UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO. 3:11-cv-583-HEH
	)	
COUNTY OF HENRICO, VIRGINIA,	)	
	)	
Defendant.	)	

COMPLAINT

The United States of America files this Complaint and alleges:

1. This is a civil action brought by the United States of America to enforce the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"), 42 U.S.C. §§ 2000cc–2000cc-5.

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. § 2000cc-2(f).

3. Venue is proper under 28 U.S.C. § 1391(b) because the actions giving rise to this action occurred in the Eastern District of Virginia.

4. Defendant County of Henrico ("County" or "Defendant") is a county located in the Commonwealth of Virginia. The County has the authority to regulate and restrict the use of land and structures within its borders, including granting and denying requests for rezoning. It covers 244.06 square miles and has a population of approximately 307,000 persons. It has 213 houses of worship consisting of 209 Christian churches, two Hindu temples, one Buddhist temple, and one synagogue. The County has no mosque.

5. The County is governed by a Board of Supervisors composed of five members. The County's Department of Planning oversees the County's building and development

needs. The County's Planning Commission is composed of one member of the Board of Supervisors, and five other members who are appointed by each member of the Board of Supervisors.

6. For purposes of RLUIPA, the County is a "government." 42 U.S.C. § 2000cc-5(4)(A)(i), (ii).

7. 1241 Associates, LLC ("the worship community of 1241" or "Mosque") is an organization formed in 2007 for the purpose of identifying a place to construct a mosque for members of its Sunni Muslim community who live or work in Henrico County.

8. For purposes of RLUIPA, the worship community of 1241 is a "religious assembly or institution." 42 U.S.C. § 2000cc(2)(b)(1).

9. The worship community of 1241 needs a mosque in Henrico County to exercise its religion. The worship community of 1241 has no imam to lead them in their prayers or to perform the other regular duties of an imam. They will not be able to hire an imam until they have a mosque and a place where they can house the imam near the mosque.

10. The members are not able to pray or perform other religious obligations in a mosque as required by their faith, and they are forced to cope without having a mosque by renting temporary locations in the western part of the County at significant cost. These temporary locations do not accommodate their religious needs, and they are constantly plagued by limited parking, inadequate space, inadequate facilities for required ablutions before prayer, and time constraints.

11. The worship community of 1241 believes that during prayer, men and women should be in the presence of an imam on the same floor. The temporary facilities described in paragraph 10 do not permit this to occur. The lack of a nursery at these locations impacts the ability of mothers and fathers to worship, and there is no place for a mother to nurse her child during services. There is no imam to instruct the children of 1241 worshipers,

and there is no central location in western Henrico County to provide for religious instruction of children.

12. In 2008, the worship community of 1241 purchased 5.2 acres of undeveloped land (the "property" or "land") located at 7705 Impala Drive in Henrico County at auction for $126,500.

13. Prior to 1984, the land was zoned R-4 Residential, and it was designated residential on the County's Land Use Plan then extant. Under the County's zoning code, a house of worship is a permitted use in R-4 zoned land. The land was rezoned in 1984 from R-4 Residential to O-3C Office. Under the County's zoning code, a house of worship is not a permitted use in O-3C zoned land.

14. Since the 1984 rezoning, the property was designated an Office and Environmental Protection Area in the County's 2010 Land Use Plan.

15. The property is adjacent to a residential neighborhood zoned R-4 to the south, is adjacent to vacant land zoned R-4 to the east, is adjacent to a school zoned R-4 to the north, and is adjacent to land zoned R-4 and M-1 to the west. Under the County's zoning code, a house of worship is a permitted use in M-1 zoned land.

16. In June 2008, the worship community of 1241 applied to have 3.6 acres of the 5.2-acre parcel rezoned from O-3C Office District to R-2AC One Family Residential for the purpose of building a mosque and community center. Under the County's zoning code, a house of worship is a permitted use in R-2AC zoned land.

17. For purposes of RLUIPA, the worship community of 1241's use of this property constitutes "religious exercise." 42 U.S.C. §§ 2000cc-5(7)(A)-(B).

