

Ruling delayed in dispute over zoning of church

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Three lawyers for **Miller Newton** challenged the city's code enforcement action against a private chapel Wednesday, saying the city is violating both the church's constitutional rights and federal law.

Special Master Herbert Langford Jr., sitting as the city's code enforcement officer, made no ruling. Instead, he gave attorneys for both **Newton's** Christ at the Sea Foundation and the city until April 28 to file supplementary briefs.

He then would have 10 days to issue a final ruling, which, if it is in the city's favor, he said would impose a \$100 a day fine against the foundation until it removes a cupola and religious symbols from the property at 13280 Fourth St. E.

During the hearing, Langford repeatedly appeared to question his "authority" to decide a constitutional issue.

City Attorney Donald O'Leary called the constitutional challenge "irrelevant" and objected to **Newton's** attorneys rearguing the original case.

If Langford eventually rules against **Newton**, it is likely he will carry his challenge to federal court.

At issue is whether the city's ban against religious symbols on **Newton's** property, issued as part of a special exception use granted in February, violates constitutional protections of free speech, religious freedom, and equal protection.

The special exception allowing use of property as a private chapel included several conditions, including a ban on any "outward appearance of religious symbols, markings or indicia or religious symbols or use, including, but not limited to, a dome, cupola, cross, signage, or bulletin board."

The ruling also required **Newton** and the foundation to remove any such symbols before March 15. **Newton** did not do this and the city subsequently issued a code violation.

In a brief filed by **Newton's** attorneys Wednesday, they argued the following:

The city should have given **Newton** a second hearing since the possibility of a religious symbol prohibition had not been raised during the original special exception hearing.

That the two conditions relating to religious symbols violate the free speech, free exercise and equal protections clauses of the U.S. Constitution, as well as the Religious Land Use and Institutionalized Persons Act of 2000.

That federal law specifically prohibits governments from imposing or implementing land use regulations that impose "a substantial burden on the religious exercise" of a person or institution unless such a restriction is a "compelling government interest."

"A zoning requirement that violates the United States Constitution or a federal statute cannot be enforced," said **Newton's** attorney, T. Mark Moseley. "The religious symbols and signs at issue here are an expression of the Christian belief and message of Christ at the Sea."

Newton's attorneys also argued that any resident has the right to put religious symbols on or about their home, and that imposing restrictions against **Newton** and the foundation was essentially unfair and illegal.

Several photos of "symbols" on or at other homes in the neighborhood were cited as examples that the city is treating **Newton** and his foundation differently than other property owners.

The controversy began months ago when **Newton's** neighbors protested the installation of a cupola with a cross on the roof of the foundation's building, which is in a residential neighborhood. The foundation uses the building as a temporary residence and prayer center for members of the church.

The home, which originally belonged to **Newton** and was transferred to the foundation in 1997, was expanded, with city permitting, in 1998 to include a recreation structure. That structure later became a private chapel, a use the city said violated city zoning codes.

In an attempt to resolve the dispute, **Newton** applied for a special exception to officially allow the property to be used as a church.

"I was somewhat shocked (by the special exception order's restrictions)," **Newton** testified Wednesday. "Even as a layman, it appears to

me to raise serious constitutional questions."

- *Dateline: MADEIRA BEACH*
- *Record: 0504175479614463536702*