

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

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 16-14366

v.

Honorable
Mag. Judge

CITY OF STERLING HEIGHTS,

Defendant.

COMPLAINT

Plaintiff, the United States of America, alleges:

JURISDICTION AND VENUE

1. This action is brought by the United States to enforce the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. § 2000cc, *et seq.* (“RLUIPA”).
2. This Court has jurisdiction over this action pursuant to 42 U.S.C. § 2000cc-2(f), and 28 U.S.C. §§ 1331 and 1345.
3. Venue is proper under 28 U.S.C. § 1391(b) because the defendant is located in the Eastern District of Michigan and because the claims alleged herein arose in the Eastern District of Michigan.

BACKGROUND

4. Defendant City of Sterling Heights (“City”) is located in Macomb County in the Eastern District of Michigan.

5. The City has a Council-Manager form of government. The City Council has seven members, including the Mayor.

6. The nine members of the City Planning Commission are appointed by the Mayor with the approval of the City Council.

7. The City is a “government” within the meaning of 42 U.S.C. § 2000cc-5(4)(A).

8. The American Islamic Community Center, Inc. (“AICC”) is a nonprofit organization dedicated to serving the religious, social, educational, and cultural needs of the Muslim community.

9. The AICC is a religious institution under RLUIPA. *Id.* § 2000cc(a), (b).

10. The AICC currently operates out of a building in the City of Madison Heights, where it holds religious services and other programs. The center of Madison Heights is approximately 11 miles from the center of Sterling Heights.

11. The AICC’s current building has become inadequate for the needs of the AICC community. The building is about 10,000 square feet and is overcrowded during important religious observances. There is inadequate

washroom space for members to perform ablutions, a religious washing act practiced by many faiths, before prayer. The current location also lacks space for educational activities, youth activities, and special events, such as weddings. Due to the space constraints in its current facility, the AICC is limited in the religious programming it can offer and the educational and social programming it can provide. Additional space is necessary for the AICC to offer programs for families to keep them involved in the community.

12. The majority of the AICC's members live in the City, making the City a more convenient location for the community than Madison Heights.

13. Members of the AICC practice the Shia Muslim faith. There is no Shia mosque located in the City.

A. Property in Sterling Heights

14. In about 2012, the AICC began looking for suitable, vacant land or an existing building where it could relocate to the City.

15. Initially, the only potentially suitable location the AICC could find was located in an industrial zone. When the AICC discussed this location with City officials, however, the officials told the AICC that it should instead seek out property in a residential area.

16. In May 2014, a buyer acting on behalf of AICC Board Member Jaafar Chehab entered into a land sale contract with the legal owner of five contiguous

plots of land totaling 4.35 acres at 15 Mile and Ryan Road (“Property”) to purchase for use by the AICC. After that agreement expired, in May 2015, Chehab entered into an agreement with the legal owner of the Property to purchase the property for the AICC. Chehab completed the purchase in January 2016, at which time he entered into a contract with the AICC, leasing the property to the AICC for ten years with an option to purchase upon receiving approval from the City to build a mosque.

B. The City Special Approval Land Use Process

17. Land use in the City is regulated under a local Zoning Ordinance.

18. The Property is zoned for R-60 residential use. Under § 3.01 of the Zoning Ordinance, permitted uses in the R-60 zone include single family homes, City-owned libraries, museums, administrative offices, police and fire facilities, and state-licensed residential facilities for six or fewer individuals.

19. There is no zone in the City designated for places of worship or where places of worship may be built as of right.

20. Under § 3.02(A) of the Zoning Ordinance, a place of worship may be permitted by the City Planning Commission within a residential zone as a Special Approval Land Use.

21. The City’s Master Plan states that public gathering places “require important sites to reinforce community identity They deserve distinctive

form, because their role is different from that of other buildings and places that constitute the fabric of the city.” City Master Plan, p. 46.

22. The Master Plan also recommends that institutional uses “should be embedded in neighborhoods and districts, not isolated in remote, single-use complexes.” *Id.* at 44-45.

