

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	No. 15 C 8628
v.)	
)	Judge
CITY OF DES PLAINES, ILLINOIS,)	
)	
Defendants.)	

COMPLAINT

The United States of America, by its undersigned attorneys, files this complaint and alleges:

Introduction

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.

Parties, 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 actions giving rise to this action occurred in the Northern District of Illinois and because the Defendant resides in the Northern District of Illinois.

4. Defendant City of Des Plaines (“City”) is a city located in Cook County, State of Illinois.

Facts

5. The City has the authority to regulate and restrict the use of land and structures within its borders, including granting and denying requests for rezoning.

6. The City is 14.42 sq. miles (or 7,468 acres).

7. According to the 2010 Census, the City has a population of 58,364, of which 77.3% is White, 17.2% is Hispanic (any race), 11.4% is Asian, 1.8% is Black, and the remainder is Other.

8. The City has approximately 42 Places of Worship: 40 are Christian, one is Buddhist, and one is Muslim.

9. Eighteen percent of the City's land (or 1,352 acres) is used for manufacturing/industrial purposes, ranking this use second only behind single-family residential use, which is 42% of the City's land (or 3,172 acres). The third ranked use is institutional (10% or 781 acres).

10. The City is governed by a city council and mayor. The Des Plaines City Council ("City Council") is composed of eight aldermen who serve four-year terms.

11. Between July and August 2013, the City Council members were: Patricia Haugeberg (Ward 1); John Robinson (Ward 2); Denise Rodd (Ward 3); Dick Sayad (Ward 4); James Brookman (Ward 5); Mark Walsten (Ward 6); Joanna Sojka (Ward 7); and Michael Charewicz (Ward 8).

12. Matthew Bogusz is the Mayor of Des Plaines. He presides at City Council meetings but votes only in the event of a tie. He has served as Mayor since May 2013.

13. The Des Plaines Plan Commission (“Plan Commission”) serves as an advisory body to the City Council on matters of land improvement that concern the City’s Comprehensive Plan.

14. The Plan Commission has five members: Cornell Bar, Mary Lane, Joseph Yi, Robert Niemotka, and Alejandro Perez. The Plan Commission had the same members in June 2013.

15. Under the City’s Zoning Ordinance (“ZO”), the Plan Commission, the Zoning Board of Appeals, the City Council, or any resident or owner of property in the City may initiate a zoning map amendment. ZO Section 3.7-3. Upon receipt of a zoning map amendment application, the Zoning Administrator reviews the application and forwards it to the Plan Commission with a written report and recommendation. ZO Section 3.7-4B. The Plan Commission holds a public hearing and within 30 days of the close of the hearing, forwards its written recommendation for approval, approval with modification, or disapproval to the City Council. ZO Section 3.7-4C. The City Council considers the application at the next scheduled public meeting. ZO Section 3.7-4D.

16. Section 3.7-5 of the ZO sets forth the factors the City Council must consider in determining whether to adopt, deny, or adopt with modification the Plan Commission’s recommendation for a zoning map amendment:

- Whether the proposed amendment is consistent with the comprehensive plan,
- Whether the proposed amendment is compatible with current conditions and character of existing surrounding developments,
- Whether the proposed amendment is appropriate considering the adequacy of available public facilities and services,

- Whether the proposed amendment will have an adverse effect on the value of properties throughout the jurisdiction, and
- Whether the proposed amendment reflects responsible standards for development and growth. ZO Section 3.7-5.

17. The ZO divides the City into four zoning districts: Residential, Commercial, Manufacturing, and Special. ZO Section 6.1.

18. The ZO provides for four types of Residential districts. ZO Section 7.2. Places of Worship are permitted by right in the R-3 and R-4 districts. ZO Table 7.2-1. Places of Worship are permitted as conditional uses in the R-1 and R-2 districts. ZO Table 7.2-1. Schools, libraries, parks, forest preserves, and private country clubs are permitted by right in all Residential districts. ZO Table 7.2-1. Membership organizations (civil, fraternal, social, political, or religious in nature) are conditional uses in all Residential districts. ZO Table 7.2-1.

19. Special districts are classified into two types of sub-districts, Institutional and Mobile Home Park districts. ZO Section 7.5. In Institutional districts, Places of Worship are permitted by right along with convents and monasteries, offices, institutional headquarters (educational, professional, religious), parks, rectories and parish houses, and public and private schools. ZO Table 7.5-1. Places of Worship also are permitted by right in Mobile Home Park districts. ZO Table 7.5-3.

20. Places of Worship are not permitted by right or as a conditional use in Manufacturing or Commercial districts. ZO Tables 7.3.1 and 7.4.1.

