

Newsletter

South Eastern Council of Governments, Dakota BUSINESS Finance,
and South Eastern Development Foundation

Phone: (605) 367-5390
Fax: (605) 367-5394
Web: www.secog.org or
www.dakotabusinessfinance.com



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Left to Right: Misty Casto, Secretary; Kevin Byrd, Treasurer; Scott Koons, Second Vice President; Doug Elliott, First Vice President; Lynne Keller Forbes, President; and Jeff Kiely, Immediate Past President.

LYNNE KELLER FORBES ELECTED PRESIDENT OF THE NATIONAL ASSOCIATION OF DEVELOPMENT ORGANIZATIONS

Washington, DC – Lynne Keller Forbes, Executive Director of the South Eastern Council of Governments in Sioux Falls, South Dakota, was elected as President of the National Association of Development Organizations (NADO) on October 18, 2016 at NADO's Annual Business Meeting. The meeting was

held in conjunction with the association's 49th Annual Training Conference in San Antonio, Texas.

As President, she will preside over the NADO Board of Directors which oversees the association's budget and operations and develops policy on issues affecting regional development organizations. The organization was founded in 1967 to provide training, information, and representation for regional development organizations throughout the United States. Today, NADO member organizations serve local governments and the public within their regions through various programs focused on diversifying local economies, assisting businesses, creating jobs, and providing vital community services.

"We are honored to have Lynne Keller Forbes serve as President of our national association. Lynne brings a wealth of expertise, knowledge, and leadership on regional community and economic development issues to the national level," stated Joe McKinney, NADO Executive Director. "Most importantly, she is focused on helping our nation's local communities pursue comprehensive regional strategies for remaining economically competitive in today's rapidly changing global environment."

She will serve as President of the association through September 12, 2017. SECOG Chairman, Mike Broderick accompanied Lynne to San Antonio.



L to R: Joe McKinney, NADO Executive Director; Lynne Keller Forbes; Mike Broderick, SECOG Board Chairman

RLUIPA: The Unknown Elephant in the Room



In July 2016, the U.S. Department of Justice (DOJ) issued a report entitled *Combating Religious Discrimination Today*, which determined that “many municipalities simply do not know enough about [the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc et seq.] [or lack] awareness about both its provisions and how the statute must be interpreted when it conflicts with local or state laws.” This article focuses on the land-use provisions of RLUIPA, which protect the right of religious assemblies and institutions from discriminatory or unjustifiably burdensome zoning laws. It is designed to give you at least a passing familiarity with the law with the hope that you seek the advice of competent legal counsel should you encounter these issues as you adopt, amend, interpret, and enforce your zoning ordinances.

What Is RLUIPA?

In 2000, Congress unanimously enacted RLUIPA. In doing so, they noted that as a whole, religious institutions were treated worse than secular places of assembly like community centers, fraternal organizations, and movie theaters, and that zoning authorities frequently violated the United States Constitution by placing excessive burdens on the ability of congregations to exercise their faiths. To combat this, RLUIPA provides roughly five separate, but sometimes overlapping, provisions to protect religious activities, including:

1. Protection Against Substantial Burdens on Religious Exercise

Section 2(a)(1) of RLUIPA prohibits the implementation of any land use regulation that imposes a “substantial burden” on the religious exercise of a person or institution, except where justified by a “compelling government interest” that the government pursues using the least restrictive means.

“What constitutes a substantial burden?” The substantial burden inquiry is very fact-intensive and examines the likelihood that the restriction will impair the ability of the person or group to engage in the religious exercise. Generally,

a restriction or set of restrictions will be found to be a substantial burden when they either (1) effectively bar the use of a particular property for religious activity; (2) impose significant barriers unique to the religious use of the property; or (3) create significant delay, uncertainty, or expense in constructing or expanding a structure for religious use. For example, courts have found that denial of a building permit due to onerous off-street parking requirements may constitute a substantial burden.

