No. _____

IN THE SUPREME COURT
of the
UNITED STATES

EAGLE COVE CAMP & CONFERENCE CENTER, INC., a Wisconsin non-stock corporation, ARTHUR G. JAROS, JR., as Co-Trustee of the Arthur G. Jaros, Sr. and Dawn L. Jaros Charitable Trust, and as Trustee of the Arthur G. Jaros, Sr. Declaration of Trust and as Trustee of the Dawn L. Jaros Declaration of Trust, WESLEY A. JAROS, as Co-Trustee of the Arthur G. Jaros, Sr. and Dawn L. Jaros Charitable Trust, and RANDALL S. JAROS, as Co-Trustee of the Arthur G. Jaros, Sr. and Dawn L. Jaros Charitable Trust

Plaintiffs/Appellants/Cross-Respondents/ Petitioners,

v.

COUNTY OF ONEIDA, *Defendant/Respondent,*

TOWN OF WOODBORO, and ONEIDA COUNTY BOARD OF ADJUSTMENT, *Defendant/Cross-Appellant/Respondent,*

Defendant.

SEPARATE APPENDIX
VOLUME 2 OF 3 – APPENDICES S - GG
of
PETITION FOR WRIT OF CERTIORARI

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APPENDIX S

STATE OF WISCONSIN CIRCUIT COURT ONEIDA COUNTY

EAGLE COVE CAMP & CONFERENCE CENTER, INC. et al.

Plaintiffs,

v.

ONEIDA COUNTY BOARD OF ADJUSTMENT, et al.

Defendants.

Case No. 2013 CV 000345

Code Nos. 30405, 30607

PLAINTIFFS' MEMORANDUM IN SUPPORT OF THEIR MOTION FOR RECONSIDERATION OF DECISION ON MOTIONS FOR JUDGMENT ON THE PLEADINGS

Plaintiffs Eagle Cove Camp & Conference Center, Inc., Arthur G. Jaros, Jr, Wesley A. Jaros and Randall S. Jaros, by their attorneys Robert G. Robinson, Arthur G. Jaros, Jr. and Michael D. Dean, LLC, respectfully submit this memorandum in support of their motion, made pursuant to WIS. STATS. Sections 806.07(g) and (h), 807.02, and 807.03, for reconsideration of this Honorable Court's January 23, 2015 Decision on Motions for Judgment on the Pleadings ("Decision") that (i) struck with prejudice Counts II-XVI that sought declaratory relief, both retrospective and prospective, with respect to the Oneida County Zoning and Shoreland Ordinance ("OCZSPO") on its face and as applied; and (ii) dismissed Oneida County and the Town of Woodboro as declaratory judgment defendants.

Background and Introduction

Near the close of the January 23, 2014 call of this case during which this Honorable Court had read aloud the body of its written Decision on Motions for Judgment on the Pleadings ("Decision") in open court, the Court also specifically invited counsel to consider footnote 1 of the Decision which had not been read aloud.

The Decision at page 13 also candidly stated:

definition for claim preclusion purposes (and nothing in *Hanlon* holds to the contrary), the *Hanlon* court did create an exception to claim preclusion–rejecting the Defendant Town's argument that claim preclusion obviously should have applied because WIS. STAT. §68.011 expressly provided that the chapter 68 certiorari remedy "shall not be exclusive." (*Hanlon*, at P. 19). The Court created the exception–not by stating that there were "two claims" as defined for claim preclusion purposes (even though, as in *Parks*, the Court employed the term "equal protection claim for money damages" under older, non-preclusion terminology)–but by observing that "the principles underlying the doctrine of claim preclusion cannot be achieved by joining a §1983 claim with a certiorari proceeding brought pursuant to Wis. Stat. Ch. 68." (*Hanlon* at P20) such that an exception applied. By the same token, the principles underlying the doctrine of claim preclusion–prevention of a multiplicity of lawsuits arising out of the same transaction-- cannot be achieved where, as here, the federal court could have ruled upon but did not decide the merits of the state law certiorari claim in which whether the Board of Adjustment's action affirming the denial of a conditional use permit was "according to law" would be in full play during the certiorari trial on the merits. In this regard, had District Judge Conley conducted that trial, ***all*** legal arguments including constitutional arguments (as *Hanlon* so states at P 13) were cognizable by the Court–even those adjudicated on summary judgment which could be revisited for plain error at any time (F.R.Civ.P. 54(b), second sentence). Moreover, the pleadings could have been amended at any time as well to add additional counts for declaratory relief under the Wisconsin constitution in order to conform the pleadings to the proof (F.R.Civ.P. 15(a)(2); (b)(2), last sentence). The Decision of this Honorable Court now appears to hold that because Judge Conley directed a shift of forum–from federal to state court–Plaintiffs' substantive rights have been impaired by not being able to raise non-monetary constitutional matters they could have raised had the certiorari count proceeded to trial in federal

court.

Second, and contrary to the inference drawn by, or the extrapolation contained in, this Court's Decision, *Hanlon* ***did not state*** that IF the plaintiff had, in fact and instead, joined his Section 1983 money damage count with a state law certiorari count in either an original state court or an original federal court proceeding, that such a case would be not one but two separate actions. Such concept as appears in this Court's Decision is, in fact, squarely ***contrary***[11] to the "joinder" language repeatedly employed by the Wisconsin Supreme Court in *Hanlon* itself as noted above. Moreover, where a plaintiff chooses to forgo the certainty over greater speed[12] of disposition of a stand-alone certiorari proceeding (*see*, pp. 8, *supra)* by instead joining non-certiorari counts, there is absolutely no policy or legal reason not to apply the ordinary rules of claim preclusion laid down in the Restatement as adopted by the Wisconsin courts.

Third, as a matter of legal reasoning, the fact that *Hanlon* created a new exception in Wisconsin to the operation of claim preclusion–in order to give a ch.68 certiorari plaintiff a more certain right to expedited review (see, p. 8, *supra*) without suffering the loss of other remedial rights-- says nothing about the rest of the doctrine of claim preclusion and/or its policy and purpose of precluding a multiplicity of court proceedings that arise out of the same transaction–a policy and purpose that cannot be satisfied here.

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[11]WIS. STATS. §803.02(2) makes plain that "joinder" is the joining of multiple "claims" (not in the transactional, claim-preclusion sense) "***in a single action***" directly contradicting the Decision at pp. 6, 7 which, without citation to authority, holds that the federal district court proceeding that bore a single "cv" docket number and joined Count XI for certiorari review with ten other non-certiorari counts was "two separate actions" rather than–in the words of the Wisconsin statute-- "a single action." Therefore, it is clear that Hanlon did not hold, contrary to the Decision of this Court, that where the Plaintiffs here did join their certiorari review count with other counts including some seeking money damages under federal law, such civil action was but one "single action." Because that entire single action was not decided on the merits, claim preclusion cannot apply. (*see*, Plaintiffs' preclusion memo at pp. 16-21, 28).

[12]As Plaintiffs did and experienced here, waiting 18 months to receive a summary judgment ruling that did not rule on the certiorari count!

STATE OF WISCONSIN CIRCUIT COURT ONEIDA COUNTY

EAGLE COVE CAMP & CONFERENCE CENTER, INC. et al.

Plaintiffs,

v.

ONEIDA COUNTY BOARD OF ADJUSTMENT, et al.

Defendants.

Case No. 2013 CV 000345

Code Nos. 30405, 30607

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF RENEWED MOTION FOR RECONSIDERATION OF DECISION ON MOTIONS FOR JUDGMENT ON THE PLEADINGS BASED, *INTER ALIA*, UPON NEW FEDERAL COURT DEVELOPMENT

Plaintiffs Eagle Cove Camp & Conference Center, Inc., Arthur G. Jaros, Jr, Wesley A. Jaros and Randall S. Jaros, by their attorneys Arthur G. Jaros, Jr. and Michael D. Dean, LLC, submit this memorandum of law in support of their Renewed Motion for Reconsideration of Decision on Motions for Judgment on the Pleadings Based upon New Federal Court Development

A) April 2015 Seventh Circuit U.S. Court of Appeals Opinion Overrules Eagle Cove District Court and Court of Appeals Decision as to Various Federal Counts

1) Case Development:

Attached is a current Shepard's citator report showing that the federal court decisions in *Eagle Cove Camp & Conference Center, Inc.* have been "overruled in part." More specifically, in *Schlemm v. Wall*, 2015 U.S.App. LEXIS 6592 (7th Cir. 4/21/2015), the Seventh Circuit--in expressly identifying its previous decision in *Eagle Cove* that had affirmed the District Court on all federal law issues from which appeal had been taken--determined that both it and the District Court had employed a standard for determining the presence or absence of "substantial burden" that did not comport with two supervening decisions of the U.S. Supreme Court issued during 2014 and 2015. As a result, the Seventh Circuit has just written:

> The district court [the same one–W.D. Wis.– and the same district judge–The Hon. William Conley--as in *Eagle Cove*] thought this inadequate to establish that lack of venison imposes a substantial burden, as we defined that phrase in *Eagle Cove Camp & Conference Center, Inc. v. Woodboro*, 734 F.3d 673, 680 (7th Cir. 2013): to be substantial, a burden must be "one that necessarily bears direct, primary, and fundamental responsibility for rendering religious exercise ... effectively impracticable[1]." If that were the standard, then Schlemm would lose, for he still could dance and pray during the Ghost Feast. But two later decisions of the Supreme Court ... articulate a standard much easier to satisfy.
>
> ***
>
> The [Supreme] Court did not ask whether a requirement to be clean-shaven would make adherence to Islam "effectively impracticable", the language of *Eagle Cove*. As the Court noted in *Holt*, the Act covers "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." 42 U.S.C. §2000cc-5(7)(A) *Eagle Cove* effectively limits the Act [RLUIPA's substantial burden provision] to those beliefs or practices that are 'central' to religious beliefs; **its approach did not survive** *Hobby Lobby* and *Holt*. (emph. added)

2) Consequence of Subsequent Overruling in Unrelated Case:

As the Fifth Circuit U.S. Court of Appeals observes:

> The Supreme Court has many times declared "the general rule[2] that *res judicata* is no defense where between the time of the first judgment and the second there has been an intervening decision or a change in the law creating an altered situation." *State Farm Mutual Auto Ins. Co. v. Duel*, 324 U.S. 154 , 162 (1945); *Blair v. Commissioner*, 300 U.S. 5 (1937); *Commissioner v. Sunnen*, 333 U.S. 591 (1948).
>
> (*Christian v. Jemison*, 303 F.2d 52 at 55 (5th Cir. 1962)

Thus, the federal court decisions on a portion of the previously adjudicated federal grounds,

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[1]*See* "effectively impracticable" excerpt from Judge Conley's summary judgment ruling attached.

[2]An exception to the general rule also laid down by the U.S. Supreme Court in *Federated Department Stores v. Moitie*, 452 U.S. 394 at 398 (1981) is that where the judgment of the trial court in the earlier case went "unappealed," then an intervening or supervening change in the law does not undo the preclusive effect of the unappealed judgment. This is a common sense result in that if an appeal had been taken, the erroneous judgment might have been directly corrected on appeal. This exception does not apply to Eagle Cove where the plaintiffs appealed to the 7th Circuit U.S. Court of Appeals, unsuccessfully sought both panel and en banc rehearing before that court and unsuccessfully sought certiorari review by the U.S. Supreme Court (134 S.Ct. 2160 (2014), *cert. den.*).

namely, federal Amended Complaint Count III, are no longer *res judicata* (thus losing their preclusive effect) and the overruled portion is subject to relief under F.R.Civ.P. 60 and/or 54(b).

3) Plaintiffs Are, in fact, Proceeding to Seek Re-opening of the Federal Litigation

Plaintiffs have prepared and are filing a motion for relief with respect to federal court Count III under F.R.Civ.P. 60(b)(6) and/or 54(b). Therefore, Plaintiffs respectfully submit that this Honorable Court ought no longer maintain that all the non-certiorari grounds asserted within the federal litigation, which this Court has considered to be, in aggregate, a unitary non-certiorari claim[3], have been decided on the merits adverse to the plaintiffs and with preclusive effect.

B) The April 22, 2015 Oral Decision of this Court Contravened the Requirements of the Wisconsin Constitution's "No Preference" Clause.

The "No Preference" Clause included (as both underlined and bolded) within Article I, Section 18 of the Wisconsin Constitution states:

> Freedom of worship; liberty of conscience; state religion; public funds. SECTION 18. [As amended Nov. 1982] The right of every person to worship Almighty God according to the dictates of conscience shall never be infringed; nor shall any person be compelled to attend, erect or support any place of worship, or to maintain any ministry, without consent; **nor shall** any control of, or interference with, the rights of conscience be permitted, or **any preference be given by law to any religious establishments or modes of worship**; nor shall any money be drawn from the treasury for the benefit of religious societies, or religious or theological seminaries.

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[3]To preserve the record, the plaintiffs again note that the Court's construction of the concept of "certiorari claim" and of "non-certiorari claim" is directly contradicted by the Restatement of Judgment 2d's transactional definition of claim that sees "claim ***in factual terms*** and to make it coterminous with the transaction ***regardless of the ... variant forms of relief*** flowing from those [substantive] theories, that may be available to the plaintiff; regardless of the number of primary rights that may have been invaded; and regardless of the variations in the evidence needed to support he theories or rights" Furthermore, "***historical forms of action***" are disregarded in the definition of the claim. To the contrary, this Court's ruling to date impermissibly affords juridical significance to ***forms of action***: namely, certiorari v. non-certiorari. This Court's ***converse*** application of the facts and ruling in *Hanlon* also flies squarely in the face of these Restatement provisions and of the Wisconsin Supreme Court's embrace of them. As articulated at pp. 5-7 of Plaintiffs' previous reconsideration Reply Memorandum, *Hanlon* itself is nothing more than an application of the exception to the operation of claim preclusion expressly contained in §26(1)(d), last clause, of the *Restatement of Judgments 2d*.

APPENDIX T

No. 2018AP000940

COURT OF APPEALS
for the
STATE OF WISCONSIN
DISTRICT III

EAGLE COVE CAMP & CONFERENCE CENTER, INC., a Wisconsin non-stock corporation, ARTHUR G. JAROS, JR., as Co-Trustee of the Arthur G. Jaros, Sr. and Dawn L. Jaros Charitable Trust, and as Trustee of the Arthur G. Jaros, Sr. Declaration of Trust and as Trustee of the Dawn L. Jaros Declaration of Trust, WESLEY A. JAROS, as Co-Trustee of the Arthur G. Jaros, Sr. and Dawn L. Jaros Charitable Trust, and RANDALL S. JAROS, as Co-Trustee of the Arthur G. Jaros, Sr. and Dawn L. Jaros Charitable Trust

Plaintiffs-Appellants-Cross-Respondents,

v.

COUNTY OF ONEIDA, *Defendant-Respondent,*

TOWN OF WOODBORO, *Defendant-Respondent-Cross-Appellant,*
and
ONEIDA COUNTY BD. OF ADJUSTMENT, *Defendant.*

APPEAL FROM THE ONEIDA COUNTY CIRCUIT COURT
No. 2013CV345
THE HONORABLE MICHAEL H. BLOOM, Circuit Judge, Presiding

COMBINED BRIEF OF APPELLANTS/CROSS-RESPONDENTS

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ARGUMENT-IN-REPLY

I) AOBr's ARGUMENT I): ERROR DISMISSING ALL NON-CERTIORARI COUNTS. (AOBr, pp.23-42)

OPENING (OCBr, pp.7-9)

The Court's attention is directed to a summary (pp.24ff., *infra)* of Appellants' appeal-in-chief against which the OCBr is directed.

Respondent asserts it "seeks finality" based on federal partial summary judgment and that claim preclusion should be imposed on Plaintiffs to provide the particular kind [3] of "finality" it demands. Respondent misunderstands "*finality*"'s meaning for claim preclusion purposes and the concept of "claim preclusion" itself.

Respondent admits (p.10) Wisconsin embraces the Restatement and that "claim" means a transaction (or related set of transactions) giving rise to one or more asserted remedial rights, irrespective of the legal theories or grounds upon which a remedy is predicated (pp.11-12).

The Restatement provides: (i) that §24(1)'s bar of claim preclusion exists only if there's "final judgment"; and (ii) guidance (per §13's first sentence and comment

[3] As explained below, pp.2-3.

b) on the meaning of "finality":

> Finality will be lacking if an issue...essential to the adjudication of the claim[4] has been reserved for future determination.

Elaborating, §13's comment e, "judgment final as to a part of an action or claim.," expressly references ***F.R.Civ.P. 54(b)***, ignored by Respondent. Moreover:

> Federal law determines the effects under the rules of *res judicata* of a judgment of a federal court. (§87)

The federal courts never adjudicated "all the rights[5] and liabilities" of "all the parties" as Rule 54(b) requires for federal rulings to have finality *for preclusion purposes*;[6] Respondent's argument is erroneous that partial summary judgment on each of the ten counts should receive "finality" is erroneous. *See* fn.55, p.30.

Whenever claim preclusion exists, a second proceeding that is commenced after complete *adjudication* in an earlier proceeding upon the same transactional "claim" is barred. (AOBr, pp.23-26) (Because Respondent admits the proceeding

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[4]State law certiorari review theory-of-relief issues were so reserved.

[5]*Blair v. Cleveland Twist Drill*, 197 F.2d 842 at 845 (7th Cir. 1952), explains that a count that's dismissed "without prejudice" but without leave to refile in that forum adjudicates only the single right *to litigate in that forum* but not "ultimate rights" and hence not "all rights."

[6]Rule 54(b) states that prior thereto, all rulings are subject to "revision" at any time–not the "finality" Respondent demands. Additionally, Respondent (p.27) notes the District Court determined–given the pendency in Wisconsin's courts--it could no longer employ Rule 54(b), observing "there was no further work" *for that court.* But that court didn't address *lack of preclusive effect* on Wisconsin's courts under Rule 54(b) of partial summary judgment [per §13's comments (b) and (e)].

below on the same claim isn't barred, it admits claim preclusion "finality" doesn't exist, yet inexplicably claims entitlement thereto.) Where claim preclusion isn't present, a second proceeding upon the same transactional claim can be subject instead to one of two doctrines[7] pertaining to matters actually decided in the first proceeding:

(1) issue preclusion--if the second proceeding involves a different "case;"

or

(2) more flexible[8] law-of-the-case--if the second proceeding pertains to the same "case" involved in the first proceeding.

But it's Respondent's sleight-of-hand to claim entitlement to "finality" in the more sweeping[9] "claim preclusion" sense of "bar" where there's never been full adjudication of all parties' rights and liabilities.

CLAIM PRECLUSION (AOBr, pp.23-25; OCBr pp.9-14)

Respondent admits Claim Preclusion cannot apply absent "a final judgment *on the merits*...." (p.10). The Restatement provides dismissal without prejudice (as OCBr, p.3 admits occurred) of one or more theories or grounds supporting recovery on a singular transactional claim is insufficient to impose claim preclusion although other theories or grounds received merits adjudication.

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[7]*Berg v. General Cas. Ins. Co.*, 2012 WI App 1@14 (SA18).

[8]*State v. Stuart*, 2003 WI 73 at *P23-*P24.

[9]"Finality"'s definition differs for "issue preclusion." SA19.

to what extent the adjudications within the federal phase are entitled to preclusive effect.

Woodboro also argues "that it is equally important for the courts to protect defendants from repetitive litigation." (*Id.*) The federal District Court expressly declined to adjudicate all theories of relief for the single transactional claim presented by the Plaintiffs. F.R.Civ.P. 54(b)–a rule that Woodboro continues to ignore--alerted Woodboro that any adjudication of fewer than all the rights and liabilities of fewer than all the parties doesn't end the action[94] as to any of the parties and may be revised at any time before the entry of a judgment adjudicating all the parties' rights and liabilities. Even apart from Rule 54(b), federal case law at footnote 55 on p. 30 holds that there is no *res judicata* (*i.e.*, claim preclusive) effect from the grant of only partial summary judgment combined with a dismissal without prejudice. Woodboro fails to grasp that there has never been an adjudication of all of the rights and liabilities of all of the parties and that therefore Woodboro had and has no legitimate right to demand a premature termination of the litigation.

Lastly, Woodboro charges the Circuit Court with erring "because subjective good faith does not justify filing an objectively meritless claim." (TBr, p.26). It's

[94]The "civil action" a/k/a "action" was commenced by Plaintiffs' filing their federal complaint (F.R.Civ.P. 3) and has continued seamlessly into the state court forum below, all upon the actionable single "case" that originated (per fn.89) at the time the underlying acts occurred.

No. 2018AP000940

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COURT OF APPEALS
for the
STATE OF WISCONSIN
DISTRICT III

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Plaintiffs-Appellants-Cross-Respondents,

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COUNTY OF ONEIDA, *Defendant-Respondent,*

TOWN OF WOODBORO, *Defendant-Respondent-Cross-Appellant,*

and

ONEIDA COUNTY BD. OF ADJUSTMENT, *Defendant.*

APPEAL FROM THE ONEIDA COUNTY CIRCUIT COURT
No. 2013CV345
THE HONORABLE MICHAEL H. BLOOM, Circuit Judge, Presiding

WIS. STATS. §809.24 MOTION FOR RECONSIDERATION OF APPELLANTS/CROSS-RESPONDENTS

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December 9, 2019

A) **The Opinion Overlooked Appellants' Argument Re: Claim Preclusion's *Prima Facie* Inapplicability.**

Appellants' opening Brief ("AOB"), p. 24 and Appendix 15, emphasized Restatement (Second) ("R2d") §24. Opinion, ¶¶37-38, correctly recite §24 and correctly state that the Wisconsin Supreme Court now:

> see[s] a claim in factual terms and ... make[s] a claim coterminous with the transaction, ***regardless of the claimant's substantive theories or forms of relief*** ...

But having correctly so stated, the Opinion then commits two errors, resulting in incorrect affirmance, that overlook the significance of this transactional definition of "claim":

Firstly, under *claim*'s transactional definition, Appellants presented only a single "claim." Yet, the Opinion is replete – everywhere else, namely, other than at ¶¶37-38 noted above – with references[1] to the various counts of Plaintiffs' federal and/or state pleadings that present various theories of law as each constituting a "claim." This misuse of "*claim*" led the Court at ¶¶32-33 to incorrectly reject Appellants' argument based upon R2d, §20(1)(b), comment (e). There, the Opinion acknowledges that "another action by the plaintiff on the same claim" isn't barred "when the court directs that ... the action be otherwise dismissed ... without prejudice" and then states that comment (e):

> concerns situations in which a dismissal is based on two or more "alternative" determinations, one of which "would not render the judgment a bar to another action on the same claim."

The Opinion avoids the effect of these R2d provisions only by positing the existence of multiple

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[1]Opinion at ¶¶14-21, 24-26, 33-36, 39-57, 60-61, 65-66 ("claim ***for a money judgment***" where "***for a money judgment***" is obviously a "form of relief" and doesn't comport with *claim*'s transactional definition).

claims, directly contrary to R2d's and *Kruckenberg's* transactional definition.

Opinion, p.14, states that neither §20(1)(b) nor comment (e) "has been adopted .. " §20(1)(c) has received favorable non-precedential, non-authoritative comment. *In rè J.M.K.*, 1988 Wisc. App. LEXIS 46 (1988), footnote 1.

Secondly, per R2d §24 (AOB, p. 24), whenever *claim preclusion*'s applicable, then:

> the claim extinguished includes **all** rights of the plaintiffs **to remedies** against the defendant with respect to all or any part of the transaction ... out of which the action arose.

This is a principal but overlooked appellate argument of Appellants because if "claim preclusion" truly were applicable, then Circuit Court certiorari review would've necessarily been a "right" "extinguished" by the federal court's disposition. But the federal court stated its ruling didn't "extinguish" "all rights" of the plaintiffs to remedies; therefore Appellants' "*claim*" wasn't extinguished and "claim preclusion" doesn't have any *prima facie* applicability. (AOB, pp. 23-26; Appellants' Combined Brief ("ACB"), pp. 2-4).

The Opinion, ¶31, incompletely discusses claim preclusion's "final judgment" element, failing to consider its R2d's definition, particularly where a single *claim* is litigated under different legal theories pleaded as "counts."

> Finality will be lacking if an issue of law or fact essential to the adjudication of the claim has been reserved for future determination.
>
> R2d, §13, comment (b).

Opinion ¶27 misapprehends the record, asserting there's "no dispute that the Wisconsin law of claim preclusion applies ... ." It's federal law, including F.R.Civ.P:. 54(b), that applies. (ACB, p.2 including footnotes 5 and 6 overlooked by the Opinion).

B) Opinion, Footnote 10, Last Sentence, Overlooks Authorities at AOB, pp. 41-42.

C) The Opinion Misapprehends the Uses Below of *Hanlon*.

Opinion, ¶45, incorrectly states: "The circuit court properly allowed Eagle Cove's certiorari claim to proceed pursuant to *Hanlon* ... ." It instead used *Hanlon* to impose claim preclusion.

The Court's "understanding" (¶45) of Appellants's argument isn't correct. It's that the Circuit Court invalidly inverted *Hanlon*. (AOB, Argument IV, pp. 47ff.; ACB, p. 17).

D) The Opinion Overlooks Appellants' Argument that the District Court Clearly Wouldn't Have Retained Jurisdiction over Wisconsin Substantive Due Process Counts Not Raised in the Federal Proceeding but Pleaded as Counts III, V, VIII, and XIII at Appendix 4.

Opinion, footnote 16, admits the District Court "might well have dismissed" "without prejudice" theories of recovery predicated upon "Wis. Const. art.I, §18" (pleaded by federal count VIII) "had Eagle Cove argued in the federal forum" as to the uniqueness of Wisconsin law. But *Parks'* application of R2d, §25, comment (e), required this Court to determine per AOB, pp. 29-30 whether Wisconsin Constitution substantive due process theories under Article I, §8 (and not §18) and not pleaded to the federal district court would've been dismissed without prejudice by the District Court as being unique.

APPENDIX U

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CLERK OF SUPREME COURT
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IN THE SUPREME COURT
of the
STATE OF WISCONSIN

EAGLE COVE CAMP & CONFERENCE CENTER, INC., a Wisconsin non-stock corporation, ARTHUR G. JAROS, JR., as Co-Trustee of the Arthur G. Jaros, Sr. and Dawn L. Jaros Charitable Trust, and as Trustee of the Arthur G. Jaros, Sr. Declaration of Trust and as Trustee of the Dawn L. Jaros Declaration of Trust, WESLEY A. JAROS, as Co-Trustee of the Arthur G. Jaros, Sr. and Dawn L. Jaros Charitable Trust, and RANDALL S. JAROS, as Co-Trustee of the Arthur G. Jaros, Sr. and Dawn L. Jaros Charitable Trust
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and
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ON FURTHER APPEAL FROM THE WISCONSIN COURT OF APPEALS, THIRD DISTRICT
2018AP000940

subsequent to

APPEAL FROM THE ONEIDA COUNTY CIRCUIT COURT
No. 2013CV345

PETITION FOR REVIEW
of
PLAINTIFFS-APPELLANTS-CROSS RESPONDENTS

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STATEMENT OF THE CASE[49]

A) Appellants' Desired Religious Land Use

Plaintiffs Jaros, are brothers, co-trustees of a charitable trust, and directors of Eagle Cove Camp & Conference Center ("ECC&CC")–both IRS-§501(c)(3)-approved. ECC&CC was formed to develop a new year-round Christian camp on thirty-four acres[50] of land with 550' of frontage on 400-acre, clear water Squash Lake in Wisconsin's "Northwoods" within Defendants' jurisdictions.[51]

The brothers' Christian faith, per their Biblical stewardship understanding ("first fruits" and offerings "without blemish"[52]), compelled them to dedicate and convert that acreage – family-owned over sixty years – to full-time Christian ministry as a Bible camp, serving youth, including those medically disabled, older

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[49]"R#" throughout this Brief refers to the Index issued by the Circuit Court Clerk. "DCD" refers to the federal district court docket number for 10-cv-118 (W.D. Wis. 2010) in the original, predecessor federal proceeding, as explained @ p. 16, *infra*. Unless otherwise indicated, "Appndx." and "App. __" refer, respectively, to lettered appendices and appendix page numbers contained in the Plaintiffs' 2017 Petition for Writ of Certiorari to the U.S. Supreme Court in Docket #16-1444, included in the record. "SA" references the Separate Appendix accompanying this Brief. "AOB" and "ACB" refer, respectively, to Appellants' opening Brief and Appellants' Combined Brief in the Wisconsin Court of Appeals. "AC" means Amended Complaint.

[50]Approximately twenty-nine acres owned by the charitable corporation and approximately five acres owned by the charitable trust. The camp also has permission to passively use twenty-four acres of contiguous land held jointly under the two trust declarations.. R#77|App.86.

[51]R#77|App.83-85.

[52]Arthur Jaros Deposition, DCD##83,84 @ p.245.

V) The Court of Appeals Erred in Holding *sua sponte* at Decision, ¶27, that Wisconsin law alone governs the claim preclusive effect of the dispositive ruling(s) of a federal court made with respect to the same transactional claim.

The Decision ignored argument @ ACB, p. 2 including footnotes 5 and 6 that federal law governs the preclusive effect of a federal court ruling on the merits. Restatement §87 provides that:

> Federal law determines the effects under the rules of *res judicata* of a judgment of a federal court.

F.R.Civ.P. 54(b), in turn, provides in relevant part:

> [A]ny order or other decision ... that adjudicates fewer than all ... the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the *entry of a judgment adjudicating ... all the parties' rights and liabilities.*

The District Court expressly determined not to adjudicate all of the parties rights and liabilities and therefore its rulings, particularly, those that erroneously and egregiously misstated Wisconsin's heightened constitutional protections for and of the free exercise of religion, didn't have preclusive effect per F.R.Civ.P. 54(b) . The dismissal without prejudice of the Wisconsin state law certiorari count didn't constitute an adjudication of all the parties' rights and liabilities. *Blair v. Cleveland Twist Drill*, 197 F.2d 842 @ 845 (7th Cir. 1952) (ACB, p.2, fn. 5).

The WCA's error was pointed out at the top of p. 3 of the M~Reconsider which was inexplicably denied without analysis. The Decision's *sua sponte* "cf." reference to *Wisconsin Pub. Serv. Corp. v. Arby Constr., Inc.* is inapposite; that

case dealt with rulings of a federal court exercising diversity-of-citizenship jurisdiction (2012 WI 87 @ *P30) not, as here, federal question jurisdiction involving merits rulings under RLUIPA and the U.S. Constitution.

APPENDIX V

FILED
02-16-2018
ONEIDA COUNTY
CLERK OF CIRCUIT COURT
2013CV000345

STATE OF WISCONSIN CIRCUIT COURT ONEIDA COUNTY

EAGLE COVE CAMP & CONFERENCE CENTER, INC. et al.
Plaintiffs,
v.
ONEIDA COUNTY BOARD OF ADJUSTMENT, et al.
Defendants.

Case No. 2013 CV 000345
Code Nos. 30405, 30607

PLAINTIFFS' REPLY MEMORANDUM OF LAW IN SUPPORT OF RENEWED MOTION FOR RECONSIDERATION OF DECISION ON MOTIONS FOR JUDGMENT ON THE PLEADINGS BASED, *INTER ALIA*, UPON APRIL, 2015 FEDERAL COURT DEVELOPMENT AND IN OPPOSITION TO THE BRIEF OF DEFENDANTS ONEIDA COUNTY BOARD OF ADJUSTMENT AND ONEIDA COUNTY IN OPPOSITION TO SAID MOTION

Plaintiffs Eagle Cove Camp & Conference Center, Inc., Arthur G. Jaros, Jr, Wesley A. Jaros and Randall S. Jaros, by their attorneys Arthur G. Jaros, Jr. and Michael D. Dean, LLC, submit this memorandum of law in further support of their Renewed Motion for Reconsideration of Decision on Motions for Judgment on the Pleadings Based upon New Federal Court Development and in opposition to the Brief of the Oneida County Defendants filed on February 9, 2016 ("OC Brief").

C. Contrary to the OC Brief at p. 5 ff., Plaintiffs Have Presented Valid Bases for Relief under WIS. STAT. §806.07.

Plaintiffs concur with the discussion at p. 5 of the OC Brief that Wisconsin case law in interpreting Wis. Stat. §806.07(1)(g) and (h) considers and commonly follows federal case law development under the F.R.Civ.P. 60(b) analogues thereto.

However, it ought be kept clearly in mind that the Plaintiffs efforts to obtain relief in the federal court system were solely directed at vacating the grant of summary judgment on federal Count III, RLUIPA "Substantial Burden" whereas the effort here is to obtain relief from the preclusive effect here of the broader grant of federal summary judgment on ten of the eleven counts of the federal Amended Complaint on the raising of grounds arising under the Wisconsin constitution by the Amended Complaint in this state court proceeding.

3. The Violation of Federal and Wisconsin Constitutional Guarantees of Due Process of Law and Equal Protection of the Laws. [OC Brief, pp. 9 - 10]

The OC Brief at p. 9 accurately observes:

> Namely, plaintiffs argue that, hypothetically, if the federal district court had not dismissed [without prejudice] their certiorari review claim when it dismissed their remaining claims in the federal action [on summary judgment], then plaintiff would have been in a position to seek leave from the district court to reopen [in light of Schlemm v. Wall] one or more of their dismissed claims based on changes in the law pursuant to Fed. R. Civ.P. 54(b).

Morever, even absent the ruling in *Schlemm v. Wall*, Plaintiffs would not have been precluded from seeking and being granted leave to further amend their federal Amended Complaint pursuant to F.R. Civ.P. 15(a)(2) ("freely give leave when justice so requires") to add additional grounds under Wisconsin law to the proceeding that continued to pend on federal Count XI, State Law Certiorari Review, in the federal forum. Thus as a matter of equal protection of the laws and due process of law, the Plaintiffs here should not be precluded, as a matter of law, from adding additional grounds under Wisconsin law to their pleading.

The text of Rule 54(b) clearly and plainly states that until there is an adjudication as to all

of the claims and all of the rights and liabilities of all of the parties, any order or decision "does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities." Given the lack of federal and state court adjudication of federal Count XI and its continuing pendency in this Circuit Court following the District Court's dismissal without prejudice in the federal forum, Plaintiffs should not be barred as a matter of law from seeking to add additional state law grounds to their pending case.

The Defendants have not provided any legal or policy reason why the substantive outcome as to the ability to amend their pleadings to raise additional state law grounds should be different merely because the state law certiorari count is being heard by a state court forum rather than in the federal court forum. Plaintiffs respectfully submit that the Defendants' position violates Plaintiffs' rights to substantive due process of law protected by the Fifth Amendment to the United States Constitution and their right to equal protection of the laws as a component of that Fifth Amendment protection recognized by *Bolling v. Sharpe*, 347 U.S. 497 (1954) and the similar protections afforded by the Wisconsin Constitution where the exercise of a federal court's discretion to exercise or not exercise federal supplemental jurisdiction would have great impact on the substantive rights of two otherwise identically situated sets of plaintiffs.

