

COPY

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ROBERT MURPHY ET AL)	
)	
PLAINTIFFS)	
)	CIVIL ACTION NO.
VS.)	
)	300CV2297HBF
ZONING COMMISSION OF THE)	
TOWN OF NEW MILFORD ET AL)	
)	
DEFENDANTS)	
)	DECEMBER 16, 2002

DEFENDANTS' MEMORANDUM IN SUPPORT
OF ITS OBJECTION TO PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT

The named Defendants hereby object to the Plaintiffs' motion for summary judgment dated November 4, 2002 as well as the amended version dated November 20, 2002. The Defendants filed their own motion for summary judgment in this matter on November 6, 2002. While the memorandum in support of their motion addresses many of the arguments raised in the Plaintiffs' memorandum, the Defendants feel it did not do so adequately as to all issues and thus find there is a need to file a short memorandum with this objection.

I. THE PLAINTIFFS HAVE ABANDONED SEVERAL OF THEIR CLAIMS

On the first page of their summary judgment memorandum, the Plaintiffs state their intention to argue that they are entitled to "[S]ummary judgment on each of the claims in Plaintiffs' Amended Complaint except for the Eighth Cause of

Action, which the plaintiffs have withdrawn." This amended complaint contained thirteen causes of action.

A review of the Plaintiffs' memorandum reveals that not all claims were briefed. Specifically, the Seventh, Ninth and Tenth Causes of action are entirely absent. The Seventh Cause of action is premised on the Establishment Clause of the First Amendment to the U.S. Constitution, the Ninth Cause of action raises a claim under the Connecticut Constitution while the Tenth Cause of action asserts that there has been an ultra vires act(s) by the Defendants.

It is well settled law that issues which are raised but not briefed will be considered abandoned and will thus not be decided by the courts. Leebaert ex rel. Leebaert v. Harrington, 193 F. Supp.2d 491 (D.Conn. 2002), Cybulski v. Planning & Zoning Commission, 43 Conn. App. 105, 109 (1996), Shaw v. Planning Commission, 5 Conn. App. 520, 525, 500 A.2d 338 (1985), Katsetos v. Nolan, 170 Conn. 637, 641, Hartford National Bank & Trust Co. v. Tucker, 178 Conn. 472, 475-476.

Even if the Plaintiffs assert that they touched on any of these claims in their brief, that would not be enough to save them. "Where a claim is asserted in the statement of issues but thereafter receives only cursory attention in the brief without substantive discussion or citation of authorities, it is deemed to be abandoned. Analysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly."

Cummings v. Twin Tool Mfg. Co., Inc., 668 A.2d 1346, 1352, 40 Conn.App. 36(Conn.App. 1996).

The Plaintiffs can not argue here that they are leaving these issues for a later hearing. They clearly stated their intention to include these counts as part of their motion for summary judgment then failed to address them in their memorandum. Where both parties have treated cross motions for summary judgement as dispositive of all issues, a failure to brief any issue renders it abandoned. A.S. ex rel. S. v. Norwalk Board of Education, 183 F. Supp. 2d 534 (D.Conn. 2002). In addition, fairness, as well as the law, dictate that this court find these claims abandoned. The inclusion of these claims has forced the Defendants to needlessly defend them at some financial cost as well divert them and this court from the claims which the Plaintiffs actually feel have merit.

II. THERE IS NO VIOLATION OF CGS. SEC. 52-571b

Found within the thirteenth and final cause of action of their Fourth Amended Complaint, the Plaintiffs' placed an allegation that in attempting to regulate the size and frequency of the meetings taking place in their home, the Defendants "[H]ave not only 'interfered' with the Murphy's' rights to associate and assemble, but have prohibited these activities altogether." Plaintiffs' memorandum at p. 22.

In order for there to be a violation of CGS. sec. 52-571b, there must be a burden of someone's right to freely exercise their religion. As the Plaintiffs correctly point

out, this burden must be more than an interference with those rights. In Grace Community Church v. Bethel, 7 Conn. L. Rptr. 66 (1992), the denial by a local land use commission of a special permit application was not found to burden the free exercise rights of the applicants. This was despite the fact that without the special permit, the applicants could not construct a church building in which to worship.

