed other entities except for Shepherd Montessori to create schools in non-schools zoning classifications.

The Court of Appeals also, after finding that the Township had treated the secular entity more favorably than the Shepherd Montessori, wrongly concluded, "The burden then shifted to defendants to show that their denial of plaintiff's variance was precisely tailored to achieve a compelling governmental interest." (Shepherd III at p4.) But, the Court of Appeals had already recognized that the zoning classification for the Township was legal and not in violation of any statute, ordinance and, in fact, that it was constitutional. Once again, the Court of Appeals erred in demanding further governmental interest when they already acknowledged that the zoning classification was proper. The courts have been very clear that a zoning ordinance comes to the court clothed with validity. (*Brae Burn, supra.)*

> "It is a necessary corollary of the above that the ordinance comes to us clothed with every presumption of validity ...and it is the burden of the party attacking to approve affirmatively that the ordinance is an arbitrary and reasonable restriction upon the owner's use of his property.... The point is that we require more than a debatable question. We require more than a fair difference of opinion. It must appeal that the clause attached is an arbitrary fiat, a whimsical ipse dixit and that there is no room for legitimate difference of opinion concerning its reasonableness." (Brae Burn at p 432.)

The problem with the new decision of the Court of Appeals, among other things, is that they admit very important facts and legal concepts, especially in regards to RLUIPA and then refuse to apply the same concepts and admission of facts to "equal protection." Their holding in RLUIPA makes no sense when it is seen in light of their reasoning for equal protection and therefore we urge the Michigan Supreme Court to grant leave of appeal to finally sort through all the issues in this important case and not leave it in the status it is now with contradictory decisions made by the Court of Appeals.

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The Court of Appeals acknowledged in their opinion the Supreme Court's ruling in *Greater Bible Way, supra*, including the "substantial burden" test. Part of the principles found in that test is that the fact that while it may be more difficult to practice ones religions "does not constitute a substantial burden". (*Greater Bible Way* at 400-401, cited in Shepherd Montessori III, p2.) It also noted in *Greater Bible Way*, that the city was not preventing the building of an apartment complex only regulating where it could be built. The court noting it should be built on property that is "zoned for apartment complexes", concluding: "In other words, in the realm of building apartments, plaintiffs have to follow the law like everyone else." (At 400-401, Shepherd III, p2.)

The Supreme Court had also concluded that the city had not done anything to coerce the church in acting contrary to their religious beliefs and thus, there was not a substantial burden on the plaintiff's exercise of religion. (Id at 401-402; Shepherd III at p3.) The Court of Appeals in Shepherd III acknowledged "in light of the Supreme Court's interpretation of RLUIPA, we are compelled to reach a similar result." (Shepherd III at p3.) The Court of Appeals went on to acknowledge that the denial of the variance to Shepherd Montessori did not force the plaintiff to do something that religion prohibited or reframe from doing something that it requires concluding "plaintiff did not allege that the property at issue has religious significance or that plaintiff's faith requires a school in that particular site. (Shepherd I, supra, 259 Mich App 332.) Notice that the Court of Appeals acknowledges that the faith does not require a school at a particular site.

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The Court of Appeals also acknowledged that the plaintiff can operate a school in another location (Shepherd III at p3.) They finally concluded, "In other words, plaintiff may operate a faith based-school but it must do so on property that is zoned for schools. Id. at 401-402." (Shepherd III at p3.)

With the acknowledgement of those principles, therefore, it was rather a surprise when the Court of Appeals then turned to look at equal protection and acknowledging that the Supreme Court "instructed us to reconsider a judgment in light of *Greater Bible Way*...." (Shepherd III at p3.) that they would have made their decision on equal protection. This should be reversed because it would be then consistent with their holdings in RLUIPA.

CONCLUSION

In conclusion, this has been before the Court of Appeals now three times. This Supreme Court, in lieu of their granting leave vacated Shepherd II and remanded it back for reconsideration in light of *Greater Bible Way, supra*. This court gave them specific instructions regarding whether the denial of the variance imposed a substantial burden on religious exercise and whether it was acting contrary to Shepherd Montessori's religious beliefs. It further directed that a mere inconvenience or irritation would not constitute a substantial burden in their practice of religion. Shepherd may have to locate a school in a zone zoned for schools but it would not constitute a violation of their religious beliefs. The Court of Appeals in *Shepherd III* agreed with the Supreme Court's direction and accepted the principles that were enunciated but they proceeded to act against those principles when they found there was a violation of the equal protection

claim. The Court of Appeals, instead of using a rational basis test, used a strict scrutiny which went to the validity of the ordinance after they already found that the ordinance was valid. Secondly, after citing the proper principles in looking at an equal protection claim as set forth in their own cases of Shepherd I, Shepherd II they, instead of looking at whether the religious entity was similarly situated as a secular entity decided to look at comparing a day school with primary school. The issue wasn't how similar the two could be, but whether or not they belonged to the same zone and they had already ruled they could be in different zones. Nevertheless, they found that Shepherd Montessori was treated differently than a secular institution. There were no affidavits or evidence presented to show that secular entities were able to locate in areas not zoned for schools or that they had treated churches or religious entities different on this school issue.

These zoning issues are important for all municipalities and Michigan's MML and MTA are very concerned that after this Honorable Supreme Court has established the principles in RLUIPA that they now can be circumvented by completely ignoring those principles and finding for an equal protection claim. We urge this Honorable Court to grant leave to the Defendants/Appellants Ann Arbor Township et al. to resolve this issue once and for all.

Dated: November 25, 2008

BAUCKHAM, SPARKS, LOHRSTORFER, THALL & SEEBER,P.C.

John K. Lohrstorfer (P39071)

JKL:paj

LAW OFFICES OF BAUCKHAM, SPARKS, ROLFE, LOHRSTORFER & THALL, P.C. - 458 WEST SOUTH STREET, KALAMAZOO, MICHIGAN 49007-4621

Exhibit A

STATE OF MICHIGAN

COURT OF APPEALS

GREAT LAKES SOCIETY, a Michigan Ecclesiastical Non-Profit Corporation,

Plaintiff-Appellant,

v

GEORGETOWN CHARTER TOWNSHIP, MANNETTE MINER, in her official capacity as Zoning Administrator of Georgetown Township; JAMES JANSMA, WILLIAM KOTSIFAS, JAMES HOLTVLUWER, RICHARD LOTTERMAN, DONALD UPP, in their official capacities as members of the Georgetown Township Zoning Board of Appeals,

Defendants-Appellees.

FOR PUBLICATION
October 30, 2008
9:05 a.m.