“What is a “religious exercise?” According to Section 8(7)(a) of RLUIPA, a “religious exercise” includes any exercise of religion, “whether or not compelled by, or central to, a system of religious belief.” Therefore, a county or municipality cannot avoid the requirements of RLUIPA by claiming that a group’s particular religious activity is something they merely want to do, rather than something they must do. For example, a town could not claim that using part of the church’s building as a homeless shelter is not a religious exercise because it is less important to its core beliefs than traditional Sunday worship services.

Further, RLUIPA also specifies in Section 8(7)(b) that “[t]he use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose.” As such, “religious exercise” also covers the actual structure itself being used for religious

RLUIPA: The Unknown Elephant in the Room—Continued

activities. For example, a county generally cannot impose “substantial burdens” on the use or expansion of a building used as a religious school. This is true even where those facilities would be used for both secular and religious educational activities.

2. Protection Against Unequal Treatment for Religious Assemblies and Institutions

Section 2(b)(1) of RLUIPA contains a provision, commonly known as the “equal terms provision.” It requires that religious assemblies and institutions be treated at least as well as nonreligious assemblies and institutions. Some courts have found the equal terms provision violated where places of worship were forbidden, but private clubs, auditoriums, community centers, day care centers, fraternal organizations, and other assemblies were permitted. As such, one thing you can do to avoid violating this section is to ensure your permitted and conditional uses are based solely on external factors such as size, impact on traffic and parking, intensity of use, hours of operation, noise, and similar objective criteria.

3. Protection Against Religious or Denominational Discrimination

Section 2(b)(2) of RLUIPA prohibits discrimination “against any assembly or institution on the basis of religion or religious denomination.” Since this Section broadly applies to discrimination based on either religion or *religious denomination*, it applies in situations where a local government may not be discriminating against all members of a particular religion, but merely a particular sub-group or sect.

4. Protection Against Total Exclusion of Religious Assemblies

Section 2(b)(3)(A) of RLUIPA states, “No government shall impose or implement a land use regulation that totally excludes religious assemblies from a jurisdiction.” If a local government wrote its zoning ordinance in such a way that religious uses were prohibited, either facially or through implication, it would be in violation of federal law.

5. Protection Against Unreasonable Limitations on Religious Assemblies

Section 2(b)(3)(B) of RLUIPA provides that government must not unreasonably limit “religious assemblies, institutions, or structures within [its] jurisdiction.” This provision is violated if a county or municipality’s land use laws, or their application, deprive religious institutions and assemblies of reasonable opportunities to use and construct structures within its borders, such as through excessive frontage and spacing requirements.

Is There Anything We Can Do To Avoid Liability?

RLUIPA contains a “safe harbor” provision that protects a local government from liability if it takes certain steps to remedy both current violations and any that may occur in the future.

Conclusion

While RLUIPA is not a blanket exemption from zoning laws, it does impose a number of safeguards and requirements on local governments regarding zoning that impacts religious uses. As long as you apply your ordinances uniformly and avoid imposing an unjustified “substantial burden” on religious exercise, you may still regulate religious land uses just as you would any other secular use. If you have any questions about this or any other land use issue, please contact Patrick Andrews at patrick@secog.org or (605) 367-5390.



New CAC Members for the MPO

The Metropolitan Planning Organization's (MPO) Citizens Advisory Committee (CAC) is beginning 2017 with new members. During the past few months, the CAC membership subcommittee was tasked with the difficult assignment of narrowing down several qualified applicants to fill two vacancies on the CAC. As a result, the MPO's governing body, the Urbanized Development Commission (UDC), approved the appointment of Carrie Geppert and Audra Staebell. In addition, Ryan Kerkvliet was appointed to serve an additional three-year term on the CAC.

Carrie Geppert works for South Dakota Advocacy Services as the PAAT Program Director, where her role is to investigate, monitor, advocate, and provide resources for individuals and persons with disabilities. She also has experience in serving for several other committees and organizations in the community such as the Community Development Committee and South Dakota Parent Connection.

