

**JIN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

VISION CHURCH, UNITED METHODIST and NORTHERN ILLINOIS CONFERENCE OF THE UNITED METHODIST CHURCH AND ITS PRESIDING BISHOP, C. JOSEPH SPRAGUE)	
)	
Plaintiffs,)	
)	
v.)	
)	
VILLAGE OF LONG GROVE,)	
)	
Defendant.)	

No. 03 C 5761

Judge Norgle

Magistrate Judge Keys

FILED

APR 29 2004

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

DOCKETED

APR 30 2004

**VILLAGE OF LONG GROVE'S MOTION TO DISMISS
COMPLAINT OF PLAINTIFF IN INTERVENTION**

Defendant Village of Long Grove (the "Village"), by its attorneys, William W. Kurnik, Victor P. Filippini, Donald G. Mulack and James T. Mueller, pursuant to Rules 10(c), 12(b)(1), and 12(b)(6) of the Federal Rules of Civil Procedure, moves to dismiss the complaint filed by plaintiff intervenor Northern Illinois Conference of the United Methodist Church and its Presiding Bishop, C. Joseph Sprague (the "Conference"). In support of its motion, the Village states as follows:

I. Counts I-VI and VIII-X of Vision's Complaint Should Be Dismissed for the Same Reasons Vision's Complaint Should Be Dismissed.

1. On August 18, 2003, plaintiff Vision Church, United Methodist ("Vision") filed a nine-count complaint against the Village.

2. The Village has moved to dismiss each of those nine counts. That motion is fully briefed and the parties are currently awaiting the Court's decision.

3. On April 5, 2004, this Court granted the Conference's motion to intervene.

4. The Conference's complaint includes ten counts, nine of which are identical to the nine counts of Vision's complaint. Counts I to VI of the two complaints advance the same theories, and Counts VIII to X of the Conference's complaint advance the same theories as Counts VII to IX of Vision's complaint.

5. The only difference between the two complaints is that the Conference's complaint adds a Count VII based on the establishment clause of the First Amendment.

6. Rather than file additional briefs on the nine counts of the Conference's complaint that are identical to the nine counts of Vision's complaint, the Village, in this motion to dismiss Counts I to VI and VIII to X of the Conference's complaint, seeks to adopt by reference the arguments in its motion and memoranda supporting dismissal of the equivalent counts of Vision's complaint, as authorized by Federal Rule of Civil Procedure 10(c).

II. Count VII Should Be Dismissed for Failure to State A Claim.

7. The establishment clause of the First Amendment prohibits the Village from passing "laws which aid one religion, aid all religions, or prefer one religion over another." *Everson v. Board of Educ. of Ewing Township*, 330 U.S. 1, 15 (1947); *see also Berger v. Rensselaer Cent. Sch. Corp.*, 982 F.2d 1160, 1168-69 (7th Cir. 1993) ("Under the Establishment Clause, the government may not aid one religion, aid all religions or favor one religion over another."). The Conference's complaint is not that the Village has aided all religions, but instead that it has favored other religions over its religion.

8. A government action violates the establishment clause if it lacks secular purpose, advances or inhibits religion, or fosters an excessive government entanglement with religion.

See *Charles v. Verhagen*, 348 F.3d 601, 610 (7th Cir. 2003) (quoting *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971)). In this case, the denial of the special use permit quite plainly has a secular purpose, and does not foster an excessive government entanglement with religion.

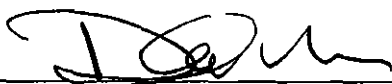
9. The flaw in the Conference's logic can be demonstrated quite simply. Under the Village's ordinances, as a matter of law, if the Conference purchased any of the existing religious facilities within the Village, that it refers to in paragraph 31 of the compliant, it could immediately begin practicing its religion at that location. Similarly, if any of the religious denominations within the Village purchased the property owned by Vision and the Conference, and sought to construct a facility of the scope Vision has proposed, they also would not be allowed to do so. Thus, the critical difference between Vision and other religions in the Village is not their religion or religious beliefs, but the size and location of the building in which they wish to worship. The Village's enforcement of regulations are focused on the parcel of land, not on the particular religion or religious beliefs of those worshipping or planning to worship on that parcel.

10. From that analysis, it is plain that religion and religious beliefs have nothing to do with the denial of Vision's request for a special use permit. The Conference alleges that the Village has given preferred status to other religions operating facilities within the Village, but it has not; the Conference is welcome to acquire any of those facilities and use them for religious purposes. The Village has not favored any one religion over another – what it has favored within its overall zoning scheme is land uses that are consistent with their surroundings over land uses that are not.

11. As the Seventh Circuit observed in *Civil Liberties for Urban Believers v. City of Chicago*, 342 F.3d 752, 766 (7th Cir. 2003), a limitation on the location of a church is not the regulation of religious belief, any more than regulating the location of the *Chicago Tribune's* building is the regulation of its First Amendment-protected product. Here the Village has in no way regulated religious beliefs; it has regulated land use, and the size of facilities that may be constructed on land within the Village. As a matter of law, the establishment clause cannot require the Village to approve a special use permit for one religious facility simply because another religious facility is operating somewhere within its boundaries. This contention is meritless as a matter of law. Accordingly, Count VII of the Conference's complaint should be dismissed.

Wherefore, Defendant Village of Long Grove requests that the Court dismiss in its entirety the complaint filed by plaintiff-intervenor Northern Illinois Conference of the United Methodist Church and its Presiding Bishop, C. Joseph Sprague.

VILLAGE OF LONG GROVE

By  _____
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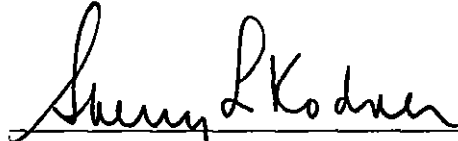
AFFIDAVIT OF SERVICE

I, Sherry Kodner, being duly sworn upon oath, state that on April 29, 2004, I served the foregoing Village of Long Grove's Motion to Dismiss Complaint of Plaintiff In Intervention on plaintiffs by depositing a copy in the U.S. mail depository at 131 South Dearborn Street, Chicago, Illinois addressed to:

John Mauck
Andy Norman
Mauck & Baker
One North LaSalle Street, Suite 2001
Chicago, Illinois 60602

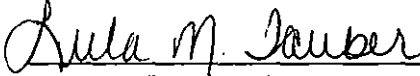
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Sherry Kodner

SUBSCRIBED AND SWORN
to before me this 29th day
of April, 2004



Notary Public

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