No. 270031
Ottawa Circuit Court
LC Nos. 03-045966-AA;
05-051308-AA

GREAT LAKES SOCIETY, a Michigan Ecclesiastical Non-Profit Corporation,

Plaintiff-Appellee,

v

GEORGETOWN CHARTER TOWNSHIP, MANNETTE MINER, in her official capacity as Zoning Administrator of Georgetown Township; JAMES JANSMA, WILLIAM KOTSIFAS, JAMES HOLTVLUWER, RICHARD LOTTERMAN, DONALD UPP, in their official capacities as members of the Georgetown Township Zoning Board of Appeals,

Defendants-Appellants.

No. 280574
Ottawa Circuit Court
LC No. 03-045966-AA

GREAT LAKES SOCIETY, a Michigan Ecclesiastical Non-Profit Corporation,

Plaintiff-Appellee,

v

No. 280577
Ottawa Circuit Court
LC No. 05-051308-AA

GEORGETOWN CHARTER TOWNSHIP;
GEORGETOWN CHARTER TOWNSHIP
ZONING BOARD OF APPEALS,

Defendants-Appellants.

Before: O'Connell, P.J., and Bandstra and Gleicher, JJ.

BANDSTRA, J.

In docket number 270031, plaintiff Great Lakes Society (GLS) appeals by leave granted the trial court's opinion and order affirming defendant Georgetown Charter Township Zoning Board of Appeals' (ZBA) denial of GLS's request for a special use permit and for a variance. In docket numbers 280574 and 280577, defendants appeal by leave granted the trial court's opinion and order granting GLS partial summary disposition on its claims under the Religious Land Use and Institutionalized Persons Act, 42 USC 2000cc *et seq*, (RLUIPA) and the Michigan and United States Constitutions.

We conclude that the trial court applied an incorrect legal standard in deciding that the building GLS proposed to build was not a "church" under the township ordinance and that, under the correct analysis, it is a church. Nonetheless, we conclude that defendants properly decided not to grant a variance with respect to the proposed building location and that they did not violate the RLUIPA or any constitutional guarantees by making that decision. Accordingly, we affirm in part, reverse in part and remand for entry of an order granting defendants summary disposition of plaintiffs' statutory and constitutional claims. We do not retain jurisdiction.

Factual Background and Proceedings Below

GLS is a Michigan ecclesiastical corporation and an IRS-recognized 501(c)(3) exempt religious organization that describes itself as ministering to persons having varying degrees of chemical sensitivities to common environmental pollutants. GLS seeks to construct a two-story building, approximately 9,700 square feet in size, for worship services and supporting ministries, on a six-acre parcel of property owned by GLS pastor John Cheetham (Cheetham property), located in defendant Georgetown Charter Township (Georgetown or the Township). The Cheetham property is zoned low-density residential (LDR). Section 8.3(A) of the Georgetown Zoning Ordinance permits construction of a "church" in a residential district with a special use permit (SUP).

GLS filed its initial SUP application on April 17, 2002, and its second SUP application on February 18, 2003. According to those applications and additional information about the

proposed building provided to the ZBA by GLS, the proposed building was to include: (1) a 2400 square foot sanctuary, including a reception area, coatroom, bathrooms, kitchen, and special heating/cooling and air-filtration equipment, for a maximum of 60 people to participate in Sunday worship services;[1] (2) a 1600 square foot counseling ministry area, including meeting rooms, a group conference room, a waiting lounge and bathrooms; (3) a 1500 square foot tape/publication ministry area, including a recording studio, tape copying equipment, publishing equipment, a mailing room, a computer room; (4) an 1800 square foot ministerial training ministry area, including classrooms, a research library, a study area, an exercise room, a kitchen and a bathroom; (5) a 1200 square foot administration area, including a ministerial office, a Board of Elders conference room, a bathroom, and a Secretary/Treasurer office; (6) a 375 square foot health ministry area; (7) a youth center, and (8) a large garage to house a GLS transport van, snow clearing/landscape equipment, space for a visiting minister's car and recycling bins. The main floor was also to include airlock entrances and a mechanical/electrical/filter room.

GLS explained the purpose of the supporting ministries to the ZBA. According to GLS, its counseling ministry provides spiritual counseling to church members on an individual and group basis to facilitate their spiritual growth. John Cheetham and Timothy DeYoung, ordained ministers, are GLS's spiritual counselors. No fees are charged for counseling services.[2] Rather, as with all of GLS's supporting ministries, donations are accepted; this is consistent with the religious belief that such giving is to be done voluntarily and "cheerfully."[3] GLS's ministerial training ministry is necessary to achieve "perpetual existence of [GLS] as a religious organization" and is in integral part of continuing GLS's form of worship and mission. A youth center was included in the proposed building in anticipation of future growth in membership, and as a means to strengthen youth connection to the group and to God. The youth center would also be used for weddings, funerals, Bible forums and other religious or worship functions. GLS's tape/publication ministry, "supports members' ability to worship through personal study of Christ's teachings," and is an effective means of "evangelistic outreach for new members."

GLS described its "Health Ministry," termed a food cooperative or nutritional service by the Township, as a "very minor portion of [the] entire ministry," arising out of GLS's mission,

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[1] GLS representatives explained that the sanctuary was designed to accommodate, at most, 60 people at one time, because that was the maximum number of individuals that could be present while still maintaining an environment permitting chemically sensitive members to worship together.

[2] Contrary to this assertion, the ZBA received affidavits and deposition testimony from Harold and Anna Mae DeYoung, the parents of GLS pastor Timothy DeYoung, indicating that they were "charged" a rate of $40 per hour and a total of over $200, for two counseling sessions with Cheetham. This money, which GLS characterized as a "donation," was returned to the DeYoungs because, according to GLS, the DeYoungs did not consider it to be a gift.

[3] GLS does not have any system of tithing or pledge contributions; its sole means of financial support comes from member donations. According to Cheetham, "GLS has a strict policy of only accepting free-will donations for any of its spiritual ministries. Therefore any and all donations given to GLS in the past and in the future are understood and received for the spiritual purposes defined in [GLS's] Mission Statement. The defining principle is 'For God loves a cheerful giver.'"

which includes "teach[ing] and practic[ing] the health and nutritional principles as revealed in the Holy Scriptures and [] provid[ing] for the members . . . as Christ taught and provided." The health ministry provides GLS members with access to specialty food items and fragrance free products. It also allows members to obtain 'ordinary' items in a fragrance free environment.[4] Cheetham characterized the health ministry as "a spiritual service that is essential to the well-being of the members." Members cannot participate in the health ministry unless and until they "establish a spiritual connection," by "showing their commitment through interest . . . in the spiritual teachings of [GLS]." Cheetham explained,

> [GLS's] nutritional practice is an integrated and critical part of [its] worship in much the same way that Jews would follow Kosher standards. Chemically sensitive and allergenic people find that [the GLS] Health Ministry is essential to their spiritual and physical health as well as their ability to worship and hold supporting jobs for their personal survival.

