

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

**ALL MUSLIM ASSOCIATION OF
AMERICA, INC.,**

Plaintiff,

v.

STAFFORD COUNTY, VIRGINIA, et al.,

Defendants.

CASE NO.: 1:20-cv-638 (LMB/JFA)

UNITED STATES OF AMERICA,

Plaintiff,

v.

STAFFORD COUNTY, VIRGINIA

Defendant.

CASE NO.: 1:20-cv-693 (LMB/JFA)

AMENDED COMPLAINT

The United States of America, by its undersigned attorneys, files this Amended Complaint against Stafford County, Virginia, and alleges:

INTRODUCTION

1. The United States of America brings this civil action against Stafford County, Virginia (“County” or “Defendant”), for imposing restrictive zoning requirements that preclude the All Muslim Association of America (“All Muslim Association”) from establishing an Islamic cemetery on land it owns, thereby impeding its religious practice of providing low-cost burial services to persons of the Islamic faith. The County’s actions constitute a substantial burden on

the free exercise of the religion of the All Muslim Association, in violation of the Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”), 42 U.S.C. §§ 2000cc–2000cc-5.

JURISDICTION AND VENUE

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 events giving rise to this action occurred in the Eastern District of Virginia.

DEFENDANT STAFFORD COUNTY

4. Defendant Stafford County is a governmental unit in the Commonwealth of Virginia.

5. The County is governed by, and acts through, an elected seven-member Board of Supervisors. The Board of Supervisors is a legislative body, responsible for enacting and applying zoning ordinances. The seven elected Board Supervisors serve four-year terms, and each represents one of seven districts in Stafford County.

6. The Planning Commission of Stafford County (“Planning Commission”) is an agency of the County. It consists of seven citizens appointed by the Board of Supervisors. There is a Planning Commissioner for each of the County’s seven districts appointed by the elected Board Supervisor from the same district. The Planning Commission reviews and makes recommendations to the Board of Supervisors regarding changes to the County’s zoning ordinances, text amendments, and conditional use permits.

7. The Planning and Zoning Department of Stafford County is an agency of the County. It provides guidance to the Board of Supervisors and the Planning Commission in land use and zoning and planning matters. According to the County’s website, such guidance is intended to ensure future orderly development and economic growth. The Planning and Zoning

Department also provides assistance and recommendations to the Planning Commission and Board of Supervisors on revisions to the County's zoning code.

8. The Board of Zoning Appeals of Stafford County is an agency of the County that determines whether to grant use variances.

9. The County is a "government" under RLUIPA, 42 U.S.C. § 2000cc-5(4)(A), and is responsible for the acts and omissions of its agents and agencies, including the Board of Supervisors, the Planning Commission, the Planning and Zoning Department, and the Board of Zoning Appeals.

FACTS

The All Muslim Association Bought Land in the County to Establish a Cemetery

10. The All Muslim Association is a non-profit organization formed in 1989 to provide low-cost burial services to members of the Islamic faith who live in the Commonwealth of Virginia, State of Maryland, District of Columbia, and other regions of the country. The All Muslim Association is a "religious assembly" or "institution" for RLUIPA purposes. 42 U.S.C. §2000cc(a)(1).

11. The religious tradition observed by the All Muslim Association requires that members of the Islamic faith who lack financial means have a place to be buried, and that the burial occur in an Islamic cemetery alongside other members of the Islamic faith.

12. According to the religious tradition observed by the All Muslim Association, a burial must take place as soon as possible after a person dies. After a body is ritually cleansed, it is wrapped in a shroud, and prayers are recited upon burial.

13. The All Muslim Association operates the only all-Islamic cemetery in Virginia. Its cemetery is approximately 7.5 acres, and is located at 1112 Brooke Road in Fredericksburg, which is within Stafford County, Virginia (the "Brooke Road Cemetery"). The Brooke Road Cemetery is located in an A-1 (agricultural) zoning district. The All Muslim Association has operated this

cemetery since approximately 1994. Families as far away as Michigan and Pennsylvania have come to bury their loved ones at the Brooke Road Cemetery.

14. Under the ordinance in place in 1994 (“Prior Cemetery Ordinance”)—which was the same ordinance regulating cemeteries until the County revised the ordinance in December 2016—the All Muslim Association was required to submit only a site plan to obtain the County’s authorization to develop the Brooke Road Cemetery. This is because, in a letter dated September 9, 1992, County Attorney Alda White informed the All Muslim Association that its proposed Brooke Road Cemetery was a “non-perpetual care cemetery,” and that it was not required to meet the provisions of the Prior Cemetery Ordinance pertaining to perpetual care cemeteries, that is, cemeteries with funds endowed for upkeep.

15. Consistent with the County Attorney’s instructions, the All Muslim Association submitted a site plan to the Stafford County Office of Planning, the precursor to the County Department of Planning and Zoning. William Shelly, the Director of the Office of Planning at the time, approved the site plan. The approval of the Planning Commission or Board of Supervisors was not required, and neither held any hearing before the County gave approval to the All Muslim Association to develop the Brooke Road Cemetery. The All Muslim Association was not required to obtain a conditional use permit to develop the Brooke Road Cemetery.

16. While one provision of the Prior Cemetery Ordinance provided that “[u]pon authorization of the establishment of a perpetual care or endowed cemetery by appropriate ordinance, a conditional use permit may be required by the board of supervisors,” the County never required any cemetery to obtain a conditional use permit under the Prior Cemetery Ordinance.

17. The All Muslim Association does not use any chemicals in the burial process at the Brooke Road Cemetery. Its practice is to place the body of a deceased person in a poly-vault, which is a plastic vault that protects a body against moisture. The poly-vault is lowered into the grave. These poly-vaults are shipped to Virginia from North Carolina.

18. Consistent with the overall growth of the Islamic Community in the Mid-Atlantic area, burials at the Brooke Road Cemetery have increased significantly in the last few years. Because the Brooke Road Cemetery is near capacity, the All Muslim Association needs an additional burial site of at least 25 acres to serve the religious needs of the growing Islamic community for decades to come. Accordingly, on June 3, 2015, it bought property at 1508 Garrisonville Road in Stafford County. A portion of the site, identified as Tax Parcel 19-3E and consisting of approximately 29 acres (hereinafter the “Garrisonville Property”), is ideal for a cemetery, because it is large, relatively flat, cleared of vegetation, and accessible, being off of a state highway known as State Highway 610, also known as Garrisonville Road. The All Muslim Association intends to use the same burial process at the cemetery on the Garrisonville Property that it uses at the Brooke Road cemetery.

19. The Garrisonville Property is in Stafford County’s A-1 zoning district.

20. The All Muslim Association bought the Garrisonville Property after it received confirmation through County representatives that Tax Parcel 19-3E was permitted “by-right” to be used as a cemetery under the Stafford County Zoning Code.

