**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF MICHIGAN**

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| CATHOLIC HEALTHCARE INTERNATIONAL, INC., et al.,<br><br>Plaintiffs,<br><br>v.<br><br>GENOA CHARTER TOWNSHIP, et al.,<br><br>Defendants. | No. 21-cv-11303-SDK-DRG<br><br>Hon. Shalina D. Kumar<br><br>Magistrate Judge David R. Grand |

**PLAINTIFFS' MOTION TO EXCLUDE THE OPINIONS OF DEFENDANTS' "EXPERT" SCOTT BOHLEN UNDER FED. R. EVID. 702**

Plaintiffs Catholic Healthcare International, Inc. ("CHI") and Jere Palazzolo move under Federal Rule of Evidence 702, *Daubert v. Merrell Dow Pharmaceuticals*, *Inc.*, 509 U.S. 579 (1993), and *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999), to exclude the opinions of Defendants' designated real-estate expert Scott Bohlen ("Bohlen") that other properties were "available," "comparable," or feasible alternatives to CHI's property for CHI's proposed religious prayer campus and all references to Bohlen's purported expert analysis referenced in Defendants' motion for summary judgment. (ECF No. 175, PageID.7346).

The central Rule 702 defect is methodological. Bohlen describes a client-specific process for identifying suitable property, but admitted that he did not apply that process in preparing or drafting his report. The consequences permeate his conclusions: he did not account for the CHI Property's donation, CHI's financial capacity, actual availability, CHI's physical and religious site requirements, or the approval requirements for four of his five selected properties. Rule 702 does not permit experience alone to bridge those missing analytical steps.

Plaintiffs request that the Court exclude Bohlen's expert opinions and disregard or strike all portions of Defendants' motion for summary judgment and supporting materials that rely on those opinions.

Pursuant to E.D. Mich. LR 7.1, on September 30, 2026, Plaintiffs' counsel sent an email to Defendants' counsel to seek a meet-and-confer in order to explain the merits of this motion and ascertain before filing whether Defendants would oppose the motion, and if so, whether there might be some agreement on some issues so as to narrow the issues raised by the motion. As of this filing, Defendants' counsel are refusing to coordinate a call with Plaintiffs' counsel to discuss the motion and instead emailed, without hearing Plaintiffs' position, that they do not concur.

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Respectfully submitted,

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**PLAINTIFFS' BRIEF IN SUPPORT OF MOTION TO EXCLUDE THE OPINIONS OF DEFENDANTS' "EXPERT" SCOTT BOHLEN UNDER FED. R. EVID. 702**

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## ISSUES PRESENTED

1. Whether Scott Bohlen's ("Bohlen") proposed opinions must be excluded under Fed. R. Evid. 702(c)-(d) because, although he identified a client-specific methodology for determining suitable property, he admitted that he did not apply that methodology to Catholic Healthcare International, Inc. ("CHI").

2. Whether Bohlen's proposed opinions must be excluded under Fed. R. Evid. 702(c)-(d) and 402 for lack of relevance as Bohlen could not determine if the properties in his report were actually available to CHI.

## CONTROLLING OR MOST APPROPRIATE AUTHORITY

Fed. R. Evid. 702(c)-(d)

Fed. R. Evid. 402

*Daubert v. Merrell Dow Pharms., Inc*., 509 U.S. 579 (1993)

*United States ex rel. TVA v. 1.72 Acres of Land*, 821 F.3d 742 (6th Cir. 2016)

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## INTRODUCTION

Defendants' proposed expert opinion fails at its starting point. Even assuming that Defendants' expert, Bohlen, is qualified to provide an opinion on whether there were other feasible alternatives available to Plaintiffs, Bohlen did not follow the methodology set out in his expert report that he said was necessary to make such a determination.

For this motion to succeed, Plaintiffs need not argue that Bohlen is not qualified to be an expert. Plaintiffs do not even need to challenge the methodology he sets forth in his report. Because even assuming he is a qualified expert and the methodology he sets forth is sound, Bohlen did not follow the process delineated in his "expert" report to identify "available properties." In fact, he did not follow a single step. Not one. This makes the Court's determination exceedingly simple. There is no in-depth analysis needed on expert qualifications, complex methodologies, or the mysteries of real estate markets. To grant Plaintiffs' motion, all the Court need do is compare his "process" with his deposition transcript where he repeatedly states that he did not follow his own methodology.