Cheetham further explained that that GLS members were not required to pay for items they obtained from this ministry, but were free to make a donation to GLS in appreciation for this service.[5] Cheetham acknowledged that GLS had a one-line advertisement in the phone book under the heading of "nutritionists," using the name "Nutritional Research" at the Cheetham property address. According to Cheetham, this was GLS's most effective form of outreach to the public; when people called to express an interest in nutrition, it gave GLS an opportunity to relate nutritional questions to spirituality. Cheetham believed that "[a]t least 80 percent" of GLS's current members came to the group through the nutrition route; the others were referrals.[6]

GLS presented the ZBA with documentary evidence establishing that other area churches also housed ancillary services, including youth centers, preschools, daycares, multipurpose rooms, gymnasiums, a coffee bar, a dance studio, a book store, a printing office, libraries, offices and kitchens, and that many of them had large garages. GLS also presented documentary evidence indicating that a number of area churches offered counseling services, ministerial training, and other ministerial services, such as performing weddings or funerals, for a fee. Finally, GLS provided documents showing that several churches have sanctuaries that comprise less than thirty percent of the church building.

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[4] Currently, GLS's "health ministry" operates out of the existing house on the Cheetham property; approximately 12 members and 1 or 2 supporters of GLS obtain products from the health ministry. Food deliveries for GLS members began in 1984. UPS deliveries occurred 2-3 times per week and, until April 2002, a semi-truck made additional deliveries once per month.

[5] Cheetham noted that some members included their "regular spiritual donation" with their health ministry donation, and therefore, he felt there was too much emphasis placed on the amount of the health ministry donations.

[6] GLS is registered with the State of Michigan as a non-profit food cooperative. Cheetham explained that GLS was instructed by state officials to use the term "co-op" because that was the only way to achieve exemption from having to obtain a license as a food establishment for the health ministry.

Following a remand from the trial court to allow the parties to further develop the record, the ZBA concluded, that the principal purpose of GLS's proposed building was not for public worship, and therefore, that the proposed building is not a "church" for purposes of the zoning ordinance.[7] Consequently, GLS's SUP application was denied.

On February 24, 2003, while GLS's SUP application was pending with the Township, the Township Board approved an amendment to § 20.4(E) of the zoning ordinance relating to street frontage requirements for churches constructed in residential districts. Before this amendment, GLS believed that the Cheetham property met, or would be able to meet, the requirements of § 20.4(E). However, the Cheetham property did not meet the amended requirements. Consequently, GLS applied for a variance from the frontage requirements in § 20.4(E) as amended. The ZBA denied GLS's variance request, concluding that it failed to meet the specific standards for granting a variance set forth in the zoning ordinance.[8]

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[7] Because the term "church" is not defined in the Georgetown Zoning Ordinance, which instructs that undefined terms "shall have the meanings customarily accepted," the ZBA consulted the Oxford American Dictionary, which defined a church as "a building for public worship."

[8] Section 28.11(C) of the ordinance provides:

> (C) Variances. The [ZBA] shall have the power to authorize, upon an appeal, specific variances from the requirements of this Ordinance, when the applicant demonstrates that ALL of the following conditions will be satisfied.
>
> (1) Granting the variance be [sic] in the public interest and will ensure that the spirit of this Ordinance shall be observed.
>
> (2) Granting the variance shall not permit the establishment within a district of any use which is prohibited, nor shall any use variances be granted.
>
> (3) That there are practical difficulties in complying with the standards of the Zoning Ordinance resulting from exceptional, extraordinary, or unique circumstances or conditions applying to the property in question, that do not generally apply to other property or uses in the vicinity in the same zoning district; and have not resulted from the adoption of this Ordinance.
>
> (4) That the granting of such variance will not be of substantial detriment to adjacent properties or improvements in the vicinity; or, that the application of conditions to an approved variance will eliminate or sufficiently mitigate potential detrimental impacts.
>
> (5) That granting such variance is necessary for the preservation of a substantial property right possessed by other properties in the vicinity in the same zoning district.

(continued...)

In reaching this decision, the ZBA noted the purposes of the requirement from which a variance was sought, as well as the degree of the variance sought. More specifically, the Township planner observed, with the ZBA's concurrence, that the purpose of requiring that a church constructed in a residential zone have 200 feet of frontage on a major street is to insure adequate sight distance for traffic entering and exiting the church site, to provide sufficient spacing between the access point to the church and adjacent property lines and driveways, to minimize confusion with regard to multiple driveways within a limited distance, to provide reasonable vehicle "stacking space" in front of the church property, and to minimize conflict with adjacent driveways with vehicles turning left into the site. Additionally, the ZBA observed that the Cheetham property has only 66 feet of frontage on a major street, and therefore, that the variance sought from the 200-foot requirement was "huge." The ZBA took note that all but three of the 37 churches in the Township have 200 feet of frontage on a major street as required by § 20.4(E)(2). As to the three non-compliant churches, the first was constructed more than 50 years ago and has 165 feet of frontage on a major street, the second was constructed more than 20 years ago and has 153 feet of frontage on a major street, and the third, constructed in 1990, was granted a variance to have less road frontage on a major street; it has 132 feet of frontage on two separate major streets.[9] On the basis of these considerations, the ZBA denied the variance request.

GLS appealed the ZBA's denial of both the SUP and the variance to the Ottawa Circuit Court, by way of two separate complaints, each of which also asserted claims under RLUIPA and the Michigan and United States Constitutions, as well as for superintending control. The trial court first concluded that, under Michigan law, whether a building is a "church" is properly ascertained by evaluating the "principal use" of the building as determined by the activities that take place in the building. After observing that "[t]here is record evidence that supports the ZBA's conclusion that the principal use of the proposed building would not be for public worship," the trial court concluded that the decision of the ZBA that the proposed building was not a "church" for zoning purposes was supported by competent, material and substantial evidence on the record. The trial court concluded further that GLS's appeal of the ZBA's denial of a variance was moot because, the proposed building not being a church, GLS was not eligible to apply for the variance sought.

Later, in response to cross-motions for summary disposition of GLS's RLUIPA and constitutional claims, the trial court determined that GLS's construction of the proposed structure

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(...continued)

> (6) That granting such variance will not cause any existing non-conforming use, structure, or condition to be increased or perpetuated, contrary to the provisions of Chapter 27 of this Ordinance, expect in accordance with Section 27.12.
>
> (7) That the variance is not necessitated as a result of any action or inaction of the applicant.