Compare this hardship with that of the Murphys. All the Defendants require, by way of the zoning regulations, is that the Plaintiffs place a reasonable limit on the size of their weekly meetings. A limit, as it turns out, that is in conformance with the average size of the Plaintiff's meetings and would not have an impact most of the time. [See Defendants' 9(c)(1) statement, paragraphs 19-23]. The facts of this case clearly show that far from being a prohibition, there isn't even a burden on the Plaintiffs' free exercise rights. "The first amendment cannot be extended to such an extent that a claim of exemption from the laws based on religious freedom can be extended to avoid otherwise reasonable and neutral obligations imposed by government." First Church of Christ, Scientist v. Historic District Commission, 46 Conn. Sup. 90 (1999).

The Defendants assert that something more is needed than just the mere inconvenience of confirming the number of people who will attend a weekly meeting at one's home. This is especially true when these meetings are not open to the

public and are by invitation only and are attended by family long time friends of the family. [See Defendants' 9(c)(1) statement, paragraphs 20, 22]. To find otherwise would render insignificant the threshold question contained in this statute, whether a governmental action burdens a persons' free exercise rights.

As further evidence that the Plaintiffs have not been burdened by the acts of the Defendants, I direct the court's attention to the terms of the Temporary Restraining Order which the Plaintiffs agree allowed them to continue to meet in accordance with their religious beliefs but, nonetheless, did place limits on the number of persons who could attend the meetings. [Plaintiff's 9(c)(1) Statement Paragraph 49 "The TRO allowed the plaintiffs to continue their prayer meetings"].

III. DEFENDANTS SUFFER HARM FROM CONTINUED FALSE STATEMENTS BY PLAINTIFFS

Despite clearly understanding that their meetings would not be prohibited by the actions of the Defendants, the Plaintiffs continue to state in their pleadings and memorandums, that their meetings are being prohibited and that the sole reason for doing so is that they are prayer meetings. [See p. 14 of Plaintiffs' brief "The Commission's act is underinclusive because it is aimed only at meetings with religious content." or p. 18 "Only prayer meetings are forbidden-" or p. 22 "Defendants ... have prohibited these activities all together"].

Contrast these statements with those identified in the Defendants' 9(c)(1) statement where the Plaintiffs admit that limiting the number of attendees at these meetings would not have any effect most of the time on their ability to freely exercise their religious beliefs. It is impossible to understand why, after making such statements under oath in court, the Plaintiffs continue to claim that their meetings are prohibited. It is possible to know the effect.

I have attached copies of several letters received by the Defendants during the course of this litigation. I request that this court take notice of the general tone of these letters and how negatively the reputations of the Defendants have been harmed. The Defendants also request that the Plaintiffs refrain from making statements which they know not to be true.

IV. Conclusion

For all these reasons as well as those stated in Defendants' Memorandum in Support of its Motion for Summary Judgment, the Defendants respectfully request that this court grant them judgment in their favor as to all counts of the Plaintiffs' fourth amended complaint. In addition, if necessary, the Defendants move that this court grant them judgment as to their remaining special defenses.

THE DEFENDANTS


BY 

Steven E. Byrne
790 Farmington Ave. Bld. 2
Farmington, Connecticut 06032
(860) 677-7355 CT 10267

CERTIFICATION

This is to certify that a copy of the above was mailed
postage prepaid to the following counsel and pro se parties
this 16th day of DECEMBER, 2002.

Attorney Vincent McCarthy
8 South Main Street
P.O. Box 1629
New Milford CT 06776
Fax: (860) 355-8008



Steven E. Byrne
790 Farmington Ave. Bld. 2
Farmington, Connecticut 06032
(860) 677-7355 CT 10267

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ATTACHMENTS

1. News Release From *The American Center for Law and Justice* dated December 4, 2000 wherein it is claimed prayer meetings are prohibited.
2. Undated notice entitled "Murphy Prayer Prohibition/ Zoning Issue containing known factual inaccuracies.
3. Ten examples of the numerous pieces of "Hate Mail" received by the Defendants.

Note:

All of these attachments were provided by the Defendants to the Plaintiffs, without objection from either party, in response to the Plaintiffs' Request for Production dated October 9, 2001. They were produced in response to item number 26 of said Request.

