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STORMWATER FEES - MARYLAND

Congregation v. Mayor and City Council of Baltimore

Court of Special Appeals of Maryland - April 27, 2018 - A.3d - 2018 WL 1989534

Religious congregation sought judicial review of city zoning appeals board's rejection of its challenge to stormwater fees assessed on congregation's properties, which congregation made based on arguments on religious freedom and city's powers under state law.

The Circuit Court affirmed. Congregation appealed.

The Court of Special Appeals held that:

- City did not exceed its power under state statute on stormwater remediation fees in ordinance that provided for assessments of stormwater fees;
- Stormwater fee was an excise tax rather than a property tax, user fee, or service charge; and
- Stormwater fee was not a land-use regulation under the Religious Land Use and Institutionalized Persons Act.

City did not exceed its power under state statute on stormwater remediation fees in ordinance that provided for assessments of stormwater fees on property, despite argument that the fee for properties that were non-exempt, non-single-family properties was based on a property's impervious surface area and not based on each property's share of stormwater management services; statute required the creation of a watershed protection and restoration program, which would include a stormwater remediation fee and a local fund, and nothing in the state forbade categorizing different properties and applying different methods for fee assessments based on those categorizations.

Stormwater fee that city assessed on religious congregation's properties was an excise tax rather than a property tax, user fee, or service charge, and thus congregation's status as a religious organization did not exempt it from the fee; fee was not based on a commodity or service consumed, but fee was rather a charge that applied toward the operation of city's stormwater management system and was based on an aspect of the use of the property, i.e., the amount of impervious surface area.

Stormwater fee, which was properly categorized as an excise tax, that city assessed on religious congregation's properties was not a land-use regulation under RLUIPA, and thus city could not maintain an argument that the ordinance was a substantial burden on religious exercise in violation of RLUIPA; ordinance did not impose use restrictions or regulate the use of property, and city was not using fee as a pretext or vehicle to enact or implement a zoning ordinance.

City appeals board could find to be unsubstantiated religious congregation's argument that the stormwater fee that was assessed on congregation's properties, and that was properly categorized as an excise tax, was a substantial burden on the congregation in violation of the First Amendment, the state constitution's free-exercise clause, and RLUIPA, despite argument that congregation initially submitted its water bills to the public-works department, which first considered congregation's challenge, and thus the alleged procedural failure of the board to consider the

complete record was not a reason to vacate the board's rejection of congregation's challenge to fee's validity; a water bill indicated one, isolated expense.