[9] Because of the relatively small degree of variance sought in that case, and because that church had frontage on two separate major streets, so as to divide the traffic issues, that case was not considered to be of precedential value by the ZBA in deciding whether to grant GLS's request for a variance in the instant case.

constitutes "religious exercise" under RLUIPA. Consequently, the trial court concluded that the determination that the proposed building was not a "church" and the denial of a variance amounted to a "substantial burden on GLS's religious exercise," were capricious and not in furtherance of a compelling governmental interest and, therefore, contravened the "substantial burden" provision of RLUIPA. 42 USC 2000cc(a). The trial court further determined that the GLS members' constitutional right to free exercise of religion was "coextensive with GLS's rights under RLUIPA" and, thus, the ZBA's actions violated that right as well. Further, the trial court concluded that the ZBA's actions violated GLS's members' constitutional rights to freely associate and to equal protection.[10]

Analysis

Is the Proposed Building a "Church"?

GLS first argues that the trial court erred in affirming the ZBA's determination that its proposed building does not constitute a "church" for zoning purposes. We agree.

Ordinances are treated as statutes for the purposes of interpretation and review. *Soupal v Shady View, Inc,* 469 Mich 458, 462; 672 NW2d 171 (2003). Hence, the interpretation and application of a municipal ordinance presents a question of law that this Court reviews de novo. *City of Riverview v Sibley Limestone,* 270 Mich App 627, 630; 716 NW2d 615 (2006). The goal of statutory construction, and thus, of construction and interpretation of an ordinance, is to discern and give effect to the intent of the Legislature. *Neal v Wilkes,* 470 Mich 661, 665; 685 NW2d 648 (2004); *Soupal, supra.* Terms used in an ordinance must be given their plain and ordinary meanings, and it is appropriate to consult a dictionary for definitions. *Halloran v Bhan,* 470 Mich 572, 578; 683 NW2d 129 (2004); *Soupal, supra.*

Generally, courts review a decision of a zoning board to determine whether it complies with the constitution and the laws of the state, is based upon proper procedure, is supported by competent, material, and substantial evidence on the record, and represents the reasonable exercise of the board's discretion. MCL 125.3606. The determination of the "the facts which, taken together, can be said to describe the situation" presented by GLS's practices and building proposal are a factual matter, and the ZBA decisions in that regard are entitled to deference. However, the manner in which the zoning ordinance applies to those facts, i.e., whether the proposed building is a "church" for purposes of the ordinance, is a question of law, for this Court to decide as a matter of de novo review. *Macenas v Village of Michiana,* 433 Mich 380, 395-396; 446 NW2d 102 (1989).

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[10] The trial court concluded, however, that the ZBA's actions did not violate the "equal terms," "nondiscrimination," or "total exclusion/unreasonable limitation" provisions of RLUIPA, 42 USC 2000cc(b), and did not infringe upon GLS members' constitutional rights to due process, freedom of assembly, or free speech, and further that GLS "failed to state a claim on which relief can be granted in superintending control." GLS has not cross-appealed the trial court's grant of partial summary disposition to defendants on the counts of its complaints presenting these claims.

For the reasons discussed below, the circuit court erred in concluding that Michigan law requires that a proposed building constitutes a church only if its "principal use" is public worship. Consequently, the circuit court erred in concluding that GLS's proposed building does not constitute a church. Rather, the correct standard is whether the building is used for public worship and reasonably closely related activities or uses. The record evidence is undisputed that the proposed building was to be used for regular public worship. Further, the other identified uses are reasonably closely related, in substance and space, to that public worship use. Therefore, the proposed GLS building constitutes a "church" for purposes of the zoning ordinance.

The trial court relied on *Portage Township v Full Salvation Union*, 318 Mich 693; 29 NW2d 297 (1947), in analyzing whether the proposed GLS building is a "church" within the meaning of that term in the Township zoning ordinance. *Portage*, like the present case, involved a zoning ordinance that allowed a "church" to be located in residential zoning districts. *Id.* at 696-697. At issue were "camp meetings" that were held during the summers and the construction of small buildings to accommodate some campers and to provide meals on a no profit/at cost basis. *Id.* at 698. The plaintiff township brought suit seeking an injunction to prevent those uses of defendant's property. The Supreme Court looked to the dictionary definition of "church," which was "a building set apart for public worship." *Id.* at 700. It then determined that religious gatherings where some people would "'camp', in the ordinary meaning of that word," using the small buildings for residential purposes, did not constitute a "church" activity. *Id.* The logic of *Portage* was that, because those buildings were not "set apart for public worship" in any way, but were instead residential in nature, they did not fall within the usual definition of a "church."

The issue in *Portage* was significantly different than the issue here. The issue here is whether a proposed building that *is* to be used for public worship loses its status as a "church" because it also is to be used for other purposes. The trial court here erred in concluding that *Portage* addressed that question in any fashion. The trial court further erred in concluding that *Portage* stands for the proposition that a building is a "church" only if its *principal* use is public worship. The trial court reasoned, citing *Portage*, that "[u]nder Michigan law, a 'church' is a building set apart whose principal use is for public worship . . . . The question, then, is what is to be the 'principal use' "of GLS's proposed building." However, the term "principal use" is not found anywhere within *Portage*. And further, the dictionary definition cited by *Portage* required only that a building be "set apart for public worship" to be considered a church. *Portage*, *supra* at 700. There was no suggestion whether the public worship function of the building must be its principal or predominant use, a significant or substantial use, or simply one of its uses in order to qualify as a church.

As with the ordinance in *Portage*, the ordinance at issue here does not define a "church." Therefore, here as in *Portage*, this Court will turn to current dictionary definitions of "church" to find the ordinary meaning of that term as it is used in the ordinance. *Stanton v City of Battle Creek*, 466 Mich 611, 617; 647 NW2d 508 (2002) ("When determining the common, ordinary meaning of a word or phrase, consulting a dictionary is appropriate."). It does not appear that the dictionary definition of "church" has changed much in the 60 years since *Portage* was decided; it is today simply defined as "a building for public . . . worship." See e.g. American Heritage Dictionary, 2nd College Edition; accord Random House Webster's College Dictionary; accord William Webster's Collegiate Dictionary, 11th Edition. The dictionary definition makes no

suggestion as to how exclusive or substantial the public worship use of a building must be to qualify. If anything, comparing this "building used for" definition to the "building set apart for" definition referenced in *Portage* suggests that less exclusivity or substantiality is needed under current usage of the term "church."

In any event, it is clear that a building must be used to some extent for public worship to fall within the "church" definition. The record here is unrefuted that regular worship services would be conducted for the GLS membership in the proposed building, and the ZBA has acknowledged that worship would take place there.[11] The argument at issue is whether, notwithstanding that use, the proposed building is not a "church" because of the non-worship activities and uses that will occur within it. There being no Michigan precedent addressing that question in the zoning context,[12] we turn to a brief review of such precedents from other jurisdictions. *People v Rogers*, 438 Mich 602, 609; 475 NW2d 717 (1991).