APPENDIX W

No. 2018AP000940

COURT OF APPEALS
for the
STATE OF WISCONSIN
DISTRICT III

EAGLE COVE CAMP & CONFERENCE CENTER, INC., a Wisconsin non-stock corporation, ARTHUR G. JAROS, JR., as Co-Trustee of the Arthur G. Jaros, Sr. and Dawn L. Jaros Charitable Trust, and as Trustee of the Arthur G. Jaros, Sr. Declaration of Trust, and as Trustee of the Dawn L. Jaros Declaration of Trust, WESLEY A. JAROS, as Co-Trustee of the Arthur G. Jaros, Sr. and Dawn L. Jaros Charitable Trust, and RANDALL S. JAROS, as Co-Trustee of the Arthur G. Jaros, Sr. and Dawn L. Jaros Charitable Trust,

Plaintiffs-Appellants,

v.

COUNTY OF ONEIDA, *Defendant-Respondent,*
TOWN OF WOODBORO, *Defendant-Respondent-Cross-Appellant,*
ONEIDA COUNTY BOARD OF ADJUSTMENT, *Defendant.*

APPEAL FROM THE ONEIDA COUNTY CIRCUIT COURT
No. 2013CV345
THE HONORABLE MICHAEL H. BLOOM, Circuit Judge, Presiding

BRIEF OF PLAINTIFFS-APPELLANTS

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C) By Applying Claim Preclusion, the Circuit Court Denied the Plaintiffs Rights Guaranteed Them by the U.S. and Wisconsin Constitutions to Due Process of Law in the Protection of their Liberty Interest in Fair Judicial Process and in Equal Protection of the Laws.

Under either of two different scenarios, the District Court either would have or could have tried federal Count XI state law certiorari (instead of dismissing it without prejudice to refiling in Wisconsin's courts).

F.R.Civ.P.54(b), operative in that situation, authorizes the District Court to revise its summary judgment ruling on federal Count III in light of the case law development in *Schlemm v. Wall*, because Claim Preclusion is never operative within the same case. The two scenarios are as follows:

1) The District Court's summary judgment ruling stated that it would have retained jurisdiction over Count XI, "State Law Certiorari" if:

> defendants are unwilling to waive any statute of limitation defense they may have in state court by virtue of plaintiffs choosing to file in this court first. (SA2 at p. 48)

2) In the exercise of its discretion, the District Court could have simply chosen to retain supplemental jurisdiction over Count XI.

The upshot of this is that by virtue of the District Court's not retaining of jurisdiction over Count XI, Claim Preclusion– plainly not available to prevent revision of the summary judgment ruling on Count III if that court retained jurisdiction over Count XI–has now been imposed against the Plaintiffs to their prejudice. What this means is that the application of substantive law in terms of modification of the summary judgment ruling on Count III, "RLUIPA Substantial Burden," is now different for two identically situated litigants,[118] one whose pendent Count XI was tried to the District Court and one whose pendent Count XI was dismissed without prejudice for the purpose of being tried in the state Circuit Court. Such disparate treatment based merely on the forum violates Plaintiffs' rights under the U.S. and Wisconsin Constitution to equal protection and to substantive due process. (*County of Kenosha v. C&S Management, Inc.*, 223 Wis.2d 373 at 393 (P.31); *Bolling v. Sharpe*, 347 U.S. 497 (1954)).

Moreover, when an adequate remedy does not exist to provide due process, Wisconsin courts are to fashion an adequate remedy. [Wisconsin Constitution, Art. I, §9; *Collins v. Eli Lilly Co.*; *Bielski v. Schulze*].

This Court--in considering STATS.§806.07--should also be guided by the federal rule that would have applied had the federal district court not decided to split

[118]The same procedural posture would exist--except as to the forum in which federal Count XI continued to pend -- following the District Court's same grant of summary judgment on Counts I-X if interlocutory appeal to the Court of Appeals were taken under 28 U.S.C. §1292(b) and F.R.A.P. 5.

Plaintiffs' case between federal (as to federal Counts I - X) and state (as to federal Count XI) forums. If, as it had authority so to do, the District Court could correct any ruling on the merits for so long as Count XI remained unadjudicated, so can Wisconsin courts as a matter of equity, due process and equal protection of the laws.

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APPEAL FROM THE ONEIDA COUNTY CIRCUIT COURT
No. 2013CV345
THE HONORABLE MICHAEL H. BLOOM, Circuit Judge, Presiding

COMBINED BRIEF OF APPELLANTS/CROSS-RESPONDENTS

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Oak Brook, IL 60523

TABLE OF CONTENTS[1]

[1]"AOBr" throughout designates Appellants' opening Brief. "OCBr" throughout designates Respondent's Brief of Oneida County. "TBr" designates the Town's Cross-Appellant's Brief. SA# designates one of the separately numbered, separately bound Appendices.

C) AOBr's Argument I(C): Due Process and Equal Protection Denials. (AOBr, pp.35-37; OCBr, pp.26-28)

Respondent attempts (p.27, full ¶) a refutation, incorrectly asserting the District Court rejected "this" hypothetical "argument." That court wasn't called upon to, and didn't, decide whether:

(1) F.R.Civ.P. 54(b) allows modifying its summary judgment ruling at any time before Count XI, "State Law Certiorari" was adjudicated ***if***--rather than dismissing Count XI without prejudice–that court had instead decided to retain supplemental jurisdiction; and/or

(2) Federal law allows Wisconsin's courts to modify a federal court's summary judgment grant where manifest error and/or intervening change in controlling law is, as here, demonstrated.

APPENDIX X

RECEIVED
JAN 13 2020
CLERK OF SUPREME COURT
OF WISCONSIN

IN THE SUPREME COURT
of the
STATE OF WISCONSIN

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Plaintiffs/Appellants/Cross-Respondents/Petitioners,

v.

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TOWN OF WOODBORO, *Defendant/Respondent/Cross-Appellant,*
and
ONEIDA COUNTY BD. OF ADJUSTMENT, *Defendant.*

ON FURTHER APPEAL FROM THE WISCONSIN COURT OF APPEALS, THIRD DISTRICT
2018AP000940

subsequent to

APPEAL FROM THE ONEIDA COUNTY CIRCUIT COURT
No. 2013CV345

PETITION FOR REVIEW
of
PLAINTIFFS-APPELLANTS-CROSS RESPONDENTS

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STATEMENT OF ISSUES.

BACKGROUND

WHERE:

- Defendant Town's Board voted to adopt Oneida County's zoning ordinance that creates use classifications based upon the Town's own Land Use Plan's map;[1]

- On advice of the County's Staff that it was necessary, Petitioners submitted a rezoning application for a year-round religious camp on long-owned and undeveloped family riparian property;[2]

- After public meetings, the County's Planning & Zoning Committee and the County Board in mid-2006 denied the rezoning application, informing Petitioners it was not necessary and that they could instead proceed under Conditional Use Permit procedure to accomplish "most or all of their stated objectives" without "delay, uncertainty or added expense";[3]

- Petitioners then spent over $200,000 and years of time pursuing a Conditional Use Permit Application that was in compliance with all technical requirements only to have the Application denied by the same committee on the basis that rezoning was necessary;[4]

- Defendant Oneida County Board of Adjustment affirmed denial of the CUP;[5]

- Petitioners brought a federal action alleging both federal law grounds (including multiple RLUIPA counts) and pendent state law counts

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[1]pp. 5-8, *infra.*

[2]pp. 4,8, *infra.*

[3]pp. 8-9, *infra.*

[4]pp. 9-12, *infra.*

[5]p. 12, *infra.*

(including Wisconsin Constitution, Art. 1, §18 and certiorari review counts);[6]

- Federal courts dismissed, on summary judgment, all federal counts with prejudice as well as the Wisconsin constitutional count based on a grossly superficial analysis equating Wisconsin religion clause law with federal protections, despite Wisconsin's courts' declining to follow the *Employment Division v. Smith* regime on multiple occasions[7] and plainly declaring that Wisconsin constitutional protections of religious liberty are more expansive than those afforded by federal law;[8]

- Federal courts dismissed the state certiorari count without prejudice because it raised "factual and legal issues ... sufficiently unique to state law";[9]

- Petitioners continued their case by filing an action in Circuit Court that included not only the dismissed-without-prejudice certiorari count but also multiple Wisconsin constitutional counts that, in any event, are also integral to the certiorari action under the "incorrect theory of law" criterion;[10]

- The Circuit Court dismissed the multiple Wisconsin constitutional counts on the basis of Claim Preclusion;[11] and

- The Circuit Court denied the Town's Motion for Sanctions for Petitioners' pleading of those multiple Wisconsin constitutional counts[12] but the Court of Appeals reversed that denial on its own *sua sponte* grounds:[13]

---

[6]pp. 12, *infra*.

[7]e.g., *State v. Miller*, 202 Wis. 2d 56 at 66-69 (1996).

[8]pp. 13, *infra*.

[9]fn. 106 at p.12,*infra*.

[10]pp. 16, *infra*.

[11]pp. 17, *infra*.

[12]pp. 17, *infra*.

[13]pp. 21, *infra*.

ISSUES

7) **In Light of a Change in Federal Case Law Directly Applicable to the Federal District Court Outcome, Did the Courts below Deny the Plaintiffs-Appellants Equal Protection of the Laws by Allowing a Continuing Restraint on Their Religious Exercise to Stand While Prohibiting the Same Restraint from All Future Similarly Situated Land Use Applicants Within Woodboro?**

Method or Manner of Raising the Issue in the Court of Appeals:

> By Argument I(C) at Appellants' opening Brief,[43] pp. 35-37 and Appellants' Combined Brief,[44] p. 13.

How the Court of Appeals Decided the Issue:

> At Decision, ¶¶61-62, the argument was rejected as "difficult to comprehend," as undermining "finality" and as not being cognizable under the Constitutional equal protection texts in the absence of prior case precedent.[45]

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[43]Appendix 4, a/k/a SA4.

[44]Appendix 6, a/k/a SA6.

[45]Appendix 1, a/k/a SA1.

[46]Appendix 8, a/k/a SA8.

VII) In Light of a Change in Federal Case Law Directly Applicable to the District Court Outcome, the Courts below Denied the Plaintiffs-Appellants Equal Protection of the Laws by Allowing a Continuing Restraint on Their Religious Exercise to Stand While Prohibiting the Same Restraint from All Future Similarly Situated Land Use Applicants Within Woodboro.

Petitioners set forth their argument based upon the equal protection texts of the U.S. and Wisconsin Constitutions as their Argument I(C) @ AOB, pp. 35-37 and ACB, p. 13. The WCA declined to accept the argument on the bases that: it was "difficult to comprehend"; the continuing disparate restraint on religious

liberty was merely "hypothetical"; and "finality" would be undermined. The Decision didn't consider that the federal proceeding didn't provide finality but instead expressly reserved to Plaintiffs the right to proceed in Wisconsin's Circuit Court.

APPENDIX Y

No. 2018AP000940

RECEIVED
DEC 09 2019
CLERK OF COURT OF APPEALS
OF WISCONSIN

COURT OF APPEALS
for the
STATE OF WISCONSIN
DISTRICT III

EAGLE COVE CAMP & CONFERENCE CENTER, INC., a Wisconsin non-stock corporation, ARTHUR G. JAROS, JR., as Co-Trustee of the Arthur G. Jaros, Sr. and Dawn L. Jaros Charitable Trust, and as Trustee of the Arthur G. Jaros, Sr. Declaration of Trust and as Trustee of the Dawn L. Jaros Declaration of Trust, WESLEY A. JAROS, as Co-Trustee of the Arthur G. Jaros, Sr. and Dawn L. Jaros Charitable Trust, and RANDALL S. JAROS, as Co-Trustee of the Arthur G. Jaros, Sr. and Dawn L. Jaros Charitable Trust

Plaintiffs-Appellants-Cross-Respondents,

v.

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TOWN OF WOODBORO, and ONEIDA COUNTY BD. OF ADJUSTMENT, *Defendant-Respondent-Cross-Appellant,*

Defendant.

APPEAL FROM THE ONEIDA COUNTY CIRCUIT COURT
No. 2013CV345
THE HONORABLE MICHAEL H. BLOOM, Circuit Judge, Presiding

WIS. STATS. §809.24 MOTION FOR RECONSIDERATION OF APPELLANTS/CROSS-RESPONDENTS

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December 9, 2019

H) The Opinion Misapprehends the Applicable Wisconsin Statute re: Woodboro's authority in land use decisions.

Footnote 24's second paragraph incorrectly reasons, *sua sponte*, that Wis. Stats. 59.69(3)(b) -- not 59.69(1) -- is the relevant statute. There's no indication of any pre-litigation county "development plan" so §59.69(3)(b)'s inapposite, not merely populationally inapplicable. §59.69(1)'s overlooked text reads:

> [the county's] board may plan for the physical development[2] and zoning[3] ... as set forth in this section and *shall incorporate* therein ... the official map of any ... village ... .

---

[2]§59.69(3).

[3]§59.69(5) exercised by Oneida County.

It's undisputed[4] Woodboro exercised village powers in adopting its official map facially barring Appellants' religious use from the entire Town and that the declaratory relief sought was to facially invalidate[5] the zoning scheme based upon the exclusionary map. The Opinion also overlooks that the zoning scheme thwarted Appellants' use on their land lying beyond the shoreland area only because Woodboro affirmatively adopted the County's zoning ordinance per §59.69(5)(c) and/or (d). (Appendix 4, ¶¶55, 68-74). Thus, the Opinion's §59.69 analytical predicate[6]–reached without benefit of oral argument and any opportunity for Cross-Respondents to be heard[7]--for imposing sanctions properly denied by the trial court doesn't exist.

Michael A. Lenz

Arthur G. Jones Jr.

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[4]Appendix 4, ¶¶66-74.

[5]Appendix 4's Counts II-VI, VIII, XII-XIV.

[6]the Town "had no authority over land use decisions that thwarted its desired Bible camp."

[7]potentially a procedural due process violation.

APPENDIX Z

RECEIVED
JAN 13 2020
CLERK OF SUPREME COURT
OF WISCONSIN

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[11]pp. 17, *infra.*

[12]pp. 17, *infra.*

[13]pp. 21, *infra.*

ISSUES

1) **Did the Court of Appeals Misapply the Clear Provisions of STATS. 895.044, Violate STATS. 802.05(3)(a)(2) and 809.22(2) and/or Deprive Petitioners of their Property Without Affording Procedural Due Process of Law in Reversing, Without Notice or Prior Opportunity for Petitioners to Be Heard, the Circuit Court's Denial of Sanctions on Grounds Raised Neither in the Circuit Court Nor in the Appellate Briefs but Rather Raised *Sua Sponte* and Where Such Grounds Were Plainly Erroneous?**

Method or Manner of Raising the Issue in the Court of Appeals:

> By Point H (including, but not limited to, footnote 7) of Petitioners' §809.24 Motion for Reconsideration that was timely filed on December 9, 2019.[14]

How the Court of Appeals Decided the Issue:

> By Order dated December 12, 2019, the Court summarily denied Petitioners' Motion for Reconsideration without any analysis or substantive reasons being stated.[15]

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[14]Appendix 8, a/k/a SA8.

[15]Appendix 2, a/k/a SA2.

ARGUMENT AMPLIFYING REASONS SUPPORTING REVIEW

I) The Court of Appeals Misapplied the Clear Provisions of STATS. 895.044, Violated STATS. 802.05(3)(a)(2) and 809.22(2) and/or Deprived Petitioners of their Property Without Affording Procedural Due Process of Law in Reversing, Without Prior Notice or Opportunity for Petitioners to Be Heard that Included Unlawful Dispensing With of Oral Argument, the Circuit Court's Denial of Sanctions on Grounds Raised Neither in the Circuit Court Nor in the Appellate Briefs but Rather Raised *Sua Sponte* and Where Such Grounds Were Plainly Erroneous.

Woodboro's Circuit Court sanctions motion (SA3) was based solely on its argument that Petitioners' arguments opposing claim preclusion were meritless. That court disagreed, making multiple express findings.[149] Woodboro's cross-appeal asserted the same (and no other) grounds in both its briefs. (SA5, 7)

WCA's Decision didn't reverse the Circuit Court's findings, stating:

> ... the circuit court found that some of Eagle Cove's argument for avoiding claim preclusion arguably demonstrated good faith ... (¶74)

But the Decision then reversed and remanded the sanctions denial under STATS. §895.055(2)(b), irrespective of Woodboro's motion's content, on the following basis and supporting grounds raised *sua sponte* after rejecting oral argument:

Basis:

> Even aside from the applicability of claim preclusion, it should have been obvious to Eagle Cove that the Town had

[149]SA13, pp. 12-14.

no authority over the land use decisions that thwarted its desired Bible camp.

Supporting Grounds:

A) "Although Eagle Cove notes the Town did approve the County zoning ordinance with respect to the non-shoreland areas, Eagle Cove does not argue the Town had any authority to grant or deny its rezoning or CUP applications." (fn. 24, last paragraph);

B) "Alternatively, Eagle Cove suggests the County was a mere instrumentality of the Town because the County was required to adopt the Town's land use plan under Wis. Stat. §59.69(1). The subsection discussing the relationship between a county's development plan and a town's master plan is §59.69(3)(b), not subsec. (1), and it states a county's development plan must incorporate a town's master plan only in counties [unlike Oneida County] with a population of at least 485,000."

C) At Decision ¶73, the Seventh Circuit U.S. Court of Appeals had found that "Woodboro chose to be subordinate to Oneida's zoning ordinance, and thereby relinquished its jurisdiction over land use regulations to the County."

D) At Decision ¶74, fn. 24, first paragraph, "... the Seventh Circuit's decision does not mention any unique attributes of an as-applied challenge; rather the court noted that "Eagle Cove's 'total exclusion'[150] argument 'was predicated, and in fact depends, on the assumption that Woodboro has jurisdiction to implement land use regulations on the subject property.' *** the court ... flatly rejected that contention. *** Eagle Cove fails to explain why any arguable distinction between its as-applied and facial challenges makes a difference as to the issue of the Town's land use authority."

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[150]RLUIPA-based per SA9, Count I, p. 47.

Each ground ((A)-(D)) is erroneous and/or irrelevant, was never briefed, and was addressed by Petitioners' M~Reconsider (Point H):

A) Ground A is correct but irrelevant. Referring to STATS. §59.69(5)(c) and/or (d) relied upon by the Plaintiffs, the Seventh Circuit also wrote: "In this case, Woodboro *was able to exercise its jurisdiction* in approving the OCZSPO. 'A county ordinance enacted under this section shall not be effective in any town until it has been approved by the town board.' " 734 F.3d @ 680. The "land use decision" by Woodboro complained of by Plaintiffs (Appendix 12, ¶¶55, 68-74) was Woodboro's very approval of the OCZSPO including its exclusionary zoning map responsible for the complete exclusion of year round Bible Camps from the whole town. This was the basis of the facial challenge under Wisconsin law against the OCZSPO that was adopted by <u>both</u> the County and Town. Thus, the Decision's statement that the "Town had no authority over the land use decisions that thwarted its desired Bible camp" is palpably erroneous. But for Woodboro's adoption action, the OCZSPO wouldn't have been applicable to bar development of a year round Bible camp on ECC&CC's non-shoreland land. Because facial

invalidation of the OCZSPO including its zoning map challenged both County and Town approval actions, Petitioners have a good faith argument that Woodboro was properly joined.

B) The Decision is hyperbolically inaccurate in attributing to Petitioners the position that the County is the Town's "mere instrumentality." More importantly, footnote 24's second paragraph incorrectly reasons, *sua sponte*, that WIS. STATS. 59.69(3)(b) -- not 59.69(1) -- is the relevant statute. A county "development plan" is dehors the record so, contrary to the Decision's *sua sponte* discussion, §59.69(3)(b)'s inapposite, not merely populationally inapplicable. §59.69(1)'s text unquoted by the WCA reads:

> [the county's] board may plan for the physical development[151] **and zoning**[152] **...** as set forth in this section and **shall incorporate therein ... the official map of any ... village ... .**

It's undisputed[153] Woodboro exercised village powers in adopting its own official map that, when incorporated into the county's zoning ordinance, facially barred Appellants' religious use from the entire Town and that the declaratory relief sought by the Amended

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[151]§59.69(3).

[152]§59.69(5) exercised by Oneida County.

[153]SA12, ¶¶66-74.

Complaint was to facially invalidate[154] the zoning scheme based upon the exclusionary map.[155]

C) As just noted in Ground A), the Seventh Circuit also wrote: "In this case, Woodboro was able to exercise its jurisdiction in approving the OCZSPO." In incompletely quoting the Seventh Circuit Opinion, the Decision failed to consider the importance of the word "relinquished." That is, Woodboro did exercise land use authority in adopting the OCZSPO–the very action complained of by Plaintiffs--but in doing so relinquished certain as-applied powers to the County (e.g. CUP approval) on a going forward basis. Thus, the sentence quoted by the Decision is plausibly irrelevant.

D) First, the Decision's reference to the Seventh Circuit's view of Woodboro's authority with respect to the operation of RLUIPA's ban on total exclusion is irrelevant to the facial challenges to total exclusion made by the Amended Complaint *based on the unique provisions of Wisconsin law.*[156] Second, the Decision errs in alleging that the Seventh Circuit's decision doesn't mention any

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[154]SA12's Counts II-VI, VIII, XII-XIV.

[155]Petitioners have a good faith argument that "the official map of any ... village." includes the official map adopted by a town that has been granted and is exercising village powers.

[156]AOB, pp. 29-30.

> unique attributes of an as-applied challenge; to the contrary, the Seventh Circuit, rightly or wrongly, considered the RLUIPA Total Exclusion challenge to be viable only as an "as-applied" challenge as evidenced by its discussion at length of the Town's lack of authority over CUP applications (734 F.3d @ 680).[157]

See, also, impact of the Town's Land Use Plan on Petitioners (text @ fn.99). Therefore, the Decision erred in concluding *sua sponte* that Woodboro "had no authority over the land use decisions that thwarted its desired Bible camp."

The Decision @ ¶72 also points to the mandatory "shall" language of STATS. 895.044(2)(b) to reverse the sanctions denial but ignores STATS. 895.044(1)'s permissive "may" language. The Decision doesn't consider that §895.044(2)(b)'s "shall" only applies "Upon either party's motion made at any time during the proceeding... ." The Decision nonsensically without authority assumes that the motion's content (i.e., grounds) are irrelevant such that a court can impose sanctions *sua sponte* without notice and opportunity for the Cross-Respondent to defend against grounds outside the sanctions motion.

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[157]The Seventh Circuit also imprecisely stated Wisconsin law: "Whether or not the town approves a *change in zoning* is merely one of the factors considered by the County in making its determination." Contrariwise, STATS. 59.69(5)(e)(3), (3m) and (6) grants to towns absolute veto power over a zoning change favored by a county. Petitioners also provided authority to the WCA @ AOB, p. 42 that Wisconsin courts aren't bound by erroneous pronouncements of Wisconsin law by the federal courts.

But, notice and hearing are basic elements of the constitutional requirement of due process of law. *Powell v. Alabama*, 287 U.S. 45 (1932).

Moreover, the WCA could've raised its own grounds at oral argument thereby comporting with the requirements of procedural due process of law.[158] Instead, by violating the "only if" requirement of STATS. 809.22(2), it unlawfully denied[159] Cross-Respondents notice and opportunity to be heard at oral argument. To wit:

(1) §809.22(2)(a)(1) and (2) weren't satisfied because Woodboro's arguments as the [cross] "appellant" weren't found to be violative of either;

(2) §809.22(2)(a)(3) wasn't satisfied because the sanctions issue didn't involve questions of fact; and

(3) §809.22(2)(b) wasn't satisfied because the WCA's resort to unbriefed *sua sponte* grounds to impose sanctions proves the briefs didn't fully develop the "theories and legal authorities" over Woodboro's "issue on appeal," namely, the sanctions denial.

In fact, what the WCA did was to impose both sanctions for services of Woodboro's attorneys at both the Circuit Court (¶75) and appellate (¶76) levels on

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[158]U.S. Constitution, Amendment Fourteen, §1; Wisconsin Constitution, Art. 1, §1 per *Reginald D. v. State*, 193 Wis.2d 299, 306-307 (1995).

[159]3/5/2019 Notice.

its own grounds noted above. Imposition of sanctions by a court on its own initiative is governed by STATS. 802.05(3)(a)(2) that requires the court to afford the proposed "sanction-ee" to show cause why he shouldn't be sanctioned.

If it be thought that unilateral sanctions for appellate level services is authorized by STATS. 895.044(5), Petitioners maintain:

1) §895.044(5) must be read in *pari materia* with §802.05(3)(a)(2)'s requirement of opportunity to defend and be heard; or

2) else, §895.044(5)--as applied to a case, as here, where no sanctions motion was filed in the WCA, where the Circuit Court sanctions motion didn't assert grounds raised *sua sponte* by the WCA, and where oral argument wasn't afforded, then §895.044(5) – constitutes an unconstitutional taking of Petitioners' liberty and/or property without the affording of procedural due process.

APPENDIX AA

No. 2018AP000940

RECEIVED
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CLERK OF COURT OF APPEALS
OF WISCONSIN

COURT OF APPEALS
for the
STATE OF WISCONSIN
DISTRICT III

EAGLE COVE CAMP & CONFERENCE CENTER, INC., a Wisconsin non-stock corporation, ARTHUR G. JAROS, JR., as Co-Trustee of the Arthur G. Jaros, Sr. and Dawn L. Jaros Charitable Trust, and as Trustee of the Arthur G. Jaros, Sr. Declaration of Trust and as Trustee of the Dawn L. Jaros Declaration of Trust, WESLEY A. JAROS, as Co-Trustee of the Arthur G. Jaros, Sr. and Dawn L. Jaros Charitable Trust, and RANDALL S. JAROS, as Co-Trustee of the Arthur G. Jaros, Sr. and Dawn L. Jaros Charitable Trust

Plaintiffs-Appellants-Cross-Respondents,

v.

COUNTY OF ONEIDA, *Defendant-Respondent,*

TOWN OF WOODBORO, *Defendant-Respondent-Cross-Appellant,*

and

ONEIDA COUNTY BD. OF ADJUSTMENT, *Defendant.*

APPEAL FROM THE ONEIDA COUNTY CIRCUIT COURT
No. 2013CV345
THE HONORABLE MICHAEL H. BLOOM, Circuit Judge, Presiding

WIS. STATS. §809.24 MOTION FOR RECONSIDERATION OF APPELLANTS/CROSS-RESPONDENTS

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December 9, 2019

Appellants' opening Brief ("AOB")

B) Opinion, Footnote 10, Last Sentence, Overlooks Authorities at AOB, pp. 41-42.

D) The Opinion Overlooks Appellants' Argument that the District Court Clearly Wouldn't Have Retained Jurisdiction over Wisconsin Substantive Due Process Counts Not Raised in the Federal Proceeding but Pleaded as Counts III, V, VIII, and XIII at Appendix 4.

Opinion, footnote 16, admits the District Court "might well have dismissed" "without prejudice" theories of recovery predicated upon "Wis. Const. art.I, §18" (pleaded by federal count VIII) "had Eagle Cove argued in the federal forum" as to the uniqueness of Wisconsin law. But *Parks'* application of R2d, §25, comment (e), required this Court to determine per AOB, pp. 29-30 whether Wisconsin Constitution substantive due process theories under Article I, §8 (and not §18) and not pleaded to the federal district court would've been dismissed without prejudice by the District Court as being unique.

F) Opinion ¶59 Overlooked and Improperly Didn't Rule on the "Continuing Restraint" Portion of Appellants' Appeal. (AOB, pp. 30-31, Argument I(B)(3); ACB, p. 9)

G) The Opinion Overlooked and Improperly Didn't Rule on Argument III. (AOB, p. 45)

No. 2018AP000940

COURT OF APPEALS
for the
STATE OF WISCONSIN
DISTRICT III

EAGLE COVE CAMP & CONFERENCE CENTER, INC., a Wisconsin non-stock corporation, ARTHUR G. JAROS, JR., as Co-Trustee of the Arthur G. Jaros, Sr. and Dawn L. Jaros Charitable Trust, and as Trustee of the Arthur G. Jaros, Sr. Declaration of Trust, and as Trustee of the Dawn L. Jaros Declaration of Trust, WESLEY A. JAROS, as Co-Trustee of the Arthur G. Jaros, Sr. and Dawn L. Jaros Charitable Trust, and RANDALL S. JAROS, as Co-Trustee of the Arthur G. Jaros, Sr. and Dawn L. Jaros Charitable Trust,

Plaintiffs-Appellants,

v.

COUNTY OF ONEIDA, *Defendant-Respondent,*
TOWN OF WOODBORO, *Defendant-Respondent-Cross-Appellant,*
ONEIDA COUNTY BOARD OF ADJUSTMENT, *Defendant.*

APPEAL FROM THE ONEIDA COUNTY CIRCUIT COURT
No. 2013CV345
THE HONORABLE MICHAEL H. BLOOM, Circuit Judge, Presiding

BRIEF OF PLAINTIFFS-APPELLANTS

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B) Even if Claim Preclusion Had *Prima Facie* Applicability, Recognized Exceptions to its Operation and/or Applicability Were Present.

2) The Circuit Court Erred as a Matter of Law in Making a Ruling that It Was "Not Clear" That the Federal District Court Would Have Declined to Exercise Supplemental Jurisdictional Over Counts Contained in the state court Amended Complaint Unique to Wisconsin Law Had They Been Pleaded in the Federal Court Forum.

Parks v. City of Madison, 171 Wis. 2d 730 at 736 (Ct. Ap. 1992) applied the rule laid down on comment e. of Restatement §25 that where the first court "***would clearly have declined to exercise it as a matter of discretion, then a second action in a competent court presenting the omitted theory or ground should be held not precluded.***"

The summary judgment opinion[109] of the federal district court clearly explained the basis of its decision not to exercise supplemental jurisdiction over Count XI. The Circuit Court below disregarded that clear explanation and instead ruled that it wasn't clear that the District Court would not have exercised jurisdiction over various counts added by the Amended Complaint that are undisputedly grounded on Wisconsin law that is unique and divergent from federal law. For example, Count V, a facial challenge to the OCZSPO on substantive due process protections afforded by the Wisconsin Constitution and not pleaded as a count in the federal forum, was grounded specifically in Wisconsin case law holding that total exclusion from a local jurisdiction of a given mode of religious exercise violates the Wisconsin Constitution:

> The ordinance adopted in July, 1954, appear to exclude churches from the entire village. We do not hesitate to say that the ordinance in that form was invalid. (*State ex rel. Lake Drive Baptist Church v. Bayside Bd. of Trustees,* 12 Wis.2d 585 at 601 (1961)).

The federal District Court[110] and appeals court[111] ruled that such town-wide exclusion imposed by the OCZSPO and its zoning map for Woodboro doesn't violate

[109]Relevant excerpt at SA14.
[110]p. 14, 15, *supra.*
[111]734 F.3d 637 at 679-680.

federal law. Thus, this ground of relief is clearly unique to Wisconsin law and the District Court would, under its own clearly articulated standard, clearly have declined to exercise supplemental jurisdiction had it been raised in a federal pleading.

Other counts added by the Amended Complaint but likewise stricken that are unique to Wisconsin law and not presented in the federal forum include Counts III, IX, X, XI, XIII and XIV.

3) The Circuit Court Erred as a Matter of Law in Refusing to Consider and/or Rule Upon Plaintiffs' Argument under the Restatement that the Defendants' Zoning Scheme Constitutes an Impermissible Continuing Restraint on the Plaintiffs' Personal Liberty Interest in the Exercise of their Religious Beliefs.

Restatement §26(1)(f) states "the general rule of §24 does not apply to extinguish the claim" where:

> **(f) It is clearly and convincingly shown that the policies favoring preclusion of a second action are overcome for an extraordinary reason, such as the apparent invalidity of a continuing restraint or condition have a vital relation to personal liberty... .**

Here, the policy reason for favoring preclusion of a second "action"–*arguendo*, the proceeding in the Wisconsin courts–was entirely non-existent because the federal District Court expressly permitted and contemplated that such a proceeding would be filed and prosecuted in any event by the Plaintiffs as a continuation of federal Count XI. On the other hand, it is likewise plain that the OCZSPO, on its face and as

applied, continues to prohibit the Plaintiffs from constructing a new year round Bible camp on cherished long-held family lands and anywhere else in Woodboro. Such restraint is invalid under Wisconsin law. (p. 29. *supra*) Although acknowledging this argument's existence[112], the Circuit Court failed to analyze or consider it.[113]

[112]At pp. 12 and 15 of R.115.
[113]At p. 27 of R.33;R.45;R.46 and again at pp. 19-20 of R.50.

Under Restatement §28(5), at p. 39 ,*supra*, the public interest in Wisconsin is not served by permitting a grossly erroneous interpretation by a federal court of

"strict scrutiny" under Wisconsin law to stand. State courts are the principal expositors of state law. (*Moore v. Sims*, 442 U.S. 415 at 429 (1979)). When the issue of state law decided incorrectly by a federal court is a question of law rather than of fact, the prior federal court determination is not conclusive on state courts either if injustice would result or if the public interest requires that relitigation not be foreclosed. (*City of Sacramento v. State of California*, 50 Cal. 3d 51 (1990); *Scott v. Bank One Trust Co.*, 62 Ohio St.3d 39 (1991)).

III) THE CIRCUIT COURT ERRED WHEN IT HELD THAT THE RLUIPA "SUBSTANTIAL BURDEN" GROUND RAISED BY COUNT III OF PLAINTIFFS' FEDERAL AMENDED COMPLAINT "WOULD NEVER HAVE BEEN LITIGATED IN THIS STATE COURT ACTION".

In its ruling of February 21, 2018 at R.116, pp. 8-9 the Circuit Court stated:

> ... the specific claim that was affected by *Schlemm versus Wall* would never have been litigated in this State court action, and the plaintiffs have acknowledged as much in the final footnote in their amended and updated memorandum ... .

Here, the Court committed two additional errors.

First, the Circuit Court misread and/or misunderstood Plaintiffs' "final footnote" (R.#84 at p.12) as to what it "acknowledged." That footnote merely stated that Plaintiffs acknowledged they could not continue their effort to obtain relief under RLUIPA by seeking "independent relief within their statutory certiorari review count" but didn't state that Plaintiffs could not seek to obtain RLUIPA relief in state court by seeking "independent relief" within a non-certiorari count.

Second, the Court below erred in stating:

> the plaintiffs' federal RLUIPA claim, the specific claim that was affected by *Schlemm versus Wall,* would never have been litigated in this State court action

If the proceeding below is determined to be the "same case" as that which pended in the federal forum, then there is no such impediment.

However, if the proceeding below is a different "case," then Claim Preclusion is inapplicable per Argument I, *supra*. In such case, submitting what had been federal Count III, "RLUIPA Substantial Burden" as an additional count in the Circuit Court would be precluded only if Issue Preclusion applied. But, Issue Preclusion wouldn't apply because Restatement §28(2) provides that

> Although an issue is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, relitigation of the issue in a subsequent action between the parties is not precluded

where:

> (2) The issue is one of law and ... (b) a new determination is warranted in order to take account of an intervening change in the applicable legal context or otherwise to avoid inequitable administration of the laws;

Both elements of (b) are present.

Comment c to this section states that: "Refusal of preclusion is ordinarily justified if the effect of applying preclusion is to give one person a favored position in current administration of a law." To wit, another, different applicant for a religious camp to be situated in Woodboro with identical legally-relevant characteristics to Plaintiffs' proposed camp would receive RLUIPA substantial burden protection (under *Schlemm*) greater than that now afforded to the Plaintiffs

unless Plaintiffs are given relief from preclusive effect of summary judgment on federal Count III.

