
An Anatomy of a RLUIPA

Case:

Guru Nanak Sikh Society of Yuba City v County of Sutter

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What is a Sikh?

- Founded in the 15th century based on teachings of Guru Nanak Dev
 - A distinct religion from Hinduism and Islam
- Not Middle Eastern nor followers of Islam
 - Often mistaken for them because of the turban
- Attributes of Sikhism
 - One God
 - Baptism by drinking Amrit, a holy sugar & water mix
 - Prayer and community involvement at a Gurdwara
 - Sikh temple, meaning “the doorway to the Guru”
 - Rejection of the Five Evils (ego, anger, greed, attachment and lust) in hopes for salvation to avoid endless reincarnation
 - Abide by the 5Ks



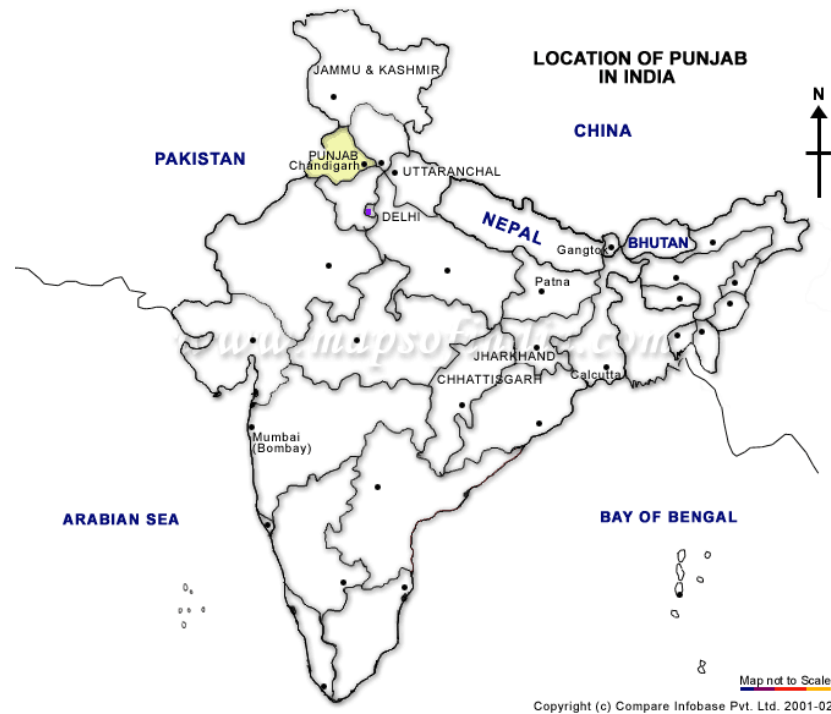
The 5Ks

- Kesh - uncut hair (kept in a turban)
 - Mark of holiness and perfection of God's creation
- Kangha - small wooden comb kept in the hair
 - Sign of cleanliness
- Kara - a steel bracelet
 - Reminder of a connection to God
- Kachhera - short cotton underwear
 - Reminder to live a faithful life
- Kirpaan – a symbolic sword (in a sheath)
 - Reminder to defend the faith and protect the weak
 - May be any size, from small enough to be worn on a necklace to a full size sword



Sikh Origin and Immigration

- Primarily from the Punjab region of India
- Many immigrated to California, beginning in the late 19th century
- A large population currently exists in the Yuba-Sutter region
- Other concentrations of Sikhs
 - Stockton, California
 - Queens, New York
 - Española, New Mexico
 - Chicago, Illinois
 - Seattle, Washington
 - Detroit, Michigan
 - Oregon State



