

THE STATE OF NEW HAMPSHIRE
SUPERIOR COURT

CHESHIRE, SS.

SAINT BENEDICT CENTER
v.
TOWN OF RICHMOND, ET AL.
07-E-0101, 08-E-0006

JOHN BOCCALINI
AND
KATHLEEN WITHAM, ET AL.
v.
TOWN OF RICHMOND ZONING BOARD OF ADJUSTMENT
08-E-0005

**ORDER ON PROPOSED STIPULATED FINAL
ORDER SUBMITTED BY ST. BENEDICT CENTER
AND TOWN OF RICHMOND**

On April 13, 2010, Saint Benedict Center and the Town of Richmond submitted a motion for approval of a "Proposed Stipulated Final Order." Saint Benedict Center and the Town represented that they had reached a settlement, which included (1) modification of the site plan conditions that had been originally set forth by the Town Planning Board in a decision dated May 9, 2007; and (2)

modification of a decision by the Town's Zoning Board of Adjustment ("ZBA"), which required Saint Benedict Center to obtain a special exception and variance for its proposed project. In connection with this settlement, Saint Benedict also filed a motion to dismiss the intervenors' accessory use claim (see docket no. 08-E-0005) as moot. The intervenors object to both the "Proposed Stipulated Final Order" and the motion to dismiss. A hearing was held on April 27, 2010.

In its Order of October 23, 2009, this Court had ruled that (1) the Town's ordinance requirement, that a house of worship obtain a special exception, constitutes an unlawful prior restraint on speech, see Order at 14–18; and (2) the Planning Board violated the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C. § 2000cc, by imposing certain conditions on its approval of Saint Benedict Center's site plan application, because certain of those conditions constituted a substantial burden on Saint Benedict's exercise of religion, see Order at 28–29. It may be worth noting that the Court did not rule that the ZBA's decisions, that a special exception and variance were required for Saint Benedict Center's proposed project, created or caused a substantial burden to the Center's practice of religion, such that these decisions violated RLUIPA. Instead, the Court concluded that issues of fact remained as to whether such actions had caused or created a substantial burden. See Order at 24–29.

In its "Proposed Stipulated Final Order," the Town seeks to invoke "authority" under RLUIPA, 42 U.S.C. § 2000cc-3(e), to modify the Planning Board's site plan conditions and the ZBA's decision with respect to special exceptions/ variances. This provision states:

A government may avoid the preemptive force of any provision of this chapter by changing the policy or practice that results in a substantial burden on religious exercise, by retaining the policy or practice and exempting the substantially burdened religious exercise, by providing exemptions from the policy or practice for applications that substantially burden religious exercise, or by any other means that eliminates the substantial burden.

42 U.S.C. § 2000cc-3(e).

The Town and Saint Benedict Center also request that the Court modify the Planning Board conditions, pursuant to its authority under RSA 677: 15 (V) (Supp. 2009) (providing that the superior court may modify a planning board decision when there is an error of law or when the court is persuaded that the decision was unreasonable). They further request that the Court modify the ZBA's decision, so that neither a special exception or variance will be required for the proposed project, pursuant to its authority under RSA 677:11 (2008) (stating that a final judgment upon a ZBA appeal shall be a decree dismissing the appeal or vacating the ZBA's order in whole or and part).

The intervenors object to the proposed settlement for several reasons. First, they argue that their right to use and enjoy their land is threatened by Saint Benedict Center's proposed project, and they demand the opportunity to be heard. The intervenors note that they were not involved in the settlement negotiations. Second, the intervenors note that the proposed stipulation appears to eliminate the need for Saint Benedict Center to obtain a variance under any circumstances, which may be considerably broader than the relief sought by the Center in its original claim, and, the intervenors argue, such a resolution would