As a general matter "[c]hurches . . . . and other institutions dedicated to religious objectives are in some degree protected from the full impact of zoning restrictions. These uses are favored for reasons ranging from their unique contribution to the public welfare to constitutional guarantees of freedom of worship." *City of Rapid City v Kahler*, 334 NW2d 510, 512 (SD 1983), quoting 2 R. Anderson, American Law of Zoning, § 12.18 (2nd Ed 1976). Thus, for example, it is an "almost universal rule that churches and their attendant uses are permitted in residential areas." *Church of Jesus Christ of Latter Day Saints v City of Idaho Falls*, 92 Idaho 571, 574; 448 P2d 185 (1968); accord, *Diocese of Rochester v Planning Bd of Brighton*, 1 NY2d 508, 522; 154 NYS2d 849; 136 NE2d 827 (NY CT App 1956) ("It is well established in this country that a zoning ordinance may not totally exclude a church or synagogue from any residential district.") As one court has reasoned, churches need not be established only in sparsely settled areas; instead, "wherever the souls of men are found, there the house of God belongs." *O'Brien v City of Chicago*, 347 Ill App 45, 51; 105 NE2d 917, 920 (1952). Consistent with these principles, the Michigan Supreme Court has noted that, already in the ordinance of the Northwest Territory, an antecedent to Michigan's statchood, religion and morality were declared to be "necessary to good government and the happiness of mankind." *Roman Catholic Archbishop of Detroit v Orchard Lake*, 333 Mich 389, 394; 53 NW2d 308 (1952). Accordingly, the Court concluded that churches could not be completely excluded from a municipality. *Id.*

As a corollary to the favored status of churches, courts have held that zoning authorities must be flexible and accommodating in reviewing requests to permit church building projects. "It is well settled that . . . greater flexibility is required in evaluating an application for a religious use than an application for another use and every effort to accommodate the religious use must

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[11] The ZBA argued that worship would not be open to the general public but would be limited to a relatively closed group. However, Pastor Cheetham's testimony that anyone who is interested may attend GLS services and that the proposed building is designed to facilitate future growth is unrefuted. A conclusion that the worship expected to occur at the building would not be "public" would not be supported by the requisite evidence. MCL 125.3606(1)(c).

[12] But see *Roman Catholic Archbishop of Detroit v Orchard Lake*, 333 Mich 389; 53 NW2d 308 (1952), discussed below. As defendants points out, precedents defining a "church" activity for tax cases are inapposite as they rest on policy concerns not at issue in zoning cases.

be made." *Genesis Assembly of God v Davies*, 617 NYS2d 202, 203; 208 AD2d 627 (S Ct App Div NY 1994).

One component of this accommodating and flexible approach is to broadly define what constitutes a "church" activity or use in light of changing ecclesiastical purposes and circumstances. "[T]he concept of what constitutes a church has changed from a place of worship alone, used once or twice a week, to a church used during the entire week, nights as well as days, for various parochial and community functions." *Beit Havurah v Zoning Bd of Appeals*, 177 Conn 440, 447-448; 418 A2d 82, 86 (1979) quoting 2A Rathkopf, The Law of Zoning and Planning § 20.03, p 20-53 (1978). Already over half a century ago, the Court of Appeals of New York handed down an often cited summary of what constitutes a church in contemporary society:

> A church is more than merely an edifice affording people the opportunity to worship God. Strictly religious uses and activities are more than prayer and sacrifice and all churches recognize that the area of their responsibility is broader than leading the congregation in prayer. Churches have always developed social groups for adults and youth where the fellowship of the congregation is strengthened with the result that the parent church is strengthened . . . . When a member of the congregation cements friendships with other members of the congregation, the church benefits and becomes stronger. It is a religious activity for the church to provide a place for these social groups to meet, since the church by doing so is developing into a stronger and closer knit religious unit. To limit a church to being merely a house of prayer and sacrifice would, in a large degree, be depriving the church of the opportunity of enlarging, perpetuating and strengthening itself and the congregation. [*Community Synagogue v Bates*, 1 NY2d 445, 453; 154 NYS2d 15; 136 NE2d 488, 493 (NY CT App 1956).]

There are, however, limitations to this approach; "the religious aim of strengthening the congregation through fellowship may not be permitted to be perverted into a justification for establishing a place of entertainment, such as a country club." *Id.* "The activity or use must be intended to promote the purposes for which the church is instituted, the most, but not sole, prominent purpose of which is the public worship of God." *Solid Rock Ministries v Zoning Bd of Appeals*, 138 Ohio App 3d 46, 55; 740 NE2d 320, 326 (2000).[13] A relationship test is generally

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[13] The *Solid Rock* court explained more fully:

> [A] church is more than a mere building used solely for worship. Religious use has been defined to mean conduct with a religious purpose. In turn, any building used primarily for purposes connected with the faith of the congregation or to propagate such faith has been deemed used for church purposes. We agree that a church cannot enjoy completely unfettered use of its property just because the activities conducted on the property bear some relation to a church purpose. To fit within the definition of a church or church use, the activities or the use to which the property is put must be reasonably closely related, in substance and in space, to the church's purpose. [*Solid Rock*, *supra*.]

used in this regard; "the activities or the use to which the property is put must be reasonably closely related, in substance and in space, to the church's purpose." *Id.*; accord, e.g., *Idaho Falls*, *supra* at 188.

While recognizing that these foreign precedents are not binding on this Court, they are persuasive authority. *Rogers*, *supra* at 609. They represent a broad agreement of opinion from our sister states and are consistent with cited zoning treatises and other authorities. Further, they flow from and are consistent with the deference for religious and church activities and uses in the zoning context as recognized by our Supreme Court in *Orchard Lake, supra.* Accordingly, we adopt these principles as a matter of Michigan law and apply them in determining this appeal.[14]

To begin, as explained earlier, there is no doubt that the proposed building would be used for public worship. The question then becomes whether the other uses of the building are reasonably closely related, in substance and in space, to that public worship use.

All of the proposed activities would be occurring within the same building. Accordingly, the spatial relationship test is not at issue. With respect to whether the other activities are reasonably closely related in substance to the public worship function of the proposed building, almost all of them clearly are. That is certainly true for the meditation and prayer rooms that adjoin the worship center. They provide space for traditional worship activities in a more intimate, small group setting. As explained in *Bates*, *supra*, the youth center and other areas of the building designed to strengthen the fellowship of the GLS congregation serve to enrich GLS as a worshipping community. For much the same reason, the use of the proposed building to provide ministerial, faith-based counseling to congregants is reasonably closely related to the public worship use of the building.[15] See e.g. *Church of the Saviour v Zoning Hearing Bd*, 130 Pa Cmwlth 542, 548; 568 A2d 1336, 1339 (1990) ("[C]ounseling is an integral part of the church's activities"). And so is use of the building to train ministers and to promulgate the teachings of the church through broadcasts and publication; these activities are designed and intended to effectively communicate the message that is regularly espoused at GLS's public worship services to a wider audience. See *Burlington Assembly of God v Zoning Bd*, 238 NJ Super 634, 642; 570 A 2d 495, 500 (1989) (operation of a church's radio station is a religious activity). As the record in this case demonstrates, all of these activities and uses are relatively commonplace among churches in the area and elsewhere.