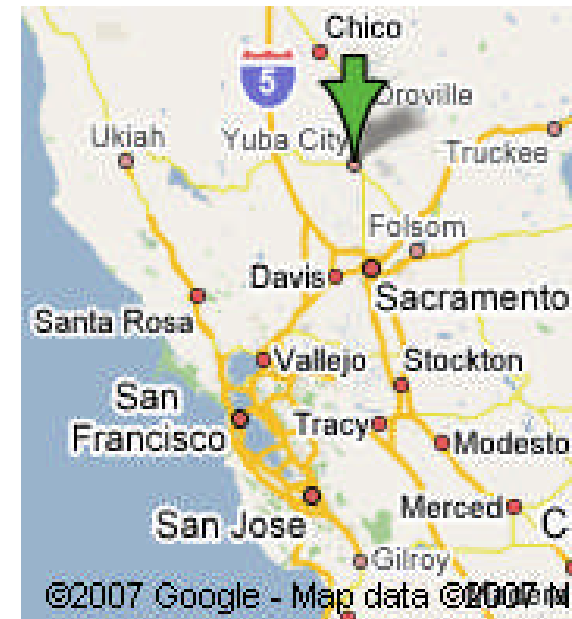
Gurdwara

- A Sikh temple is called a Gurdwara
 - May contain rooms for prayer, meals, overnight stays
- The images to the right are of a Gurdwara in Yuba City, one of the largest in the US



Yuba-Sutter Region, California

- Called the Prune Capital of the World
- Yuba City was rated the worst place to live in the US in 1985, but got out of the bottom 50 by 2005 (rated by Rand McNally's Places Rated Almanac)
 - Poor image due to high crime, poverty rates, youth gangs, and illegal drug trade
- Median household income is \$33k/yr, with \$16k/yr per capita
- 18% of the population is below the poverty line
- Overall crime rate slightly higher than average, but violent crime lower than average
- One of the largest Sikh populations in the US
 - Yuba City est. population in 2006: 60,000+
 - Roughly 10% of area population has Sikh roots



Sikh Parade in Yuba City

- The Sikhs put on an annual 4.5 mile parade through Yuba City
 - It has drawn over 50k people in recent years
 - Over 25 have been held



Case Timeline

- 2001
 - **Action:** Society applied for conditional use permit (CUP) to build a Gurudwara
 - **Site Location:** Its 1.89 acre property on Grove Rd. in Yuba City
 - **Zoning:** Large lot single family homes, allowing religious institutions with a conditional use permit

Case Timeline (cont'd)

- April 4, 2001
 - **Action:** County Planning Commission unanimously decided to deny the CUP application, after recommended approval by county staff
 - **Reason Cited:** Noise and traffic concerns

Case Timeline (cont'd)

- 2002
 - **Action:** Society bought another property rather than appealing the commission's decision and applied for CUP for expansion and use of an existing house for a Gurdwara
 - **Site Location:** 28 acre parcel in an unincorporated area of the county
 - **Zoning:** AG-20 (agricultural land, 20 acre minimum lot size)

Case Timeline (cont'd)

- January 9, 2002
 - **Action:** Society applied for a CUP for expansion and use of an existing house on the 28 acre property as a Sikh temple
 - **Result:** The planning commission approved the CUP by a vote of 4-3

Case Timeline (cont'd)

- May 21, 2002
 - **Action:** Neighbors appealed the decision and the CUP was subsequently unanimously denied.
 - **Reason Cited:** Leapfrog development concerns

Case Timeline (cont'd)

- August 19, 2002
 - **Action:** The Guru Nanak Society filed suit, alleging violations of state and federal law, including RLUIPA
- November 19, 2003
 - **Result:** Judge Karlton found that the County violated RLUIPA, and upheld the constitutionality of the land use provisions of RLUIPA

Case Timeline (cont'd)

- December 12, 2003
 - **Action:** Sutter County filed a notice of appeal to the Ninth U.S. Circuit Court of Appeals
- August 1, 2006
 - **Result:** The county was required to approve the CUP

RLUIPA:

Tips for Local Governments

Julie A. Tappendorf
Holland + Knight, LLP

Types of Challenges

- Facial Challenges to Municipal Zoning Schemes – (i.e., check your ordinances!)
- “As Applied” Challenges to Zoning Decisions
 - Zoning of Particular Site
 - Special Use Permit or Variation
 - Building Codes
 - Condemnation
 - Annexation

Best Practices: *Avoid Litigation*

Tip #1:

- Review your zoning and other land use regulations now



Best Practices: Avoid Litigation

Tip #2:

- Avoid *Guru*: don't give religious institutions the "runaround"