23. Under § 25.03(B)(4) of the Zoning Ordinance, the concurring vote of at least five members of the City Planning Commission is required to approve a Special Approval Land Use application. Such applications must meet both the specific and general standards for the proposed use in the Zoning Ordinance. The City Planning Commission makes the final decision on Special Approval Land Use applications in the City.

24. The specific standards for a place of worship in a residential zone are outlined in § 3.02(A) of the Zoning Ordinance. These standards contain specific height and setback requirements, a requirement that a place of worship be on a major or secondary road, parking requirements, and requirements for auxiliary uses.

25. The general standards for Special Approval Land Use are outlined in § 25.02 of the Zoning Ordinance and include factors such as harmony with the neighborhood, safe traffic flow, and impact on the development or use of neighboring properties.

26. Since 2006, no application for Special Approval Land Use for a place of worship has been denied, with the exception of the application at issue in this case. During this same period, the City Planning Commission approved five Special Approval Land Use applications for places of worship.

C. The AICC Special Approval Land Use Application

27. After locating the Property in 2014, Jaafar Chehab (“the Petitioner”) worked cooperatively with the City Planning Office and City Planner Donald Mende for over a year to develop a mutually acceptable site plan.

28. The Petitioner expressed a willingness to address concerns raised by the City at every step and agreed to several changes, including moving the location of sidewalks, moving the building further from the property line, agreeing to forego any external call to prayer, and agreeing to not oppose any liquor license applications in the surrounding area.

29. On July 8, 2015, the Petitioner submitted a Special Approval Land Use application (“Application”) to the City Planning Office.

30. The Application included a site plan for a proposed place of worship approximately 20,500 square feet with 130 off-street parking spaces, a dome approximately 58 feet high, and two spires approximately 66 feet high each.

31. The City Planning Office placed the Application on the City Planning Commission’s August 13, 2015 agenda.

32. About a week before the August 13 City Planning Commission meeting (“August 13 meeting”), the City Planning Office issued a report regarding the Application (“August 13 Report”). City Planner Mende prepared the Report and provided it to the members of the City Planning Commission.

33. The August 13 Report stated that the Application met all of the specific standards for residential zones and all of the general standards for Special Approval Land Use, outlined in § 3.02(A) and § 25.02 of the Zoning Ordinance, respectively. The August 13 Report recommended approval of the Application.

D. August 13, 2015 City Planning Commission Meeting

34. The August 13 meeting was heavily attended by the public.

35. City Planner Mende introduced the Application. He stated that in the City’s R-60 zone, a residential building may cover no more than 30% of its lot and that the proposed mosque would cover 11% of the lot.

36. City Planner Mende further stated that the Application included plans for a dome and two spires that exceeded the 30-foot height limit in the City’s R-60 zone, but was permissible because the Application contained the appropriate setbacks to offset the extra height, as required by the Zoning Ordinance.

37. City Planner Mende also stated that the Zoning Ordinance required 109 parking spaces be provided on the site and the Application provided for 130 parking spaces.

38. After City Planner Mende gave his presentation, members of the public spoke during a public comment period. Fifty people spoke against the Application; only seven people spoke in favor of the Application.

39. Many of the comments were directed at the religion of the Petitioner, including a plea to “Remember 9/11,” statements that Christians would not be allowed to build a church in Iraq, and statements that property values would drop if a mosque were built in the neighborhood.

40. Some public comments focused on the height of the mosque. City Planner Mende addressed comments about height, stating that the City Planning Commission could discuss the height of the proposed building, but also stating that a nearby church had a 75-foot tall steeple, which is taller than the proposed mosque’s 58-foot dome and 66-foot spires.

41. Commissioner Jeffrey Norgrove asked whether the City would be in favor of conducting a “full impact social and economic study.” No such study had been done for any other place of worship.

42. Other members of the City Planning Commission, including Chairperson Gerald Rowe and Commissioner Al Kollmorgen, asked questions or expressed concerns about the height of the mosque’s spires and dome. The Petitioner stated that he was open to working with the City to address any concerns.

43. After some discussion on the Application, Chairperson Rowe asked about postponing a vote on the proposal. Commissioner Stefano Militello responded that he would be against postponement and “if this was a Catholic church . . . we wouldn’t be doing this.”