Audra Staebell is the Marketing and Communications Coordinator for the University Center-Sioux Falls where she will be able to serve as a liaison between higher education and the formal transportation planning process. She also has experience in serving for several

other committees and organizations in the community such as Lutheran Social Services and the Sioux Falls Area Chamber of Commerce.

The CAC is an important component of the MPO's transportation planning process, which directs and oversees all transportation planning and programming activities within the official metropolitan planning area, including the Cities of Brandon, Crooks, Harrisburg, Hartford, Sioux Falls, and Tea, as well as portions of Lincoln and Minnehaha Counties. The CAC is the committee established to solicit public participation into the local transportation planning process with membership comprised of interested citizens representing various segments of the population within the planning area. The CAC serve as liaisons between the general public and the formal transportation planning process. The CAC, along with the Technical Advisory Committee (TAC) serve as advisory committees to the Urbanized Development Commission, the decision making board of the MPO, which is primarily comprised of elected officials from the government participants of the MPO. To learn more, or become involved with the MPO planning process, please visit the MPO's website at www.siouxfallsmpo.org.

Jessica Evans and Trisha Viss Earn HDFP Certification



Left to Right: Jessica Evans and Trisha Viss

Jessica Evans and Trisha Viss have each received a Housing Development Finance Professional (HDFP) certification from the National Development Council (NDC). Certification is a designation given to individuals who successfully complete an intensive housing development finance training series. The training provides individuals working in the field of housing development with instruction in single-family home ownership finance, multi-family housing development finance, housing development finance including problem solving and deal structuring, and the creation and implementation of development programs.

Recent Funding in SECOG Region

LWCF Awards

Gov. Dennis Daugaard has awarded a total of \$429,000 in Land and Water Conservation Fund (LWCF) money to several communities. The federal assistance program provides up to 50 percent reimbursement for outdoor recreation projects. SECOG staff assisted the following communities with the following LWCF grants for outdoor recreation projects:

- ◇ Dell Rapids – \$75,000 for campground and comfort station development
- ◇ Elk Point – \$54,800 for playground equipment replacement

Land and Water Conservation Funds come from the National Park Service and are administered in South Dakota by the state Department of Game, Fish and Parks.

Transportation Grant Awards

At its Nov. 18, 2016, meeting, the South Dakota Transportation Commission awarded nearly \$3.9 million in economic development grants for infrastructure improvements in smaller communities in South Dakota. The funds awarded will improve roads leading to schools, main business areas, hospitals, grain elevators and other economic areas in the communities. The grants pay for 60 percent of the construction costs, up to a maximum of \$400,000.

SECOG staff assisted the following communities with the following successful grant applications:

Agri-Business Grant:

- ◇ Lincoln County - \$400,000 for 468th Avenue and 290th Street which will provide access to the Dakota Plains Dairy.

Community Access Grant:

- ◇ Bridgewater - \$71,500 for Juniper Street which serves a business area.
- ◇ Elk Point - \$290,000 for Rose Street which serves a business area.
- ◇ Salem - \$400,000 for Main Street and Norton and Essex Avenues which serves the downtown business area.

For more information on LWCF Grants, Agri-Business Grants or Community Access Grants, contact Planners Melissa Gibson (melissa@secog.org) or Leslie Mastroianni (leslie@secog.org).

State Historical Society Announces Deadwood Fund Grant Applications



The South Dakota State Historical Society announced that applications for the first round of the 2017 Deadwood Fund grant program are due on February 1, 2017, for work beginning no earlier than May 1, 2017. The second round of 2017 applications will be due October 1, 2017, for work beginning no earlier than January 1, 2018.

The program is designed to encourage large-scale restoration or rehabilitation of historic properties by individuals, organizations or public agencies, according to Jay D. Vogt, director of the State Historical Society, whose historic preservation office administers the program. Funding for the program is from Deadwood gaming revenue earmarked by state law for historic preservation projects throughout the state and distributed by the State Historical Society.

Grants will be awarded in amounts ranging from \$1,000 to \$25,000. The grant amount must be matched on a dollar-for-dollar basis from nonfederal and nonstate sources. Nonprofit organizations will be allowed to use in-kind services for one-half of their match.