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[14] We find the precedents relied upon by defendant, *North Pacific Union Conference v Clark County*, 118 Wash App 22; 74 P3d 140 (2003) and *Hayes v Fowler*, 123 NC App 400; 473 SE2d 442 (1996), to be factually distinguishable from the instant matter. In *North Pacific Union*, the building at issue was a 40,000 square foot 5-state regional headquarters office complex that contained a relatively small worship room to be only used by building employees. In *Hayes*, the building at issue was not to be used for worship at all; it was located one half block away from the church and its sanctuary.

[15] It is irrelevant whether counseling services are provided free or on a reduced cost basis. Further, the record evidence, while slightly contradictory, is heavily in favor of concluding that the services are provided on a donation basis.

The same is not true of GLS's health ministry "co-op" activities, whereby GLS buys bulk amounts of various products for distribution to its members. However, this does not necessarily mean that the health ministry is unrelated to GLS's public worship purpose. To the contrary, this activity flows directly from the unique reason for GLS existing as a church in the first place, i.e., to accommodate the chemical sensitivities and allergies of its members. By operating its health ministry, GLS asserts that it provides a much-needed service to its members in a fashion otherwise unavailable in today's society. Pastor Cheetham characterized the health ministry as a "spiritual service that is essential to the well being of the members" and part of the GLS mission to "teach and practice the health and nutritional principles as revealed in the Holy Scriptures." Compare *Shim v Washington Twp Planning Bd*, 298 NJ Super 395, 408; 689 A2d 804, 811 (1997) (Daycare centers considered to be part of a spiritual mission because they provided a valuable community service, even though they did not necessarily advance religious teachings.) We cannot conclude that the health ministry does not strengthen GLS as a community in its worship and otherwise. See *Bates*, *supra*. Further, the health ministry generates a net positive flow of revenue that helps to support GLS in its public worship and other endeavors. In this regard, it is similar to quasi-commercial ventures that the record demonstrates are occurring in other area churches, to raise money for various causes. Thus, the health ministry use of the proposed building is not so far afield from its public worship purpose, nor so extensive,[16] that it would undermine its status as a "church."

In sum, we conclude that, under the correct legal analysis, the record here does not support the ZBA's determination that the proposed GLS building is not a "church" for purposes of the Township ordinance. Accordingly, as a church, GLS could qualify for an SUP to construct its building, assuming that a variance should have been granted for the location GLS proposed.

Denial of the Variance

GLS next argues that the ZBA improperly denied its request for a variance allowing it to construct its church on the Cheetham property. The trial court did not review this decision, reasoning that, because the GLS building is not a church, it could not qualify for the variance sought. Nonetheless, because this issue was fully briefed in the trial court, this Court's review of any trial court decision on GLS's appeal of the denial would be de novo, *Norman Corp v City Of East Tawas*, 263 Mich App 194, 198; 687 NW2d 861 (2004), and the record is adequate for our review, we will consider this issue. *Peterman v DNR*, 446 Mich 177, 183; 521 NW2d 499 (1994).

GLS's first argument arises from the fact that the ordinance was amended during the time between its initial application and when the Township made its decision to deny that application.

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[16] We note that, after concluding that the "camp meetings" at issue in *Portage* were not a "church" under the dictionary definition of that term, as discussed above, our Supreme Court noted that those meetings were very noisy from early morning until extremely late at night and thus caused disturbance to neighbors. *Portage*, *supra* at 700. In contrast, the record here shows that the health ministry would involve nothing more than occasional delivery truck and customer activities during daytime hours.

Prior to the amendment, the zoning ordinance included only a general 200-foot minimum width requirement; the amendment specified that the 200-foot length must be on an adjoining street for access.[17] GLS argues that it could have satisfied the general 200-foot minimum width requirement, and that it should not be subject to the amended version of the ordinance. We disagree.

As this Court explained in *Landon Holdings v Grattan Twp,* 257 Mich App 154, 161; 667 NW2d 93 (2003):

> In determining which version of a zoning ordinance a court should apply, "the general rule is that the law to be applied is that which was in effect at the time of decision." *MacDonald Advertising Co v MacIntyre,* sub nom *MacDonald Advertising Co v City of Pontiac,* 211 Mich App 406, 410; 536 NW2d 249 (1995), quoting *Klyman v City of Troy,* 40 Mich App 273, 277; 198 NW2d 822 (1972); *Lockwood v Southfield,* 93 Mich App 206, 211; 286 NW2d 87 (1979).

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[17] At the time GLS filed each of its SUP applications, Georgetown zoning ordinance § 20.4(E) imposed the following site requirements for the construction of churches in residential districts:

> (1) Minimum lot width shall be two hundred (200) feet.
>
> (2) Minimum lot area shall be two (2) acres; plus an additional fifteen thousand square feet for each one hundred (100) setting capacity or fraction thereof in excess of one hundred (100).
>
> (3) The property location shall be such that at least one (1) property line abuts and has access to a collector, major, arterial, or minor arterial streets. [Zoning Ordinance 20.4(E), before February 24, 2003.]

As amended, § 20.4(E) imposes the following site requirements for churches constructed in residential districts:

> (1) Minimum lot area shall be two (2) acres; plus an additional fifteen thousand (15,000) square feet for each one hundred (100) seating capacity or faction thereof in excess of one hundred (100).
>
> (2) The property location shall be such that at least one (1) property line with a minimum lot width of two hundred (200) feet abuts and has access to a collector, major arterial, or minor arterial street. [Zoning Ordinance, § 20.4(E) as amended.]

The Township began the process of amending § 20.4(E) on January 13, 2003, in order "to clarify" the ordinance requirements to clearly comport with the longstanding intention of the Township that churches constructed in residential districts have a minimum of 200 feet of frontage on a major street. Township representatives explained that the filing of GLS's first application for a SUP presented the first occasion for the Township to observe that there may have been an ambiguity in this section as originally enacted.