21. In June 2015, as was the case in 1994, cemeteries were a “by-right” use in A-1 zoning districts under the Stafford County Zoning Code. A “by-right” use means that no discretionary approval by the County is required to proceed with development.

22. In June 2015, the Stafford County Zoning Code contained no separation requirement providing that cemeteries be separated or located at a minimal distance away from certain water sources. There was no requirement in the Prior Cemetery Ordinance that cemeteries be separated by a certain distance from private wells or that they be separated by a certain distance from terminal reservoirs or perennial streams. There was also no requirement that a cemetery applicant obtain a conditional use permit accompanied by a hydrogeological study if it desired to locate a cemetery within less than 200 meters (656 feet) of a private well.

23. At or near the time the All Muslim Association purchased the Garrisonville Property, based on the County's treatment and approval of its Brooke Road Cemetery under the Prior Cemetery Code, it understood that the process for approval of its proposed cemetery on the Garrisonville Property would be the same as with the approval of the Brooke Road Cemetery and that no hearing would be needed before the Planning Commission or Board of Supervisors.

24. At or near the time the All Muslim Association purchased the Garrisonville Property, it conformed to all applicable County zoning requirements pertaining to cemeteries and met all the conditions required to develop a cemetery under the Prior Cemetery Ordinance.

25. At or near the time the All Muslim Association purchased the Garrisonville Property, it conformed to all applicable laws and regulations of the Commonwealth of Virginia pertaining to cemeteries.

26. At or near the time the All Muslim Association purchased the Garrisonville Property, it had obtained the consent of landowners who were within 250 yards on the same side of the Garrisonville Property satisfying the consent provisions in the Virginia State Code § 57-26. The All Muslim Association's proposed cemetery is set back from the property line such that the cemetery is, at all points, more than 250 feet from any of the residences across State Highway 610. Because it did not propose developing the cemetery within 250 feet of the residences of the neighbors who lived on the other side of State Highway 610, in accordance with Virginia State Code § 57-26, the All Muslim Association did not need to obtain the consent of anyone living on the other side of State Highway 610.

27. At or near the time the All Muslim Association purchased the Garrisonville Property, it consulted an engineering firm to ascertain if the soil was appropriate for a cemetery, which concluded that it was.

28. At or near the time the All Muslim Association purchased the Garrisonville Property, its use complied with the 100-foot buffer of the Resource Protection Area under the Chesapeake Bay Preservation Act, 9 VAC25-830-140(B).

29. At or near the time the All Muslim Association purchased the Garrisonville Property, its use complied with the 100-foot separation requirement to private wells required by the Virginia Department of Health Regulation, 12 VAC5-630-10 *et. seq.* at Table 3.1.

30. Based on the All Muslim Association's due diligence, including the facts described above, the fact that the Garrisonville Property was in the A-1 zoning district, where cemeteries were a "by-right" use, and the County's prior approval of the Brooke Road Cemetery—obtained under the same cemetery ordinance (the Prior Cemetery Ordinance) on land located in the A-1 zoning district—it was reasonable for the All Muslim Association to expect that it would receive all necessary County land use approvals to develop the Garrisonville Property as a cemetery.

Neighbors Opposed the Cemetery at the Garrisonville Property

31. At all times relevant to this Complaint, Wendy Maurer served as a Board Supervisor from the Rock Hill District.

32. Crystal Vanuch lives at 1535 Garrisonville Road in Stafford County, which is across State Highway 610 from the Garrisonville Property, and her residence consists of at least seven acres. Ms. Vanuch operates a business from her home called "Small Pharma Agricultural Farm." She raises and sells horses and chickens in her back yard. She also sells equine fertilizer and chicken eggs from this location. In approximately July 2014, she received an exemption from the County's Department of Public Works that allowed her to build a barn on her land to store the fertilizer. Like the other property owners who live across State Highway 610 from the Garrisonville Property, Ms. Vanuch has a private well. Her fertilizer barn is located substantially less than 656 feet from her private well. Ms. Vanuch did not obtain a conditional use permit or present a hydrogeological study to the County before obtaining permission to operate a farm or

build a fertilizer barn. In January 2016, she was appointed to the Planning Commission by Board of Supervisor member Wendy Maurer.

33. In April 2015, at or around the time that the All Muslim Association had purchased the Garrisonville Property, Ms. Vanuch met with a member of the Stafford County Agricultural Commission and indicated that she was aware of the All Muslim Association's purchase of the Garrisonville Property, was concerned that it was planning to develop a cemetery on this land, and wanted to change the cemetery ordinance. In an email dated April 23, 2015, the Stafford County Agricultural Commission member advised a member of the Stafford County Board of Ms. Vanuch's concerns.

34. On June 9, 2016, a citizen living across State Highway 610 on Skywood Court ("Skywood Court citizen") expressed concern to his elected County Supervisor, Wendy Maurer, about the All Muslim Association's proposed cemetery on the Garrisonville Property and the safety of his private-well-water. He sought to have the County impose a separation requirement of 900 feet between his and his neighbors' private wells and the proposed cemetery on the Garrisonville Property. The Skywood Court citizen shared this concern with his neighbor, Crystal Vanuch, who was now a Planning Commissioner and was already aware of the proposed cemetery.

35. Supervisor Maurer and Planning Commissioner Vanuch asked County staff to investigate the Skywood Court citizen's concern. County staff informed both officials that the All Muslim Association bought the Garrisonville Property on June 3, 2015, and that the All Muslim Association owns and operates the Brooke Road Cemetery. County staff also shared with Supervisor Maurer a link to the parcel viewer for the Garrisonville Property.

36. In connection with the investigation of the Skywood Court citizen's concern, County staff turned to Tommy Thompson, Environmental Health Supervisor for the Virginia Department of Health, because, as explained in an email dated June 20, 2016, by County staff,

“state law and Health Department regulations dictate the location of cemeteries relative to adjacent residences and ground water wells.”

37. On or about June 21, 2016, County representatives, including Supervisor Maurer, and Commissioner Vanuch, learned that the Virginia Department of Health had a separation requirement of 100 feet between a cemetery and private wells. They also learned from the Virginia Department of Health’s representative, Tommy Thompson, that, after reviewing certain data pertaining to the Skywood Court citizen’s specific private well relative to the proposed cemetery on Garrisonville Road, he concluded, that, “in my professional opinion and according to the Regulations, if there is at least 100 feet of separation distance between this existing bored well and the proposed cemetery, there should be no public health problem created by the cemetery being installed.” Mr. Thompson was referencing the Virginia Department of Health’s regulation, 12 VAC5-630-10 *et. seq.* at Table 3.1, which sets forth a separation distance of 100 feet between a cemetery and private wells. The Garrisonville Property was at least 100 feet away from any of the private wells pertaining to the residents on Skywood Court and/or Garrisonville Road across State Highway 610.

38. In an email dated June 22, 2016, Planning Commissioner Vanuch expressed her concern to Supervisor Maurer regarding the location of the proposed cemetery on the Garrisonville Property backing up to the nearby Aquia Creek. She suggested a meeting with the County Attorney to develop a regulation through the Planning Commission to address the Skywood Court citizen’s concern and the effect of the proposed cemetery on the Aquia Creek.