21. For purposes of RLUIPA, the City is a “government.” 42 U.S.C. § 2000cc-5(4)(A)(i), (ii).

22. American Islamic Center (“AIC”) is a non-profit religious organization of Bosnian Muslims that practices a Sufi approach to Islam.

23. For purposes of RLUIPA, AIC is a “religious assembly or institution.” 42 U.S.C. § 2000cc(2)(b)(1).

24. AIC currently does not have its own worship facility. Without their own worship facility, AIC members are inhibited from exercising their religion in the following ways:

- They cannot conduct regular daily prayers.
- They cannot conduct weekly Friday prayer services.
- They cannot conduct prayer services with sermons in their native Bosnian language.
- They cannot conduct religious educational programs in convenient locations and at convenient times.
- Many members are unable to have meaningful interaction with the imam.
- Members are hindered in conducting weddings, celebrating births, and providing funeral prayer services.
- Interfaith activities are limited in scope and intensity.
- The congregation cannot provide adequate spiritual counseling to its members, many of whom have mental or physical injuries due to the Bosnian conflict in the 1990s.

25. AIC has attempted to cope without having a worship facility in the following ways. It has rented space, when available, at the Islamic Society of Northern Suburbs (“ISNS”) in Rolling Meadows and at the Turkish American Society of Chicago Cultural Center (“TASC” or “Turkish Center”) in Mount Prospect. AIC’s options to worship and rent space at other area

mosques are hindered because many other Muslim communities do not allow Sufism. As a result, AIC is not welcome at many mosques and its ability to rent space and conduct worship activities at other mosques is limited.

26. AIC male members are obligated to attend Friday Jummah prayer services. AIC does not conduct Jummah services because it does not have a permanent prayer space. As a consequence, AIC members are unable to receive instruction and guidance from their imam during these services in their native Bosnian language. AIC members cope by attending Friday services at other mosques. AIC members who do not understand English and speak only Bosnian are unable to understand the sermons. In addition, these services are not Sufi in orientation and do not meet their religious needs.

27. AIC members celebrate Ramadan. Because members do not have a worship facility, AIC members have celebrated Ramadan in the lobby of a building owned by a friend of AIC in Glenview, which was too small and narrow to accommodate the congregation and required setting up and breaking down the worship space each day. This building has been sold, however, and this year for Ramadan AIC reached an agreement with TASC that was inadequate. AIC's imam delivered the nightly Ramadan prayers for TASC, but had to do it in English, and was not allowed to take a collection. This deprived those AIC members who do not speak English of Ramadan services that they can understand, and limited AIC's ability to raise funds. AIC was also limited in its ability to hold iftars—communal meals undertaken during Ramadan—at the TASC site.

28. AIC used to conduct interfaith meetings at the Glenview office building. However, now that it is no longer able to use the building, it has had to end its interfaith efforts. Interfaith dialogue is an important mission of AIC.

29. AIC struggles to offer Saturday school for children and religious education for adults. Currently, AIC rents space at ISNS, and its time is limited. AIC pays \$660 in rent each month. AIC's imam gives a lecture on Saturday afternoons at ISNS to the adults. Every other Saturday, AIC holds a "family community" event. The attendance is limited because of the inconvenience of the location in Rolling Meadows. The Turkish Center is not available on Saturdays. For special events such as weddings, graduation ceremonies, and Hajj parties, AIC must rent space from ISNS. However, space is not always available.

30. The lack of permanent, centralized space to conduct religious worship, education, and fellowship events puts a significant strain on AIC's faith community and risks causing it to break apart.

31. In March 2011, AIC initiated an effort to find a worship facility. AIC performed a two-year search for a suitable property. During the property search, AIC considered at least 11 properties before identifying a suitable property at 1645 Birchwood Avenue in the City (the "Subject Property"). The other properties were not suitable for a place of worship because they were unaffordable, were not large enough, did not have sufficient parking, or could not function as a worship facility.

32. In February 2013, AIC entered into a contract to purchase the Subject Property from Founders Insurance Company. The Subject Property was and still is owned by Founders Insurance Company, which formerly operated the property as an insurance company. The property was vacant at the time AIC contracted to purchase it.

33. AIC's contract to purchase the Subject Property was contingent upon a rezoning from M-2 to a zoning that would allow a Place of Worship. AIC intended to renovate the interior space and parking area of the Subject Property to use it as a Place of Worship.

34. The Property is 1.8 acres and includes two buildings with a total of 15,477 sq. ft. connected by a lower-level hallway and a parking lot with 116 off-street parking spaces. The primary structure has a 9,394 sq. ft. footprint, and the secondary structure has a 6,083 sq. ft. footprint. In addition, there are 43 on-street public parking spaces on the south side of Birchwood Avenue. Specifically, along the western portion of Birchwood, there are 22 two-hour limit parking spaces, and there are 21 no-limit parking spaces along the eastern portion.