In 2015, \$113,744 were awarded between eight projects, resulting in a total public-private investment of \$297,162.

For more information on the South Dakota State Historical Society's Deadwood Fund grant program, contact Planners Melissa Gibson (melissa@secog.org) or Leslie Mastroianni (leslie@secog.org).

Grant forms are available online at <http://history.sd.gov/Preservation/FundingOpps/FundingOpportunities.aspx>.

City of Crooks Selected by the South Dakota Department of Health and SDSU for Active Transportation Assessment



The South Dakota Department of Health provides one SD community (or two communities as an inter-community active transportation project) with technical assistance on launching healthy community design principles through conducting active transportation assessments. The technical assistance is provided by SDSU Landscape Architect students as part of their spring 300 level City Planning class. The students, under the guidance of Professor Donald Burger, conduct varied built environment assessments, develop recommendations for improving the built environment to increase active transportation within that community or joint communities, and present their findings to the community. A highlight of this collaboration is the community stakeholder engagement with the students throughout the process.

Active transportation is the integration of physical activity into daily routines such as walking or biking to destinations like work, school, grocery stores, or parks. Active transportation policies and practices in community design, land use, and facility access have been proven effective to increase physical activity. Improving the built environment conducive to active transportation also improves community aesthetics, enhances the economy of a community, and improves overall community con-

nectedness and quality of life.

Communities are selected through a competitive application process. Applications are made available at www.healthysd.gov in late fall, for a winter/spring grant period. This is a no-cost opportunity for the selected community. By engaging in the assessment process, communities can position themselves for larger funding opportunities to support short-term healthy community design enhancements, or long-term complete streets policy implementation and infrastructure investments. Selected communities convene a multi-sector coalition of community stakeholders with representation from Elected Officials, Community/Civic Leaders, Wellness, Public Works, Zoning, Planning, Transportation, Engineering, Parks and Rec, Transit Authority, Walking/Bicycling Advocacy, Schools, Historical Preservation, Local Business, Economic Development, Social Services, Tourism, Seniors, Youth, Childcare, Healthcare, People with Disabilities, Law Enforcement, Main Street/Downtown Associations, and other local residents.

The following communities have participated in this collaboration and are at different stages of consideration and/or implementation of the recommendations: **2013 Huron, 2014 Mitchell, 2015 Volga and Salem, and 2016 Ft. Pierre.** All communities receive ongoing support, technical assistance and follow-up provided by the SDDOH as part of this project. All SDSU community reports can be found on each of the cities' websites.

Multi Hazard Pre-Disaster Mitigation Plan

The Lincoln County and Minnehaha County Emergency Management Departments have contracted with the South Eastern Council of Governments (SECOG) to assist with the development of an updated, joint Multi-Hazard Pre-Disaster Mitigation Plan (PDM plan). This plan will be partially funded by FEMA's Hazard Mitigation Grant Program, which was awarded in November.

Annual DOT Road Inventory Project

Keep an eye out because SECOG will soon send out maps and letters for the annual road inventory. Since 1995, the South Dakota Department of Transportation and the South Dakota Planning and Development Districts have been working together to update any changes to the public road system. SECOG members will soon receive envelopes which contain two copies of their local road map and a letter further detailing what information is being requested by the DOT Road Inventory program. Members are asked to carefully review these maps for accuracy and provide a response using the included return envelope even if there have been no new roads constructed or any changes made to road surfaces or alignment in the previous year. Your assistance is critical to the accuracy of SDDOT's public road inventory.

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GILBERT, 576 U.S. ____ (2015),
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ORDINANCE MAY NEED TO
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(605) 367-5390 AT YOUR
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Dakota BUSINESS Finance and SEDF Approve Additional Loans

Garbage-N-More, LLC

Financing Source: South Eastern Development Foundation

Purpose: Purchase sanitation truck and equipment

Community: Garretson



Trucks-N-Trykes 2 Daycare Center, Inc.