18. The County's traffic engineer projected that the mosque, if developed, would generate 275 trips per day on Impala Drive, which he concluded to be an insignificant impact. He reported that Impala Drive was a major access road, which had a capacity of 7,000-8,000

trips during a 24-hour period. While the Mosque's rezoning request was pending with the County, the County's traffic engineer performed a traffic count on Impala Drive over a two-day period, and the count showed that Impala Drive was used at roughly half of its capacity, with only 4,000 trips during a 24-hour period.

19. On August 14, 2008, the Planning Commission held a public hearing on the Mosque's rezoning request. The Planning Commission voted to recommend denial of the rezoning request.

20. On October 31, 2008, the Planning Department issued a report to the Board of Supervisors recommending denial of the worship community of 1241's rezoning application.

21. On November 12, 2008, the Board of Supervisors considered the Mosque's rezoning request. The Board of Supervisors denied the rezoning request by a vote of 3-2.

22. On December 9, 2008, the Mosque filed a lawsuit in Henrico County Circuit Court claiming that the denial of the rezoning request was arbitrary, capricious, and unreasonable, in derogation of Virginia Code §§ 15.2-2285, et seq., and seeking that the Board of Supervisors be enjoined from interfering with the use of the 3.6 acre parcel at issue for the construction and operation of a house of worship and related activities.

23. Between June 2008, and the present, some County residents have communicated their hostility to the Mosque's plan to obtain rezoning by making comments and sending communications to County officials expressing hostility to the Mosque on the basis of religion or religious denomination.

24. County officials directly involved in the Mosque's attempts to obtain rezoning have discriminated against the Mosque on the basis of religion or religious denomination,

including making derogatory and discriminatory statements, and/or treating the Mosque's application less favorably than similar applications by non-Muslim houses of worship.

25. The County was motivated to deny the Mosque's application for rezoning to effectuate the desires expressed by County residents and County officials who were hostile to the Mosque and its members on the basis of religion or religious denomination.

26. The County has never turned down a rezoning application submitted by a Christian church.

27. Under the 2010 land use plan, the County has treated applications for rezoning submitted by Christian churches, including applications by the Episcopal Diocese of Virginia, First Mennonite Church, Metro African American Baptist Church, Glen Allen Church of Christ, and Ginter Park Congregation of Jehovah's Witnesses of Richmond, VA, better than it treated the Mosque's application. The County approved the rezoning requests by these churches, even though they submitted requests similar to the Mosque's request.

28. For purposes of RLUIPA, the County's denial of an application for rezoning constitutes the "application" of a "land use regulation" that "limits or restricts a claimant's use or development of land (including a structure affixed to land)." 42 U.S.C. § 2000cc-5(5).

29. There is no other land in Henrico County that is available for purchase and that is suitably located for 1241's worship community, meets the County's minimum size and frontage requirements for houses of worship, and is affordable.

30. On March 10, 2010, the United States Department of Justice ("Department"), while the Mosque's state action was pending, sent a letter to the County informing it that the Department had initiated an investigation of the County's zoning and land use practices under RLUIPA concerning the denial of the Mosque's rezoning application and requested that the County provide the Department with relevant documents and materials.

31. In August 2010, the Department met with County officials pursuant to its investigation and has done extensive review of the documents and materials since initiating the investigation.

32. On May 2-6, 2011, and on May 20, 2011, the Department interviewed County officials pursuant to its investigation, including members of the Board of Supervisors, members of the Planning Commission, and Planning Department staff.

33. On June 15, 2011, the County Attorney informed the Department that he met with the Board of Supervisors, County management, and planning staff on the evening of June 14, and that the County had decided to invite the Mosque to submit a new rezoning application.

34. The Mosque submitted a new rezoning application on June 15, 2011.

35. On July 14, 2011, the Planning Department recommended approval of the rezoning request during the Planning Commission's public hearing on the request. The Planning Commission voted 4-0 to recommend approval of the rezoning application to the Board of Supervisors. However, during the public hearing, one Planning Commissioner recommended to the worship community of 1241's attorney that, prior to the Board of Supervisor's meeting on the new rezoning request, the worship community of 1241 should come up with a plan to perform charitable work in order to be a good neighbor. The Planning Commission has not made such requests from any of the non-Muslim religious denominations who sought rezoning and are identified in paragraph 27, above. The Planning Commissioner who made the motion for approval of the new rezoning request stated that he had reservations about the case, and recommended approval of the zoning application only because of RLUIPA.