35. The Subject Property is situated in one of the City's manufacturing districts and is zoned M-2 (general manufacturing). The manufacturing district contains mostly industrial and manufacturing facilities. The manufacturing district is surrounded by residential properties, parks, a school, and a place of worship to the north, east, and south, and northwest. It is bordered by commercial property to the southwest.

36. The Des Plaines 2007 Comprehensive Plan ("Comprehensive Plan" or "Plan") was developed in compliance with the Illinois Local Planning Technical Assistance Act ("ILPTAA") to provide direction for future land use and development in the City. Comp. Plan, at 4, 7. The ILPTAA declares that a local government's land-use actions should be consistent with its Comprehensive Plan. Comp. Plan, at 4.

37. The Comprehensive Plan, in accordance with the ILPTAA, addresses the characteristics of future land use in the City over a 20-year period, and it is intended to provide basic direction for future land use development to City decision-makers as opportunities arise for land use changes. Comp. Plan, at 5, 7

38. The Comprehensive Plan represents a clear statement of community expectations and aspirations upon which to evaluate land use and development decisions. Comp. Plan, at 7.

The Plan was developed with substantial community input and represents the conclusion of a year-long planning process. Comp. Plan, at 7.

39. The City Council and Plan Commission are responsible for implementing the Comprehensive Plan, with the assistance of the City staff. Comp. Plan, at 96 – 97. The Comprehensive Plan is to be monitored, maintained, and updated in a timely manner. Comp. Plan, at 96. The City Council may amend the Plan, and a proposal to amend the Plan can be brought forth at any time. Comp. Plan, at 96 – 97.

40. The City's Comprehensive Plan recommends that the future land use for the entire manufacturing district in which the Subject Property is located be Residential-Mixed Density, and under the City's Land Use Plan, a Place of Worship use is consistent with Residential-Mixed Density. Comp. Plan Figure 2a/b, at 26 – 27.

41. The Comprehensive Plan states it is the objective of the City to encourage the concentration of industrial uses in the City's southwest area and the redevelopment of obsolete industrial spaces and obsolete office spaces where possible. Comp. Plan, at 15.

42. The Subject Property is an office building that has been vacant for more than three years, and it is located in an industrial district in the City's southeast area.

43. The City has not amended or updated the Comprehensive Plan's recommendation for future land use for the Subject Property or the industrial district in which the Subject Property is located. The Plan continues to state that the City's objective is to concentrate industrial uses in the City's southwest area and to redevelop and/or replace obsolete office buildings.

44. On March 19, 2013, AIC submitted an application to the City to rezone the Subject Property from M-2 (manufacturing) to I-1 (Institutional) for use as a Place of Worship. The application proposed a worship space of 3,661 sq. ft. to be used for a Friday Jummah prayer, a weekly afternoon prayer on Sundays, a Thursday evening prayer, nightly prayers during

Ramadan, and prayers during two holidays, and proposed that the other parts of the building be used for Saturday school, youth groups on Friday evenings, and other small gatherings or events.

45. For purposes of RLUIPA, AIC's proposed use of the Subject Property constitutes "religious exercise." 42 U.S.C. §§ 2000cc-5(7)(A)-(B).

46. Under the requirements in the ZO, the Subject Property had enough off-street parking to accommodate a 3,661 sq. ft. worship space for the Friday Jummah prayer, the Subject Property's principal use. Section 9.1 of the ZO states that "all uses" are required to provide parking in the amount and manner specified in the ZO. Section 9.5 of the ZO states that "[t]he total number of required parking spaces shall be based upon the parking requirements stated for the principal use of the zoning lot in question." Section 9.7 provides the parking requirements for Institutional Uses. For Places of Worship, the requirements are—

- (a) 1 space for every 4 seats in the main auditorium, sanctuary, nave or similar place of assembly and other rooms (gymnasiums, classrooms, offices), which are to be occupied simultaneously; or
- (b) In the case where there is no affixed seating, 1 space shall be provided for every 60 sq. ft. of floor area.

47. AIC did not propose fixed seating for its 3,661 sq. ft. worship space. Therefore, under Section 9.7 of the ZO, allowing one parking space for every 60 feet of worship space, the number of parking spaces required for this worship space was at most 62 ($3661/60 = 61.02$), and as alleged above, the Subject Property has 116 off-street parking spaces.

48. After reviewing AIC's rezoning application, the City's Senior Planner forwarded it to the City's Traffic Engineer with instructions to consider AIC's application in reference to the one Muslim place of worship in the City, known as the Islamic Community Center ("ICC") located on Potters Road on the City's eastern edge. The City alleges that it has experienced problems with parking at ICC.