The County Enacted a Cemetery Ordinance with Separation Requirements

39. On or about August 25, 2016, County staff distributed to Supervisor Maurer and Planning Commissioner Vanuch a copy of a draft cemetery ordinance, which contained, among other new cemetery provisions, two separation requirements. One required that “no burial be placed within one hundred feet (100 feet) of any private well used as a water supply,” and, the

second provided that “no burial be placed within nine hundred (900) feet of any terminal reservoir of [sic] any perennial stream that drains to a terminal reservoir.” In proposing the separation of 100 feet to private wells, County staff relied on Virginia Department of Health regulations and Mr. Thompson’s professional opinion that 100 feet of separation to private wells is sufficient to protect public safety. County staff explained its reasoning to certain County officials, including Supervisor Maurer and Planning Commissioner Vanuch, in an email dated August 25, 2016, as follows: “We looked at the 100 foot separation requirement from a private well as a defensible standard. It is the maximum distance that the Health Department requires. State code provisions for cemeteries have a separation requirement from municipal wells but there is no separation requirement from private wells. The Health Department standards are more restrictive.”

40. County staff provided no written explanation for its proposal to impose a separation distance of 900 feet from any terminal reservoir or any perennial stream that drains into a terminal reservoir.

41. On September 7, 2016, the Board of Supervisors Community and Economic Development Committee (CEDC), whose Chairperson was Supervisor Maurer, considered the proposed cemetery ordinance, with its provisions for a private well separation requirement from cemeteries of 100 feet, and a terminal reservoir/perennial stream separation requirement from cemeteries of 900 feet. The CEDC voted to send the proposed draft to the Board of Supervisors, with a recommendation to send it to the Planning Commission for a public hearing and recommendation.

42. On September 20, 2016, the Board of Supervisors adopted Resolution R16-295. This Resolution referred the proposed ordinance with the separation requirements described in paragraph 41 (hereinafter “Proposed Ordinance No. O16-39”) to the Planning Commission for its review, recommendations, and a public meeting. At Supervisor Maurer’s direction, County staff

included in Resolution R16-295 an additional clause that authorized the Planning Commission to make changes to the proposed ordinance.

43. On September 28, 2016, the Planning Commission met and formed a cemetery subcommittee (“Subcommittee”) to study and make recommendations regarding Proposed Ordinance No. O16-39. The Subcommittee included Planning Commissioner Vanuch.

44. On or about October 5, 2016, the Subcommittee met and soon thereafter, on or about October 7, 2016, a new version of the cemetery ordinance was drafted providing that there be a private well separation requirement of 900 feet, instead of 100 feet.

45. In a correspondence dated October 10, 2016, Planning Commissioner Vanuch proposed to the County staff that language be included in the proposed ordinance to remove from the Board any authority to grant any exceptions or waivers to the separation requirements in any application that came before it. County staff responded in an email dated October 11, 2016, that relief from the separation requirements would go before the Board of Zoning Appeals, assuming the use was permissible, and that the Board of Zoning Appeals could grant relief only if the application of the requirements were unreasonable and posed a hardship to a cemetery applicant.

46. On October 11, 2016, County staff sent a revised draft ordinance to the Subcommittee, which contained a separation requirement of 900 feet to private wells, as well as the separation requirement of 900 feet to terminal reservoirs or perennial streams draining into such reservoirs.

47. The revised draft for the Subcommittee’s review on October 11, 2016, also contained a new procedure requiring an applicant to petition the Board for adoption of an ordinance to establish a cemetery, and the use of a text amendment/rezoning classification process, which was a more expensive and time-consuming procedure than that under the Prior Cemetery Ordinance. This procedure required a cemetery applicant to submit to a public hearing before the Planning Commission and then another public hearing before the Board of Supervisors.

Engineering fees may cost an applicant as much or more than \$50,000, and the process could take an applicant as much or more than a year to complete. The revised draft exempted “churchyards” from the text amendment/rezoning classification process. In addition to the rezoning procedures, the proposed ordinance required compliance with the separation requirements, and notice of any public hearings to owners of any property located within 900 feet of the proposed cemetery.

48. On October 12, 2016, members of the Subcommittee provided a report to the Planning Commission with the proposed changes described in paragraphs 46 and 47, above. The Planning Commission voted in favor of having a public hearing scheduled on the revised draft.

49. On November 9, 2016, the Planning Commission voted unanimously to recommend the proposed changes described in paragraphs 46 and 47, above to the Board of Supervisors.

50. On December 13, 2016, the Board of Supervisors, at its regularly scheduled public meeting, considered the recommendation of the Planning Commission to enact the revisions to proposed Ordinance No. O16-39, described in paragraphs 46 and 47, above.

51. At the meeting of December 13, 2016, Planning Commissioner Vanuch addressed the Board, recommending that it adopt the Planning Commission’s recommendation.

52. It was not the usual procedure for a Planning Commissioner to address the Board in furtherance of revisions to an ordinance.

53. The Board of Supervisors voted unanimously to approve and enact the revisions to the cemetery ordinance.

54. Ordinance No. O16-39 is codified at Section 28-39(o) of the Stafford County Zoning Code (hereinafter the “2016 Cemetery Ordinance”). It repealed Chapter 8, and moved the bulk of applicable regulations for cemeteries into Chapter 28 of the Stafford County Zoning Code.

55. The 2016 Cemetery Ordinance contained a separation requirement of 900 feet between private wells and cemeteries, and a separation requirement of 900 feet from any terminal

reservoir or any perennial stream that drains into a terminal reservoir (collectively and hereinafter, the “900-foot separation requirements”). The pertinent provisions are as follows:

(o) Cemeteries

(1) Establishment of cemeteries. The following requirements shall apply to the establishment of any cemetery:

a. Restrictions as to location of cemeteries.

(1) ... [board authorization provision]

(2) ... [consent within 250 feet of highway provision]

(3) ... [public well provision]

(4) No cemetery shall be established within 900 feet of any terminal reservoir or any perennial stream that drains into a terminal reservoir. No cemetery shall be located within 900 feet of any private well used as a drinking water supply.

* * *

County Representatives Withhold Certain Key Information

56. At neither the Planning Commission meeting of November 9, 2016, nor the Board of Supervisors meeting of December 13, 2016, did Planning Commissioner Vanuch include information in her presentation about Mr. Thompson’s professional opinion that a separation of 100 feet to a private well was adequate protection for public safety. She did not mention that the state cemetery statute, Va. Code 57-26, had no separation requirements for private wells or terminal reservoir/perennial streams. She also did not mention that the Virginia Department of Health regulations had a separation requirement from private wells to cemeteries of only 100 feet, and that the Chesapeake Bay Preservation Act required only a 100-foot separation from a cemetery to a perennial stream.