36. On August 4, 2011, the United States informed the County that it was authorized to commence a lawsuit against the County under RLUIPA.

37. On August 9, 2011, the County Board of Supervisors held a public hearing on the Mosque's application. At the hearing, the Director of Planning presented the staff's report on the case and recommended approval. The Board approved the Mosque's application by a vote of 5-0.

38. On August 11, 2011, the County and the worship community of 1241 submitted a Final Order endorsed by both parties to the Henrico County Circuit Court for entry in the worship community of 1241 suit referenced in paragraph 22, above, seeking dismissal of the lawsuit, which was granted on August 15, 2011.

39. The approval of the Mosque's application is one step in a multi-phase development process that requires the Mosque to submit a plan of development and obtain additional County approvals and permits to build the mosque. The plan of development includes a public hearing before the Planning Commission for approval of the overall site development layout and the buildings. Subsequent phases of the project, including the construction plan and building permits for the structures, are reviewed and must be approved by Planning Department staff. Thus, the Planning Commissioners and Planning Department staff will be managing the plan of development phase that will determine whether the mosque actually is built.

40. Even though the County's wrongful denial of the 2008 application delayed the Mosque's ability to submit a plan of development and to seek other approvals, the County will still require the Mosque to go through the plan of development stage and to seek and obtain all of the other approvals, adding further delay to the construction of the house of worship.

41. As a result of the November 2008 denial, the Mosque was wrongfully denied the right to construct a house of worship at the property and suffered the burdens outlined in paragraphs 9 through 11. Due to the delay in construction caused by the County's denial

of the 2008 application, the Mosque will continue to suffer these burdens on its religious exercise.

42. At all times relevant, the County did not have in place procedures or practices to ensure County officials were able to satisfy their obligations under RLUIPA, including but not limited to, providing RLUIPA training to County officials and staff involved in religious land use determinations, and having established procedures to address complaints concerning denials of rights under RLUIPA. During interviews referenced in paragraph 32, several Planning Commissioners and Planning Department staff stated that they were not familiar with the provisions of RLUIPA.

43. Other Muslim congregations in the County are in the process of purchasing land, and they will be required to come before the Planning Commission to obtain approval for plans of development. The plan of development stage requires the submission of building plans and drawings, and applications for various types of permits.

COUNT I – DISCRIMINATION

44. The allegations above are hereby incorporated by reference.

45. The County has imposed and/or implemented its land use regulation to discriminate against the Mosque by treating the Mosque differently in the zoning process than it treated non-Muslim places of worship because of religion or religious denomination, in violation of RLUIPA, 42 U.S.C. § 2000cc(b)(2).

COUNT II – SUBSTANTIAL BURDEN

46. The allegations above are hereby incorporated by reference.

47. Defendant's treatment of the Mosque in its zoning process constitutes the imposition or implementation of a land use regulation that imposes a substantial burden on the Mosque's religious exercise, which burden 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, 42 U.S.C. § 2000cc(a).

48. For purposes of RLUIPA, the County made an individualized assessment of the Mosque's property when it denied the Mosque's rezoning application. 42 U.S.C. § 2000cc(a)(2)(C).

49. For purposes of RLUIPA, the Mosque's plans to construct a worship facility, a parking lot, and other improvements affects interstate commerce. 42 U.S.C. § 2000cc(a)(2)(B).

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

1. Declares that Defendant's policies and practices, as alleged herein, violate RLUIPA;

2. Enjoins Defendant, its officers, employees, agents, successors and all other persons in concert or participation with it, from:

   (a) Discriminating against the Mosque and its members and other Muslim religious entities and institutions and their members on the basis of religion or religious denomination; and

   (b) Imposing a substantial burden on the religious exercise of the Mosque and its members and other Muslim religious entities and institutions and their members that is not narrowly tailored to serve a compelling governmental interest; and

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

   (a) Take such actions as may be necessary to restore, as nearly as practicable, the Mosque and its members to the position they would have been in but for the unlawful conduct of Defendant; and

(b) Take such actions as may be necessary to prevent the recurrence of such discriminatory or otherwise unlawful conduct in the future, including but not limited to, providing RLUIPA training to County personnel, establishing procedures to address complaints of RLUIPA violations; and maintaining records and submitting reports relating to RLUIPA compliance.

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The United States further prays for such additional relief as the interests of justice may require.

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