49. The City's Traffic Engineer concluded that the parking ratios under Section 9.7 of the ZO were inadequate for Muslim places of worship. He also determined that AIC should conduct a traffic study, even though, as stated above, AIC had enough off-street parking under the ZO.

50. Traffic studies generally are not performed for rezoning applications in Des Plaines, and generally are required only for conditional use permit ("CUP") applications.

51. The City's Senior Planner informed AIC that it would need to conduct a traffic study, even though he had informed AIC earlier that a traffic study would not be required.

52. The City's Traffic Engineer informed AIC that instead of using the ratios in Section 9.7 of the ZO, its traffic study must be based upon vehicle/passenger ratios observed at existing Muslim places of worship in the surrounding area. The City recommended that AIC use KLOA, a local traffic firm, to prepare the study.

53. The City's Traffic Engineer informed AIC that it should assume that there would be one worshiper per every 10 sq. ft. of worship space. This ratio is found nowhere in the ZO.

54. On April 18, 2013, AIC submitted a traffic and parking study to the City prepared by the KLOA engineering firm. The study concluded that, at a ratio of 1.24 worshipers per vehicle (a vehicle-to-passenger ratio KLOA engineers observed at a local mosque), the proposed use of the facility would cause negligible impact on the roadways and surrounding uses, and that there was adequate off-street parking. The study stated that a maximum of 75 people would attend the Friday prayer service, and it noted that the typical expected attendance was 50 – 60 people.

55. After reviewing the April 18, 2013, traffic study, the City's Traffic Engineer informed AIC that it would be required to calculate peak parking demand based on the maximum occupancy of its facility—not the estimated maximum attendance of 75 people.

56. The City's Traffic Engineer required AIC to produce a traffic study in accordance with the parameters discussed above in paragraphs 50, 53 and 56 because AIC was a Muslim group, and because the City had allegedly had problems with parking with ICC, the other Muslim Place of Worship in the City.

57. The City's Traffic Engineer required AIC to assume a maximum occupancy at a rate of one worshiper per 10 sq. ft. of worship space, and to calculate parking at a rate of 1.24 persons per vehicle. This ratio is found nowhere in the ZO. The parking ratio imposed by the City's Traffic Engineer on AIC is equivalent to one parking space required for every 12.4 sq. ft. of worship space. By comparison, under Section 9.7 of the ZO, one parking space is required for every 60 sq. ft. of worship space where there is no fixed seating. Under the rationale imposed by the City's Traffic Engineer on AIC, AIC was required to provide 296 spaces for a 3,661 sq. ft. worship space ($3,661 / 12.4 = 296$) whereas under the ZO, it was required to provide only 62 spaces ($3,661 / 60 = 61.02$).

58. To deal with the parking demands of the parking ratio imposed by the City, AIC informed the City that it would reduce its proposed worship space from 3,661 to 1,810 sq. ft. Under the parking ratio imposed by the City, AIC's parking requirement was reduced from 296 spaces to 145 spaces. (Under Section 9.7 of the ZO, only 30 spaces would be required for a 1,810 sq. ft. worship space).

59. On June 3, 2013, AIC submitted a revised traffic and parking study that applied the parking ratio imposed by the City on AIC to the reduced worship space of 1,810 sq. ft. The

study concluded that 180 worshipers attending a Friday prayer service at 1.24 occupants per vehicle would have minimal impact on roadways. The study also concluded that the 116 off-street parking spaces and the additional on-street public parking spaces along Birchwood Avenue could accommodate 145 vehicles. The study continued to state, however, that at 1.24 passengers per vehicle, the actual expected peak demand for the proposed place of worship would be 60 parking spaces, based on a maximum of 75 individuals attending Friday Jummah prayer services.

60. After reviewing the June 3, 2013 traffic study, the City's Traffic Engineer concluded that AIC's 116 off-street parking spaces and the available on-street parking along Birchwood Avenue could meet a demand for 145 parking spaces.

61. On June 10, 2013, the City's Senior Planner submitted a staff report to the Plan Commission recommending consideration of AIC's rezoning request.

62. The June 10, 2013, staff report noted that AIC had conducted a traffic and parking impact study, that the City's Engineering staff had reviewed that study, and that the Engineering staff had concluded AIC's proposed use would have a limited and acceptable impact upon the area traffic network. The staff report did not identify any safety concerns presented by the proposed use.

63. As for the rezoning criteria in Section 3.7-5 of the ZO, the City staff report made the following conclusions:

- Whether the proposed amendment is consistent with the goals, objectives, and policies of the comprehensive plan: The City staff report noted that the comprehensive plan recommended "mixed density residential" for the currently Industrial zoned area, and that places of worship are permitted in the City's R-3 and R-4 multi-family residential districts.