57. At neither the Planning Commission meeting of November 9, 2016, nor the Board of Supervisors meeting of December 13, 2016, did Planning Commissioner Vanuch mention that she had previously raised the issue of revising the County cemetery ordinance as a private citizen when she learned in 2015 that the All Muslim Association had purchased the Garrisonville

Property or that a Skywood Court citizen who is her neighbor had raised a concern about his own well and those of his neighbors in relation to a proposed cemetery on the Garrisonville Property.

58. At neither the Planning Commission meeting of November 9, 2016, nor the Board of Supervisors meeting of December 13, 2016, did Planning Commissioner Vanuch mention that the Garrisonville Property had been purchased on June 3, 2015, by the All Muslim Association, which was already operating the Brooke Road Cemetery for the Islamic community.

59. At the time of the Board of Supervisors meeting on December 13, 2016, Planning Commissioner Vanuch knew that the 900-foot separation requirements would have an adverse impact on the ability of the All Muslim Association to develop a cemetery on the Garrisonville Property, but she withheld this fact from members of the Board.

60. During the Board of Supervisors meeting on December 13, 2016, Supervisor Maurer did not disclose to other Board Supervisors the facts she knew about the Garrisonville Property. She withheld the fact regarding Mr. Thompson's professional opinion—that a separation requirement of 100 feet to a private well was adequate protection for public safety. She withheld the fact that the Virginia Department of Health regulations have only a private well separation requirement of 100 feet, and that the Chesapeake Bay Preservation Act requires only 100 feet of separation between cemeteries and perennial streams.

61. During the Board of Supervisors meeting on December 13, 2016, Supervisor Maurer did not disclose to the Board how the issue of revising the cemetery ordinance came to her attention in the first place, *i.e.*, by Ms. Vanuch or the Skywood Court citizen who lives next to Planning Commissioner Vanuch and had a concern about his own well and those of his neighbors in relation to the proposed cemetery on the Garrisonville Property.

62. During the Board of Supervisors meeting on December 13, 2016, Supervisor Maurer did not disclose to other Board Supervisors that the Garrisonville Property was owned by

the All Muslim Association, which had acquired it in 2015 and was already operating the Brooke Road Cemetery to serve the Islamic community.

63. At the time of the Board of Supervisors meeting on December 13, 2016, Supervisor Maurer knew that the 900-foot separation requirements would have an adverse impact on the ability of the All Muslim Association to develop a cemetery on the Garrisonville Property, but she withheld this fact from other members of the Board.

64. From June through December 2016, County staff members were in contact with representatives from the All Muslim Association about other land use matters near the Brooke Road Cemetery. At no time during this period did these County staff members inform the All Muslim Association that the County was considering changes to its cemetery ordinance.

65. From January 2017 through March 2017, County staff members were in contact with representatives from the All Muslim Association about other land use matters near the Brooke Road Cemetery. At no time during this period did these County staff members inform the All Muslim Association that revisions to the County's cemetery ordinance had been issued.

66. By the date of the Board meeting in December 2016, certain County staff members and officials knew that through the imposition of the 900-foot separation requirements, the All Muslim Association would have insufficient land on the Garrisonville Property upon which to develop a cemetery to serve the Islamic community. None of these County representatives informed the All Muslim Association about the impact of the 900-foot separation requirements on the Garrisonville Property.

The Impact of the 2016 Cemetery Ordinance on the All Muslim Association Was Substantial

67. The imposition of the 900-foot separation requirements removed all land on the Garrisonville Property upon which the All Muslim Association could develop a cemetery.

68. The provisions in the 2016 Cemetery Ordinance imposing 900-foot separation requirements on the Garrisonville Property for the proposed cemetery extended beyond any separation requirements pertaining to cemeteries in the laws and regulations of Virginia.

69. The provisions in the 2016 Cemetery Ordinance imposing 900-foot separation requirements on the Garrisonville Property for the proposed cemetery were not contained in any other county zoning code in Virginia.

70. The provisions in the 2016 Cemetery Ordinance changed a cemetery from a “by-right” use in the A-1 zoning district into a discretionary process requiring that a cemetery applicant such as the All Muslim Association undergo a text amendment/rezoning process to develop a cemetery, which would have required hearings before the Planning Commission and Board of Supervisors.

71. The 2016 Cemetery Ordinance’s text amendment/rezoning process did not apply to “churchyards” and was not contained in any other county zoning code in Virginia. The County has previously stated that a “churchyard” must have a church located on the same property or associated with the property on a directly abutting parcel. In accordance with All Muslim Association’s sincerely held religious beliefs, however, a cemetery may not be located on the same property as a mosque.

72. Under the 2016 Cemetery Ordinance, a cemetery applicant was required to, in the application document, demonstrate compliance with the 900-foot separation requirements. The 2016 Cemetery Ordinance did not provide the Board with the authority to approve a text amendment for any cemetery applicant who did not demonstrate compliance with the 900-foot separation requirements.

73. The provisions in the 2016 Cemetery Ordinance imposing 900-foot separation requirements did not apply to any other by-right uses in the A-1 zone allowed under the Stafford County Zoning Code, including agriculture, feed lot, septic systems, golf courses, waste water

treatment facilities, and slaughter and animal processing, even though, as stated below in paragraphs 105-112, these uses are considered by County and state health officials to be potential sources of groundwater contamination.

The All Muslim Association Took Steps to Undo the Harm to Its Planned Cemetery

73. In April 2017, the All Muslim Association approached the County and explained that it was ready to develop its proposed cemetery on the Garrisonville Property. In April 2017, representatives from the All Muslim Association met with Kathy Baker, the Assistant Director of the Stafford County Department of Planning and Zoning. Ms. Baker informed the representatives that the All Muslim Association would need to submit a rezoning application, get multiple approvals, first from the Planning Commission and then from the Board of Supervisors, and comply with the 900-foot separation requirements. Seeing their surprise and confusion, Ms. Baker directed them to consult a lawyer, which the All Muslim Association did.

74. In or about April 2017, an attorney for the All Muslim Association spoke to Susan Blackburn, the Stafford County Zoning Administrator, and Michael Zuraf, the Principal Planner who processes rezoning applications. These zoning officials expressed significant confusion about the application process, but indicated that it would be treated like a rezoning and that the filing fee was \$12,000. They also explained the 2016 Cemetery Ordinance and its terms, including the 900-foot separation requirements.

75. In June 2017, representatives from the All Muslim Association contacted Supervisor Paul Milde, who was also Chair of the Board of Supervisors at the time, and informed him that the 900-foot separation requirements in the 2016 Cemetery Ordinance prohibited the organization from developing a cemetery on the Garrisonville Property, and asked him what could be done to undo the harm to the organization.

76. Based on the concerns expressed by the All Muslim Association, on October 3, 2017, Supervisor Milde introduced a Resolution to the Board to instruct the Planning Commission

to review the 2016 Cemetery Ordinance and provide a recommendation to the Board of Supervisors for revisions. The Board of Supervisors voted in favor of the Resolution 7-0, and the matter was sent to the Planning Commission.