be fundamentally unfair. Third, the intervenors object to the Court accepting the Town's "findings" (that the land use decisions violated RLUIPA) because such findings had not made been made during a public hearing, there are no public records documenting such findings, and that it appears that the ZBA and Planning Board had not been consulted before the Town entered into the settlement agreement. Fourth, the intervenors maintain that the settlement unfairly rewards Saint Benedict Center for disregarding rules and processes which bind other property owners in Richmond, and invites the Center to engage in similar conduct in the future, all to the detriment of the intervenors. For example, the intervenors contend that this settlement allows Saint Benedict Center to avoid its responsibility to either build an alternate road to alleviate traffic on Fay Martin Road, or to improve this road. Fifth, the intervenors object to the clause in the proposed stipulation which shifts Saint Benedict Center's burden to pay for upgrades to Fay Martin Road to the Town.

By way of response, Saint Benedict Center maintains that the intervenors do not have standing to object to a settlement between it and the Town. First, because the Town invoked its authority to alleviate a substantial burden under RLUIPA, Saint Benedict Center asserts that the intervenors may not object. Second, Saint Benedict Center maintains that an intervenor in a regular land use case does not have the right to object to a settlement between a developer and a town. See G2003B, LLC v. Town of Weare, 153 N.H. 725 (2006). Moreover, Saint Benedict Center points out that the intervenors had never appealed the Planning Board conditions, and as such, they have no standing to object to this

portion of the settlement. Additionally, Saint Benedict Center observes that the intervenors have had the full opportunity to be heard by this Court, and will not be prejudiced by the proposed terms of the settlement.

As noted above, the Town and Saint Benedict Center also seek to dismiss the intervenors' appeal of the ZBA's decision, which concluded that Saint Benedict Center's religious school was an allowable accessory use to its house of worship. Saint Benedict Center and the Town represent that the intervenors' contention that the school is not an accessory use relies on its assertion that the house of worship never obtained the necessary special exception. However, the Center and the Town note that because the terms of the proposed settlement provide that neither a special exception nor a variance will be required for either the church or the school, the intervenors' appeal is moot.

In response, the intervenors contend that their appeal had not been limited to the assertion that a variance was required for the school merely because Saint Benedict Center failed to obtain a special exception for its house of worship use. Instead, the intervenors assert that the Center had failed to establish that a house of worship use had been or would be a lawful principal use of the parcel and, as such, had not established that a religious school would be an allowable accessory use. The intervenors also maintain that if they prevail in their appeal, the school would not be an accessory use and therefore would require a variance regardless of whether a special exception was required for the house of worship. Finally, the intervenors maintain that Saint Benedict Center may not settle the intervenors' claim through an agreement with the Town.

Saint Benedict Center maintains, however, that even if its religious school were not an accessory use, the requirement that a religious school, which is located more than 525 feet from a lake, must obtain a variance is unconstitutional and a violation of RLUIPA. As such, Saint Benedict's maintains that litigating the accessory use claim would be "a purely academic exercise producing no productive result," because the intervenors are simply asking the Court to impose one unconstitutional provision instead of another.

In analyzing whether the proposed stipulation should be approved in this case, the Court notes that "consent decrees are ... encouraged by New Hampshire's well-established principle of favoring the settlement of litigation." G2003B, 153 N.H. at 728. However, because three separate actions have been consolidated in this case, the intervenors' status appears different than the intervenors' status in G2003B. In fact, the intervenors are actually the initiating parties in docket number 08-E-0005.

The intervenors' primary concern appears to be that as a result of this settlement, Saint Benedict Center would be given a limitless pass to expand its facilities, without the input of the public, the Planning Board or the ZBA. The intervenors have acknowledged that they cannot prevent Saint Benedict Center and the Town from reaching an agreement, especially in light of the fact that the Town could face liability for damages should Saint Benedict Center prevail in its action. The intervenors do want their interests to be considered, however, because the approval of Saint Benedict Center's project impacts their enjoyment of their land.

There would be a concern should the intervenors essentially be given a veto power over the settlement of matters involving claims of liability against the Town of Richmond. To the extent that a party is facing claims of liability in a litigation, that party's ability to seek to resolve the claims should not turn on the consent of intervenors when the intervenors are not the party who would be directly responsible for payment of claims that potentially might be awarded. Essentially, the intervenors would be taking risks with other people's money.