THE AMERICAN CENTER FOR LAW AND JUSTICE

News Releases

ACLJ NEWS RELEASE - DECEMBER 4, 2000

DEC 21 - UPDATE - INJUNCTION ISSUED TO ALLOW PRAYER MEETING ([News Release](#))

ACLJ FILES FEDERAL SUIT OVER IN-HOME PRAYER PROHIBIT CONNECTICUT

(Hartford, CT) – The American Center for Law and Justice, an international public law firm, announced today it has filed a federal lawsuit in Hartford, Connecticut against the Town of New Milford, Connecticut charging that the Zoning Commission has issued an order prohibiting a family from holding prayer meetings inside their private residence.

“This is clearly a case where the zoning authorities have overstepped their authority in determining that our clients cannot use their private residence for weekly prayer meetings,” said Vincent McCarthy, Senior Counsel of the ACLJ who is representing the family. “The town’s issue an order prohibiting a family from using their private residence for prayer is one of the worst forms of religious discrimination, it represents a direct assault on constitutional rights. We are asking the court to declare the actions of the zoning commission unconstitutional and to issue an injunction to clear the way for the family to resume prayer meetings in their home.”

The ACLJ filed suit December 1st on behalf of Robert and Mary Murphy, resident of New Milford who have been holding weekly prayer meetings and Bible studies at their single-family home since 1995. The complaint contends the prayer meetings, which are attended by no more than 25 people, do not violate any town regulations and are in full compliance with all applicable law.

The lawsuit contends that the problems began after they received the proper zoning permits to add a family room and a garage to their home this year – new permits that were not used for the prayer meetings.

As the Murphy’s attempted to add a driveway to their property, the complaint contends that the town rescinded a permit to complete the driveway because they Murphy’s used the driveway for prayer meetings.

The lawsuit states that the Murphy’s received a letter from town’s zoning enforcement on November 29th ordering the Murphy’s to suspend the prayer meetings at their home, saying the zoning commission has determined that such activity is not permissible. The lawsuit also states that the town will take legal action against the Murphy’s if they continue to hold the prayer meetings at their home.

McCarthy said: “It is very troubling that a local government body would censor the free expression of a family who only wants to use their own private residence for prayer meetings.”

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town's reasoning and actions are not only flawed but send a disturbing signal that government can be used as a kind of 'prayer police' to censor the legal and lawful expression of our clients."

The lawsuit charges the defendants with violating the First, Fifth, and Fourteenth Amendments of the U.S. Constitution as well as provisions of Connecticut law. The complaint contends that the actions of the town violate the Murphy's constitution: free speech and freedom of assembly by restricting and inhibiting religious express

The lawsuit names as defendants the Zoning Commission of the Town of New Mi its members. The suit requests the court declare the town's action invalid and unconstitutional and asks the court for an injunction to prevent the town from con discriminatory action.

The ACLJ is an international public interest law firm that specializes in constitutio The ACLJ focuses on pro-liberty, pro-family, and pro-life issues. The ACLJ's wet address is www.aclj.org.

Murphy Prayer Prohibition Zoning Issue

In order to fight this attack on our 1st, 3rd and 14th Amendment Rights, we are asking that those who are in support of Bob Murphy and Family voice their opinion to certain key parties to this issue. To give a brief outline of what is being decided, I offer you the following points:

- The Town has issued a Cease and Desist Order that orders the cessation of prayer meetings in the privacy of the Murphy residence. The Town of New Milford has attempted to take authority over what people do in the privacy of their own homes.
- To explain this point further, the Town states that NOBODY, not a single person, is allowed over to the Murphy home on a regular basis!! There was some discrepancy argued in court on January 18, 2001, where the Town stated that they were only disallowing gatherings of more than 25 "Diverse" people, however, they have since clarified to state that 0 (ZERO) people are allowed over to the house on a regular basis. They claim that this applies universally throughout the Town, not only to the Murphy family. (Imagine the intrusion of family gatherings, Boy Scouts, Girl Scouts, Religious Education, Home Schooling, Small Christian Communities, etc.)
- The Town has issued a Cease and Desist Order that orders us to cease construction of a driveway that was being constructed to allow Bob Murphy, a handicapped access to his own house. Because our friends who join us to pray park there, it is now being called a "parking lot" and being disallowed. The irony here is that people were parking in the back to alleviate the original complaints, which were directed at cars in the driveway - which coincidentally is not illegal either.
- The Town is spending Taxpayer money to defend this position.
- The Town has never presented the Murphy family with a list of the complaints or concerns brought against them to allow them a chance to dispute many outrageous claims (Claims of rock throwing, trespassing, destruction of property, etc.) Anyone who knows the family knows that these claims are baseless.
- The Mayor, who acts independently of the Zoning Commission, has taken a similar approach and even gone one step further. The Mayor has never spoken or in any way corresponded with the Murphy family. He received a letter from the same neighbors that complained to zoning, and he has failed to act in a responsible, neutral manner. He failed to allow the Murphy's Due Process, thus took away their legal protection under the law.
- To make things worse, the Mayor has published a website and referred to it in the press. This website houses information that is not only completely irrelevant (according to the Zoning Board), but is completely untrue, grossly exaggerated, and inflammatory.

We are asking that if you feel so moved, to address in writing your views to the following important contacts:

New Milford Zoning Commission
10 Main Street
New Milford, CT 06776
Attn: Chairman George Doring

Town of New Milford
10 Main Street
New Milford, CT 06776
Attn: Mayor Arthur Pettler

Danbury News Times
233 MAIN STREET
DANBURY, CT 06810
Attention: Sue Tuz

Topper S. Baker
Cynthia J. Baker
20510 N. Austin Road
Colbert, Washington 99005

December 8, 2000

Zoning Commission
Town of New Milford, Connecticut

RE: Robert and Mary Murphy Building Permits

Dear Zoning Commission:

No doubt you are well aware of the Robert and Mary Murphy listed above and the problems you have been unleashing on them in the past few weeks and months regarding your withholding a building permit because they have in-home prayer meetings among friends. What if they were having friendly barbecues, or birthday parties, or committee meetings or neighborhood get-togethers? Would you be so adamant in your stand? Next, you will be wanting to appoint a policeman to sit in their home at the meetings to make sure they are the proper type of meetings that the zoning commission approves of. How stupid of you.

I just got off the web reading the update from ACLJ and I am shaking my head in disgust at people like you that would twist the law to force your ungodless beliefs on man kind. It is too bad that people like you get into office of government, because when that happens, it can only mean problems and headaches for decent citizens.

I suggest the zoning commission fully rethink (if that is possible for your commission) its position on this rezoning/building permit issue for Mister and Mrs. Murphy and come up with a correct decision this time.

It is amazing how far our government personnel go to squash one's constitutional rights these days.

Sincerely,

Topper Baker
An Interested Follower of the
Murphy case.

Kathy Castagnetta

rom: Lisa Hasbrouck
Sent: Friday, July 20, 2001 3:22 PM
To: Kathy Castagnetta
Subject: FW: Protest!!

-----Original Message-----

From: Mary Lou Tannich [mailto:batchbear@hotmail.com]
Sent: Friday, July 20, 2001 12:32 PM
To: Lisa Hasbrouck
Subject: Protest!!

To Whom it may concern:

I am emailing this as a response to the ban on prayer meetings in private homes that has been perpetrated by your city.

What an outrage!! Is there no one intelligent enough to find a legal way of handling a traffic jam in a neighborhood?

Freedom to worship in our homes is a fundamental aspect of our country's constitution! This ban flies in the face of all that this country stands for! Where in this world did this ban's author come from? Does anyone know what honor is? This is a very sad thing to see. I have many ancestors who lived and died in your city. They would be in an uproar!

I am so grateful that U.S. Magistrate Judge Holly B. Fitzsimmons is involved in getting this revoked! If it weren't for honorable people in the courts, more than just New Milford would be in trouble.

What is another outrage is this unscrupulous, dishonorable attorney, Steven Byrne, will fight this magistrate's decision! If this town has any honor and any sense of duty to follow the constitution, it will dismiss this fellow and hire someone who will follow the law!