44. Commissioner Norgrove moved to postpone a vote on the Application to the City Planning Commission’s next meeting, on September 10, 2015. The motion to postpone passed, with six votes in favor and one against.

45. Days later, Mayor Michael Taylor e-mailed a resident, stating that “[the Application] fits in the zoning there, the parcel is large enough to accommodate the building without any variance, and 15 Mile R[oa]d has lower traffic counts than most other major thoroughfares in the city.” Taylor further asked the resident, “Where else could it possibly go where there wouldn’t be the same outcry?”

E. Public Opposition to the Application

46. Although the Application was not on the City Council’s agenda, members of the public attended City Council meetings and made anti-Muslim statements against the Application.

47. At the August 18, 2015 City Council meeting (“August 18 meeting”), one resident of the City held up a picture of a woman wearing a garment that covered her head and stated that he did not want to “be near people like this.”

48. Another City resident who spoke at the meeting suggested that the mosque might be used as a facility to store weapons. Another resident asked that Homeland Security screen the AICC because “they’re cutting people’s heads off, they kill our soldiers”

49. Members of the City Council also spoke about the mosque at the August 18 meeting.

50. Councilmember Joseph Romano said that, while “I respect [Muslims] there are certain sects of them that shouldn’t be in this country.” Mayor Taylor stated that “[the City Council] ha[s] absolutely no authority” in deciding whether to approve the Application and that residents should wait and “watch the process play out, and let the chips fall.”

51. During this period, the councilmembers and mayor were running for re-election. The Application became a key election issue. For instance, some Chaldean¹ business owners refused to support Mayor Taylor’s campaign because of a perception that Taylor supported the proposed mosque. In response to the mounting pressure, on August 28, 2015, Taylor posted the following message on Facebook:

Let me set the record straight. I am the Mayor of Sterling Heights. I am opposed to this mosque being built on 15 Mile Road. It is sad that my political opponents are lying to you and trying to scare you

¹ Chaldean refers to adherents of the Chaldean Catholic Church, a church composed primarily of persons of Iraqi descent.

into thinking I am insensitive to the Chaldean people throughout the world. My heart breaks for the Christians in Iraq and throughout the world who are being terrorized by Islamic terrorists. I will do EVERYTHING in my power to protect, support and defend the Chaldean population in Sterling Heights. I have nothing to do with this mosque and do not want it built there.

52. The following day, Mayor Taylor attended one of at least two protests against the Application. Two protests, on August 29 and 30, 2015, across the street from the Property drew crowds between 150 and 300 people. Some protestors held signs stating “no mosque” or carried Christian crosses.

53. At the protest on August 29, Mayor Taylor told the crowd that he “d[id] not support the building of this mosque [on the Property.]” In addition, on August 29, a protester e-mailed Taylor, thanking him and taking his advice to change signs from “NO MOSQUE” to signs “saying NO to the special land use approval. So the protest was not about religion and about the land use approval.” The protester “found [Taylor] to be very informative in how this matter should be approached for the outcome we are all hoping for.”

54. Commissioner Norgrove was present at the protest against the mosque on August 30, 2015. In 2011, Norgrove had opposed a different mosque in the City. In addition, as recently as two months before the August 13 meeting, Norgrove posted the following anti-Muslim statements on Facebook: “Oh no the terrorists are gonna attack, according to the media this weekend. Come to the Detroit area. They dont [sic] bomb their revenue source.” He also shared a picture

of a pig from the “Barack Obama’s Dead Fly” Facebook Page with the statement, “Share this pig if your [sic] not celebrating ramadan [sic].”

F. September 10, 2015 City Planning Commission Meeting

55. After the August 13 meeting, City Planner Mende contacted the Petitioner’s architect and asked that the height and size of the structure be reduced to make the structure less visible from the street. He also asked that more parking spaces be added. The architect responded that he could not reduce the square footage of the building or add parking spaces in the time allotted to him, but could reduce the height of the building.

56. On August 27, 2015, the Petitioner’s architect sent revised plans to City Planner Mende, which included a reduction in the height of the two spires.