There is some disagreement as to whether the Planning Board and the ZBA had been consulted and/or had agreed to the settlement which appears to have been entered into and approved by the Board of Selectmen. Town counsel typically acts on behalf of the land use boards when counsel enters into an agreement. See J.E.D. Assocs., Inc. v. Town of Danville, 122 N.H. 234, 236 (1982). It is not clear, however, that the Planning Board and ZBA, as the entities with the power to make decisions with respect to land use issues, had authorized counsel to enter this settlement. See id. In a matter not involving RLUIPA, it has been held that the Board of Selectmen lacks the authority to enter into a stipulation which purports to grant some form of land use relief. See Buxton v. Town of Exeter, 117 N.H. 27, 29 (1997) (selectmen lack authority to enter into stipulation granting a special exception, so stipulation is not effective). In this case, it appears the Board of Selectmen has authorized the modification of the conditions originally set forth by the Planning Board without input of the Planning Board. It also appears that in light of RLUIPA, the Board of Selectmen

determined to resolve matters in a fashion contrary to the ZBA's determination that the proposed project had required a special exception and a variance.

As a land use law matter, the Court is not persuaded that the Board of Selectmen of the Town of Richmond may effectuate a settlement absent input or agreement of the appropriate land use boards.

Once jurisdiction has been granted to a planning board to approve or disapprove subdivisions, that jurisdiction is exclusive. A town meeting cannot attempt to interfere with jurisdiction by establishing bond requirements for subdivision improvements. A city council does not retain any type of concurrent jurisdiction which would permit it to short circuit the subdivision approval process of the planning board. Courts will not allow landowners to use artificial schemes to avoid subdivision authority; however, they will not allow planning boards to exercise jurisdiction unless the matter is clearly within the powers of the planning board.

15 P. Loughlin, New Hampshire Practice, Land Use Planning and Zoning § 26.03, at 312 (1993) (footnotes omitted).

Given the circumstances, the Court believes it would be necessary for the Planning Board to be consulted with respect to settlement. As noted in Buxton, a non-RLUIPA case, the selectmen would otherwise lack the authority, and potentially the expertise, to determine whether certain planning conditions are appropriate. The involvement of the Planning Board would help to ensure that permissible land use considerations are taken into account. This procedure would also provide the Planning Board with the opportunity to offer the land use input that is committed to planning boards by statute. Ehrenberg v. Concord, 120 N.H. 656, 660-61 (1980). It must be kept in mind, however, that whatever

conditions may be ultimately approved, they must also comport with RLUIPA. Any issues of access to or confidentiality of the selectmen and/or land use board proceedings would be governed by applicable provisions of the New Hampshire Right-to-Know Law, RSA 91-A.

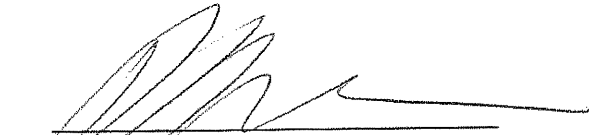
Similarly, the ZBA shall also be involved in this process. The ZBA has the authority to determine whether a variance is required or whether a special exception is needed. See RSA 674:33 (2008). In this case, however, the Court has determined that the special exception requirement is unconstitutional. Although the Court has made no determination with respect to the constitutionality of the variance requirement or its validity under RLUIPA, the Town has apparently agreed or concluded that this requirement is unconstitutional and violates RLUIPA. Again, the Court believes that similar involvement of the selectmen and the ZBA with respect to these issues will help to address the concerns of the intervenors. If after this consultation occurs the intervenors are still not satisfied that they have been adequately heard in connection with the Town's decision with respect to the variance, the Court will entertain the intervenors' litigation with respect to accessory use.

