

New Jersey Law Journal

Select '**Print**' in your browser menu to print this document.

©2007 New Jersey Law Journal

Page printed from: <http://www.njlj.com>

[Back to Article](#)

Town's Taking of Mosque Site Based On Anti-Muslim Bias, Suit Charges

Charles Toutant

08-07-2006

A Muslim congregation is suing the township of Wayne in federal court, claiming that the taking of its planned mosque site by eminent domain is an act of religious discrimination.

The congregation, made up of Albanian Muslims, says the township's action "was based on placating community residents that are biased against the mosque." The township says it wants to prevent development because the site is environmentally sensitive.

The suit, *Albanian Associated Fund v. Township of Wayne*, 06-3217, alleges not only free speech and equal protection infringement but also violations of the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. sec. 2000cc et seq., which is designed to protect houses of worship from discriminatory zoning.

Lawyers on both sides say this is the first time a court in New Jersey has been asked whether RLUIPA-defined rights outweigh the power of eminent domain.

"I think the idea that [RLUIPA] applies to condemnation is . . . very novel," notes Wayne's attorney, Mark Semeraro, saying the law doesn't apply because condemnation isn't a land use issue.

Jared Leland, counsel to the Becket Fund for Religious Liberty of Washington, D.C., which drafted the complaint, says the RLUIPA is implicated because the township is using eminent domain to advance open space preservation.

Adds plaintiffs' lawyer A. Michael Rubin, a Wayne solo: "The question is, whether the governing body can move forward with an eminent domain proceeding to stop a religious institution by taking the property for open space after we've been before the board 3-1/2 years with a land use application."

The congregation, which claims to have 200 families, says Wayne resorted to condemnation after years of planning board proceedings failed to derail the project. Their plan is to build a mosque on the 11-acre Wayne site to replace their overcrowded one in Paterson. They say about 70 percent of their members live in Wayne and there are no other Albanian mosques in the area.

The suit says that starting in October 2002, congregation members attended planning board hearings, listened to

vocal criticisms from residents and complied with the board's requests for information and for plan modification, such as removing minarets from their architectural renderings at the township's request.

Rubin says his clients have been subjected to more stringent requirements than other applicants, such as being made to produce a "worst case scenario" traffic study rather than the industrial-standard traffic study usually required.

More troubling, Rubin says, neighbors have said "very hurtful things" about the mosque, both at hearings and elsewhere.

One mosque member who attended meetings, Violca Camaj, said in a certification, "the board for the most part never came right out and said that they did not want a Muslim mosque in their township. But the cold hatred in the faces of the neighbors, the palpable tension in the hearing room, the snide remarks and people jumping out of their seats when we would describe our prayer rituals and religious practices made it very clear."

"There was also lots of sarcasm directed at us by the large group of objectors who are in attendance at every hearing on our application. None of this is evident from the dry words of the transcripts, but it was palpable during the hearings," Camaj said.

But a lawyer representing some of the objectors dismisses charges that his clients are biased. "My clients' objections are based entirely on the lack of suitability of this particular site," says John Segreto, of Segreto, Segreto & Segreto in Haledon. "It's a site with very acute environmental problems, steep slopes. It has nothing to do with the fact that it's an Albanian mosque."

According to township officials, the property's steep slopes require blasting and large concrete retaining walls to construct the mosque. The planning board has concerns about possible runoff problems and says the storm water management plan submitted by the mosque is inadequate.

The planning board had not reached a final decision when, in April, the township commissioned an appraisal of the mosque property for condemnation purposes and authorized its solicitor to negotiate purchase of the property. The township offered to pay \$510,000 for the property but the mosque said no.

Planning board attorney Matthew Cavaliere admits the application process has taken an unusually long time, but he says it is because the applicants made dramatic changes to their plans that could have justified starting the process all over. The planning board has let them amend their existing application instead.

Cavaliere says the planning board hasn't deliberated or voted on the mosque plan yet but is likely to do so soon. He called the suit "a pre-emptive strike, and a skeptic would say, intended to motivate the board to lean toward approval."

Township lawyer Semeraro says Wayne's actions are justified by an Appellate Division ruling last year that let a township use eminent domain to stop construction of a 23-home subdivision that had been given planning board approval. *Mount Laurel Township v. MiPro Homes, LLC*, 379 N.J. Super. 358.

"I don't see any reason to distinguish this from the factual basis of the case that was before the court last year" he says.

The *MiPro* case did not involve a house of worship, but last December, a federal judge in New York State found that RLUIPA did not prevent a town from seizing a vacant lot for use as a public park, thus preventing the church next door, which owned the lot, from using it to expand its facilities. The case, *Faith Temple Church v. Township*

of Brighton, 04-CV-6355L, is on appeal to the Second U.S. Circuit Court of Appeals.