APPENDIX BB

RECEIVED
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CLERK OF SUPREME COURT
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IN THE SUPREME COURT
of the
STATE OF WISCONSIN

EAGLE COVE CAMP & CONFERENCE CENTER, INC., a Wisconsin non-stock corporation, ARTHUR G. JAROS, JR., as Co-Trustee of the Arthur G. Jaros, Sr. and Dawn L. Jaros Charitable Trust, and as Trustee of the Arthur G. Jaros, Sr. Declaration of Trust and as Trustee of the Dawn L. Jaros Declaration of Trust, WESLEY A. JAROS, as Co-Trustee of the Arthur G. Jaros, Sr. and Dawn L. Jaros Charitable Trust, and RANDALL S. JAROS, as Co-Trustee of the Arthur G. Jaros, Sr. and Dawn L. Jaros Charitable Trust

Plaintiffs/Appellants/Cross-Respondents/Petitioners,

v.

COUNTY OF ONEIDA, *Defendant/Respondent,*

TOWN OF WOODBORO, *Defendant/Respondent/Cross-Appellant,*

and

ONEIDA COUNTY BD. OF ADJUSTMENT, *Defendant.*

ON FURTHER APPEAL FROM THE WISCONSIN COURT OF APPEALS, THIRD DISTRICT
2018AP000940

subsequent to

APPEAL FROM THE ONEIDA COUNTY CIRCUIT COURT
No. 2013CV345

PETITION FOR REVIEW
of
PLAINTIFFS-APPELLANTS-CROSS RESPONDENTS

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STATEMENT OF ISSUES.

BACKGROUND

WHERE:

- Defendant Town's Board voted to adopt Oneida County's zoning ordinance that creates use classifications based upon the Town's own Land Use Plan's map;[1]

- On advice of the County's Staff that it was necessary, Petitioners submitted a rezoning application for a year-round religious camp on long-owned and undeveloped family riparian property;[2]

- After public meetings, the County's Planning & Zoning Committee and the County Board in mid-2006 denied the rezoning application, informing Petitioners it was not necessary and that they could instead proceed under Conditional Use Permit procedure to accomplish "most or all of their stated objectives" without "delay, uncertainty or added expense";[3]

- Petitioners then spent over $200,000 and years of time pursuing a Conditional Use Permit Application that was in compliance with all technical requirements only to have the Application denied by the same committee on the basis that rezoning was necessary;[4]

- Defendant Oneida County Board of Adjustment affirmed denial of the CUP;[5]

- Petitioners brought a federal action alleging both federal law grounds (including multiple RLUIPA counts) and pendent state law counts

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[1] pp. 5-8, *infra.*

[2] pp. 4,8, *infra.*

[3] pp. 8-9, *infra.*

[4] pp. 9-12, *infra.*

[5] p. 12, *infra.*

(including Wisconsin Constitution, Art. 1, §18 and certiorari review counts);[6]

- Federal courts dismissed, on summary judgment, all federal counts with prejudice as well as the Wisconsin constitutional count based on a grossly superficial analysis equating Wisconsin religion clause law with federal protections, despite Wisconsin's courts' declining to follow the *Employment Division v. Smith* regime on multiple occasions[7] and plainly declaring that Wisconsin constitutional protections of religious liberty are more expansive than those afforded by federal law;[8]

- Federal courts dismissed the state certiorari count without prejudice because it raised "factual and legal issues ... sufficiently unique to state law";[9]

- Petitioners continued their case by filing an action in Circuit Court that included not only the dismissed-without-prejudice certiorari count but also multiple Wisconsin constitutional counts that, in any event, are also integral to the certiorari action under the "incorrect theory of law" criterion;[10]

- The Circuit Court dismissed the multiple Wisconsin constitutional counts on the basis of Claim Preclusion;[11] and

- The Circuit Court denied the Town's Motion for Sanctions for Petitioners' pleading of those multiple Wisconsin constitutional counts[12] but the Court of Appeals reversed that denial on its own *sua sponte* grounds:[13]

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[6]pp. 12, *infra.*

[7]e.g., *State v. Miller*, 202 Wis. 2d 56 at 66-69 (1996).

[8]pp. 13, *infra.*

[9]fn. 106 at p.12,*infra.*

[10]pp. 16, *infra.*

[11]pp. 17, *infra.*

[12]pp. 17, *infra.*

[13]pp. 21, *infra.*

ISSUES

8) **By Dispensing with Oral Argument contrary to STATS. 809.22(2), by an Unreasoned Summary Denial of a Motion for Reconsideration, and by Refusing to Address Issues and Arguments Raised on an Appeal as of Right, Did the Court of Appeals Deny Petitioners their Liberty Interest in and to Fair Adjudicative Process and/or in and to Free Exercise of their Religion Without Affording them Procedural Due Process of Law?**

Method or Manner of Raising the Issue in the Court of Appeals:

By Points B, D, F and G of the §809.24 Motion for Reconsideration of Appellants/Cross-Respondents.[46]

[46]Appendix 8; a/k/a SA8.

How the Court of Appeals Decided the Issue:

The Court denied the Motion for Reconsideration without providing analysis or substantive reasoning.[47]

[47]Appendix 2, a/k/a SA2.

VIII) By Dispensing with Oral Argument contrary to STATS. 809.22(2), by an Unreasoned Summary Denial of a Motion for Reconsideration, and by Refusing to Address Issues and Arguments Raised on an Appeal as of Right, the Court of Appeals Denied Petitioners their Liberty Interest in and to Fair Adjudicative Process and/or in and to Free Exercise of their Religion Without Affording them Procedural Due Process of Law.

Although state governments aren't constitutionally required to provide for appellate review,[171] when a choice to provide it is made, then adjudicative state action of the reviewing courts is subject to constitutional protections of due process and equal protection. (*M.L.B. v. S.L.J.*, 519 U.S. 102@110 (1996)).

Petitioners appealed to the WCA "as of right" per STATS. 808.03(1); it brought before that court all judgments, orders and ruling "adverse to the appellant." STATS. 809.10(4).

If the WCA had issued a four word "Decision" reading: "Plaintiffs-Appellants' appeal is denied," could there be any doubt Plaintiffs would've been denied meaningful appellate review and that such conduct would constitute both

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[171]Contrariwise, "availability of judicial review" is one of eleven essential due process elements. (Friendly, *Some Kind of Hearing*, 123 U. PA. L. REV. 1267@1279-1295 (1975)).

an abdication of appellate adjudicative responsibilities[172] and arbitrary state action? Wis. Const. Art. I, §1 affords protection against arbitrary exercise of government power. *State v. Brown*, 85 Wis.2d 341 (Ct.App. 1978), aff'd 96 Wis.2d 238 (1980).

The WCA's Decision failed and that court, in inexplicably denying the M~Reconsider, refused to even mention and therefore address the following issues and arguments raised by the Petitioners' Appeal as of Right:

1) Their argument from *Parks* and Restatement §25 at Argument II, *supra*.

2) Their argument[173] that, even if Claim Preclusion had *prima facie* applicability, an additional exception prohibits its imposition to the extent imposition constitutes a "Continuing Restraint" on Plaintiffs' religious liberties exercise.

3) Their argument[174] that the Circuit Court made an erroneous finding regarding what Plaintiffs would never litigate.

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[172]SCR 60.04(1)(a), (b) and (hm).

[173]Argument I(B)(3) @ AOB, pp.30-31; ACB, p. 9; M~Reconsider, Point F.

[174]Argument III @ AOB, pp. 45-47; M~Reconsider, Point G.

4) Their argument[175] that the District Court outcome didn't yield a coherent disposition such that Claim Preclusion shouldn't be imposed per Restatement §26(1)(f).[176]

Moreover, notice and hearing are basic elements of the constitutional requirement of due process of law. *Powell v. Alabama*, 287 U.S. 45 (1932). Imposition of sanctions (Argument I, *supra*) on grounds raised *sua sponte* without benefit of oral argument and/or compliance with STATS. 802.05(3)(a)(2)– either of which procedures could've afforded Cross-Respondents due process– coupled with an unreasoned, arbitrary denial of Reconsideration Point H–denied the Petitioners procedural due process.

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[175]Argument I(B)(4) @ AOB, pp. 31-32; ACB, pp. 9-10.

[176] Decision, ¶60, p. 31 incorrectly posits without reasons the §26(1)(f) argument is "merely duplicative."

APPENDIX CC

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

EAGLE COVE CAMP & CONFERENCE CENTER, INC., a Wisconsin non-stock corporation,

ARTHUR G. JAROS, JR., individually, and as Co-trustee of the Arthur G. Jaros, Sr. and Dawn L. Jaros Charitable Trust, and as Trustee of the Arthur G. Jaros, Sr. Declaration of Trust, and as Trustee of the Dawn L. Jaros Declaration of Trust,

WESLEY A. JAROS, as Co-trustee of the Arthur G. Jaros, Sr. and Dawn L. Jaros Charitable Trust,

RANDALL S. JAROS, individually, and as Co-trustee of the Arthur G. Jaros, Sr. and Dawn L. Jaros Charitable Trust,

CRESCENT LAKE BIBLE FELLOWSHIP, a Wisconsin non-stock corporation,

and

KIM WILLIAMSON,

Plaintiffs

vs.

TOWN OF WOODBORO, Wisconsin, a body corporate and politic,

and

COUNTY OF ONEIDA, Wisconsin, a body corporate

and

ONEIDA COUNTY BOARD OF ADJUSTMENT,

Defendants.

AMENDED COMPLAINT

No. 10-CV-118

JURY TRIAL DEMANDED

AMENDED COMPLAINT

Plaintiffs EAGLE COVE CAMP & CONFERENCE CENTER, INC. ("ECCCC"), ARTHUR G. JAROS, JR., WESLEY A. JAROS, RANDALL S. JAROS, CRESCENT LAKE BIBLE FELLOWSHIP ("CLBF"), and KIM WILLIAMSON, by their undersigned attorneys and amending their Complaint as of right pursuant to Federal Rule of Civil Procedure 15(a)(1)(B), complain of Defendants TOWN OF WOODBORO ("TOWN"), COUNTY OF ONEIDA ("COUNTY") and ONEIDA COUNTY BOARD OF ADJUSTMENT ("BOA") as follows:

INTRODUCTION

1. Plaintiffs intend to use certain land owned by the Jaros family for over sixty years and located in the "Northwoods" lakes region of north-central Wisconsin, specifically within the jurisdictions of Defendants TOWN OF WOODBORO and COUNTY OF ONEIDA, as a year-round Bible Camp, which will serve, among others, youth with medical disabilities. The Defendants have unlawfully and unconstitutionally prevented the use and operation of the Bible Camp through their discriminatory laws and a four-year pattern of hostile, capricious and irrational actions. Prohibiting the Bible Camp use outright on the Jaros property and completely from the TOWN OF WOODBORO, while permitting similarly situated uses such as churches, schools, libraries, community buildings, museums and community living arrangements, violates federal and state constitutional protections of religious freedom and of equal protection of the law, the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. §§ 2000cc, *et seq.*, the Rehabilitation Act of 1973, 29 U.S.C. § 794, and the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131, *et seq.*, both on the face of the land use regulations themselves and as

applied by the Defendants. Defendants have further acted in bad faith toward the Plaintiffs by falsely declaring and informing Plaintiffs that their use was permitted on the property as currently zoned as a conditional use (which was the basis for rejecting a rezoning application), thereby inducing them to comply with time-consuming and costly procurement of site-specific permits from the State of Wisconsin (required by the COUNTY OF ONEIDA as a condition of processing the conditional use permit application), only to later inform Plaintiffs that such use was in fact not eligible under the applicable zoning ordinance as a conditional use and rejecting the conditional use permit application on that basis. Finally, Defendants have explicitly taken the position that Bible Camps used as a modality to evangelize is not entitled to the same protection as "churches" and "religious schools," contrary to the Wisconsin Constitution's protection of freedom of worship.

PARTIES

2. Plaintiff EAGLE COVE CAMP & CONFERENCE CENTER, INC. is a non-stock corporation formed under the Laws of the State of Wisconsin on December 27, 2004 under the original name of Squash Lake Christian Camp, Inc.

3. Plaintiff ARTHUR G. JAROS, JR. is a co-trustee of the ARTHUR G. JAROS, SR. AND DAWN L. JAROS CHARITABLE TRUST ("CHARITABLE TRUST"), and successor trustee under the ARTHUR G. JAROS, SR. DECLARATION OF TRUST, and successor trustee under the DAWN L. JAROS DECLARATION OF TRUST.

4. Plaintiff WESLEY A. JAROS is a co-trustee of the CHARITABLE TRUST.

5. Plaintiff RANDALL S. JAROS is a co-trustee of the CHARITABLE TRUST.

6. Plaintiff CRESCENT LAKE BIBLE FELLOWSHIP is a non-stock corporation formed under the laws of the State of Wisconsin.

7. Plaintiff KIM WILLIAMSON is a resident of the Defendant TOWN OF WOODBORO.

8. Defendant TOWN OF WOODBORO is a civil town, possessing its own elected town board and taxing and other powers, and a body corporate and politic under Wisconsin Statutes § 60.01, whose territory is almost but not quite contiguous with that certain regular, geographic township surveyed pursuant to, or in accordance with, the Land Ordinance of 1785 and known as Township 36 North, Range 7 East of the Fourth Principal Meridian of approximately 6 miles square, all lying within the Defendant COUNTY OF ONEIDA.

9. Defendant COUNTY OF ONEIDA is a body corporate under Wisconsin Statutes § 59.01, situated entirely within the State of Wisconsin and within a geographic region densely populated with lakes and forest known as "The Northwoods."

10. Defendant ONEIDA COUNTY BOARD OF ADJUSTMENT is a board authorized by Wisconsin Statutes § 59.694, created by action of the Defendant COUNTY OF ONEIDA.

JURISDICTION AND VENUE

11. The subject matter of this Court is founded upon 28 U.S.C. § 1331 (federal question jurisdiction) in that this action is brought under 42 U.S.C. § 2000cc *et seq.*, 29 U.S.C. §§ 794 & 794a, 42 U.S.C. § 12131, *et seq.*, and 42 U.S.C. § 1983. This Court also has pendent jurisdiction of Counts VIII and XI under 28 U.S.C. § 1367(a) for claims brought, respectively, under the Constitution of the State of Wisconsin and Wisconsin statutes.

12. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) in that all of the events giving rise to the claims herein occurred in this District and Defendants are subject to personal jurisdiction in this District as of the commencement of this action.

FACTUAL ALLEGATIONS

The Bible Camp

13. Since 2004, various of the Plaintiffs have been attempting to develop and use certain property described *infra* as a religious Bible Camp. This use constitutes religious exercise, and is motivated by the Plaintiffs' Protestant evangelical Christian religious faith.

14. Christian Bible camp ministries are a vital form of religious exercise, separate and distinct from organized churches and play key roles in bringing persons to Christian faith and in strengthening and maturing the Christian faith of persons who have already professed Christianity. As described in detail below, an important aspect of the Bible Camp will be to specifically minister to youth suffering from serious disabling medical conditions that preclude them from attending many other established Bible camps.

15. The objectives of the Bible Camp are to provide a year-round Bible camp facility with one principal structure, a multi-function lodge building, that will contain (1) a chapel for worship of the triune God, as understood by the orthodox creeds of the Christian church; (2) classrooms for religious instruction, including topics related to events or occurrences recorded and/or depicted in the Holy Bible; (3) boarding accommodations, primarily in the form of bunkrooms; (4) food service facilities including dining hall and commercial kitchen; and (5) recreational amenities including soccer field(s), softball field, swimming beach, and cross-country ski and walking nature trails. The majority of the Bible Camp's activity will involve evangelism,

worship, prayer, meditation, devotional Scripture reading, discipleship and role-modeling and Christian educational instruction.

16. The Bible Camp's summer season ministry for school age youth will involve their attending on a weekly basis, segregated by gender and age, what are known as Youth Camps.

17. During the non-summer seasons of the year, the Bible Camp will minister mainly to adults and will include the same ministries of worship in the beauty of God's creation, evangelism, discipleship and role-modeling, and education including Christian theology, Christian apologetics and the relation of science to Christian belief.

18. Plaintiffs ARTHUR G. JAROS, JR., WESLEY A. JAROS and RANDALL S. JAROS, ages 59, 56 and 51, respectively, each a resident of the State of Illinois, have their life-long secondary residences at Squash Lake in the TOWN OF WOODBORO, almost immediately adjacent to the SUBJECT PARCEL.

19. Plaintiffs ARTHUR G. JAROS, JR. and RANDALL S. JAROS desire and intend to personally teach Christian education courses at the Bible Camp, both to youth and to adults, in order to exercise their sincere and long-held religious beliefs. The topics of such courses will include: "Bible Survey (Old Testament and/or New Testament)," "The Bible and Law–the Interaction of God's Law and American Civil Law," "Law and Grace–Analyzing the Antinomian Tendencies of Contemporary Protestant Christianity," "The Palestinian-Israeli Conflict–Causes & Solutions from a Multi-faceted Biblical Perspective: Theology, Morality & Law," "Christian Apologetics, Epistemology and Metaphysics (honors high school and older only)," "The Basics of Christianity for Young Children: Using the Holidays as Tools for Understanding the Christian Faith," and "Jesus' Teaching on Divorce and Remarriage–Tough and Overlooked Teachings of

the Lord Jesus Christ and How Couples Engaged to be Married May Implement Them with Force and Conviction." The Bible Camp will provide the Jaros Brothers with a forum of expression in which these Christian theological beliefs will be able to be freely communicated.

20. Plaintiffs ARTHUR G. JAROS, JR., WESLEY A. JAROS, and RANDALL S. JAROS are Trustees of the Arthur G. Jaros, Sr. and Dawn L. Jaros Charitable Trust (the "Charitable Trust"). The Declaration of Faith that forms the basis of the Charitable Trust's policies and is set forth in the charitable trust agreement dated May 15, 2002, states:

DECLARATION OF FAITH

1) We believe in the Scriptures of the Old and the New Testaments as verbally inspired by God and inerrant in the original writing, and that they are of supreme and final authority in faith and life.

2) We believe in one God, eternally existing in three Persons: Father, Son and Holy Spirit.

3) We believe that Jesus Christ was begotten by the Holy Spirit, born of the Virgin Mary, and is true God and true man.

4) We believe that man was created in the image of God; that he sinned, and thereby incurred not only physical death, but also that spiritual death which is separation from God; and that all human beings are born with a sinful nature, and, in the case of those who reach moral responsibility, become sinners in thought, word and deed.

5) We believe that the Lord Jesus Christ died for our sins, according to the Scriptures, as a representative and substitutionary sacrifice; and that all who believe in Him are justified on the ground of His shed blood.

6) We believe in the physical resurrection of the crucified body of our Lord, in His ascension into Heaven, and in His present life there for us, as High Priest and Advocate.

7) We believe in "that blessed hope," the personal return of our Lord

and Savior Jesus Christ.

8) We believe that all who receive by faith the Lord Jesus Christ are born again of the Holy Spirit, and thereby become children of God, having their status before God change from unjust and lost to justified by the gracious imputation of Christ's righteousness.

9) We believe that a child of God, to retain justified status, must diligently endeavor to obey the Commandments of the Lord, must persevere in the profession of Faith and process of sanctification, and must overcome the temptation to be given over to a lifestyle disgraceful to the Lord.

10) We believe in the bodily resurrection of the just and the unjust, the everlasting blessedness of the saved and the everlasting punishment of the lost.

21. Plaintiffs ARTHUR G. JAROS, JR., WESLEY A. JAROS, and RANDALL S. JAROS are the sole directors of the Plaintiff EAGLE COVE CAMP & CONFERENCE CENTER, INC. The Statement of Faith of Plaintiff EAGLE COVE CAMP & CONFERENCE CENTER, INC., adopted during 2006, provides as follows:

1) We believe in the Scriptures of the Old and New Testaments as verbally inspired by God, and inerrant in the original writings, and that they are of supreme and final authority in faith and life. (2 Timothy 3:16, 17; 2 Peter 1:21)

2) We believe in one God eternally existing in three persons: Father, Son and Holy Spirit. (Mark 12:29; 2 Corinthians 13;14; Matthew 28:19, 20, 1 John 5:7)

3) We believe that Jesus Christ was begotten by the Holy Spirit and born of the Virgin Mary and is true God and true man. (Matthew 1:18-20; Isaiah 7:14)

4) We believe that man was created in the image of God, that he sinned and thereby incurred not only physical death, but also spiritual death which is separation from God; and that all human beings are born with a sinful nature, and in case of those who reach moral responsibility, become sinners in thought, word and deed.

(Genesis 1:26; John 5:40, 6:33; Ephesians 2:1-3)

5) We believe that Jesus Christ died for our sins according to the scriptures as a representative, and substitutionary sacrifice, and washed us from our sins in His own blood. All who by faith receive Him as their personal Savior are justified on the ground of His death, burial and resurrection. They are born of the Holy Spirit, and thereby become the children of God. (John 1:12, 3:3-5, 16; 1 Corinthians 15:3-5 Revelation 1:5)

6) We believe in the resurrection of the crucified body of our Lord Jesus Christ, in His ascension into heaven, and His present life there for us as High Priest and Advocate. (Luke 24:36-46; Acts 2:22, 24; 1 Corinthians 15:3-5)

7) We believe in that "Blessed Hope," the personal, pre-millennial and imminent return of our Lord and Savior Jesus Christ for His redeemed ones; and in His subsequent pre-millennial return to earth with His saints, to establish His millennial kingdom. (John 14:1-3; Acts 1:11; Luke 12:40; 1 Thessalonians 4:13-18; Revelation 19:11-16, 20:1-6)

8) We believe in the bodily resurrection of the dead; the saved to eternal life and blessedness, the unsaved to eternal conscious suffering and woe. (John 5:28-29; Revelation 20:4-5, 12-13; 1 Corinthians 15:51-53)

9) We believe in the preaching of the gospel to every person, and the edification of the individual members of the body of Christ. (Matthew 28:18-20; Acts 1:8)

22. The Bible Camp would be operated in accordance with the Statement of Faith described above.

23. EAGLE COVE CAMP & CONFERENCE CENTER, INC. and the JAROS CHARITABLE TRUST are both charitable organizations approved by the United States of America, Department of the Treasury, Internal Revenue Service, as private foundations, with the former being additionally designated as a private operating foundation.

24. Plaintiff CRESCENT LAKE BIBLE FELLOWSHIP has directly or indirectly

operated its own Bible camp under the name Crescent Lake Bible Camp ("CLBC") situated in the Town of Crescent, County of Oneida, Wisconsin since the 1930's. The Town of Crescent is adjacent to the TOWN OF WOODBORO.

25. CRESCENT LAKE BIBLE FELLOWSHIP has for many years devoted most of the summer season to what are known as Family Camps, where entire families come to be nurtured, as families, in Christian growth and discipleship.

26. In recent years, Plaintiff CRESCENT LAKE BIBLE FELLOWSHIP desired to expand its ministry to provide for Youth Camp ministries during the entire summer season.

27. CRESCENT LAKE BIBLE FELLOWSHIP lacks the physical capacity at its own facility in the Town of Crescent in the COUNTY OF ONEIDA to accommodate and serve those interested in Christian camping and in particular to meet the needs of youth campers.

28. CRESCENT LAKE BIBLE FELLOWSHIP intends to serve youth with medical disabilities and their families, and intends to devote several weeks over the summer for such camps.

29. In order to accomplish its own Youth Camp ministry objective, Plaintiff CRESCENT LAKE BIBLE FELLOWSHIP entered into an Operating Agreement with the CHARITABLE TRUST and EAGLE COVE CAMP & CONFERENCE CENTER, INC. in August, 2006. In accordance with the agreement, CRESCENT LAKE BIBLE FELLOWSHIP will provide staff and programming services for the proposed Bible Camp.

30. CRESCENT LAKE BIBLE FELLOWSHIP intends to serve youth with medical disabilities at the Bible Camp because the type of construction planned for the Bible Camp permits the accommodation of such youth with special needs. CRESCENT LAKE BIBLE

FELLOWSHIP's current facilities at Crescent Lake cannot accommodate such youth because of its age and the construction types of the camp buildings.

31. The operation of the Bible Camp will be pure religious exercise including evangelism, worship, devotional reading of the Holy Scriptures, prayer and meditation, discipleship and role-modeling and wholesome recreation in the beauty of, and therefore permitting reflection on and thankfulness for, God's Northwoods creation.

32. The Operating Agreement, which references Eagle Cove Camp & Conference Center, Inc. by its original name, namely, Squash Lake Christian Camp, Inc. ("SLCC"), contains a doctrinal statement of faith and further states, *inter alia*:

- "All programming by CLBC will be in accordance with the Camp's doctrinal statement."
- "It will be the intention of CLBC and SLCC to attract unbelieving campers to the camp and communicate the Gospel of Jesus Christ to them in hope that they will accept Him as their personal Savior and make Him the Lord of their lives."
- "It will be the intention of CLBC and SLCC to attract campers from all denominations and faiths for the purpose of instructing them in actual righteousness (i.e., holy living) and faith according to God's Word."
- "All instructors including counselors and any camp chaplain shall profess this Statement of Faith."

33. The Operating Agreement states that the purpose of the Bible Camp is to "carry[] on, thereon, based on the teachings of God's Word, a Christian Bible Camp within that certain Protestant tradition within the Christian religion broadly described and known as 'evangelical' for the purposes of evangelizing non-Christians, providing opportunities to worship the triune God in the special setting of the beauty of His Northwoods creation and with due consideration and respect for the residents of Squash Lake, fostering discipleship and sanctification and equipping

Christians for the work of ministry and for the apologetics task . . . ."

34. KIM WILLIAMSON has been and is presently employed at the CRESCENT LAKE BIBLE CAMP but desires to be employed at the proposed Bible Camp. Her principal motivation to do so is her personal desire, as an evangelical Christian, to minister to youth who have special needs.

35. The Bible camp will attract and serve youth and adults from throughout the State of Wisconsin as well as the Twin Cities area of the State of Minnesota and the metropolitan areas of northern Illinois including greater Chicago and Rockford.

36. In furtherance of Plaintiffs' mission to serve campers with serious disabling medical conditions, the Bible Camp would have a climate-controlled environment that would be of particular importance to campers whose conditions create respiratory, cardiac or other problems when exposed to uncontrolled outdoor environments. Heat, cold or humidity would not affect a camper's experience when they have an environmentally protected space if weather conditions would affect their health. Dust, mold or other outdoor irritants can be controlled, offering relief to the campers.

37. The Bible Camp would include an indoor recreation area that would allow recreation and learning when outdoor conditions are not healthy or safe for campers with serious disabling medical conditions. A planned greenhouse will allow the Bible Camp to bring the outdoors inside to teach outdoor education programs to children who cannot go outside because of their disabilities. A library and classrooms enable teaching biblical principles to those whose handicaps prevent them from receiving such instruction outside.

38. The Bible Camp would have paved pathways. Mobility is frequently a problem for

a medically challenged camper, and the pathways to the lake and recreation areas will be safe for the unstable camper to walk on and would allow wheelchair access that dirt paths would not. It also will provide a transportation system featuring a self-propelled rail car providing ADA-acceptable mobility to and from the parking lot and recreation areas. Golf carts will be available to serve the campers on the paved pathways. ADA-compatible elevators will be available to transport children who are unable to use stairs. Restrooms will be ADA-certified providing all the room and handles that a disabled child would need to negotiate effectively.

39. The Bible Camp would also provide a Medical Facility/Nurses Station that can be designed to provide the needs of a first responder, if a camper required medical emergency treatment. It would also have a security system controlling corridors and rooms, allowing notification in case of a medical emergency. Access is controlled by security codes and alarms, further protecting the camper from unwanted guests, a concern for children who cannot physically protect themselves.

40. The Bible Camp's food service area will store and prepare special dietary products required by the campers.

41. The aforementioned design features will allow the Bible Camp to serve youth who suffer from medical disabilities that limit their mobility and/or prevent them from safely engaging in a wide variety of activities in the outdoors. These individuals are unable to attend most other Bible camps. Upon information and belief, after investigation, the Plaintiffs believe that there are no Bible camps in the upper Midwest that have the facilities for Christian programming, where the Gospel is presented and hope can be imparted to youth and their families who are struggling with questions about life and their medical conditions, and meet the needs of children with

medical disabilities that Eagle Cove Camp would provide. There are very few camps of any kind that deal with children who have serious medical problems, such as cancer, heart and lung problems.

42. Based on the foregoing, the Plaintiffs believe that many disabled children are unable, because of their disabilities, to find access to Bible camp services in other locations. Under those circumstances, the Defendants' actions in refusing to make a reasonable accommodation to their zoning scheme to permit the Plaintiffs to operate the Bible Camp prevents seriously medically disabled children from accessing Bible camp services by reason of their disabilities, in violation of the Americans with Disabilities Act and the Rehabilitation Act.

The Subject Property

43. Plaintiff EAGLE COVE CAMP & CONFERENCE CENTER, INC. presently owns and at all relevant times has owned approximately 29 acres lying entirely within the Town of Woodboro, having between 550 and 600 feet of lake frontage on Squash Lake, an approximately 400-acre clear water publicly owned inland lake, and is directly served by United States Highway Route 8, a main east-west artery across northern Wisconsin. The western portion of Squash Lake lies in the Defendant Town of Woodboro and the eastern portion lies in the Town of Crescent, both towns lying within the Defendant County of Oneida.

44. There is held in the CHARITABLE TRUST approximately 5 acres, consisting principally of a large natural ravine (the "Amphitheater") contiguous to the aforesaid 29 acres.

45. The 29 acre parcel and the 5 acre parcel are devoted to the exclusive use of the Bible Camp and are hereinafter referred to as "Exclusively Charitable Acres." A substantial

portion of the Exclusively Charitable Acres lies greater than 1000' from the ordinary high water mark of Squash Lake.

46. Plaintiff Arthur G. Jaros, Jr., as trustee of the Jaros Family Trusts, also owns approximately 25 acres, adjacent and immediately to the north of the Exclusively Charitable Acres, which 25 acres have in excess of 1800 feet of additional lake frontage on Squash Lake and are intended to be made available on a non-exclusive basis to EAGLE COVE CAMP & CONFERENCE CENTER, INC. to provide additional open space for various of the Bible Camp's purposes set forth above.

47. Together, the approximately 34 Exclusively Charitable Acres and the 25 acres owned by the Jaros Family Trusts are referred to as the "Subject Property" or "Subject Parcel."

48. The eastern portion of the Exclusively Charitable Acres is rugged and heavily wooded with two ridges running approximately parallel to the shore of Squash Lake. The western portion of the Exclusively Charitable Acres consists of flat field along with "the Amphitheater," the bottom of which is dry even though below the surface of Squash Lake.

49. The Subject Property is particularly well-suited for a Bible camp land use.

50. Plaintiff Arthur G. Jaros, Jr., as trustee of the Jaros Family Trusts, has agreed to add approximately one (1) acre to the Exclusively Charitable Acres in order to accommodate the placement of the multi-function lodge and an ancillary structure away from the nearest residential neighbors to the south by being detached via conveyance from the adjacent property held in the Jaros Family Trusts, upon the securing of the requisite land use approvals.

51. In order to minimize impact to the environment, the parking lot for the Bible camp, instead of being located on rugged, heavily wooded acres near the multi-function lodge, has been

located adjacent to U.S. Highway 8, which will provide direct ingress and egress for the Camp; ordinary access to the multi-function lodge from the parking lot will be on foot or by an accessible, standard gauge self-propelled railcar operating on an insular short-line railroad to be constructed on the Exclusively Charitable Acres.

The Applicable Land Use Regulations and Existing Land Uses

52. Plaintiffs are subject to the laws and regulations of the Defendants COUNTY OF ONEIDA and TOWN OF WOODBORO in the use of the Subject Property.

53. The Defendant TOWN OF WOODBORO, by its electorate, has chosen to possess "Village Powers," pursuant to Wisconsin Statutes §§ 60.10(2)(c) and 60.22(3).

54. As a result, the TOWN OF WOODBORO is empowered to engage in land use planning pursuant to Wisconsin Statutes §§ 60.22(3), 61.35, and 62.23.

55. On November 11, 1997, the TOWN OF WOODBORO adopted (and subsequently revised on January 13, 1998 and February 4, 1998) its own Land Use Plan ("1997 WB~LUP") containing "Goals and Policies" and a land use map with respect to land use within its jurisdiction and which serves as a guide for local officials to coordinate future development of the TOWN, pursuant to Wisconsin Statutes §§ 60.62(4) and 62.23(2).

56. The 1997 WB~LUP provided that "The Zoning Map under Oneida County Zoning for the Town of Woodboro should be amended to reflect the land use plan map."

57. Pursuant to Wisconsin Statutes § 59.69(1), the Defendant COUNTY OF ONEIDA's zoning scheme for property lying within the TOWN OF WOODBORO was required to "incorporate" the TOWN's 1997 WB~LUP.

58. The 1997 WB-LUP made no reference to religious use anywhere within the TOWN OF WOODBORO. The 1997 WB-LUP was never amended to reflect any requirements of the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. § 2000cc *et seq.*

59. During the first half of 2000, the Defendant COUNTY OF ONEIDA adopted, pursuant to Wisconsin Statutes § 59.69(5)(d), a comprehensive revision to its existing zoning ordinance, such revision being titled the "Oneida County Zoning and Shoreland Protection Ordinance" ("OCZSPO") effective no earlier than May 15, 2000, and containing the permitted-as-of-right uses by district, discretionary (*i.e.*, administrative review and conditional) uses by district, and zoning map applicable to the dispute which is the subject of this civil action.

60. Under Wisconsin law, Wisconsin Statutes § 59.69(5)(c)-(d), neither a county's initial zoning ordinance nor any comprehensive revision thereto (*e.g.*, the OCZSPO) is allowed to take effect in any Town, including the Defendant TOWN OF WOODBORO, in existence pursuant to Article IV, Section 23 of the Wisconsin Constitution and subject to Chapter 60 of the Wisconsin Statutes until and unless the Town agrees to adopt, and be bound by, same.

61. By its Resolution dated May 8, 2001, the TOWN OF WOODBORO approved and agreed to be bound by the COUNTY OF ONEIDA's OCZSPO including the zoning districts and zoning map provided for thereby. The Resolution states in part:

> **WHEREAS**, the Oneida County Planning and Zoning Committee proposed a comprehensive revision to the Oneida County Zoning and Shoreland Protection Ordinance as Resolution #35-2000/Ordinance Amendment #597; and
>
> **WHEREAS**, the Oneida County Board of Supervisors did enact Ordinance Amendment #597, Resolution #35-2000 on April 3, 2000; and
>
> **WHEREAS**, Section 4 of Ordinance Amendment #597 states, in part "For all towns in Oneida County, approval of the comprehensive revision shall

> be accomplished by the passage of a resolution and the filing of a certified copy of the resolution approving the comprehensive revision with the County Clerk."
>
> **NOW, THEREFORE, BE IT RESOLVED THAT** the Town Board of the Town of Woodboro does hereby accept and approve Oneida County Ordinance Amendment #597 and will uphold all provisions of said ordinance therein.

The TOWN OF WOODBORO therefore has approved: (i) the zoning districts and zoning map for the TOWN contained in the OCZSPO at the time of the TOWN's aforesaid May 8, 2001 resolution; and (ii) COUNTY OF ONEIDA's enforcement of land use regulations within the TOWN OF WOODBORO's jurisdiction.

