

For Church, Religious Liberty Is a Wrecking Ball

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B. Douglas
Robbins, Wood
Robbins partner
Image: courtesy
photo



Thomas Lakritz,
San Francisco
deputy city
attorney
Image: courtesy

SAN FRANCISCO — It's a real estate dispute of near biblical proportions.

At the center is San Francisco's First St. John's United Methodist, a century-old church in lower Nob Hill.

In 2004, church leaders decided to raze the building, which had so many structural infirmities it was unsafe for use, and sell the land to a condo developer.

But after nine years, three lawsuits, a landmarking process, scores of neighborhood meetings and multiple CEQA review hearings, the church at 1601 Larkin St. is still standing — still vacant — and those battling with the city over its fate are still litigating.

Since the start, the case has presented a clash of religious liberty and city planning that poses thorny questions under the First Amendment. While there is a legal framework for religious organizations fighting to build or expand houses of worship, church leaders are on less charted territory — fighting for their right to demolish an unwanted, but historic, structure.

The case is also politically charged. David Chiu, president of the San Francisco Board of Supervisors, lives directly across the street from St. John's and has spoken out against aspects of the project.

In the state courts, the church won one round in 2009, while the city scored a victory in December 2012.

This past week, lawyers for church leaders and real estate developer [Pacific Polk Properties](#) [took their fight](#) to federal court where they faced off against the city attorney's office at a hearing before U.S. District Judge Yvonne Gonzalez Rogers.

Gonzalez Rogers, whose first task is to determine whether federal claims can proceed after years of litigation in state court, likened the vacant church to a frozen asset. "It is either a dead asset or they can liquidate it to survive," she said.

The California-Nevada Annual Conference of the United Methodist Church claims the refusal by city officials to authorize a demolition permit burdens the church in violation of the federal Religious Land Use and Institutionalized Persons Act, or RLUIPA. That law enacted in 2000 protects religious institutions from local land-use or zoning regulations that discriminate against or infringe on religious exercise.

Gordon Egan of Signature Law Group, who represents the church, said the \$3 million real estate deal must be viewed as a religious exercise because proceeds will be used to fund the mission of the church.

"The substantial burden in this case is egregious," he said.

However, lawyers for the city want the suit dismissed and insist selling property for financial gain is not protected.

"Not everything that a religious institution does is covered by RLUIPA," argued Thomas Lakritz, a 16-year veteran of the city attorney's office.

Lakritz and Egan have each been involved in the litigation since 2007, as has B. Douglas Robbins of Wood Robbins, who represents Pacific Polk.

To date, the city has spent more than \$700,000 on litigation costs, according to the city's response to a public records request from Wood Robbins.

Pacific Polk's owner, John McInerney, a former real estate lawyer at Orrick, Herrington & Sutcliffe, maintains the company has spent more than \$400,000 on designs, environmental review and permit fees. And he is seeking compensatory damages of more than \$8 million for the value of the project and lost rental income since 2007.

"It's cost all of us enormous amounts of money," McInerney said. "In 37 years as a real estate lawyer, I've never seen anything like this."

St. John's, designed by architect George Washington Kramer, was constructed in 1911 after the earthquake and fire of 1906 destroyed a predecessor. The church is considered notable for its fusion of Mission Revival and English Gothic styles.

For more than 90 years, it housed services. Over time, however, the number of worshippers dwindled and church leaders decided to sell the property in 2004.

Inspections identified structural problems with the wood-frame church, including dry rot so severe that Pacific Polk maintains it is unsafe for occupancy and no preservation of the existing structure is possible.

According to the developer, the vacant church has become a magnet for squatters, prostitutes, drug users and vandals. Even as the church has been battling for a demolition permit, it has received numerous citations from San Francisco's Department of Building Inspection for inadequate maintenance.

Some local residents contend the church has intentionally allowed the building to fall into disrepair in order to force its demolition. Chiu has been sympathetic to some of their concerns.

"Despite years of litigation, I hope this developer will respond to the concerns expressed by my neighbors, the Planning Department and the Planning Commission," Chiu said in an emailed statement.

To understand the current dispute, it's necessary to understand its history, Robbins says.

In June 2007, three years after Pacific Polk contracted to purchase the church property, San Francisco's Board of Supervisors passed a resolution to designate St. John's a local landmark. Though religious institutions are exempt from such designations, the city argued St. John's did not qualify since it had ceased using the church and agreed to its sale.

The church sued and won in a ruling affirmed in California-Nevada Annual Conference of the United Methodist Church v. City and County of San Francisco, 173 Cal.App.4th 1559. The appeals court in 2009 ordered the city to abort any further landmarking proceedings "that unquestionably are beyond the city's jurisdiction."

To Robbins, the landmarking fight demonstrates the city's interest in preserving the church at all costs.

"The city has shown its willing to do anything, lawful or unlawful to stop development of this project," he said.

The spectre of landmarking also complicates the transfer of the property, Robbins said. Once the church transfers to Pacific Polk, a nonreligious entity, the city could re-initiate landmark proceedings — a Catch-22 reflected in the developer's contract with the church, which provides for transfer of the property at the moment the church is torn down.

But Lakritz points out that while the appeal court sided with the church on landmarking, it did not obligate the city to issue a demolition permit and allowed for review to continue in accordance with the California Environmental Quality Act. "The statute and case law are really clear we can't approve a demolition permit until CEQA is done," Lakritz said. "We have litigated that and from our perspective, we won." So far, the church and Pacific Polk have struck out in the city's CEQA review process.

In 2010, the Planning Commission rejected Pacific Polk's plans for a six-story, 27-unit building. By a 4-3 vote, the commission declined to certify the developer's environmental impact report, finding it failed to address aesthetics or consider alternative designs.

The church sued again, but this time [the city won](#), arguing the church had failed to exhaust administrative remedies.

In June 2012, Pacific Polk presented a new design to the commission and was again denied.

McInerney continues making changes. His current proposal has been reduced by one story and altered to match the height of neighboring buildings, he says. A further hearing is scheduled for next month, but the process has grown contentious.

"I don't think anyone wants to pretend we can erase all the bad things, all the bad blood, all the bad misgivings," Planning commissioner Gwyneth Borden remarked at a December meeting on the project.

Since the inception of the RLUIPA case in 2011, U.S. Magistrate Judge Laurel Beeler has held more than two dozen conferences, according to court records, including three public meetings in chambers attended by lawyers and various neighborhood representatives.

The developer and his lawyer said they doubt anything will satisfy their opponents.

At this past week's hearing, Egan, the church's lawyer, told Gonzalez Rogers it is time for the church to be torn down.

When Methodists began their faith, he noted, they had no formal churches and would gather outdoors.

"We'll preach in an open field," he said. "We just can't preach in that building."

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