## FACTUAL BACKGROUND

According to Bohlen's Report, Defendants asked him to "assess whether there were other properties available in the surrounding area before, during, and after Plaintiff, Catholic Healthcare International, Inc.'s [sic] application for special land

use approval of a chapel development at the property commonly known as 3280 Chilson Road." (Bohlen Report, ECF No. 175-11, PageID.7509). (Hereinafter, "CHI Property" refers to 3280 Chilson Road.) His qualifications are principally 25 years as a licensed realtor in Livingston County and involvement in more than 1,400 real estate transactions. (*Id.* at PageID.7509-10). He admitted he is not a real-estate appraiser. (Bohlen Tr. 24[1]:10-12, ECF No. 175-24, PageID.7973).

According to his report, "[t]he process of identifying available property begins by understanding the intended use, as well as applicable restrictions that apply to properties under consideration." (Bohlen Report, ECF No. 175-11, PageID.7511-12). This process "begins by meeting with [clients] to discuss the specific use or plans for the desired property." (*Id*. at PageID.7512). During this meeting and *prior* to any property search for a feasible property, one must first ascertain "specific needs or requirements for the desired property;" "any boundaries related to location of the property, or preferred locations;" "the process to get a contemplated project approved through the local municipality, the required county approvals and potential state involvement in the approval process;" "zoning requirements based on specific municipalities and identif[ing] which zoning districts will allow their use or will require special use permits that may allow the clients desired use;" "the need to hire

[1] Since the deposition transcript filed by Defendants does not have its own page numbers, the numbers referenced herein are the pages from the document's ECF stamp.

specialists to assist in the application;" "due diligence time" to ensure the client can afford to complete their project given the property's features; and "whether the client's use would be allowed by current zoning, allowed by special use and discussing where the township would like to see the specific use proposed by my client located in the municipality. This includes a review of the current and master plan zoning maps and current zoning ordinance for the zoning districts that would allow the clients desired use."[2] (*Id*. at PageID.7512). According to Bohlen, one of the more important criteria is purchase price.[3] (Bohlen Tr. 84:16-85:6, ECF No. 175-24, PageID.8033-34).

It is only *after* this process that Bohlen "look[s] for potential properties . . ." that are "available." (Bohlen Report, ECF No. 175-11, PageID.7513). Bohlen concludes that "[t]here were other nearby properties available for Plaintiff's proposed development in Genoa Township and the surrounding area, before, during and after their efforts to develop the [CHI Property]," (*id*. at PageID.7513), before listing five specific properties. And that is undoubtedly true: many properties "in Genoa Township and the surrounding area" sold "before, during and after" Plaintiffs acquired the CHI Property. But that obvious conclusion is not what Defendants

[2] Plaintiffs' proposed use of the CHI Property is an allowed use under the zoning ordinance.

[3] Oddly, though this expert identified purchase price as one of the more important criteria, this important criterion is completely absent from his "expert" report.

purport to prove through the Bohlen Report. Instead, they argue that the five properties listed by Bohlen were feasible, available alternatives to the CHI Property.[4] But, alas for Defendants, their expert's testimony and the Bohlen Report belie this conclusion.

## ARGUMENT

Rule 702 requires Defendants to demonstrate to the Court, more likely than not, that Bohlen's opinions are based on sufficient facts or data, are the product of reliable principles and methods, and reflect a reliable application of those principles and methods. Fed. R. Evid. 702(b)-(d). To do this, the rule "specifically provides that the trial court must scrutinize not only the principles and methods used by the expert, *but also whether those principles and methods have been properly applied to the facts of the case*." Fed. R. Evid. 702 advisory committee's note (2000) (emphasis added). "[*A*]*ny* step that renders the analysis unreliable . . . renders the expert's testimony inadmissible . . . whether the step completely changes a reliable methodology *or merely misapplies that methodology*." *In re Paoli R.R. Yard PCB Litig.*, 35 F.3d 717, 745 (3d Cir. 1994) (emphasis added). "[A]n expert must do more than just state that []he is applying a respected methodology; []he must follow

[4] Bear in mind, the properties must be feasible alternatives under the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C. § 2000cc *et seq.*, which requires consideration of delay, uncertainty, and cost associated with acquiring and developing the new property. *See Catholic Healthcare Int'l, Inc. v. Genoa Charter Twp.*, 82 F.4th 442, 449 (6th Cir. 2023).

through with it." *Brown v. Burlington N. Santa Fe Ry.*, 765 F.3d 765, 773 (7th Cir. 2014).

