

Equal Protection Challenge by Parochial School

Facts:

The property at issue is zoned as an office park (OP) district pursuant to the Ann Arbor Township zoning ordinance. The property is located in the Domino's Farms office complex. Among the uses permitted in the township's OP zoning district are daycare facilities for use by children of office park employees.

Rainbow Rascals, a former tenant, had operated a 100-child capacity secular preschool daycare facility in the office park limited to children of office park employees. In 1991, a variance was granted by the township to allow children whose parents did not work at Domino's Farms to attend the daycare.

In 1998, Shepherd Montessori opened a Catholic preschool daycare facility limited to children of the employees of the same office park. It subsequently requested and was granted a variance identical to the one granted to Rainbow Rascals to allow children whose parents did not work at the office complex.

In 2000, Rainbow Rascals moved out of the office park and Shepherd Montessori proposed to move into the vacated space and operate a K-3 primary school program. Shepherd Montessori sent a letter to the township's zoning administrator describing the proposal. The zoning administrator denied the proposed use, explaining that the operation was not a permitted use within the OP district. Shepherd Montessori filed a petition appealing the decision.

The Zoning Board of Appeals (ZBA) ruled that it agreed with the zoning administrator that a primary school is not a permitted use within an OP district. It also ruled that the proposed nonconforming primary school use could not be substituted for Rainbow Rascals' use of the property because the daycare was a permitted use. Finally the ZBA denied the request for a use variance since Shepherd Montessori did not prove that, without the variance, there could be no other viable economic use of the property.

Shepherd Montessori sued the township—alleging, among other things, that its equal protection rights were violated by the township's denial of the variance request. The plaintiff's claim was that the township had treated “a secular entity more favorably than plaintiff, a religious entity and that the township offered no evidence to show that the denial of plaintiff's variance achieved a compelling governmental interest.”

Question:

Did the denial of plaintiff's variance request violate equal protection principles?

Answer according to the trial court: No.

Answer according to the court of appeals: Yes.

Answer according to the Michigan Supreme Court: No.

The equal protection clauses of the Michigan and U.S. constitutions provide that no person shall be denied equal protection of the law. The equal protection clause requires that persons similarly situated be treated alike under the law. Generally, legislation that treats similarly situated groups disparately is presumed valid if the classification drawn by the legislation is rationally related to a legitimate state interest. However, legislation that treats similarly situated groups disparately on the basis of a suspect classification (which in this case is the free exercise of religion) will be sustained only if the government can show that the classification is narrowly tailored to serve a compelling governmental interest.

In determining whether plaintiff and Rainbow Rascals are similarly situated entities, the court examined their respective variance requests. The court noted that plaintiff's current request is for a variance to operate a K-3 primary school, i.e. a use not permitted within an OP. The previous requests by both Rainbow Rascals and the plaintiff—to include children whose parents did not work in the office park—were treated similarly. The court reasoned that the current request—to operate a primary school—had never been requested by Rainbow Rascals. “The township's consideration of a different request does not constitute different treatment of similarly situated entities.”

The court further found that plaintiff was not seeking similar treatment; rather plaintiff was asserting religion in an effort to obtain preferential treatment. As a result, the court found that the plaintiff had failed to demonstrate that it was treated differently from similarly situated entities.

The court finally addressed whether the facially neutral zoning ordinance was applied in a discriminatory manner against the plaintiff because of its religious affiliation. The court found that no evidence had been presented to support such a claim.

[Editor's note: Prior proceedings had determined that the actions of the township did not violate plaintiff's rights under the Religious Land Use and Institutionalized Persons Act.]

Shepherd Montessori Center Milan v Ann Arbor Charter Township, No. 137443, June 18, 2010.



Sue Jeffers is associate general counsel for the League. You may contact her at 734-669-6306 or sjeffers@mml.org.

This column highlights a recent judicial decision or Michigan Municipal League Legal Defense Fund case that impacts municipalities. The information in this column should not be considered a legal opinion or to constitute legal advice.