Sincerely,
Mary Lou Tannich
Spokane, Washington
ml.tannich@worldnet.att.net

Get your FREE download of MSN Explorer at
<http://explorer.msn.com/intl.asp>

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Date: Thu, 14 Dec 2000 13:48:58 -0500
 From: Jerry Oxendine <joxendi@bellsouth.net>
 To: Greenwave@newmilford.org

Guten Tag! Haben sie die SS im New Milford?

I figured I'd start in German since I read the CNN report of your Zoning Commission telling a family they couldn't hold prayer meetings in their own home. That just about tears it. I could understand it if that particular family were exceeding the safe numbers of people in a residence, in so doing, violating fire codes. But a PRAYER meeting of less than 25 people? Was ist los? I know I don't live in Connecticut, and you could say this is none of my business. But I am outraged that it has come to the point that one can have a party complete with liquor, dancing, and even wife-swapping in their homes—as long as they don't make too much noise. But, NO. GASP! Those people have the gall to PRAY in their homes! "Ve must sctop dis behavior!" Your paperz, pleesch! VE must zee dat de queerz can meet im der homez, but dat doze verdammen Christians can't pray at home. Overreaction? You might think so, but I don't. Never before in the history of this country has a group of people, with exception of certain races, been so harshly attacked. This began with the 1963 decision against prayer. It's been going down hill ever since. And yet the stupid liberals cannot see the parallel between the moral condition so exemplified by Clinton, who besmirched his office, that exists today and the lack of reverence towards God as well as the lack of prayer in public places. Now you want to remove the ability of a family and friends to pray together in their own homes? I say NEVER! I see that you are about to be sued over this, and I hope they BREAK New Milford's back over this!!

And now, I am joyfully thanking God for the fact that, tho I wasn't born here, my parents brought me to the beautiful state of North Carolina when I was 6 years old. North Carolina is still a state of quite independent and liberty-minded people. The spires of beautiful churches rise high, proudly into the skies. The mountains soar to the west, and one can see the winter snow on the majestic slopes. I thank God for the four distinct seasons, the rolling hills that surround me as I write this, and even the ice on the trees from last night's ice storm. People from up north sometimes come down here and make fun of us--the way we do things, the way we speak. And on that subject, there are at least 5 distinct dialects within NC. But you have made me realize just how lucky I am to be living here instead of in Connecticut. How nice it is to be able to visit someone's home and pray if I want to, have a prayer meeting if we want to--just so long as we don't create a dangerous situation by exceeding the fire code. Yes, I am angry at you (unless I read this report wrong) and would deliberately avoid New Milford while traveling. I would not trade even one village in NC for your town, but thank you for making me aware of the enemies of Christiauity and the city they live in. As the attacks on Christians increase, and they ARE, as the banning of their liberties are attempted (and the Bible said these things would happen in the latter days), I cannot help but wonder how long before there is a "Kristal Nacht" (Night of broken glass) in America against Christians where there is a government sanctioned storming and burning of churches and Christian homes. Is New Milford at the forefront, the harbinger of things to come? You tell me.

J.W. Oxendine Gastonia, NC

Subject: prayer meetings
 Date: Sat, 16 Dec 2000 12:13:28 -0800 (PST)
 From: Patrick Carr <fatherbreadloaf@yahoo.com>
 To: greenwave@newmilford.org

CF. P. 3

Hello. I have yet to hear back from anyone regarding my questions about the zoning ordinance in New Milford and whether or not prayer meetings are allowed in private homes. Why is the city council allowing people to be discriminated against? Prayer is legal in this country, even in elitist, soul-less New England

Kathy Castagnetta

m: Lisa Hasbrouck
ent: Friday, July 20, 2001 3:22 PM
To: Kathy Castagnetta
Subject: FW: Judge lifts ban on home prayer meetings -- The Washington Times



20010720-4538416.ht

m

-----Original Message-----

From: Bob Hill [mailto:bhill@ti.com]
Sent: Friday, July 20, 2001 11:34 AM
To: Lisa Hasbrouck
Subject: Judge lifts ban on home prayer meetings -- The Washington Times

I consider people like you zoning commission members the enemy of not only New Milford, but the enemy of America. The fact that you members seem to intrude into one's home shows that you operate like power hungry socialists. People like you need to be removed from your positions of authority. You are abusive in your position. I thank God everyday that I do not live in the rtheast where socialism has become to surface. Our country became great via capitalism, and wrong headed people like you want to turn our country into some socialistic form of government, to serve your own personal agendas. Can you tell me what it's like to be an idiot and not know it?