Accordingly, the Court defers consideration of the proposed stipulation. The Board of Selectmen shall engage in a consultation with the Planning Board and ZBA in a way that makes evident that all of relevant land use entities have had required input into the terms of the settlement. Any access issues concerning the proceedings or the records of proceedings shall be consistent with the New Hampshire Right-to-Know Law or any other applicable statutes.

Intervenors may request that the accessory use issue be scheduled for a merits hearing.

SO ORDERED.

6-2-10
Date


Philip P. Mangones
Presiding Justice

THE STATE OF NEW HAMPSHIRE

CHESHIRE, SS.

SUPERIOR COURT

DOCKET NO.: 07-E-0101, 08-E-0006

Saint Benedict Center

v.

Town of Richmond, et. al.

DOCKET NO.: 08-E-0005

John Boccalini

and

Kathleen Whitham, et al

v.

Town of Richmond Zoning Board of Adjustment

PROPOSED STIPULATED FINAL ORDER

NOW COMES the Plaintiff, Saint Benedict Center, and the Defendant, the Town of Richmond, its Planning Board, its Zoning Board of Adjustment and moves that the Court approve this Proposed Stipulated Final Order saying as follows:

Factual and Procedural Background

1. Saint Benedict Center [SBC] has operated a church and a school at its monastery at 95 Fay Martin Road in Richmond, New Hampshire since the late 1980s. SBC desires to build a proposed new church/school building. The Town seeks to ensure that new church/school building is built safely and that the resulting site development guarantees the health, safety and welfare of all of the residents of the Town of Richmond.

Modification of Planning Board Conditions

2. The Planning Board, in a decision dated May 9, 2007, approved SBC's site plan to

construct the church/school subject to certain conditions.

3. Having made the requisite findings and determinations, the Town invokes its authority under RLUIPA, 42 U.S.C. Section 2000cc-3(e), to modify the planning Board's Site Plan Conditions to the conditions attached as Exhibit A

4. In addition, although no Court approval of the Town's modification under 42 U.S.C. § 2000cc-3(e) is necessary, the parties jointly request that the Court, pursuant to its authority under RSA 677:15(V), modify the Planning Board's Site Plan Conditions to the conditions attached as Exhibit A.

Modification of Zoning Conditions

5. Having made the requisite findings and determinations, the Town invokes its authority under RLUIPA, 42 U.S.C. Section 2000cc-3(e), to modify the Zoning Board of Adjustment's decision to provide that neither a special exception nor a variance is required for either SBC's current or proposed new church/school building.

6. In addition, although no Court approval of the Town's modification under 42 U.S.C. § 2000cc-3(e) is necessary, the parties jointly request that the Court, pursuant to its authority under RSA 677 hold that neither a special exception nor a variance are required for SBC's current use nor its proposed new church/school building.

WHEREFORE, Saint Benedict Center and the Town of Richmond jointly and respectfully requests that this Honorable Court:

- a. Approve this Stipulated Final Order and/or schedule a hearing for approval of this Stipulated Final Order;
- b. Modify the Planning Board Site Plan Conditions of Approval pursuant to its authority

under RSA 677:15 as provided in Exhibit A;

c. Modify the Zoning Board of Adjustment decision to provide that neither a special exception nor a variance are required as provided in paragraphs 5 and 6;

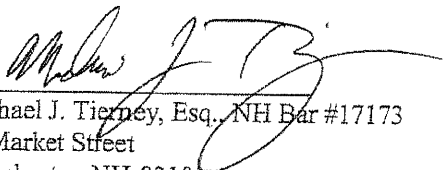
d. Such other and further relief as may be just and equitable.

Respectfully submitted,

Saint Benedict Center,

By its attorneys,
Wadleigh, Starr & Peters, PLLC

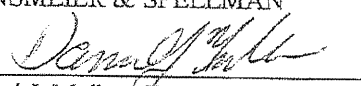
Dated: April 13, 2010

By: 
Michael J. Tierney, Esq., NH Bar #17173
95 Market Street
Manchester, NH 03101
(603) 669-4140

THE TOWN OF RICHMOND, ET AL.