62. Under Wisconsin law, the Defendant TOWN OF WOODBORO possesses veto power over any rezoning of property, other than shoreland areas (which shoreland areas include land within 1000' of the ordinary high water mark of Squash Lake), within its jurisdiction otherwise approved by the Board of Supervisors of the Defendant COUNTY OF ONEIDA, pursuant to Wisconsin Statutes §§ 59.69(5)(e)(3) and (e)(6), by taking preliminary disapproval action and by taking final disapproval action within 40 days of County Board approval.

63. During early 2009, the TOWN OF WOODBORO was engaged in adoption of a Comprehensive Plan pursuant to Wisconsin Statutes § 66.1001(a)(2).

64. That TOWN OF WOODBORO's Comprehensive Plan was required by § 66.1001(2)(h) to have a "land-use element."

65. That Comprehensive Plan, as proposed and submitted to the public for comment, stated:

> The Town will maintain the existing Land Use Plan (adopted November 11, 1997), which will serve as a guide for future land use and zoning

decisions

and

> [t]he Town will actively participate in zoning and subdivision review decisions at the County level, which affect the Town. This includes zoning amendment and subdivision requests acted on by the County Planning and Zoning Committee, as well as variance and conditional use requests acted on by the County Zoning Board of Adjustment. This plan will be cited as the basis for all such actions including 'disapproval' of proposed zoning amendments under § 59.69 Wisconsin Statutes.

66. Plaintiff EAGLE COVE CAMP & CONFERENCE CENTER made written objection in early 2009 to the continuing omission from the TOWN OF WOODBORO's land use plan of any religious uses.

67. Such objection was ignored or rejected and the TOWN OF WOODBORO's Comprehensive Plan, including its incorporation by reference of the 1997 WB~LUP, was adopted by the TOWN OF WOODBORO's governing board on April 14, 2009.

68. In the context of one of Plaintiffs' land use applications, the Planning & Zoning Committee of the Defendant COUNTY OF ONEIDA on June 14, 2006 stated in the Committee's making of "Findings, which is basically a checklist of questions":

> Has the Town of Woodboro adopted a land use plan?
>
> Comments
> Committee unanimously agrees that the Town of Woodboro has adopted a land use plan.
> "YES"
>
> In what manner is the requested rezone consistent and/or inconsistent with the Land Use Plan of the Town of Woodboro?
>
> Comments
> Mr. Scott Holewinski, "I would feel that the requested rezone is inconsistent with the Land Use Plan of the Town of Wooboro [sic]."
>
> Full consensus by the committee.

69. The TOWN OF WOODBORO has appointed a Town Plan Commission, pursuant to Wisconsin statutes. The Defendant TOWN OF WOODBORO's Plan Commission (sometimes referred to by one or more of the Plaintiffs as the TOWN OF WOODBORO's "Land Use Committee") holds public proceedings on Petitions for Rezoning, and issued recommendations to the TOWN's Board on the same.

70. The Defendant TOWN OF WOODBORO's Town Board holds public proceedings on Petitions for Rezoning.

71. Defendant ONEIDA COUNTY BOARD OF ADJUSTMENT is a board authorized by Wisconsin Statutes § 59.694. It was created by action of the Defendant COUNTY OF ONEIDA to, among other things, hear appeals from denials of applications for conditional use permits from the Defendant COUNTY's Planning & Zoning Committee, and is suable and liable in civil litigation for a judicial award of costs pursuant to Wisconsin Statutes § 59.694(10) and (14), respectively.

72. The southwest portion of the Subject Property is designated "Residential and Farming" (District 4) under the OCZSPO. The remainder of the Subject Property is designated "Single Family Residential" (District 2) under the OCZSPO.

73. The District 2 "Single Family Residential" zoning district under the OCZSPO allows the following uses, among others, as of right:

- Single family dwellings including long-term single-family rental and lease arrangements requiring a 30 consecutive day minimum length of stay.
- Community and other living arrangements as allowed by sec. 59.69, Wis. Stats., that are properly licensed by the appropriate

state agency and that have the capacity for eight or fewer persons.

74. Uses permitted as of right in District 4 "Residential and Farming" include all of the uses permitted as of right in District 2.

75. The District 2 Single Family Residential zoning district permits the following uses by administrative review or conditional use permit:

- Cemeteries
- Day care centers if a home occupancy, and only in accordance with provision of the ordinance pertaining to home occupations
- Telephone and public utility lines and transmission facilities and governmentally-owned or governmentally-contracted communication structures
- Bed and breakfast establishments with no limit on the number of guest rooms
- Churches
- Schools
- Libraries
- Community buildings
- Museums
- Community living arrangements with no limit on the number of residents
- Governmental uses without limitation
- Public parks and playgrounds of unlimited size

76. Uses authorized by administrative review or conditional use permit procedure in District 4 include all of such administrative review or conditional uses authorized for District 2 plus the following:

- Boarding and lodging houses;
- Tourist rooming house (1 rental unit);
- Hospitals;
- Sanitariums;
- Clinics;
- Convalescent and nursing homes not including correctional institutions;
- Multiple family dwellings of an unlimited number of units;
- Golf grounds;
- Commercial agriculture, horticulture and farming operations;
- Commercial stables or riding academies;
- Airports and landing fields;
- Trap and skeet shooting and rifle, pistol, and archery ranges;
- Contractor storage yards;
- Retail or wholesale business;
- Non-metallic mining;
- Metallic mineral exploration;
- Dog kennels and/or cat boarding facilities;
- Certain animal shelters;
- Certain wildlife rehabilitation centers;
- Veterinary clinics or animal hospitals;
- Communication structures subject to Section 9.54 of the Ordinance.

77. The zoning ordinance contains the terms "church" and "school" for which no definitions are provided within the OCZSPO, including in its Article X, "Definitions."

78. Under Wisconsin law, "Schools" may include dormitories to house students as part of the principal use or as an accessory use to the principal use.

79. Both "Schools" and "Churches" may include recreational facilities as part of their principal use.

80. Processing of applications for Administrative Review Use and Conditional Use Permits are individualized assessments resulting in the discretionary approval or disapproval of the application either by the Department (in the case of an Administrative Review Use) or, in the case of a Conditional Use, by the COUNTY OF ONEIDA's Planning & Zoning Committee, which consists of certain members of the elected County Board of Supervisors, with participation, as alleged within paragraph 65, *supra*, and as provided for by § 9.42(B) of the OCZSPO, by the TOWN OF WOODBORO.

81. Applications for rezoning parcels of land are individualized assessments involving the discretionary approval of the COUNTY OF ONEIDA and TOWN OF WOODBORO.

82. Neither the District 2 zoning district nor the District 4 zoning district permits "Bible camps," "recreational camps," or any other camps, whether as of right or by administrative review or conditional use permit.

83. Only the following zoning districts exist within the Town of Woodboro: (1) District 1-A Forestry; (2) District 2 Single Family Residential; (3) District 4 Residential and Farming; (4) District 7 Business B-2; (5) District 8 Manufacturing and Industrial; and (6) District 15 Rural Residential.

84. There is no zoning district within the Town of Woodboro that permits year round Bible camps or year round recreational camps.

85. The Plaintiffs' proposed use of the Subject Property as a year round Bible camp is prohibited outright on the Subject Property, prohibited everywhere else within the District 2 and District 4 zoning districts, and prohibited everywhere else in the Town of Woodboro.

86. While Wisconsin statutory law expressly recognizes "Bible camps" (Wis. Stat. § 70.11(11)) as a separate modality of religious exercise, the OCZSPO, as adopted, does not utilize the term "Bible camp," or permit land use expressly denoted as a "Bible camp" anywhere within its jurisdiction, and does not expressly recognize Bible camps as a separate modality of religious exercise.

87. The land use denoted year-round "recreational camps" is permitted in certain locations outside of the TOWN OF WOODBORO within the COUNTY OF ONEIDA only as Administrative Review or Conditional Uses but are nowhere permitted as of right in areas subject to the OCZSPO. More specifically, the OCZSPO permits year-round "recreational camps" as Administrative Review or Conditional Uses only in District 5 "Recreational" or District 10 "General Use."

88. The zoning map promulgated by the COUNTY OF ONEIDA for application to the TOWN OF WOODBORO does not contain any land zoned District 5 or District 10 within any of the Town's approximately 36 square miles. As such, year round Recreational Camps are not provided for by the OCZSPO anywhere within the Defendant TOWN OF WOODBORO.

89. Article X of the County's OCZSPO provides the following definition of "Recreation Camps":

> Areas of land improved with buildings or tents, and sanitary facilities used for the accommodation of groups for educational or recreational purposes.

90. Throughout the Defendant COUNTY OF ONEIDA's jurisdiction, what little "District 5, Recreational" land exists almost always abuts, in whole or in part, Single Family District 2 land.

91. Various other properties fronting Squash Lake, some in the TOWN OF WOODBORO and some in the adjacent Town of Crescent, are zoned for B-1 and/or B-2 Business Use (Districts 6 and/or 7). These uses include three for-profit apartment buildings and several rental houses in the TOWN OF WOODBORO.

92. Approximately 20 acres of property consisting of a peninsula extending into Squash Lake approximately 1,000 feet directly to the east of the SUBJECT PARCEL lying in the Town of Crescent is zoned by the COUNTY OF ONEIDA for Business Use.

93. The COUNTY OF ONEIDA and TOWN OF WOODBORO have previously jointly approved a public park that, like the Subject Parcel, abuts both the governmentally owned right-of-way on which U.S. Highway 8 lies and the shore of Squash Lake and that lies in a Single Family Residential District (District 2) entirely within the TOWN OF WOODBORO.

94. There are at least four lakefront lots located on Hancock Lake within the TOWN OF WOODBORO that are zoned "Business" and are located adjacent to parcels zoned residential.

95. Current land uses in the Town of Woodboro include one (1) acre of "Government/Institution," twenty-nine (29) acres of "Commercial," and three (3) acres of "Outdoor Recreation" (being a public park at Perch Lake located inside the Oneida County Forest), which constitute 0.004%, 0.013%, and 0.122% of the land in the Town, respectively.

Applications to Use the Property

96. The Plaintiffs have spent more than four years applying for rezoning and conditional use permits to allow them to use the Subject Property as a year round Bible Camp. They have exhausted all available legislative and administrative means of converting fallow (apart from occasional haying and timber removal) real estate—which has been controlled by the three Jaros Brothers and their ancestors for six decades—located in the TOWN OF WOODBORO to a developed year round Bible Camp. The Defendants collectively have now, as of February 11, 2010, taken final actions that deny the Plaintiffs such use and leaving Plaintiffs with no recourse other than seeking judicial relief.

97. In the context of such efforts, the Defendants have acted arbitrarily and capriciously, demonstrating both (i) great hostility to the proposed use and to the Plaintiffs, and (ii) the Defendants' determination that such use will never be permitted. The Defendant COUNTY OF ONEIDA arbitrarily changed its position on the permissibility of the Plaintiffs' proposed use, first stating that the land would need to be rezoned, then denying a petition for rezoning based on its position that rezoning was unnecessary as the use would be permitted as a conditional use under current zoning, and finally denying the conditional use permit based on a determination that it was not a permissible conditional use under current zoning.

98. Petition for Rezoning (May 2005 to August 2006). On May 20, 2005, the Defendant COUNTY OF ONEIDA's Planning Manager Steven Osterman informed Plaintiff ARTHUR G. JAROS, JR. that, in order to operate the Bible Camp on the Subject Property, the Property would need to be rezoned from "District 2, Single Family" (applicable to all of the

acreage abutting the lake) and from "District 4, Farming and Residential" (applicable to some of the land abutting U.S. Highway 8) to either "District 5, Recreation" or "District 10, General Use."

99. Under the ordinances of the Defendant COUNTY OF ONEIDA, its Planning Manager has authority to enforce the OCZSPO pursuant to Section 9.80(C)(2) thereof.

100. On December 13, 2005, the EAGLE COVE CAMP & CONFERENCE CENTER, INC., then known under its original name of Squash Lake Christian Camp, Inc. and the CHARITABLE TRUST filed a Petition to Rezone the Exclusively Charitable Acres to "District 5, Recreation District" with the Defendant COUNTY OF ONEIDA, subject to the TOWN OF WOODBORO's veto over the portion of the Exclusively Charitable Acres greater than 1000 feet from the ordinary high water mark of Squash Lake.

101. The Defendant TOWN OF WOODBORO's Plan Commission (sometimes referred to by one or more of the Plaintiffs as the TOWN OF WOODBORO's "Land Use Committee") held public proceedings on the Petition for Rezoning on February 7, 2006 and February 20, 2006. In February 2006, the TOWN OF WOODBORO's Plan Commission members consisted of Kurt Zalewski, Sherry Tischendorf, Pat Zatopa, Mike Barnes and Virginia Amerena.

102. The TOWN OF WOODBORO's Plan Commission held the authority to make a recommendation to the Defendant TOWN OF WOODBORO's elected Town Board. On February 20, 2006, the Plan Commission adopted a negative recommendation concerning the Petition for Rezoning.

103. The Town Board of the Defendant TOWN OF WOODBORO, then comprised of Mike Barnes, Kurt Zalewski and Sue Johnson, conducted proceedings on the said Petition on March 14, 2006, April 18, 2006, and May 11, 2006.

104. On April 19, 2006, the Planning & Zoning Committee of the Defendant COUNTY OF ONEIDA conducted a public hearing on the Petition for Rezoning.

105. The Defendant TOWN OF WOODBORO adopted and submitted to the COUNTY OF ONEIDA Planning and Zoning Committee a formal Recommendation dated May 15, 2006 that the Committee deny the petition to rezone.

106. In early August 2006, the Defendant COUNTY OF ONEIDA's Planning & Zoning Committee formally recommended denial of the rezoning petition by the full 21-person elected County Board of Supervisors by the Committee's formal Report dated August 2, 2006 which memorialized and incorporated the results of that Committee's "deliberative session" held on June 14, 2006.

107. The Defendant COUNTY OF ONEIDA's Planning & Zoning Committee ("Committee") stated and found at its June 14, 2006 deliberative session on the rezoning petition that the Plaintiffs "could achieve most or all of their stated objectives" without the petitioned-for rezoning but rather "[b]ased on the current zoning of the parcel subject to the re-zone request" as a conditional use or uses and echoing the Report dated June 13, 2006 jointly issued by Steve Osterman, Planning Manager of the Oneida County Planning & Zoning Department of the Defendant COUNTY and Karl Jennrich, Zoning Director of the Defendant COUNTY and executive head of the said Department stating: "It is staff's position that the proposed rezone is unnecessary . . . ."

108. The "objectives" of the rezone petitioners which had been "stated" to the Committee by the rezoning petitioners were the development and operation of a year-round Bible Camp located on the Exclusively Charitable Acres which included having one principal structure:

a multi-function lodge containing chapel, classrooms for religious instruction, boarding and food service accommodations for campers, and recreational facilities.

109. On June 14, 2006, the Defendant COUNTY OF ONEIDA's Planning & Zoning Committee also found that "there would be no delay, uncertainty or added expense born [sic] by the parties seeking this rezone" "given that 'religious exercise' is allowed on the property with a conditional use permit in the districts that the property is currently zoned." The County did not state that the Plaintiffs' proposed form of religious exercise would not be permitted by a conditional use permit on the Exclusively Charitable Acres.

110. Also on June 14, 2006, the Defendant COUNTY OF ONEIDA's Planning & Zoning Committee stated on the record that the Plaintiffs can "have a church and also have living quarters and . . . exercise their religion." Defendant COUNTY OF ONEIDA thus changed its position from its May 20, 2005 statement that rezoning the Exclusively Charitable Acres to District 5 or District 10 would be necessary in order to use it for a year-round Bible Camp. The Defendant COUNTY OF ONEIDA's Planning & Zoning Committee stated on the record that it had previously approved Conditional Use Permit applications in Single Family/Residential districts for religious entities which allowed for playground type areas, park type areas, meeting rooms, and classrooms.

111. On August 11, 2006, ARTHUR G. JAROS, JR. sent a letter to the Defendant COUNTY OF ONEIDA's Board of Supervisors' Chairman Andrew Smith, with copies to various other members of the Board of Supervisors and to Planning & Zoning Department Director Karl Jennrich, which stated in part:

> For the first time at the Planning and Zoning Committee meeting on June 14, statements were made by certain individual Supervisors who serve as

committee members that based on current zoning, we, the petitioners could "achieve most or all of their stated objectives [plural]." (See, proposed finding #9). Such a statement had never been made to us by Staff of the Department. Moreover, we have only one overall stated objective: development of a Bible camp. One of those Supervisors, namely Committee Chairman Metropulos, opined without explanation or reference to your zoning ordinance that we "can have a church and also have living quarters[3]." (See, comment to proposed finding #3). Another committee member, Mr. Holewinski, twice commented that religious exercise of some sort is allowed by current zoning but "maybe not to the magnitude that they would want ... " (See, comments to proposed findings #3 and #9). Unfortunately, Mr. Holewinski did not provide any details of his surmise (we say, "surmise" because of his own use of the word "maybe") as to what components of the Bible camp we seek are not allowed by current zoning and therefore left the matter vague.

[3]What Mr. Metropulos' basis is for asserting we can have living quarters under present zoning remains a mystery. We understood that we were not permitted to seek clarification during the committee meeting because this statement was made during the deliberative phase of that meeting.

Immediately following the June 14 Committee meeting and directly contrary to Mr. Metropulos' comment on "living quarters" reproduced in the comment to proposed finding #3, Mr. Jennrich stated to me inside the same committee room that he had doubts that living quarters for Bible campers could be the subject of a building permit without a change in zoning classification.

If it is now the County Board's position that a Bible camp including chapel, religious classrooms, recreational areas including both playing fields for activities such as soccer and softball and nature and cross-country ski trails, food service and sleeping accommodations for campers is allowed under existing zoning, then please make that clear to us by formal action of the County Board. We may then conclude that the Board is placing a far different interpretation on the zoning ordinance than that placed on it by the Staff. We would also then conclude that we have wasted the better part of a year in going through unnecessary rezoning proceedings despite being directed to do so by Staff. Of course, we would also need to know under what specific provisions of the zoning ordinance our Bible camp is currently allowable (e.g., as a "church," as a "school" or as something else) so that we may know how to apply for a building permit as a permitted use, administrative use or conditional use.

> (Again, as both we and the Staff have read the County's zoning ordinance, only "churches" and "schools"-- neither of which is afforded a definition within Article 10--are potential religious uses, with a C.U.P., of our lands under current zoning but a Bible camp, providing for housing for short term campers and providing for significant private playground areas is not.)
>
> ***
>
> Accordingly, we urge the County Board not to adopt the proposed findings in their present form and request clarification as set forth above.

112. No response which expressly referenced the aforesaid letter of August 11, 2006, was issued by Chairman Smith or anyone else on behalf of the Defendant COUNTY to the request for clarification contained in that letter.

113. On August 15, 2006, the Defendant COUNTY OF ONEIDA's Board of Supervisors accepted the recommendation of its Planning & Zoning Committee and denied the Petition to Rezone by a vote of 20 to 0, with 1 member not voting.

114. Hostility and opposition to the proposed Bible Camp which preceded the aforesaid denial was rife within the surrounding community. Examples of such hostility included:

- In late December, 2005, an anonymous letter was circulated without the knowledge of any of the Plaintiffs among various local landowners.
- A membership organization called the "Squash Lake Association" was formed at least in part to become available as a platform for opposing (as the Association, in fact, thereafter did) the proposed Bible Camp.
- Virginia Amerena, a member of the TOWN OF WOODBORO's Plan Commission, an owner of property adjacent to the Exclusively Charitable Acres, and an avowed opponent of the Bible Camp, was instrumental in incorporating the aforesaid Squash Lake Association.

- Public opposition to the Bible Camp was manifest by extensive written submissions to the TOWN and to the COUNTY OF ONEIDA by riparian property owners during January-March, 2006.

- Public opposition to the Bible Camp was expressed at the County's public hearing conducted by the Committee on April 19, 2006 on the petition to rezone.

- The Committee expressly found on June 14, 2006, that there was "overwhelming" community opposition to the Petition to Rezone.

115. In making and incorporating into their decision the aforementioned express finding that there was overwhelming community opposition to the Petition to Rezone, the Committee members violated their oath of office and abridged Plaintiffs' constitutionally protected rights by adopting private biases and hostility.

116. Application for Conditional Use Permit (Late Summer, 2006 through February 11, 2010). In reliance on the Defendant COUNTY OF ONEIDA's finding on June 14, 2006, that the Plaintiffs could achieve "most or all of [our] stated objectives" and can "have living quarters and . . . exercise their religion," the Plaintiffs began the process for applying for a Conditional Use Permit.

117. During late summer and early autumn of 2006, the Plaintiffs interviewed teams of architectural and engineering firms for the purposes of formulating the specifics required by the Defendant COUNTY's instructions for completing an Application for a Conditional Use Permit. Plaintiffs retained the services of the Wausau-based firm of Becher-Hoppe which, in turn, engaged various sub-contractors including the Madison-based landscape architectural firm of Ken Saiki Design.

118. The cost to prepare and to prosecute before the Defendant COUNTY and

Defendant BOARD the site-specific Application for Conditional Use Permit was approximately $205,000 exclusive of time devoted by the principals of EAGLE COVE CAMP & CONFERENCE CENTER, INC. including its attorney ARTHUR G. JAROS, JR.

119. On December 29, 2006, the Plaintiffs filed their Application for a Conditional Use Permit with the Defendant COUNTY OF ONEIDA's Planning & Zoning Department.

120. Upon receipt of the Application by the County, its Planning & Zoning Department refused to forward the Application to the Planning & Zoning Committee for consideration but instead required that the Applicants obtain several site specific permits from various departments of the State of Wisconsin, including:

- For a potable water well (from the Wisconsin Department of Commerce);
- To construct a private onsite wastewater treatment system ("POWTS") (from the Wisconsin Department of Commerce with concurrence from the Wisconsin Department of Natural Resources);
- For operation (*i.e.*, discharge into the ground) from such POWTS (from the Wisconsin Department of Natural Resources);
- For ingress and egress directly from U.S. Highway 8 (from the Wisconsin Department of Transportation)
- For grading of land within 1000' of Squash Lake (from the Wisconsin Department of Natural Resources).

121. While § 9.42(A)(1) of the OCZSPO provides that an Application for a Conditional Use Permit be "reviewed by the Zoning Administrator for completeness," the published instructions for completeness of such an Application did not require, as a condition of completeness, actual procurement of site-specific State permits for a potable water well, for construction of a POWTS, for operation of such POWTS, or for a DOT permit for ingress and

egress. The published instructions for an Application for a Conditional Use Permit did require a grading permit from the Wisconsin Department of Natural Resources.

122. By letter dated February 1, 2007, the Defendant COUNTY OF ONEIDA's Planning Department required that the Plaintiffs obtain such permits:

> This Department has had an opportunity [to] review your conditional use permit application. This initial review has deemed your application incomplete for the following reasons. Pursuant to Section 9.42A(2) of the Oneida County Zoning and Shoreland Protection Ordinance you must provide all Wisconsin Department of Natural Resources permits and include them with your conditional use permit application. *** [S]everal permit approvals will be necessary including a Chapter 30 Permit; Wisconsin Pollution Discharge Elimination Permit . . . . You must obtain those permits and provide us with copies. *** The Department does not have documentation that the Wisconsin Department of Transportation (DOT) approved the access. *** These details need to be included in the application. *** Once you have provided this additional information the department will resume our review.

No mention was made by the Department's letter that the proposed Bible Camp use detailed in the Application was not an allowable conditional use(s) for the Subject Property as presently zoned.

123. The Defendant COUNTY OF ONEIDA continued to act in bad faith by demanding, through its Department, that the CUP Applicants procure site specific permits, which were not legally mandated conditions to the sending of their application to the COUNTY's Planning and Zoning Committee for decision, since the Department in fact believed that the application should be denied based on zoning irrespective of the Applicants' future costly and successful procuring of such permits.

124. However, in reliance on the Defendant COUNTY OF ONEIDA's new position expressed on June 14, 2006 regarding the permissibility of the proposed Bible Camp use under

current zoning of the Subject Parcel, the Plaintiffs proceeded to jump through (in what later became clear to be futile) administrative hoops in furtherance of their Application.

125. The Plaintiffs obtained such permits as required by the Defendant COUNTY OF ONEIDA at great cost and delay.

126. The Plaintiffs obtained the site-specific grading permit from the State of Wisconsin's Department of Natural Resources ("WDNR") on November 15, 2007. The WDNR determined that the Bible Camp "will not adversely affect water quality, will not increase water pollution in surface waters, ... will not cause environmental pollution as defined in s. 283.01(6m), Wis. Stats., ... will not affect wetlands if constructed as proposed, ... [and] that the impact to natural scenic beauty will not be significant if the applicant complies with the permit conditions and their plan to screen the development using native vegetation." The written ruling of the Wisconsin DNR's hearing officer more specifically stated:

> The issue of aesthetics or natural scenic beauty was also raised. The Department considers natural scenic beauty a public interest in the respect that impacts to it are reviewed for grading applications. The proposed site of the Squash Lake Bible Camp is not a unique site on the lake. Other sites have been developed on steep gradients, some with manicured lawns to the water's edge. Many lots on the lake contain large homes or other buildings readily visible from the lake and from the opposite shorelines. The Squash Lake Bible Camp proposes to screen the building from the lake's viewshed using native vegetation to the extent possible.

None of the Defendants and no private person appealed from such determination, even though the TOWN and private person objectors were given notice by the WDNR of their right to appeal.

127. The Plaintiffs obtained a site-specific permit to construct a POWTS from the State of Wisconsin's Department of Commerce on October 31, 2007 with concurrence received, in advance, from the WDNR on August 29, 2007. The cost of obtaining such permit was

approximately $22,000 which is included in the overall cost figure set forth in paragraph 118, *supra*.

128. By letter dated November 16, 2007, the Plaintiffs obtained permission from the WDNR to operate the site-specific POWTS. The Plaintiffs obtained the site-specific potable water well permit from the WDNR by letter dated July 27, 2007. The cost of obtaining such permit was approximately $4,000, which is included in the overall cost amount set forth in paragraph 118, *supra*.

129. The Plaintiffs obtained a site-specific permit for ingress and egress directly from U.S. Highway 8 from the Wisconsin Department of Transportation dated September 11, 2008. The cost of obtaining such permit was approximately $31,500, which is included in the overall cost amount set forth in paragraph 118, *supra*.

130. On December 18, 2008, the Plaintiffs supplemented and amended their December 2006 Application for a Conditional Use Permit by providing all of the site-specific permits required by the Defendant COUNTY OF ONEIDA and by narrative response to other points contained in the COUNTY OF ONEIDA's February 1, 2007 letter.

131. The Defendant COUNTY OF ONEIDA responded to the supplemented Application by letter on February 18, 2009 and by e-mail on July 6, 2009, by which it raised site-specific objections.

132. However, in its February 18, 2009 letter, the Defendant COUNTY OF ONEIDA by its Planning & Zoning Department for the first time advised the Plaintiffs that it was now changing its position once again and taking the position that the Application should not be granted because the use(s) described in the Application were not allowable for the Subject Property as

currently zoned. The Department failed and refused to address the statement made in open session by the Planning & Zoning Committee on June 14, 2006 wherein the COUNTY, by that Committee which has jurisdiction over CUP Applications, had communicated to the Plaintiffs that they could achieve "most or all of their stated objections" without a change in zoning using the conditional use permit procedure and without delay, uncertainty or added expense.

133. On July 29, 2009, the Defendant COUNTY OF ONEIDA acknowledged in a memorandum that all such site-specific technical objections or concerns raised by the Department had been satisfactorily resolved.

134. At the July 29, 2009 "deliberative session," the Defendant COUNTY OF ONEIDA by its Committee made an arbitrary and unreasonable determination that the proposed Bible Camp would substantially impair the enjoyment of neighboring property. Committee members admitted that with respect to this finding and conclusion, they had "no evidence" and "nothing to base" this finding and conclusion on.

135. On July 29, 2009, the Defendant COUNTY OF ONEIDA by its Committee also made an arbitrary and unreasonable determination that the proposed Bible Camp was incompatible with: (a) adjacent "Single Family" uses, and (b) any adopted local plans for the area. The Committee gave no reasons for its determination as to the latter conclusion.

136. Other than the two findings described above, the Defendant COUNTY OF ONEIDA's Committee otherwise found that the Application complied with all General Standards set forth in the OCZSPO for Conditional Use Permits.

137. The Plaintiffs have repeatedly offered to reduce the scale of the proposed Bible Camp facility, even though the full-sized structure, as finally proposed, fully complied with all

generally applicable neutral zoning requirements, including setback and height limitations. However, at no time did any of the Defendants respond to the reduced-size submission. The County also failed to consider the Plaintiffs' written invitation to discuss any legitimate governmental concerns over the scale of the project.

138. At the July 29, 2009 deliberative session, the Committee denied the Application for Conditional Use Permit in its entirety and adopted written findings and conclusions consistent therewith on August 19, 2009.

139. Public opposition to the granting of the Conditional Use Permit by the Committee was rife:

- Extensive public opposition to the Bible Camp was orally expressed at a public hearing conducted on the grading permit application by the Wisconsin Department of Natural Resources on October 29, 2007.

- A large number of written submissions to the COUNTY OF ONEIDA's Planning & Zoning Committee were made by protestors during March and April, 2009.

- Extensive oral objections were presented at the April 29, 2009, public hearing conducted by that committee on the application for conditional use permit and protestors at that hearing were so numerous that they spilled out into overflow seating set up in the hallway serving the largest meeting room in the County building where the hearing was being conducted.

- The Woodboro Town Board issued an Advisory Recommendation dated March 3, 2009, to the County Planning and Zoning Department (received by the Department on April 23, 2009) recommending denial of the Conditional Use Permit Application.

140. By Appeal Petition filed September 16, 2009 and docketed as No. 09-005, the Plaintiffs timely appealed the denial of their Application for Conditional Use Permit to the

Defendant ONEIDA COUNTY BOARD OF ADJUSTMENT ("BOA").

141. On December 2, 2009, the BOA conducted a limited scope public hearing confined to the following two issues: (a) "May the Board find, in this case, that the OCZSPO violates the Federal Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), or alternatively, based on RLUIPA, may the Board, in this case, approve an "exemption" to the Ordinance?"; and (b) "Is the proposed camp and conference center an allowed conditional use within the meaning of Section 9.22(D)(1) of the Ordinance, i.e. a church, school, library, community building or museum?"

142. Within their Appeal Petition referenced by paragraph 140 above, various of the Plaintiffs informed the BOA of their rights under the Religious Land Use and Institutionalized Persons Act, and the County government's obligation to abide by federal civil rights laws.

143. On January 12, 2010, at its session called for the purpose of deliberating upon the two limited questions described above, the BOA, by three separate motions, determined: (1) the proposed Bible Camp was not an allowable conditional use(s) in the zoning districts for which the Subject Property was currently zoned; (2) not to grant the Plaintiffs any relief under the exemption power conferred upon it by the "Governmental Discretion in Alleviating Burdens on Religious Exercise" provision of RLUIPA, 42 U.S.C. § 2000cc-3(e); and (3) to deny and affirm the Committee's complete denial of the Application for Conditional Use Permit and dismiss the appeal from the Committee's decision to the BOA.

144. The COUNTY OF ONEIDA's Board of Adjustment determined that it "ha[d] the authority to approve an exception" for the Bible Camp use under RLUIPA, "acknowledged the application of RLUIPA," and acknowledged RLUIPA's provision "which allows exemptions to

be made under certain circumstances." The Board's Chairperson stated: "Certainly we're allowed to make an exemption."

145. The COUNTY OF ONEIDA's Board of Adjustment determined that no exemption under RLUIPA should be made for the Bible Camp use because the OCZSPO permits a "church" and a "school" and therefore, according to the Board members, "This to me would not indicate that there is no exercise for them for religious liberty" (Board Chairperson Robert Rossi), and "Therefore, on the basis that the ordinance does allow a church, it does allow a school, I don't think there's any violation of RLUIPA" (Board Member Harland Lee).

146. On February 11, 2010, the BOA adopted a written resolution in conformity with its actions taken on January 12, 2010.

147. The COUNTY OF ONEIDA's Board of Adjustment, which took the final agency action on the application for CUP or exemption for religious land use under RLUIPA, discriminates in favor of churches and religious schools, and against other forms of religious exercise, and discriminates against those that practice an Evangelical Christian belief system from other religious traditions.

148. The BOARD OF ADJUSTMENT refused to employ its discretion to place reasonable conditions on the Bible Camp use, such as allowing portions of the proposed use or to the scaled-down multi-function lodge proposal provided by the Plaintiffs, that would constitute a less restrictive means of achieving any governmental interest.

149. The written decision of the BOA states: "The BOA is obligated to apply RLUIPA in rendering its decision in this appeal" and "The BOA has authority under RLUIPA to change a policy or practice '*that results in a substantial burden on religious exercise, . . . by providing*

exemptions from the policy or practice for applications that substantially burden religious exercise . . . .'"

150. The written decision of the BOA states "Zoning District 2 does not contemplate a use of the nature or extent described in the CUP application as a conditional use, ..."

151. The BOA decided in its written decision that "religious exercise" constitutes only church and school uses, thereby discriminating against the religious modality of a Bible camp: "Zoning District 2, Single Family Residential, does not prohibit religious exercise, as it allows for use of property for a 'church' or 'school' upon issuance of a CUP in that district."

Legal Claims

152. The "Oneida County Zoning and Shoreland Protection Ordinance" ("OCZSPO") and the enforcement of the OCZSPO is a land use regulation and an implementation of a land use regulation within the meaning of 42 U.S.C. § 2000cc-5(5).

153. The TOWN OF WOODBORO'S Comprehensive Plan and Land Use Plan, and its Resolutions and other actions taken with respect to land use regulation constitute land use regulation and an implementation of land use regulation within the meaning of 42 U.S.C. § 2000cc-5(5).

154. The Defendants, by their actions, have implemented the Town of Woodboro's land use plan, which is a "land use regulation."

155. The TOWN OF WOODBORO is a "government" whose electorate possesses

direct powers enumerated in Wisconsin Statutes § 60.10(1) and has an elected Town Board with various powers and duties including those enumerated in Wisconsin Statutes § 60.22.

156. The TOWN OF WOODBORO is a "jurisdiction" within the meaning of 42 U.S.C. § 2000cc(b)(3)(A) and (B).

157. The COUNTY OF ONEIDA is a "government."

158. The Bible Camp use of the Subject Property constitutes religious exercise within the meaning of 42 U.S.C. § 2000cc-5(7).

159. Plaintiffs have no basis within the OCZSPO for seeking a Conditional Use Permit for their use within the TOWN OF WOODBORO; to wit, no year-round "Recreational Camps" and no year-round Bible Camps, can be a conditional use (i) on the Subject Property, (ii) on other land within the TOWN which is classified as being in the same zoning districts in which the Subject Property is located, or (iii) in fact, on any land anywhere within the TOWN OF WOODBORO.

160. The treatment of Plaintiffs by the Defendants has been contradictory, arbitrary and malicious.

161. Specifically and not by way of limitation, repeated detailed submissions by EAGLE COVE CAMP & CONFERENCE CENTER, INC., which called to the Defendants' attention the various independent protections contained within RLUIPA, were repeatedly and continuously ignored by the Defendants, thereby manifesting their reckless disregard of federal law and of Plaintiffs' rights thereunder.

162. Defendants' inconsistent and malicious application of their land use regulations has caused Plaintiffs to suffer severe hardship.