57. Less than one week later, City Planner Mende had spoken to all but one of the Commissioners about the Application. At least two of the Commissioners told Mende that they would vote to deny the Application at the upcoming September 10 City Planning Commission meeting (“September 10 meeting”). Commissioner Norgrove told Mende that he wanted to make the motion to do so. On September 1, 2015, Mende shared this information with City Manager Mark Vanderpool.

58. Before the September 10 meeting, City Planner Mende did not contact the Petitioner to request further revisions or express dissatisfaction with the revised

plans. After the Petitioner called Mende to “make sure the architect sent the updated drawing and [find out] if anything else was missing[,]” Mende e-mailed City Manager Vanderpool, stating “As we discussed, I do not intend on calling him.”

59. About a week before the September 10 meeting, City Planner Mende issued a report on the Application (“September 10 Report”). The September 10 Report reversed Mende’s earlier position recommending approval. The September 10 Report recommended denial based on excessive height relative to the neighborhood, the size of the building relative to the zoning district, insufficient parking on certain occasions, and lack of harmony of the building with the neighborhood.

60. After receiving the September 10 Report, Commissioner Norgrove called several Commissioners, telling them that he planned to make a motion to deny the Application at the September 10 meeting. Such a call prior to a vote on an issue before the City Planning Commission was a highly unusual practice.

61. The City determined that the time for public comments at the September 10 meeting should be limited to two minutes per speaker and that each speaker could only speak about the changes in the height of the proposed building. Limiting comments in this way was an unusual practice when there were additional

issues—size, harmony with the neighborhood, and parking—put forth as the basis for a recommendation.

62. The September 10 meeting was heavily attended, with a large crowd of about 500 protesters gathered in the parking lot. The City Hall Chambers also reached its maximum capacity.

63. During the meeting, supporters of the mosque discussed other places of worship that had similar heights in R-60 zones. In addition, at least one AICC Board member stated that the AICC remained willing to make further changes to the Application to satisfy the City.

64. AICC supporters attempted to raise other issues in the September 10 Report, including parking, square footage, and harmony with the neighborhood, but were interrupted by the Chairperson and told to limit their comments to height.

65. Following public comment, without discussion or debate, Commissioner Norgrove made a motion to deny the Application for the same reasons outlined in the September 10 Report. The City Planning Commission immediately and unanimously voted to deny the Application.

66. Subsequently, Mayor Taylor asked AICC members whether they would be amenable to making the structure appear “less Middle Eastern” and more “generic.”

67. In other applications for places of worship that the City has considered since 2006, the City has instructed specific conditions for approval or postponed consideration to allow petitioners for the places of worship to amend their applications. The City did not give the AICC the same opportunities to revise its application at the September 10 meeting, despite the AICC's stated willingness to work with the City.

68. Before the AICC Application, the City had never requested that a place of worship add parking beyond that required in the Zoning Ordinance for ancillary uses, even when it was clear that the place of worship would have ancillary uses.

69. The City also has at least two other places of worship in R-60 zones that exceed the 30-foot height limit for that zone.

70. Nearby St. Blase Catholic Church is 151 feet high excluding a large cross on top. Like the Property at issue here, St. Blase is located near a school and residential properties.

71. First Church also has a steeple of about 75-80 feet in an R-60 zone.

72. Other places of worship in the City also have distinctive features that stand out from structures surrounding them.

73. St. Blase and S.S. Cyril and Methodius Slovak Catholic Church have pyramid-like structures with large crosses on top.

74. Heritage Baptist Church, also located in an R-60 zone, has unique white architecture and a tall spire.

75. The unique features associated with the places of worship described above and with the proposed mosque are consistent with the City's Master Plan, making the Application in harmony with the neighborhood. Public gathering places, like places of worship, "deserve distinctive form[s] because their role is different from that of other buildings and [are] places that constitute the fabric of the city." City Master Plan, p. 46.

76. The City Planning Commission's decision on the AICC's Application was procedurally and substantively inconsistent with its prior decisions regarding other places of worship, inconsistent with the Master Plan and the Zoning Ordinance, and based on anti-Muslim bias.

77. The City Planning Commission's denial has prevented the AICC from locating a place of worship in Sterling Heights and forced the AICC to remain in its current, inadequate facility.