Financing Source: South Eastern Development Foundation

Purpose: Refinance, working capital

Community: Sioux Falls



Dakota BUSINESS Finance and SEDF Approve Additional Loans

Microtel Inn

Financing Source: Dakota BUSINESS Finance

Purpose: Purchase and renovate existing hotel

Community: Sioux Falls

Participating Lender: Aaron Tribble with American Bank & Trust



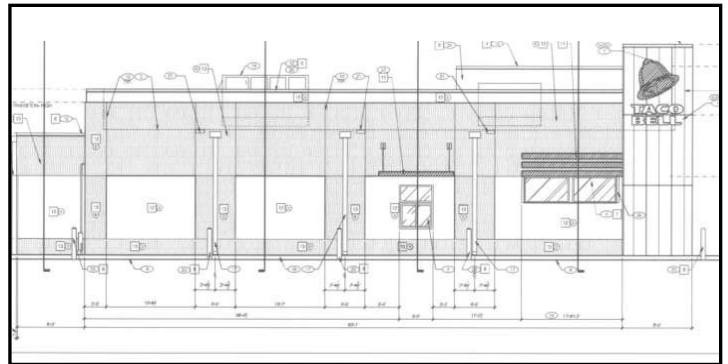
Taco Bell

Financing Source: Dakota BUSINESS Finance

Purpose: Purchase land and construct new building, purchase equipment

Community: Marshall, MN

Participating Lender: Mike Flint with First Dakota National Bank



Silverstar Car Wash

Financing Source: Dakota BUSINESS Finance

Purpose: Purchase land, construct new car wash, purchase equipment

Community: Sioux Falls

Participating Lender: Jeff Priebe with First Dakota National Bank



Slydog of South Dakota, Inc. and Dakota Plastics & Machining, LLC

Financing Source: Dakota BUSINESS Finance

Purpose: Purchase existing building and renovate, purchase equipment

Community: Madison

Participating Lender: Cory Hughes with First Savings Bank



Dakota BUSINESS Finance and SEDF Approve Additional Loans

Kooiker Roofing and Urethane Insulation

Financing Source: Dakota BUSINESS Finance

Purpose: Purchase existing building and equipment as part of business purchase

Community: Sioux Falls

Participating Lender: Cory Hughes with First Savings Bank



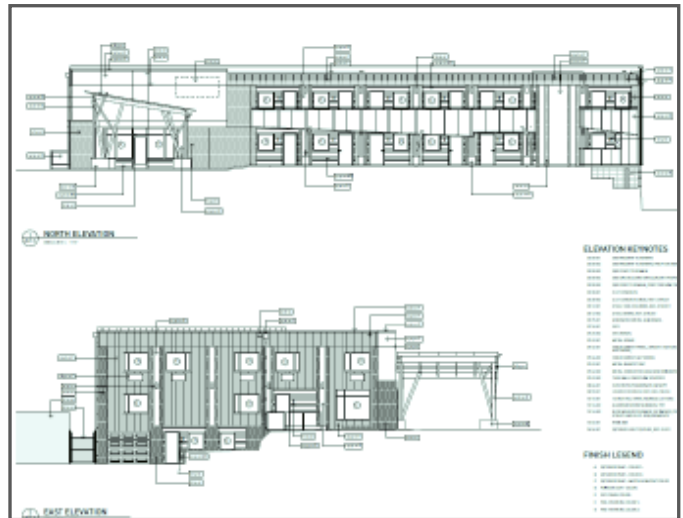
The Nest

Financing Source: Dakota BUSINESS Finance

Purpose: Renovate existing hotel

Community: Rapid City

Participating Lender: Jennifer Baloun with Bank-West



Eastway Bowl

Financing Source: Dakota BUSINESS Finance

Purpose: Purchase existing building, complete renovations, and purchase new equipment

Community: Sioux Falls

Participating Lender: Gary Junck with CorTrust Bank



Luminous Software

Financing Source: Dakota BUSINESS Finance

Purpose: Purchase existing building and renovate

Community: Sioux Falls

Participating Lender: Pam Hanneman with First Premier Bank



A photograph of a single-story, light-colored house with a dark roof, surrounded by snow and bare trees in winter. A sign is visible on the side of the house.