Bob Hill
Wallis, Texas

<http://washingtontimes.com/national/20010720-4538416.htm>

Executive Secretary to the Mayor

-----Original Message-----

From: John Andrew Prime [mailto:japrime@shreve.net]
Sent: Friday, July 20, 2001 3:03 PM
To: Jennifer Lake
Cc: japrime@shreve.net
Subject: Religion zoning

Mayor Peitler:

Listening to the news on radio here just now, I must say your town's efforts to stamp out a religious activity by zoning sounds faintly -- no, loudly -- fascist to me. Tell me, would you be doing this if these were Jewish folks at a seder? I think not.

As a former New Jersey boy, I thank God I live in Louisiana, in the deep South, where people are a lot less bigoted, about race and religion and a whole lot of things, than you folks up in cold climes would give us credit for.

Don't get me wrong, I love the north -- my grandfather was the mayor of Bergenfield 80 years ago, and was a power in Democratic politics there for 60 years. But he's spinning in his grave now over how anal it is there, I'm sure.

John Andrew Prime
Shreveport, LA
<http://www.shreve.net/~japrime/>

Lisa Hasbrouck

From: Title of Liberty [ttloflib@san.rr.com]
Sent: Sunday, July 22, 2001 2:40 AM
To: Lisa Hasbrouck; mayormayor@newmilford.org; Fran Pennington
Cc: LDS-Eschatology@yahogroups.com
Subject: Prayer Meelings

Dear New Milford Connecticut,

It is truly surprising that in this day of alleged enlightenment and political correctness that so little tolerance is given to those who still believe in God. When an elected committee of citizens turns it's back on the people it represents over a few whining neighbors it is ridiculous and sad in the extreme. Perhaps you could have made some special parking rules for the cul-du-sac prior to the Christian hunt. It's even more sad that your stubbornness had to be rebuked and overturned by the supreme court of the USA, how embarrassing it must be collectively and individually. I only wish I had the direct email of those who wrote, sponsored and voted for this sublime law. But please feel free to forward this to them just as a reminder of the shame they should feel.

I live in San Diego which has a significant Hispanic population and the culture they hold dear is one of community family. Distant cousins and friends of friends are expected to come together frequently to support birthdays, baptisms, illnesses and other life events and some just because someone baked a great cake. The point I make is that Hispanic families have huge gatherings of people and cars nearly every Sunday in our area. No one complains, ordinances and zoning laws aren't changed to persecute close family and friend gatherings, it would be absurd and rude. Perhaps some of you should get out more and understand people better before you knee jerk react in town council meetings.

I hope you realize that the whole country is watching your actions and many of us are seriously appalled at the open persecution of people who profess a belief in God. Your names could go down in history as the bigots who hated dying men and folks that believe in God. What an auspicious honor that will be for your children and grandchildren to drag around.

By the way, did you know that there is not one known culture in the world that denies the existence of a supreme being, I wonder if that survey missed your backward little hamlet?

Sincerely,

Brien Hamrick
San Diego, CA

Lisa Hasbrouck

From: Gary Westbrook [mangus14@home.com]
Sent: Friday, July 20, 2001 11:51 PM
To: Lisa Hasbrouck
Subject: Anti-Christian Momentum

It's amazing to me, as well as ironic, that in the very area of the United States in which our founding fathers fought for and won freedom for religion, not freedom from religion, an anti-Christian sentiment is growing outward to the rest of the country and eating away at all religious freedoms like a cancer. Reading articles like the one I just read about banning prayer meetings, or even limiting the number of people at such meetings, sends chills down my spine as it is eerily reminiscent of restrictions and bans of such meetings in the former Soviet Union and bans that are still in effect in the People's Republic of China. God help us if your anti-Christian, pro-gay/pro-lesbian, pro-anythingnotchristian sentiment is allowed to prevail in this case. It's sad that non-Christians are allowed to spew hatred towards Christians, but Christians cannot even state their opinions about immoral acts and practices. Somehow things have been turned backwards over the last 50 years or so. What used to be bad is now good. What used to be good is now bad. It's no wonder our children are so confused as to what is right or wrong. I will pray that your appeal fails in this instance.

