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Supremes: Refusal To Rezone No Violation

The Michigan Supreme Court today held that a decision by the City of Jackson and the Jackson Planning Commission not to rezone property owned by the Greater Bible Way Temple of Jackson for the construction of an apartment house was not a violation of the state's Religious Land Use and Institutionalized Persons Act (RLUIPA).

That finding came in a decision by Justice Stephen MARKMAN that was joined in by Chief Justice Clifford TAYLOR, Justice Maura CORRIGAN and Justice Robert YOUNG in *Greater Bible Way Temple of Jackson v City of Jackson*.

The lower court and the Court of Appeals barred the City of Jackson from interfering with plans by the Bible Temple to build an apartment complex. The Temple brought suit after the City had refused to rezone the property.

In their opinion, the court noted that a refusal to rezone does not constitute an "individualized assessment" and therefore RLUIPA is not applicable to the matter at hand.

"Even if RLUIPA were applicable, the building of an apartment complex would not constitute a 'religious exercise' and even if it did constitute a 'religious exercise' the defendants' refusal to rezone the plaintiff's property would not substantially burden the plaintiff's religious exercise, and even if it did substantially burden the plaintiff's religious exercise, the imposition of that burden would be in the furtherance of a compelling governmental interest and would constitute the least restrictive means of furthering that interest."

The case was remanded to the lower court for entry of judgment in favor of the City of Jackson.

Actual Attorney Needed To Collect Attorney Fees The Supreme Court today also ruled in *Torger G. OMDAHL v West Iron County Board of Education* that an attorney suing under the Open Meetings act and representing himself cannot collect attorney fees.

In this case, Omdahl sued arguing that the West Iron County Board of Education failed to take minutes at two closed-door sessions in violation of the state's Open Meetings Act.

The lower court opted not to grant Omdahl his attorney fees after he won his argument on the minutes question. He then appealed and the Court of Appeals reversed and ordered the lower court to grant Omdahl his attorney fees.

"In sum, by its plain terms, the phrase 'actual attorney fees' requires an agency relationship between an attorney and the client he or she represents," wrote Chief Justice Clifford TAYLOR for the majority. "Therefore there must be separate identities between the attorney and the client and a person who represents himself or herself cannot recover actual attorney fees even if the pro se individual is a licensed attorney."

Taylor was joined in the decision by Justices Maura CORRIGAN, Robert YOUNG and Stephen MARKMAN. Sara BASSO, representing West Iron, applauded the decision.

"The person who brought this action against the school district happened to be an attorney," Basso said. "Iron County Circuit Judge SCWHWEDLER did not award attorney fees because he ruled a person representing him or herself does not have attorney fees. The Supreme Court solidly backed him up on that ruling. That has been our position throughout the appeal of this decision."