Best Practices: *Avoid Litigation*

Tip #3:

- Don't treat "similarly situated" uses more favorably than religious uses



Best Practices: *Avoid Litigation*

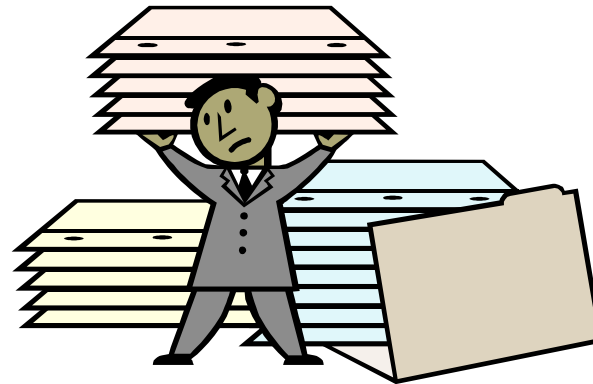
Tip #4:

- Don't impose conditions that impact or could be viewed as impacting religious practices

Best Practices: *Avoid Litigation*

Tip #5:

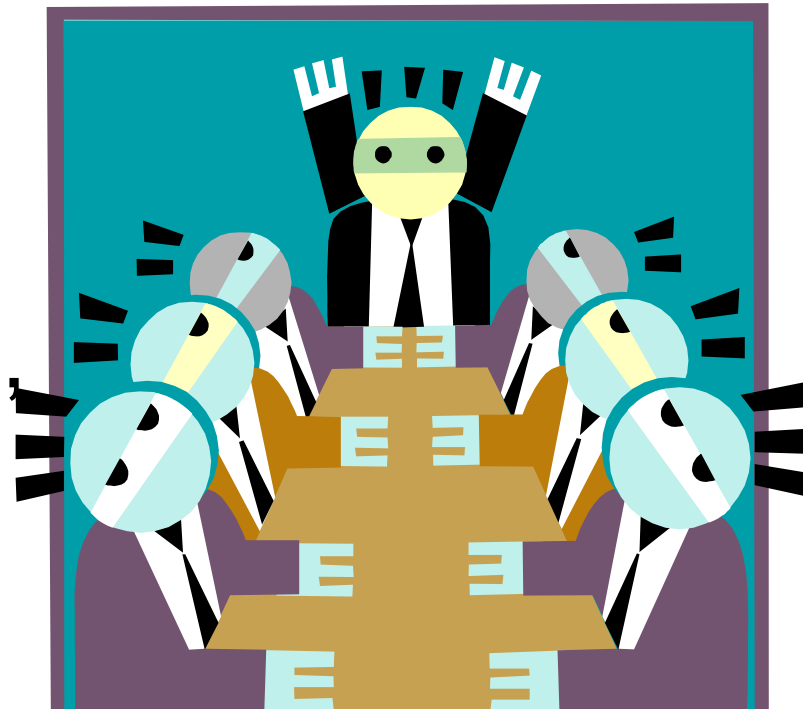
- Make your record during the local hearing process



Too Late...Defending Litigation

Tip #1:

- Get in “Litigation Mode”: advise your clients, (planning staff, commissioners, & corporate authorities)



Too Late...Defending Litigation

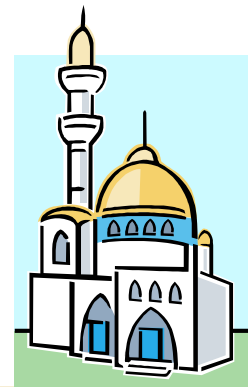
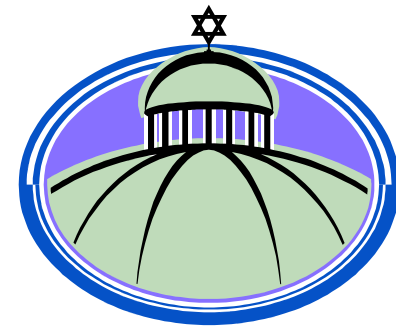
Tip #2:

- Identify options that applicant could have explored (other configurations or designs, locations)

Too Late...Defending Litigation

Tip #3:

- Identify religious institutions that have successfully navigated zoning/planning process



Too Late...Defending Litigation

Tip #4:

- Identify secular assembly uses that have been treated in the same manner as religious uses

Too Late...Defending Litigation

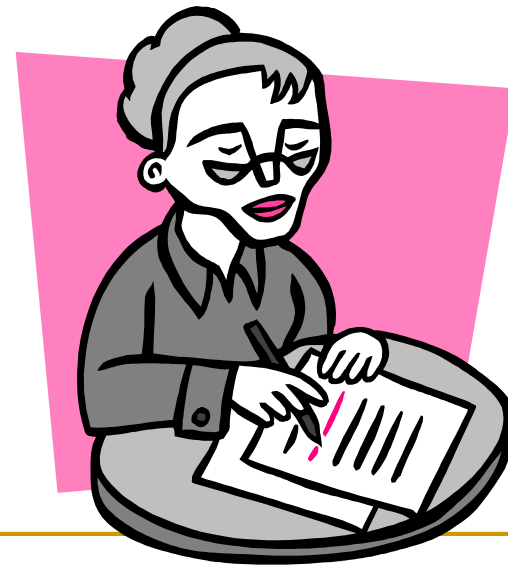
Tip #5:

- Prepare to explain sound planning principles that underlie decision (easy if you “made your record”)
- Retain planning and other experts

Too Late...Defending Litigation

Tip #6:

- If necessary, revise decision (i.e., settle) at early stage of litigation



Representing Religious Institutions

Wendie Kellington

Learn RLUIPA's Structure

1. Distinguish substantial burden from other elements;
2. Read “substantial burden” cases from your state/circuit;
3. Rift between 2 competing views of substantial burden: “effectively impracticable standard” versus “oppressive to a sufficiently great extent”

Lesson One

- Who is your lead contact?
- Are they knowledgeable and do they have authority?

Lesson Two

- Try Twice
- Different locations or scaled back applications

LESSON THREE: Be Clear on Client's Religious Requirements

- Who does the client need to serve that they cannot adequately serve now;
- What does the client need;
- Where does the client need it;
- When does the client need it;
- Why does the client need it
- Evidence on all of these is essential

LESSON FOUR: *Alternative Locations?*

- What alternative locations were selected?
- Why were they rejected
- *Guru Nanak* example: alternative rural location was selected to accommodate opponent and decision maker issues with initially selected urban location

Lesson Five: What are the land use standards?

- Work very hard to comply with land use standards;
- If land use standards cannot be complied with be clear on free exercise reasons why compliance should be excused;
- If issue is application of discretionary standards, treat case like any other land use case

Lesson Six: Re-Read First Amendment

Re:Read RLUIPA

- Old First Amendment cases can be a source of support;
- RLUIPA is fairly narrow; clients often think it supplies more assistance than it does;
- RLUIPA is designed to prevent invidious discrimination against the free exercise of religion by citizens vested with land use discretion/authority.

Lesson Seven

- Experts:
 - ❑ Religious space needs
 - ❑ Overcrowding and its consequences
 - ❑ Unique religious exercise issues of your client
 - ❑ Unique religious exercise issues in your community
 - ❑ Traffic – Understand how peak hour traffic estimates are calculated in your case

Lesson Eight

- Attend preapplication conference;
- Schedule and attend neighborhood meeting;
- Adjust to meet as many concerns as possible

LESSON NINE

- Save news articles
- Where needed congregation should write supporting letters to editor
- Write confirming letters of outcomes of:
 - Neighborhood meetings
 - Preapplication conferences

Lesson Ten

- Rely on local zoning laws for approval
- RLUIPA should simply reinforce local code outcome where possible

Lesson Eleven

- If RLUIPA is the horse your client must ride, prepare them for an expensive fight;
- Look to interest organizations for help

Lesson Twelve

- Turn the congregation loose;
- Have religious leader(s) announce updates of land use proceedings and key hearings and meetings where attendance is required;
- Congregation should show up at public hearings and meetings to support project;
- Create a land use subcommittee to mobilize members

Selecting and Managing Expert Witnesses in Administrative Proceedings

Dwight H. Merriam
Robinson & Cole LLP

The Perspective



...intended for both religious organizations and governments...



objective is middle-of-the-road...