Gary Westbrook

together at home?

FOR ZONING**Subject: Friends can't pray together at home?****Date: Sat, 9 Dec 2000 22:43:44 -0800****From: "Ed Harriger" <harriger@mbay.net>****To: <Greenwave@newmilford.org>**

I read this article in the L.A. Times On-line, Religious News Service. I must say, I'm glad I don't live in New Milford, CT. Our church has group meetings called "Shepherding Groups". We take turns every second Sunday meeting at another person's home. If we lived in New Milford, the Zoning Enforcement Officer would be real busy writing us lots and lots of letters.

With all respect, I think you should consider changing this ordinance. What if I lived in New Milford and decided to have thirty-five or forty friends over to watch an XXX rated tape I rented? I guess being non-religious that would be okay, eh? Someone needs to get their priorities straight there. I don't expect you to comment on this since it looks like you're going to get your sox sued off, but I did want to give you my two cents worth. One would think a city founded in 1712 would have become a bit more tolerant of religion by now.

Thanks for your time.

L.A. Times
Religious News Service -

"NEW MILFORD, Conn.--A Connecticut couple has sued the town zoning commission for prohibiting them from holding prayer meetings in their home.

The American Center for Law and Justice, a law firm founded by religious broadcaster Pat Robertson, filed suit on behalf of Robert and Mary Murphy, who have held weekly prayer meetings and Bible studies in their home since 1995. As many as 25 people attend the gatherings, they said.

After receiving complaints about traffic from the Murphys' neighbors, New Milford Zoning Enforcement Officer Kathy Castagnetta wrote the couple, informing them that such meetings were not permitted at single-family residences. "

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Check my websites:

They aren't working right now but this one is:

<http://www.newmilford.org>

Matt. 21:22 - And all things, whatsoever ye shall ask in prayer, believing, ye shall receive

Kathy Castagnetta

From: Jennifer Lake
Sent: Monday, July 23, 2001 9:40 AM
To: 'PNY372@aol.com'
Arthur Peitler; Dena Davey; Kathy Castagnetta; Patrick Maguire
Subject: RE: Step up to the plate...

Mr. Yeckel,

Thank you for your inquiry regarding the Murphy case. Attached please find documentation which outlines the New Milford Zoning Commission's standpoint on this issue. I hope you find it informative. Please feel free to contact us if you have any other questions/concerns.

Very truly yours,

Jennifer M. Lake
Executive Secretary to the Mayor

-----Original Message-----

From: PNY372@aol.com [mailto:PNY372@aol.com]
Sent: Friday, July 20, 2001 9:09 PM
To: Jennifer Lake
Subject: Step up to the plate...

Mr. Peitler,

I can't believe your city is trying to ban home prayer meetings under the guise of "zoning restrictions". Why? I have never heard of such a thing until I read about on the web. I can't believe your town's harrassment of the Murphy family. Do other towns run bible study meetings out on a rail? Have you investigated other solutions besides issuing "cease and desist" orders? I would hope that you would take a leadership role in trying to both accomodate those that wish to worship God and the needs of the community to ensure an even flow of traffic/egress. Your city looks awefully heavy handed and your tactics remind me of those taken in places like China to stifle religious expression. Will Christians need to get a permit from your city for bible study? C'mon!! Read the first ammendment sir. It does not exempt local governments from stifiling "freedom of religion". Would your city take the same approach if this were a business bringing in tax revenue?

Step up to the plate sir. Why should I visit your town on my next trip to Connecticut? I would hope that your city would find an equitable solution to this problem that does not trample on rights guaranteed by our founding fathers. I will pray for you and your town to find the wisdom to respect a

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DEFENDANTS' LOCAL RULE 9(C)(2) STATEMENT

Pursuant to Local District Rule 9(c)(2), the Defendants respond to the Plaintiffs' Local Rule 9(c)(1) Statement of Undisputed Facts.