The Board Voted Not to Amend the 2016 Cemetery Ordinance

77. The Planning Commission sent the matter to its cemetery Subcommittee where Planning Commissioner Vanuch continued to preside. The Subcommittee held two public meetings. The first public meeting was on December 6, 2017, and the second was on February 15, 2018. All Muslim Association representatives submitted information and/or participated at these meetings. They explained their methods of internment at the Brooke Road Cemetery and the use of poly-vaults. They also explained that, because of the 900-foot separation requirements, they were prohibited from establishing a cemetery on the Garrisonville Property. Neighbors across State Highway 610 also attended these meetings arguing in favor of the 2016 Cemetery Ordinance and that changes were unnecessary. Ultimately, the Subcommittee recommended that the Planning Commission recommend to the Board that it make no change to the 2106 Cemetery Ordinance.

78. On May 9, 2018, the Planning Commission held a public meeting. During the public portion of the meeting, representatives from the All Muslim Association spoke, emphasizing their desire to work constructively with the County and the need for changes to the 2016 Cemetery Ordinance, noting that it was far stricter than any other local ordinance, and that it prohibited them from developing an Islamic cemetery on the Garrisonville Property.

79. On May 23, 2018, the Planning Commission voted to recommend that the Board of Supervisors make no change to the 2016 Cemetery Ordinance.

80. On August 21, 2018, the Board of Supervisors held a public meeting where citizens testified in favor of preserving the New Cemetery Ordinance.

81. At the August 21, 2018 meeting of the Board of Supervisors, County staff members informed the Board that the All Muslim Association owned the Garrisonville Property to operate

as a cemetery and that they had “expressed concerns about our County Ordinance relative to their ability to establish a cemetery on their property.” County staff members also explained the internment practices of the All Muslim Association and its use of poly-vaults. County staff members noted that the 2016 Cemetery Ordinance had “some additional standards that go above and beyond what the state require,” referencing the 900-foot separation requirements.

82. On September 18, 2018, the Board of Supervisors conducted another public meeting. County staff members provided a report to the Board outlining the portions of the 2016 Cemetery Ordinance that “mirror[ed]” state law, and those portions, such as the private well separation requirements that exceeded state law. County staff members explained that in 2017, the All Muslim Association expressed concerns about the effects of the 2016 Cemetery Ordinance on its ability to develop a cemetery on the Garrisonville Property, which prompted the Board to have the Planning Commission revisit the matter. County staff members explained that the Planning Commission recommended that the separation requirements remain unchanged based on “international studies regarding the potential effects of burials on groundwater drinking sources” that had been reviewed in connection with the issuance of the 2016 Cemetery Ordinance in December 2016. County staff members indicated that there “continues to be some concern over the Ordinance and the provisions that extend beyond the State code requirements without opportunity for relief.”

83. At the September 18, 2018, all members of the Board of Supervisors knew that the All Muslim Association owned the Garrisonville Property, intended to use it as a cemetery to serve the Islamic community, and could not do so because of the 900-foot separation requirements.

84. During the September 18, 2018 meeting, County staff members identified two options to the Board to mitigate the harm to the All Muslim Association. These were contained in Resolution 18-228. One option was to have the Board request that the Planning Commission prepare an ordinance that would retain the separation requirement of 900 feet from private wells,

but allow a reduction in the distance by approval of a conditional use permit when soil evaluations demonstrate that there is no reasonable likelihood of contamination of wells near a specific property, and maintain all State Virginia Code requirements as currently provided in the Ordinance. The second option was to have the Board request that the Planning Commission prepare an ordinance that removes the separation requirement of 900 feet from private wells, relying on Virginia Department of Health standards, and removes all other requirements that exceed Virginia Code requirements and Virginia Administrative Code regulations, and maintain all Virginia Code requirements as currently provided in the Ordinance.

85. During the September 18, 2018 meeting, County staff members recommended that the Board approve the proposed Resolution R18-228, and adopt either of the two options described in paragraph 84, above, and have the Planning Commission prepare an ordinance and conduct a public hearing to amend the 2016 Cemetery Ordinance. With regard to both options, the Resolution noted in the whereas clause that the All Muslim Association “expressed concerns about the effects of Ordinance O16-39 on its ability to develop a cemetery on property that it owns at 1508 Garrisonville Road, and that some of the restrictions, such as setbacks to private wells and water resources may be too restrictive.” With regard to the option that removed all separation requirements other than those imposed by Virginia, the Resolution noted in the whereas clause that the “Board is concerned that it does not have the capacity to evaluate possible impacts of cemeteries on water quality better than the Virginia Department of Health.”

86. Notwithstanding the County staff’s recommendation that either of the options described in paragraph 84, above, be approved, Supervisor Maurer moved that the Board approve a motion not to make *any* changes in the 2016 Cemetery Ordinance at the September 18, 2018 meeting.

87. During the September 18, 2018 meeting, Supervisor Shelton made a substitution motion to defer a vote on the issue to give the Board more time to think about it. Supervisor

Dudenefer seconded the motion. Supervisor Cavalier said that another Supervisor (Supervisor Snellings) was away on a family emergency and asked that the vote be deferred as he was one of the four remaining Board members at the time the Ordinance was passed. Supervisor Maurer stated that the Board “needed to give the residents an answer,” that “they [the residents] were tired” and the Board should not defer the issue. The vote on the substitution motion for a deferral on the matter was a tie, and therefore it did not carry.

88. During the September 18, 2018 meeting, Supervisor Cavalier remarked on the origins of the 2016 Cemetery Ordinance, when Planning Commissioner Vanuch addressed the Board in favor of its issuance. Supervisor Cavalier stated: “Well, a couple years ago when we – when this issue was first brought to us, we were briefed as this Board by a junior member of the Planning Commission [Crystal Vanuch], which was totally out of normal order. That has rarely if ever been done, and I don't think that we were given the briefing that we probably deserved at that time. And I don't think we were, uh, afforded the opportunity to make a really informed decision.”

89. The Board voted on Supervisor Maurer's motion not to change the 2016 Cemetery Ordinance. Three Board members voted in favor (Maurer, Bohmke, Coen); two voted against (Cavalier, Shelton); and there were two abstentions (Dudenefer, Snellings). Thus, the 2016 Cemetery Ordinance remained unchanged.

90. At the time the Board enacted the 900-foot separation requirements in December 2016, and left these provisions in the New Cemetery Ordinance unchanged in September 2018, the Board knew of no other religious organization—or any secular organization—seeking to develop a cemetery in Stafford County other than the All Muslim Association.

91. At no point during the reconsideration of the 2016 Cemetery Ordinance did the Planning Commission or Board of Supervisors consult with an expert on groundwater contamination, hydrogeology, or any other pertinent scientific field regarding groundwater safety.