163. The cumulative impact of the Defendant COUNTY OF ONEIDA's and TOWN OF WOODBORO's laws, both on their face and as applied to the Plaintiffs with respect to the Plaintiffs' proposed use, constitutes a complete denial of Plaintiffs' ability to operate the Bible Camp.

164. The delay of in excess of 4 years from the filing of the Petition to Rezone in December 2005, and expenditures on the magnitude of $200,000, together with the concomitant inabilities to engage in the Bible Camp's development and applied-for use and to provide such religious ministry to youth and adults while pursuing futile applications made in reliance on the Defendants' various and contradictory assertions about the permitted uses on the Subject Property constitutes a substantial burden on the Plaintiffs' religious exercise.

165. Prohibiting the Plaintiffs from converting to religious use property that has been held in the Jaros family for 60 years, which the State of Wisconsin, as to all required site-specific permits, has determined is suited for such use, and for which on the order of $200,000 has been expended in furtherance of the proposed Bible Camp use on the Subject Property, and to require Plaintiffs to search for other land outside of the Town of Woodboro to locate the Bible Camp would subject the Plaintiffs to delay, uncertainty, and expense that constitutes a substantial burden on their ability to engage in their religious exercise.

166. The lack of any zoning districts under the OCZSPO (even outside the TOWN OF WOODBORO) within the COUNTY OF ONEIDA that permit such use by right, and the fact that the justifications employed to deny the Bible Camp in the rezoning and conditional use applications would apply at any location within the COUNTY OF ONEIDA where such use may be permitted as a conditional use, constitute a substantial burden on Plaintiffs' religious exercise.

167. At no time did the Defendants identify any genuine compelling governmental interest that justifies prohibiting the Bible Camp use on the Subject Property.

168. The Defendants possess no rational, important or compelling governmental interest that is furthered by prohibiting the Bible Camp use on the Subject Property.

169. The Defendants possess no rational, important or compelling governmental interest that is furthered by prohibiting year-round Bible Camp use in the TOWN OF WOODBORO.

170. The Defendants did not use the least restrictive means of furthering any governmental interest by prohibiting the Bible Camp use on the Subject Property.

171. The Defendants did not use the least restrictive means of furthering any governmental interest by prohibiting year-round Bible Camp use in the TOWN OF WOODBORO.

172. Plaintiffs were and are willing to accept any reasonable, nondiscriminatory limitations on their Bible Camp use designed to protect public health and safety on and near the Subject Parcel.

173. The Defendants refused to employ their discretion to alleviate the burden on Plaintiffs' religious exercise, as permitted by 42 U.S.C. § 2000cc-3(e).

174. The proposed Bible Camp use will be constructed in substantial part from materials purchased and/or that have moved in interstate commerce including from states which neighbor the State of Wisconsin.

175. The denial of the Plaintiffs' requests for rezoning and for a CUP involved a system of formal or informal procedures or practices that permit the government to make individualized assessments of the proposed uses for the property involved.

176. The Defendants were influenced by community opposition against the Bible Camp that demonstrated serious animus against the Plaintiffs throughout all of their governmental processes.

177. The Defendants, on the face of their land use regulations and as applied to the Plaintiffs, discriminate in favor of certain forms of religious exercise such as church and religious school uses and against missionary, outreach, and evangelistically oriented religious exercise carried out by Bible camps in the TOWN OF WOODBORO and on the Subject Parcel.

178. The Defendants, on the face of their land use regulations and as applied to Plaintiffs, treat Plaintiffs' proposed Bible Camp use on less than equal terms with other assembly and institutional land uses that are permitted by right or as administrative review or conditional uses on the Subject Property or portions thereof that have equal or greater land use impacts than the Bible Camp, including schools, libraries, community buildings, museums, community living arrangements licensed by the State of Wisconsin, subject to no maximum number of occupants by the OCZSPO, public parks, public playgrounds, and bed and breakfast establishments, subject to no maximum number of occupants by the OCZSPO; day care centers; churches; boarding and lodging houses; hospitals; sanitariums; clinics; convalescent and nursing homes not including correctional institutions; multiple family dwellings of an unlimited number of units; commercial stables or riding academies; airports and landing fields; trap and skeet shooting and rifle, pistol, and archery ranges; retail or wholesale business; and veterinary clinics or animal hospitals.

179. The proposed Bible Camp would have far less impact on the community and nearby landowners than an allowable as-of-right residential subdivision on the Subject Property.

180. The Defendants on the face of their land use regulations and as applied to

Plaintiffs, treat Plaintiffs' proposed Bible Camp use on less than equal terms with other assembly and institutional land uses throughout both the TOWN OF WOODBORO and the COUNTY OF ONEIDA in other zoning districts

181. Some or all of the Defendants have permitted other land uses on similar properties within their jurisdictions that have land use impacts equal to or greater than the Bible Camp.

182. No rational basis exists to prohibit the Bible Camp use outright on the Subject Property (i) when other property on Squash Lake is zoned for business (which allows for-profit uses such as resort hotels); (ii) when a large riparian tract of such business-zoned property at Squash Lake is served by far inferior roads than the Bible Camp which is to be served by direct access from U.S. Highway 8; (iii) when other similarly situated rural riparian property in both the TOWN OF WOODBORO and the COUNTY OF ONEIDA allows for business uses or similar nonresidential uses including public parks; (iv) when permitted-as-of-right uses on the Subject Property including residential subdivision would have greater land use impacts than the Bible Camp; and (v) when lakefront Bible camps are perfectly compatible with adjacent single family uses, as similar Bible camps exist in the COUNTY that are adjacent to single family uses, such as Camp Luther on Range Line Lake, Honey Rock Camp on Long Lake, Crescent Lake Bible Camp on Crescent Lake, and Ft. Wilderness on Spider Lake.

183. It would be futile to seek further administrative remedies to operate the Bible Camp on the Subject Property, as the Defendants lack discretion to permit the use.

184. The Defendants have become recalcitrant and entrenched in their position adverse to the Plaintiffs' religious use of a year-round Bible Camp of the Jaroses' long-held land, demonstrating that any future application to use the Subject Property as a Bible Camp would be

denied and futile.

185. Plaintiffs seek injunctive, declaratory, compensatory and punitive damage relief for their injuries suffered as a result of Defendants' unlawful conduct. In particular and not by way of limitation, they seek a judgment: (1) an injunction preventing the Defendants from interfering with Plaintiffs' use of the Subject Property as a Bible camp; (2) annulling and setting aside the August 19, 2009, determination of the Committee and the February 11, 2010, determination of the BOA which, respectively denied, and affirmed the denial of, the CUP Applicants' Application for Conditional Use Permit, and (3) ordering the immediate unconditional issuance of the Conditional Use Permit. Plaintiffs also, and not by way of limitation, seek an award of costs and reasonable attorneys' fees.

COUNT I

RLUIPA, 42 U.S.C. § 2000cc(b)(3)(A)

"EXCLUSION AND LIMITS: TOTAL EXCLUSION"

186. Paragraphs 1 through 185 are incorporated by reference as if set forth fully herein.

187. Defendants have deprived and continue to deprive Plaintiffs of their right to the free exercise of religion, as secured by the Religious Land Use and Institutionalized Persons Act, by imposing and implementing a land use regulation that totally excludes their proposed year-round Bible Camp use from the jurisdiction of the TOWN OF WOODBORO.

COUNT II

RLUIPA, 42 U.S.C. § 2000cc(b)(3)(B)

"EXCLUSION AND LIMITS: UNREASONABLE LIMITATION"

188. Paragraphs 1 through 185 are incorporated by reference as if set forth fully herein.

189. Defendants have deprived and continue to deprive Plaintiffs of their right to the free exercise of religion, as secured by the Religious Land Use and Institutionalized Persons Act, by imposing and implementing a land use regulation that unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.

COUNT III

RLUIPA, 42 U.S.C. § 2000cc(a)

"SUBSTANTIAL BURDENS"

190. Paragraphs 1 through 185 are incorporated by reference as if set forth fully herein.

191. Defendants have deprived and continue to deprive Plaintiffs of their right to the free exercise of religion, as secured by the Religious Land Use and Institutionalized Persons Act, by imposing and implementing land use regulations that place a substantial burden on Plaintiffs' religious exercise without a compelling governmental interest, and without using the least restrictive means of achieving any governmental interest.

COUNT IV

RLUIPA, 42 U.S.C. § 2000cc(b)(1)

"EQUAL TERMS"

192. Paragraphs 1 through 185 are incorporated by reference as if set forth fully herein.

193. Defendants have deprived and continue to deprive Plaintiffs of their right to the free exercise of religion, as secured by the Religious Land Use and Institutionalized Persons Act, by imposing and implementing a land use regulation that treats a religious assembly and institution on less than equal terms with a nonreligious assembly and institution.

COUNT V

RLUIPA, 42 U.S.C. § 2000cc(b)(2)

"NONDISCRIMINATION"

194. Paragraphs 1 through 185 are incorporated by reference as if set forth fully herein.

195. Defendants have deprived and continue to deprive Plaintiffs of their right to the free exercise of religion, as secured by the Religious Land Use and Institutionalized Persons Act, by imposing and implementing land use regulations that discriminate against Plaintiffs on the basis of religion or religious denomination.

COUNT VI

UNITED STATES CONSTITUTION

EQUAL PROTECTION CLAUSE, FOURTEENTH AMENDMENT

42 U.S.C. § 1983

196. Paragraphs 1 through 185 are incorporated by reference as if set forth fully herein.

197. Defendants have deprived and continue to deprive Plaintiffs of their right to equal protection of the laws, as secured by the Fourteenth Amendment to the United States Constitution, by discriminating against Plaintiffs in the imposition and implementation of their land use regulations.

COUNT VII

UNITED STATES CONSTITUTION

FREE EXERCISE OF RELIGION, FIRST AMENDMENT

42 U.S.C. § 1983

198. Paragraphs 1 through 185 are incorporated by reference as if set forth fully herein.

199. Defendants have deprived and continue to deprive Plaintiffs of their free exercise of religion, as secured by the First Amendment to the United States Constitution and made applicable to the States by the Fourteenth Amendment, by substantially burdening Plaintiffs' religious exercise without a compelling governmental interest and by discriminating against Plaintiffs.

COUNT VIII

WISCONSIN CONSTITUTION

ARTICLE I, SECTION 18

200. Paragraphs 1 through 185 are incorporated by reference as if set forth fully herein.

201. Defendants have deprived and continue to deprive Plaintiffs of their freedom of worship, as secured by Article I Section 18 of the Wisconsin Constitution by interfering with the Plaintiffs' rights of conscience, and by preferring other religious establishments and modes of worship.

COUNT IX

AMERICANS WITH DISABILITIES ACT

42 U.S.C. §§ 12131 *et seq.*

202. Paragraphs 1 through 185 are incorporated by reference as if set forth fully herein.

203. Defendants have excluded from participation in or denied the benefits of the services, programs, or activities of a public entity, or subjected to discrimination individuals with a disability, by reason of their disabilities in violation of the Americans with Disabilities Act, 42 U.S.C. §§ 12131, *et seq.*, and the implementing regulations.

COUNT X

REHABILITATION ACT

29 U.S.C. § 794

204. Paragraphs 1 through 185 are incorporated by reference as if set forth fully herein.

205. Defendants have excluded from participation in or denied the benefits of the services, programs, or activities of a public entity, or subjected to discrimination individuals with a disability by reason of their disabilities in violation of Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, by reason of failing to make reasonable accommodations.

COUNT XI

STATE LAW CERTIORARI REVIEW

Wis. Stats. § 59.694(10)

206. Paragraphs 1 through 185 are incorporated by reference as if set forth fully herein.

207. In denying the Application for Conditional Use Permit referenced by this Complaint, Defendants COUNTY OF ONEIDA and ONEIDA COUNTY BOARD OF ADJUSTMENT have erred by misinterpreting the OCZSPO and/or by making findings of fact contrary to the manifest weight of the evidence.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court grant the following relief:

(a) A declaration that the Defendants' laws and regulations preventing the Plaintiffs' Bible Camp use on the Subject Property, both on their face and as applied to the Plaintiffs, are illegal and unconstitutional as violating the United States and Wisconsin Constitutions, the Religious Land Use and Institutionalized Persons Act of 2000, the Americans With Disabilities Act, and the Rehabilitation Act;

(b) A declaration that the Defendants' actions preventing the Bible Camp use on the Subject Property, including the denial of the Plaintiffs' CUP and rezoning requests, are illegal and unconstitutional as violating the United States and Wisconsin Constitutions, the Religious Land Use and Institutionalized Persons Act of 2000, the Americans With Disabilities Act, and the Rehabilitation Act;

(c) Preliminary and permanent injunctive relief preventing Defendants from illegally and unconstitutionally applying the laws and regulations of the Defendants to Plaintiffs' use of the Subject Property in Woodboro, Wisconsin, including, but not limited to, enjoining Defendants from applying their laws in a manner that substantially burdens Plaintiffs' religious exercise, enjoining Defendants from applying their ordinances and adopted land use plans in a discriminatory manner, and otherwise enjoining Defendants from preventing Plaintiffs' exercise of constitutional and statutory rights;

(d) An award to Plaintiffs against each of the Defendants for compensatory and punitive damages in an amount to be determined at trial;

(e) An order reversing both the Planning & Zoning Committee decision of August 19, 2009, and the Board of Adjustment's Decision, Order and Determination of February 11, 2010 and instead granting or commanding the granting of the Conditional Use Permit as applied for;

(f) An award to Plaintiffs of full costs, disbursements and attorneys' fees, to the extent permitted by law, arising out of Defendants' laws, actions and land use decisions and out of this litigation; and

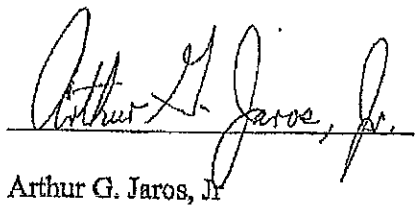
(g) Such other and further relief as this Court may deem just and appropriate.

DEMAND FOR JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs hereby demand a trial by jury in this action of all issues so triable.

Respectfully submitted by the Plaintiffs this 27th day of April, 2010.

LAW OFFICE OF ARTHUR G. JAROS, JR.

By: 

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APPENDIX DD

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

EAGLE COVE CAMP & CONFERENCE CENTER, INC., a Wisconsin non-stock corporation,

ARTHUR G. JAROS, JR., individually, and as Co-trustee of the Arthur G. Jaros, Sr. and Dawn L. Jaros Charitable Trust, and as Trustee of the Arthur G. Jaros, Sr. Declaration of Trust, and as Trustee of the Dawn L. Jaros Declaration of Trust,

WESLEY A. JAROS, as Co-trustee of the Arthur G. Jaros, Sr. and Dawn L. Jaros Charitable Trust,

RANDALL S. JAROS, individually, and as Co-trustee of the Arthur G. Jaros, Sr. and Dawn L. Jaros Charitable Trust,

CRESCENT LAKE BIBLE FELLOWSHIP, a Wisconsin non-stock corporation,

and

KIM WILLIAMSON,

Plaintiffs

vs.

TOWN OF WOODBORO, Wisconsin, a body corporate and politic,

and

COUNTY OF ONEIDA, Wisconsin, a body corporate

and

ONEIDA COUNTY BOARD OF ADJUSTMENT,

Defendants.

No. 10-CV-118

PLAINTIFFS' NOTICE OF ADDITIONAL AUTHORITY RE: COUNT VIII[1]

Plaintiffs respectively direct the Court's attention to:

> *Willow Creek Ranch, L.L.C. v. Town of Shelby, County of LaCrosse, and Wisconsin Municipal Mutual Insurance Company*, 235 Wis. 2d 409 (S.Ct. 2000) at 429 ("although immunity serves as a bar to both money damages and injunctive relief based in tort, municipalities do not benefit from the shield of immunity in actions seeking declaratory relief").

LAW OFFICE OF ARTHUR G. JAROS, JR.

By: /s/ Arthur G. Jaros, Jr.

Arthur G. Jaros, Jr
1200 Harger Road
Suite 830
Oak Brook, Ill. 60523

Attorney for All Plaintiffs

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[1]This submission is occasioned by the new argument contained at Point VI,(B) on p. 57 of the Defendants County's and BOA's Reply Brief (ECF Doc. #97) that the County and the BOA are "***thus entitled to summary judgment***" on Count VIII whereas their supporting memorandum (ECF Doc. #52) at point VIII, pp. 51-53, merely urged they were *"entitled to immunity"* (presumably insofar as immunity is lawfully available) but did not argue *entitlement to summary judgment* as to the entirety of the relief, including especially declaratory relief, sought by Count VIII. Moreover, their supporting memorandum only requested immunity for only two of the defendants' determination acts, namely "whether or not to" (1) "rezone the subject property; or" (2) "grant the requested conditional use permit" (ECF Doc. #52, p. 52, last paragraph) but (3) did not argue for immunity as to Plaintiffs' challenge to the face of the zoning ordinance and its zoning map, as originally adopted by the County and the Town, which facially "preferred"-- throughout the Town of Woodboro--year round churches as a "mode of worship" over year round Bible camps. As to (3), the Court's attention is further respectfully directed to the same case authority, namely, 235 Wis.2d 409 but at 417, 424-427 ("absolute and certain ministerial duty to defer to the state").

APPENDIX EE

United States Court of Appeals
for the
Seventh Circuit

Case No. 13-1274

EAGLE COVE CAMP & CONFERENCE CENTER, INC.,
a Wisconsin non-stock corporation, *et al.*,

Plaintiffs-Appellants,

– v. –

TOWN OF WOODBORO, WISCONSIN, *et al.*,

Defendants-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN, NO. 3:10-CV-00118-WMC,
WILLIAM M. CONLEY, CHIEF DISTRICT JUDGE

BRIEF AND REQUIRED SHORT APPENDIX OF PLAINTIFFS-APPELLANTS

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V. THE DISTRICT COURT ERRED IN GRANTING SUMMARY JUDGMENT ON PLAINTIFFS' WISCONSIN CONSTITUTION CLAIM – MOTION FOR CERTIFICATION.

A. Wisconsin's Protection of Religious Exercise is Considerably Broader than That of Federal Law.

The text of the Wisconsin Constitution's protections of religious freedom diverges considerably from its federal counterpart. Article I, § 18 provides:

> The right of every person to worship Almighty God according to the dictates of conscience shall never be infringed; nor shall any person be compelled to attend, erect or support any place of worship, or to maintain any ministry, without consent; nor shall any control of, or interference with, the rights of conscience be permitted, or any preference be given by law to any *religious establishments* or *modes of worship*; nor shall any money be drawn from the treasury for the benefit of religious societies, or religious or theological seminaries.

(Emphases added.) It is both stronger and more specific.

> [T]hese provisions, though sharing some similarities with the federal provisions, are not the same.... The protections and prohibitions in the Wisconsin Constitution are far more specific.... [T]his clause contains extremely strong language, providing expansive protections for religious liberty. Thus, we are not limited to current First Amendment jurisprudence when interpreting our own constitutional protections for religious liberty; rather, we are required to give effect to the more explicit guarantees set forth in our state constitution.

Coulee Catholic Schools v. Labor and Review Comm'n, 768 N.W.2d 868, 887 (Wis. 2009); *see also State v. Miller*, 549 N.W.2d 235, 239 (Wis. 1996) (same).

Additionally, while the lower court accurately cited a decision of the Wisconsin Supreme Court that held that the provision requires strict scrutiny

review of *any* burden (not just "*substantial*" burdens) on religious beliefs,[16] it erred in summarily rejecting such claim merely by reference to its RLUIPA "Substantial Burdens" decision. SA-48. Therefore, the district court's failure to apply independent analysis to the text of the Wisconsin Constitution in light of Count VIII's express invocation of that text constitutes plain and reversible error of law in granting Defendants summary judgment on that count.

B. All Burdens on Religious Worship, and Not Merely Those That Are Described as "Substantial" Under Federal Jurisprudence, Are Subject to Strict Scrutiny Under Article I, § 18 of the Wisconsin Constitution.

The lower court's opinion erroneously concluded that there was no reason to hold that "the protections offered Wisconsin citizens under Article I, § 18, are in any way greater than its federal counterpart, much less RLUIPA's additional protections," SA-48, which contradicts the passage from *Coulee Catholic Schools* it quoted:

> *See also Coulee Catholic Schs. v. LIRC*, 2009 WI 88, ¶ 60, 768 N.W.2d 868, 768 N.W.2d 868 (applying "compelling state interest/least restrictive alternative test" to a claim that a freedom of conscience claim, which requires the plaintiff to prove "(1) that it has a sincerely held religious belief, and (2) that such belief *is burdened* by the application of the state law at issue. . . . ").

[16] Defendants' motions below did not brief or argue against the applicability of the Preference clause. *See* Doc. 57 at 44-47; Doc. 52 at 53-54. Instead, the sole argument interposed piecemeal by the County Defendants against this cause of action was an "immunity defense." *See* Doc. 52 at 51-53. The lower court did not rule on the immunity argument. Op. 48 n.26.

SA-40 (emphasis added). *See State v. Miller*, 549 N.W.2d at 239-40 (same). The County Defendants acknowledged the same in their own brief. Doc. 52 at 53-54.

As the court held in *Coulee Catholic Schools*: "The Wisconsin Constitution uses the strongest possible language in the protection of this right. It provides that the right to worship as one is so convinced '*shall never be infringed.*' It goes even further, stating, 'nor shall *any* control of, or interference with, the rights of conscience be permitted.' It is difficult to conceive of language being stronger than this." *Coulee Catholic Schools*, 768 N.W.2d at 885. (Emphases added.)

C. Having Found That Plaintiffs' Religious Exercise Was Burdened, the Court Erred In Not Applying Strict Scrutiny Review.

The District Court did not find that the Plaintiffs had not been "burdened" at all, rather that the Plaintiffs had not been "substantially burdened." SA-33-39. It acknowledged that Plaintiffs' religious exercise was restricted. SA-28. However, and without citation to any authority or argument of the Defendants, it then applied the "substantial" component of RLUIPA to the analysis. SA-39 n.21. Thus, given that Plaintiffs' ability to worship as they see fit was burdened, and that the Wisconsin Constitution protects against such burdens, the District Court erred in analyzing the Wisconsin Constitution claim as being *in pari materia* with the federal claims.

The district court also failed to make the requisite findings under Wisconsin law that the exclusion of year-round religious camps from the zoning districts in which Plaintiffs' land was situated would "promote the general welfare" and that the burden from such exclusion was "commensurate with the promotion of the general welfare." *State ex rel. Lake Drive Baptist Church v. Vill. of Bayside Bd. of Trustees*, 108 N.W.2d 288, 296 (Wis. 1961). *Lake Drive Baptist Church* also requires "the closest scrutiny to the question whether the exclusion of a church from a district is justified." *Id.* at 297.

D. The District Court Erred in Failing to Address the "Preference" Clause of Article I, § 18.

Among its specific provisions, the Wisconsin Constitution also forbids "any preference . . . by law to any religious establishments or modes of worship." The County and Town land use regulations prefer certain "modes of worship" and "religious establishments," namely churches and religious schools, over religious camps within their jurisdictions. *See supra,* § III(B)(2)(b).

The court failed to address the unique provisions of the "Preference" clause at all. Instead it erroneously adopted its holding on the federal claims as dispositive. "[P]laintiffs' claim for violation of the Wisconsin Constitution's Free Exercise Clause, Article I, § 18, is indeed 'doomed' for all the same reasons as its federal constitutional equivalent . . . ." SA-48 (emphasis added). The Plaintiffs

contend that the Defendants' zoning permitting churches and religious schools but prohibiting Bible camps is precisely the sort of impermissible preference between different types of religious establishments or modes of worship prohibited by the Preference clause. Doc. 16 ¶ 147, 177, 201. However, there do not appear to be any reported cases from Wisconsin's courts that address the scope of the terms "religious establishments" or "modes of worship."

E. Motion For Certification to the Wisconsin Supreme Court

In order to permit the Wisconsin Supreme Court to address this important provision of state constitutional law, the Plaintiffs hereby move this honorable Court to certify the following question to the Wisconsin Supreme Court pursuant to Seventh Circuit Rule 52:

> Whether land use regulations, as adopted pursuant to Wisconsin Statutes §§ 61.35, 62.23(2) & (3), 66.1001, 59.69(1), (4) & (5), and 59.692, and implemented by County governments and by Town governments authorized to exercise village powers, that explicitly or effectively prohibit and/or greatly restrict certain forms of religious worship such as religious camps based on such governments' stated preferences for other forms of religious worship, namely "churches" and "schools," implicates Article I, Section 18 of the Wisconsin Constitution's provision that no "preference be given by law to any religious establishments or modes of worship," and, if so, to what standard of judicial review should such preferences be subject?

Should the Defendants prevail on all the federal law claims this question could be dispositive of this action.

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United States Court of Appeals
for the
Seventh Circuit

Case No. 13-1274

EAGLE COVE CAMP & CONFERENCE CENTER, INC.,
a Wisconsin non-stock corporation, *et al.*,

Plaintiffs-Appellants,

— v. —

TOWN OF WOODBORO, WISCONSIN, *et al.*,

Defendants-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN, NO. 3:10-CV-00118-WMC,
WILLIAM M. CONLEY, CHIEF DISTRICT JUDGE

REPLY BRIEF OF PLAINTIFFS-APPELLANTS

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V. DEFENDANTS FAIL TO REBUT THAT THE WISCONSIN CONSTITUTION INCLUDES BROADER PROTECTIONS OF RELIGIOUS EXERCISE.

A. Summary Judgment on the Merits of Plaintiffs' Distinct State Constitution Claims by Mere Reference to Their Federal Claims Was Error.

Wisconsin's protections of religious exercise are broader than those of the federal constitution or RLUIPA, since they apply to any burden on religious exercise, not merely "substantial" burdens. WIS. CONST. Art. I, § 18. Both *Coulee Catholic Schools v. LIRC*, 752 N.W.2d 341, ¶ 60 (Wis. App. 2008), and *State v. Miller*, 549 N.W.2d 235, 239-40 (Wis. 1996), so state and require application of strict scrutiny without imposing a requirement that the burden on religious exercise is "substantial." *See Miller*, 549 N.W.2d at 241 (discussing "burden on their sincerely held religious beliefs."). Wisconsin's courts have struck down such apparently slight burdens as a reflective triangle on Amish buggies. *Id.*

The County and Town appear to agree the protections are broader (CB46, TB52) but shift to suggest that there is *no* burden on Eagle Cove's religious exercise whatsoever. CB47. However, the district court

acknowledged both the legitimacy of the "plaintiffs' . . . sincere belief that they have been called to build a Bible camp on the land in issue," and that such religious exercise was "restrict[ed]." SA-2, SA-28; *see also* Doc. 77 ¶¶ 71-75. Prohibiting Plaintiffs from building a Bible camp on their property must burden that sincere belief. *See State ex rel. Lake Drive Baptist Church v. Village of Bayside*, 108 N.W.2d 288, 289 (Wis. 1961) (plaintiff unable to build a church on specific property).

The County further argues that Eagle Cove's claim under the "Preference Clause" of Article I, § 18 was "waived." CB47-48. This is not true. It was the County that did not address it in their opening summary judgment brief, although it was included in Plaintiffs' Amended Complaint. Doc. 52 at 53-54, Doc. 16 at ¶¶ 1, 86, 147, 177, 201. Neither did the County argue for immunity on the claim of violation that provision. Doc. 52 at 51-53. In *reply*, the County raised the new argument that it was "entitled to summary judgment" on the entirety of Count VIII (Doc. 97 at 57). Eagle Cove responded by submitting a notice of additional authority, which included another reference to its Preference Clause argument. Doc. 106 at 2.

Additionally, the County admitted that strict scrutiny review was applicable under Article I, § 18 (Doc. 52 at 53-54), and Eagle Cove explicitly agreed (Doc. 91 at 109) and adopted by reference its other arguments, where it did address the mode of worship preference issue. *See id.* at 44-46. *See U.S. v. Cortwright*, 528 F.2d 168 (7th Cir. 1975) (accepting arguments adopted by reference in briefs).

It is the district court that then disagreed with all parties, holding that the Wisconsin provisions were "'doomed' for all the same reasons as its federal constitutional equivalent . . . ." SA-48. There is no question that certain modes of worship are preferred over Bible camps in the zoning district, in the Town, and throughout the County. *See supra*, § VI; CB34. The lower court's decision was error and should be reversed.

B. Wisconsin's Notice of Claim Statute Does Not Bar This Action.

The County argues in the alternative that Eagle Cove failed to comply with Wisconsin's notice of claim provisions. This Court has previously ruled that commencement of an action constitutes actual notice of a claim sufficient to comply with section 893.80. This is true

both in civil rights actions, *Brockert v. Skornicka*, 711 F.2d 1376, 1380 n.3 (7th Cir. 1983) ("plaintiff commenced his state court suit within 120 days of his dismissal, thus giving defendants 'actual notice' of his claim in satisfaction of §§ 893.80 and 62.25."), and damage claims. *Orthmann v. Apple River Campground, Inc.*, 757 F.2d 909, 911-12 (7th Cir. 1985).

Wisconsin courts also found actual notice excusing strict compliance with the notice provisions of section 893.80 in two cases that bear many similarities to this action. One is *Ecker Bros. v. Calumet County*, 321 Wis. 2d 51 (Wis. App. 2009), cited by the County, which fails to note that the court found "letters [over two years] to the county planning office, board and corporation counsel" containing their names, addresses and their objections to the zoning ordinance "provided substantial compliance with § 893.80(1)(b). We conclude there was actual notice." *Id.* at 60; *see also State v. Town of Linn*, 556 N.W.2d 394, 400 (Wis. App. 1996) ("Village was aware of the State's claim and was not prejudiced by the State's failure to comply with the particularities of § 893.80(1)(a), Stats" where Wisconsin DNR letters were sent to the Town about a dispute concerning a lakeshore access ordinance). Here, Plaintiffs sent far more numerous letters and

communications over more years. Docs. 63-33, 63-34 at 9-10, 63-55. The County fails to identify any specific written claim requirements that were not met. CB48.

C. Defendants Are Not Immune From Suits For Declaratory Judgment Under the Wisconsin Constitution.

Finally, the County argues that it is immune from suits for damages and injunctive relief based on actions that are discretionary. CB48. However, "municipalities do not benefit from the shield of immunity in actions seeking declaratory relief." *Willow Creek Ranch, L.L.C. v. Town of Shelby*, 611 N.W.2d 693, 702 (Wis. 2000). *See* Doc. 16 at 52-53 (seeking declaratory relief under Wisconsin Constitution). Their claims for injunctive relief and damages are under federal law, which is not subject to Wisconsin's immunity statutes. The grant of declaratory relief would be of special significance because the infringement of a fundamental right protected by a state constitution should be seen as constituting a *per se* "unreasonable limitation" under that particular provision of RLUIPA.

APPENDIX FF

No. 16-3194

United States Court of Appeals
for the
Seventh Circuit

EAGLE COVE CAMP & CONFERENCE CENTER, INC.,
a Wisconsin non-stock corporation, *et al.*

Plaintiffs-Appellants,

v.

TOWN OF WOODBORO, WISCONSIN, *et al.*,

Defendants-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN No. 10-cv-00118-WMC
WILLIAM M. CONLEY, CHIEF DISTRICT JUDGE

BRIEF AND REQUIRED SHORT APPENDIX OF PLAINTIFFS-APPELLANTS

Arthur G. Jaros, Jr.
Counsel of Record
The Law Office of Arthur G. Jaros, Jr.
1200 Harger Road, #830
Oak Brook, IL 60523
(630) 574-0525
agjlaw@earthlink.net

JURISDICTIONAL STATEMENT.

I. District Court's Jurisdiction

The District Court had jurisdiction over this case as a civil action, commenced on March 10, 2010, arising under the laws of the United States pursuant to 42 U.S.C. §1331 (federal question jurisdiction) for counts I-VII, IX and X, which counts alleged violations of 42 U.S.C. §§2000cc *et seq.* (Counts I-V), 29 U.S.C. §§794 & 794a (Count X), 42 U.S.C. §§12131 *et seq.* (Count IX), and 42 U.S.C. §1983 (Counts VI-VII).

The District Court properly exercised supplemental jurisdiction over Counts VIII and XI under 28 U.S.C. §1367(a). Count VIII alleged a violation of Article I, §18 of the Wisconsin Constitution. Count XI sought Certiorari Review under Wisconsin Statutes §59.694(10).

II. Jurisdiction of the Court of Appeals

This appeal is taken from the Opinion and Order denying both (i) Plaintiffs-Appellants' Motion under F.R.Civ.P. 54(b) and 60(b)(6) filed on May 13, 2015 as District Court Doc. #171, and (ii) Plaintiffs-Appellants' Motion under F.R.Civ.P. 60(b)(5) filed on June 13, 2015 as District Court Doc. #177. This was an adjudication of all matters pending in the District Court. No motions tolling the time within which to appeal were filed.

This Court has jurisdiction, under the collateral order doctrine, to decide this case pursuant to 28 U.S.C. §1291 and §1294, *Browder v. Director, Department of Corrections*, 434 U.S. 257 at 263 (1978), and *Monzidelis v. World's Finest Chocolate*, 92 Fed. Appx. 349 (Seventh Cir. 2004). In that regard and pursuant to Circuit Rule 28(a)(3)(ii), Appellants state that the underlying Order and Judgment issued in February, 2013 (*see*, Part IV, *infra*) were deemed sufficiently final for pur-

poses of the prior appeal to this Court referenced in Part IV because Counts I - X were adjudicated by the District Court on the merits and Count XI was dismissed without prejudice to the Plaintiffs' right to have the adjudication of that state law count performed in the Wisconsin state court system, which litigation is presently pending as civil action 13-CV-345 in the Circuit Court for Oneida County. (*Moses H. Cone Memorial Hospital v. Mercury Construction Corp.*, 460 U.S. 1 at 11 (1983); *Quackenbush v. Allstate Insurance Company*, 517 U.S. 706 at 713 (1996); *Montano v. City of Chicago*, 375 F.3d 593 at 598 (7th Cir. 2004)). The state law count was deemed separable from action in the District Court as that court's Opinion and Order of February 1, 2013 so concluded (District Court Doc. #155 at p. 48) in dismissing that count without any adjudication of the merits thereof and without prejudice. The previous grant on February 1, 2013 of summary judgment on all counts except Count XI, that is, on Counts I - X, was practically unreviewable--because that 2013 ruling, as a matter of practical effect, ended the federal court proceedings[1]--unless there were an immediate right of appeal to this Court which appeal this Court entertained on the merits (*see*, Part IV).

III. Notice of Appeal

The Notice of Appeal was filed with the District Court on August 17, 2016, within 30 days of the entry of the August 11, 2016 Opinion and Order.

