

Memorandum

To: Town of Somers Zoning Commission

From: Hillsdale College

Date: March 2, 2020

Re: Response to Special Counsel’s Memorandum to the Commission
Regarding the Religious Land Use and Institutionalized Persons
Act (RLUIPA)

In a memorandum dated February 3, 2020, and circulated to the Hillsdale College’s counsel at the February 3 public hearing, Special Counsel to the Town of Somers Zoning Commission suggests that RLUIPA makes any evidence of the College’s prior plans for the Blake Center properties relevant in these proceedings, and that the Act even empowers the Commission to direct the College to turn over such evidence. *See* Evan J. Seeman Mem. 1–2 (Feb. 3, 2020). Special Counsel further suggests that, in light of that evidence, the Commission could make factual findings about whether the College’s long-held Christian commitments are sincerely held or are instead “fraud[ulent].” *Yellowbear v. Lampert*, 741 F.3d 48, 54 (10th Cir. 2014) (Gorsuch, J.). *See* Evan J. Seeman Mem. 1–2 (Feb. 3, 2020).

Respectfully, Special Counsel is incorrect on all counts, including for reasons already set forth in an earlier letter and not repeated here. *See* Letter from R. Walsh to Attorney Landolina (Jan. 31, 2020).

To begin, nothing in RLUIPA makes the sincerity of an applicant’s religious views a condition of zoning approval, which is a creature of state and municipal law, not federal. Indeed, RLUIPA does not purport to *add* to the burden of religious land-use applicants at all. To the contrary, it *protects* them—precisely by restricting the discretion of zoning authorities. Accordingly, the Commission’s task here is only to “determine whether the proposed use is expressly permitted under the regulations, and whether the standards set forth in the regulations and statutes are satisfied.” *Daughters of St. Paul, Inc. v. Zoning Board of Appeals*, 17 Conn. App. 53, 56 (1988). If the applicant shows that its proposed use is that of a “religious institution or place of worship,” and it satisfies all other fairly applicable state and local zoning-related requirements, then its applications must be granted. RLUIPA addresses burdens of production and proof in litigation, not in zoning proceedings.

In fact, directing a religious applicant to turn over evidence that a non-religious applicant would *not* be asked to produce would *itself* violate RLUIPA. The Act provides that “[n]o government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution *on less than equal terms* with a nonreligious assembly or institution.” 42 U.S.C. § 2000cc(b)(1) (emphasis added). As the College has explained, the Somers Zoning Regulations do not permit the Commission to direct a special-use applicant to turn over any and all internal documents and materials relating to previous plans for a development. *See* Letter from R. Walsh to Attorney Landolina 3 (Jan. 31, 2020). Nor, upon information and belief, is it the practice of this Commission to request such information from non-religious special-use applicants. To illustrate, the Zoning Commission assuredly would not ask an applicant to turn over evidence to test whether its plans for a proposed commercial horse farm, a special use permitted in two districts, are “sincere”—even in the face of reports that the applicant had previously wanted to use the property solely for his own personal riding enjoyment.

In addition, nothing in RLUIPA (or any other law) empowers local zoning authorities to make factual findings concerning the sincerity of an applicant’s religious beliefs. Although special counsel has cited cases in which *district courts* have made such findings, he has cited none in which *zoning boards* have done so, and counsel for the College is aware of none. The unpublished opinion in *Church of Universal Love and Music v. Fayette County*, 2008 W.L. 4006690 (2008) (W.D. Pa. Aug. 26, 2008), cited by Special Counsel, is not to the contrary. In that case, the zoning authority expressly stated that it “was not considering whether [the plaintiff] was a religious organization but was only considering [the plaintiff’s] *original application*,” which was for a “commercial recreational” use, not a religious one. *Id.* at *3 (emphasis added; internal quotation marks omitted). Here, by contrast, the “original application[s]” have been—and remain—the only applications before this body, they have always sought approval for a religious use, and the applicant’s long-held religious identity and mission cannot be doubted.

Regardless, any evidence regarding previous plans for the properties would not go to the sincerity of the College’s beliefs in the first place. The sincerity standard assesses merely “whether a claimant *truly holds* [the asserted] religious belief.” *Yellowbear*, 741 F.3d at 54 (emphasis added). This is a “modest” inquiry, “limited to asking whether the claimant is (in essence) seeking to perpetrate a fraud on the [decisionmaker]—whether he actually holds the beliefs he claims to hold.” *Id.* Here, no one—including Special Counsel—has questioned whether the College “truly holds” the Christian commitments that it has documented and described at length. Nor could they. Plainly, the College’s commitment to “teach by precept and example the essentials of the Christian faith and religion” (Mem. App. Tab 5 (Dec. 2, 2019))

is not some conspiracy—175 years in the making—to trick this Commission into approving a small faith-based conference center in rural Connecticut.

Even if the College previously had formed plans for the properties that were not as obviously focused on religious exercise, and then changed plans to better comport with local zoning regulations, that fact would not detract at all from the sincerity of its long-held Christian beliefs. Consider an analogy: An order of Catholic monks inherits a building that it first proposes to use as a commercial bed and breakfast. Upon learning that local zoning law forbids this use, the monks alter their proposal and state a desire to convert the building instead into a monastery. Obviously, that change in plans says nothing about whether the monks are *sincerely Catholic*. But suppose instead that a commercial developer were to conveniently repurpose itself as a Catholic religious order just before applying to open a commercial store selling religious art. The sudden and suspicious change in *identity*, in the second hypothetical, could raise a question about sincerity, whereas the mere change in *plans*, in the first hypothetical, would not.