The County Denied the All Muslim Association a Variance

92. On December 22, 2018, having no other viable path forward to developing a cemetery on its Garrisonville Property because of the 2016 Cemetery Ordinance, the All Muslim Association filed an application with the Stafford County Board of Zoning Appeals (“BZA”) for a partial variance from the 900-foot separation requirements in the 2016 Cemetery Ordinance.

93. In support of its variance application, the All Muslim Association demonstrated that it met all applicable Virginia laws and regulations. It showed that: (a) it obtained the consent of landowners who were within 250 yards on the same side of the Garrisonville Property; (b) its development on the Garrisonville Property would be more than 250 feet away from the residences across State Highway 610, thereby obviating the need for the consent of those landowners; (c) its development on the Garrisonville Property would be at least 100 feet away from the nearest private wells, as required by the Virginia Department of Health regulations; and (d) its development would be at least 100 feet away from the Resource Protection Area, required by the Chesapeake Bay Preservation Act, Virginia Code § 62.1-44.15:67 *et. seq.* The All Muslim Association also submitted with its variance application an affidavit of an environmental expert with a background in water contamination who testified that there was no significant threat of contamination from the proposed cemetery on the Garrisonville Property to nearby public and private water sources, including private wells, and that Virginia Department of Health regulations provided adequate protection for water quality.

94. The All Muslim Association submitted an exhibit with its variance application showing that the 900-foot separation requirements would prohibit it from using any of the land as a cemetery

95. The All Muslim Association submitted an exhibit with its variance application that showed the demarcation of the cemetery at more than 250 feet from the residences at their nearest points across State Highway 610.

96. On February 26, 2019, at a public hearing, the BZA denied the variance.

The County Amends the 2016 Cemetery Ordinance

97. During its March 18, 2020 meeting, the Board voted to refer a proposal (Resolution R20-85) to the Planning Commission for review and recommendation.

98. Resolution R20-85 proposed to amend the 2016 Cemetery Ordinance, section 28-39(o) of the County Code, to, among other things, require that all applications to develop cemeteries “except churchyard or family cemeteries” go through an extensive conditional use permit process (CUP), defined in County Code § 28-185. It also decreased the 900-foot separation requirements to 750 feet and provided that a cemetery could be developed less than 750 feet from private wells or perennial streams if its proponent demonstrates, through a hydrogeological study, that there is “no reasonable likelihood of adverse water quality impacts on drinking water supplies.”

99. Resolution R20-85 also defined a “churchyard” as “[a]n area on a lot surrounding a place of worship (as exempted from zoning regulation by Virginia Code § 57-26).” The All Muslim Association, because of its sincerely held religious beliefs and customs, cannot locate a cemetery on or adjacent to the same parcel of land with a mosque.

100. To obtain a CUP under County Code § 28-185, an applicant must comply with expensive and time-consuming requirements, including the filing of an application, development plan, nonrefundable fees, an impact statement, and at least two public hearings, one before the Planning Commission and one before the Board. The CUP process can take months, if not years to complete, and tens of thousands of dollars in application, engineering, expert, legal, and other fees. The Board has the ultimate discretion of whether to grant or deny a CUP and can consider myriad factors, including, but not limited to, purported impact on adjacent and nearby properties and whether the proposed use “will be detrimental to the public welfare.” Further, once granted,

a CUP may include additional conditions on the use, and may also be revoked by the Board for noncompliance.

101. On July 27, 2020, the Planning Commission considered Resolution R20-85. The Planning Commission voted to deny recommending the proposed ordinance, and instead recommended to the Board of Supervisors that it adopt an ordinance which required that all cemetery applicants—except for a churchyard or family cemetery—obtain a CUP before developing a cemetery, and that the separation requirements be reduced to 200 meters (656 feet) from private wells and perennial streams, but that an applicant could develop closer than 200 meters with a conditional use permit and a hydrogeological assessment showing “no reasonable likelihood of adverse water quality impacts on drinking water supplies.”

102. On August 18, 2020, the Board of Supervisors considered the Planning Commission’s July 22, 2020 recommendation but voted to approve a different proposed ordinance. The Board approved an ordinance (the “2020 Cemetery Ordinance”), which allows a cemetery to be developed in the A-1 zoning district through the site plan approval process provided that the cemetery is at least 200 meters (656 feet) from “private wells used as drinking water supplies” and 100 feet from any terminal reservoir or perennial stream that drains into a terminal reservoir. If a cemetery applicant wants to develop a cemetery within 656 feet or less from a private well used as a drinking water supply, it must apply for a conditional use permit—through the County’s extensive and expensive CUP process described above—and demonstrate “through hydrogeological studies that the location of the specific proposed cemetery will have no reasonable likelihood of adverse water quality impacts on drinking water supplies.” Further, the conditional use permit “shall include provisions for monitoring, and other reasonable ongoing protections from possible contamination of drinking water supplies.” Such hydrogeological studies and monitoring cost tens and possibly hundreds of thousands of dollars.

103. The 2020 Cemetery Ordinance also adds a definition of a “churchyard” to the Stafford County Zoning Code, defining it as “an area on a lot surrounding a place of worship (as exempted from zoning regulation by Virginia Code § 57-26).” The County was aware in enacting this provision that the AMAA would not qualify for such exemption because of its religious belief, which does not permit a mosque to be co-located with a cemetery.

104. The 2020 Cemetery Ordinance provides that an “applicant must comply with all consent requirements outlined in Code of Virginia § 57-26(1).” The County has recently and incorrectly construed the state law consent requirements such that they prohibit the AMAA from using the Garrisonville Property for a religious cemetery. As a result, any application for a religious cemetery on the Garrisonville Property under the 2020 Cemetery Ordinance would be denied by the County and is futile.

The County Continues to Allow Potential Sources of Contamination That Are More Likely to Contaminate Private Wells Than Cemeteries to Be Located Much Closer to Private Wells Than Allowable Under the 2020 Cemetery Ordinance

105. The County has been aware since at least 2004 that uses other than cemeteries pose a greater risk of contamination to groundwater and private wells in Stafford County. For example, in 2004, the County commissioned Draper Aden Associates, an engineering and environmental services firm, to evaluate Stafford County’s groundwater resources (the “2004 Groundwater Management Plan”). The 2004 Groundwater Management Plan identified landfills, feedlots, agricultural activity, and septic systems, among others, as potential threats to groundwater safety—particularly in relation to their proximity to wells—and made several recommendations about these uses, including prohibiting them in certain areas in the County. Notably absent from the 2004 Groundwater Management Plan was any mention of cemeteries as a potential source of groundwater contamination or any recommendations about them.

106. In 2018, after having already enacted the Prior Cemetery Ordinance on the purported basis of groundwater safety, the County retained ECS Mid-Atlantic, a geotechnical

consulting company, to provide an evaluation of groundwater resources in Stafford County (the “2018 Groundwater Study”). The 2018 Groundwater Study reports that the major causes of groundwater contamination in rural areas of the County are run-off from agricultural operations and leakage from septic systems.