---

[1]But did not end the Plaintiffs' "case." The federal and state court proceedings are but a single "case". *Montano v. City of Chicago*, 375 F.3d 593 at 600 (7th Cir. 2004): "Further, it is clear that ***only one*** constitutional 'case' is present here .... Had this been a ***case*** that reached federal court through removal, it is doubtful that the court would have had the authority to remand only the state claims, because they are not 'separate and independent.'" (emph. added)

APPENDIX GG

STATE OF WISCONSIN **CIRCUIT COURT** **ONEIDA COUNTY**

EAGLE COVE CAMP & CONFERENCE CENTER, INC.,
a Wisconsin non-stock corporation,

ARTHUR G. JAROS, JR.,
as Co-trustee of the Arthur G. Jaros, Sr. and Dawn L. Jaros Charitable Trust, and as Trustee of the Arthur G. Jaros, Sr. Declaration of Trust, and as Trustee of the Dawn L. Jaros Declaration of Trust,

WESLEY A. JAROS,
as Co-trustee of the Arthur G. Jaros, Sr. and Dawn L. Jaros Charitable Trust,

and

RANDALL S. JAROS,
as Co-trustee of the Arthur G. Jaros, Sr. and Dawn L. Jaros Charitable Trust,

Plaintiffs,

-vs-

ONEIDA COUNTY BOARD OF ADJUSTMENT,

Oneida County Courthouse
P. O. Box 400
Rhinelander, WI 54501,

COUNTY OF ONEIDA, and
1 South Oneida Avenue
Rhinelander, WI 54501,

TOWN OF WOODBORO,
8672 Soo Lake Road
Rhinelander, WI 54501,

Defendants.

ONEIDA COUNTY FILED
AUG 29 2014
CLERK OF CIRCUIT COURT

Case No. 13-cv-345

For Certiorari Review and Other Relief

Case Code: 30405

Amount in Controversy Exceeds $10,000

AMENDED SUMMONS

THE STATE OF WISCONSIN

To each person named above as a defendant:

You are hereby notified that the Plaintiff named above has filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within forty-five (45) days of receiving this Summons, you must respond with a written answer, as that term is used in chapter 802 of the Wisconsin Statutes, to the complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is:

Clerk of Circuit Court
Oneida County Courthouse
P.O. Box 400
1 S. Oneida Ave.
Rhinelander, Wisconsin 54501

and to Michael D. Dean, the Plaintiff's attorney, whose address is

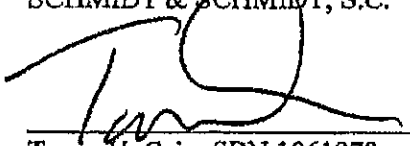
Michael D. Dean, LLC
P.O. Box 2545
Brookfield, WI 53045

You may have an attorney help or represent you.

If you do not provide a proper answer within forty-five (45) days, the court may grant judgment against you for the award of money or other legal action requested in the Plaintiff's Complaint, and you may lose your right to object to anything that is or may be incorrect in the Plaintiff's Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 29th day of August, 2014.

ATTORNEYS FOR PLAINTIFFS
SCHMIDT & SCHMIDT, S.C.



Tyson V. Cain, SBN 1061878

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PO Box 146
Wausau WI 54402-0146
(715) 845-9621

STATE OF WISCONSIN CIRCUIT COURT ONEIDA COUNTY

EAGLE COVE CAMP & CONFERENCE CENTER, INC.,
a Wisconsin non-stock corporation,

ARTHUR G. JAROS, JR.,
as Co-trustee of the Arthur G. Jaros, Sr. and Dawn L. Jaros Charitable Trust, and as Trustee of the Arthur G. Jaros, Sr. Declaration of Trust, and as Trustee of the Dawn L. Jaros Declaration of Trust,

WESLEY A. JAROS,
as Co-trustee of the Arthur G. Jaros, Sr. and Dawn L. Jaros Charitable Trust,

and

RANDALL S. JAROS,
as Co-trustee of the Arthur G. Jaros, Sr. and Dawn L. Jaros Charitable Trust,

Plaintiffs,

-vs-

ONEIDA COUNTY BOARD OF ADJUSTMENT,
Oneida County Courthouse
P. O. Box 400
Rhinelander, WI 54501,

COUNTY OF ONEIDA, and
1 South Oneida Avenue
Rhinelander, WI 54501,

TOWN OF WOODBORO,
8672 Soo Lake Road
Rhinelander, WI 54501,

Defendants[1].

Case No. 13-CV-345

For Certiorari Review and Other Relief

Case Code: 30405

Amount in Controversy Exceeds $10,000

ONEIDA COUNTY
FILED
AUG 29 2014
CLERK OF CIRCUIT COURT

AMENDED COMPLAINT

[1] With notice to the Wisconsin Attorney General per WIS. STATS. §806.04(11).

Plaintiffs EAGLE COVE CAMP & CONFERENCE CENTER, INC. ("ECCCC"), ARTHUR G. JAROS, JR., WESLEY A. JAROS, and RANDALL S. JAROS, by their undersigned attorneys, amend their Complaint, pursuant to the Court's Scheduling Order dated August 16, 2014 and entered on the docket on August 18, 2014, for certiorari review pursuant to WIS. STAT. §59.694(10) and for other relief, complaining of Defendant ONEIDA COUNTY BOARD OF ADJUSTMENT ("BOA") and, with respect to Counts II-XVI, for declaratory judgment pursuant to WIS. STAT. §806.04 and for other relief, also complaining of Defendants COUNTY OF ONEIDA and TOWN OF WOODBORO, as follows:

INTRODUCTION

1. Plaintiffs intend to use certain land owned by the Jaros family for over sixty years and located in the "Northwoods" lakes region of north-central Wisconsin, specifically within the jurisdictions of TOWN OF WOODBORO ("TOWN" or "WOODBORO") and COUNTY OF ONEIDA ("COUNTY"), as a year-round Bible Camp, which will serve, among others, youth with medical disabilities.

2. The Defendant ONEIDA COUNTY BOARD OF ADJUSTMENT has unlawfully and unconstitutionally prevented the use and operation of the Bible Camp by violating its own procedural orders and notices, by proceeding upon an incorrect theory of law, and by acting in arbitrary, oppressive and unreasonable fashion, hostile to the protections of religious liberty guaranteed by the Constitution of the State of Wisconsin and in a manner dismissive of the advice of its own independent legal counsel.

3. Interpreting the 'ONEIDA COUNTY ZONING AND SHORELAND PROTECTION ORDINANCE ("OCZSPO") -- in a manner not required by its text and in a manner which

violated the dictates of the Constitution of the State of Wisconsin to prohibit the Bible Camp use outright on the Jaros property and completely from the TOWN OF WOODBORO, while permitting similarly situated uses such as institutional churches, institutional diploma-oriented parochial and/or public boarding schools, libraries, community buildings, museums and community living arrangements -- violates state constitutional protections of religious freedom, due process and equal protection of the law, both on the face of the land use regulations themselves and as applied by the Defendant BOA.

4. The COUNTY, as affirmed by the Defendant BOA, has further acted in bad faith toward the Plaintiffs by falsely declaring and informing Plaintiffs that their use was permitted on the property as currently zoned as a conditional use (which was the basis for rejecting a rezoning application), thereby inducing them to comply with time-consuming and costly procurement of site-specific permits from the State of Wisconsin (required by the COUNTY OF ONEIDA as a condition of processing the conditional use permit application), only to later inform Plaintiffs that such use was in fact not eligible under the applicable zoning ordinance as a conditional use and rejecting the conditional use permit application on that basis.

5. Finally, Defendant BOA has explicitly taken the position that Bible Camps, as a modality of religious exercise to evangelize, is not entitled to the same protection as institutionalized "churches" and institutionalized diploma-oriented "religious schools," contrary to the Wisconsin Constitution's protection of freedom of worship and/or express prohibitions on preferring one "mode of worship" over another and on preferring one type of "religious establishment" over another.

PARTIES AND THOSE IN PRIVITY OR OTHERWISE DIRECTLY INTERESTED

6. Plaintiff EAGLE COVE CAMP & CONFERENCE CENTER, INC. is a non-stock corporation formed under the Laws of the State of Wisconsin on December 27, 2004 under the original name of Squash Lake Christian Camp, Inc.

7. Plaintiff ARTHUR G. JAROS, JR. is a co-trustee of the ARTHUR G. JAROS, SR. AND DAWN L. JAROS CHARITABLE TRUST ("CHARITABLE TRUST"), and successor trustee under the ARTHUR G. JAROS, SR. DECLARATION OF TRUST, and successor trustee under the DAWN L. JAROS DECLARATION OF TRUST.

8. Plaintiff WESLEY A. JAROS is a co-trustee of the CHARITABLE TRUST.

9. Plaintiff RANDALL S. JAROS is a co-trustee of the CHARITABLE TRUST.

10. CRESCENT LAKE BIBLE FELLOWSHIP is a non-stock corporation formed under the laws of the State of Wisconsin.

11. Defendant TOWN OF WOODBORO is a civil town, possessing its own elected town board and taxing and other powers, and a body corporate and politic under Wisconsin Statutes § 60.01, whose territory is almost but not quite contiguous with that certain regular, geographic township surveyed pursuant to, or in accordance with, the Land Ordinance of 1785 and known as Township 36 North, Range 7 East of the Fourth Principal Meridian of approximately 6 miles square, all lying within the COUNTY OF ONEIDA.

12. Defendant COUNTY OF ONEIDA is a body corporate under Wisconsin Statutes § 59.01, situated entirely within the State of Wisconsin and within a geographic region densely populated with lakes and forest known as "The Northwoods."

13. Defendant ONEIDA COUNTY BOARD OF ADJUSTMENT is a board authorized by

Wisconsin Statutes § 59.694, created by action of the COUNTY OF ONEIDA.

14. For ease of reference, Plaintiffs' Causes of Action are summarized as follows. Causes of Action II - XVI present issues of law arising under the Wisconsin Constitution that may properly be considered under Plaintiffs' Cause of Action I. for certiorari review under § 59.694, stats. Plaintiffs state those Causes of Action II - XVI for declaratory judgment as separate Counts for the sake of clarity to assist the Court and Parties in identifying and addressing the distinct legal issues, and because Plaintiffs are entitled to pursue such declaratory judgment actions separately apart from their action for certiorari. *E.g., Willow Creek Ranch, L.L.C. v. Town of Shelby*, 224 Wis. 2d 269, 284-85, 592 N.W.2d 15, 22 (Ct. App. 1998) *aff'd*, 2000 WI 56, 235 Wis. 2d 409, 611 N.W.2d 693.

15. Plaintiffs are entitled to pursue Causes of Action II - XVI because the federal courts in prior federal litigation between the parties declined or failed to address or dispose of specific issues of state law raised by Plaintiff in relation to protection from government "preferences" under Wisc. Const. art. I, §, and would have further have declined to consider due process and equal protection issues peculiar to Wisconsin state law. *See, e.g., State ex rel. Lake Drive Baptist Church v. Vill. of Bayside Bd. of Trustees*, 12 Wis. 2d 585, 108 N.W.2d 288 (1961). *See also Parks v. City of Madison*, 171 Wis.2d 730, 738-39, 492 N.W.2d 365 (Ct.App.1992), *Aldrich v. Labor & Indus. Review Comm'n*, 2008 WI App 63, 310 Wis. 2d 796. 801-02, 751 N.W.2d 866, 869.

SUMMARY OVERVIEW OF CAUSES OF ACTION

COUNT I: CAUSE OF ACTION ARISING FROM
BOARD OF ADJUSTMENT AFFIRMING DENIAL OF CUP APPLICATION

I. ACTION FOR CERTIORARI REVIEW
§ 59.694, STATS., PARS. 170.-202.

COUNTS II-III: CAUSES OF ACTION FOR DECLARATORY JUDGMENT ARISING FROM TOTAL EXCLUSION OF SINGLE PRINCIPAL RELIGIOUS STRUCTURE CAMPS FROM ALL ONEIDA COUNTY AREAS SUBJECT TO OCZSPO

II. RELIGIOUS PREFERENCE, FACIAL CHALLENGE
WIS. CONST. ART. I, § 18, PARS. 203.-228.

III. SUBSTANTIVE DUE PROCESS, FACIAL CHALLENGE
WIS. CONST. ART. I, § 8, PARS. 229.-230.

COUNTS IV-V: CAUSES OF ACTION FOR DECLARATORY JUDGMENT ARISING FROM TOTAL EXCLUSION YEAR ROUND RELIGIOUS CAMPS FROM THE ENTIRE TOWN OF WOODBORO AND/OR ENTIRE ZONING DISTRICTS

IV. RELIGIOUS PREFERENCE, FACIAL CHALLENGE
WIS. CONST. ART. I, § 18, PARS. 231.-234.

V. SUBSTANTIVE DUE PROCESS, FACIAL CHALLENGE
WIS. CONST. ART. I, § 8, PARS. 235.-236.

COUNTS VI-XI: CAUSES OF ACTION FOR DECLARATORY JUDGMENT ARISING FROM PREFERENTIAL TREATMENT OF INSTITUTIONALIZED CHURCH AND NON-SEASONAL PAROCHIAL SCHOOLS IN THE TOWN OF WOODBORO

VI. RELIGIOUS PREFERENCE, FACIAL CHALLENGE
WIS. CONST. ART. I, § 18, PARS. 237.-241.

VII. RELIGIOUS PREFERENCE, AS APPLIED CHALLENGE
WIS. CONST. ART. I, § 18, PARS. 242.-243.

VIII. SUBSTANTIVE DUE PROCESS, FACIAL CHALLENGE
WIS. CONST. ART. I, § 8, PARS. 244.-245.

IX. SUBSTANTIVE DUE PROCESS, AS APPLIED CHALLENGE
WIS. CONST. ART. I, § 8, PARS. 246.-259.

X. EQUAL PROTECTION, FACIAL CHALLENGE
WIS. CONST. ART. I, § 1, PARS. 260.-261.

XI. EQUAL PROTECTION, AS APPLIED CHALLENGE
WIS. CONST. ART. I, § 1, PARS. 262.-263.

COUNTS XII-XIV: CAUSES OF ACTION ARISING FROM PREFERENTIAL TREATMENT OF INSTITUTIONALIZED CHURCH AND NON-SEASONAL PAROCHIAL SCHOOLS IN THE COUNTY OF ONEIDA

XII. RELIGIOUS PREFERENCE, FACIAL CHALLENGE
WIS. CONST. ART. I, § 18, PARS. 264.-269.

XIII. SUBSTANTIVE DUE PROCESS, FACIAL CHALLENGE
WIS. CONST. ART. I, § 8, PARS. 270.-271.

XIV. EQUAL PROTECTION, FACIAL CHALLENGE
WIS. CONST. ART. I, § 1, PARS. 272.-273.

COUNTS XV-XVI: CAUSES OF ACTION ARISING FROM ADMINISTRATION OF OCZSPO APPLICATION PROCEDURES

XV. RELIGIOUS BURDEN
WIS. CONST. ART. I, § 18, PARS. 274.-284.

XVI. PROCEDURAL DUE PROCESS
WIS. CONST. ART. I, § 18, PARS. 285.-288.

JURISDICTION AND VENUE

16. This court has certiorari review power conferred upon it by WIS. STAT. §59.694(10) including the powers to take evidence, appoint a referee to take evidence and report findings of fact and conclusions of law, and reverse or otherwise partly or wholly modify the decision of the Board of Adjustment brought up for review by this certiorari action.

17. The decision of the Defendant BOA was dated February 11, 2010. On the 27th day thereafter, namely, March 10, 2010, Plaintiffs filed a civil action docketed as #10-cv-00118 in the United States District Court for the Western District of Wisconsin and Count XI of which sought certiorari review now being sought by Count I herein.

18. On February 5, 2013, the District Court entered a judgment upon a memorandum opinion dated February 4, 2013, which dismissed Count XI without prejudice to re-filing in this Court. On February 5, 2013, Plaintiffs filed their Notice of Appeal to the Seventh Circuit U.S. Court of Appeals which appealed, inter alia, the dismissal of Count XI. On October 30, 2013, a panel of the Seventh Circuit U.S. Court of Appeals issued an opinion which affirmed such dismissal. This state court civil action is commenced within 30 days of October 30, 2013.

19. This court also has plenary power over the additional counts for declaratory judgment under § 806.04, Stats., set forth herein. Neither are such counts barred by law-of-the-case, issue preclusion or claim preclusion.

20. Venue is proper in this Court in that all of the events giving rise to the claims herein occurred in this Circuit and Defendants are subject to personal jurisdiction in this District as of the commencement of this action.

FACTUAL ALLEGATIONS COMMON TO AND INCORPORATED IN EACH COUNT

21. The allegations of fact provided in this and other sections of this Complaint are comprehensive but not exhaustive, and Plaintiffs intend and preserve their right to provide additional facts and evidence for consideration of the Court during litigation of this action.

The Bible Camp

22. Since 2004, various of the Plaintiffs have been attempting to develop and use certain property described *infra* as a year-round religious Bible Camp. This use constitutes religious exercise, and is motivated by the Plaintiffs' Protestant evangelical Christian religious faith which mandates, including but not limited to the reasons set forth in ¶¶ 61 and 62, below, that they use the Exclusively Charitable Acres (*infra* ¶ 55) for such purpose.

23. Christian Bible camp ministries are a vital form of religious exercise, separate and distinct from organized churches and play key roles in bringing persons to Christian faith and in strengthening and maturing the Christian faith of persons who have already professed Christianity. As described in detail below, an important aspect of the Bible Camp will be to specifically minister to youth suffering from serious disabling medical conditions that preclude them from attending many other established Bible camps.

24. The objectives of the Bible Camp are to provide a year-round Bible camp facility with one principal structure, a multi-function lodge building, that will contain (1) a chapel (i.e., church structure) for worship of the triune God, as understood by the orthodox creeds of the Christian church; (2) classrooms, identical to those of an institutional school, for religious instruction, including topics related to events or occurrences recorded and/or depicted in the

Holy Bible; (3) boarding accommodations, primarily in the form of bunkrooms; (4) food service facilities including dining hall and commercial kitchen, both identical to those of an institutional school; and (5) recreational amenities including soccer field(s), softball field, swimming beach, and cross-country ski and walking nature trails. The majority of the Bible Camp's activity will involve evangelism, worship, prayer, meditation, devotional Scripture reading, discipleship and role-modeling and Christian educational instruction.

25. The Bible Camp's summer season ministry for school age youth will involve their attending on a weekly basis, segregated by gender and age, what are known as Youth Camps.

26. During the non-summer seasons of the year, the Bible Camp will minister mainly to adults and will include the same ministries of worship in the beauty of God's creation, evangelism, discipleship and role-modeling, and education including Christian theology, Christian apologetics and the relation of science to Christian belief.

27. Plaintiffs ARTHUR G. JAROS, JR., WESLEY A. JAROS and RANDALL S. JAROS, ages 63, 60 and 55, respectively, each a resident of the State of Illinois, have their life-long secondary residences at Squash Lake in the TOWN OF WOODBORO, almost immediately adjacent to the SUBJECT PARCEL.

28. Plaintiffs ARTHUR G. JAROS, JR. and RANDALL S. JAROS desire and intend to personally teach Christian education courses at the Bible Camp, both to youth and to adults, in order to exercise their sincere and long-held religious beliefs. The topics of such courses will include: "Bible Survey (Old Testament and/or New Testament)," "The Bible and Law–the Interaction of God's Law and American Civil Law," "Law and Grace – Analyzing the Antinomian Tendencies of Contemporary Protestant Christianity," "The Palestinian-Israeli

Conflict–Causes & Solutions from a Multi-faceted Biblical Perspective: Theology, Morality & Law," "Christian Apologetics, Epistemology and Metaphysics (honors high school and older only)," "The Basics of Christianity for Young Children: Using the Holidays as Tools for Understanding the Christian Faith," and "Jesus' Teaching on Divorce and Remarriage–Tough and Overlooked Teachings of the Lord Jesus Christ and How Couples Engaged to be Married May Implement Them with Force and Conviction." The Bible Camp will provide the Jaros Brothers with a forum of expression in which these Christian theological beliefs will be able to be freely communicated.

29. Plaintiffs ARTHUR G. JAROS, JR., WESLEY A. JAROS, and RANDALL S. JAROS are Trustees of the Arthur G. Jaros, Sr. and Dawn L. Jaros Charitable Trust (the "Charitable Trust"). The Declaration of Faith that forms the basis of the Charitable Trust's policies and is set forth in the charitable trust agreement dated May 15, 2002, states:

DECLARATION OF FAITH

1) We believe in the Scriptures of the Old and the New Testaments as verbally inspired by God and inerrant in the original writing, and that they are of supreme and final authority in faith and life.

2) We believe in one God, eternally existing in three Persons: Father, Son and Holy Spirit.

3) We believe that Jesus Christ was begotten by the Holy Spirit, born of the Virgin Mary, and is true God and true man.

4) We believe that man was created in the image of God; that he sinned, and thereby incurred not only physical death, but also that spiritual death which is separation from God; and that all human beings are born with a sinful nature, and, in the case of those who reach moral responsibility, become sinners in thought, word and deed.

5) We believe that the Lord Jesus Christ died for our sins, according to the Scriptures, as a representative and substitutionary sacrifice; and that all

who believe in Him are justified on the ground of His shed blood.

6) We believe in the physical resurrection of the crucified body of our Lord, in His ascension into Heaven, and in His present life there for us, as High Priest and Advocate.

7) We believe in "that blessed hope," the personal return of our Lord and Savior Jesus Christ.

8) We believe that all who receive by faith the Lord Jesus Christ are born again of the Holy Spirit, and thereby become children of God, having their status before God change from unjust and lost to justified by the gracious imputation of Christ's righteousness.

9) We believe that a child of God, to retain justified status, must diligently endeavor to obey the Commandments of the Lord, must persevere in the profession of Faith and process of sanctification, and must overcome the temptation to be given over to a lifestyle disgraceful to the Lord.

10) We believe in the bodily resurrection of the just and the unjust, the everlasting blessedness of the saved and the everlasting punishment of the lost.

30. Plaintiffs ARTHUR G. JAROS, JR., WESLEY A. JAROS, and RANDALL S. JAROS are the sole directors of the Plaintiff EAGLE COVE CAMP & CONFERENCE CENTER, INC. The Statement of Faith of Plaintiff EAGLE COVE CAMP & CONFERENCE CENTER, INC., adopted during 2006, provides as follows:

1) We believe in the Scriptures of the Old and New Testaments as verbally inspired by God, and inerrant in the original writings, and that they are of supreme and final authority in faith and life. (2 Timothy 3:16, 17; 2 Peter 1:21)

2) We believe in one God eternally existing in three persons: Father, Son and Holy Spirit. (Mark 12:29; 2 Corinthians 13;14; Matthew 28:19, 20, 1 John 5:7)

3) We believe that Jesus Christ was begotten by the Holy Spirit and born of the Virgin Mary and is true God and true man. (Matthew 1:18-20; Isaiah 7:14)

4) We believe that man was created in the image of God, that he sinned and thereby incurred not only physical death, but also spiritual death which is separation from God; and that all human beings are born with a sinful nature, and in case of those who reach moral responsibility, become sinners in thought, word and deed. (Genesis 1:26; John 5:40, 6:33; Ephesians 2:1-3)

5) We believe that Jesus Christ died for our sins according to the scriptures as a representative, and substitutionary sacrifice, and washed us from our sins in His own blood. All who by faith receive Him as their personal Savior are justified on the ground of His death, burial and resurrection. They are born of the Holy Spirit, and thereby become the children of God. (John 1:12, 3:3-5, 16; 1 Corinthians 15:3-5 Revelation 1:5)

6) We believe in the resurrection of the crucified body of our Lord Jesus Christ, in His ascension into heaven, and His present life there for us as High Priest and Advocate. (Luke 24:36-46; Acts 2:22, 24; 1 Corinthians 15:3-5)

7) We believe in that "Blessed Hope," the personal, pre-millennial and imminent return of our Lord and Savior Jesus Christ for His redeemed ones; and in His subsequent pre-millennial return to earth with His saints, to establish His millennial kingdom. (John 14:1-3; Acts 1:11; Luke 12:40; 1 Thessalonians 4:13-18; Revelation 19:11-16, 20:1-6)

8) We believe in the bodily resurrection of the dead; the saved to eternal life and blessedness, the unsaved to eternal conscious suffering and woe. (John 5:28-29; Revelation 20:4-5, 12-13; 1 Corinthians 15:51-53)

9) We believe in the preaching of the gospel to every person, and the edification of the individual members of the body of Christ. (Matthew 28:18-20; Acts 1:8)

31. The Bible Camp would be operated in accordance with the Statement of Faith described above.

32. EAGLE COVE CAMP & CONFERENCE CENTER, INC. and the JAROS CHARITABLE TRUST are both charitable organizations approved by the United States of America, Department of the Treasury, Internal Revenue Service, as private foundations, with the

former being additionally designated as a private operating foundation.

33. CRESCENT LAKE BIBLE FELLOWSHIP has directly or indirectly operated its own Bible camp under the name Crescent Lake Bible Camp ("CLBC") situated in the Town of Crescent, County of Oneida, Wisconsin since the 1930's. The Town of Crescent is adjacent to the TOWN OF WOODBORO.

34. CRESCENT LAKE BIBLE FELLOWSHIP has for many years devoted most of the summer season to what are known as Family Camps, where entire families come to be nurtured, as families, in Christian growth and discipleship.

35. In recent years, CRESCENT LAKE BIBLE FELLOWSHIP desired to expand its ministry to provide for Youth Camp ministries during the entire summer season.

36. CRESCENT LAKE BIBLE FELLOWSHIP lacks the physical capacity at its own facility in the Town of Crescent in the COUNTY OF ONEIDA to accommodate and serve those interested in Christian camping and in particular to meet the needs of youth campers.

37. CRESCENT LAKE BIBLE FELLOWSHIP intends to serve youth with medical disabilities and their families, and intends to devote several weeks over the summer for such camps.

38. In order to accomplish its own Youth Camp ministry objective, CRESCENT LAKE BIBLE FELLOWSHIP entered into an Operating Agreement with the CHARITABLE TRUST and EAGLE COVE CAMP & CONFERENCE CENTER, INC. in August, 2006. In accordance with the agreement, CRESCENT LAKE BIBLE FELLOWSHIP will provide staff and programming services for the proposed Bible Camp.

39. CRESCENT LAKE BIBLE FELLOWSHIP intends to serve youth with medical

disabilities at the Bible Camp because the type of construction planned for the Bible Camp permits the accommodation of such youth with special needs. CRESCENT LAKE BIBLE FELLOWSHIP's current facilities at Crescent Lake cannot accommodate such youth because of its age and the construction types of the camp buildings.

40. The operation of the Bible Camp will be pure religious exercise including evangelism, worship, devotional reading of the Holy Scriptures, prayer and meditation, discipleship, role-modeling, teaching of moral virtues (including good citizenship) and against moral vices, and wholesome recreation in the beauty of, and therefore permitting reflection on and thankfulness for, God's Northwoods creation.

41. Bible camps generally and the instant Bible Camp in particular promote the general welfare and play a positive role in promoting and protecting healthy surroundings for family life.

42. The Operating Agreement, which references Eagle Cove Camp & Conference Center, Inc. by its original name, namely, Squash Lake Christian Camp, Inc. ("SLCC"), contains a doctrinal statement of faith and further states, *inter alia*:

- "All programming by CLBC will be in accordance with the Camp's doctrinal statement."
- "It will be the intention of CLBC and SLCC to attract unbelieving campers to the camp and communicate the Gospel of Jesus Christ to them in hope that they will accept Him as their personal Savior and make Him the Lord of their lives."
- "It will be the intention of CLBC and SLCC to attract campers from all denominations and faiths for the purpose of instructing them in actual righteousness (i.e., holy living) and faith according to God's Word."
- "All instructors including counselors and any camp chaplain shall profess this Statement of Faith."

43. The Operating Agreement states that the purpose of the Bible Camp is to "carry[] on,

thereon, based on the teachings of God's Word, a Christian Bible Camp within that certain Protestant tradition within the Christian religion broadly described and known as 'evangelical' for the purposes of evangelizing non-Christians, providing opportunities to worship the triune God in the special setting of the beauty of His Northwoods creation and with due consideration and respect for the residents of Squash Lake, fostering discipleship and sanctification and equipping Christians for the work of ministry and for the apologetics task . . . ."

44. The Bible camp will attract and serve youth and adults from throughout the State of Wisconsin including the TOWN and COUNTY as well as the Twin Cities area of the State of Minnesota and the metropolitan areas of northern Illinois including greater Chicago and Rockford.

45. In furtherance of Plaintiffs' mission to serve campers with serious disabling medical conditions, the Bible Camp would have a climate-controlled environment that would be of particular importance to campers whose conditions create respiratory, cardiac or other problems when exposed to uncontrolled outdoor environments. Heat, cold or humidity would not affect a camper's experience when they have an environmentally protected space if weather conditions would affect their health. Dust, mold or other outdoor irritants can be controlled, offering relief to the campers.

46. The Bible Camp would include an indoor recreation area that would allow recreation and learning when outdoor conditions are not healthy or safe for campers with serious disabling medical conditions. A planned greenhouse will allow the Bible Camp to bring the outdoors inside to teach outdoor education programs to children who cannot go outside because of their disabilities. A library and classrooms enable teaching biblical principles to those whose

handicaps prevent them from receiving such instruction outside.

47. The Bible Camp would have paved pathways. Mobility is frequently a problem for a medically challenged camper, and the pathways to the lake and recreation areas will be safe for the unstable camper to walk on and would allow wheelchair access that dirt paths would not. It also will provide a transportation system featuring a self-propelled rail car providing ADA-acceptable mobility to and from the parking lot and recreation areas. Golf carts will be available to serve the campers on the paved pathways. ADA-compatible elevators will be available to transport children who are unable to use stairs. Restrooms will be ADA-certified providing all the room and handles that a disabled child would need to negotiate effectively.

48. The Bible Camp would also provide a Medical Facility/Nurses Station that can be designed to provide the needs of a first responder, if a camper required medical emergency treatment. It would also have a security system controlling corridors and rooms, allowing notification in case of a medical emergency. Access is controlled by security codes and alarms, further protecting the camper from unwanted guests, a concern for children who cannot physically protect themselves.

49. The Bible Camp's food service area will store and prepare special dietary products required by the campers.

50. The aforementioned design features will allow the Bible Camp to serve youth who suffer from medical disabilities that limit their mobility and/or prevent them from safely engaging in a wide variety of activities in the outdoors. These individuals are unable to attend most other Bible camps. Upon information and belief, after investigation, the Plaintiffs believe that there are no Bible camps in the upper Midwest that have the facilities for Christian

programming, where the Gospel is presented and hope can be imparted to youth and their families who are struggling with questions about life and their medical conditions, and meet the needs of children with medical disabilities that Eagle Cove Camp would provide. There are very few camps of any kind that deal with children who have serious medical problems, such as cancer, heart and lung problems.

51. Based on the foregoing, the Plaintiffs believe that many disabled children are unable, because of their disabilities, to find access to Bible camp services in other locations. Under those circumstances, the Defendant's actions in refusing to make a reasonable accommodation to their zoning scheme to permit the Plaintiffs to operate the Bible Camp prevents seriously medically disabled children from accessing Bible camp services by reason of their disabilities, in violation of the Americans with Disabilities Act and the Rehabilitation Act.

52. The camp's dining hall and chapel were designed for a maximum of 300 persons and the camp's capacity in all regards is average among existing year round Bible camps situated elsewhere in the COUNTY.

The Subject Property

53. Plaintiff EAGLE COVE CAMP & CONFERENCE CENTER, INC. presently owns and at all relevant times has owned approximately 29 acres lying entirely within the Town of Woodboro, having between 550 and 600 feet of lake frontage on Squash Lake, an approximately 400-acre clear water publicly owned inland lake, and is directly served by United States Highway Route 8, a main east-west artery across northern Wisconsin. The western portion of Squash Lake lies in the Town of Woodboro and the eastern portion lies in the Town of Crescent, both towns lying within the County of Oneida.

54. There is held in the CHARITABLE TRUST approximately 5 acres, consisting principally of a large natural ravine (the "Amphitheater") contiguous to the aforesaid 29 acres.

55. The 29 acre parcel and the 5 acre parcel are devoted to the exclusive use of the Bible Camp and are hereinafter referred to as "Exclusively Charitable Acres." A substantial portion of the Exclusively Charitable Acres lies greater than 1000' from the ordinary high water mark of Squash Lake.

56. Plaintiff Arthur G. Jaros, Jr., as trustee of the Jaros Family Trusts, also owns approximately 25 acres, adjacent and immediately to the north of the Exclusively Charitable Acres, which 25 acres have in excess of 1800 feet of additional lake frontage on Squash Lake and are intended to be made available on a non-exclusive basis to EAGLE COVE CAMP & CONFERENCE CENTER, INC. to provide additional open space for various of the Bible Camp's purposes set forth above.

57. Together, the approximately 34 Exclusively Charitable Acres and the 25 acres owned by the Jaros Family Trusts are referred to as the "Subject Property" or "Subject Parcel."

58. The eastern portion of the Exclusively Charitable Acres is rugged and heavily wooded with two ridges running approximately parallel to the shore of Squash Lake. The western portion of the Exclusively Charitable Acres consists of flat field along with "the Amphitheater," the bottom of which is dry even though below the surface of Squash Lake.

59. The Subject Property was purchased by the paternal grandparents of the three JAROS plaintiffs in the early 1940's.

60. Ownership and/or control of the Subject Property passed to the generation represented by the three JAROS brother plaintiffs in 2004.

61. The Exclusively Charitable Acres represent the prime portion of the JAROS plaintiffs' inheritance which they regard as the Biblical "firstfruits" of their inheritance and analogous to the "lamb without blemish."

62. The Subject Property is particularly well-suited for a Bible camp land use.

63. Plaintiff Arthur G. Jaros, Jr., as trustee of the Jaros Family Trusts, has agreed to add approximately one (1) acre to the Exclusively Charitable Acres in order to accommodate the placement of the multi-function lodge and an ancillary structure away from the nearest residential neighbors to the south by being detached via conveyance from the adjacent property held in the Jaros Family Trusts, upon the securing of the requisite land use approvals.

64. In order to minimize impact to the environment, the parking lot for the Bible camp, instead of being located on rugged, heavily wooded acres near the multi-function lodge, has been located adjacent to U.S. Highway 8, which will provide direct ingress and egress for the Camp; ordinary access to the multi-function lodge from the parking lot will be on foot or by an accessible, standard gauge self-propelled railcar operating on an insular short-line railroad to be constructed on the Exclusively Charitable Acres.

The Applicable Land Use Regulations and Existing Land Uses

65. Plaintiffs are subject to the laws and regulations of the COUNTY OF ONEIDA and TOWN OF WOODBORO in the use of the Subject Property.

66. The TOWN OF WOODBORO, by its electorate, has chosen to possess "Village Powers," pursuant to Wisconsin Statutes §§ 60.10(2)(c) and 60.22(3).

67. As a result, the TOWN OF WOODBORO is empowered to engage in land use planning pursuant to Wisconsin Statutes §§ 60.22(3), 61.35, and 62.23.

68. On November 11, 1997, the TOWN OF WOODBORO adopted (and subsequently revised on January 13, 1998 and February 4, 1998) its own Land Use Plan ("1997 WB~LUP") containing "Goals and Policies" and a land use map with respect to land use within its jurisdiction and which serves as a guide for local officials to coordinate future development of the TOWN, pursuant to Wisconsin Statutes §§ 60.62(4) and 62.23(2).

69. The 1997 WB~LUP provided that "The Zoning Map under Oneida County Zoning for the Town of Woodboro should be amended to reflect the land use plan map."

70. Pursuant to Wisconsin Statutes § 59.69(1), the COUNTY OF ONEIDA's zoning scheme for property lying within the TOWN OF WOODBORO was required to "incorporate" the TOWN's 1997 WB~LUP.

