



KeyCite Yellow Flag - Negative Treatment

Disagreed With by [Trinity Assembly of God of Baltimore City, Inc. v. People's Counsel for Baltimore County](#), Md., December 24, 2008

285 Conn. 381

Supreme Court of Connecticut.

**CAMBODIAN BUDDHIST SOCIETY  
OF CONNECTICUT, INC.**, et al.

v.

**PLANNING AND ZONING COMMISSION  
OF the TOWN OF NEWTOWN.**

No. 17690.

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Argued March 6, 2007.

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Decided Feb. 12, 2008.

### Synopsis

**Background:** Buddhist society and its president appealed decision of the town planning and zoning commission which denied special exception to build temple on society's land. The Superior Court, J.R. Downey, J., granted commission's motion to dismiss president's claims due to lack of standing, and, following an evidentiary hearing, the Court, Frankel, J., entered judgment for commission. Society and president appealed.

**Holdings:** Following transfer from the Appellate Court, the Supreme Court, [Palmer](#), J., held that:

[1] president lacked standing to appeal commission's decision;

[2] society had standing to bring action under state free exercise statute;

[3] Religious Land Use and Institutionalized Persons Act's (RLUIPA's) substantial burden provision did not apply to claim that town's refusal to grant special exception to build temple was discriminatory;

[4] commission did not apply zoning regulations in a discriminatory manner in violation of RLUIPA;

[5] temple's proposed design was not a valid reason for denial of application for special exception;

[6] evidence was insufficient to support denial of application on grounds that proposed use would create additional traffic congestion and hazards on road;

[7] evidence was sufficient to support conclusion that proposed use was not in harmony with the general character of the rural residential neighborhood; and

[8] evidence was sufficient to support determination that proposed temple constituted a potential health or safety hazard.

Affirmed.

**Procedural Posture(s):** On Appeal; Motion to Dismiss.

West Headnotes (41)

#### [1] **Action** **Persons entitled to sue**

Standing is established by showing that the party claiming it is authorized by statute to bring an action, in other words, statutorily aggrieved, or is classically aggrieved.

[18 Cases that cite this headnote](#)

#### [2] **Action** **Persons entitled to sue**

Statutory standing concerns the question of whether the interest sought to be protected by the complainant is arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question.

[5 Cases that cite this headnote](#)

#### [3] **Action** **Persons entitled to sue**

The fundamental test for determining classical aggrievement for standing purposes encompasses a well-settled twofold determination: first, the party claiming aggrievement must successfully demonstrate a specific, personal and legal interest in [the challenged action], as distinguished from a

## Property Values

[39] We next address the commission's determination that the proposed use of the property would substantially impair property values in the neighborhood in violation of § 8.04.730 of the regulations. The society presented a report by Calciano and Stern Appraisal Associates, Inc., a real estate appraisal firm, in which that firm opined that "[the proposed temple] will have no impact on the '[quiet] enjoyment,' utility, or market value of the surrounding properties." In reaching this conclusion, the firm had used a "matched pair analysis" under which it compared sales of residential properties in other Newtown neighborhoods near existing religious facilities to sales of similar properties where there was no religious facility. It also used a "comparative market analysis" pursuant to which it examined the impact of similarly intense nonresidential uses on residential neighborhoods.

The commission also heard evidence that a family in the neighborhood of the proposed temple had been forced to move as a result of past activities there. When that residence was sold, realtors had inquired whether it was near the society's property, leading the family to believe that the location had made it more difficult to sell the property.<sup>38</sup> In addition, the commission heard \*443 evidence that a potential purchaser had canceled plans to buy a property when he learned that the property was near the proposed temple.

The commission concluded that the society's appraisal report was of little value because the comparable sales on which the report relied were in the vicinity of churches that had "far fewer members than the participants expected at the temple" and lower levels of continuous activity. It further concluded that "[t]he specific examples provided by the neighbors [were] more persuasive." Accordingly, the commission concluded that the level of activity at the proposed temple would substantially impair neighboring property values.

As we have indicated, "[t]he credibility of the witnesses and the determination of issues of fact are matters solely within the province of the [commission]." (Internal quotation marks omitted.) *Municipal Funding, LLC v. Zoning Board of Appeals*, supra, 270 Conn. at 453, 853 A.2d 511. Accordingly, the commission was not required to credit the appraisal firm's conclusion that the proposed temple would have no effect on property values. Similarly, the commission was entitled to credit the anecdotal reports that past activities \*\*906 on

the society's property had made neighboring properties less desirable. We already have concluded that the commission's determination that those activities would cause a significantly greater disruption to the neighborhood than any permitted use was supported by substantial evidence. Moreover, it is reasonable to conclude that the effect of the activities on the sale of neighboring properties would continue if the activities were allowed to continue. We therefore conclude that the commission's determination that the disruptive activities would significantly impair property values was supported by substantial evidence.

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## Health and Safety Considerations

[40] Finally, we address the commission's conclusion that the proposed use of the property did not comply with § 8.04.750 of the regulations, which requires that "[t]he proposed use shall not create a health or safety hazard to persons or property on or off the lot on which the use is proposed," because the society had not established that the proposed subsurface wastewater system or private water system would meet the public health code. The following additional facts are necessary to our resolution of this issue. Wilson Alford, an engineer, spoke at the October 17, 2002 hearing on behalf of the society and stated that the proposed septic system for the temple would have no impact on neighboring properties if properly designed and installed. Bart Clark, an engineer employed by Oakwood Environmental Associates, appeared at the December 9, 2002 hearing and submitted a letter prepared on behalf of the Newtown Residential Preservation Society in which he stated that the proposed septic system did "not appear to comply with standard procedures required by the [s]tate [h]ealth [c]ode" and identified potential deficiencies. John R. Trautman, an ecological consultant, also spoke at the December 9, 2002 hearing and indicated that he did not believe that the septic system would function properly as designed.

At the time of the hearings, the society had not obtained approval from the state department of public health (department) for the plans for the septic system. The record nevertheless reveals that the society received a letter from the department dated February 20, 2003, stating that the plans for the proposed septic system "were found to be generally satisfactory and in accordance with the requirements of the