107. Virginia’s 2015 Water Resources Plan lists septic systems as a key challenge to Virginia’s water resources.

108. To the extent that cemeteries pose any risk to private wells, that risk is no greater than the risks associated with other uses in the County, such as the thousands of private septic systems and agricultural operations in the County. The County has no compelling reason to require greater setbacks from private wells for cemeteries than septic systems and agricultural operations, including farms, feedlots, and fertilizer operations.

109. In the A-1 zoning district, the Stafford County Zoning Code allows as of right, and without a 656-foot separation from private wells, the following uses that pose a similar or greater risk of groundwater contamination than a cemetery: agricultural operation for livestock/poultry; agriculture; equestrian use and bridle path; farm brewery; farm winery; feedlot; and slaughter and animal processing.

110. Stafford County requires setback distances of only 50 to 100 feet between private septic systems and private wells (the distance depends on the type of well) to prevent contamination of wells from septic systems. Stafford County also requires a buffer of 50 to 100 feet between other sources of contamination—including agricultural operations and the other uses stated in paragraph 109—and private wells to prevent contamination. In contrast, the County requires a buffer of 656 feet between cemeteries and private wells, which is six to thirteen times more than what is required for septic systems and agricultural operations.

111. There are over 20 private septic systems in the vicinity of the Garrisonville Property, which includes the systems of the residences across State Highway 610 from the

Garrisonville Property. These residences also have private wells. These private septic systems are located far less than 656 feet—frequently as close as 50 to 100 feet—from the residences’ private wells. These septic systems pose a risk of groundwater contamination to the nearby private wells greater than any risk posed by the proposed cemetery on the Garrisonville Property.

112. The County has no compelling justification to treat cemeteries differently from septic systems and agricultural operations. To the contrary, there are thousands of septic systems and many agricultural operations throughout the County. According to County records, there have been only two new cemeteries since 1994, and one of those was the Brooke Road Cemetery. The risk of contamination from a cemetery, to the extent any risk exists, is dwarfed by the risk of groundwater contamination from septic systems and agricultural operations in Stafford County. Despite this substantial imbalance in relative risk, the County has singled out cemeteries for regulation only after learning that the All Muslim Association was planning to develop a religious cemetery for persons of the Islamic faith at the Garrisonville Property.

The 2020 Cemetery Ordinance’s Countywide 200-Meter Separation Requirement is Overbroad and Not the Least Restrictive Means of Promoting the County’s Alleged Interests in Protecting Groundwater

113. The 2004 Groundwater Management Plan assessed the vulnerability of the County area to groundwater contamination using the “DRASTIC” methodology—developed by the National Water Well Association under the sponsorship of the United States Environmental Protection Agency. The DRASTIC methodology evaluated relative groundwater pollution potential of areas of the County based on various hydrologic parameters, including depth to water, water recharge rates, aquifer media, soil media, topography, impact to the vadose zone media and hydraulic conductivity.

114. Stafford County is divided into three distinct geological units: Piedmont, Fall Zone, and Coastal Plain. The 2004 Groundwater Management Plan found that, because of the hydrologic parameters, wells in the Piedmont Zone are significantly less vulnerable to groundwater

contamination than the other two zones. The Garrisonville Property is located in the Piedmont Zone.

115. The 2004 Groundwater Management Plan further identified the relative risk of groundwater contamination by dividing the County into hundreds of equally portioned units, assigning each unit a DRASTIC “score” based on the hydrogeological characteristics of each individual unit. The lower the score, the lower the risk of groundwater contamination.

116. The 2020 Cemetery Ordinance imposes a 200-meter (656 feet) separation requirement between cemeteries and private wells across the entire County, regardless of location or local hydrogeologic characteristics. This unfairly and unreasonably places the burden of demonstrating safety—through a costly and lengthy CUP process requiring an expensive hydrogeological assessment and monitoring—on a cemetery applicant, even if that applicant wishes to develop a cemetery in a geologic zone or unit of land which presents low vulnerability of groundwater contamination. The County has access to this hydrogeologic data and to professional geologists, and is thus in the position to determine whether a proposed cemetery poses a substantial risk of groundwater contamination, without forcing every applicant to undergo an expensive, lengthy, and unnecessary CUP and hydrogeological assessment.

117. According to the 2004 Groundwater Management Plan, the Garrisonville Property is on a unit of land that is significantly less vulnerable to groundwater contamination from surface sources than the majority of other units in the County.

118. The County has no compelling interest to require that the All Muslim Association undergo a CUP process or impose a 656-foot separation requirement on the All Muslim Association when the County already has information indicating that there is low vulnerability for groundwater contamination from surface sources to nearby private wells at the Garrisonville Property.

The County's Actions Imposed and Continue to Impose a Substantial Burden on the All Muslim Association

119. The All Muslim Association has been and continues to be substantially burdened in the exercise of its religion because of the County's revisions to the Prior Cemetery Ordinance.

120. During the time that All Muslim Association researched and purchased the Garrisonville Property, it had done substantial due diligence, including ensuring with the County that development of a cemetery was a "by-right" use on the Garrisonville Property. It also obtained the required consent from its neighbors on the same side of State Highway 610 and ensured that the cemetery's location was such that it did not need the consent of the neighbors—such as Ms. Vanuch and the Skywood Court citizen—who lived across State Highway 610. It performed a soil study to ensure that the property was appropriate for a cemetery. It had also previously obtained approval to develop and operate the Brooke Road Cemetery through the submission of a site plan and so it reasonably believed that it was able to meet all the requirements for obtaining approval under the Prior Cemetery Ordinance to develop a large cemetery on the Garrisonville Property. It therefore had a reasonable expectation that it would be able to develop its proposed cemetery on the Garrisonville Property.

121. The County's enactment and imposition of the 2016 Cemetery Ordinance completely prohibited the All Muslim Association from developing its proposed cemetery on the Garrisonville Property. The 900-foot separation requirements contained in the 2016 Cemetery Ordinance barred the All Muslim Association from using any of its 29 acres on the Garrisonville Property for cemetery use. The 2016 Cemetery Ordinance also changed the "by-right" nature of a cemetery into an expensive and time-consuming discretionary process, which in any event the All Muslim Association could not satisfy because of the 900-foot separation requirement. The 2016 Cemetery Ordinance imposed a substantial burden on the All Muslim Association.

122. When the All Muslim Association protested the 2016 Cemetery Ordinance, the County voted to maintain the 2016 Cemetery Ordinance in its entirety, despite a recommendation from the Planning staff to revise the ordinance.

123. Maps prepared by the County show that it was aware that the All Muslim Association was precluded from developing a cemetery on the Garrisonville Property by virtue of the 900-foot separation requirements in the 2016 Cemetery Ordinance. True and correct copies of these County maps are attached as Exhibits 1 and 2.