By their attorneys,
RANSMEIER & SPELLMAN

Dated: April 13, 2010

By: 
Daniel J. Mullen, Esq., NH Bar #
P. O. Box 600
Concord, NH 03302-0600
Tel. (603) 228-0477

Approved and so ordered.

April __, 2010

Presiding Judge

EXHIBIT A

THE STATE OF NEW HAMPSHIRE

CHESHIRE, SS.

SUPERIOR COURT

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FINAL ORDER ON PLANNING CONDITIONS

Pursuant to RSA 677:5, I find and rule that the Town of Richmond May 9, 2007 Notice of Decision regarding the site plan of Saint Benedict Center be modified to the following:

Road Improvements

1. The Applicant shall upgrade and maintain the fire lane/access road year round from Fay Martin Road to the dry hydrant at the fire pond. The access portion of the road, approximately 350 feet from Fay Martin Road to the beginning of the parking lot, shall be gravel and upgraded to the standards of 50 to 200 cars per day as set forth in the Town of Richmond Subdivision Regulations, as amended through March 4, 1998. The fire lane portion of the road, that being from the parking lot to the dry hydrant, shall be gravel and upgraded to the standards of 0 to 50 cars per day as set forth in the Town of Richmond Subdivision Regulations, as amended through March 4, 1998. Upgrades to both the access road and the fire lane shall be completed prior to occupancy of the new building.

Safety

2. The Applicant is responsible for compliance with all local and state fire safety codes.
3. The Applicant is responsible for modification (if necessary) and final approval of the fire pond and dry hydrant access as required by the Town of Richmond Fire Chief to the specifications stated in the March 7, 2007 Minutes of the Richmond Planning Board.
4. The Applicant is responsible for depicting on the plans and construction of a fireway access around the proposed new building as recommended by the Town of Richmond Fire Chief at the Richmond Planning Board hearing of May 3, 2007. Said fire lane shall comply with the New Hampshire State Building Code.
5. The Applicant must install a fire alarm system that meets or exceeds all applicable codes.
6. The Applicant must show (on the Site Plans) sidewalks for egress from each of the exterior doors to specifications required by the New Hampshire State Building Code.
7. The Applicant must maintain at all times the appropriate egress from the proposed new building including snow removal of all walkways.
8. The Applicant shall place a minimum 2 hour firewall between assembly area and school to the specifications required by the New Hampshire Building Code.

Water and Septic and Soil

9. The Applicant must apply for and obtain all applicable DES approvals and supply copies to the Planning Board and to the Board of Selectmen.
10. The Applicant must seal the well next to St. Joseph's House according to DES standards prior to occupancy of the new building. The well on the Boscarino lot is to be brought online and made operational prior to the occupancy of the new building.
11. The Applicant must obtain and provide to the Planning Board DES approval of stormwater discharge, i.e. an Alteration of Terrain Site Specific Permit. This condition has already been met by the applicant as DES permit WPS 7727 was received by the Planning Board on March 1, 2007.
12. The Applicant must be in compliance with the Town of Richmond ZBA special exception approval granted the Applicant for "jacking" under the delineated wetlands on the St. Benedict Center site plan (ZBA Approval of April 11, 2007).
13. The Applicant must obtain federal and state approvals, including DES approval, for disturbing more than one acre prior to construction and provide copies of such approvals to the Planning Board.

14. The Applicant must decommission use of the leach field presently located on Map 412 Lot 20 according to any applicable DES standards when the new system to be located on Map 412 Lot 19 becomes operational. The new septic system must be installed and made operational before the occupancy permit of the new building is issued.

Plats, Plans, and Building Permit

15. The Applicant shall prepare and submit to the Planning Board, for its prompt signature by the Chairman and Secretary of the Planning Board, the Site Plan inclusive of any changes required by the aforementioned conditions, suitable for recording at the Registry of Deeds.
16. The footprint, siting, and landscaping shall remain the same as on the Plats and all construction shall meet applicable state and local codes. To the extent revisions to the plan are needed to comply with current codes, such as but not limited to state regulations regarding wetlands and/or stormwater drainage, this approval shall include approval of any design changes necessary to comply with state regulations.

