

TO: Ann Arbor Planning Commission
From: Daniel Reim, S.J., petitioner for special exception use
RE: Concerns of the Planning Commission regarding “Precedence”

As commented in the *Ann Arbor Chronicle* (June 4), opponent to the Jesuit special exception use application Peter Nagourney says, “except for two speakers (at the June 3 Planning Commission meeting) no one had anything but praise and respect for the individual Jesuit brothers.” Members of the Planning Commission made similar comments during the meeting.

It seems then that the issue before the Planning Commission is not that the Jesuits applying for this special exception use are not likely to be good neighbors, (the point of zoning laws) but rather there is concern about **the consequences of granting a special exception use at all.**

If I understand correctly, the addition of the “special exception use” provision to the Ann Arbor zoning ordinance was added in 1991 in response to the Michigan Supreme Court case (*Delta Charter Township v. Dinolfo*, 531 N.W.2d 831 (1984)). In this case, the Court found an ordinance limiting occupancy to a “traditional” family unit too restrictive and unconstitutional in light of Defendants’ living as a functional family.

This family unit consisted of two biological families living with six single unrelated adults in the same household. The common bond shared by these individuals was their membership in the Work of Christ Community, a legitimate religious organization recognized by our State’s government as an ecclesial non-profit entity and a federally qualified tax exempt organization.

The Court stated:

All of the members of these “families” have adopted their lifestyle as a means of living out the Christian commitment that they stress is an important part of their lives.” (*Dinolfo* at 258.)

The Court later held:

“We conclude that this ordinance, which prohibits the defendants from including in their households six unrelated persons, is unreasonable and arbitrary and, accordingly, in violation of the Due Process Clause of the Michigan Constitution.” (*Dinolfo* at 258.)

Thus, the provision of the “special exception use” to the zoning ordinance serves to address those groups that are not a family, but function like one. The situation in the Jesuits’ petition is identical to that of *Dinolfo* in that the common bond shared by the Jesuit priests is their membership in the Society of Jesus, a legitimate religious organization recognized as such by the State of Michigan. They have adopted a communal living style as an essential means of living out their Christian commitment.

But there seems to be fear that this would set a precedent for other groups—students or cults or other non-desirable groups—who would draw on this special exception use as a precedent and thus lead to the diminishment of a neighborhood.

But in the case of *Stegeman v. City of Ann Arbor*, 540 N.W.2d 724 (1995), the city demonstrated the ability to discriminate between cases. The plaintiffs in *Stegeman*, doing business as Campus Rentals, were prevented from renting houses to groups of college students by the Ann Arbor code. The *Stegeman* court said that the *Dinolfo* decision “[does] not force the zoning authorities to abandon the concept of the family in its entirety ... it merely [requires] zoning ordinances to

take into account so-called 'functional families' in its provisions for residential zoning.” And in this case, the court found that the Ann Arbor ordinance did precisely that.

In summary, the Planning Commission should be able to judge whether or not the Jesuits' application satisfies the criterion of a “functional family” without concern of thus establishing a precedent which would negatively bind them in the future.

The purpose of the zoning law is to preserve the good character of the neighborhoods. There does not seem to be an argument that the Jesuits would be a threat to this goal. Granting this application would also not lead to a future binding condition that would be regrettable.