- Whether the proposed amendment is compatible with the current conditions and the overall character of existing developments in the immediate vicinity of the subject property: The City staff report noted that while a place of worship was dissimilar to the surrounding context of industrial and manufacturing uses, the analysis of the traffic and parking impacts concluded that the use would “not cause significant negative impacts.”
- Whether the proposed amendment is appropriate considering the adequacy of public facilities and services available to the subject property: The City staff report noted that the public facilities and the public services provided by the City were expected to be adequate, and that no expansion of public facilities or service would be anticipated if the application were approved.
- Whether the proposed amendment will have an adverse effect on the value of properties throughout the jurisdiction: The City staff report noted only that a place of worship would be a dissimilar use. It did not find that such a use would have an adverse effect on the values of properties.
- Whether the proposed amendment reflects responsible standards for development and growth: The City staff report noted that based on the future land use of the area as a Mixed Density Residential neighborhood, the requested zoning change could reflect responsible standards for its development and growth. The staff report noted that the current conditions did not reflect this proposed future use, as the area is developed as industrial and manufacturing.

64. On June 10, 2013, the Plan Commission conducted a hearing on AIC's rezoning request and recommended unanimously (3-0) that the City Council approve it.

65. During the hearing, representatives from two businesses near the Subject Property raised concerns about parking on Birchwood Avenue on Fridays and the impact traffic for the Friday service would have on their businesses. These concerns stemmed from the assumption that 145 parking spaces would be needed for a Friday prayer service. In response, the Chairman of the Plan Commission noted that parking on Birchwood Avenue was public and that the police would be able to enforce any restrictions.

66. It was noted during the hearing, by AIC's attorney, that the previous office use of the Subject Property (as an insurance company) generated more traffic. This point was not disputed.

67. On July 15, 2013, the City Council held a hearing on AIC's rezoning request. The City Council voted to deny the application 5-3, and it instructed the City Attorney to prepare a resolution denying the application for the next meeting.

68. The aldermen voting against the rezoning provided varying rationales for their opposition.

69. Alderman Mark Walsten of Ward 6, where the Subject Property was located, raised concerns that the City would lose tax revenue.

70. Alderman Dick Sayad echoed Alderman Walsten's concerns about loss of tax revenue. Alderman Sayad, in expressing dismay at the potential loss in tax revenue that would accompany the granting of the rezoning, demanded to know how much revenue would be lost, and told City staff that in the future he wanted the potential tax deficit included in staff reports. At the time of the hearing, the property taxes on the Subject Property amounted to approximately

\$90,000 per year for Cook County, and the City receives approximately 13% of each tax dollar collected by the County (or \$12,000).

71. The City has approved numerous nonprofit uses that were similarly situated to AIC, and has never relied on loss of tax revenue to deny zoning approval for a non-Muslim place of worship or other nonprofit land use in the City.

72. During the hearing, Alderman Sayad repeatedly asked AIC members where they came from. Alderman Sayad continued to ask this question even after he was informed that 25% of AIC members already lived in the City and after it was explained that AIC members separated from a mosque in Northbrook, IL, and were looking to relocate in an area convenient for their membership. Alderman Sayad suggested that AIC members stay in Northbrook, or consider locating to other communities such as Glenview or Palatine, rather than Des Plaines.

73. Alderman James Brookman stated he was against rezoning manufacturing-zoned land, that it was inappropriate to have a place of worship in a manufacturing area, and expressed concern that traffic for the Friday prayer service would disrupt neighboring businesses.

74. On August 5, 2013, the City Council voted 5-3 to adopt a resolution denying AIC's rezoning application.

75. At that meeting, AIC urged the City Council to reconsider its decision to deny AIC's rezoning application and informed the City Council of its rights under RLUIPA.

76. During this meeting, the aldermen who previously voted against the rezoning did not mention potential loss of tax revenue as a basis for denial, but instead focused for the first time on the issue of safety, including danger to children. At the invitation of Alderman Brookman, representatives of two nearby businesses (the same ones who were present at the June 10, 2013 Plan Commission meeting) addressed the City Council and similarly raised

concerns about safety, including safety of children. The City Council did not suggest that AIC could address safety issues by constructing a fence around the Subject Property.

77. During this meeting, and while the City Council was considering the resolution to deny AIC's rezoning application, Alderman Brookman sent an email to Aldermen Haugeberg, Robinson, Dodd, Walsten, Charewicz, Sojka, Sayad, and to Mayor Bogusz, forwarding an email that he had received on August 2, 2013, from one of the business representatives referenced in paragraph 77, above, opposing AIC's rezoning request. The forwarded email from the business representative, among other things, included two photographs showing trucks parked on the north and south sides of Birchwood Avenue. The City does not permit parking on the north side of Birchwood. The photograph of the truck on the south side of Birchwood was blocking the driveway of the Subject Property, and in a location that does not permit public parking. The forwarded email from the business representative also contended that parking on Birchwood Avenue by AIC members would affect safety by hindering the ability of emergency personnel to respond to an emergency situation.