78. The AICC seeks to construct a place of worship on the Property for the purpose of religious exercise, within the meaning of RLUIPA. 42 U.S.C. § 2000cc-5(7).

79. The City made an "individualized assessment" of the AICC's application to build on the Property when it considered and denied the Special

Approval Land Use Application, within the meaning of RLUIPA. *Id.*

§ 2000cc(a)(2)(C).

80. The City's denial of the AICC's plans to construct a mosque "affects interstate commerce," within the meaning of RLUIPA. *Id.* § 2000cc(a)(2)(A).

VIOLATION OF RLUIPA

81. Paragraphs 1-80 are re-alleged and incorporated into paragraphs 82 and 83 by reference.

COUNT I

82. The City's denial of the AICC's Application constitutes the imposition or implementation of land use regulations that imposes a substantial burden on the religious exercise of the AICC and its members, which is not in furtherance of a compelling governmental interest and/or is not the least restrictive means of furthering such interest, in violation of RLUIPA. *Id.* § 2000cc(a).

COUNT II

83. The City's treatment and denial of the Application constitutes discrimination against the AICC on the basis of religion or religious denomination, in violation of RLUIPA. *Id.* § 2000cc(b)(2).

RELIEF REQUESTED

WHEREFORE, the United States prays that this Court enter an Order that:

A. Declares that the City's policies and practices, as alleged herein, violate RLUIPA;

B. Enjoins the City, its officers, employees, agents, successors, and all other persons in concert or participation with it, from imposing a substantial burden on the religious exercise of the AICC and its members that is not narrowly tailored to a compelling governmental interest;

C. Enjoins the City, its officers, employees, agents, successors, and all other persons in concert or participation with it, from adopting or enforcing any zoning restriction, or from applying their laws in a manner that violates RLUIPA;

D. Requires the City, its officers, employees, agents, successors, and all other persons in concert or participation with it, to:

- i) Take such actions as may be necessary to restore, as nearly as practicable, the AICC and its members to the position they would have been in but for its unlawful conduct; and
- ii) Take such actions as may be necessary to prevent the recurrence of such unlawful conduct in the future, including but not limited to, providing RLUIPA training to City personnel, establishing procedures to address complaints of RLUIPA violations, and maintaining records and submitting reports relating to RLUIPA compliance; and

E. Awards such additional relief as the interests of justice may require, together with the United States' costs and disbursements in this action.

Respectfully submitted,

LORETTA E. LYNCH
Attorney General

BARBARA L. McQUADE
United States Attorney
Eastern District of Michigan

/s/ Sarah Karpinen
SARAH KARPINEN, P63289
Assistant United States Attorney
211 W. Fort Street, Ste. 2001
Detroit, MI 48226
(313) 226-9595

/s/ Vanita Gupta
VANITA GUPTA
Principal Deputy Assistant Attorney
General
Civil Rights Division

/s/ Sameena Shina Majeed
SAMEENA SHINA MAJEED
Chief
Housing and Civil Enforcement
Section
Civil Rights Division

/s/ Abigail A. Nurse
TIMOTHY J. MORAN
Deputy Chief
ERIC W. TREENE
Special Counsel
ABIGAIL A. NURSE
New York Bar No. 5244512
Trial Attorney
Housing and Civil Enforcement
Section
Civil Rights Division
United States Department of Justice
950 Pennsylvania Ave. NW - NWB
Washington, DC 20530

Attorneys for Plaintiff
United States of America

Dated: December 15, 2016

CERTIFICATE OF SERVICE

I hereby certify that on December 15, 2016, I electronically filed the foregoing paper with the Clerk of the District Court using the ECF system, which will send notification of such filing to all electronic parties of record.

I further certify that I have mailed by Certified U.S. Mail the foregoing paper to the following:

Carol Rosati
Johnson Rosati Schultz Joppich PC
27555 Executive Drive, Suite 250
Farmington Hills, MI 48331-3550

/s/ Sarah Karpinen
SARAH KARPINEN, P63289
Assistant United States Attorney
211 W. Fort Street, Ste. 2001
Detroit, MI 48226
(313) 226-9595