Importance of the record below

- “record appeal” jurisdiction
- administrative proceedings at the local level can be highly probative



The usual entourage of experts

- land-use planner
- a real estate market specialist
- architect
- appraiser
- traffic engineer
- construction cost specialist
- civil engineer
- environmental

Finding the expert

- must be good enough
- planners
 - AICP, Fellows of AICP
 - www.planning.org/faicp/faicp.htm
 - other sources of leads
 - International Municipal Lawyers Association, the American College of Real Estate Lawyers, the Counselors of Real Estate (associated with the National Association of Realtors), the Royal Institution of Chartered Surveyors, and the State Bar Association section or division on planning and zoning law.



The selection process

- ❑ confidentiality
- ❑ relationships
- ❑ experienced or not as a witness?
- ❑ test them
- ❑ read records
- ❑ costs and fees
- ❑ availability



COMMERCIAL APPRAISAL REVIEW FORM

The appraisal report which is the subject of this review is briefly identified and described as follows:

Name of Project/Property _____
Location/Legal _____
Type of property _____ Existing Proposed Construction
Name of Appraiser _____ Telephone _____
Address _____
Report Addressed to: _____ Telephone _____
Address _____
Type of Appraisal Report: Narrative Printed Form Other (identify) _____

Section I — Purpose and Function of Appraisal

Value Sought:	<input type="checkbox"/> Market Value	<input type="checkbox"/> Other (identify) _____	Date of value:	<input type="checkbox"/> Current	<input type="checkbox"/> Future	<input type="checkbox"/> Past
Interests Valued:	<input type="checkbox"/> Fee Simple	<input type="checkbox"/> Leased Interest	Definitions Given For:	<input type="checkbox"/> Value Sought	<input type="checkbox"/> Interest To Be Valued	
	<input type="checkbox"/> Easements	<input type="checkbox"/> Other (identify) _____		<input type="checkbox"/> Market Rent	<input type="checkbox"/> Other (identify) _____	
Real Estate Valued	<input type="checkbox"/> Land	<input type="checkbox"/> Improvements	Assumptions and	<input type="checkbox"/> Standard	<input type="checkbox"/> Consistent with	
	<input type="checkbox"/> Ground Lease	<input type="checkbox"/> Personal Property	Limiting Conditions:	<input type="checkbox"/> Third Party	<input type="checkbox"/> Unreasonable or	
	<input type="checkbox"/> Other (identify) _____			Report	Excessive	

Comments: _____

- appraisers
 - ❑ much the same
 - ❑ more technical
 - ❑ read the depositions
 - ❑ ask about publications, statements, client positions

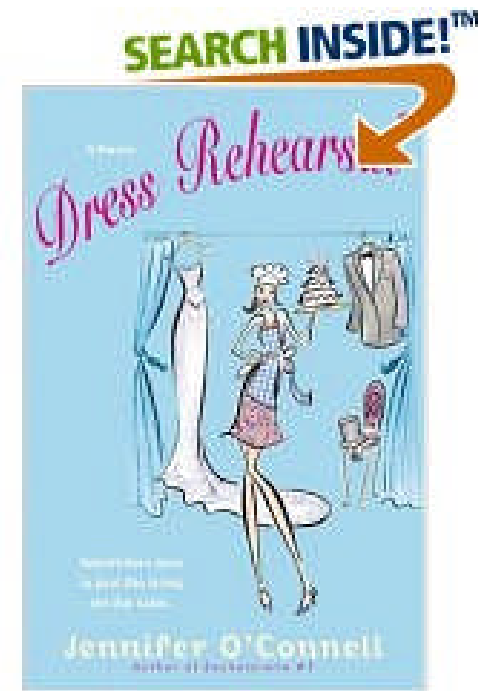
“Shadow” experts



- helpful in strategy; settlements
- talkers and thinkers

Managing the experts

- viewing the setting
- dress rehearsal
- discipline
- fixing the inevitable mistake.



Enjoy the ride...

- This is a team, you are the coach...

