

QUESTION 1
(One Hour)

Big Guy Development Co. built a 10-parcel subdivision called Great Rich Independent Property Estates (“GRIPE”). The GRIPE documents drafted by Big Guy’s legal department included a Declaration of Covenants that was duly recorded, and was referenced in each grant deed from Big Guy to each original purchaser. Big Guy no longer has any ownership interest in GRIPE.

GRIPE has a homeowner’s association (“HOA”) to which all parcel owners belong. There is an HOA board of directors, but the board does not have much power, and does not really do anything but meet once in a while for happy hour. The GRIPE covenants require a 60% (6 out of 10 parcels) majority vote to amend or repeal any existing covenant or to adopt a new covenant; the covenants also provide that each parcel gets one vote in such matters.

Francine Fishpaw is a homeowner in GRIPE. Francine and 4 other homeowners have formed an “unofficial” coalition called Keep All Residents Ranked Properly (“KARRP”); all 5 members of KARRP are still members of the HOA. The 5 members of KARRP own the 5 largest parcels in GRIPE, ranging from 12,000 to 15,000 square feet. All the other GRIPE parcels are less than 10,000 square feet. KARRP wants to change the GRIPE covenants in a number of ways, including as to the voting procedures for covenant amendment, repeal, and adoption. KARRP retains you (a private law firm) to explain whether (and why or why not) a court would be likely to enforce the following proposals:

- a) Change from “one parcel – one vote,” to votes weighted according to the square footage of each parcel.
- b) Adopt a covenant investing any KARRP member with the power to veto any measure, regardless of how all other HOA members vote.
- c) Prohibit all remodeling of residences without approval by a 51% majority of the total square footage in all parcels.
- d) Prohibit all sales of parcels to families with children under age 18.
- e) Prohibit renting of any housing unit for more than 30 days, with no “grandfathering” allowed for existing rentals – of which there are currently 3, none of which is on a KARRP parcel.

Note: Discuss each proposal independently.

QUESTION 2
(One Hour)

Tiny Town (pop. 1,200) faces the impact of a plan by Mega Church, Inc. (“MCI”) for a new facility to be built on 50 undeveloped acres that MCI owns within the Town limits. The parcel is currently zoned for “town business use,” and is adjacent to areas zoned for “residential use.” The plan includes a main church building and several outbuildings, and paved parking for up to 2,500 vehicles. The development is projected to bring up to 5,000 people to the facility twice per week (Sunday mornings and Wednesday evenings) for regular church services, and various numbers of people to the facility for meetings, concerts, and other gatherings on various days and times.

The Town Council retains you (a private law firm) to research regulatory options available to restrict – or, preferably, prevent – the planned development, and to address possible challenges to those options. Prepare an advisory memo as follows:

- Part I: Explain the basics of the federal Religious Land Use and Institutionalized Persons Act (“RLUIPA”) and how it interacts with the Free Exercise Clause of the First Amendment; and explain generally how RLUIPA can be used to challenge any land use regulation.
- Part II: The Town’s General Plan defines the “town business use” zoning classification as “commercial enterprises compatible with the historical character of the Town.” Using this definition, draft a new ordinance intended to significantly restrict, or prevent, MCI’s planned development. You can propose an ordinance about noise, fire or other safety risks, traffic, occupancy rates, parking restrictions, or any other (reasonable) possibility. Explain how the proposed ordinance might be challenged as an RLUIPA violation, and how the Town can defend against such a challenge.
- Part III: Draft a General Plan amendment to redefine the “town business use” classification more clearly, and intended to significantly restrict, or prevent, MCI’s planned development. Explain how the new definition might be challenged as an RLUIPA violation, and how the Town can defend against such a challenge. (N.B.: Part III is independent of Part II.)

Notes (re. all three parts)

Note 1: Any regulatory action must comply with RLUIPA’s “religious exercise” and “substantial burden” provisions. Ignore the “equal terms” provision.

Note 2: Do not discuss eminent domain.