1. Admit.
2. Admit.
3. Admit.
4. Admit.
5. Admit.
6. Admit.
7. Admit.
8. Admit.
9. Admit.
10. Admit.

11. Admit except for that portion which refers to the "town's position" and the fear of arrest due to said town. The Town of New Milford is not a party to this action [See Complaint] nor can the zoning commission control the

position of said town. Therefore, this factual statement is irrelevant to this matter and should be stricken.

12. Admit.

13. Admit.

14. Admit except to clarify that people other than handicapped persons use this rear parking lot. [Preliminary Injunction Hearing Transcript, January 18, 2001, "Tr." at 75].

15. Admit.

16. Admit.

17. Admit.

18. Admit.

19. Admit.

20. Admit.

21. Admit.

22. Admit.

23. Admit.

24. Admit, except for that portion which states that there are "no zoning guidelines". As Defendants' brief in support of its motion for summary judgment illustrates, the zoning regulations do provide guidelines by defining the term "accessory use" as well as by listing those uses which are permitted. [Doc. 515] In addition, the case law of this jurisdiction provides ample guidance of what an accessory use is for a single family home is a residential neighborhood.

25. Admit.

26. Admit except that not all meetings are prohibited, only those that exceed a certain size limit and occur weekly. [Doc. 4]

27. Admit.

28. Admit.

29. Admit.

30. Admit.

31. Admit.

32. Admit.

33. Admit.

34. Admit.

35. Admit.

36. Admit.

37. Admit.

38. Admit.

39. Admit.

40. Admit.

41. Admit except for typographical error. "Large" should be "larger".

42. Admit with clarification that "prayer group" as applied in this matter can be allowed as an accessory use. If Plaintiffs' use became a church, then those sections of the zoning regulations dealing with special permits would then apply.

43. Admit.

44. Deny as an incomplete statement of law. Connecticut General Statute sec. 8-8 directs in part that

any appeal of a decision of a zoning commission be to the Superior Court. Section 8-7 of these general statutes directs that an appeal of a zoning enforcement officer be to a zoning board of appeals. In this matter, the Defendant Commission only issued an opinion which could not be enforced by it. [Doc. 515, sec. 185-010] The Defendant Zoning Enforcement Officer made the only appealable decision.

45. Admit.

46. Admit.

47. Admit with the clarification that the cease and desist order targeted only those weekly meetings which included 25 or more non-family members regardless of the meeting's purpose or content. [Doc. 4]

48. Admit.

49. Admit.

50. Admit.

51. Admit.

52. Admit.

53. Admit.

RESPECTFULLY SUBMITTED
THE DEFENDANTS


BY 

Steven E. Byrne
790 Farmington Ave. Bld. 2
Farmington, Connecticut 06032
(860) 677-7355 CT 10267

CERTIFICATION

This is to certify that a copy of the above was mailed postage prepaid to the following counsel and pro se parties this 16th day of DECEMBER, 2002.

Attorney Vincent McCarthy
8 South Main Street
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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ROBERT MURPHY ET AL)	
)	
PLAINTIFFS)	
)	CIVIL ACTION NO.
VS.)	
)	300CV2297HBF
ZONING COMMISSION OF THE)	
TOWN OF NEW MILFORD ET AL)	
)	
DEFENDANTS)	DECEMBER 16, 2002
)	

DEFENDANTS' OBJECTION TO PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT

Pursuant to F.R.C.P. 56 and Local Rule 9(c), the Defendants in the above captioned matter respectfully OBJECT to the Plaintiffs' motion for summary judgment as to all counts of the Plaintiffs' fourth amended complaint. The Defendants make this objection on the grounds that they are entitled to judgment as a matter of law.

In seeking to enforce the zoning regulations of the Town of New Milford on the Plaintiffs' illegal use of their residential property as a meeting hall, the defendant zoning enforcement officer did not violate any of the rights of the Plaintiffs 'secured by the State or Federal Constitution nor did she violate any right protected by the Religious Land Use and Institutionalized Persons Act (42 USC 2000cc) or C.G.S sec. 52-571b.

For the reasons set forth in the attached memorandum of law as well as those contained in their motion for summary

judgment dated November 6, 2002 as well as any that may be raised at oral argument, the Defendants claim that they are entitled to judgment as a matter of law on all counts of the Plaintiffs' fourth amended complaint.

THE DEFENDANTS

BY

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