124. The County continued to substantially burden the All Muslim Association when it denied its variance application.

125. The County's enactment of the 2020 Cemetery Ordinance continues the substantial burden on the All Muslim Association. It prohibits the All Muslim Association from using most of the Garrisonville Property as a cemetery. The 200-meter (656 feet) separation requirement between cemeteries and private wells limits development of the Garrisonville Property to approximately 8 out of 29 acres for use as cemetery. This is inadequate to develop a cemetery on the Garrisonville Property. The All Muslim Association's religious mission is to develop a religious cemetery that will serve the growing Islamic community in Maryland, Virginia, the District of Columbia, and beyond, for decades to come. An 8-acre cemetery cannot accomplish that mission.

126. The CUP process contemplated by the 2020 Cemetery Ordinance causes a substantial burden on the All Muslim Association by imposing requirements far beyond those in existence when the All Muslim Association purchased the Garrisonville Property. The 2020 Cemetery Ordinance—and the CUP process in particular—changed a cemetery from a “by-right” use to a discretionary one. Any CUP application for a cemetery is subject to the discretion of the Planning Commission and Board of Supervisors—the same entities responsible for prohibiting the All Muslim Association from developing a cemetery in the first instance. The impetus for the

2016 Cemetery Ordinance was Ms. Vanuch, who now sits on the Board of Supervisors. The All Muslim Association reasonably does not expect that the County will approve any CUP that it seeks.

127. Further, the CUP process is costly, in application fees, engineering fees, and hydrogeological testing, reporting and monitoring fees. The CUP process will further delay the development of the cemetery.

128. The 2020 Cemetery Ordinance is underinclusive and serves no compelling government interest because it allows septic systems, agricultural operations and other uses that present an equal or greater risk of private well contamination to be located 50 to 100 feet from private wells while requiring cemeteries to be located 200 meters (656 feet) from private wells.

129. The 2020 Cemetery Ordinance is overbroad and not the least restrictive means of advancing the County's alleged interest because it applies a countywide 200-meter separation requirement when the County is aware that the Piedmont Zone where the Garrisonville Property is located and the specific DRASTIC unit on which the Garrisonville Property sits do not pose a significant risk of groundwater contamination. The County could require that only applicants seeking to develop a cemetery in places where it is risky to do so—such as the Coastal Plain or Fall Zone or on a parcel with a high DRASTIC score—apply for a CUP and conduct a hydrogeological assessment.

130. The County cannot demonstrate that the 656-foot separation requirement or the CUP requirement in the 2020 Cemetery Ordinance advances a compelling government interest.

131. The County cannot demonstrate that the cemetery proposed by the All Muslim Association on the Garrisonville Property poses a health or safety risk to the private wells and perennial streams that are more than 100 feet from the proposed cemetery on the Garrisonville Property.

132. The County cannot demonstrate that there are no less restrictive means to accomplish its alleged interests than by imposing the 200-meter (656-foot) separation requirements or the CUP process contained in 2020 Cemetery Ordinance.

133. The County's actions described in this Complaint have created considerable delay, expense and uncertainty for the All Muslim Association in its efforts to develop a religious cemetery.

134. The All Muslim Association conducted an extensive search of land in the County to meet the burial needs of the Islamic community before deciding to purchase the Garrisonville Property. A new search for an alternative property in the County that is suitable for its needs and that comports with the separation requirements in the 2020 Cemetery Ordinance will impose additional delay, expense, and uncertainty on the All Muslim Association.

135. The County's actions described in this Complaint have caused the All Muslim Association to suffer significant financial loss, including, but not limited to, engineering fees, expert fees, attorneys' fees and professional fees.

136. In drafting and enacting the 2016 Cemetery Ordinance, considering the All Muslim Association's request to revise the 2016 Cemetery Ordinance, and in voting to maintain the 2016 Cemetery Ordinance, the County did not have in place procedures or practices to ensure that 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 of denial of rights under RLUIPA.

137. The 2020 Cemetery Ordinance imposes requirements far beyond those in place when the All Muslim Association purchased the Garrisonville Property and will cause additional

delay, uncertainty and expense. The 2020 Cemetery Ordinance does not remedy the substantial burden that has been imposed by the County on the All Muslim Association.

138. The All Muslim Association has a “property interest” in the Garrisonville Property within the meaning of 42 U.S.C. § 2000cc-5(5).

139. The All Muslim Association’s efforts to establish a cemetery constitutes “religious exercise” within the meaning of 42 U.S.C. § 2000cc-5(7).

140. The All Muslim Association’s efforts to establish a cemetery and the County’s actions described in this Complaint, which prevents the establishment of the proposed cemetery, affects “commerce among the several States” within the meaning of 42 U.S.C. § 2000cc(a)(2)(B).

141. Section 28-39(o) of the County Code includes several provisions that contemplate an “individualized assessment” within the meaning of 42 U.S.C. § 2000cc(a)(2)(C).

142. Section 28-39(o) and the County’s Zoning Code are “land use regulation[s]” within the meaning of 42 U.S.C. § 2000cc-5(5).

VIOLATION OF RLUIPA: SUBSTANTIAL BURDEN

143. The allegations set forth in the preceding paragraphs are incorporated by reference.

144. The County’s actions described in this Complaint have and continue to impose a substantial burden on the religious exercise of the All Muslim Association in violation of RLUIPA, 42 U.S.C. § 2000cc(a).

145. The County’s imposition of the burden on the All Muslim Association does not further a compelling governmental interest using the least restrictive means. 42 U.S.C. § 2000cc(a).

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

1. Declares that the Defendant's actions in prohibiting the All Muslim Association from developing its cemetery on the Garrisonville Property have substantially burdened its religious exercise and violate RLUIPA;
2. Enjoins the Defendant from imposing burdensome requirements in the 2020 Cemetery Ordinance on the All Muslim Association's efforts to develop a cemetery at the Garrisonville Property;
3. Enjoins the Defendant from violating RLUIPA, including treating the All Muslim Association differently from other religions and/or from imposing a substantial burden on the religious exercise of the All Muslim Association and its members that is not narrowly tailored to serve a compelling governmental interest;
4. Enjoins the Defendant from denying any approvals to the All Muslim Association for the purpose of developing a cemetery dedicated to persons of the Islamic faith on the Garrisonville Property;
5. Requires the Defendant, its officers, employees, agents, successors, and all other persons in concert or participation with them, to:
 - a. Take actions necessary to restore, as nearly as practicable, the All Muslim Association and its members to the position they would have been in but for the Defendant's unlawful conduct, including, but not limited to, granting exemptions to the All Muslim Association to comply with the 200-meter (656-foot) separation requirement and CUP process contained in the 2020

Cemetery Ordinance, and to grant to it all necessary approvals
for the use the Garrisonville Property as a cemetery; and

- b. Take actions necessary to prevent the recurrence of such
unlawful conduct in the future; and
6. Awards such additional relief as the interests of justice may require, together with the
United States' costs.

Respectfully Submitted

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Dated: September 8, 2020