

## Trouble Brewing in Marblehead

In *St. Paul's Foundation v. Ives*, the First Circuit Court of Appeals held that the Town of Marblehead did not violate the Religious Land Use and Institutionalized Persons Act (RLUIPA) when it declined to reinstate a suspended building permit to St. Paul's Foundation and the Shrine of St. Nicholas the Wonderworker, Patron of Sailors, Brewers, and Repentant Thieves. St. Paul's is an Orthodox Christian monastic organization. The monks planned to construct a complex containing a brewery, chapel, and fellowship hall in Marblehead. The planned fellowship hall would be used, among other things, to serve the monks' beer to the public.

St. Paul's submitted building plans to the Town in order to obtain a building permit. As required by law, the building plans designated uses for each of the three main areas in the monastic complex according to International Building Code categories. The fellowship hall was designated an A-2 use, for "assembly uses intended for food and/or drink consumption."

Midway through construction, after the resignation of the project architect led to the suspension of the building permit, St. Paul's tried to claim a new use designation for the fellowship hall. St. Paul's' attorney and, eventually, a new project architect asserted to the building inspector that the proper use designation for the fellowship hall was actually an R-2 or A-3 use, a monastery or an "assembly use[] intended for worship." The building inspector declined to let construction go forward: the plans reflected an A-2 use, he believed that was the correct use, and R-2 or A-3 uses were incompatible with the plans. He insisted that St. Paul's agree that the fellowship hall was an A-2 use, consistent with the plans.

Instead, St. Paul's sued. They argued that the building inspector's refusal to let construction proceed violated RLUIPA. RLUIPA prohibits local governments from imposing land use regulations so as to impose a substantial burden on religious exercise. To determine whether a Town action imposes a substantial burden, courts look at whether the action was arbitrary, capricious, or unlawful; or the town's conduct shows hostility towards the religious group. Rather than relying on any evidence of hostility, St. Paul's took the first approach, claiming that the building inspector's refusal to reinstate the permit was arbitrary and capricious because the Town could have reinstated the permit and allowed construction to proceed while deferring the question of the proper use designation for the fellowship hall.

The court disagreed. The undisputed evidence showed that the only reason the building inspector refused to reinstate the permit was his concern that St. Paul's was deviating from the use reflected in the building plans. The court held that it could not be arbitrary and capricious for the building inspector to require confirmation that the project would conform to the building plans, because "it hardly is unreasonable for a building commissioner to ensure that the party seeking to reinstate a permit is not engaged in a bait-and-switch." The building inspector was consistent and clear about why he would not reinstate the permit, his reason was a valid one, and there was no evidence that he had an ulterior motive. And so the RLUIPA claim failed.

The First Circuit's decision provides an important reminder for town officials to be careful and remain focused on the issues within their jurisdiction when faced with potentially contentious matters. The building inspector's reasoning was consistent throughout the dispute, and he remained focused on technical questions of compliance with the building and plumbing code. His decision would have been more vulnerable to an RLUIPA challenge had he changed his mind repeatedly or expressed any opinion on the religious aspect of the proposed uses.

In Marblehead, it seems that ale's well that ends well, and the parties are no longer hopping mad. While the case was pending, St. Paul's agreed to a conditional reinstatement of the permit based on the A-2 assembly use. Although the fellowship hall is not yet open to the public, Marblehead residents can order [growlers of beer for delivery](#).