The Court, in considering the application of methodology, serves an important "gatekeep[ing]" function that "determines the admissibility of expert evidence . . . ." *United States v. Stafford*, 721 F.3d 380, 394 (6th Cir. 2013); Fed. R. Evid. 702 advisory committee's note (2023); *Davis v. Sig Sauer, Inc.*, 126 F.4th 1213, 1224 (6th Cir. 2025) ("Federal Rule of Evidence 702 requires district courts to act in a gatekeeping role to 'ensur[e] that an expert's testimony both rests on a reliable foundation and is relevant.'") (quoting *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 597 (1993)). And this gatekeeping function "applies not only to testimony based on 'scientific' knowledge, but also to testimony based on 'technical' and 'other specialized' knowledge." *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 141 (1999). The Sixth Circuit has affirmed exclusion of experience-based real-estate/development testimony where the opinion lacked a sufficient factual basis to establish the asserted opinion. *See United States ex rel. TVA v. 1.72 Acres of Land*, 821 F.3d 742, 750 (6th Cir. 2016).

## I. Bohlen Did Not Apply His Own Methodology.

Bohlen's methodology "begins by meeting with [the client] to discuss the specific use or plans for the desired property." (Bohlen Report, ECF No. 175-11, PageID.7512). And during testimony ***elicited from Defendants' counsel***, Bohlen

stressed that this is a critical (*i.e.,* ***not optional***) step: "Well, first off, you ***have*** to identify the specific criteria that's -- that ***needs*** to be accomplished for your client." (Bohlen Tr. 106:17-19, ECF No. 175-24, PageID.8055) (emphasis added). He further stressed that he uses his process for "***every client***." (*Id*. at 107:4-5, PageID.8056).

From the outset, Bohlen failed to apply this initial necessary step, admitting that he had no discussion with CHI and did not perform the client consultation his report identifies as the "need[ed]" starting point. (*Id*. at 35:4-22, PageID.7984). When asked whether he actually used his stated process to come to the conclusions in his report, he answered: "No. Because I wasn't hired by the plaintiff to identify properties for them." (*Id*. at 37:2-5, PageID.7986). Bohlen conceded: "I have not met with the plaintiff, so I would not know exactly what [the specific needs or requirements] were." (*Id*. at 37:12-20, PageID.7986). That admission is not a minor defect in execution; it establishes that the conclusions Defendants seek to offer were not produced by the methodology Bohlen himself identifies as necessary for the task. Truly, Plaintiffs could rest their motion here. Defendants' expert clearly stated he did not do what an expert should do to come to the conclusions in his report. This admission is fatal, yet we will proceed with an analysis of the steps to kick this proverbial dead horse.

**A. Purchase Price**

Though notably missing from his report, Bohlen identified "purchase price" as one of the more important criteria to consider when helping clients find property to fit their needs. (Bohlen Tr. 84:16-85:6, ECF No. 175-24, PageID.8033-34). This factor has two sides: purchase price and client budget. Bohlen's report fails to take into account either. This factor is particularly relevant in this case because CHI did not purchase the CHI Property; the Diocese of Lansing donated (for the nominal price of $1) the property to CHI so CHI could further its religious mission. (Jere Palazzolo Decl. ¶¶ 8-10, ECF No. 97-2, PageID.4165-66). Yet Bohlen admitted that he did not consider price or value when comparing his proposed alternatives. (Bohlen Tr. 33:20-23, ECF No. 175-24, PageID.7982). In fact, Bohlen conceded that "there's no way to know whether those properties could have been acquired for -- through a donation. So there's no way to go back in time to determine what they could be acquired for." (*Id*. at 85:14-17, PageID.8034); *see also* (*id*. at 84:1-3, 11-13, PageID.8033) ("[T]here's no way to know if [the five properties identified in his report as feasible alternatives] would have been able to be acquired for a dollar at the time."); (*id*. at 84:11-13, PageID.8033) ("I have no way of knowing what those properties could have been acquired for . . . ."). Bohlen further demonstrated the importance of Plaintiffs' purchase price requirements by stating that he would have used such a requirement had it been given to him. (*Id*. at 86:7-21, PageID.8035).

However, Bohlen was not asked to evaluate CHI's financial capacity and did not know its capacity to acquire another property. (*Id*. at 126:3-18, 127:5-18, PageID.8076).