78. The City's resolution denying AIC's rezoning stated that (1) representatives of businesses near the property testified that the proposed place of worship would disrupt business operations and jeopardized public safety by causing traffic congestion and by exposing visitors to the place of worship to risks associated with manufacturing processes, (2) the proposed place of worship would cause the use of on-street parking along Birchwood Avenue, (3) the proposed place of worship was dissimilar to the surrounding industrial and manufacturing uses, and (4) it was in the best interests of the City to deny the rezoning application.

79. The aldermen who voted against the rezoning on July 15, 2013, and who voted in favor of the resolution to deny the rezoning on August 5, 2013, are Aldermen Walsten, Sayad,

Brookman, Haugeberg, and Charewicz. Aldermen Rodd, Robinson, and Sojka voted in support of the rezoning on both occasions.

80. The issue of whether the Subject Property would meet the minimum lot size requirements for I-1 zoned land was not raised by any City Council member at the July 15 or August 5, 2013 meetings, and no City Council member stated that this issue constituted a basis for denial of AIC's rezoning application. The City's resolution denying AIC's rezoning request does not list this issue as a reason for denial.

81. Subsequent to denying AIC's rezoning application, the City has taken no action to redesignate, alter, or otherwise change the number of or location of on-street parking spaces on Birchwood Avenue.

82. Subsequent to denying AIC's rezoning application, upon information and belief, trucks continue to park on the north side of Birchwood Avenue or in areas on the south side of Birchwood that do not permit parking.

83. As a result of the denial of AIC's rezoning application, AIC lost its contract to purchase the Subject Property.

84. The City's denial of AIC's 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).

85. The City's denial of AIC's plans to use and renovate a 1,810 sq. ft. worship space, a parking lot, and make other improvements to the Subject Property "affects interstate commerce." 42 U.S.C. § 2000cc(a)(2)(A).

86. There is no other land in the City that is available for purchase and that is suitably located for AIC's worship community, meets the City's minimum size and frontage requirements for houses of worship, and is affordable to AIC.

87. At all times relevant, the City did not have in place procedures or practices to ensure City officials were able to satisfy their obligations under RLUIPA, including but not limited to, providing RLUIPA training to City officials and staff involved in religious land use determinations, and having established procedures to address complaints concerning denials of rights under RLUIPA.

88. Prior to denying AIC's rezoning application, the City had approved zoning applications for tax-exempt religious organizations and other tax-exempt organizations to occupy properties formerly used as manufacturing or commercial enterprises, including the following:

- Fountain of Life Church – Zoning Case No. 12-024-CU. In 2012, City granted a CUP to allow a Christian church to occupy a vacant former office building in a C-3 general commercial district.
- Chicago Christian Church – Zoning Case No. 11-029-CU. In 2011, City granted a CUP to allow a church to occupy a vacant former restaurant in a C-3 general commercial district.
- Phat Bao Temple – Zoning Case No. 10-023-CU. In 2010, the City granted a CUP to allow a Buddhist Temple to occupy an existing single-family lot on land zoned R-1 single-family residential.
- Plato Academy, in Zoning Case No. 10-054-CU. In 2010, the City granted a CUP to allow the private school to use a vacant two-story office building on land zoned C-5 central commercial district.

- Christian Science Society – Zoning Case No. 08-026-CU. In 2008, the City granted a CUP to allow a church to use a vacant one-story commercial building in a C-3 general commercial district.
- Science & Arts Academy – Zoning Case No. 06-17-PUD-MA. In 2006, the City granted a rezoning of vacant land in an M-2 district to I-1 to allow for the construction of an elementary/junior school.

All of these uses involved losses of tax revenue, and involved traffic impacts, increases in intensity of use, and parking issues that were at least as great or greater than those of AIC.

89. The City permits manufacturing, industrial, and commercial uses to operate alongside places of worship, schools, daycares, parks, and other uses that may involve children. In some cases, a fence separates the uses.

90. For example, a place of worship, a school, a community pool, parks, and residences operate alongside the manufacturing district containing the Subject Property:

- First Presbyterian Church operates adjacent to the building on the northeast end of the manufacturing district. The church has a playground in back, and the playground and church are separated from this manufacturing facility by a chain-link fence.
- Iroquois Community School and the Iroquois Pool are located directly across the street from the loading docks of a large manufacturer. There is no fence around the loading docks or the many trucks at the docks.
- Arndt Park borders this manufacturing district on the northwest side. The park has playgrounds and baseball fields. The park abuts Digital Printing, Shelter Roofing, PMG, and Pexco Co. The uses are separated by a fence.