> There are two exceptions to the general rule: (1) "A court will not apply an amendment to a zoning ordinance where . . . the amendment would destroy a vested property interest acquired before its enactment . . ."; and (2) a court will not apply the amendment where "the amendment was enacted in bad faith and with unjustified delay." *Lockwood, supra* at 211, citing *City of Lansing v Dawley,* 247 Mich 394, 396; 225 NW 500 (1929), and *Keating [Int'l Corp v Orion Twp,* 395 Mich 539, 549; 236 NW2d 409 (1975)], . . . "[T]he test to determine bad faith is whether the amendment was enacted for the purpose of manufacturing a defense to plaintiff's suit." *Id.*

In *Klyman, supra* at 278-279, this Court identified several factors to be considered in exercising discretion to admit or deny evidence of an amended ordinance: (a) whether the plaintiff had an unquestionable right to issuance of a permit before the amendment, (b) whether the municipality had not forbidden the type of construction the plaintiff proposed before the amendment (c) whether the ordinance was amended for the purpose of manufacturing a defense to the plaintiff's suit, and (d) whether the city waited until the last possible minute to assert the defense. Similarly, in *Lockwood, supra* at 211, this Court reiterated the general rule that the law to be applied is that in effect at the time of the decision, subject to the exception that a court will not apply an amendment to a zoning ordinance if the amendment was "enacted for the purpose of manufacturing a defense to plaintiff's suit." The Court noted that, in the case before it, there was evidence indicating that the amendment was intended to clarify an ambiguous ordinance and that the amendment did not apply only to the plaintiff's property, but to all like structures throughout the city. Thus, this Court concluded that the trial court did not abuse its discretion in holding that the amendment was not enacted in bad faith. *Id.* at 212.

While these cases address amendment of a zoning ordinance during the pendency of litigation, and the instant ordinance was amended before the onset of litigation, they instruct that the bad faith exception does not apply to Georgetown's February 2003 amendment of § 20.4(E) under the facts presented. The record shows that all but three of the 37 churches within the Township, each located there before the ordinance was amended, either comply with the 200-foot street frontage requirement or were granted a variance from that requirement. The two exceptions to that rule were constructed decades ago, and each has more than 150 feet of street frontage. That lends great credibility to other record evidence indicating that the intent of the ordinance was always to require 200 feet of street frontage, that the GLS application alerted zoning authorities within the Township to the need for a clarifying amendment, and that the amendment was merely intended to provide that clarification, not to concoct a reason to deny GLS's application. See *McDonald Advertising v McIntyre*, 211 Mich App 406, 410-411; 536 NW2d 249 (1995) ("[a]fter reviewing the facts in this case, it is clear that the amendment was not enacted for the purpose of manufacturing a defense to plaintiff's suit."). Further, the amendment does not apply only to GLS; it governs the use of property throughout the Township. *Id.*; accord *Landon Holdings, supra*; *Lockwood, supra* at 212; *Klyman, supra* at 278-279. Accordingly, the zoning authorities properly applied the ordinance as requiring a variance from the 200-foot street frontage requirement.

Having determined that the amended requirements of § 20.4(E) apply here, this Court reviews the ZBA's decision to deny GLS a variance from those requirements to determine whether it is supported by competent, material, and substantial evidence on the record. MCL 125.3606(1)(c); *Norman, supra* at 202. As noted, the 200-foot frontage requirement has been

imposed against churches in the Township almost universally. The record further shows that the only variance granted was for a church having much longer frontage than the 66 feet available to the GLS parcel here.[18] The Township's planning consultant testified regarding the rationale for the 200-foot minimum requirement:

> The purpose of the requirement is to ensure adequate sight distance for traffic entering and exiting the site, to provide sufficient spacing between access points and adjacent property lines and driveways, to minimize confusion with regard to multiple driveways within a limited distance, to provide reasonable vehicle stacking space in front of the church property, to minimize conflicts with adjacent driveways with vehicles turning left into the site.

The planner reasoned that, while these issues might certainly arise even as to the limited membership of the GLS congregation today, they could be exacerbated if GLS grows, as hoped and expected, or if another church takes over the property in the future.

In sum, the decision not to grant GLS a variance was based upon the large deviation requested, the purposes of the 200-foot requirement, and the traffic and public safety issues that could result from allowing GLS to establish a church on this parcel of property. As the planner further testified, the denial was justified by ordinance provisions specifying the criteria upon which variance requests are to be considered. We conclude that the decision was based on competent, material and substantial evidence and affirm that decision.

GLS's RLUIPA Claim

The "substantial burden" provision of RLUIPA provides in relevant part that:

> No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution--
>
> (A) is in furtherance of a compelling governmental interest; and
>
> (B) is the least restrictive means of furthering that compelling governmental interest. [42 USC § 2000cc(a).]

Although the trial court determined that the Township had correctly concluded that the proposed GLS building was not a church, it nonetheless also held that the Township had violated the federal RLUIPA in applying its ordinance to prevent the location of the proposed building at the location where GLS wanted to build it.[19] Specifically, the trial court determined that

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[18] As discussed previously, that church also had frontage on two arterial roads, thus distributing the traffic in a manner so as to, perhaps, reduce the traffic concerns that might otherwise have arisen from that site having less than the required frontage.

[19] To the extent that this determination was based on the Township's failure to consider the proposed building a church, questions regarding that decision have become moot because of our (continued...)

implementation of the ordinance placed an improper "substantial burden" on GLS's right to exercise its religion. 42 USC 2000cc(a).[20]

Since the trial court issued its decision in this regard, our Court decided *Shepherd Montessori Center Milan v Ann Arbor Charter Twp*, ___ Mich App ___; ___ NW2d ___; 2008 WL 3914605 (2008). That case is dispositive of the issue presented.[21] In *Shepherd,* this Court reasoned:

> [T]o establish a RLUIPA violation, plaintiff must show that the denial of the variance request "coerces" individuals into acting contrary to their religious beliefs. Plaintiff did not show that the denial of the variance forces plaintiff to do something that its religion prohibits, or refrain from doing something that its religion requires. Plaintiff did not allege that the property at issue has religious significance or that plaintiff's faith requires a school at that particular site. Rather, evidence suggests that . . . plaintiff *could* operate its school at another location in the surrounding area . . . . In other words, plaintiff may operate a faith-based school but it must do so on property that is zoned for schools. . . . [T]he denial of the variance does not constitute a substantial burden on plaintiff's religious exercise and, therefore, the trial court correctly granted summary disposition to defendants on the RLUIPA claims. [*Id.* at ___; slip op at 3 (citations omitted, emphasis in original).]

Similarly here, the record demonstrates that GLS could locate a church at some other location within the Township so long as the property chosen has a 200-foot street frontage and otherwise complies with the ordinance. Failing that, if the alternative property more closely complies with the ordinance requirement, it could qualify for a variance. GLS makes no argument whatsoever

(...continued)

conclusion that it is a church. The same is the case for the constitutional claims discussed below. Thus, we consider the statutory question and the constitutional claims only with regard to the denial of the variance.