71. The 1997 WB~LUP made no reference to religious use anywhere within the TOWN OF WOODBORO.

72. During the first half of 2000, the COUNTY OF ONEIDA adopted, pursuant to Wisconsin Statutes § 59.69(5)(d), a comprehensive revision to its existing zoning ordinance, such revision being titled the "Oneida County Zoning and Shoreland Protection Ordinance" ("OCZSPO") effective no earlier than May 15, 2000, and containing the permitted-as-of-right uses by district, discretionary (i.e., administrative review and conditional) uses by district, and zoning map applicable to the dispute which is the subject of this civil action.

73. Under Wisconsin law, Wisconsin Statutes § 59.69(5)(c)-(d), neither a county's initial zoning ordinance nor any comprehensive revision thereto (*e.g.*, the OCZSPO) is allowed to take effect in any Town, including the TOWN OF WOODBORO, in existence pursuant to art. IV, § 23 of the Wisconsin Constitution and subject to Chapter 60 of the Wisconsin Statutes until and

unless the Town agrees to adopt, and be bound by, same.

74. By its Resolution dated May 8, 2001, the TOWN OF WOODBORO approved and agreed to be bound by the COUNTY OF ONEIDA's OCZSPO including the zoning districts and zoning map provided for thereby. The Resolution states in part:

> **WHEREAS,** the Oneida County Planning and Zoning Committee proposed a comprehensive revision to the Oneida County Zoning and Shoreland Protection Ordinance as Resolution #35-2000/Ordinance Amendment #597; and
>
> **WHEREAS,** the Oneida County Board of Supervisors did enact Ordinance Amendment #597, Resolution #35-2000 on April 3, 2000; and
>
> **WHEREAS,** Section 4 of Ordinance Amendment #597 states, in part "For all towns in Oneida County, approval of the comprehensive revision shall be accomplished by the passage of a resolution and the filing of a certified copy of the resolution approving the comprehensive revision with the County Clerk."
>
> **NOW, THEREFORE, BE IT RESOLVED THAT** the Town Board of the Town of Woodboro does hereby accept and approve Oneida County Ordinance Amendment #597 and will uphold all provisions of said ordinance therein.

The TOWN OF WOODBORO therefore has approved: (i) the zoning districts and zoning map for the TOWN contained in the OCZSPO at the time of the TOWN's aforesaid May 8, 2001 resolution; and (ii) COUNTY OF ONEIDA's enforcement of land use regulations within the TOWN OF WOODBORO's jurisdiction.

75. Under Wisconsin law, the TOWN OF WOODBORO possesses veto power over any rezoning of property, other than shoreland areas (which shoreland areas include land within 1000' of the ordinary high water mark of Squash Lake), within its jurisdiction otherwise approved by the Board of Supervisors of the COUNTY OF ONEIDA, pursuant to Wisconsin Statutes §§ 59.69(5)(e)(3) and (e)(6), by taking preliminary disapproval action and by taking final disapproval action within 40 days of County Board approval.

76. During early 2009, the TOWN OF WOODBORO was engaged in adoption of a Comprehensive Plan pursuant to Wisconsin Statutes § 66.1001(a)(2).

77. That TOWN OF WOODBORO's Comprehensive Plan was required by § 66.1001(2)(h) to have a "land-use element."

78. That Comprehensive Plan, as proposed and submitted to the public for comment, stated:

> The Town will maintain the existing Land Use Plan (adopted November 11, 1997), which will serve as a guide for future land use and zoning decisions
>
> and
>
> [t]he Town will actively participate in zoning and subdivision review decisions at the County level, which affect the Town. This includes zoning amendment and subdivision requests acted on by the County Planning and Zoning Committee, as well as variance and conditional use requests acted on by the County Zoning Board of Adjustment. This plan will be cited as the basis for all such actions including 'disapproval' of proposed zoning amendments under § 59.69 Wisconsin Statutes.

79. Plaintiff EAGLE COVE CAMP & CONFERENCE CENTER made written objection in early 2009 to the continuing omission from the TOWN OF WOODBORO's land use plan of any religious uses.

80. Such objection was ignored or rejected and the TOWN OF WOODBORO's Comprehensive Plan, including its incorporation by reference of the 1997 WB~LUP, was adopted by the TOWN OF WOODBORO's governing board on April 14, 2009.

81. In the context of one of Plaintiffs' land use applications, the Planning & Zoning Committee of the COUNTY OF ONEIDA on June 14, 2006 stated in the Committee's making of "Findings, which is basically a checklist of questions":

> Has the Town of Woodboro adopted a land use plan?

Comments

Committee unanimously agrees that the Town of Woodboro has adopted a land use plan.

"YES"

In what manner is the requested rezone consistent and/or inconsistent with the Land Use Plan of the Town of Woodboro?

Comments

Mr. Scott Holewinski, "I would feel that the requested rezone is inconsistent with the Land Use Plan of the Town of Woodboro [sic]."

Full consensus by the committee.

82. The TOWN OF WOODBORO has appointed a Town Plan Commission, pursuant to Wisconsin statutes. The TOWN OF WOODBORO's Plan Commission (sometimes referred to by one or more of the Plaintiffs as the TOWN OF WOODBORO's "Land Use Committee") holds public proceedings on Petitions for Rezoning, and issued recommendations to the TOWN's Board on the same.

83. The TOWN OF WOODBORO's Town Board holds public proceedings on Petitions for Rezoning.

84. Defendant ONEIDA COUNTY BOARD OF ADJUSTMENT ("BOA" or "BOARD") is a board authorized by Wisconsin Statutes § 59.694. It was created by action of the COUNTY OF ONEIDA to, among other things, hear appeals from denials of applications for conditional use permits from the COUNTY's Planning & Zoning Committee, and is suable and liable in civil litigation for a judicial award of costs pursuant to Wisconsin Statutes § 59.694(10) and (14), respectively.

85. WIS. STAT. §59.694(1) provides that the COUNTY may confer upon the BOARD the power to "in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance in harmony with its general purposes and intent and in accordance with general or specific rules therein contained."

86. §9.83(B) of the OCZSPO states in relevant part: "The Board of Adjustment shall have the powers:

> 1. ***
>
> 2. To authorize upon appeal in specific cases, special exceptions to and variances from the terms of the ordinance as will not be contrary to the public interest, when owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship and which shall be in harmony with the spirit and general purposes of the ordinance and will result in substantial justice being done.
>
> 3. ***
>
> 4. ***

87. §9.11 of the OCZSPO provides, in part, that: "it is the purpose of this ordinance to promote the ... general welfare *** and to protect healthy surroundings for family life."

88. The southwest portion of the Subject Property is designated "Residential and Farming" (District 4) under the OCZSPO. The remainder of the Subject Property is designated "Single Family Residential" (District 2) under the OCZSPO.

89. The District 2 "Single Family Residential" zoning district under the OCZSPO allows the following uses, among others, as of right:

- Single family dwellings including long-term single-family rental and lease arrangements requiring a 30 consecutive day minimum length of stay.
- Community and other living arrangements as allowed by sec. 59.69, Wis. Stats., that are properly licensed by the appropriate state agency and that have

the capacity for eight or fewer persons.

90. Uses permitted as of right in District 4 "Residential and Farming" include all of the uses permitted as of right in District 2.

91. The District 2 Single Family Residential zoning district permits the following uses by administrative review or conditional use permit:

- Cemeteries
- Day care centers if a home occupancy, and only in accordance with provision of the ordinance pertaining to home occupations
- Telephone and public utility lines and transmission facilities and governmentally-owned or governmentally-contracted communication structures
- Bed and breakfast establishments with no limit on the number of guest rooms
- Churches
- Schools
- Libraries
- Community buildings
- Museums
- Community living arrangements with no limit on the number of residents
- Governmental uses without limitation
- Public parks and playgrounds of unlimited size

92. Uses authorized by administrative review or conditional use permit procedure in District 4 include all of such administrative review or conditional uses authorized for District 2 plus the following:

- Boarding and lodging houses;

- Tourist rooming house (1 rental unit);
- Hospitals;
- Sanitariums;
- Clinics;
- Convalescent and nursing homes not including correctional institutions;
- Multiple family dwellings of an unlimited number of units;
- Golf grounds;
- Commercial agriculture, horticulture and farming operations;
- Commercial stables or riding academies;
- Airports and landing fields;
- Trap and skeet shooting and rifle, pistol, and archery ranges;
- Contractor storage yards;
- Retail or wholesale business;
- Non-metallic mining;
- Metallic mineral exploration;
- Dog kennels and/or cat boarding facilities;
- Certain animal shelters;
- Certain wildlife rehabilitation centers;
- Veterinary clinics or animal hospitals;
- Communication structures subject to § 9.54 of the Ordinance.

93. The zoning ordinance utilizes the terms "church" and "school" but for which no definitions are provided within the OCZSPO, including in its Article X, "Definitions."

94. The terms "church" and "school" each have dual meanings: an institutional meaning

and a physical structure meaning.

95. Under Wisconsin law, "Schools", in both the institutional and physical structure meanings of that term, may include dormitories to house students as part of the principal use or as an accessory use to the principal use.

96. Both "Schools" and "Churches", in both the institutional and physical structure meanings of those terms, may include recreational facilities as part of their principal use.

97. Processing of applications for Administrative Review Use and Conditional Use Permits are individualized assessments resulting in the discretionary approval or disapproval of the application either by the Department (in the case of an Administrative Review Use) or, in the case of a Conditional Use, by the COUNTY OF ONEIDA's Planning & Zoning Committee, which consists of certain members of the elected County Board of Supervisors, with participation, as alleged within ¶ 69, *supra*, and as provided for by § 9.42(B) of the OCZSPO, by the TOWN OF WOODBORO.

98. Applications for rezoning parcels of land are individualized assessments involving the discretionary approval of the COUNTY OF ONEIDA and TOWN OF WOODBORO.

99. Neither the District 2 zoning district nor the District 4 zoning district permits "Bible camps," "recreational camps," or any other camps, whether as of right or by administrative review or conditional use permit.

100. Only the following zoning districts exist within the Town of Woodboro: (1) District 1-A Forestry; (2) District 2 Single Family Residential; (3) District 4 Residential and Farming; (4) District 7 Business B-2; (5) District 8 Manufacturing and Industrial; and (6) District 15 Rural Residential.

101. While Wisconsin statutory law expressly recognizes "Bible camps" (WIS. STAT. § 70.11(11)) as a separate modality of religious exercise, the OCZSPO, as adopted, does not utilize the term "religious camp" or "Bible camp," or permit, as of right, land use expressly denoted as a "religious camp" or "Bible camp" anywhere within its jurisdiction, and does not expressly recognize religious camps including Bible camps as a separate modality of religious exercise.

102. Article X of the County's OCZSPO provides the following definition of "Recreation Camps":

> Areas of land improved with buildings or tents, and sanitary facilities used for the accommodation of groups for educational or recreational purposes.

103. The principal function of the Bible camp will be to provide group worship, other religious devotional activities and personal spiritual development, none of which are aptly referred to as "educational or recreational purposes." However, the Bible camp will also provide religious education and a time-limited amount of recreation in a spiritual environment.

104. The land use denoted year-round "recreational camps" is permitted in certain locations *outside of* the TOWN OF WOODBORO within the COUNTY OF ONEIDA only as Administrative Review or Conditional Uses but are nowhere permitted as of right in areas subject to the OCZSPO. More specifically, the OCZSPO permits year-round "recreational camps" as Administrative Review or Conditional Uses only in District 5 "Recreational" or District 10 "General Use."

105. The zoning map promulgated by the COUNTY OF ONEIDA for application to the TOWN OF WOODBORO does not contain any land zoned District 5 or District 10 within any of

the Town's approximately 36 square miles. As such, year round Recreational Camps are not provided for by the OCZSPO anywhere within the TOWN OF WOODBORO.

106. Throughout the COUNTY OF ONEIDA's jurisdiction, what little "District 5, Recreational" land exists almost always abuts, in whole or in part, Single Family District 2 land.

107. Under the interpretation placed upon the OCZSPO by the TOWN, COUNTY and Defendant BOA, there is no zoning district within the Town of Woodboro that permits year round Bible camps or year round recreational camps.

108. A non-compelled interpretation of the OCZSPO which results in an exclusion of a particular type of religious use from an entire Town violates the Wisconsin Constitution as construed by Wisconsin judicial decisions and is impermissible.

109. A non-compelled interpretation of the OCZSPO which results in an exclusion of a particular type of religious use from an entire zoning district violates the Wisconsin Constitution as construed by Wisconsin judicial decisions.

110. The Plaintiffs' proposed use of the Subject Property as a year round Bible camp has been prohibited outright on the Subject Property, prohibited everywhere else within the District 2 and District 4 zoning districts, and prohibited everywhere else in the Town of Woodboro by the various actions, as alleged herein, of the TOWN, COUNTY and Defendant BOARD.

111. Various other properties fronting Squash Lake, some in the TOWN OF WOODBORO and some in the adjacent Town of Crescent, are zoned for B-1 and/or B-2 Business Use (Districts 6 and/or 7). These uses include three for-profit apartment buildings and several rental houses in the TOWN OF WOODBORO.

112. Approximately 20 acres of property consisting of a peninsula extending into Squash

Lake approximately 1,000 feet directly to the east of the SUBJECT PARCEL lying in the Town of Crescent is zoned by the COUNTY OF ONEIDA for Business Use.

113. The COUNTY OF ONEIDA and TOWN OF WOODBORO have each previously given their approvals to the dedication of a public park that, like the Subject Parcel, abuts both the governmentally owned right-of-way on which U.S. Highway 8 lies and the shore of Squash Lake and that lies in a Single Family Residential District (District 2) entirely within the TOWN OF WOODBORO.

114. There are at least four lakefront lots located on Hancock Lake within the TOWN OF WOODBORO that are zoned "Business" and are located adjacent to parcels zoned residential.

115. Current land uses in the Town of Woodboro include one (1) acre of "Government/Institution," twenty-nine (29) acres of "Commercial," and three (3) acres of "Outdoor Recreation" (being a public park at Perch Lake located inside the Oneida County Forest), which constitute 0.004%, 0.013%, and 0.122% of the land in the Town, respectively.

Applications to Use the Property

116. The Plaintiffs spent more than four years applying for rezoning and conditional use permits to allow them to use the Subject Property as a year round Bible Camp. They have exhausted all available legislative and administrative means of converting fallow (apart from occasional haying and timber removal) real estate—which has been controlled by the three Jaros Brothers and their ancestors for six decades—located in the TOWN OF WOODBORO to a developed year round Bible Camp. The TOWN, COUNTY and Defendant BOARD collectively have now, as of February 11, 2010, taken final actions that deny the Plaintiffs such use and leaving Plaintiffs with no recourse other than seeking judicial relief.

117. In the context of such efforts, the TOWN, COUNTY and Defendant BOARD have acted arbitrarily and capriciously, demonstrating both (i) great hostility to the proposed use and to the Plaintiffs, and (ii) the Defendant's determination that such use will never be permitted. The COUNTY OF ONEIDA arbitrarily changed its position on the permissibility of the Plaintiffs' proposed use, first stating that the land would need to be rezoned, then denying a petition for rezoning based on its position that rezoning was unnecessary as the use would be permitted as a conditional use under current zoning, and finally denying the conditional use permit based on a determination that it was not a permissible conditional use under current zoning.

Petition for Rezoning (May 2005 to August 2006).

118. On May 20, 2005, the COUNTY OF ONEIDA's Planning Manager Steven Osterman informed Plaintiff ARTHUR G. JAROS, JR. that, in order to operate the Bible Camp on the Subject Property, the Property would need to be rezoned from "District 2, Single Family" (applicable to all of the acreage abutting the lake) and from "District 4, Farming and Residential" (applicable to some of the land abutting U.S. Highway 8) to either "District 5, Recreation" or "District 10, General Use."

119. Under the ordinances of the COUNTY OF ONEIDA, its Planning Manager has authority to enforce the OCZSPO pursuant to § 9.80(C)(2) thereof.

120. On December 13, 2005, the EAGLE COVE CAMP & CONFERENCE CENTER, INC., then known under its original name of Squash Lake Christian Camp, Inc. and the CHARITABLE TRUST filed a Petition to Rezone the Exclusively Charitable Acres to "District 5, Recreation District" with the COUNTY OF ONEIDA, subject to the right of the TOWN OF

WOODBORO to veto rezoning over the portion of the Exclusively Charitable Acres greater than 1000 feet from the ordinary high water mark of Squash Lake.

121. The TOWN OF WOODBORO's Plan Commission (sometimes referred to by one or more of the Plaintiffs as the TOWN OF WOODBORO's "Land Use Committee") held public proceedings on the Petition for Rezoning on February 7, 2006 and February 20, 2006. In February 2006, the TOWN OF WOODBORO's Plan Commission members consisted of Kurt Zalewski, Sherry Tischendorf, Pat Zatopa, Mike Barnes and Virginia Amerena.

122. The TOWN OF WOODBORO's Plan Commission held the authority to make a recommendation to the TOWN OF WOODBORO's elected Town Board. On February 20, 2006, the Plan Commission adopted a negative recommendation concerning the Petition for Rezoning.

123. The Town Board of the TOWN OF WOODBORO, then comprised of Mike Barnes, Kurt Zalewski and Sue Johnson, conducted proceedings on the said Petition on March 14, 2006, April 18, 2006, and May 11, 2006.

124. On April 19, 2006, the Planning & Zoning Committee of the COUNTY OF ONEIDA conducted a public hearing on the Petition for Rezoning.

125. The TOWN OF WOODBORO adopted and submitted to the COUNTY OF ONEIDA Planning and Zoning Committee a formal Recommendation dated May 15, 2006 that the Committee deny the petition to rezone.

126. Prior to August 15, 2006, the COUNTY OF ONEIDA's Planning & Zoning Committee formally recommended denial of the rezoning petition by the full 21-person elected County Board of Supervisors by the Committee's formal Report dated August 2, 2006 which

memorialized the results of that Committee's session held on June 14, 2006.

127. The COUNTY OF ONEIDA's Planning & Zoning Committee ("Committee") stated and found at its June 14, 2006 deliberative session on the rezoning petition that the Plaintiffs "could achieve most or all of their stated objectives" without the petitioned-for rezoning but rather "[b]ased on the current zoning of the parcel subject to the re-zone request" as a conditional use or uses.

128. The only "objectives" of the rezone petitioners which had been "stated" to the Committee by the rezoning petitioners were the development and operation of a year-round Bible Camp located on the Exclusively Charitable Acres which included a multi-function lodge containing chapel, classrooms for religious instruction, boarding and food service accommodations and recreational facilities.

129. On June 14, 2006, the COUNTY knew that the "stated objectives" of the Plaintiffs were as set forth in the preceding paragraph and not an institutional "church" and not an institutional "school."

130. On June 14, 2006, the COUNTY OF ONEIDA's Planning & Zoning Committee also found that "there would be no delay, uncertainty or added expense born [sic] by the parties seeking this rezone" "given that 'religious exercise' is allowed on the property with a conditional use permit in the districts that the property is currently zoned." The County did not state that the Plaintiffs' proposed form of religious exercise would not be permitted by a conditional use permit on the Exclusively Charitable Acres.

131. Also on June 14, 2006, the COUNTY OF ONEIDA's Planning & Zoning Committee stated on the record that the Plaintiffs can "have a church and also have living quarters and . . .

exercise their religion." COUNTY OF ONEIDA thus changed its position from its May 20, 2005 statement that rezoning the Exclusively Charitable Acres to District 5 or District 10 would be necessary in order to use it for a year-round Bible Camp. The COUNTY OF ONEIDA's Planning & Zoning Committee stated on the record that it had previously approved Conditional Use Permit applications in Single Family/Residential districts for religious entities which allowed for playground type areas, park type areas, meeting rooms, and classrooms.

132. On August 15, 2006, the COUNTY OF ONEIDA's Board of Supervisors accepted the recommendation of its Planning & Zoning Committee and denied the Petition to Rezone by a vote of 20 to 0, with 1 member not voting.

133. Hostility and opposition to the proposed Bible Camp which preceded the aforesaid denial was rife within the surrounding community. Examples of such hostility included:

- In late December, 2005, an anonymous letter was circulated without the knowledge of any of the Plaintiffs among various local landowners.
- A membership organization called the "Squash Lake Association" was formed at least in part to become available as a platform for opposing (as the Association, in fact, thereafter did) the proposed Bible Camp.
- Virginia Amerena, a member of the TOWN OF WOODBORO's Plan Commission, an owner of property adjacent to the Exclusively Charitable Acres, and an avowed opponent of the Bible Camp, was instrumental in incorporating the aforesaid Squash Lake Association.
- Public opposition to the Bible Camp was manifest by extensive written submissions to the TOWN and to the COUNTY OF ONEIDA by riparian property owners during January-March, 2006.
- Public opposition to the Bible Camp was expressed at the County's public hearing conducted by the Committee on April 19, 2006 on the petition to rezone.
- The Committee expressly found on June 14, 2006, that there was "overwhelming" community opposition to the Petition to Rezone.

134. In making and incorporating into their decision the aforementioned express finding that there was overwhelming community opposition to the Petition to Rezone, the Committee members violated their oath of office and abridged Plaintiffs' constitutionally protected rights by adopting private biases and hostility.

Application for Conditional Use Permit (Late Summer, 2006 through February 11, 2010).

135. In reliance on the COUNTY OF ONEIDA's finding on June 14, 2006, that the Plaintiffs could achieve "most or all of [our] stated objectives" and can "have living quarters and . . . exercise their religion," the Plaintiffs began the process for applying for a Conditional Use Permit.

136. During late summer and early autumn of 2006, the Plaintiffs interviewed teams of architectural and engineering firms for the purposes of formulating the specifics required by the COUNTY's instructions for completing an Application for a Conditional Use Permit. Plaintiffs retained the services of the Wausau-based firm of Becher-Hoppe which, in turn, engaged various sub-contractors including the Madison-based landscape architectural firm of Ken Saiki Design.

137. The cost to prepare and to prosecute before the COUNTY and Defendant BOARD the site-specific Application for Conditional Use Permit was approximately $205,000 exclusive of time devoted by the principals of EAGLE COVE CAMP & CONFERENCE CENTER, INC. including its attorney ARTHUR G. JAROS, JR.

138. In late December, 2006, the Plaintiffs filed their Application for a Conditional Use Permit with the COUNTY OF ONEIDA's Planning & Zoning Department.

139. Upon receipt of the Application by the County, its Planning & Zoning Department refused to forward the Application to the Planning & Zoning Committee for consideration but

instead required that the Applicants obtain several site specific permits from various departments of the State of Wisconsin, including:

- For a potable water well (from the Wisconsin Department of Commerce);
- To construct a private onsite wastewater treatment system ("POWTS") (from the Wisconsin Department of Commerce with concurrence from the Wisconsin Department of Natural Resources);
- For operation (i.e., discharge into the ground) from such POWTS (from the Wisconsin Department of Natural Resources);
- For ingress and egress directly from U.S. Highway 8 (from the Wisconsin Department of Transportation)
- For grading of land within 1000' of Squash Lake (from the Wisconsin Department of Natural Resources).

140. While § 9.42(A)(1) of the OCZSPO provides that an Application for a Conditional Use Permit be "reviewed by the Zoning Administrator for completeness," the published instructions for completeness of such an Application did not require, as a condition of completeness, actual procurement of site-specific State permits for a potable water well or for a DOT permit for ingress and egress. The published instructions for an Application for a Conditional Use Permit did require a grading permit from the Wisconsin Department of Natural Resources.

141. By letter dated February 1, 2007, the COUNTY OF ONEIDA's Planning Department stated:

> This Department has had an opportunity [to] review your conditional use permit application. This initial review has deemed your application incomplete for the following reasons. Pursuant to Section 9.42A(2) of the Oneida County Zoning and Shoreland Protection Ordinance you must provide all Wisconsin Department of Natural Resources permits and include them with your conditional use permit application. *** [S]everal permit approvals will be necessary including a Chapter 30 Permit; Wisconsin Pollution Discharge Elimination Permit . . . . You must obtain those permits and provide us with copies. *** The Department does not have documentation that the Wisconsin Department of Transportation (DOT)

> approved the access. *** These details need to be included in the application. *** Once you have provided this additional information the department will resume our review.

No mention was made by the Department's letter that the proposed Bible Camp use detailed in the Application was not an allowable conditional use(s) for the Subject Property as presently zoned.

142. The COUNTY OF ONEIDA continued to act in bad faith by demanding, through its Department, that the CUP Applicants procure site specific permits, which were not legally mandated conditions to the sending of their application to the COUNTY's Planning and Zoning Committee for decision, since the Department in fact believed that the application should be denied based on zoning irrespective of the Applicants' future costly and successful procuring of such permits.

143. However, in reliance on the COUNTY OF ONEIDA's new position expressed on June 14, 2006 regarding the permissibility of the proposed Bible Camp use under current zoning of the Subject Parcel, the Plaintiffs proceeded to jump through (in what later became clear to be futile) administrative hoops in furtherance of their Application.

144. The Plaintiffs obtained such permits as required by the COUNTY OF ONEIDA substantial site-specific engineering cost.

145. The Plaintiffs obtained the site-specific grading permit from the State of Wisconsin's Department of Natural Resources ("WDNR") on November 15, 2007. The WDNR determined that the Bible Camp "will not adversely affect water quality, will not increase water pollution in surface waters, ... will not cause environmental pollution as defined in s. 283.01(6m), Wis. Stats., ... will not affect wetlands if constructed as proposed, ... [and] that the impact to natural

scenic beauty will not be significant if the applicant complies with the permit conditions and their plan to screen the development using native vegetation." The written ruling of the Wisconsin DNR's hearing officer more specifically stated:

> The issue of aesthetics or natural scenic beauty was also raised. The Department considers natural scenic beauty a public interest in the respect that impacts to it are reviewed for grading applications. The proposed site of the Squash Lake Bible Camp is not a unique site on the lake. Other sites have been developed on steep gradients, some with manicured lawns to the water's edge. Many lots on the lake contain large homes or other buildings readily visible from the lake and from the opposite shorelines. The Squash Lake Bible Camp proposes to screen the building from the lake's viewshed using native vegetation to the extent possible.

Neither the TOWN, COUNTY nor any private person appealed from such determination, even though the TOWN and private person objectors were given notice by the WDNR of their right to appeal.

146. The Plaintiffs obtained a site-specific permit to construct a POWTS from the State of Wisconsin's Department of Commerce on October 31, 2007 with concurrence received, in advance, from the WDNR on August 29, 2007. The cost of obtaining such permit was approximately $22,000 which is included in the overall cost figure set forth in ¶ 137, *supra*.

147. By letter dated November 16, 2007, the Plaintiffs obtained permission from the WDNR to operate the site-specific POWTS. The Plaintiffs obtained the site-specific potable water well permit from the WDNR by letter dated July 27, 2007. The cost of obtaining such permit was approximately $4,000, which is included in the overall cost amount set forth in ¶ 137, *supra*.

148. The Plaintiffs obtained a site-specific permit for ingress and egress directly from U.S. Highway 8 from the Wisconsin Department of Transportation dated September 11, 2008. The cost of obtaining such permit was approximately $31,500, which is included in the overall cost

amount set forth in ¶ 137, *supra.*

149. On December 18, 2008, the Plaintiffs supplemented and amended their December 2006 Application for a Conditional Use Permit by providing all of the site-specific permits required by the COUNTY OF ONEIDA and by narrative response to other points contained in the COUNTY OF ONEIDA's February 1, 2007 letter.

150. The COUNTY OF ONEIDA responded to the supplemented Application by letter on February 18, 2009 and by e-mail on July 6, 2009, by which it raised site-specific concerns.

151. However, in its February 18, 2009 letter, the COUNTY OF ONEIDA by its Planning & Zoning Department for the first time after the initial filing of the application for Conditional Use Permit advised the Plaintiffs that it was now changing its position once again and taking the position that the Application should not be granted because the use(s) described in the Application were not allowable for the Subject Property as currently zoned. The Department failed and refused to address the statement made in open session by the Planning & Zoning Committee on June 14, 2006 wherein the COUNTY, by that Committee which has jurisdiction over CUP Applications, had communicated to the Plaintiffs that they could achieve "most or all of their stated objections" without a change in zoning using the conditional use permit procedure and without delay, uncertainty or added expense.

152. On July 29, 2009, the COUNTY OF ONEIDA acknowledged in a memorandum that all such site-specific technical objections or concerns raised by the Department had been satisfactorily resolved.

153. At the July 29, 2009 "deliberative session," the COUNTY OF ONEIDA by its Committee made an arbitrary and unreasonable determination that the proposed Bible Camp

would substantially impair the enjoyment of neighboring property. Committee members had no evidence and admitted that with respect to this finding and conclusion, they had "nothing to base it on."

154. On July 29, 2009, the COUNTY OF ONEIDA by its Committee also made an arbitrary and unreasonable determination that the proposed Bible Camp was incompatible with: (a) adjacent "Single Family" uses, and (b) any adopted local plans for the area. The Committee gave no reasons for its determination as to the latter conclusion.

155. Other than the two findings described above, the COUNTY OF ONEIDA's Committee otherwise found that the Application complied with all General Standards set forth in the OCZSPO for Conditional Use Permits.

156. The Plaintiffs have offered to reduce the scale of the proposed Bible Camp facility, even though the full-sized structure, as finally proposed, fully complied with all generally applicable neutral zoning requirements, including setback and height limitations. However, at no time did the TOWN or COUNTY respond to the reduced-size submission. The County also failed to consider the Plaintiffs' written invitation to discuss any legitimate governmental concerns over the scale of the project.

157. At the July 29, 2009 deliberative session, the Committee denied the Application for Conditional Use Permit in its entirety and adopted written findings and conclusions consistent therewith on August 19, 2009.

158. Public opposition to the granting of the Conditional Use Permit by the Committee was rife:

- Extensive public opposition to the Bible Camp was orally expressed at a public hearing conducted on the grading permit application by the Wisconsin

Department of Natural Resources on October 29, 2007.

- A large number of written submissions to the COUNTY OF ONEIDA's Planning & Zoning Committee were made by protestors during March and April, 2009.

- Extensive oral objections were presented at the April 29, 2009, public hearing conducted by that committee on the application for conditional use permit and protestors at that hearing were so numerous that they spilled out into overflow seating set up in the hallway serving the largest meeting room in the County building where the hearing was being conducted.

- The Woodboro Town Board issued an Advisory Recommendation dated March 3, 2009, to the County Planning and Zoning Department (received by the Department on April 23, 2009) recommending denial of the Conditional Use Permit Application.

Proceedings Before the Defendant Board of Adjustment (Sept. 2009-February 2010)

159. By Appeal Petition filed September 16, 2009 and docketed as No. 09-005, the Plaintiffs timely appealed the denial of their Application for Conditional Use Permit to the Defendant ONEIDA COUNTY BOARD OF ADJUSTMENT as authorized, *inter alia*, by §9.42(C)(4) of the OCZSPO.

160. On December 2, 2009, the BOA conducted a limited scope public hearing confined to the following two issues): (i) "May the Board find, in this case, that the OCZSPO violates the Federal Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), or alternatively, based on RLUIPA, may the Board, in this case, approve an "exemption" to the Ordinance?" (referred to herein as Limited Issue A); and (ii) "Is the proposed camp and conference center an allowed conditional use within the meaning of § 9.22(D)(1) of the Ordinance, i.e. a church, school, library, community building or museum?" (referred to herein as Limited Issue B).

161. Within their Appeal Petition referenced by ¶ 159 above, various of the Plaintiffs informed the BOA of their rights under the federal Religious Land Use and Institutionalized Persons Act, and the County government's obligation to abide by federal civil rights laws.

162. With respect to Limited Issue A, the Defendant BOARD determined that it "ha[d] the authority to approve an exception" for the Bible Camp use under RLUIPA, "acknowledged the application of RLUIPA," and acknowledged RLUIPA's provision "which allows exemptions to be made under certain circumstances." The Board's Chairperson stated: "Certainly we're allowed to make an exemption."

163. On January 12, 2010, at its session called for the purpose of deliberating upon the two limited questions described above, the BOA, by three separate motions: (i) determined with respect to Limited Issue B that the proposed Bible Camp was not an allowable conditional use(s) in the zoning districts for which the Subject Property was currently zoned (hereinafter, "Motion 1"); (ii) not to grant the Plaintiffs any relief under the exemption power conferred upon it by the "Governmental Discretion in Alleviating Burdens on Religious Exercise" provision of RLUIPA, 42 U.S.C. § 2000cc-3(e) (hereinafter, "Motion 2"); and (iii) to deny (and affirm the Committee's complete denial of) the Application for Conditional Use Permit and dismiss the appeal from the Committee's decision to the BOA (hereinafter, "Motion 3").

164. The COUNTY OF ONEIDA's Board of Adjustment determined that no exemption under RLUIPA should be made for the Bible Camp use because the OCZSPO permits a "church" and a "school" and therefore, according to the Board members, "This to me would not indicate that there is no exercise for them for religious liberty" (Board Chairperson Robert Rossi), and "Therefore, on the basis that the ordinance does allow a church, it does allow a school, I don't

think there's any violation of RLUIPA" (Board Member Harland Lee).

165. On February 11, 2010, the BOA adopted a written resolution in conformity with its actions taken on January 12, 2010.

166. The COUNTY OF ONEIDA's Board of Adjustment, which took the final agency action on the application for CUP or exemption for religious land use under RLUIPA, adopted an unnecessary interpretation of the OCZSPO which interpretation resulted in a preference for religious exercise in the form of institutional churches and institutional diploma-oriented religious schools over year-around religious camps on the Subject Property and throughout the Town of Woodboro. The BOARD OF ADJUSTMENT refused to employ its discretion to place reasonable conditions on the Bible Camp use, such as allowing portions of the proposed use or to the scaled-down multi-function lodge proposal provided by the Plaintiffs, that would constitute a less restrictive means of achieving any governmental interest.

167. The "Decision of the Oneida County Board of Adjustment" states in part: "The BOA is obligated to apply RLUIPA in rendering its decision in this appeal" and "The BOA has authority under RLUIPA to change a policy or practice '*that results in a substantial burden on religious exercise, . . . by providing exemptions from the policy or practice for applications that substantially burden religious exercise . . . .*'"

168. The written decision of the BOA states "Zoning District 2 does not contemplate a use of the nature or extent described in the CUP application as a conditional use, ..."

169. The BOA decided in its written decision that "religious exercise" constitutes only church and school uses, thereby discriminating against the religious modality of a Bible camp: "Zoning District 2, Single Family Residential, does not prohibit religious exercise, as it allows

for use of property for a 'church' or 'school' upon issuance of a CUP in that district."

CAUSES OF ACTION

COUNT I: CAUSE OF ACTION ARISING FROM
BOARD OF ADJUSTMENT AFFIRMING DENIAL OF CUP APPLICATION

COUNT I: ACTION FOR CERTIORARI REVIEW
§ 59.694, STATS.

Legal Claims--Primary

170. Preceding allegations are incorporated by reference.

171. The Board did not proceed on a correct theory of law and/or did not keep within the jurisdiction it prescribed for itself by denying Plaintiffs both an opportunity to be heard and due process of law by exceeding the limited two-issue scope of proceeding conducted on January 12, 2010 by considering and voting upon Motions 2 and 3 as set forth in ¶ 163, above.

172. With respect to Motion 1 set forth in ¶ 163, above, the Board proceeded on an incorrect theory of law in construing the OCZSPO in a manner which favored and preferred institutional churches and institutional religious schools over Bible camps, even though the physical structures of the Bible camp would be identical to those of a parochial boarding school, and in construing and/or applying the OCZSPO facially as complained of in Causes of Action II - XVI.