Active and Substantial Development

17. The Applicant is required to record the Site Plan, that being sheet C.2.0, C.2.1 and C.2.2, and the Conditions of Approval as Modified by the Cheshire Superior Court, with the Cheshire County Registry of Deeds prior to the commencement of construction.
18. All conditions previously stated must be completed prior to occupancy of the new building. Pursuant to RSA 674:39(I)(a), as amended by 2009 N.H. Laws 93, commencement of active and substantial development must occur prior to 4 years from the time of the Order or the conclusion of any appeals brought by any party, third party or intervener, whichever is later, (including the any appeals of any claims currently consolidated with 07-E-101) to benefit from the vesting provision in that statute. Substantial completion must occur prior to 7 years from the time of the Court's final order in this case in order to benefit from the vesting of RSA 674:39. Commencement of active and substantial development shall be deemed to have occurred when the foundation for the proposed building is poured.
19. No special exceptions or variances are required for the Applicant's proposed new building.
20. The Board of Selectman, shall promptly issue a building permit upon (1) submission of the usual application (2) payment of the building permit application fee and (3) review of plans by Clough Harbor (or other mutually agreeable third party) for compliance with these conditions and all applicable building codes. The State Fire Marshall has previously reviewed the plans for code compliance and all review by the Planning Board, Zoning Board of Adjustment and the Conservation Commission have been completed. The Town shall forward the plans to a third party reviewer within (5) business days and

the Town shall make good faith effort to have all review completed within 30 days.

Road and Bridge Improvements

21. The Applicant's right to continue development in accord with the site plan shall be conditioned upon the following: The Applicant shall, within 6 months of the date of this Order, or the conclusion of any appeals brought by any party, third party or intervenor, whichever is later, (including any appeals of any claims currently consolidated with 07-E-101) deposit with the Town or post a bond or irrevocable letter of credit in the amount of \$137,500, this representing 50% of the current estimated cost of improvements to Fay Martin bridge (\$175,000) and 33% of the current estimated costs of upgrading Fay Martin Road from the bridge to the driveway of the former Boscarino property. (\$150,000) (Approximately 3000 feet). This deposit received from the Applicant shall be used exclusively for improvements to Fay Martin Road and the Fay Martin Road bridge. The Town shall perform all road and bridge improvements to specification standards set forth in the appendix to the Town of Richmond Subdivision Regulations as amended through March 4, 1998. The Town shall apply for all applicable state and federal bridge and road aid and shall return to the Applicant its proportional share of any state or federal aid received. The Town shall seek to appropriate its percentage of road and bridge improvements annually at the Town meeting commencing with Town Meeting 2011. Pursuant to RSA 674:21(V)(e), if the Town fails to appropriate or perform the necessary bridge improvements within 6 years of the date of the original Conditional Approval (that is before May 14, 2013), this condition shall be deemed to be waived and the fee paid by the Applicant shall be refunded, with interest, to the Applicant. Pursuant to RSA 674:21(V)(e), if the Town fails to appropriate or perform the necessary road improvements within 6 years of the date of this agreement (that is before January 29, 2016), this condition shall be deemed to be waived and the deposit paid by the Applicant shall be refunded, with interest, to the Applicant. Pursuant to RSA 674:21(V)(j), the Applicant shall not be required to wait until the Town has completed road and bridge improvements prior to initiating construction.
22. Should the Applicant desire to initiate construction prior to the Town's construction of a permanent bridge and exceed the currently posted weight limit for Fay Martin Road Bridge, the Town shall allow SBC to construct a temporary bridge with a minimum capacity of HS-20 (20 tons) as set forth in Appendix IV of the Town of Richmond Subdivision Regulations, as amended through March 4, 1998, or the weight of the Town's heaviest fire truck, whichever is more. Costs of construction and removal of said bridge shall be borne by SBC and said temporary bridge shall remain until a new bridge is constructed or the Applicant's new building is completed, whichever occurs first.