Defendants' counsel also recognized the importance of purchase price as a limiting factor of available properties when he questioned: "If somebody walked into your office and said they had $200 million to spend, that would be a different client than somebody who said they had no money to spend. Is that fair?" (*id*. at 106:2-6, PageID.8076), to which Bohlen responded in the affirmative (*id*. at 106:11, PageID.8076). Without knowing CHI's financial capability, Bohlen could not and did not use CHI's maximum budget to eliminate properties based on that ceiling as an expert would do in such a case. (*Id*. at 51:2-52:12, PageID.8000-01).

**B. Required Approvals, Zoning, and Special Use**

In *United States ex rel. TVA v. 1.72 Acres of Land*, 821 F.3d 742 (6th Cir. 2016), the Sixth Circuit upheld the district court's exclusion of a real estate expert's opinion when he did not provide any analysis on the feasibility of a development, particularly noting that "nowhere in [the expert's] statement was there any mention of whether [the] County would approve a rezoning, variance, or permits for commercial development on this property." *Id*. at 750.

This case revolves around the Township's denial of Plaintiffs' special land use application. The CHI Property is in part of the Township where churches are an

allowed use (meaning no variance is required) with special land use approval. (Scott Tousignant Decl. ¶ 3, ECF No. 97-4, PageID.4376). Yet, Bohlen did not consider whether the properties identified in his report would also require a special land use approval. (Bohlen Tr. 62:16-23, ECF No. 175-24, PageID.8011). Indeed, Bohlen only identified one property that did not require special land use approval (Property #4 in his report).[5] (*Id*. at 63:18-64:2, PageID.8012-13).

While identifying zoning and related governmental approvals as a step in determining whether a property would meet a client's needs, "nowhere in [Bohlen's] statement was there any mention of whether [the Township] would approve a rezoning, variance, or permits for [a religious use] on th[ese] propert[ies]." *See TVA*, 821 F.3d at 750. A parcel cannot reliably be characterized as a feasible alternative where Bohlen did not determine whether CHI would face the same discretionary approval process that initiated this case. Indeed, if these properties requiring the exact same approval process as the CHI Property are taken as feasible alternatives because CHI's plans for the CHI Property could be built there, then Defendants have lost this entire case. They cannot argue that CHI cannot build its church on its own property because it could build its project on other properties that it does not own that require the exact same approval process. Such a position is nonsense.

[5] This property is not even in the Township. (*See* Bohlen Report, ECF No. 175-11, PageID.7518). Defendants' expert did not identify a single property within the Township where the CHI Project would not require a special use approval.

**C. Specific Needs, Locations, and Need for Specialists**

The CHI Property is not simply forty acres. It is ideal for a prayer campus with prayer trails and an adoration chapel because of the existing trails and the wooded and rural nature of the property that provide a great place to pray and worship. (O'Reilly Decl. ¶ 15, ECF No. 97-3, PageID.4369). While Bohlen had a limited understanding from CHI's special use application that the project included a church and prayer trail, he did not know CHI's actual aesthetic, environmental, or contemplative requirements. (Bohlen Tr. 38:2-40:12, ECF No. 175-24, PageID.7987-89).

Property #4, the only property Bohlen identified as not requiring special land use approval, highlights the importance of specific needs and aesthetics—and puts glaring focus on the fact that Bohlen did not consider them at all in compiling his report. The CHI Property is rural and wooded, making it uniquely suitable for a prayer campus and adoration chapel as the property reflects the natural beauty, peace, and serenity of God's creation. (Palazzolo Decl. ¶ 15, ECF No. 97-2, PageID.4167). ***Property #4 was an abandoned bowling alley***. (Bohlen Report, ECF No. 175-11, PageID.7518). While the properties are similar in size (and both have turkeys), the similarities stop there. This property is not located in the Township; it has no wooded area; and, in addition to the abandoned bowling alley, it contained an abandoned golf driving range, an abandoned Putt Putt center, and four softball

fields. (Bohlen Report, ECF No. 175-11, PageID.7518; Bohlen Tr. 64:9-17, ECF No. 175-24, PageID.8013). Additionally, this property is in a part of Hartland Township that is specifically designed to be congested with significant volumes of vehicular traffic, which is inherently loud. *See* Hartland Township Zoning Ordinance 3.1.14 (available at https://www.hartlandtwp.com/planning/page/ordinances-planning). Bohlen performed no analysis comparing this commercial/recreational setting with the wooded, secluded environment CHI selected for prayer trails, contemplation, and religious worship.

Defendants cannot escape "the core inquiry" of Rule 702: "To be admissible, any relevant scientific or technical evidence must be the 'product of reliable principles and methods' and must have been 'reliably applied' in the case. That is what matters most." *United States v. Gissantaner*, 990 F.3d 457, 463 (6th Cir. 2021). The Bohlen Report fails to apply at all, let alone reliably, reliable principles and methods and is therefore inadmissible.