173. Specifically, the TOWN, COUNTY and Defendant BOA, on the face of their land use regulations and/or as interpreted and applied to the Plaintiffs, give preference to certain types of religious establishments and modes of worship such as churches and religious schools in the institutional senses of "church" and "school" and against missionary, outreach, and evangelistically oriented religious exercise carried out by Bible camps in the TOWN OF

WOODBORO and on the Subject Parcel.

174. The Board's interpretation of the OCZSPO -- which unnecessarily interpreted the terms "church" and "school" (terms left undefined by the OCZSPO) in their institutional rather than physical structure senses -- was unreasonable in light of the requirements of the Wisconsin constitution and the cases decided thereunder requiring strict construction of a county zoning ordinance against the government and the Board's erroneous belief that Plaintiffs' religious liberties were not unlawfully abridged represented its will and not a judgment based upon the requirements of Wisconsin law including the protections of the Wisconsin Constitution.

175. The Board and/or various of its members acted arbitrarily, oppressively, and/or unreasonably in making findings of fact that were false based upon subjective opinion and/or personal experience without taking any, and not based upon any, evidence (e.g., that institutional churches would never have a commercial kitchen of the type proposed for the Bible camp) and also erred in misstating Plaintiffs' testimony given during the limited scope public hearing conducted on December 2, 2009.

176. The Board proceeded on an incorrect theory of law in assuming that the only relevant concept regarding protection of religious liberties is that of "substantial burden."

177. The Defendant BOA acted arbitrarily, oppressively, and/or unreasonably -- based upon its unlawful interpretative preference for institutional churches and institutional schools -- in refusing to employ its discretion to alleviate the burden on Plaintiffs' religious exercise, as authorized by § 9.83(B)(2) of the OCZSPO and as required by art. I, § 18 of the Constitution of the State of Wisconsin and the cases decided thereunder.

178. In denying the Application for Conditional Use Permit referenced by this Complaint,

the COUNTY and Defendant ONEIDA COUNTY BOARD OF ADJUSTMENT erred, as a matter of law, by misinterpreting the OCZSPO (including, but not limited to, placing an unlawful interpretation upon it which contravenes the Constitution of the State of Wisconsin by preferring institutional churches and institutional parochial schools over religious camps throughout the Town of Woodboro, totally excluding year round religious camps--no matter how small and even if their physical structures were identical to a parochial boarding school--from zoning districts 2 and 4, and by making findings of fact without taking evidence and/or contrary to the manifest weight of the evidence received by the COUNTY during its Committee's proceedings on the application for CUP.

Legal Claims--Additional

179. Preceding allegations are incorporated by reference.

180. The "Oneida County Zoning and Shoreland Protection Ordinance" ("OCZSPO") and the enforcement of the OCZSPO is a land use regulation and an implementation of a land use regulation.

181. The TOWN OF WOODBORO'S Comprehensive Plan and Land Use Plan, and its Resolutions and other actions taken with respect to land use regulation constitute land use regulation and an implementation of land use.

182. The TOWN, COUNTY, and Defendant BOA, by their actions, have implemented the Town of Woodboro's land use plan, which is a "land use regulation."

183. The TOWN OF WOODBORO is a "government" whose electorate possesses direct powers enumerated in Wisconsin Statutes § 60.10(1) and has an elected Town Board with various powers and duties including those enumerated in Wisconsin Statutes § 60.22.

184. Plaintiffs have no basis, due to the unlawful interpretation placed upon the OCZSPO by the TOWN, COUNTY and Defendant BOARD, within the OCZSPO -- as so interpreted -- for seeking anew a Conditional Use Permit for their use within the TOWN OF WOODBORO; to wit, under such interpretation no year-round "Recreational Camps" and no year-round Bible Camps, can be a conditional use (i) on the Subject Property, (ii) on other land within the TOWN which is classified as being in the same zoning districts in which the Subject Property is located, or (iii) in fact, on any land anywhere within the TOWN OF WOODBORO.

185. The treatment of Plaintiffs by the Defendant COUNTY and Defendant BOA has been arbitrary, oppressive, and/or contradictory and capricious.

186. The TOWN's, COUNTY's and Defendant BOARD's arbitrary, oppressive, and/or contradictory and capricious application of their land use regulations has caused Plaintiffs to suffer severe hardship.

187. The cumulative impact of the COUNTY OF ONEIDA's and TOWN OF WOODBORO's laws, both on their face and as applied to the Plaintiffs with respect to the Plaintiffs' proposed use, constitutes a complete denial of Plaintiffs' ability to operate the Bible Camp on the Subject Property for which various site-specific permits have been procured from the State at substantial cost as required by the COUNTY as a condition of even processing the Plaintiffs' Application for Conditional Use Permit.

188. The delay of in excess of four years from the filing of the Petition to Rezone in December 2005, and expenditures on the magnitude of $200,000, together with the concomitant inabilities to engage in the Bible Camp's development and applied-for use and to provide such religious ministry to youth and adults while pursuing futile applications made in reliance on the

COUNTY'S various and contradictory assertions about the permitted uses on the Subject Property constitutes a burden on the Plaintiffs' religious exercise.

189. Prohibiting the Plaintiffs from converting to religious use property that has been held in the Jaros family for 60 years, which the State of Wisconsin, as to all required site-specific permits, has determined is suited for such use, and for which on the order of $200,000 has been expended in furtherance of the proposed Bible Camp use on the Subject Property, and to require Plaintiffs to search for other land outside of the Town of Woodboro to locate the Bible Camp would subject the Plaintiffs to delay, uncertainty, and expense that constitutes a burden on their ability to engage in their religious exercise.

190. The lack of any zoning districts under the OCZSPO (even outside the TOWN OF WOODBORO) within the COUNTY OF ONEIDA that permit such use by right, and the fact that the justifications employed to deny the Bible Camp in the rezoning and conditional use applications would apply at any location within the COUNTY OF ONEIDA where such use may be permitted as a conditional use, constitute a burden on Plaintiffs' religious exercise.

191. At no time did the Defendants identify any genuine compelling governmental interest for purposes of Wisconsin constitutional law that justifies prohibiting the Bible Camp use on the Subject Property.

192. The Defendants possess no rational, important or compelling governmental interest for purposes of Wisconsin constitutional law that is furthered by prohibiting year-round Bible Camp use in the TOWN OF WOODBORO.

193. The Defendants did not use the least restrictive means under Wisconsin constitutional law of furthering any governmental interest by prohibiting the Bible Camp use on the Subject

Property including on the basis of its alleged "extent" and/or "scope".

194. The Defendants did not use the least restrictive means under Wisconsin constitutional law of furthering any governmental interest by prohibiting year-round Bible Camp use in the TOWN OF WOODBORO.

195. Plaintiffs were and are willing to accept any reasonable, nondiscriminatory limitations on their Bible Camp use designed to protect public health and safety on and near the Subject Parcel.

196. The denial of the Plaintiffs' requests for rezoning and for a CUP involved a system of formal or informal procedures or practices that permit the government to make individualized assessments of the proposed uses for the property involved.

197. The TOWN, COUNTY and Defendant BOA were influenced by community opposition against the Bible Camp that demonstrated serious animus against the Plaintiffs throughout all of their governmental processes.

198. The proposed Bible Camp would have far less impact on the community and nearby landowners than an allowable as-of-right residential subdivision on the Subject Property.

199. The Defendants on the face of their land use regulations and as applied to Plaintiffs, treat Plaintiffs' proposed Bible Camp use on less than equal terms with other assembly and institutional land uses throughout both the TOWN OF WOODBORO and the COUNTY OF ONEIDA.

200. Some or all of the Defendants have permitted other land uses on similar properties within their jurisdictions that have land use impacts equal to or greater than the Bible Camp.

201. No rational basis exists to prohibit the Bible Camp use outright on the Subject

Property (i) when other property on Squash Lake is zoned for business (which allows for-profit uses such as resort hotels); (ii) when a large riparian tract of such business-zoned property at Squash Lake is served by far inferior roads than the Bible Camp which is to be served by direct access from U.S. Highway 8; (iii) when other similarly situated rural riparian property in both the TOWN OF WOODBORO and the COUNTY OF ONEIDA allows for business uses or similar nonresidential uses including public parks; (iv) when permitted-as-of-right uses on the Subject Property including residential subdivision would have greater land use impacts than the Bible Camp; and (v) when lakefront Bible camps are perfectly compatible with adjacent single family uses, as similar Bible camps exist in the COUNTY that are adjacent to single family uses, such as Camp Luther on Range Line Lake, Honey Rock Camp on Long Lake, Crescent Lake Bible Camp on Crescent Lake, and Ft. Wilderness on Spider Lake.

202. In sum, for the foregoing reasons, Defendant BOA (i) failed to keep within its jurisdiction, (ii) failed to act according to law, (iii) acted in an arbitrary, oppressive, contradictory and unreasonable manner that represented its will and not its judgment, and (iv) lacked evidence supporting its determination sufficient to make it reasonable.

COUNTS II-III: CAUSES OF ACTION FOR DECLARATORY JUDGMENT ARISING FROM TOTAL EXCLUSION OF SINGLE PRINCIPAL RELIGIOUS STRUCTURE CAMPS FROM ALL ONEIDA COUNTY AREAS SUBJECT TO OCZSPO

COUNT II: RELIGIOUS PREFERENCE, FACIAL CHALLENGE
WIS. CONST. ART. I, § 18

203. Preceding allegations are incorporated by reference.

204. Section 9.16(B) of the OCZSPO provides, in part, that "[t]he provisions of this ordinance . . . shall be liberally construed in favor of the County . . . ."

205. Such provision is invalid under Wisconsin law in that county zoning ordinances are in

derogation of the free use of property and in tension with the public policy that favors the free and unrestricted use of property, *Cohen v. Dane Cnty. Bd. of Adjustment*, 74 Wis. 2d 87, 91, 246 N.W.2d 112, 114 (1976); *Hansman v. Oneida Cnty.*, 123 Wis. 2d 511, 514, 366 N.W.2d 901, 903 (Ct. App. 1985), especially for religious purposes. WISC. CONST., art. I, § 18.

206. Section 9.25(C)(3) of the OCZSPO lists "Recreational camps with more than 1 principal structure" as being an "Administrative Review Use" for "Recreational (District 5)."

207. Section 9.21(A)(4)(b) lists "Seasonal recreational camps with more than 1 principal structure" as being an "Administrative Review Use" for "District 1-A Forestry".

208. Section 9.21(B)(3)(b) lists "Seasonal recreational camps with more than 1 principal structure" as being an "Administrative Review Use" for "District 1-B Forestry".

209. The foregoing three sections are the only sections of the OCZSPO that make reference to any type of recreational camp being either a "Permitted Use" (as of right), an "Administrative Review Use" or a "Conditional Use."

210. The text of the OCZSPO does not make provision in any zoning district for a year-round Recreation or Recreational Camp having but only one principal structure.

211. Section 9.20(F) of the OCZSPO provides that:

> Unclassified or unspecified uses are presumed to be prohibited unless authorized by the Committee after review and recommendation of the Zoning Administrator, provided that such uses are compatible with the permitted uses, administrative review uses, or conditional uses allowed in that district.

212. The Plaintiffs' application for Conditional Use Permit provided for only one principal structure, namely, a main, multi-function lodge.

213. The Defendants or either of them construe the facial text of the OCZSPO, not only

with respect to Plaintiffs' application but purportedly generally, by intentionally disregarding and/or refusing to enforce the language "more than 1 principal structure" from § 9.25(C)(3) as well as from § 9.21(A)(4)(b) and (B)(3)(b) of the OCZSPO.

214. Such disregard of the plain text of the ordinance was without basis in law and/or unlawful in that, on information and belief, the County's Planning & Zoning Committee the Committee has never acted pursuant to § 9.20(F) of the OCZSPO to authorize for any zoning district either a recreational camp having but only one principal structure or a seasonal recreational camp having but only one principal structure.

215. A year round religious camp in land zoned Single Family Residential (District 2) need not have land use impact more severe than churches, schools, libraries, community buildings, community living arrangements for unlimited numbers of residents, any type and size of governmental building, bed and breakfast establishments having an unlimited number of guest rooms, and public parks and playgrounds, all of which are listed as Conditional Uses for such District 2.

216. In the alternative to the second preceding paragraph, if the Defendants had authorized, under the exception and proviso provisions of § 9.20(F), recreational camps having only but one principal structure, then the Defendants could have granted the Plaintiffs' CUP Application even though a year round religious camp having only one principal structure is not expressly listed as a Permitted Use, Administrative Review Use or Conditional Use and their denial of the CUP on the basis that the proposed conditional use "would not conform to the applicable regulations of the district" [namely, Districts 2 and/or 4] "in which it would be located" and/or that the proposed use as a year round Bible camp "is not a use allowed as a permitted or conditional use

in either Zoning Districts 2 or 4" was untrue and constituted an error of law.

217. The practice or conduct described in the fourth preceding paragraph was intended to permit the Defendants to make the claim that Plaintiffs' applied-for land use and/or development was allowable as a "Recreation Camp" or "Recreational Camp" in Districts 5 and 10 so as to avoid a legal violation while furthering the subjective will of the Defendants to block the Plaintiffs' exercise of their religion and conscience in the form of a year round Bible camp on the Subject Property.

218. Under the OCZSPO, a religious boarding school, as a particular type of "school" that is a listed administrative review use and/or conditional use in various zoning districts including the two zoning districts applicable to Subject Property can structurally and functionally include classrooms, chapel, sleeping accommodations, dining hall, commercial kitchens, library, gymnasium and recreational playing fields.

219. Substantially all of the Plaintiffs' proposed Bible camp development would consist of the structural and functional components described in the preceding paragraph.

220. The remainder of the proposed Bible camp development, if and/or to the extent not falling within the definition of "School", is described by other conditional and/or administrative review uses applicable to the Subject Property. For example, the proposed Bible camp development includes an air riflery range in the basin of the Amphitheater which is zoned District 4, Residential and Farming, and in which district rifle ranges are listed as conditional uses by § 9.24(A)(4)(g) of the OCZSPO.

221. The Defendants refused to treat and/or allow any aspect of the Plaintiffs' applied-for land use and/or development as "school" under the OCZSPO including specifically as a religious

boarding school and/or as an independent category as permitted by the exception and proviso of § 9.20(F) of the OCZSPO.

222. The Defendants lawfully could have treated all or substantially all of the Plaintiffs' applied-for land use and/or development in whole or in substantial part as a religious boarding school and, therefore, as a "School" in the structural and functional sense of that term under the OCZSPO.

223. Section 9.16(B) purports to confer power on the Defendants or either of them to interpret and/or apply the OCZSPO in favor of the preferences of government officials.

224. As § 9.16(B) applies to Plaintiffs' applied-for land use and/or development, the OCZSPO was interpreted and/or applied in a manner which restricted the use of Plaintiffs' land and land anywhere in the entire Town of Woodboro as a year round Bible camp.

225. With respect to applications for religious land use and/or development including that of the Plaintiffs, § 9.16(B) of the OCZSPO on its face violates established Wisconsin constitutional law.

226. The text of the OCZSPO makes no provision for religious camps having but only one principal structure.

227. The OCZSPO on its face prohibits religious camps having but only one principal structure from the entire County.

228. Such prohibition violates art. I, § 18 of the Wisconsin Constitution.

COUNT III: SUBSTANTIVE DUE PROCESS, FACIAL CHALLENGE
WIS. CONST. ART. I, § 8

229. Preceding allegations are incorporated by reference.

230. The OCZSPO on its face violates the Wisconsin Constitution's protection of

substantive due process of law.

COUNTS IV-V: CAUSES OF ACTION FOR DECLARATORY JUDGMENT ARISING FROM TOTAL EXCLUSION YEAR ROUND RELIGIOUS CAMPS FROM THE ENTIRE TOWN OF WOODBORO AND/OR ENTIRE ZONING DISTRICTS

COUNT IV: RELIGIOUS PREFERENCE, FACIAL CHALLENGE
WIS. CONST. ART. I, § 18

231. Preceding allegations are incorporated by reference.

232. Absent relief by this Honorable Court, Plaintiffs have no basis, due to the interpretation placed upon the face of the OCZSPO by the TOWN, COUNTY and Defendant BOARD, within the OCZSPO--as so interpreted--for seeking anew a Conditional Use Permit for their use within the TOWN OF WOODBORO; to wit, under such interpretation no year-round "Recreational Camps" and no year-round Bible Camps, can be a conditional use (i) on the Subject Property, (ii) on other land within the TOWN which is classified as being in the same zoning districts in which the Subject Property is located, or (iii) in fact, on any land anywhere within the TOWN OF WOODBORO.

233. Such total exclusion violates the law of the State of Wisconsin.

234. In particular but not by way of limitation, the total facial exclusion of year round religious camps even merely from zoning districts 2 and 4, let alone the entire Town of Woodboro, violates Wisconsin's prohibition on exclusion of religious assemblies from particular zoning districts as constituting an impermissible infringement on the right to worship according to the dictates of conscience and/or as an impermissible interference with the rights of conscience. *State ex rel. Lake Drive Baptist Church v. Vill. of Bayside Bd. of Trustees*, 12 Wis. 2d 585, 607, 108 N.W.2d 288, 300 (1961) (J. Hallows concurring).

COUNT V: SUBSTANTIVE DUE PROCESS, FACIAL CHALLENGE
WIS. CONST. ART. I, § 8

235. Preceding allegations are incorporated by reference.

236. The OCZSPO, on its face, violates the Wisconsin Constitution's protection of substantive due process.

COUNTS VI-XI: CAUSES OF ACTION FOR DECLARATORY JUDGMENT ARISING FROM PREFERENTIAL TREATMENT OF INSTITUTIONALIZED CHURCH AND NON-SEASONAL PAROCHIAL SCHOOLS IN THE TOWN OF WOODBORO

COUNT VI: RELIGIOUS PREFERENCE, FACIAL CHALLENGE
WIS. CONST. ART. I, § 18

237. Preceding allegations are incorporated by reference.

238. "Churches" and "Schools" are listed as conditional use and/or administrative review uses in District 2 ("Single Family Residential"), District 3 ("Multiple Family Residential"), District 4 ("Residential and Farming") as to Schools only, District 5 ("Recreational"), District 7 ("Business B-2"), District 8 ("Manufacturing and Industrial"), District 10 ("General Use"), and District 15 ("Rural Residential"), all of which districts pertain to portions of the Town of Woodboro.

239. According to the interpretation placed upon the face of the OCZSPO by the Defendants including its insistence that the undefined terms "church" and "school" can only be assigned, for purposes of construing the OCZSPO, their institutional, rather than structural and functional, senses of those terms, there is no land zoned within the Town of Woodboro as either a Permitted Use (as of right), Administrative Review Use or Conditional Use that would allow the County to issue a use permit for land situated anywhere within the Town of Woodboro for a year round religious camp.

240. As such, the face of the OCZSPO, as so construed, confers a preference upon certain types of religious establishments and/or modes of worship, namely, institutional churches and institutional parochial schools over religious camps including Bible camps, which are thereby unreasonably limited.

241. The face of the OCZSPO as so construed by the Defendants contravenes the "no preference" provisions of art. I, § 18 of the Wisconsin Constitution.

COUNT VII: RELIGIOUS PREFERENCE, AS APPLIED CHALLENGE
WIS. CONST. ART. I, § 18

242. Preceding allegations are incorporated by reference.

243. The OCZSPO, on its face, violates the Wisconsin Constitution's guaranty of substantive due process of law.

COUNT VIII: SUBSTANTIVE DUE PROCESS, FACIAL CHALLENGE
WIS. CONST. ART. I, § 8

244. Preceding allegations are incorporated by reference.

245. The OCZSPO, on its face, denies the Plaintiffs the equal protection of the laws guaranteed by the Wisconsin Constitution.

COUNT IX: SUBSTANTIVE DUE PROCESS, AS APPLIED CHALLENGE
WIS. CONST. ART. I, § 8

246. Plaintiffs also incorporate by reference the paragraphs of the Count VI into this count.

247. During the proceedings conducted by various of the Defendants on Eagle Cove Camp and Conference Center's December, 2005 Petition for Rezone and December 2006 Application for Conditional Use Permit (including appeal to the Defendant Board of Adjustment from the denial thereof), the Defendants justified the denial of that Petition and that Application based

upon their reasoning that the Plaintiffs could have a "church" rather than a "Bible camp" in the Town of Woodboro and/or on Subject Property.

248. Such reasoning gave preference to certain types of religious establishments, namely, institutional churches and institutional schools, including parochial schools, over religious camps including Bible camps.

249. Such reasoning gave preference to certain modes of worship, namely, worship conducted at institutional churches and institutional schools, including parochial schools, over worship conducted at religious camps including Bible camps.

250. The adjudicatory process applied by the Defendants to the aforesaid Petition and Application (including appeal) contravened the "no preference" provisions of art. I, § 18 of the Wisconsin Constitution.

251. Count VIII of Plaintiffs' federal Amended Complaint in the preceding and now concluded federal litigation alleged that the "Defendants have deprived and continue to deprive Plaintiffs of their freedom of worship, as secured by art. I, § of the Wisconsin Constitution ... by preferring other religious establishments and modes of worship."

252. Although the District Court granted and the Seventh Circuit U.S. Court of Appeals affirmed the grant of summary judgment on Count VIII, the Defendants' motion for summary judgment did not address the "no preference" provision of the Wisconsin Constitution and neither the Opinion of the District Court nor the Opinion of the U.S. Court of Appeals addressed that provision.

253. Issue preclusion does not apply where an issue is not actually submitted for ruling or where the tribunal does not actually address the issue.

254. In addition, the panel of the U.S. Court of Appeals ignored and did not expressly rule on Plaintiffs' motion, included in their Appellants' Brief to certify a question pertaining to the "no preference" provision to the Wisconsin Supreme Court pursuant to Seventh Circuit Rule 52.

255. Accordingly, the federal court grant of summary judgment on all of federal Count VIII without considering the special, specific and unique prohibition on giving preference to one type of religious establishment over another and/or one type of mode of worship over another constituted a manifest misapplication of existing principles that resulted in substantial injustice.

256. Wisconsin courts and/or, in particular, the Wisconsin Supreme Court -- not the federal courts -- are the ultimate arbiter of the scope of protections of religious liberties, including the right to devote and use private lands for the exercise of religious liberties, afforded by the Wisconsin Constitution.

257. If this state court proceeding is considered to be a continuation of the federal court proceeding and thus part of the "same case," then the Wisconsin courts are not bound by the erroneous grant and affirmance of summary judgment by the federal courts of important Wisconsin constitutional issues that went unaddressed by them. In particular, issue preclusion does not apply within the "same case," and the "law of the case" doctrine does not bar the Wisconsin courts from ruling on the issue of the "no preference" provision *de novo*. (*See*, F.R.Civ.P. 54(b), last sentence; *cf.* WIS. STAT. §752.35).

258. On the other hand, even if this state court proceeding is considered not to be a continuation of the federal court proceeding and thus not part of the "same case," then "law of the case" doctrine is inapplicable but "issue preclusion" does not apply as set forth in ¶ 253, *supra*, and/or because, where an important state law issue has been decided erroneously by a

federal district court or a U.S. court of appeals, principles of federalism and comity require that the state court system not automatically accept the federal court's ruling. *E.g.*, *Kopp v. Fair Pol. Practices Com.*, 11 Cal. 4th 607, 905 P.2d 1248 (1995); *cf.* § 752.35, Wis. Stats.

259. Neither does "claim preclusion" apply because: (1) the federal courts did not completely conclude the litigation on the Plaintiffs' claim to be entitled to relief as set forth in their prayer for relief and did not rule that the Plaintiffs were entitled to no relief whatsoever on the prayer contained in their federal complaint because the federal courts expressly dismissed Count XI without prejudice to refiling in the Wisconsin state court system pursuant to 28 U.S.C. § 1367(c)(3); and/or (2) the federal district court made clear that it would refuse to exercise supplemental jurisdiction per the usual practice over any state law causes of action except for those whose contours were identical with, or less expansive than, rights under federal causes of action that that court was adjudicating. *Parks*, 171 Wis.2d at 738-39, 492 N.W.2d at 369-70; *Aldrich*, 2008 WI App at ¶¶ 5-7, 310 Wis. 2d at 801-02, 751 N.W.2d at 869.

COUNT X: EQUAL PROTECTION, FACIAL CHALLENGE
WIS. CONST. ART. I, § 1

260. Preceding allegations are incorporated by reference.

261. The OCZSPO, as applied to Plaintiffs' Application for Conditional Use Permit, violated the Wisconsin Constitution's protection of substantive due process.

COUNT XI: EQUAL PROTECTION, AS APPLIED CHALLENGE
WIS. CONST. ART. I, § 1

262. Preceding allegations are incorporated by reference.

263. The OCZSPO, as applied to Plaintiffs' Application for Conditional Use Permit, denied the Plaintiffs the equal protection of the laws guaranteed by the Wisconsin Constitution.

COUNTS XII-XIV: CAUSES OF ACTION ARISING FROM PREFERENTIAL TREATMENT OF INSTITUTIONALIZED CHURCH AND NON-SEASONAL PAROCHIAL SCHOOLS IN THE COUNTY OF ONEIDA

COUNT XII: RELIGIOUS PREFERENCE, FACIAL CHALLENGE WIS. CONST. ART. I, § 18

264. Preceding allegations are incorporated by reference.

265. "Churches" permitted to operate year round and "Schools" permitted to operate year round and/or non-seasonally are listed as conditional use and/or administrative review uses in District 2 ("Single Family Residential"), District 3 ("Multiple Family Residential"), District 4 ("Residential and Farming") as to Schools only, District 5 ("Recreational"), District 6 ("Business B-1"), District 7 ("Business B-2"), District 8 ("Manufacturing and Industrial"), District 10 ("General Use"), and District 15 ("Rural Residential").

266. Non-seasonal Recreational camps having more than one principal structure are listed as administrative review uses in District 5 ("Recreational") and District 10 ("General").

267. The amount of land situated in the County of Oneida zoned, in aggregate, for Districts 2, 3, 4, 5, 6, 7, 8, 10 and 15 dwarfs the amount of land zoned, in aggregate, for Districts 5 and 10.

268. Accordingly, on its face, the OCZSPO affords a preference to churches and parochial schools, both permitted to operate year round, over religious camps that are permitted to operate year round.

269. The OCZSPO including its zoning maps thereby on its face contravenes the "no preference" provisions of art. I, § 18 of the Wisconsin Constitution.

COUNT XIII: SUBSTANTIVE DUE PROCESS, FACIAL CHALLENGE
WIS. CONST. ART. I, § 8

270. Preceding allegations are incorporated by reference.

271. The OCZSPO, on its face, violates the Wisconsin Constitution's protection of substantive due process.

COUNT XIV: EQUAL PROTECTION, FACIAL CHALLENGE
WIS. CONST. ART. I, § 1

272. Preceding allegations are incorporated by reference.

273. The OCZSPO, on its face, violates the Wisconsin Constitution's guaranty of equal protection of the laws.

COUNTS XV-XVI: CAUSES OF ACTION ARISING FROM
ADMINISTRATION OF OCZSPO APPLICATION PROCEDURES

COUNT XV: RELIGIOUS BURDEN
WIS. CONST. ART. I, § 18

274. Preceding allegations are incorporated by reference.

275. Plaintiffs' consciences requires them to exercise their religious liberties on the Exclusively Charitable Acreage in the form of a Bible Camp rather than an institutionalized church or parochial school.

276. As set forth in the paragraphs above common to all counts, the conduct of the Defendants burdened the Plaintiffs' exercise of religious liberties by interfering with their right of conscience.

277. Under RLUIPA's "as applied" provision (42 U.S.C. § 2000cc(a)), a plaintiff, whether an individual or a religious assembly or religious institution, bears the burden of persuasion that a government's land use regulation "*substantially* burdens" the plaintiff's religious exercise.

278. Under Wisconsin constitutional law, the protections of religious exercise are both "more expansive" than under federal law and "far more specific." *State v. Miller*, 202 Wis.2d 56 at 63-66 (1996).

279. In particular, under Wisconsin constitutional law applicable to the non-interference with right of conscience portion of art. I, § 18 of the Wisconsin Constitution, a plaintiff bears only the burden of showing that the land use regulation "burdens" rather than "substantially burdens" the plaintiff's religious exercise. *Coulee Catholic Sch. v. Labor & Indus. Review Comm'n, Dep't of Workforce Dev.*, 2009 WI 88, 320 Wis. 2d 275, 310, 768 N.W.2d 868, 885

280. The federal courts, during the federal court phase of this civil action, disregarded the established Wisconsin case law set forth above and instead erroneously concluded, with respect to the portion of federal Count VIII that asserted a violation of the no-interference-with-rights-of-conscience provision (that forms part of art. I, § 18 of the Wisconsin Constitution), that the Wisconsin standard was identical to, and no more expansive in the protection of religious liberties than, the federal "substantial burden" standard.

281. If this state court proceeding is considered to be a continuation of the federal court proceeding and thus part of the "same case," then the Wisconsin courts are not bound by the erroneous grant and affirmance of summary judgment by the federal courts on the important issue of the protection of Plaintiffs' rights of conscience under the specific and more expansive Wisconsin Constitutional provision. In particular, issue preclusion does not apply within the "same case," and the "law of the case" doctrine does not bar the Wisconsin courts from ruling on the issue of the "no-interference-with-rights-of-conscience" provision *de novo*. *See*, F.R.Civ.P. 54(b), last sentence; *cf.* WIS. STAT. §752.35 (Wisconsin Court of Appeals authority to grant

discretionary relief in the interest of justice or where the real controversy had not been fully tried)

282. Further, although the Wisconsin Supreme Court is bound by federal determination of federal law, in execution of its superintending and law-making functions, it nevertheless has constitutional authority and prerogative to grant relief where federal determination of state law is erroneous or improvident and would otherwise result in injustice to a party and harm to the law of this state and its general interest of Wis. Const. art. VII, § 3. *See also, e.g., City of Chicago v. Morales*, 527 U.S. 41, 61, 119 S. Ct. 1849, 1861, 144 L. Ed. 2d 67 (1999); Reetz v. Bozanich, 397 U.S. 82, 90 S.Ct. 788, 25 L.Ed.2d 68 (1970) (federal district courts bound to abstain from deciding an unsettled issue of state law until state courts are given opportunity to address the question).

283. On the other hand, even if this state court proceeding is considered not to be a continuation of the federal court proceeding and thus not part of the "same case," then "law of the case" doctrine is inapplicable and "issue preclusion" also does not apply as set forth in ¶ 253, *supra*, and/or because, where an important state law issue has been decided erroneously by a federal district court or a U.S. court of appeals, principles of federalism and comity require that the state court system not automatically accept the federal court's ruling. (*Kopp, et al. v. Fair Political Practices Commission*, 11 Cal. 4th 607 (1995); *cf.* WIS. STAT. §752.35).

284. Neither does "claim preclusion" apply because the federal courts did not completely conclude the litigation on the Plaintiffs' claim to be entitled to relief as set forth in their prayer for relief and did not rule that the Plaintiffs were entitled to no relief whatsoever on the prayer included in their federal complaint because the federal courts expressly dismissed Count XI

without prejudice to refilng in the Wisconsin state court system pursuant to 28 U.S.C. §1367(c)(3).

COUNT XVI: PROCEDURAL DUE PROCESS
WIS. CONST. ART. I, § 18

285. Preceding allegations are incorporated by reference.

286. Defendants rejected Plaintiffs' rezoning petition, stating that they were doing so on the basis that Plaintiffs could achieve most or all of their stated objectives through a Conditional Use Permit application, and advising them to make such application.

287. When Plaintiffs thereafater filed their application for a Conditional Use Permit, Defendants rejected the application, contrary to their prior statements.

288. Defendants thereby deprived Plaintiffs of Procedural Due Process guaranteed them by WIS. CONST. ART. I, § 18 .

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court grant the following relief:

1) With respect to Count I, an order reversing both the Planning & Zoning Committee decision of August 19, 2009, and the Board of Adjustment's Decision, Order and Determination of February 11, 2010 and instead granting or commanding the granting of the Conditional Use Permit as applied;

2) With respect to the declaratory relief sought by Counts II through XVI:

i) A declaration that that portion of § 9.16(B) reproduced in ¶ 204, above, violates art. I, § 18 of the Wisconsin constitution and/or Wisconsin judicial decisions and is therefore unconstitutional or otherwise violative of Wisconsin state law; and

ii) A declaration that the Plaintiffs' applied-for land use and/or developed as set forth in their conditional permit application and related submissions to the County constitutes a "school" in the structural and/or functional senses of that term, specifically, a parochial boarding school, and qualifies as a "school" under the OCZSPO; and

iii) In the alternative to (ii), declaration under Counts II and III that the face of the OCZSPO does not permit any religious camp land use and development including that of Plaintiffs' as applied-for consisting of only one principal structure in any zoning district and the OCZSPO on its face violates the Wisconsin constitution and/or Wisconsin case law and that the land use permit requirements of the OCZSPO may not be enforced against the Plaintiffs' land use and/or development described in their conditional use permit application and supporting materials submitted to the County;

iv) A declaration under Counts IV and V that the face of the OCZSPO excludes year

round religious camps from the entire Town of Woodboro and from each zoning district applicable to any and every portion of the Town of Woodboro, that such exclusion violates the Wisconsin Constitution as previously and consistently construed by Wisconsin case law development thereunder;

v) A declaration that the OCZSPO on its face confers a preference on institutional year round churches and year round and/or non-seasonal institutional parochial schools over year round religious camps with the Town of Woodboro (Counts VI and VIII) and/or the broader portions of the County of Oneida that are subject to the OCZSPO (Counts XII, XIII and XIV), that such treatment violates the Wisconsin Constitution and that the Plaintiffs' Application for Conditional Use Permit may be treated no less favorably than as if it were an application for a church and/or parochial school;

vi) A declaration under Count VII, IX, and XI that in the Defendants' processing of the Plaintiffs' Application for Conditional Use Permit, the Defendants impermissibly expressed a preference for the development of institutional churches and institutional parochial schools to the derogation of religious camps, that such treatment violated the Wisconsin Constitution and that the Defendants County and Board of Adjustments thereby erred as a matter of law in their deliberative processes; and

vii) A declaration under Count XVI that the Defendants County and Board of Adjustment denied Plaintiffs rights protected by the Wisconsin Constitution by burdening the Plaintiffs' religious exercise through interfering with their rights of conscience and to procedural due process of law, that the federal District Court and U.S. Court of Appeals fundamentally misunderstood and misapplied Wisconsin constitutional law in imposing a requirement on

plaintiffs of demonstrating a "substantial burden" on that portion of their federal Count VIII pertaining to the "no interference" portion of art. I, § 18 of the Wisconsin Constitution, and that the Defendants failed to demonstrate a compelling governmental interest in denying the applied-for conditional use permit including on the alleged "*nature*" "of the project" or "of the proposed use" and/or failed to apply the least restrictive alternative in rejecting the applied-for conditional use permit on the basis of the "*scope*" or "*extent*" of the project;

3) With respect to any and all counts, an award to Plaintiffs of full costs, disbursements and attorneys' fees, to the extent permitted by law, arising out of Defendants' laws, actions and land use decisions and out of this and related federal court predecessor litigation; and

4) Such other and further relief as this Court may deem just and appropriate.

Respectfully submitted by the Plaintiffs this 29th day of August, 2014.

By: _____

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