Equipment Storage (30' x 90')

Maintenance (35' x 80')

BB & VB Area (60' x 100')

Baseball Area (60' x 100')

Soccer Field

Gymnasium

Classrooms

Offices

University of Houston

University of Houston System

A simple line drawing of a white dump truck. The truck is shown from a side profile, facing left. Its bed is raised at an angle, indicated by diagonal lines. It has a single door on the driver's side, a small orange light on the front fender, and two large wheels.



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DAVENPORT, EVANS, HURWITZ & SMITH, LLP
 206 WEST 14TH STREET • P.O. BOX 1030
 SIOUX FALLS, SOUTH DAKOTA 57101-1030
 (605) 357-1227 • DHAJEK@DEHS.COM
 WWW.DEHS.COM

**Meierhenry
 Sargent LLP**
 ATTORNEYS AT LAW

Todd V. Meierhenry
 todd@meierhenrylaw.com

315 SOUTH PHILLIPS AVENUE
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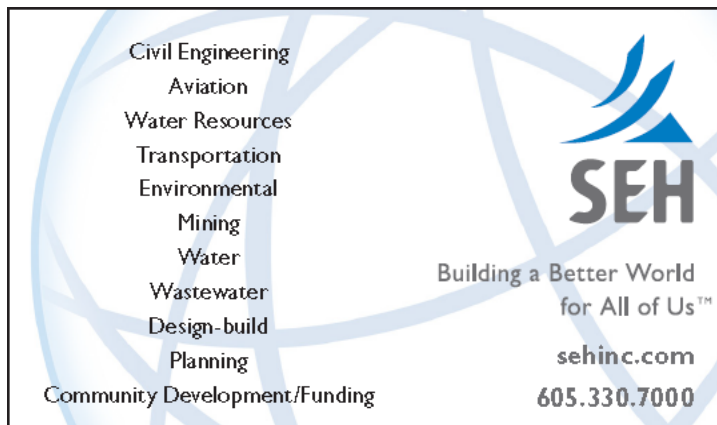


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ATTORNEYS AT LAW

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(605) 335-4950
FAX (605) 335-4961
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SECOG STAFF

500 N. Western Ave., Suite 100

Sioux Falls, SD 57104

Phone: (605) 367-5390

FAX: (605) 367-5394

www.secog.org

Lynne Keller Forbes, Executive Director

E-Mail: lynne@secog.org

Patrick Andrews, Planner

E-Mail: patrick@secog.org

Kristen Benidt, GIS Technician/Planner

E-Mail: gis@secog.org

Jessica Evans, Senior Loan Officer

E-Mail: jessica@secog.org

Amber Gibson, Planner II

E-Mail: amber@secog.org

Melissa Gibson, Planner

E-Mail: melissa@secog.org

Janice Gravning, Accountant

E-Mail: janice@secog.org

Barb Martin, Closing Officer

E-Mail: barb@secog.org

Leslie Mastroianni, Planner

E-Mail: leslie@secog.org

Michelle McAvoy, Office Supervisor

E-Mail: michelle@secog.org

Daniel Park, Servicing Analyst

E-Mail: daniel@secog.org

Trisha Viss, Loan Officer

E-Mail: trisha@secog.org

SECOG Calendar

SEDF Board Meeting February 8

DBF Board Meeting February 8

SEDF Board Meeting March 8

DBF Board Meeting March 8

CAC Meeting March 8

TAC & UDC Meeting March 9

SECOG Board Meeting April 5

SEDF Board Meeting April 12

DBF Board Meeting April 12

CAC-Citizens Advisory Committee

DBF-Dakota BUSINESS Finance

SECOG-South Eastern Council of Governments

SEDF-South Eastern Development Foundation

TAC-Technical Advisory Committee



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