## II. Bohlen's Report is Not Relevant to the RLUIPA Feasible Alternative Analysis.

Under Rule 702, this Court must determine whether an expert's testimony "both rests on a reliable foundation and is relevant to the task at hand." *Newell Rubbermaid, Inc. v. Raymond Corp.*, 676 F.3d 521, 527 (6th Cir. 2012) (quoting *Daubert*, 509 U.S. at 597). "Expert testimony which does not relate to any issue in the case is not relevant and, ergo, non-helpful." *Daubert*, 509 U.S. at 591. Evidence

that is not relevant should be excluded. *United States v. Silber*, 456 F. App'x 559, 562 (6th Cir. 2012) (excluding expert testimony because it was not relevant); *see also* Fed. R. Evid. 402.

Under RLUIPA, for property to be a "feasible alternative," it must, at a minimum, be *available* to the Plaintiff. *See generally Livingston Christian Sch. v. Genoa Charter Twp.*, 858 F.3d 996, 1005 (6th Cir. 2017). This is also the purported purpose of Bohlen's Report: "to identify available properties." The process discussed in Section I *supra* was "[t]he process of identifying available property." (Bohlen Report, ECF No. 175-11, PageID.7512). Bohlen provides the general conclusion that "[t]here were other nearby properties available for Plaintiff's proposed development in Genoa Township and the surrounding area, before, during and after their efforts to develop the [CHI Property] site." But this proves nothing. Property for sale "before, during, and after" does not make property a feasible alternative under RLUIPA. Logically, properties for sale before CHI began developing the CHI Property are not relevant because CHI had property (donated), and the proposed use was an allowed use. Indeed, the Planning Commission recommended approval (which also negates the "during" factor as it would make no sense to abandon the process when the trajectory was approval). This only leaves the "after" factor which, once again, fails to address delay, cost, uncertainty, *etc*., in addition to the fact that Bohlen failed to follow his own methodology when

identifying these properties. And Bohlen admits he does not know if the properties in his Report were actually available. (Bohlen Tr. 96:19-21, ECF No. 175-24, PageID.8045) ("There's -- there's really no way to know at that moment in time whether any or all of these properties or any other properties may have been available."). At a minimum, if the property was not available, the Report and its conclusions are not relevant and should be excluded.

Bohlen testified that he would need to go back in time to know if the properties in his Report were actually available. (*Id.* at 97:15-16, PageID.8046) ("Without going back in time, it would be hard to identify specific properties that could be available."). Bohlen did not go back in time; he speculated. "No matter how good experts' credentials may be, they are not permitted to speculate." *Tamraz v. Lincoln Elec. Co.*, 620 F.3d 665, 671 (6th Cir. 2010) (internal quotation marks omitted) (quoting *Goebel v. Denver & Rio Grande W. R.R. Co.*, 215 F.3d 1083, 1088 (10th Cir. 2000)).

Bohlen's experience cannot cure his methodological failures. Experience may provide specialized knowledge, but Rule 702 still requires a reliable method reliably applied and relevance. Fed. R. Evid. 702(c)-(d); *Kumho Tire*, 526 U.S. at 150-52. None of that exists here. Because Bohlen expressly did not apply his own methodology and conceded he did not know if the properties were available, Defendants cannot carry their Rule 702 burden for his conclusions.

## CONCLUSION

Plaintiffs do not contend—and the Court need not consider—whether Bohlen could ever be an expert; it need only look at his methodology and see clearly, by his own repeated admission, that he did not follow a single step of it. The Court should exclude Scott Bohlen's expert opinions. His analysis ignored the defining economic fact that the CHI Property was donated, did not determine whether CHI could finance a market acquisition, and did not perform any of the client-specific site-selection analysis his own methodology requires. Further, he did not establish that any supposed substitute was actually available to CHI, making his report irrelevant to this case. Thus, the Court should disregard or strike every portion of Defendants' motion for summary judgment or supporting record that relies on Bohlen's report or testimony.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 5, 2026, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the court's electronic filing system. Parties may access this filing through the court's system. I further certify that a copy of the foregoing has been served by ordinary U.S. mail upon all parties for whom counsel has not yet entered an appearance electronically: None.

AMERICAN FREEDOM LAW CENTER

/s/ David Yerushalmi
David Yerushalmi, Esq.