Other

23. The applicant shall install an electrical generator to be installed by an electrician licensed by the State of New Hampshire of sufficient size and capacity to power: (1) the well pump(s); (2) the septic pump(s); (3) emergency lighting; and (4) the heating system.

The aforementioned 23 conditions are the entirety of the site plan conditions to be imposed on Saint Benedict Center.

THE STATE OF NEW HAMPSHIRE

CHESHIRE, SS.

SUPERIOR COURT

DOCKET NO.: 07-E-0101, 08-E-0006

Saint Benedict Center

v.

Town of Richmond, Richmond Planning Board, and Richmond Zoning Board of Adjustment

DOCKET NO.: 08-E-0005

John Boccalini and Kathleen Whitham, et al

v.

Town of Richmond and Richmond Zoning Board of Adjustment

PARTIALLY ASSENTED-TO MOTION TO DISMISS
ACCESSORY USE CLAIM AS MOOT

NOW COMES the Saint Benedict Center, by and through their attorneys, Wadleigh, Starr & Peters, PLLC, and files this Partially Assented-to Motion to Dismiss and moves as follows:

1. These consolidated cases pertain to Saint Benedict Center's [SBC's] attempts to obtain municipal approvals for its proposed church/school building.
2. Pursuant to a Joint Settlement Stipulation dated April 8, 2010, the Town invoked its authority under 42 U.S.C. § 2000cc-3(e) and modified its Zoning Decision of December 19, 2007 to hold that SBC is neither required to obtain a special exception nor a variance for either its current nor its proposed new church/school buildings.
3. The sole issue in the Appeal in Docket # 08-E-0005, Boccalini v. Town of Richmond, is whether SBC's religious school is an allowable accessory use to SBC's house of worship.
4. Boccalini argued in Docket # 08-E-005 that SBC's religious school is not accessory to its house of worship because SBC did not obtain a special exception for its house of worship and therefore SBC must obtain a variance for its religious school.

5. Whereas the Town has invoked its authority under RLUIPA to hold that neither a special exception nor a variance is required for SBC's church/school, Boccalini's claim that SBC must obtain a variance for its school because it did not obtain a special exception for its house of worship is moot and should be dismissed.

6. There are no factual issues regarding the mootness or the merits of Boccalini's appeal. Nevertheless, to the extent that the Court determines that there are factual issues that would require a hearing, SBC and the Town jointly and respectfully requests that the Court immediately schedule a hearing on the mootness and/or merits of Boccalini's appeal.

7. Atty. Dan Mullen, for the Town of Richmond and the Richmond ZBA, has been contacted and indicates that the Town and the ZBA join in this Motion to Dismiss. Atty. John Bisson for Boccalini, et al. has been contacted and does not assent to this Motion to Dismiss.

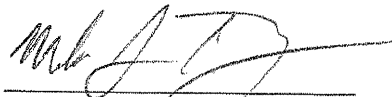
WHEREFORE, Saint Benedict Center respectfully requests that this Honorable Court:

- a. Dismiss the claim at Docket #08-E-0005; or in the alternative
- b. Schedule a hearing, not to exceed two hours, on why Boccalini's appeal should not be dismissed as moot and/or the merits of Boccalini's appeal in Docket # 08-E-005; and
- c. Such other and further relief as may be just and equitable.

Respectfully submitted,

Saint Benedict Center,

By its attorneys,
Wadleigh, Starr & Peters, PLLC


By: 
Michael J. Tierney, Esq., NH Bar #17173
95 Market Street

Dated: April 13, 2010

Manchester, NH 03101
(603) 669-4140

CERTIFICATION

I hereby certify that copies of this Motion to Dismiss have this day been mailed to Daniel J. Mullen, Esq., Ransmeier & Spellman, P.O. Box 600, Concord, NH 03302-0600, and to John F. Bisson, Esq., 722 Chestnut Street, Manchester, NH 03104.



Michael J. Tierney, Esq.

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