- Duplexes border the manufacturing district on the north side, abutting Pexco Co. and two other manufacturers. The residences are separated from the manufacturing properties by a chain-link fence.
- Lake Opeka Park and residences operate adjacent to Abbott Molecular Laboratories. The park, which has a playground, volleyball courts, go-kart tracks, and a small golf course, is across the street. Single-family homes are adjacent to the laboratory, and are separated by a fence.

91. Places of worship, schools, parks, and residences operate alongside manufacturing and industrial uses in the City's eight other manufacturing districts.

92. The City's ZO permits Child Care Centers to operate as conditional uses in all of the City's Commercial districts. Section 8.7 of the ZO requires that a Child Care Center must be enclosed by a fence.

93. The City's ZO permits Commercial Indoor Recreation Centers and Outdoor Recreation Centers (e.g., water parks) to operate in M-2 manufacturing districts.

94. In 2011, the City granted a CUP to Play Ball USA, an indoor baseball training facility for children and young adults, to operate in the center of an M-2 zoned manufacturing district in the southwestern part of the City. Play Ball USA – Zoning Case No. 11-044-CU. The site was a 73,158 sq. ft. building on a 2.92 acre lot. The applicant proposed to use the middle section of a building, which was approximately 25,000 sq. ft. The applicant expected about 100 people during the busiest times (M-F, 5:00 pm to 10:00 pm, S-S, 12:00 pm to 6:00 pm). The applicant proposed to use 20 parking spaces (by lease) across the street, and 54 spaces on-site.

95. The Play Ball USA building is surrounded on all sides by manufacturing uses zoned M-2: Plitek, a die cutting, laminating, adhesive coating, and printing facility, is adjacent

to the building on the west; Adamba imports, a liquor distributor operates across the street; Finzer Roller, a manufacturer of rubber and steel rollers, is located to the east, and International Paper, a manufacturer of paper and packaging products, is located behind the building. There is no fence separating the Play Ball USA building from any of these uses. The building is located on Rawls Road, which is a two-lane street that ends at a cul-de-sac.

96. The City made no finding that the use by Play Ball USA would present a safety issue for children or others, or that it would disrupt the operations of surrounding businesses. The City planning staff stated that “[n]one of the functions of the Commercial Indoor Recreation use are anticipated to be hazardous or disturbing to the surrounding neighborhood.” The City’s Traffic Engineers waived the requirement for a parking or traffic study because they were satisfied that the amount of parking provided was adequate, and concluded, without any study, that the proposed use was “not anticipated to create an amount of additional traffic and parking which cannot be accommodated by the existing street network according to the information provided.”

97. The City has permitted tax-exempt, secular places of assembly that were comparable to AIC in all relevant respects to rezone M-2 (manufacturing) land to I-1 (institutional).

98. In 2006, the City permitted the rezoning of M-2 land in a manufacturing district in the eastern part of the City to I-1 to allow for the construction of an elementary and junior high school at 1825 & 1865 Miner Street. The school, known as Science & Arts Academy (“S&AA”), is surrounded by manufacturing and industrial uses. To the south is Chicago Quadrill, a drill manufacturer, and to the south and east is Self-Storage, a large storage facility. There is a fence separating the school playground and school parking lot from Chicago Quadrill.

There is no fence separating the school grounds from part of the Self-Storage facility and the roadway into and out of the storage facility. The school soccer field also is next to Self-Storage, and it is enclosed by a fence. GA Auto, an auto repair and renovation facility, and Precision Instruments, a manufacturer, are located directly across the street (a two-lane road) from the school and soccer field. There is no fence separating GA Auto and Precision Instruments from the school grounds.

99. The rezoning for S&AA was not in conformity with the City's Land Use Plan, which recommended Industrial/Manufacturing for this land. KLOA prepared a traffic study for S&AA, and the City accepted KLOA's findings that the proposed project would not adversely impact surrounding uses. The City did not find that the school operating in a manufacturing district would present safety concerns. Rather, the City noted in its staff report that the school would exist harmoniously with surrounding uses.

100. The Plan Commission approved the S&AA project unanimously (4-0). As a condition of approval, the Plan Commission required the installation of a fence and a buffer zone – as required by Section 10.9-3-D of ZO. During the Planning Commission meeting, the Plan Commission Chairman verified that a fence would be planned so that the children would be protected.

101. Activities conducted at S&AA include sporting events, operas and other musical events, theater performances, girl- and boy-scout meetings, graduation ceremonies, and meetings of academic fraternal societies, among others.