[20] To the extent that GLS argues that the RLUIPA was also violated because the Township's implementation of its ordinance "treat[ed] a religious assembly or institution on less than equal terms with a nonreligious assembly or institution," 42 USC§ 2000cc(b)(1), we consider that argument to be improperly preserved for appeal and improperly argued as it was presented without citation to any authority other than merely referencing the RLUIPA. A party may not merely announce a position and leave it to this Court to discover and rationalize the basis for the claim, or to search for authority to sustain or reject his position. *Goolsby v City of Detroit*, 419 Mich 651, 655 n 1; 358 NW2d 856 (1984); *In re Toler,* 193 Mich App 474, 477; 484 NW2d 672 (1992). Further, the gist of the argument is that the Township's zoning scheme treats churches less favorably than some commercial enterprises but, as a matter of fact, that is not the case. As to most of the commercial enterprises about which GLS complains, they are completely prohibited from locating in residential zoning districts. The imposition of certain conditions, like the 200-foot street frontage requirement, on churches which want to locate in residential districts certainly does not treat them less favorably in comparison with others who are simply excluded altogether.

[21] Although *Shepherd Montessori* involved a religious school rather than a church, we see no logical distinction between those uses of property for purposes of the RLUIPA and its "substantial burden" provision.

that the particular parcel of property upon which it would like to place the facility has any religious significance or that it is otherwise unique in any way. Accordingly, implementation of the ordinance against GLS's use of this particular piece of property does not constitute a "substantial burden" under the RLUIPA, and the decision of the trial court is reversed.

GLS's Constitutional Claims

The Township argues that the trial court erred in determining that its application of the ordinance to reject GLS's proposed building plan was in violation of GLS members' rights to freely exercise their religion, to freely associate and to be afforded equal protection under the United States and Michigan constitutions.[22] The trial court decided that GLS had not been afforded its rights under these three constitutional theories largely on the basis of its determination that the RLUIPA had been violated. As we have determined that the RLUIPA was not violated, that reasoning cannot serve as the basis upon which to conclude that the constitutional claims GLS raises are valid.[23] Instead, we turn to an analysis of each of those claims under applicable case law.

This Court reviews constitutional questions de novo. *Michigan Dep't of Transportation v Tomkins*, 481 Mich 184, 190; 749 NW2d 716 (2008). Likewise, challenges to the constitutionality of a zoning ordinance are also reviewed de novo on appeal. *Scots Ventures, Inc v Hayes Twp*, 212 Mich App 530, 532; 537 NW2d 610 (1995).

We begin our analysis by noting that, with respect to GLS's constitutional claims to free exercise and equal protection, there are no significant differences between the Michigan and United States constitutions as to the rights afforded or their interpretation. *Advisory Opinion v Constitutionality of 1970 PA 100*, 384 Mich 82, 105; 180 NW2d 265 (1970) (with respect to the free exercise claim); *Neal v Oakwood Hosp Corp*, 226 Mich App 701, 716; 575 NW2d 68 (1997) (with respect to the equal protection clause). Further, the freedom of association claim arises solely out of the United States Constitution; it has not been recognized as a right under the Michigan Constitution. Accordingly, we analyze these questions largely on the basis of federal precedents.

The free exercise clause does not relieve an individual from the obligation to comply with neutral laws of general applicability. *Employment Division, Dept of Human Resources of Oregon v Smith*, 494 US 872, 878-879; 110 S Ct 1595; 108 L Ed 2d 876 (1990). A law is neutral if, both on its face and in its implementation, its object is something other than the infringement or restriction of religious practices. *Church of the Lukumi Babalu Aye, Inc v City of Hialeah*, 508 US 520, 533; 113 S Ct 2217; 124 L Ed 2d 472 (1993); *Grace United Methodist Church v City Of Cheyenne*, 451 F3d 643, 649 (CA10 2006). The record in this case amply demonstrates

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[22] In response, GLS goes to great lengths to describe the religious hostility, animus and discriminatory intent of various township officials. All of that argument applies to the decision that GLS is not a church, however, so it is inapposite to this Court's review of GLS's claims that its constitutional rights were violated with respect to the variance decision.

[23] We express no opinion regarding the propriety of the trial court's approach or its assumption that, if the RLUIPA was violated, so was the constitution with respect to these rights.

that neither the ordinance requirement that the parcel have 200 feet of frontage on a major street, nor the decision to deny GLS a variance from that requirement run afoul of the free exercise clause under these principles. Instead, the record demonstrates that the street frontage requirement and its imposition against GLS was a valid exercise of a generally applicable scheme to accommodate competing interests within the Township, traffic issues and other community concerns. See e.g. *Village of Euclid v Ambler Realty Co*, 272 US 365; 47 S Ct 114; 71 L Ed 303 (1926).

Freedom of association claims like those GLS raises are tested under a three part analysis: a zoning ordinance does not violate the United States Constitution if it (1) is content neutral, (2) is narrowly tailored to serve a legitimate governmental objective, and (3) leaves open ample channels of alternative means of association. *Ward v Rock Against Racism*, 491 US 781, 791; 109 S Ct 2746; 105 L Ed 2d 661 (1989); *Mothershed v Justices of Supreme Court*, 410 F3d 602, 612 (CA9 2005). The 200-foot street frontage requirement satisfies this test. It applies to all churches regardless of the message they espouse and is, therefore, content neutral. There is no apparent manner, and GLS suggests none, in which the ordinance might be more narrowly tailored to meet the valid traffic and other purposes that the record demonstrates it advances. As explained above, the ordinance leaves open other channels for GLS to exercise its right to associate, on other parcels of property within the Township.

The equal protection clause "is essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne v Cleburne Living Ctr*, 473 US 432, 439; 105 S Ct 3249, 87 L Ed 2d 313 (1985). Accordingly, the first question has to be whether GLS demonstrated on the record that it was treated differently from some similarly situated church. See *Shepherd Montessori Center Milan v Ann Arbor Charter Twp*, 259 Mich App 315, 336-337; 675 NW2d 271 (2003). With respect to the variance request, the record here shows that all churches within the Township have been treated alike. Almost all have been allowed only on parcels of property that have a 200-foot street frontage. The few exceptions have a street frontage available that is much closer to that requirement, in comparison to the parcel upon which GLS would have located its proposed building. Therefore, GLS has failed to show that it has been treated differently from any similarly situated church.

In sum, we conclude that the trial court erred in determining that these three constitutional claims were valid under the facts of this case.

We reverse the trial court decision affirming the ZBA conclusion that the proposed building is not a church under the zoning ordinance. We affirm the decision of the ZBA denying GLS's variance request. We remand for entry of an order granting defendants summary disposition of plaintiffs' statutory and constitutional claims. We do not retain jurisdiction.

/s/ Richard A. Bandstra
/s/ Peter D. O'Connell
/s/ Elizabeth L. Gleicher