102. In 2009, the City permitted the rezoning of M-2 land in a manufacturing district in the central part of the City to I-1 at the request of the Society of Danube Swabians ("SDS"), a non-profit cultural society located at 625 Seegers Road. The uses at SDS include programs and

activities for youth and senior citizens, weekend school for children, youth group activities for teenagers on Friday nights and senior citizen activity groups on Wednesdays, among others. The SDS building contains a small museum and a research library to study the history of the Swabian people in Europe. The land rezoned for SDS is surrounded by Union Pacific Railroad right-of-way to the north, Sysco Systems to the east and south, and single-family homes to the west.

103. The City's Land Use Plan called for the rezoning of SDS's land to Mixed-Density Residential. The City planning staff's report noted that the SDS facility was "similar to places of worship and schools" and therefore would be consistent with any Mixed-Density Residential development. The Plan Commission voted unanimously (3-0) to approve the proposal, even though members of the public complained and opposed the rezoning. The Plan Commission, as a condition for approval, required that a fence be constructed.

104. Prior to denying AIC's rezoning application, the City had applied the parking ratios in Section 9.7 to all zoning applications involving places of worship, including, but not limited to, the following:

- Fountain of Life – Zoning Case No. 12-024-CU. In 2012, the City approved a CUP requested by Fountain of Life Church to operate a place of worship at 1645 River Road. The proposed site was a vacant 1,705 sq. ft. suite in a 27,413 sq. ft. building. The proposed floor plan had 45 fixed seats. The City staff noted that 12 spaces would be required under the ZO at a ratio of one space per four seats in the sanctuary. The City staff recommended approval of the CUP, and the City Council approved it.
- Cambodian Buddhist Association, Inc. – Zoning Case No.12-067-CU. In 2012, the Cambodian Buddhist Association submitted a conditional use

request to operate a place of worship at 1090-1100 Executive Way in the City. The proposed sanctuary space (meeting area for worshipers and monks) was 2,555 sq. ft. The traffic study submitted in support of the application, performed by Gewalt Hamilton Associates, Inc., calculated 43 spaces were required, citing to the ZO requirement of one parking space per 60 sq. ft. of worship space. The application subsequently was withdrawn.

- Chicago Christian Church – Zoning Case No. 11-029-CU. In 2011, Chicago Christian Church requested a CUP to establish a place of worship at a vacant 6,112 sq. ft. building. The proposed sanctuary space had fixed seating (pews) that would accommodate 120 persons. The City staff noted that under the requirements of the ZO, one space per four seats was required, which equaled 30 parking spaces. The City staff recommended approval of the CUP. The City Council granted the CUP.
- Phat Bao Temple – Zoning Case No. 10-023-CU. In 2010, the Phat Bao Temple submitted an application for a CUP to operate a place of worship at 1495 Prospect Avenue in Des Plaines. The applicant proposed to demolish existing structures and create a building with a 1,465 sq. ft. sanctuary. The City staff noted that the sanctuary did not have fixed seating, and that the ZO required one off-street parking space for every 60 sq. ft. of the central area of worship. The City staff noted that under this calculation, a minimum of 24 spaces would be needed, and that the applicant proposed to create 26 spaces. It recommended approval of the CUP. The City Council granted the CUP.

COUNT I

RLUIPA – SUBSTANTIAL BURDEN

105. The allegations above are hereby incorporated by reference.

106. Defendant's treatment and denial of AIC's rezoning request constitutes the imposition or implementation of a land use regulation that imposes a substantial burden on AIC'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)(1).

COUNT II

RLUIPA– EQUAL TERMS

107. The City's treatment of AIC and its denial of AIC's rezoning application constitutes the imposition or implementation of a land use regulation that treated, and continues to treat, AIC on less than equal terms with a nonreligious assembly or institution, in violation of RLUIPA, 42 U.S.C. § 2000cc(b)(1).

COUNT III

RLUIPA – DISCRIMINATION

108. The City's has treated AIC and its rezoning application differently from other applications on the basis of religion or religious denomination, in violation of RLUIPA, 42 U.S.C. § 2000cc(b)(2).

WHEREFORE, the United States asks that this court enter an order that:

1. Declares that the City's policies and practices, as alleged herein, violate RLUIPA;
2. Enjoins the City, its officers, employees, agents, successors and all

other persons in concert or participation with it, from—

- a. Imposing a substantial burden on the religious exercise of AIC and its members that is not narrowly tailored to further a compelling governmental interest;
 - b. Treating AIC and its members on less than equal terms with nonreligious assemblies or institutions; and
 - c. Discriminating against AIC and its members on the basis of religion or religious denomination.
3. Requires the City, 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, AIC and its members to the position they would have been in but for the City's unlawful conduct, including but not limited to granting such approvals as are necessary to allow AIC to proceed with the purchase of the Subject Property and to use the Subject Property as a Place of Worship; and
 - b. 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.
4. Awards such additional relief as the interests of justice may require, together with the United States' costs and disbursements in this action.

Respectfully submitted,

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Dated: September 30, 2015